

**REPORT FOR TABLING IN PARLIAMENT BY
THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN**

Under s 486O of the Migration Act 1958

Personal identifier: 095/06

Principal facts

Personal details

1. Mr X, a single male aged approximately 29 years old, is an ethnic Hazara from Afghanistan. He believes his family (father, mother, brothers and sisters) continue to reside in Afghanistan, although he has not had contact with them for over two years. He has heard that two of his brothers have also left Afghanistan but he does not know their current location.

Detention history

2. Mr X arrived in Australia in April 2001 by boat and was immediately detained under s 189(2) of the *Migration Act 1958*. He was initially placed in Woomera Immigration Reception and Processing Centre, moved to Port Hedland Immigration Reception and Processing Centre, and then transferred to Baxter Immigration Detention Facility (Baxter IDF). Mr X was released from detention in September 2005 when he was granted a temporary Protection Visa (TPV).

Visa applications

3. Applied for a Protection Visa (PV) (June 2001); the Department (DIMA) refused PV application (October 2001); Refugee Review Tribunal (RRT) affirmed refusal decision (January 2002); appeal to the Federal Court on the basis of bias and jurisdictional error, appeal dismissed (May 2002); request under s 48B (July 2004), denied (September 2004); request under s 417 (May 2005) and further request under s 48B (August 2005); permitted to lodge a further PV application; granted a TPV (September 2005).

Current immigration status

4. Mr X resides lawfully in the community on a TPV.

Removal details

5. DIMA advises that it asked Mr X to voluntarily return to Afghanistan on a number of occasions. Mr X declined to cooperate with his removal. DIMA also offered Mr X the Afghan re-integration package in June 2002 and May 2005. These offers lapsed without response.

Ombudsman consideration

6. The DIMA report to the Ombudsman under s 486N was dated 30 August 2005.
7. Ombudsman staff interviewed Mr X at Baxter IDF on 22 September 2005.
8. Ombudsman staff have sighted a number of documents, including: a medical summary report from International Health and Medical Service (IHMS) dated 26 August 2005; a psychiatric report from Professor Y, dated 21 October 2005; submissions from Mr X's solicitor dated 20 September 2005 and 23 October 2005; and a DIMA submission to the Minister dated 14 August 2005.

Key issues

Nationality

9. The RRT questioned Mr X's nationality, finding that *'I am unable to be satisfied that the applicant is a national of Afghanistan'*. DIMA disputed Mr X's claims that he is an Afghan citizen, asserting that he was a Pakistani citizen. In May 2005, the Islamic Republic of Afghanistan Embassy confirmed Mr X is an Afghan citizen. The DIMA briefing to the Minister states *'this information is authoritative and fundamentally contradicts the findings upon which earlier refusals to [Mr X and 4 others] were based'*.

Health and Welfare

10. During his interview with Ombudsman staff, Mr X commented that his experience of detention had been very difficult. He advised that he felt a lot of physical and emotional pain and had been so desperate at times that he hit his head against the wall until it bled. He felt that life had lost its meaning. Mr X was diagnosed with depression while in detention. He was admitted to Glenside Hospital as an involuntary patient under the *Mental Health Act 1993 (SA)* between 22 July and 27 July 2005 because he felt depressed and suicidal.
11. Although Mr X was released from detention on 27 September 2005, his condition had not improved at the time of receipt of Prof. Y's psychiatric report. The report states that Mr X suffers from a major depressive disorder, which is long-standing and severe, and is associated with melancholic features and psychotic features. He comments, *'I have serious clinical concerns about Mr X. His depression is severe and psychotic, and it is difficult to engage him in treatment'*. The professor examined the causes of Mr X's depression and stated that he is not likely to improve unless he has some sense of certainty about the future. Prof. Y commented that the uncertainty about Mr X's future, combined with the threat of return to Afghanistan, have been a major cause of his mental health condition. He said, *'I have identified uncertainty and indecision as the principal pathogenic factor within the detention setting that led to Mr X's depression ... The ongoing uncertainty of his current situation is now serving to perpetuate the depression. A temporary visa replicates the set of conditions which caused the depression in the first instance. It is therefore clinically contraindicated'*.
12. Prof. Y comments that Mr X is particularly at risk because he does not trust officials and will not engage in treatment or therapy. The professor believes this distrust is directly related to the fact that DIMA officials did not believe that Mr X was from Afghanistan, a fact that later proved to be correct.

Attitude to removal


13. Mr X has continually asserted that he is at great risk if he returns to Afghanistan. He claims that the Taliban killed his uncle. Although the Taliban is no longer in power, Mr X still fears harm from the Pashtuns in his region because he belongs to the Hazara minority. He also fears harm from the religious people in his region because he has spent time in a non-Muslim country. His last message from his father was that it was too unsafe to return home.

Ombudsman assessment/recommendation

14. Mr X spent four and a half years in detention and has now been granted a TPV. He first applied for protection in 2001, and it was only in September 2005 that his claims for protection were accepted. His initial claim was rejected because DIMA disputed that he was an Afghan citizen, a fact that was positively established when the Embassy of the Islamic Republic of Afghanistan confirmed his Afghan nationality in May 2005. If he had

been granted a TPV in response to his initial application in June 2001, he may now be on a permanent PV.

15. Mr X was diagnosed as suffering from a major depressive illness when he was released from detention in September 2005. Prof. Y's view (provided the following month) is that this illness relates directly to Mr X's time in detention and the continuing uncertainty of his visa status, and that Mr X needs a degree of permanency and stability to begin the process of recovery. The impact of this condition on Mr X's quality of life was said to be severe. He was diagnosed as suffering hallucinations, the nihilistic delusion that he is already dead, wishing to self-harm, weight loss, insomnia, and impaired memory, among other symptoms.
16. DIMA's submission to the Minister mentions that it is unsafe for Mr X to return to Afghanistan. It notes that the United Nations High Commissioner for Refugees has asked for complementary protection for citizens from the Ghazni area of Afghanistan, because they are likely to be affected by military operations, searches, arrests, and false denunciations.
17. In light of the medical evidence pinpointing detention as a major cause for his current poor mental health, and in light of the new country information from the UNHCR highlighting the ongoing dangers in Afghanistan, the Ombudsman **recommends** that the Minister grant Mr X a permanent PV or other permanent substantive visa. In doing so, it might be appropriate for the Minister to waive the 30 month waiting period for Mr X to apply for a permanent PV.
18. Prof. Y is hopeful that Mr X will develop a therapeutic relationship with a psychiatrist if he is given a permanent visa. He believes that until this can be achieved, there will be no dramatic improvement in Mr X's mental health. DIMA needs to consider what ongoing role it might provide Mr X in support of his current and future medical needs.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date