

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 486/08

Principal facts

Personal details

1. Mr X is aged 40 and is from Bangladesh. He claims to be a Bihari (a stateless minority group in Bangladesh) and not a citizen of Bangladesh. Mr X claims his family were all killed in the 1971 Bangladesh Liberation War.

Detention history

2. On 16 August 2002 Mr X was detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC) (August 2002).

Visa applications

3. Mr X arrived in Australia on a Short Stay Business Visa (SSBV) (July 1997) with an Indian passport. He was granted a further SSBV (August 1997) and applied for a Protection Visa (PV) (September 1997); PV refused (March 1998); Refugee Review Tribunal (RRT) affirmed decision (May 2000); judicial review sought at the Federal Court (FC) (July 2000), dismissed (October 2000).
4. Mr X joined a class action (November 2000) in the High Court (HC), discontinued (March 2001); joined a further class action (June 2001) in the HC, discontinued; application to the Full Federal Court (FFC) (April 2004) dismissed (August 2004), application for special leave to the HC discontinued (March 2005).
5. Mr X was granted various bridging visas (BV) from September 1997 until August 2002 when he was taken into detention. Subsequent applications for a BV refused (November 2004, January 2005); Mr X lodged a s 417 request (August 2005); on 26 September 2005 Mr X was granted a Removal Pending Bridging Visa (RPBV) and released from detention. The Minister declined to consider Mr X's s 417 request (December 2005).

Current immigration status

6. Mr X is currently living lawfully in the community on a RPBV.

Removal details

7. The Department (DIAC) advises that Mr X arrived in Australia on a genuine Indian passport (valid to January 2007), however Mr X claims that he bought the passport and that he is actually from Bangladesh. DIAC has not pursued Mr X's removal as the Indian Consulate has indicated that establishment of whether he is a national of India or Bangladesh has proven to be problematic. DIAC advises that investigations in relation to Mr X's nationality are ongoing.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 22 September 2005.
9. Ombudsman staff interviewed Mr X on 21 February 2006 and spoke with him by telephone on 12 September 2008.

10. Ombudsman staff sighted a medical summary report from International Health and Medical Service (IHMS) and a psychological summary report from Professional Support Services (PSS) both dated 19 June 2006.

Key issues

Health and welfare


11. DIAC advises that while in detention, Mr X complained of headaches, stomach, eye and ear problems. IHMS advises that hearing aids were approved prior to Mr X being granted a RPBV but he was released prior to his appointment with an Ear, Nose and Throat surgeon. The Ombudsman understands that he received hearing aids in early 2006 with the assistance of the Australian Red Cross.
12. Mr X advised Ombudsman staff that he sustained injuries from a motor vehicle accident prior to being detained which resulted in continuing headaches, eye and hearing problems.
13. In September 2008 Ombudsman staff spoke with Mr X, who said he had recently been discharged after a 20-day stay in hospital following a kidney operation. Mr X said that his health is 'very bad' as he suffers from diabetes, high blood pressure and high cholesterol.

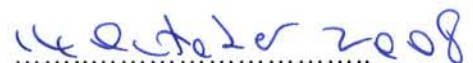
Attitude to removal

14. Mr X advised Ombudsman staff that if he is returned to Bangladesh, he could face gaol for leaving on an Indian passport and he is very fearful of the consequences. He also said that he would not survive as a Bihari in Bangladesh without any family support.
15. Mr X advised the RRT that he would be discriminated against and would not be able to get a good job if he returned to Bangladesh. However, the RRT was not satisfied that Mr X 'suffered any discrimination or other mistreatment in Bangladesh because he is a Bihari'.

Ombudsman assessment/recommendation

16. The Ombudsman notes that Mr X was granted a RPBV in September 2005, after being detained for three years. The DIAC decision that Mr X does not qualify for protection has been reviewed and affirmed. The Ombudsman has no further comment on this matter.
17. Mr X's immigration status has continued to remain uncertain since he was granted a RPBV three years ago and it has now been over six years since his detention in August 2002. The Ombudsman **recommends** that the Minister give further consideration to Mr X's case to resolve his immigration status.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date