

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 226/07

Principal facts

Personal details

1. Ms X is aged 41 and is a citizen of country A. She is not in contact with her parents who are still in country A.

Detention history

2. Ms X was located and identified as an unlawful non-citizen in 2004. The Department (DIAC) detained her under section 189(1) of the *Migration Act 1958* and she was placed at Villawood Immigration Detention Centre (IDC). Ms X was released from detention on 31 July 2006 when she was granted a Bridging Visa (BV).

Visa applications

3. Ms X arrived in Australia on a Short Stay Tourist Visa (November 1999), granted extensions (February and May 2000); applied for a Long Stay Business Visa (LSBV) and granted associated BV (October 2000), LSBV granted (June 2001); made a further application for a LSBV and associated BV granted (June 2002); employer withdrew its nomination and application for a LSBV was refused (December 2002); applied for merits review of the refusal at the Migration Review Tribunal (MRT) (January 2003), decision affirmed (February 2004); BV ceased (April 2004); BV application lodged and withdrawn (May 2004).
4. Protection Visa (PV) application refused (June 2004); the Refugee Review Tribunal (RRT) affirmed decision, application for judicial review of the refusal at the Federal Magistrates Court (August 2004) unsuccessful (January 2005); appeal to the Full Federal Court (February 2005) dismissed (April 2005); s 417 request lodged (June 2005), referred to the Minister (February 2006), returned requesting further advice on the breach of privacy issue; the case will be re-submitted to the Minister when the Office of the Privacy Commissioner (OPC) completes its investigation (discussed further below).

Current immigration status

5. Ms X resides lawfully in the community on a BV.

Removal details

6. DIAC advises that Ms X holds a country A passport valid until August 2013. Removal options are dependent upon the outcome of the s 417 request following resolution of the complaint to the OPC.

Ombudsman consideration

7. The DIAC report to the Ombudsman under s 486N is dated 22 May 2006.
8. Ombudsman staff interviewed Ms X on 3 August 2006 with Ms Y present as a support person.
9. Ombudsman staff sighted medical summary reports from International Health and Medical Services (IHMS) and Professional Support Services (PSS), both dated 10 May 2006.

Key issues

Alleged breach of privacy

10. The Ombudsman's office investigated circumstances surrounding an alleged breach of Ms X's privacy following the compliance operation by DIAC that led to Ms X being taken into immigration detention. Ms X stated that she voiced her concerns at the time and asked that an unidentified person, who was present during the compliance activity, stop taking photographs of her and other individuals whilst they were being detained and questioned. DIAC confirmed that a journalist and photographer accompanied DIAC officers during this compliance visit and on a number of other occasions.
11. Ms X complained that the journalist's story identified her. She also said that she was wrongly identified as a sex-worker, that she was harassed and called '*prostitute*' when she arrived at Villawood IDC. Ms X advised that, at the time, she was trying to arrange her return to country A but after the article was published the local country A community and her family overseas '*all turned their backs on me*'. Ms X advised that she has a high profile in the community because she has worked as a journalist in the newspaper and radio industry in country A and Australia.
12. As part of the investigation into Ms X's complaint, the Ombudsman's office noted that DIAC '*failed to ensure that information which would result in Ms X's identification was removed or amended prior to publication*'. DIAC accepted responsibility for the breach of Ms X's privacy and in line with recommendations made by the Ombudsman's office, sent Ms X a letter of apology in April 2006. The Ombudsman's office recommended that DIAC compensate Ms X for the breach of privacy and acknowledged that it was appropriate for DIAC to await the outcome of the OPC's investigation for guidance on the issue of compensation. The Ombudsman understands that the matter has not yet been finalised.

Assault

13. The Ombudsman's office investigated a second issue concerning an assault that occurred during Ms X's time in detention. Ms X complained that a fellow detainee at Villawood IDC had assaulted her on 28 January 2005 and that she suffered a range of injuries including several chipped front teeth, a lump on her forehead and bruising. DIAC confirmed that a GSL officer witnessed the two detainees shouting at each other, and he then observed a physical altercation develop but did not intervene as '*he remained at his post to ensure other detainees did not become involved in the incident*'. The Ombudsman's office expressed the view that the officer's response did not accord with procedures to maintain the good order and security of the centre. Further, concerns were raised that the post-assault intervention was '*not effectively managed under the circumstances*'.
14. The matter was referred to the NSW Police but no criminal charges were laid. Following this, the Ombudsman's office provided DIAC with preliminary views and possible remedies on this matter. DIAC subsequently agreed to resend details of the matter to NSW Police and request that they conduct an investigation. In response, the Ombudsman's office asked DIAC in July 2006 to be kept informed if DIAC or the NSW Police took any further action. No further advice on this matter has been received.
15. The Ombudsman's office decided to record a finding of administrative deficiency against DIAC on the assault issues.

Health and welfare

16. The IHMS report listed Ms X's medical problems as a skin rash, dental problems, depression and anxiety. In respect of her skin condition, she was referred to a dermatologist. Ms X said the condition worsened in detention because of stress. Ms X's depression and anxiety was managed with medication, supportive counselling by PSS and she was reviewed by the visiting psychiatrist.

17. PSS reports that Ms X's *'presentation is consistent with features of Major depression'* and she presented with *'depressed mood, poor self-esteem, frustration, shame, embarrassment and anxiety ... in addition ... also the victim of a significant assault ... this led to issues relating to victimisation (fear, shame, anxiety, loneliness) which were further compounded by a perceived lack of action taken by GSL or DIMIA to investigate the assault'*. The PSS report concludes *'Ms X's psychological state has shown deterioration since being in detention. It is evident ... that there were pre-existing personal issues prior to her detention. These have most likely been exacerbated by her ongoing detention situation'*.
18. At interview, Ms X explained that she will continue to see a psychiatrist in the community because she is *'going to need to continue with medication for a while'* and expressed concerned about being able to afford to do so.

Attitude to removal

19. Ms X has refused to sign a removal notice, and has indicated to DIAC staff that she is unwilling to return to country A given the breach of her privacy. She advised Ombudsman staff that if returned she would face a lot of problems because she was identified as a sex-worker. She thinks she will not be able to obtain employment or accommodation because country A people are not as broad-minded as Australians and have *'narrow minded strong Catholic'* attitudes.

Other detention issues

20. Ms X advised that whilst detained she acted as a spokesperson for other detainees and regularly attended various detainee consultative meetings with DIAC and GSL. She outlined a series of issues that she felt were unsatisfactory during her time at Villawood IDC, including unsuitable playing grounds, unsafe electricity, poor quality fruit and vegetables and insufficient access to dental care. She also said the kitchen staff did not provide the meals that were planned by the nutritionist and outlined on the weekly menu.

Ombudsman assessment/recommendation

21. Ms X has been in Australia for over eight years and spent two years in immigration detention. The DIAC decision that Ms X does not qualify for protection has been reviewed and affirmed. The Ombudsman has no further comment on this matter.
22. DIAC advises that it will re-submit the s 417 application to the Minister once the complaint with the OPC is completed. In considering the s 417 application, the Ombudsman suggests that the Minister take the following into account: the impact that the breach of Ms X's privacy has had on both her health and her ability to return to country A, including her capacity to find appropriate employment should she be removed to country A; the exacerbation of pre-existing personal issues as a result of her detention; and that she was the victim of a significant assault by another detainee and her psychological state was compounded by a perceived lack of action taken by DIAC and GSL to investigate the assault.
23. Given Ms X's mental health issues, the Ombudsman **recommends** that DIAC consider the extent to which it may be appropriate to offer her ongoing case management and mental health support.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date