

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 105/06

Principal facts

Personal details

1. Mr X is aged 38 and is a citizen of Nepal. His mother and father are deceased. He has one sister who lives in Nepal and he is in regular contact with her.

Detention history

2. In May 2004, Mr X was referred to the Department (DIMA) by the New South Wales Police, detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDF). In March 2005, he was transferred to Baxter Immigration Detention Facility (IDF) and in October 2005 to Glenside Hospital. In April 2006, Mr X was placed at the Port Augusta Residential Housing Centre (RHC).

Visa applications

3. Mr X entered Australia on a Student Visa (SV) (February 1996); SV ceased, Protection Visa (PV) application lodged and granted Bridging Visa (BV) (August 1996); BV ceased, new BV granted and in the same month Mr X left Australia (October 1996); returned to Australia (November 1996); PV refused (March 1997).
4. Appeal to the Refugee Review Tribunal (RRT) (April 1997); RRT affirmed decision (August 1998); BV ceased (September 1998); granted a series of BVs (September 1998 to July 2003); Mr X detained (May 2004).
5. Mr X was a member of the *Nancy Lie and Others Class Action* to the High Court which was withdrawn (June 2003); judicial review of RRT decision sought in Federal Magistrates Court (FMC) (January 2005); application successful and matter remitted to the RRT for reconsideration (July 2005); RRT affirmed decision to refuse PV (October 2005); judicial review of RRT decision sought in FMC (November 2005); Mr X filed a Notice of Discontinuance relating to the FMC application and initiated a s 417 request (March 2006); s 48B commenced on Mr X's behalf (April 2006); requests ongoing.

Current immigration status

6. Mr X is an unlawful non-citizen and is currently detained at Port Augusta RHC.

Removal details

7. DIMA advised that Mr X is unavailable for removal as he has ongoing requests before the Minister.

Ombudsman consideration

8. The DIMA report to the Ombudsman under s 486N was dated 8 June 2006.
9. Ombudsman staff interviewed Mr X on 4 August 2006.
10. Ombudsman staff sighted a psychological report from Glenside Campus Mental Health Service (GCMHS) dated 24 March 2006; three letters from GCMHS to DIMA, dated 8 November 2005, 21 December 2005, and 6 March 2006; a letter from GCMHS to the Guardianship Board, dated 23 February 2006; a copy of Mr X's proposed Community Care Plan; a s 417 Ministerial Submission by Ms A, dated 9 April 2006; a letter of support from Sister B, dated 8 September 2006; and correspondence from Mr X.

Key issues

Health and welfare

11. Mr X spent six months at Glenside Hospital receiving psychiatric care (October 2005 – April 2006). The GCMHS psychological report noted that he was diagnosed with *'major depression and a possible alcohol related mood disorder in the past when he was actively drinking. His alcohol abuse syndrome is in remission and he has Post Traumatic Stress Disorder symptomatology'*. A GCMHS letter (6 March 2006) noted that he was treated during this time with antidepressants, mood stabilisers and *'general support and encouragement'*.
12. Mr X advised Ombudsman staff that he did not have a good childhood, as his father was an alcoholic and abusive towards him. He believes that this may be compounding the problems he is experiencing now. Mr X said that his mental health rapidly declined while living in Sydney for eight years – for seven years of which he was on a series of BVs and for ten months as an unlawful non-citizen in the community. The GCMHS psychological report noted that his conditions were the result of a *'background of chronic uncertainty about his future'*. He stated that this time in the community was more stressful than his later experience in detention, due to this lack of certainty. He began suffering from depression, saying *'I used to finish work, long hours, go to the pub, go back home, sleep, get up with a hangover and go back to work again. I was in that abusive cycle. I was cornered that way. I didn't want to lead a life like that'*. The psychological report further noted that *'during the time he was forced to work illegally to subsist, he was extremely anxious and used alcohol as an anxiolytic [to reduce anxiety]'*.
13. Mr X stated that he began hearing voices during this time in the community, however this *'accelerated'* once in detention. The psychological report noted that while at Baxter IDF Mr X *'developed psychomotor retardation with difficulty in concentration and memory, poor sleep initiation and a constant sense of fear and anxiety'*. DIMA advised that Mr X was on Suicide and Self Harm (SASH) watch six times between 19 September 2005 and 11 May 2006. The second time this occurred he was found with razorblades and a noose. It was after this event that he was transferred to Glenside Hospital.
14. Mr X stated that he responded well to living at Glenside Hospital as he *'had a sense of connection because almost every day people used to drop in and see me'*. He also began education and art classes, and started going to the gym. In March 2006, a Guardianship order was undertaken on his behalf, stating that he has been regarded as having *'mental incapacity within the meaning of the Act'*.
15. In April 2006, he was placed at Port Augusta RHC, and at interview stated that he was upset about this development as he had understood that he would be released into the community and had been provided with a Community Care Plan detailing this arrangement. He raised this as a complaint with the Ombudsman's Immigration and Detention Investigations team. While Mr X's individual complaint has been closed, it has contributed to a wider investigation by the Ombudsman's office into the systemic issues regarding detainees being discharged from mental health institutions back into detention environments.
16. Mr X said that he had a slow adjustment to living at the Port Augusta RHC, but prefers it to living at Baxter IDF. He is going to the gym four days a week, goes grocery shopping and cooks for himself. He is, however, still experiencing anxiety, sleeping problems and hears voices. He is also still attending regular sessions with attending psychologists.
17. The GCMHS psychological report noted that there are concerns regarding Mr X's future. If removed, he has *'maintained he will attempt suicide and complete it'*. It further noted that if he is given a Temporary Protection Visa or Removal Pending Bridging Visa *'his risk to himself will escalate at times of reviews'*. Mr X confirmed this at

interview, stating that that if he was offered a BV *'I would feel insecure because that might make things worse for me because of the uncertainty, and in turn that will make me more anxious'*. The report concluded that his application for a permanent visa was fully supported.

Attitude to removal

18. Mr X stated that, if returned to Nepal, he believes he will be killed by the ruling government due to his earlier involvement with the Communist (Maoist) Party of Nepal, currently the United People's Front (UPF). Mr X believes the authorities will not accept that he is no longer connected to the UPF, and that his recent time in Australia and his reliance on travel documents will bring him to their attention.

Other detention issues

19. Mr X expressed frustration regarding his former partner's ability to make harassing phone calls to him while he has been in detention. He said this happened while he was at Villawood IDF, Baxter IDF and Glenside Hospital. He said that he wrote to Global Solutions Limited (GSL) staff (the detention service providers) requesting that if she rang not to put the call through to him. He said that they replied that *'they had no right to stop anyone from calling me, they cannot do that legally'*. The DIMA report indicates that GSL had pursued concerns about threats made by Mr X's former partner and had enlisted the support of police in relation to preventing further visits by her to Villawood IDF.
20. Mr X also felt frustrated at the continual camera surveillance at the Port Augusta RHC, saying *'the cameras they just annoy me, because I was paranoid with cameras while I was in Villawood and because the first few weeks you don't notice, then after a certain time you feel like you are being watched 24/7'*. He also said that he found Baxter IDF very depressing as the detainees cannot see the horizon.

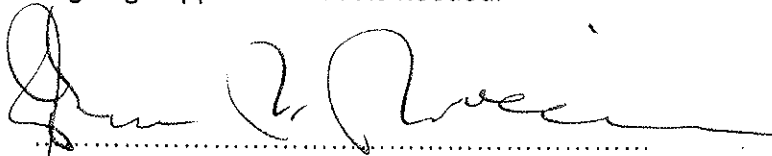
Living in the community issues

21. Mr X noted the difficulties of living on a BV without work rights. He said that he did this for eight years, stating *'You live your life like an outcast, an outlaw you know, and you develop that sense of disrespect and you don't care if you find solace in alcohol ... A lot of time I didn't have money to pay rent, the house owner used to knock on my door and give me a hard time. A lot of times I had to borrow money for work, and they used to exploit me and make me do extra hours'*.
22. At interview Mr X advised that he made many friends while at Glenside Hospital, predominantly from the Circle of Friends and church groups. Sister B wrote to the Ombudsman's office, informing that those who know Mr X regard him as honest, respectful and hardworking. Mr X said that this community support is important to him as it has helped him deal with his alcoholism. He said that he has not had alcohol since he has been in detention and that *'now I have a lot of people trying to help me and I don't want to let them down'*. He advised that he has joined Alcoholics Anonymous and goes to regular meetings.
23. The current s 417 submission before the Minister, from Ms A, highlights that Mr X has lived in Australia for over ten years, he speaks fluent English, he was gainfully employed, he has been a law abiding person, and that he poses no risk to the Australian community.

Ombudsman assessment/recommendation

24. Mr X has been in immigration detention for over two years, primarily due to ongoing litigation relating to his PV claim. It is understood that requests under s 417 and s 48B are currently being considered by the Minister, and that those requests propose that Mr X be granted a visa, subject to health and character checks.

25. The uncontradicted medical evidence before the Ombudsman is that Mr X is suffering from Major Depression and Post Traumatic Stress Disorder. He spent more than six months at Glenside Hospital and currently resides at the Port Augusta RHC. Psychiatric advice recommends that, while Mr X's immigration matters are being resolved, he not be returned to a formal detention facility as the risk he presents to himself will significantly increase. Although Mr X may no longer require acute mental health inpatient care, the detention facility environment appears to have been a factor in the deterioration of his mental state.
26. The Ombudsman has no recommendation to make at this stage in relation to Mr X. It is, however, desirable that a permanent solution soon be found to Mr X's unresolved immigration issues. Numerous psychiatric reports advise that his long term prognosis is not good unless he is provided with certainty in his future, noting that he may relapse into his depressive illness or attempt self harm if he is released on a temporary visa or removed to Nepal. If he is released into the Australian community following the completion of health and character checks, DIMA will need to consider if ongoing support for Mr X is needed.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

21 Oct 2016
Date