

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 580/10

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 (536/09). The Ombudsman's first report was sent to the Minister on 30 April 2009 and tabled in Parliament on 17 June 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 10 December 2009.

Key issues

Health and welfare

6. 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.
7. Mr X says of his situation in Community Detention that he is '*happy to have been given a chance to recover and to deal with the issues for the AAT [in a community environment]*'. Mr X's wife and daughter are currently visiting him.
8. Mr X says his health has improved. He ceased taking anti-depressant medication about two months ago and no longer sees a psychologist although he continues to regularly attend sessions with the Program of Assistance to Survivors of Torture and Trauma.
9. Mr X continues to receive strong community support and said that the community would assist him with employment and accommodation should he be allowed to live lawfully in Australia.

Attitude to removal

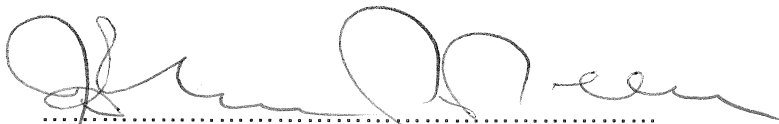
10. Mr X's attitude to removal has not changed.

Ombudsman assessment/recommendation

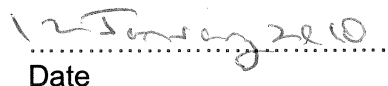
11. Mr X has been detained in Australia since his arrival in October 2006.

12. 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.

13. 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



Date