

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 128/07

Principal facts

Personal details

1. Mr X is aged 38 and is a citizen of Iran. His parents and siblings live in Iran.

Detention history

2. Mr X was detained under s 189(2) of the *Migration Act 1958* as an unauthorised boat arrival and was transferred to Curtin Immigration Reception and Processing Centre (CIR&PC) in June 2000. He was transferred from CIR&PC to Baxter Immigration Detention Facility (Baxter IDF) in September 2002.

Visa applications

3. Mr X lodged a Protection Visa (PV) application (March 2001), which was refused (March 2001), the refusal was affirmed by the Refugee Review Tribunal (RRT) (July 2001); application for judicial review of the RRT decision (July 2001) in the Federal Court (FC), dismissed (April 2002); appeal against the FC judgment to the Full Federal Court (FFC) (April 2002), dismissed (October 2002); application for special leave to appeal the FFC decision to the High Court (HC) (October 2002), refused (May 2004).
4. A request for Ministerial discretion under s 417 was lodged (January 2004), refused (March 2004); a further six s 417 requests lodged (July 2004 to June 2005), all of which were refused (June 2005).
5. Mr X lodged a s 48B request (March 2005); the Minister favourably exercised her discretion (June 2005) to allow a further claim for protection; Mr X was invited to apply for a Removal Pending Bridging Visa (RPBV) (June 2005); applied for RPBV (June 2005); further PV application lodged (July 2005); Temporary Protection Visa (TPV) granted 20 July 2005.

Current immigration status

6. Mr X is the holder of a TPV and resides lawfully in the community.

Ombudsman consideration

7. The Department of Immigration and Citizenship (DIAC) report under s 486N was dated 12 December 2005.
8. Ombudsman staff sighted a number of documents: a letter from Dr Y, general practitioner regarding Mr X's mental health; a letter, psychological report and clinical assessment (28 March 2006) from Mr N, clinical psychologist; a psychiatric report (10 April 2006) from Dr B, psychiatrist; and a letter (17 May 2006) from Ms F, migration agent.
9. Ombudsman staff interviewed Mr X with the assistance of a Farsi speaking interpreter in Adelaide on 14 June 2006.

Key issues

Health and welfare

10. Mr N's psychological report (March 2006) stated that *'It is my clinical opinion that Mr X suffers a severe Major Depressive Disorder and a severe Posttraumatic Stress Disorder [PTSD] of long duration. His current uncertain status as a temporary protection visa holder aggravates his psychological problems and mitigates against his ability to effectively engage in therapy'*.
11. Dr B's psychiatric report (April 2006), noted that *'Prior to detention in Australia, he had experienced no symptoms of depression or anxiety ... he did experience normal anxiety ... he was in good emotional health when he lived in Iran, and experienced no long-term ill effects from anxiety at that time.'* Dr B noted that *'should a Permanent Visa be granted immediately, it would provide him with a sense of security and belonging which would be invaluable in helping to overcome the debilitating symptoms which are a result of post-traumatic stress disorder. It would seem to be an inhumane act to make Mr X wait a further three years for the Permanent Visa, when he has already spent five years in the detention centre. The uncertainty of waiting on a decision will almost certainly contribute to exacerbating his already severe symptoms'*.

Attitude to removal

12. DIAC reported that Mr X was offered the Iranian re-integration package in March 2004 but he did not indicate his response before the offer lapsed.
13. Mr X does not wish to return to Iran as he says he fears persecution as a result of his political activity in that country and his conversion to Christianity while in Australia.

Other detention issues

14. At interview with Ombudsman staff Mr X said that every part of his five years in detention was difficult, that he was constantly worried about being woken up to be deported, or being deceived into attending for a medical so as to be deported.
15. Mr X said that while detained he had difficulty getting access to a solicitor or a phone and that he had to pay to send faxes to his solicitor.
16. Other issues raised by Mr X included the shortage of doctors at the detention centre and that when he presented with health concerns the most frequent advice that he received was to drink water. He also made allegations about the lack of variety and poor quality of food offered in the detention centre. The Ombudsman notes that Mr X's concerns related to a particular period in time and that detention circumstances have improved considerably since he was in Curtin and Baxter detention centres.

Ombudsman assessment/recommendation

17. Mr X spent five years in detention as a result of his claims for protection being refused. The Minister allowed Mr X to make a further claim for protection in June 2005, which was accepted by DIAC and he was granted a TPV in July 2005.
18. The Ombudsman notes that in early 2006 a clinical psychologist and a psychiatrist both reported on the negative impact on Mr X's mental health of his temporary status. The medical information available to the Ombudsman indicates that Mr X was still suffering from major depression and PTSD nearly twelve months after his release from immigration detention. The Ombudsman is unaware of the current status of his mental health, however notes that the psychiatrist's advice was that providing Mr X with some certainty would be invaluable in alleviating his psychological conditions. In light of this, the Ombudsman **recommends** that the Minister consider exercising his discretion to

waive the usual 30-month waiting period and allow Mr X to be considered for a permanent visa.

19. The Ombudsman **recommends** that DIAC consider what ongoing medical and casework support it should provide to Mr X.

V. Thom

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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

6 March 2007

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Date