

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 218/07*

This is the combined second, third and fourth s 486O report by the Ombudsman on Mr Y and the combined third and fourth report on Ms X and four of their five children, as they have remained in immigration detention since the Ombudsman's first reports on Mr Y (62/06) and Ms X and the children (67/06). The Ombudsman's first report on Mr Y was sent to the Minister on 24 April 2006 and tabled in Parliament on 20 June 2006. The Ombudsman's combined first and second report on Ms X and the children was sent to the Minister on 7 June 2006 and tabled in Parliament on 16 August 2006. This report updates the material in those reports and should be read in conjunction with them.

## **Principal facts**

*Miss A*

1. Miss A was born in October 2004 while her parents were detained at Villawood Immigration Detention Centre (IDC) and her situation was addressed in Report 67/06, although at that stage she had not reached two years in detention. The Ombudsman has received an independent s 486N report regarding Miss A as she has also now been detained for over two years but, for the ease of reporting, she is included in this report with the whole family.

*Visa applications*

2. A combined s 417/48B request lodged (September 2006), assessed as not meeting the guidelines for referral to the Minister, however the s 417 request was referred on a schedule to the Minister (November 2006), the Minister declined to consider this request (December 2006); combined s 417/48B request lodged (December 2006), the s 48B request was assessed as not meeting the guidelines for referral to the Minister and the s 417 request was referred to the Minister as a first stage submission (February 2007), Minister declined to intervene under s 417; combined s 417/48B request lodged (March 2007), requests assessed as not meeting the guidelines for referral to the Minister (April 2007); combined s 417/48B request lodged (May 2007), request on hold while the Department (DIAC) prepares a s 195A submission.

*Current immigration status*

3. Mr Y, Ms X, and their five children continue to reside in Community Detention.

*Removal details*

4. DIAC advises that the family is available for removal and it is negotiating with Taiwanese authorities and support services to ensure that travel documents will be procured and post removal care arrangements are put in place. DIAC also advises that Taiwanese travel documents (for return purposes) have a validity period of two weeks and that close and regular monitoring of Mr Y's mental health will be maintained while the removal arrangements are made.

## **Ombudsman consideration**

5. The DIAC reports to the Ombudsman under s 486N are dated 10 October 2006 (relating to Miss A only), 20 October 2006 and 16 April 2007.

6. Ombudsman staff interviewed Mr Y by telephone on 17 April 2007.
7. Ombudsman staff sighted the following documents: a Community Care Plan dated 28 January 2006; a letter from the Auburn Community Mental Health Services (ACMHS) dated 4 August 2006, a copy of a Professional Support Services (PSS) psychological report dated 5 August 2006; a medical discharge/referral report and letter from ACMHS both dated 10 October 2006; a psychological report from Ms Z, Consultant Transcultural Psychologist dated 8 November 2006; internal DIAC emails and letters; a copy of the s 417/48B request schedule dated 13 November 2006, and a copy of the s 417/48B submission by Refugee Advice and Casework Service (RACS) dated 20 December 2006.

## **Key issues**

### *Health and welfare*

#### *Mr Y*

8. The comprehensive August 2006 PSS report noted that Mr Y's *'presentation is consistent with the diagnosis of 297.1 Delusional Disorder, persecutory type'*. PSS recommended that Mr Y continue to see a psychologist and psychiatrist regularly, as he is *'more likely to be co-operative in the process if his delusional belief remains unchallenged and that his claims are taken in a serious manner'*.
9. The Australian Red Cross (ARC) referred Mr Y to the ACMHS, whose report of August 2006 noted that Mr Y retained *'a delusional system of persecution, focussed on Taiwanese authorities ... these do not seem to affect his normal functioning'*. From discussions with the Centre's Consultant Psychiatrist, ACMHS suggested that *'1. Dr Cottrell-Dormer be consulted re: admission to Cumberland Hosp. (Mr Y is not schedulable, at this stage). 2. That Dept. of Immigration be informed that if Mr Y were to be repatriated to Taiwan, for him to be linked to a psychiatrist ... it is unlikely that any change will occur unless he is compliant with medication'*. In October 2006, ACMHS advised that Mr Y's file had been closed because of his refusal to attend psychiatric reviews or take his prescribed medication. It further advised that Mr Y *'at no time, presented acutely ill or disordered ... There has been no written evidence that he has been given a "schizophrenia" diagnosis either in Taiwan or in Australia ... I have found him to be highly functioning, not only looking after himself but his wife and his various children, and his interactions with his family have been observed to be, at all times, respectful, loving, highly patient'*.
10. Mr Y was then referred to Ms Z, a Taiwanese (Teochew) and Mandarin-speaking psychologist. Ms Z noted that *'there is a possibility that Mr Y would not be able to have employment as mental illness is much more stigmatised in Chinese society and his past anti-government sentiments would have reduced any employment opportunities. It is a concern that he reported to have considered burning charcoal to end the family's misery'*. Ms Z reported that charcoal burning is a common method of suicide in Taiwan and Hong Kong. DIAC advised that Ms Z supported a diagnosis of schizophrenia.
11. DIAC advised that Mr Y has complained of continuing pain in his hands, however he had refused to take the available medication. In March 2007 Mr Y advised DIAC that he felt *'that his brain was dying; that the Department had implanted a microchip in his head and that Doctors had been instructed by the Department to lie to him about his health'*. Mr Y further informed DIAC that his heart rate is high because of stress and he believes he may have cancer. He claimed that he had not been provided with the results of an earlier CT scan, and would like another scan. He felt frustrated that he does not have a Medicare card and is therefore reliant on ARC and DIAC to provide this for him.
12. ARC advised DIAC that while Mr Y presents as stressed and anxious, it is satisfied that his mental health is stable. ARC also advised DIAC of the range of mental health

supports in place and available for Mr Y and that he is encouraged to continue his sessions with Ms Z.

Ms X

13. DIAC advised that in June 2006 a doctor confirmed that Ms X had suffered a miscarriage, possibly in late April 2006. Ms X elected not to undergo a surgical procedure to remove the foetal matter as *'she was positive she was pregnant, and sure she could hear the baby's heartbeat and feel the unborn baby kicking'*. She refused to have an ultrasound that would have shown that the baby was not growing. During this time DIAC and ARC arranged to visit Ms X every two days to monitor her condition. DIAC advised that on 26 September 2006 Ms X and Mr Y informed DIAC that a Chinese doctor had confirmed the miscarriage. Mr Y contacted ARC in December 2006 and said that Ms X subsequently saw a gynaecologist that month.
14. At interview in April 2007 Mr Y said that Ms X was in good health and was four months pregnant. He said that she gets regular medical support from ARC and also that his children were in good health.

*Paternity issues*

15. In Report 67/06, the Ombudsman recommended that the Minister delay removal plans until the paternity of Master B had been established. The Minister, in her *Statement to Parliament* (15 August 2006), stated that paternity tests have established that Mr Y is the biological father of Master B. Mrs X and Mr Y have amended his birth certificate to reflect this and his name had been changed from Master B to Master C.

*Attitude to removal*

16. At interview Mr Y said that his family does not want to return to Taiwan. He said that his children do not speak Mandarin, they are doing well in school and have many friends. He said the family want to stay in Australia because it is a generous country and they have been well supported here, however if returned he believed they will be *'finished'*. During her treatment with Ms Z, Ms X said that as she has a speech defect and low intellectual functioning she is not accepted by the Taiwanese community.
17. In relation to the possibility of removal to Taiwan, the PSS report notes that *'it remains difficult to ascertain and discriminate the reality of [Mr Y's] beliefs and his mental health history, as well as his ability to find employment and look after his family shall he be deported to Taiwan ... it is also likely that Mr Y's mental health would deteriorate if he faces deportation'*. Ms Z's report notes that *'there is a high possibility that returning to Taiwan could traumatise him. There is a high risk that he may suffer from helplessness and hopelessness compounded by delusional thoughts that may result in a "family suicide pact"'*.
18. Of the children, Ms Z said that they are reasonably healthy and appeared to have benefited from living in Australia: *'Their self-reports showed that they want to stay in Australia and they have their own network of friends and have stability as they have received a lot of positive inputs and support from their schools. Further disruption to their life may destabilise them and will be disruptive to their developmental phase'*.
19. The most recent s 48B request with DIAC presents new claims that Mr Y was forced by DIAC to be interviewed by Taiwanese officials who he says asked why he applied for asylum. Mr Y claims this is a violation of International Refugee Law. He also presented the new claim that his family wish to remain in Australia to *'enjoy the love of Jesus'*.

*Other detention issues*

20. Ms Z said that Mr Y reported feeling safer now that he was living in Community Detention than he felt at Villawood Immigration Detention Centre (IDC). Mr Y and Ms X claimed that

one of their sons was sexually assaulted at Villawood IDC and he had nightmares and cried frequently during this time. They said they did not report it at the time, as they felt intimidated by the detainee who was the perpetrator. Mr Y said that this experience has impacted on his son's mental health and decreased his sense of security. DIAC has advised that it is currently investigating this allegation and, while its investigation is not yet complete, this issue has been included in this report for the sake of completeness.

#### *Community Detention*

21. At interview Mr Y said that being in Community Detention is satisfactory, however he commented that his unit is too small for the family and that the neighbours complain about the noise of the children. He said it would be more appropriate for the family to live in a detached house.

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

22. In Report 62/06 the Ombudsman recommended that DIAC refer Mr Y's case to a psychiatrist and a mental health multi-disciplinary team and that, if removal were to be attempted, close and regular monitoring be maintained of the impact of removal plans upon Mr Y's mental health. The Minister, in her *Statement to Parliament* (14 June 2006), stated that Mr Y had declined referrals to see a psychiatrist at that time but was seeing a General Practitioner (GP), and that DIAC was considering numerous options regarding his mental health. Since that time, Mr Y agreed to seek expert help and the most recent medical evidence available to the Ombudsman notes that Mr Y presents with symptoms of Delusional Disorder and schizophrenia.
23. Ms X, Mr Y and their children remain in Community Detention and, therefore, are still detained. These arrangements allow them to reside in the community with the support of ARC. ARC has advised that Mr Y's mental health is stable and is being closely monitored.
24. DIAC has advised that the family is available for removal and it is attempting to obtain travel documents from the Taiwanese authorities. The Ombudsman notes that DIAC plans to closely monitor Mr Y's mental health while the removal arrangements are undertaken and support from ARC appears to be the most suitable arrangement for the family at this time while these processes continue. Based on all of the information available to the Ombudsman, including that Ms X and Mr Y have expressed general satisfaction with current arrangements, the Ombudsman makes no recommendations in relation to the family's detention arrangements.
25. The Ombudsman **recommends** that the Minister make a decision on the s 195A submission and combined s 417/48B application as soon as possible and in any case not later than the statutory period prescribed in s 486P of the Migration Act for reporting to Parliament on this report (*viz*, within 15 sitting days of receiving the report).

  
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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

  
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Date