

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 440/08

Principal facts

Personal details

1. Mr X is aged 36 and is a citizen of India of Gorkha ethnicity. His father and five siblings reside in India and Nepal and he is in contact with them.

Detention history

2. Mr X arrived in Australia in February 1998 on a Student Visa. On 28 March 2006, Mr X was located and detained under s 189(1) of the *Migration Act 1958* as a visa over-stayer and placed at Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X lodged an application for a Protection Visa (PV), refused (April 2006); the Refugee Review Tribunal (RRT) affirmed refusal (July 2006), RRT decision appealed to the Federal Magistrates Court (FMC) and applied for a Bridging Visa (BV), BV refused (August 2006), review by FMC dismissed (October 2006); the Department (DIAC) initiated an assessment under s 195A (July 2007), assessed as not meeting the guidelines (August 2007); s 417 request lodged (November 2007), assessed as not meeting the guidelines and referred to Minister on a schedule (March 2008); DIAC again considered his circumstances under s 195A, assessed as not meeting the guidelines (March 2008); s 417 request not considered (April 2008), Mr X's case was considered by the Minister in his review of long term detainees (May 2008) and the decision made was for his removal from Australia.

Current immigration status

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

Removal details

5. DIAC advises that Mr X signed a travel document application in March 2006 and that although Mr X's identity was established in July 2007, the Indian Consulate is awaiting further identity confirmation from Mr X's hometown in India. DIAC is currently waiting for a travel document to be issued by the Indian Consulate and a tentative removal date has been set. DIAC recently advised that Mr X has asked to be removed from Australia.

Ombudsman consideration

6. DIAC's report to the Ombudsman under s 486N is dated 17 March 2008.
7. Ombudsman staff interviewed Mr X on 14 May 2008 at Villawood IDC.
8. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 5 March 2008.

Key issues

Health and welfare

9. IHMS have diagnosed Mr X as suffering from paranoid psychosis with delusional disorder.

10. DIAC advises that Mr X was placed on Suicide and Self Harm observation for ten days in October 2007.
11. IHMS reported that Mr X has psychiatric review as required and ongoing contact with the Mental Health Team. The last contact with the psychiatrist was in February 2008 where it was noted that he declined to take anti-psychotic medications as prescribed, but *'expressed no thoughts of self-harm or harm to others'*.
12. At interview with Ombudsman staff Mr X said that during his first year in detention, *'I was quite active, I was very healthy'* but that his health had subsequently declined and he had difficulties with his memory. He said *'it's like being drugged every day ... you cannot focus'*. He explained *'I used to see the doctor but it doesn't help ... I was offered medications [but] it just made me more sleepy'*.

Other detention issues

13. DIAC advises that Mr X had requested transfer to Sydney Immigration Residential Housing in October 2007. Mr X's request was not approved as he had recently started using a new medication and was not able to self-medicate.

Ombudsman assessment/recommendation

14. Mr X has been in detention for over two years. The DIAC decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. The Ombudsman has no further comment to make on this matter.
15. The Ombudsman notes that Mr X's case was considered by the Minister and that Mr X is to be removed from Australia.
16. The Ombudsman further notes that Mr X has been diagnosed with *'paranoid psychosis with delusional disorder'*. The Ombudsman **recommends** that Mr X's mental health be taken into account in his detention arrangements and any planning for his removal.

V. Thom

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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

8 July 2008

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Date