

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 130/07*

## **Principal facts**

### *Personal details*

1. Mr X is aged 36 and, although he claims to be a citizen of Sierra Leone, the Nigerian High Commission has confirmed that it is satisfied he is a citizen of Nigeria.

### *Detention history*

2. It has not been determined when Mr X arrived in Australia. On 18 August 2004, he was located by Department of Immigration and Citizenship (DIAC) officers, who detained him under s 189(1) of the *Migration Act 1958*. He was placed at Villawood Immigration Detention Facility (IDF).

### *Visa applications*

3. Mr X lodged an application for a Temporary Protection Visa (February 2000), refused (May 2002); decision appealed to the Refugee Review Tribunal (RRT), affirmed (July 2003); series of Bridging Visas (BVs) granted (February 2000 to August 2003); s 417 request seeking favourable exercise of the Minister's humanitarian discretion lodged (October 2003), declined (May 2004); BV granted on 7 June 2004, valid to 21 June 2004, to enable Mr X to make departure arrangements from Australia; detained (August 2004); BV application refused (August 2004); submission referred to Minister for possible consideration of exercise of detention intervention powers, declined (August 2005).

### *Current immigration status*

4. Mr X is an unlawful non-citizen currently detained at Villawood IDF.

### *Removal details*

5. DIAC advised that Mr X has been uncooperative with removal efforts and attempts to identify him. DIAC stated that since Mr X's nationality has been determined, the Nigerian High Commission issued Mr X an emergency travel document on 26 February 2007 and, as he has no active Ministerial intervention requests or litigation afoot, his removal is imminent.

## **Ombudsman consideration**

6. DIAC reports to the Ombudsman under s 486N dated 30 August 2006 and 27 February 2007.
7. Ombudsman staff contacted Mr X on two occasions to invite him to be interviewed. On both occasions he refused, saying that it may prejudice his case before the Minister.
8. Ombudsman staff sighted two International Health and Medical Services (IHMS) medical summary reports, dated 30 August 2006 and 21 January 2007.

## **Key issues**

### *Identity issues*

9. DIAC advises that Mr X claimed to have entered Australia using a fraudulent South African passport in the name of Mr Y. DIAC has no record of this passport being used to enter Australia. Mr X provided DIAC with a photocopy of a visa issued in Pretoria in the

name of Mr Z, which DIAC records indicate was associated with an arrival record on 6 January 2000.

10. In September 2004, DIAC officials contacted the Sierra Leone Consulate General seeking travel documents for Mr X. DIAC stated that the Consulate General advised that before providing travel documents, they must first speak with Mr X. Mr X refused to speak with the Sierra Leone High Commission and subsequent attempts by DIAC to arrange an alternate solution with the High Commission were unsuccessful.
11. DIAC referred Mr X's identity issues to its National Identity Verification and Advice (NIVA) Section on 8 August 2005. He was interviewed and evidence obtained indicated that Mr X is a Nigerian national. NIVA liaised with the Nigerian High Commission in Canberra who is satisfied that Mr X is a Nigerian national. An emergency travel document was issued by the Nigerian authorities on 26 February 2007.

#### *Health and welfare*

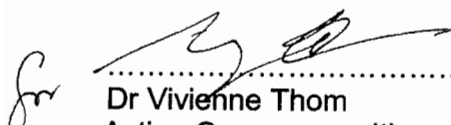
12. DIAC advises that *'Mr X tends to be a "loner", usually either staying in his room or watching television. He does not eat in the Mess Hall or socialise with other detainees. While Mr X has played soccer on occasion, he has chosen not to participate in other recreational activities or education classes or excursions'*. DIAC advised that a Mental Health Examination was conducted with Mr X on 31 January 2007, which revealed that there were *'no mental health issues of note'*.

#### *Attitude to removal*

13. The RRT noted that Mr X *'claims to fear persecution in Sierra Leone at the hands of an influential family involved in a dispute with his own family over a parcel of land'*. The RRT considered Mr X's claim and concluded that he *'displayed only a limited knowledge of Sierra Leone ... the Tribunal could not be satisfied that he had a well-founded fear of persecution in any other country'*.
14. Mr X elected not to meet with Ombudsman staff and therefore did not discuss his attitude to removal.

#### **Ombudsman assessment/recommendation**

15. Mr X has been in detention for nearly two and a half years, primarily due to the difficulty in establishing his true identity and country of origin, and because of his ongoing litigation.
16. The DIAC decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. There is no evidence available to the Ombudsman that would lead to a different conclusion.
17. The Ombudsman understands that there is no outstanding litigation that would prevent Mr X's removal from Australia and that his removal is imminent. The Ombudsman makes no recommendations in this report. Should his removal be delayed, the Ombudsman may be required to prepare another report on Mr X's circumstances if he remains in detention. The Ombudsman will at that time review Mr X's circumstances, considering the suitability of continued detention in an immigration facility.

  
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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman

13 / 3 / 07  
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Date