

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 132/07

Principal facts

Personal details

1. Mr X is a male from Afghanistan, aged around 24. He is a Shi'a Muslim of Hazara ethnicity. He has attempted to contact his family in Afghanistan (mother, father, brothers, sisters) through the Red Cross Tracing Service, but has received limited information and does not know where they reside. He has had some contact with an uncle who resides in Afghanistan.

Detention history

2. Mr X arrived in Australia by boat in December 2000 and was placed in immigration detention by the Department (DIAC), pursuant to s 189(1) of the *Migration Act 1958*. He was initially placed at Woomera Immigration Reception and Processing Centre (IRPC). He was transferred to Port Hedland Immigration Reception and Detention Centre (April 2002); to Woomera IRPC (May 2002); to police custody (June/July 2002); to Woomera IRPC (July 2002); to Baxter Immigration Detention Facility (IDF) (March 2003); and to Glenside Hospital (August 2005). He was released into the community (October 2005).

Visa applications

3. Mr X applied for a Protection Visa (PV) (February 2001), refused (March 2001); Refugee Review Tribunal (RRT) dismissed his appeal (July 2001); application for judicial review to the Federal Court (FC) unsuccessful (March 2002); appeal to the Full Federal Court (FFC) unsuccessful (November 2002).
4. Applied to the Minister under s 48B (July 2004), unsuccessful (August 2004); applied to the Minister under s 48B and s 417 (June 2005); the Minister exercised her discretion under s 48B and allowed him to apply again for a PV (September 2005); granted a Temporary Protection Visa (TPV) (October 2005).

Current immigration status

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

Removal details

6. The DIAC report to the Ombudsman stated that Mr X was offered a reintegration package to Afghanistan in September 2003 and May 2005. Information on Mr X's DIAC file shows that he was also offered the reintegration package to Afghanistan in December 2002. Mr X's migration agent claims he was also offered the package in March 2003, as well as the reintegration package to Iran in March 2003. Although Ombudsman staff viewed information about the Iranian reintegration package on Mr X's file, they did not find documents evidencing him being offered the Iranian package.

Ombudsman consideration

7. The DIAC report to the Ombudsman under s 486N is dated 11 August 2005.
8. Ombudsman staff interviewed Mr X at Glenside Hospital on 24 August 2005, and spoke to him again on 3 February 2006, with an interpreter.

9. Ombudsman staff sighted a number of medical documents: medical information including a discharge summary from Glenside Campus Mental Health Service (MHS) dated 25 November 2005; a letter from Glenside Campus MHS dated 18 October 2005; a report from psychologist Mr A dated 24 November 2004; notes from Dr B, psychiatrist, dated May 2005; reports from the psychiatrist Dr C dated 16 June and 29 June 2005; an International Health and Medical Services (IHMS) medical summary report dated 18 August 2005; and a summary report from Professional Support Services (PSS) dated 18 August 2005. Ombudsman staff spoke to Dr D, psychiatrist, on 24 February 2006 and 10 March 2006.
10. Ombudsman staff sighted a United Nations High Commissioner for Refugees briefing dated 11 July 2005 to DIAC, DIAC's submission to the Minister dated 12 August 2005, and a number of Mr X's DIAC files.
11. The Ombudsman received submissions from Mr X's migration agent, Ms K, dated 31 October 2005, and from a friend of Mr X, Mr Z, dated 1 November 2005. Ombudsman staff also spoke to Ms K and Mr Z.

Key issues

Country information

12. Mr X claimed to be an Afghan national, who experienced persecution as a Shi'a Muslim and Hazara. In July 2001, the RRT rejected his claim to be Afghani.
13. Mr Z stated that he received an identity document, a *'taskera'*, from Mr X's uncle in Afghanistan, which he translated and sent to DIAC on 6 July 2004. At around the same time, the Minister considered an application from Mr X under s 417. The migration agent alleges that DIAC's submission to the Minister failed to refer to the new identity information *'Yet this information, which substantiated the applicant's case, does not appear to have been taken into consideration in the re-examination process that began in July 2004'*. If the submission to the Minister failed to include reference to the new identity evidence, the migration agent is correct in stating that it would be an important oversight. The Minister made the decision to refuse the submission on 31 August 2004, but the Ministerial submission itself is undated. Given this, it is difficult to know if DIAC provided the submission to the Minister before or after Mr Z provided the new information.
14. Mr X was subsequently interviewed by a delegation from the Embassy of the Islamic Republic of Afghanistan, who issued him with a certificate of Afghan citizenship on 13 May 2005. DIAC's submission to the Minister of the 12 August 2005 states the advice from the Government of Afghanistan is *'authoritative and fundamentally contradicts the findings upon which earlier refusals of PVs ... were based'*.
15. DIAC's report of 11 August 2005, however, continues to refer to *'allegations [that] have been received by the department that Mr X is in fact a Pakistani'*. Ms K criticises this in her submission, stating *'The applicant has been the subject of untested dob-ins and his processing has been affected by adverse speculation about his nationality being maintained on [DIAC] database systems'*. The Ombudsman supports the view expressed in the Ministerial submission that Mr X's Afghan identity has been conclusively established, which is reflected in the fact that he has since been granted a TPV.

Health and welfare

16. Dr B's notes stated in May 2005 that Mr X had *'Major depression with melancholic features'*. Dr C stated that he *'suffers from panic disorder and severe major depression. Even though anxiety and panic are more of a problem for this man than depression, he scored 33 on the Hamilton Depression Rating Scale. A score of 24 is regarded as very*

severe'. An early psychological report by Mr A similarly stated that Mr X had a major depressive illness. The November 2005 Glenside Campus MHS discharge summary stated that his diagnoses were the major psychotic disorder, '*Schizophreniform disorder*', in preference to a depressive disorder, as well as Post-traumatic Stress Disorder and a '*Pathological Grief Reaction*'.

17. Dr B noted a link between Mr X's condition and his time in detention. His notes stated '*However [I] expect that whilst he is in detention any effect of medication will be limited by the effect of the detention on his depression making it more difficult to treat*'. Dr C also commented on this in his report '*the treatment cannot be provided within the Baxter environment because the continued exposure to the environment that has caused him the damage will exacerbate his difficulties*'.
18. The discharge summary from Glenside Campus MHS noted '*Since he was granted with a TPV he improved significantly. He became more reactive, spontaneous and significantly improved in his mood ... However, he continues to experience nightmares disturbing his sleep. He becomes anxious and upset when tries to recollect faces of his family members*'. In his discussions with Ombudsman staff in February 2006, Mr X said that he still suffered at that time from weakness and sweating. His psychiatrist Dr D said he had improved since he left Glenside MHS and had been studying English and obtained his drivers licence. However, Dr D said in early 2006 that he was still showing signs of Post-traumatic Stress Disorder. She commented on the effect of his temporary protection visa status on his mental health '*He is trying to assimilate and he has a history of psychotic depression. It is risky if he thinks he can't stay*'.

Hepatitis diagnosis

19. Ms K queried whether DIAC's report to the Ombudsman correctly identified Mr X's hepatitis condition. She also questioned whether DIAC should have employed Mr X in the detention centre kitchen in light of him having Hepatitis B. Her submission to a Senate Enquiry on 7 October 2005 stated '*the report that went to the Ombudsman said that he is hep C positive but he is hep B positive ... Of grave concern to us all should be that very first medical report was ignored, and he was working in the kitchens at Woomera and Baxter*'.
20. Information on the DIAC files showed that Mr X tested positive for Hepatitis B at Woomera IRPC on 13 January 2001 and for Hepatitis C on 9 August 2005 at Glenside Hospital. DIAC confirms that Mr X was working in the detention centre kitchens after being diagnosed with Hepatitis B. However, a DIAC officer stated '*I also received medical advice that Hepatitis B is not a food borne disease and a detainee working in a kitchen would not present a threat to public health provided they followed standard kitchen hygiene practices, as are in place in detention centre kitchens*'. Mr X was diagnosed with Hepatitis C when he was no longer working in the detention centre kitchen.
21. It appears that Mr X's positive result for Hepatitis B was known to DIAC but, due to poor communication, it was not known to the medical service provider within the detention centre. An officer from DIAC stated '*I have investigated this issue and can report that during Mr X's health screening conducted as part of assessment of his application for a Protection visa, it was found following blood tests that Mr X is a Hepatitis B carrier. This condition was not known to the detention health services provider, IHMS, as the information arose out of a visa process, not out of the day-to-day management of detainee health. I have since liaised with the Detention Health Taskforce, who have agreed that this presents a deficiency in the communication of health related information between the multiple health practitioners that are commonly in contact with detainees*'. The response went on to say that a meeting was planned between the health service providers to establish a protocol for the better exchange of medical information in future.

22. DIAC's s 486N report to the Ombudsman did not make any mention of Mr X having Hepatitis B, presumably because of the same deficient record keeping that meant IHMS did not know about the condition. DIAC's report did not mention Hepatitis C either; however Mr X was diagnosed with this condition at around the same time the DIAC report was sent to the Ombudsman.

File management

23. Mr Z provided Ombudsman staff with two documents that DIAC purportedly mistakenly sent to Mr X. These DIAC letters, dated 24 October 2003 and 18 February 2004, are addressed to Mr X and refer to him as being a TPV holder. At the time he was in immigration detention and had never held a TPV. Mr Z said that he contacted DIAC on Mr X's behalf and was informed that the letters were a mistake and Mr X had been mixed up with someone else.

Attitude to removal

24. In his interview with Ombudsman staff, Mr X stated that he is at risk in Afghanistan and can not return because he is a Shi'a Muslim from a predominantly Sunni Muslim area and the religious leaders would regard him with suspicion because he lived in a Western country. He said that there is no other country to which he can go.

Ombudsman assessment/recommendation

25. Mr X was granted a TPV in October 2005, which entitles him to live in the community but there is a waiting period of thirty months before Mr X can apply for a PV. The Minister can exercise his discretion to allow him to be considered for the grant of a PV earlier than thirty months.
26. It is important to consider what weight should be attached to the fact that Mr X spent almost five years in immigration detention before he was granted a TPV. The RRT in 2001 held that it did not accept that Mr X was an Afghan national but the Embassy of the Islamic Republic of Afghanistan confirmed in May 2005 that he is an Afghan national. In October 2005, DIAC granted Mr X a TPV because it accepted *'he has a serious psychiatric condition ... He would be unable to conceal this if he returned, and his length of stay in Australia living with Christians and behaving in a manner totally unacceptable to the Muslims would ensure his persecution'*. The DIAC officer comments *'I note that the applicant's Afghan nationality has been confirmed via the Afghan Embassy, as this was the main cause of his earlier Protection Visa application refusal'*. It is difficult to escape the conclusion that, with Mr X's claimed Afghan identity ultimately being accepted after 4 years, he may have spent more time in detention than was necessary.
27. The uncontradicted evidence is that Mr X's medical conditions in detention and following detention were serious. They may still be so. It is a positive indicator that he *'significantly improved'* after being granted a TPV. Considering these factors, the Ombudsman **recommends** that the Minister consider waiving the waiting period and allow Mr X to apply for a Permanent Protection Visa. This would release Mr X from the restrictions associated with a TPV, assist him in recovering his mental health, and provide him with the security that he requires to move on with his life.

V. Thom

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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

20 March 2007

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Date