

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 112/06

Principal facts

Personal details

1. Mr X is a male aged 38. He is an ethnic Arab from the XXX region of XXX. His family, including three sisters, four brothers, and cousins, reside in XXX.

Detention history

2. Mr X arrived in Australia by boat on 18 December 2000. The Department (DIMA) detained him under s 189(2) of the *Migration Act 1958* and placed him in the Curtin Immigration Reception and Processing Centre (IRPC). He was transferred to Baxter Immigration Detention Facility (IDF) (September 2002) and remained there until he was released from detention (August 2005).

Visa applications

3. Mr X's application for a Protection Visa (PV) (January 2001) was refused (March 2001); unsuccessfully appealed to the Refugee Review Tribunal (RRT) (December 2001); unsuccessfully sought judicial review at the Federal Magistrates Court (FMC) (July 2002); appealed to the Full Federal Court (FFC) (September 2003); unsuccessfully applied for special leave to appeal to the High Court (HC) (November 2004).
4. Mr X applied to the Minister under s 417 (January 2004), DIMA deemed it inappropriate to consider (March 2004); initiated thirty-one s 417 requests to the Minister (October 2004-January 2005), all were refused (March 2005); applied to the Minister under s 48B (April 2004), DIMA deemed it inappropriate to consider (March 2005); made a further three s 417 applications and a s 48B application to the Minister (March-May 2005); granted a Removal Pending Bridging Visa (RPBV) (August 2005); the Minister exercised her discretion under s 48B and permitted him to file a further application for a PV (December 2005); Mr X was granted a Temporary Protection Visa (TPV) on 26 May 2006.

Current immigration status

5. Mr X holds a TPV and resides lawfully within the community.

Removal details

6. DIMA reports that Mr X was offered the XXX reintegration package in January 2004 and the offer lapsed without him accepting.

Ombudsman consideration

7. The DIMA report to the Ombudsman under s 486N was dated 24 November 2005.
8. Ombudsman staff interviewed Mr X on 7 March 2006 in Adelaide, with an interpreter, in the presence of his friend Ms A.
9. Ombudsman staff sighted a number of documents: reports from Dr Z (Psychiatrist) dated 4 and 21 November 2005 and Mr Y (Clinical Psychologist) dated 28 June 2006 and 12 April 2006; a summary report from Professional Support Services (PSS) dated 11 April 2006; submissions from Ms A dated 12 December 2005 and 8 March 2006; copies of the Refugee Advocacy Service of South Australia's (RASSA) submissions to the Minister for Mr X dated 11 March 2005, 6 May 2005, and 28 June 2005; copies of

letters from Mr X's brothers, dated 11 December 2004 and 15 April 2005; and a copy of DIMA's submission to the Minister dated 20 October 2005.

Key issues

Health and welfare

10. Mr X used counselling services during his time in immigration detention, although the PSS report states *'without a full Psychological assessment, a formal diagnosis was not made'*. Mr X reports that he was taken to hospital after a suicide attempt and the treating doctor at the hospital recommended that he consult a psychiatrist but this recommendation was not followed up. The DIMA report states that he went on hunger strikes during 3-8 November 2004 and 7-24 December 2004. It also states that in November 2004 Mr X *'self harmed by attaching bare wires to his toe which were connected to the electricity supply. DSP [Detention Service Provider] staff disconnected the electricity supply and placed Mr X in the recovery position'*.
11. After his release from immigration detention, Mr X consulted with psychologist Mr Y who concluded that he is *'suffering from a severe Posttraumatic Stress Disorder [PTSD], resulting in "marked impairment of social or occupational functioning" ... [and] a severe Major Depressive Disorder and a co-morbid Anxiety syndrome'*. Dr Z stated he had depression, commenting *'he is living a restricted and miserable life at the moment, reluctant to leave his house, sleeping only in the mornings'*. In his second report, Dr Z comments *'I continue to have grave concerns about his survival. He remains disengaged, unable to tolerate social contact for any length of time ... Whilst he remains in his uncertain predicament he holds no hope for the future'*.
12. Mr Y comments on the causes of Mr X's illnesses: *'It is my clinical opinion that the prolonged period that he spent in immigration detention has had a severe impact on his psychological well-being and continues to affect his psychological well-being adversely'*. Dr Z states *'No single intervention will resolve Mr X's considerable difficulties, which were directly attributable to his detention experience'*. Both professionals comment on the importance of stability to his recovery. Dr Z states *'some increased security from being given a protection visa would contribute to him having some chance of recovering from his current dire state. There is likely to be further exacerbation and complete mental disintegration and or significant self harm (up to and including suicide) remain possibilities'*. Mr Y states *'he remains highly anxious about the uncertainty of residency in Australia and continues to hold grave fears for his well-being and safety if he is forced to repatriate to XXX. These uncertainties also impact on his ability to engage in psychological therapy in an effective manner to resolve his psychological problems'*.
13. In his interview with Ombudsman staff, Mr X commented that that he can't talk about his time in detention *'because it is like rubbing salt into a wound'*, and *'I am really sick but I do not know what it is – it is a mental and body sickness'*.

Attitude to removal

14. Mr X stated he had suffered discrimination in XXX because he is an XXX Arab. He said the government had taken his family's land without sufficient compensation and he had been involved in activities protesting the resumption. He said he left XXX just prior to his uncle organising a big protest, at which a number of people were injured and arrested. His uncle had apparently told the authorities Mr X was the organiser of the protest. He said his four brothers were arrested after the protest, and one was detained for over four years. He said he would be persecuted in relation to this protest if he were forced to return to XXX. Initially the RRT did not accept that XXX Arabs were subject to systematic persecution in XXX *'Arab people do not suffer significant discrimination at the hands of the XXX authorities'*. It considered that *'international bodies such as Amnesty International and Human Rights Watch would have reported such serious discrimination ... if it existed'*.

15. Almost four years after this RRT decision, the Minister granted Mr X permission to make another application for a PV. This was after a submission from DIMA stating [quote removed containing information about changed country circumstances].

Resettlement issues

16. When Ombudsman staff interviewed Mr X, he was on a RPBV. He described feeling uncertain about the future *'I am concerned that someone will come and tap me on the shoulder and take me away'*. He also described difficulties in obtaining work, saying that people were reluctant to employ him or train him because he was only temporarily in Australia. Despite this, he had been able to obtain a licence to be a front-end loader driver and work temporarily as a maintenance officer. Since then, Mr X has been granted a TPV, which gives him the right to reside in Australia for 36 months. He can be considered for a further visa at the conclusion of 30 months.
17. Mr X has significant community support. As well as Ms A who Mr X says is *'like a mother to me'*, the Ministerial submission noted *'a substantial number of letters have been received from members of the public and clergy supporting Mr X's request to permanently stay in Australia'*.
18. Mr X will not be entitled to financial assistance to study, in the form of a Commonwealth supported place or a HECS-HELP loan, while he is on a Temporary Protection Visa.

Ombudsman assessment/recommendation

19. Mr X spent over four and a half years in immigration detention, primarily as a result of his pursuit of protection. After almost five and a half years, his claim to protection was accepted. While his claim had not changed, DIMA had received information that discrimination against Arabs in XXX had increased in the intervening years.
20. His time in detention caused Mr X to develop a number of debilitating mental health conditions, including Major Depression and PTSD. Even though he has been out of detention for almost a year, Mr Y states that his time in detention *'continues to affect his psychological well-being adversely'*. The medical evidence is that he needs some certainty in order to recover from his psychological problems. Given Mr X's medical condition, the Ombudsman **recommends** that the Minister consider exercising her discretion to waive the usual 30 month waiting period and allow Mr X to be considered for a Permanent Protection Visa.
21. Given that Mr X has a number of mental health conditions, it would be appropriate for DIMA to consider what ongoing medical and casework support it can provide to him.



.....
Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

15 November 2006

.....
Date