

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 527/09

Principal facts

Personal details

1. Mr X is aged 60 and is a citizen of Lebanon. He has an Australian citizen wife, and five stepchildren. Mr X's parents and two brothers are also Australian citizens. Mr X's former wife and two children are citizens of the United States of America.

Detention history

2. On 22 May 2006 Mr X was located as an unlawful non-citizen having over-stayed his Bridging Visa (BV). He was detained under 189(1) of the *Migration Act 1958* and placed at Maribyrnong Immigration Detention Centre (IDC) the following day where he remained until 22 May 2007 when he was transferred to Community Detention. On 25 February 2009 Mr X was granted a Removal Pending Bridging Visa (RPBV).

Visa applications

3. Mr X entered Australia on a Close Family Visitor Visa (Dec 1993); lodged a Protection Visa (PV) application (March 1994), refused (August 1994); Refugee Review Tribunal (RRT) found that Mr X was a refugee under the *1951 Convention Relating to the Status of Refugees* (the Convention) but affirmed the Department's (DIAC) decision that he was excluded from the Convention under Article 1F(a) or 1F(b) (August 1995). Mr X's migration agent made a s 417 request (September 1995), assessed as not meeting the guidelines for referral to the Minister (October 1995); appealed the RRT decision to the Administrative Appeals Tribunal (AAT) but the out of time application was dismissed and the AAT found that it lacked jurisdiction (February 1996); appealed to the Federal Court (FC), appeal dismissed (November 1996); appealed to the Full Federal Court (FFC) (December 1996), case remitted to the RRT for reconsideration (August 1997) with the direction that the RRT decision of August 1995 was 'void ab initio insofar as it relied upon Article 1F' of the Convention; the RRT remitted the matter to DIAC for reconsideration with the direction that the applicant is a refugee under Article 1A of the Convention (September 1997).
4. DIAC advises that it interviewed Mr X regarding Article 1F (May 1999), sought a legal opinion from the Australian Government Solicitor (November 1999) which was provided in December 1999. DIAC advises that it is unclear why a decision on Mr X's PV application was delayed until February 2004 when it determined that he was excluded from protection under Article 1F and therefore refused his PV; the AAT affirmed the decision (February 2005); Mr X's application for an extension of time at the FC was dismissed (April 2005); applied for review of the decision to the FFC; appeal dismissed (March 2006). Lodged Child Visa (CV) application; associated BV refused (May 2006); CV application refused (October 2006). DIAC initiated a request under s 197AB and Mr X was transferred to Community Detention at his home (May 2007).
5. In March 2008 a combined s 501J/195A submission was lodged by DIAC and referred to the Minister; the Minister declined to intervene but requested further information associated with Mr X's claimed activities during the Lebanese civil war (August 2008). On 25 February 2009 Mr X was granted a (RPBV) and released from Community Detention.

Current immigration status

6. Mr X resides lawfully in the community.

Removal details

7. DIAC advises that staff from its Melbourne office recently met with Mr X to explain to him the conditions of the RPBV and to advise that they will work with Mr X to facilitate his removal as soon as practicable. DIAC is holding Mr X's expired Lebanese passport and removal is dependent on obtaining a further travel document.

Ombudsman consideration

8. DIAC's reports to the Ombudsman under s 486N are dated 23 May 2008 and 17 November 2008.
9. Ombudsman staff interviewed Mr X on 22 August 2008. His wife, Ms Y, also attended the interview.
10. Ombudsman staff sighted the following documents: two combined submissions to the Minister under s 501J/195A dated 20 March 2008 and 8 December 2009, and two medical summary reports from International Health and Medical Services (IHMS) dated 29 April 2008 and 21 October 2008.

Key issues

Health and welfare

11. The IHMS report notes that Mr X has a history of anxiety and depression which has been managed with medications, supportive counselling and ongoing psychiatric consultation. While in Community Detention Mr X told Ombudsman staff that he has been '*feeling depressed waiting for a decision*'.
12. In March 2008 IHMS took over the provision of health services to people in Community Detention and arranged for Mr X to see a psychologist who has implemented an ongoing treatment plan.

Alleged war crimes in Lebanon

13. At interview with Ombudsman staff Mr X claimed he was a Lebanese Phalangist Party member from the age of 17. He claims that while in the Christian militia he was directly involved in the massacre of Palestinian refugees in 1982. DIAC advises that the precise role played by Mr X in the Lebanese civil war remains unproven.
14. In October 2008 the Australian Federal Police advised that based on current information it has no active investigation into Mr X and was closing its file on him.

Attitude to removal

15. At interview Mr X expressed fear for his life should he be returned to Lebanon.

Community links


16. Mr X has lived in Australia for approximately 15 years. Mr X married his Australian citizen wife in May 2005 after living together since 1999 in Victoria. Ms Y has five children one of whom is under 18 and living at home. DIAC advises that all of Ms Y's children have attested to Mr X's good character.
17. DIAC further advises that it has received numerous character references from Mr X's local community and he has been undertaking voluntary work within the community.
18. Mr X advised at interview that his parents and two brothers are Australian citizens who have lived in Australia for over 30 years and he has no immediate family in Lebanon.


Other detention issues

19. At interview Mr X stated that GSL (Australia) Pty Ltd officers at Maribyrnong IDC 'were doing an excellent job' however he commented that drugs were prevalent in the detention centre, religious differences and the mixing of former convicted criminals with visa over-stayers was problematic.

Ombudsman assessment/recommendation

20. The DIAC decision that Mr X does not qualify for protection has been reviewed and affirmed and the Ombudsman has no further comment on this matter.
21. The Ombudsman notes that Mr X has been granted a RPBV and makes no recommendations in this report.


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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman


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Date