

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 499/08

This is the fourth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined second and third report. The Ombudsman's first report (139/07) was sent to the Minister on 28 March 2007 and tabled in Parliament on 13 June 2006. The Ombudsman's combined second and third report (409/08) was sent to the Minister on 17 April 2008 and tabled in Parliament on 14 May 2008. This report updates the material in those reports and should be read in conjunction with them.

Principal facts

Visa applications

1. In March 2008 further information was provided to the Minister in relation to Mr X's request under s 417 of the *Migration Act 1958* and he was considered by the Minister in his review of long term detainees. On 18 April 2008 Mr X was placed in the community in an alternative detention arrangement until 24 April 2008 when he was transferred to Community Detention. The Minister has indicated that he will consider Mr X for the grant of a Global Special Humanitarian Visa (GSHV) subject to health and character checks.

Current immigration status

2. Mr X is an unlawful non-citizen detained in the community.

Ombudsman consideration

3. The Department's (DIAC) further report to the Ombudsman under s 486N is dated 18 June 2008.
4. Ombudsman staff spoke with Mr X by telephone on 22 October 2008.
5. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 10 June 2008.

Key issues

Health and welfare

6. The IHMS report notes that previous reports indicated Mr X has '*an adjustment disorder with chronic depressed mood secondary to the chronic stress of detention*'. He has been referred to Foundation House for '*ongoing management related to emotional distress*'.
7. At interview with Ombudsman staff, Mr X complained that he continues to suffer from sleep difficulties and only sleeps a few hours each night.

Other detention issues

8. Mr X said that six months has passed since the Minister granted him Community Detention and indicated that he is being considered for a GSHV. Mr X explained that six months is too long to wait for a final outcome. He said '*I can't do anything. I want to go to TAFE to study to be a plumber but I can't do this. I can't even get a driver's licence*'.

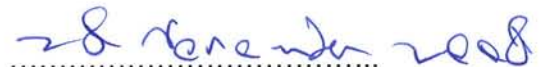
9. Mr X said that when he was discharged from Villawood Immigration Detention Centre he initially felt supported by DIAC but now he feels there is no support.
10. Mr X said he has to obtain his own police clearances for DIAC as part of the character checks required for the grant of a GSHV. Mr X said that, with the assistance and support from members of the community, it took three months to obtain a police clearance from Kenya. When he submitted this to DIAC he was then informed that it also required a police clearance from South Africa. The South African police clearance has been completed but Mr X's Migration Agent has been advised that the relevant South African authority refuses to mail the clearance to Australia and expects someone to collect it in person. Mr X's Migration Agent has advised DIAC of this problem and DIAC has contacted its post in Pretoria for assistance. DIAC has also been asked to waive the requirement to provide the police clearance from South Africa. Mr X is waiting for DIAC's decision.

Ombudsman assessment/recommendation

11. In Report 409/08 the Ombudsman recommended *'that Mr X be placed immediately in alternative detention in the community, pending resolution of his immigration status'*. The Ombudsman notes that Mr X was placed in alternative detention in the community on 18 April 2008 and the Minister approved him for Community Detention on 24 April 2008.
12. The Minister's Statement to Parliament noted that Mr X is being considered for a GSHV subject to health and character checks. Seven months has elapsed since the Minister informed Mr X that he is being considered for a visa. Mr X advises that it has been time consuming and expensive to obtain the necessary clearances. Progress now hinges on collecting the completed South African police clearance or DIAC waiving this particular requirement. The Ombudsman notes the difficulties faced by Mr X and suggests that DIAC does all it can to assist him. The Ombudsman makes no recommendations in this report.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date