

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 452/08

Principal facts

Personal details

1. Mr X is aged 33 and is a citizen of Bangladesh.

Detention history

2. Mr X has been detained three times (December 2003 to January 2004; April 2004; and April 2005 to March 2007) under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC). On 6 March 2007 Mr X was granted a BV(E) and was released from detention.

Visa applications

3. Mr X entered Australia on a Short Stay Business Visa using a false passport (May 2000); applied for a Protection Visa (PV), granted associated Bridging Visa (BV) (June 2000), PV application refused (November 2000), decision affirmed by the Refugee Review Tribunal (RRT) (December 2002), application to the Federal Court (FC) dismissed (April 2003), filed FC notice of motion to set aside order of April 2003, dismissed (May 2003), FC application for extension of time to appeal dismissed (June 2003); BV application lodged, refused, Migration Review Tribunal (MRT) remitted decision to the Department (DIAC) (December 2003), BV granted; application to appeal to the High Court (HC) dismissed (January 2004), application to HC for special leave to appeal, associated BV granted (March 2004).
4. BV cancelled under s 116 for breach of visa conditions, MRT set aside BV cancellation (April 2004); HC dismissed special leave application (April 2005); BV cancelled under s 116 for breach of visa conditions (April 2005); BV request, refused, decision affirmed by the MRT (May 2005); application to the Federal Magistrates Court appealing the RRT decision of December 2002 (December 2005), adjourned due to Mr X's ill health, dismissed by consent (March 2007).
5. Mr X lodged a combined s 417/48B request (April 2004), s 48B request assessed as not meeting the guidelines for referral to the Minister (July 2005), Minister declined to consider s 417 request (September 2005); BV application granted (March 2007); s 417 Ministerial Intervention submission initiated by DIAC (April 2007), ongoing.

Current immigration status

6. Mr X is residing lawfully in the community on a BV(E) with the support of the Australian Red Cross.

Removal details

7. DIAC advises that Mr X's removal is not being pursued pending the Minister's decision.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 16 February 2007.
9. Ombudsman staff interviewed Mr X on 5 July 2007.

10. Ombudsman staff sighted the following documents: International Health and Medical Services (IHMS) medical records between 1 April 2005 and 23 October 2007; reports from Dr X, Ear, Nose and Throat (ENT) surgeon, dated 30 August 2005, 26 September 2005 and 9 November 2005; reports from Dr B, ENT surgeon, dated 1 December 2005, 8 March 2006, 5 April 2006, 28 June 2006, 25 October 2006 and 15 December 2006; reports from Dr C, Neurosurgeon, dated 1 May 2006, 14 August 2006, 11 September 2006 and 15 December 2006; report from Dr D, Respiratory Physician, dated 11 August 2006; report from Dr E, Pain Medicine and Research Centre, dated 5 December 2006; an IHMS report dated 17 January 2007; a Professional Support Services (PSS) report dated 18 January 2007; a mental state evaluation report from Dr F of the Transcultural Mental Health Centre dated 15 April 2007; a s 417 request to the Minister from Mr X dated 16 April 2007; a submission from Ms G dated 15 May 2007 and a copy of a letter of request to the Minister from Ms H dated 17 May 2007.

Key issues

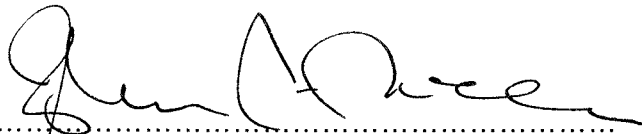
Health and welfare

11. The IHMS report noted Mr X's medical problems as: removal of right acoustic neuroma (tumour) in June 2006; total hearing loss in the right ear and moderate mixed hearing loss in the left ear; headaches and persistent pain; and insomnia. He was receiving ongoing pain management treatment from the Pain Medicine and Research Centre at Liverpool Hospital. IHMS noted that Mr X could be better managed in a setting other than an IDC.
12. PSS reported that Mr X presented with *'depressed mood and difficulty coping with his perceived pain ... continues to be highly focused on his illness and pain. He does not appear to be responsive to psychological management and treatment'*.
13. The Transcultural Mental Health Clinic's impression was that Mr X presented with *'Grief Reaction and Post Traumatic Stress Disorder with significant depressive and anxiety features'*.
14. Mr X complained at the interview with Ombudsman staff that within a few days of being detained, he got water in his ear and developed an infection in his left ear. He said it took three months before he was allowed to see a doctor even though *'I begged to see a doctor'*. During this time Mr X said he had a lot of discharge from his ear and was in continuous pain. He believes that if he had seen a doctor sooner he could have *'saved his ear'*. He said that he saw the nurse every day but the instructions were they could not give him any medication other than paracetamol. When he did see a doctor, no interpreter was used and he had trouble understanding what the doctor said but he had a CT scan and was prescribed medication. After the doctor did a second CT scan, he said he was advised that *'my left ear was gone and on your right side there is a brain tumour'*. Mr X said that after this he became *'very frail and broken mentally'*. Eight to nine months later he said he had surgery.
15. The IHMS medical records for Mr X indicate that he was examined on the day of his detention, 1 April 2005, and again on 3 April where it was noted he had a *'painful left ear, states sometimes discharges'*. On 7 April the examining doctor noted *'ears: left erythema [redness of the skin] of drum and ear canal'*. Mr X was referred to a specialist and his first appointment with an ENT specialist was on 30 August 2005. The report from Dr A dated 30 August 2005 noted a *'long standing infected attic retraction'*. Dr A's report of 9 November 2006 noted *'I have explained this to him in great detail in the presence of an interpreter. He needs urgent referral to Glen Coxson'*. Dr B noted in his report dated 1 December 2005, *'he has persistent discharge from his left ear dating back many years. There is associated diminished hearing on his left side. His right ear is his better-hearing ear. He's currently receiving no treatment for the discharging ear'*.

16. DIAC paid for private hospital treatment for Mr X as the surgeon advised that the public hospital waiting list was too long. The removal of the right acoustic neuroma led to a pulmonary embolism, a cerebral-spinal fluid leak with follow-up surgery, and chronic headaches.
17. Mr X has experienced persistent headaches since the neuroma removal surgery. Neurosurgeon, Dr C, in his letter to IHMS dated 15 December 2006, recommended *'there is nothing more that can be done from the treatment perspective to lessen his pain ... he would be better off in the community ... I would support his release from detention on such medical grounds'*. Dr B, in a letter to DIAC dated 19 January 2007, indicated *'our experience with post acoustic neuroma headache is ... it is usually limited to 12 to 18 months post surgery'*.
18. Mr X was placed on Suicide and Self-Harm observations between 3 August 2006 and 4 September 2006, and 26 September 2006 to 12 October 2006.

Ombudsman assessment/recommendation

19. Mr X was in immigration detention on three occasions for a total of two years. DIAC's decision that Mr X does not qualify for protection in Australia has been reviewed and affirmed. The Ombudsman has no further comment to make on this matter.
20. Since Mr X's release from detention, he has been granted a series of short term BV's and a permanent immigration resolution for him remains outstanding. The Ombudsman understands that the Minister has a s 417 submission before him.
21. While Mr X has had an unfortunate medical history during his time in detention it also appears from the specialist reports that the problems with his ears were longstanding and there is no evidence that the condition resulted from his detention. The Ombudsman's office examined the medical records in relation to Mr X due to the concerns he expressed about a delay in providing him with appropriate medical treatment in detention. It appears that Mr X received medical attention for his conditions within a few days of his detention on 1 April 2005. He had been examined by and treated by a doctor who referred him promptly to a specialist. Mr X continues to suffer headaches as a consequence of the surgery to remove the right acoustic neuroma. His medical records indicate that this problem should resolve itself, given time.
22. The Ombudsman makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

12 August 2008
Date