

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 237/07

Principal facts

Personal details

1. Mr X is aged 45 and is a citizen of Nepal. His wife and two sons aged 19 and 22 live in Nepal and he maintains contact with them.

Detention history

2. In February 2005, Mr X was located working illegally and detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC). Mr X was transferred to Sydney Immigration Residential Housing (IRH) on 23 February 2007.

Visa applications

3. Mr X entered Australia on a Tourist Visa (TV) (November 1991), TV ceased (January 1992); Protection Visa (PV) application lodged and granted Bridging Visa (BV) (December 1994), PV application withdrawn (January 1997), BV ceased (February 1997); Combined Resolution of Status Visa application lodged (March 1998), deemed to be invalid (April 1998); Mr X joined the *Macabenta* class action that was dismissed (January 1999); BV application lodged and refused (January 1999); two BVs granted to facilitate Mr X's departure from Australia (June 2002), BV ceased and the Department (DIAC) lost contact with him (July 2002).
4. Second PV application lodged (February 2005), application refused (March 2005); three associated BV applications refused, decisions to refuse BV applications affirmed by the Migration Review Tribunal (MRT) (March-August 2005); the Refugee Review Tribunal (RRT) affirmed the decision to refuse PV, judicial review of the RRT decision sought in the Federal Magistrates Court (FMC) (April 2005), a s 417 request lodged (July 2005), request deemed inappropriate to consider (August 2005); appeal dismissed, appeal of the FMC decision to the Full Federal Court (September 2005), appeal dismissed, combined s 417/48B request lodged (February 2006), combined submission referred to the Minister (October 2006), Minister declined to intervene under s 417 (February 2007) but agreed to allow s 48B request to enable Mr X to make a new PV claim which was refused (March 2007); the RRT affirmed the refusal decision (July 2007), Mr X lodged a s 417 request (August 2007) assessed as not meeting the guidelines for referral to the Minister (October 2007), appeal of the RRT decision to the FMC lodged (October 2007), matter ongoing.

Current immigration status

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

Removal details

6. DIAC has advised that the removal of Mr X has been deferred pending the outcome of his appeal to the FMC.

Ombudsman consideration

7. The DIAC reports to the Ombudsman under s 486N are dated 13 February 2007 and 17 July 2007.
8. Ombudsman staff interviewed Mr X on 6 July 2007 at Sydney IRH.

9. Ombudsman staff sighted the following documents: a psychological summary report from Professional Support Services (PSS) dated 19 January 2007; a medical report from International Health and Medical Services (IHMS) dated 17 January 2007; a copy of DIAC's response to Mr X's BV application dated 6 March 2007; a s 417 Ministerial Submission by Ms Y dated 21 April 2006 and attached documentation, including 18 letters of support from members of the community.

Key issues

Health and welfare

10. In February 2005 Mr X participated in a voluntary hunger strike at Villawood IDC. As a result of his actions he was placed on Suicide and Self Harm observation for 13 days. Mr X advised Ombudsman staff that he was protesting in the hope that he would be freed from detention. He indicated that he was new to detention and was upset and confused about why he was in a gaol-like environment '*surrounded by razor wire*' when he is not a criminal.
11. The January 2007 report stated that Mr X '*presented with anxiety symptoms, including increased irritability and associated anger volatility, sleeping difficulties and forgetfulness*'. The PSS report also noted that '*his level of resilience appears to have decreased during the recent months, which appears to be a consequence of the following; his long term detention of approximately 2 years; difficulties faced in his current environment/situation, as well as his persistent family concerns. It appears unlikely that Mr X's mental health state could be improved without a change in his environment*'.
12. Mr X was relocated to Sydney IRH in February 2007. He told Ombudsman staff that he continues to experience low moods and feelings of '*uneasiness*' at the Sydney IRH. He stated that he occupies himself playing sport and participating in other recreation activities when available, however he remains '*anxious*' and '*unhappy*'.
13. The PSS report noted that Mr X '*engages well with PSS and would seek psychological support readily when he feels it necessary*'. However Mr X informed Ombudsman staff that since being transferred to Sydney IRH he has experienced some degree of difficulty in making a psychologist appointment. The Ombudsman's office raised this concern with DIAC and it advises that the IRH operates similarly to the community and requires a referral from a General Practitioner before a person consults with a psychologist.
14. Mr X stated that he has suffered from an ongoing problem with his teeth since he was first detained at Villawood IDC. He has had most of his back teeth removed and he said he finds it '*very hard to eat*' and experiences pain. He has made several requests for dentures and said he does not feel these requests have been resolved in his best interest. The IHMS report of January 2007 recommended '*ongoing dental treatment*' as a key management issue. DIAC advises that IHMS does not consider prosthetics to be necessary.

Attitude to removal

15. Mr X advised Ombudsman staff that he was subjected to torture and imprisonment while in Nepal as a result of his marriage to a Christian woman. He believes that if he returns to Nepal he will again be tortured, fears he may be killed and that his wife and sons may also be in danger.

Other detention issues

16. Mr X said that because he speaks six languages, fellow detainees rely on him to communicate with different groups and he assists in resolving disputes. The PSS report stated that '*His sense of responsibility to take care of his peers in detention appears to increase his pressure and level of distress*'.

Ombudsman assessment/recommendation

17. Mr X has been in immigration detention for two and a half years primarily due to his unsuccessful pursuit of protection in Australia. He has lodged three PV applications and the DIAC decisions that he does not qualify for protection by Australia have been reviewed and affirmed. Removal of Mr X has been deferred pending the outcome of his litigation. The Ombudsman has no further comment on this matter.
18. Medical information available to the Ombudsman indicates that long-term detention is having a negative effect on Mr X's mental health. The PSS report indicates that it is unlikely that Mr X's mental health will improve without a change in his environment.
19. The issue of present concern in Mr X's case is the length of time he has been detained in immigration detention. While he does not appear to currently have any major health issues that would be better managed outside of the detention environment, the PSS report indicates that his level of resilience has decreased.
20. The Ombudsman makes no recommendations in this report however notes that if Mr X were to remain in detention, a further report under s 486N would fall due in February 2008. The Ombudsman will, at that time, review Mr X's circumstances, considering again the impact of detention upon him and the suitability of continued detention in an immigration facility.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date