

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 453/08*

## **Principal facts**

### *Personal details*

1. Mr X is aged 32 years and is a citizen of Sri Lanka of Tamil ethnicity. He married Ms Y, an Australian citizen, at Baxter Immigration Detention Centre (IDC) in June 2005. Mr X's wife gave birth to a son on 1 July 2006. Mr X stated that his Sri Lankan family had all left Sri Lanka and resettled as refugees in Canada.

### *Detention history*

2. Mr X arrived in Australia on a false passport as an unauthorised air arrival on 30 April 2001. He was detained under s 189(1) of the *Migration Act 1958* and placed at Perth IDC. He was transferred to Port Hedland Immigration Reception and Processing Centre (IRPC) (February 2002) and then to Baxter IDC (May 2004).

### *Visa applications*

3. Mr X applied for a Protection Visa (PV) (May 2001), PV refused (August 2001); refusal affirmed by the Refugee Review Tribunal (October 2001); application for judicial review by Federal Court (FC), dismissed (March 2002); appeal to Full Federal Court (FFC), dismissed (August 2002); application to High Court (HC) for special leave to appeal (September 2002), granted and remitted to FFC (September 2003); FFC dismissed appeal (September 2004); a second application to HC for special leave to appeal (October 2004); HC deemed application abandoned (January 2005); request to HC seeking reinstatement of special leave application, allowed (August 2005); six s 417 requests (lodged between August 2004 and June 2005) were refused (August 2005); notice of discontinuance filed by Mr X (October 2005); Mr X was invited to apply for a Removal Pending Bridging Visa (RPBV) (June 2005), RPBV granted (July 2005); lodged s 417 request (November 2005); granted a Visitors Visa (5 September 2006); granted a Bridging Visa (BV) in association with a Spouse Visa (SV) application (9 January 2007), SV granted (5 March 2008).

### *Current immigration status*

4. Mr X resides lawfully in the community on a SV.

## **Ombudsman consideration**

5. The Department's (DIAC) report to the Ombudsman under s 486N is dated 7 November 2005.
6. Ombudsman staff interviewed Mr X on 17 November 2005 in the company of his Migration Agent from the Asylum Seeker Resource Centre (ASRC) and again by telephone on 25 January 2007.
7. Ombudsman staff sighted the following documents: a s 417 submission by the ASRC dated 15 November 2005 with statements by Ms Y and Mr X dated 11 November 2005; a counselling report by Ms Z, Counsellor, Western Region Health Centre dated 16 January 2005; International Health and Medical Services (IHMS) 'GP Progress Notes' dated 2005; an IHMS medical summary report dated 18 January 2006; and a

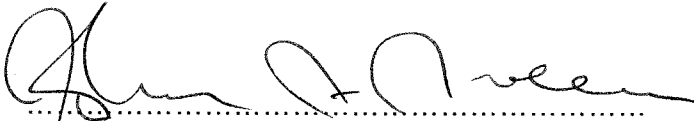
## Key issues

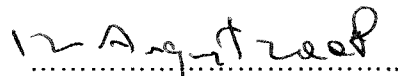
### Health and welfare

8. IHMS reported that Mr X has minor depression, panic attacks and a cyst on his eyelid, and that in November 2004 Mr X commenced voluntary starvation, necessitating two admissions to Port Augusta Hospital for rehydration and to investigate chest pain.
9. At interview, Mr X reported an onset of stress and depression over the last 12 months of his detention, *'until we were in a state where we can't see anything else'*. He also reported increasing conflict with detention centre staff due to irritability, *'at the end I couldn't cope at all'*. He said, *'we were changed into a different person. We were focussing on a very small point, [it] totally destroyed our concentration, even now I have to have counselling to extend my view'*. He reported persisting memory and concentration difficulties, problems with social contact and with using public transport.
10. Ms Z has been seeing Mr X since 31 October 2005. She reported that *'Mr X describes symptoms consistent with Post Traumatic Stress Disorder. These include poor concentration, inability to focus on a conversation for an extended time, especially if it involves personal issues, flashbacks, poor sleeping, poor appetite, emotionally labile (angry and sad), avoidance behaviours, anxiety and social isolation.'* And *'he has found the settlement process extremely challenging. He has continued to be on guard and is prone to withdraw if he is forced to socialise ... or make decisions. Mr X shows a keen interest in improving his well being and reports that his symptoms are improving ... and that long-term work will probably be necessary for a more complete recovery'*.

### Ombudsman assessment/recommendation

11. Mr X was in immigration detention for four years and three months until his release on a RPBV in July 2005. He was granted a SV in March 2008. The medical evidence before the Ombudsman is that Mr X experienced deterioration in his mental health as a consequence of his lengthy detention and continued to experience disabling psychological symptoms after his release for which longer-term treatment is advised. His prior prolonged exposure to the civil war in Sri Lanka appears to be a complicating factor.
12. Mr X is now married and living in the community with his Australian wife and son. The Ombudsman makes no recommendations in this report.

  
.....  
Prof. John McMillan  
Commonwealth and Immigration Ombudsman

  
.....  
Date