

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 492/08*

## **Principal facts**

### *Personal details*

1. Mr X is aged 24 and is a citizen of Bangladesh. His sister, two stepsisters, two stepbrothers, father, mother and stepmother reside in Bangladesh. Mr X said he also has a stepsister in Australia with whom he is not in contact.

### *Detention history*

2. Mr X entered Australia twice on a Vocational Educational and Training Visa (VETV) (February 2003 and February 2005), second VETV valid to March 2005. In May 2006 Mr Mamun was detained as a visa over-stayer under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC).

### *Visa applications*

3. Mr X lodged an application for a third VETV, assessed as invalid (June 2006); applied for a fourth VETV and associated Bridging Visa (BV) (June 2006), BV application withdrawn, VETV application refused (July 2006); appealed VETV refusal at the Migration Review Tribunal (MRT) (July 2006), decision affirmed (August 2006); lodged s 351 request (September 2006), assessed as not meeting the guidelines but referred to the Minister on a schedule, was not considered by the Minister (December 2006); applied for a BV, refused (December 2006); sought judicial review of the MRT decision by the Federal Magistrates Court (FMC) (December 2006); lodged associated BV application (February 2007), withdrawn (March 2007); FMC dismissed application to appeal the MRT decision (March 2007); appealed to the Full Federal Court (FFC) (March 2007), application dismissed (April 2007); lodged associated BV application, dismissed (April 2007); sought leave of the High Court to appeal the FFC decision (May 2007), dismissed (June 2007).
4. Mr X lodged a Protection Visa (PV) application and associated BV, PV refused (July 2007), BV withdrawn (August 2007); appealed to the Refugee Review Tribunal (RRT); appealed BV refusal to the MRT, decision affirmed (August 2007); RRT affirmed PV refusal (September 2007); sought judicial review by the FMC (October 2007); the Department (DIAC) initiated a s 197AB request (November 2007), assessed as not meeting the guidelines (December 2007); review of the FMC dismissed (January 2008); appealed to the FFC (February 2008); DIAC initiated a s 195A assessment, assessed as not meeting the guidelines for referral to the Minister (April 2008); review by the FFC dismissed (May 2008); lodged combined s 417/48B request (June 2008); DIAC initiated a s 197AB request (July 2008). On 24 September 2008 the Minister granted Mr X a BV and he was released from detention.

### *Current immigration status*

5. Mr X resides lawfully in the community on a BV.

## **Ombudsman consideration**

6. DIAC's report to the Ombudsman under s 486N is dated 8 May 2008.

7. Ombudsman staff interviewed Mr X on 26 June 2008 at Villawood IDC with three support people present.
8. Ombudsman staff sighted the following documents: an International Health and Medical Services (IHMS) medical summary report dated 16 April 2008; and a report by Dr A, Senior Specialist in Psychiatry and Dr B, Psychiatry Registrar, dated 28 July 2008.

## **Key issues**

### *Complaints to the Ombudsman*

9. At interview with Ombudsman staff and during a follow-up telephone conversation Mr X raised a number of issues. Three issues have been lodged as separate complaints with the Ombudsman's office.

### *Health and welfare*

10. IHMS noted that Mr X was prescribed anti-psychotic medications for '*auditory hallucinations and paranoid ideation*' and that he is non-compliant '*with both medications and attendance at Psychiatric appointments ... despite encouragement*'. The most recent Mental State Examination in February 2008 reported that Mr X was still experiencing hallucinations but had no thoughts of self harm. IHMS noted that in August 2007 Mr X was placed on Suicide and Self Harm Watch for one month.
11. The report by Dr A and Dr B referred to Mr X experiencing referential ideas, auditory hallucinations and mild paranoia. It noted that Mr X '*demonstrates depressed mood, severe anxiety, neurovegetative features, cognitive changes, and somatic preoccupations*' and diagnosed Mr X with '*Severe Depression that has now evolved into Severe Depression with Psychotic Features*'. The report noted that Mr X's '*record of treatment compliance has been checkered, and he has been very non-adherent with medical appointments. This can give the impression that he is resistant, belligerent and uncooperative. In fact the records generally note that he is cooperative in interview and even pleasant when feeling better. This discrepancy can be explained by his agitations and disorganisation due to his depression ... this behaviour is uncontrollable and in our experience resolves on successful treatment of the mental illness*'.
12. The report noted that Mr X is not predisposed to mental illness and explained, '*His decline appears largely due to realistic concerns, particularly the double bind about staying illegally in Australia versus returning to Bangladesh with a risk of bodily harm including persecutory torture and murder solely for his role in a political group*'. Dr A and Dr B reported that it is unclear when Mr X's depressive symptoms began, but that Mr X '*stated that he did not have a history of the above psychotic symptoms before being in detention*'. The report concluded that Mr X's '*prognosis will depend on adequate treatment for his present severe mental difficulties ... If he remains in immigration detention and/or is removed from Australia, his mental health prognosis and his capacity to cope would likely be much worse*'.


### *Attitude to removal*

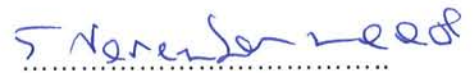
13. Mr X explained at interview that his uncle was kidnapped and tortured to the extent of being paralysed due to his membership with the Awami League, the opposition to the ruling party of Bangladesh, the Bangladesh National Party. Mr X said that he was an active member of the Awami League and prior to leaving Bangladesh he received death threats from political opponents. He said that his parents told him that people continue to visit their house asking about him. In his submission to the Minister, Mr X explained '*I do not feel safe to go back to my country. If I were forced to go back there then I would be killed*'.
14. The RRT considered Mr X's protections claims and concluded that despite Mr X being part of the same social group as his uncle it did not accept that Mr X '*faces a real chance*

*of persecution for reasons of his membership of that particular social group [and] does not accept that the applicant faces a real chance of persecution for reason of any political opinion he may be imputed with because of any association with his uncle'.*

**Ombudsman assessment/recommendation**

- 15. The Ombudsman notes that Mr X was placed in immigration detention for over two years prior to his release. The independent psychiatric report from Dr A and Dr B indicates that Mr X was not susceptible to a psychotic disorder but that after being detained for more than two years, he now presents with psychotic symptoms. IHMS confirms that Mr X continues to experience hallucinations and is non-compliant with medication, which the psychiatric report explains is in part due to his depression. The Ombudsman notes the expert medical opinion that Mr X's prognosis will depend on adequate treatment for his present severe mental difficulties and that if he is released into the community with appropriate professional and other support, he will make a good adjustment.
- 16. The Ombudsman notes that the Minister has recently granted Mr X a BV. Given Mr X's recent release from immigration detention and his mental health, the Ombudsman suggests that DIAC consider whether it is appropriate to provide Mr X with ongoing case management and mental health support.

  
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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

  
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Date