

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 579/10

This is the second s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (537/09). The Ombudsman's first report was sent to the Minister on 30 April 2009. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. Mr X has an ongoing application to the Administrative Appeals Tribunal (AAT) (December 2008) for a review of the decision by the Department (DIAC) to refuse to grant him a Protection Visa (PV). A decision by the AAT is expected in mid February 2010.

Current immigration status

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

Removal details

3. DIAC advises that Mr X will remain in Community Detention until his immigration status is resolved. If the AAT affirms the Minister's primary decision DIAC has advised that it will refer Mr X's case to the Minister for consideration under s 501J or s 195A of the *Migration Act 1958*.

Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N is dated 13 October 2009.
5. Ombudsman staff interviewed Mr X by telephone on 17 December 2009.
6. Ombudsman staff considered a report from Queensland Program of Assistance to Survivors of Torture and Trauma (QPASTT) dated 12 June 2009.

Key issues

Health and welfare

7. The Minister made a Residence Determination under s 197A for Mr X in April 2009 and Mr X was provided with a community detention placement.
8. Mr X told Ombudsman staff he found his community residence very stressful because of difficulties with noise made by a neighbour which interfered with his sleep. In early September 2009, Mr X requested to be moved to another residence in the vicinity of his local church and this move has now been arranged.
9. Mr X has attended regular counselling sessions with QPASTT since 7 May 2009. However Mr X says that sometimes he cannot attend the sessions because he feels too despondent. In its report QPASTT describes Mr X as experiencing significant symptoms which are consistent with a post traumatic stress response.

10. Mr X says he has commenced taking anti-depressant medication although he does not believe that the medication will assist him because his unhappiness is caused by his situation. Mr X says that he has frequent stomach upsets and has lost his appetite because of his sadness.
11. Mr X says his life remains one of sadness and sorrow. He says *'I cannot catch up with my life [after three decades] ... I try to read or to write my book but I can't concentrate ... my life is a mess'*. He describes being unable to enjoy life activities saying *'I can't enjoy [these things] because I have no freedom; I can't do anything for my family'*. For two years Mr X has been unable to see his wife who lives in Indonesia.
12. Mr X says he had worked as a teacher earlier in his life and, if granted refugee status to live lawfully in Australia, would like to pursue qualifications in teaching English as a second language. However he says that he does not think much about his future because he fears disappointment.
13. Although the move to Community Detention has improved Mr X's circumstances, he says that his situation has a continuing negative impact on his mental and physical health. QPASTT notes in its report that it is likely that Mr X's symptoms of post traumatic stress *'are also being exacerbated due to the instability and uncertainty related to his status as an asylum seeker'*.

Attitude to removal

14. Mr X's attitude to removal has not changed.

Ombudsman assessment/recommendation

15. Mr X has been detained in Australia since his arrival in October 2006.
16. DIAC refused Mr X a PV and Mr X has challenged this decision in the AAT. Since the previous s 486O report in April 2009 Mr X's application to the AAT has been heard and a decision is expected in February 2010.
17. The Ombudsman notes that DIAC has considered options for referral to the Minister under s 501J and s 195A should the AAT confirm DIAC's primary decision and makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

12 January 2010
Date