

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 502/09

Principal facts

Personal details

1. Mr X is aged 49 and is a citizen of Iran. Mr X's parents, brother and sister live in Iran and he is in contact with them.

Detention history

2. On 1 October 1998 Mr X was detained under s 189(1) of the *Migration Act 1958* as a Bridging Visa (BV) over-stayer and placed at Villawood Immigration Detention Centre (IDC); released from detention on a BV with a bond (23 June 1999); redetained at Villawood IDC (26 June 2007); transferred to Sydney Immigration Residential Housing (IRH) (20 March 2008).

Visa applications

3. Mr X entered Australia on a Visitor Visa (December 1993) and on arrival was granted a Temporary Entry permit until 2 February 1994; applied for refugee status (February 1994), under the introduction of the *Migration Reform Act 1992* Mr X's refugee status application became a Protection Visa (PV) application; granted an associated BV (September 1994), PV refused (September 1994); Refugee Review Tribunal (RRT) affirmed refusal (October 1995); BV ceased (November 1995); Mr X was unlawful in the community until he was granted a BV (June 1997) until September 1997; lodged a request under s 417; referred to the Minister on a schedule and not considered (October 1997).
4. Mr X lodged a s 48B request (April 1999); did not meet guidelines for referral to the Minister (May 1999); joined the *Muin* and *Lie* class action in the High Court (HC) (June 1999); HC dismissed class action (August 2002), all proceedings remitted to the Federal Court (FC) (November 2002); FC dismissed class action (February 2004); BV ceased (March 2004).
5. Mr X lodged a s 48B request (June 2007), withdrawn (August 2007); sought judicial review of the RRT decision of October 1995 at the Federal Magistrates Court (FMC) (August 2007); FMC dismissed application (February 2008); combined s 417/48B request lodged (March 2008); further information requested and supplied (August 2008); guidelines met, case incorporated in submission referred to the Minister (September 2008); the Minister decided to consider granting Mr X a Global Special Humanitarian Visa (GSHV) subject to health, character and security checks (October 2008) and the provision of an Australian Values Statement.

Current immigration status

6. Mr X is an unlawful non-citizen detained at Sydney IRH.

Removal details

7. The Department (DIAC) advises that Mr X's identity has been established and he is being considered for a GSHV.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 22 October 2008.
9. Ombudsman staff interviewed Mr X on 19 November 2008 at Sydney IRH.
10. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 12 September 2008.

Key issues

Health and welfare

11. IHMS reports that Mr X has a history of back pain as a result of a pre-detention injury. It advises that he had back surgery in October 2007 and '*Although now accommodated in Sydney Residential Housing it is likely that Mr X will need to access external specialist services on a regular basis*'.
12. At interview with Ombudsman staff Mr X said that he has been having trouble with his shoulder ever since his injury and expressed concern that his post-surgery instructions were not properly followed. He said that he lives with a pain scale of '*about four out of ten*' which is managed by medication and physiotherapy. He said that if his injury gets worse, he will consider further surgery.
13. IHMS advises that Mr X has been prescribed medication for '*insomnia and depressed mood*'. Mr X said that when he feels angry or depressed he exercises and absents himself from other detainees. He also said he finds it helpful to speak with the psychologist.

Attitude to removal

14. Mr X said that there is no life for him in Iran and he felt relief at receiving the news that he was being considered for a visa. He stated that he is anxiously awaiting the clearance of his medical and police checks.
15. Mr X commented that he is '*sometimes in contact*' with his elderly parents in Iran who are unaware that he is in immigration detention. He said he does not want to '*worry them*' and it is difficult to maintain a close relationship because he is unable to talk about his day-to-day existence. He said that if he is granted a visa, he looks forward to having more regular contact and a better relationship with his family in Iran.

Other detention issues

16. Mr X said that it is '*not normal life*' living in detention and that the mixing of former convicted criminals with genuine refugees is problematic.
17. Mr X said he noticed a significant difference between Stage Two at Villawood IDC and Sydney IRH. He commented that GSL staff were '*sometimes angry*' in Stage Two and '*more friendly*' in Sydney IRH where there is more freedom. He said that in Sydney IRH he is allowed to go shopping, attend church services and eat lunch with friends in the community. He also reads English newspapers, keeps himself informed about current events in Iran via the internet, plays table tennis and runs.
18. Mr X advised that he is in regular contact with his DIAC case officer, who calls him '*every two weeks – sometimes once a month*'.

Community links

19. Mr X stated that he maintains strong links with the Anglican church community and also has supportive friends outside of Sydney IRH. He said he has maintained contacts in the painting industry and if he is granted a visa he would like to resume work as a painter.

Ombudsman assessment/recommendation

20. The Ombudsman notes that Mr X is being considered for a GSHV subject to health, character and security checks. The Ombudsman makes no recommendations in this report.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date