

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 526/09

Principal facts

Personal details

1. Mr X is a citizen of Lebanon and his passport shows his age as 50 but he claims to be 48¹. Mr X's immediate family comprising his parents, five brothers and three sisters are Australian citizens. Mr X also has a large extended family in Australia. Mr X married Ms Y, a detainee at Villawood Immigration Detention Centre (IDC) on 14 November 2008.

Detention history

2. On 14 December 2006 Mr X was detained under s 189(1) of the *Migration Act 1958* after completing a criminal sentence and placed at Villawood IDC.

Visa applications

3. Mr X arrived in Australia in March 1977 and was granted a permanent visa on arrival. In September 1982 he was considered for Criminal Deportation under s 201 and issued with a warning notice; Mr X re-offended and was sentenced to two years (August 1983); issued with a further warning notice but escaped from custody and committed further offences; convicted and sentenced for a minimum term of 29 years (April 1985); Mr X's permanent visa considered to be a Transitional (Permanent) Visa under the Migration Reform (Transitional Provisions) Regulations (September 1994); again considered for Criminal Deportation and issued with an order (December 1999); Mr X appealed the Deportation Order at the Administrative Appeals Tribunal; set aside (December 2003); Mr X's visa cancelled under s 501 (December 2006).
4. Mr X lodged a Protection Visa (PV) application (January 2007); refused by the Department (DIAC) (February 2007); sought review at the Refugee Review Tribunal (RRT); RRT remitted the matter to DIAC with direction that Mr X met the definition of a refugee (May 2007); DIAC issued a Notice of Intent to Consider Refusal (NOICR) (June 2007); Mr X provided further information (November 2007); submission considering the refusal of Mr X's PV under s 501 has been drafted for referral to the Minister; Mr X's case was referred to the Minister for consideration under s 195A (December 2008); the Minister declined to intervene.

Current immigration status

5. Mr X is an unlawful non-citizen detained at Villawood IDC.

Removal details

6. DIAC advises that it has set a tentative date for Mr X's removal.

¹ DIAC states that Mr X entered Australia in 1977 using the name of ABX on a false passport showing his date of birth as 24 November 1961, and that the passport issued under the name CX shows his date of birth as 14 November 1958. At interview and in evidence presented to the Refugee Review Tribunal Mr X said that his date of birth is 14 November 1960 making him 48 years of age, but that his date of birth was incorrectly listed in his passport as 14 November 1958.

Ombudsman consideration

7. DIAC's report to the Ombudsman under s 486N is dated 18 December 2008.
8. Ombudsman staff interviewed Mr X on 24 February 2009 at Villawood IDC. Mr X's wife, Ms Y, also attended the interview.
9. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 19 November 2008.

Key issues

Criminal history and visa cancellation

10. Mr X's criminal record extends from 1982 to 2005. His crimes included armed robbery, break enter and steal, escape from lawful custody and grievous bodily harm. He has spent over 20 years in gaol.
11. At interview with Ombudsman staff Mr X stated that when he received notice of his visa cancellation in 2006 he was surprised, saying '*I thought I was part of the community ... I really thought I was Australian ... I had papers to say I'm an Australian*'.

Health and welfare

12. The IHMS report states that Mr X commenced voluntary starvation on three occasions in November 2007, December 2007 and April 2008. It recommended anti-depressant medication in August 2008 which Mr X refused. IHMS advises that at Mr X's Mental State Examination of October 2008 he reported sleep interruption and depression, but had no thoughts of self-harm or harm to others.
13. IHMS reports that '*there is nothing to indicate that Mr X's medical conditions could be better managed in a setting other than an IDC*'.

Attitude to removal

14. At interview Mr X said that he and his family left Lebanon to escape civil war and a family feud, and he has lived in Australia for 32 years. He stated that his immediate and extended family live in Australia.
15. The RRT decision stated that Mr X's refugee status had been assessed by DIAC on two occasions in December 1999 and October 2006 and on both occasions he was found to be a refugee '*on account of his membership of a particular social group, that group being his family, at risk of persecution in Lebanon because of a family feud*'. The RRT remitted the matter to DIAC with the direction that Mr X is a person '*to whom Australia has protection obligations under the Refugees Convention*'. The decision was remitted in May 2007 and DIAC sent a NOICR the following month. A final decision has not been made about Mr X's PV refusal.

Other detention issues

16. Mr X said that his escorted home visits and excursions ceased after a change in DIAC's policy following a detainee's escape from immigration detention. He reported that he is visited each day by his elderly parents who bring him food but he would like to be allowed home visits again.
17. Mr X perceived that GSL (Australia) Pty Ltd (GSL) officers are overly authoritarian, commenting that '*we absolutely get treated like prisoners here*' but '*this is [immigration] detention—we're not prisoners!*'.
18. Mr X further commented that GSL officers made assumptions about his character '*from the first day I walked in here*'. He said they labelled him '*a monster*' and '*I'm not that person, don't judge me—you don't even know me*'.

19. Mr X said that he regrets spending *'more than half my life behind bars ... and now I'm nearly 50—I mean, I've wasted enough years'*. He commented that when he was released in 2004 after 21 years imprisonment there were no transition or support services available, he had significant adjustment difficulties resulting in him being unable to eat or sleep, and he re-offended.
20. Mr X further stated that when he re-offended, it was not *'for criminal enterprise, what I did I did out of frustration because I knew how to live in gaol—I didn't know how to live in the community'*. However he said he had completed communication and anger management courses in his most recent gaol sentence and had been preparing to live in the community when his visa was cancelled and he was detained at Villawood IDC.
21. Mr X lives in Stage Two at Villawood IDC with Ms Y and he commented that *'coming here [to Villawood IDC] was the best thing for me—going shopping ... swimming ... bowling ... getting used to the community again'*. He further explained that *'I'm really trying to get my life together'* and while waiting for an immigration outcome he would like the opportunity to demonstrate that he and Ms Y are *'capable of living in the community'* to *'show what kind of people we are'*.

Ombudsman assessment/recommendation

22. The Ombudsman notes that Mr X has lived in Australia for 32 years, has strong family connections in Australia and no ties to Lebanon. Mr X committed a series of armed robbery and other offences, has served his sentences and has been in immigration detention for over two years. In 2007 the RRT decided that Mr X met the definition of a refugee. In February 2009 the Minister declined to intervene in Mr X's case.
23. Mr X has significant family support in Australia, as does his wife Ms Y. In Report 505/09 on Ms Y, the Ombudsman recommended that the Minister consider what alternative detention arrangements are available for Ms Y, including allowing her to live in the community while her immigration status is resolved.
24. In Mr X's case, the Ombudsman **recommends** that the Minister consider what alternative detention arrangements are available for Mr X, including allowing Mr X to live in the community with his wife while his immigration status is resolved. Until such time as a decision is made, the Ombudsman **recommends** that Mr X and Ms Y are transferred to Sydney Immigration Residential Housing to assist their transition into the community.



 Prof. John McMillan
 Commonwealth and Immigration Ombudsman

15 May 2009

 Date