

# **REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN**

*Under s 486O of the Migration Act 1958*

*Personal identifier: 349/08*

## **Principal facts**

### *Personal details*

1. Mr X is aged 47 and is a citizen of Peru. He has no family in Australia and his mother resides in the United States. He has an Australian citizen girlfriend.

### *Detention history*

2. On 22 August 2005, Mr X was detained under section s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC).

### *Visa applications*

3. Mr X arrived in Australia on a Tourist Visa, was granted a Long Stay Visitor Visa (VV) (November 1997); VV ceased (August 1998); Bridging Visa (BV) application (August 2005); BV refused, decision affirmed by Migration Review Tribunal (MRT) (September 2005); Protection Visa (PV) application (October 2005); associated BV refused, decision affirmed by the MRT, PV refused (November 2005); PV refusal affirmed by Refugee Review Tribunal (RRT) (December 2005); three BV applications, one deemed invalid, one withdrawn (December 2005); BV refused, decision affirmed by MRT (January 2006); BV application made and refused (February 2006); decision affirmed by MRT (March 2006); Federal Magistrates Court dismissed application for judicial review of RRT decision (March 2006); four BV applications (April to May 2006), three withdrawn and one assessed as invalid; BV application made and refused, decision affirmed by the MRT (May 2006); BV application made and refused (August 2006); decision affirmed by MRT (September 2006).
4. Mr X lodged a combined s 48B/417 request (May 2006); s 48B request not referred to Minister, s 417 request referred to the Minister on a schedule (November 2006); Minister declined s 417, combined s 48B/417 request lodged (February 2007); requests assessed as not meeting the guidelines, another combined s 48B/417 request lodged (June 2007); requests assessed as not meeting the guidelines (July 2007); s 417 request lodged (October 2007) is ongoing.

### *Current immigration status*

5. Mr X is an unlawful non-citizen in detention at Villawood IDC.

### *Removal details*

6. The Department (DIAC) advises that Mr X refuses to cooperate in obtaining a travel document from Peruvian authorities. In August 2007, the Peruvian Consulate reportedly told DIAC it would allow Mr X's removal to Peru on an Australian Certificate of Identity after it had interviewed him to satisfy itself that all avenues to obtain his cooperation have been exhausted.

## **Ombudsman consideration**

7. DIAC's report to the Ombudsman under s 486N is dated 15 August 2007.
8. Ombudsman staff interviewed Mr X on 24 October 2007 at Villawood IDC.

9. Ombudsman staff sighted the following documents: an International Health and Medical Services (IHMS) report dated 9 August 2007 and an update on 27 November 2007; Professional Support Services (PSS) psychology summary reports dated 14 August 2007 and 18 November 2007; correspondence from Ms Y dated 14 November 2007; and correspondence from Mr X dated 20 September 2007, 18 October 2007, 24 October 2007 and 26 November 2007.

## Key issues

### Health and welfare

10. The PSS report of November 2007 noted that Mr X presented with *'anxiety, depression with psychotic features [and] some PTSD [Post-traumatic Stress Disorder] symptoms'*. He is receiving medication and weekly counselling. The report concluded that Mr X's *'current mental health is of concern to PSS because he appears to be presenting with psychotic symptoms. Alternative treatment options may need to be considered [if] the client's mental health does not improve in the short term'*. The report noted that Mr X appeared to find counselling useful and that he was continuing with regular sessions. The report stated *'ongoing detention is causing him considerable psychological distress'*.
11. The above symptoms were reported in a Mental State Examination in September 2007. Mr X was referred to the IHMS psychiatrist and treated. IHMS has stated that Mr X's present symptoms are *'indicative of deterioration in his mental health and possibly a re-triggering of his unresolved trauma issues'*. In his interview with Ombudsman staff, Mr X claimed he heard voices telling him that if he is returned to Peru *'my life is finished, my life is destroyed'*.

### Attitude to removal


12. Mr X indicated he fears being returned to Peru, stating multiple times during his interview with Ombudsman staff that *'I can't go back'*. Mr X claimed to the RRT that he was at risk of persecution in Peru because of his membership of a political party, among other factors. The RRT held that it *'does not accept that the Applicant was an APRA activist as he claimed ... or that he will be targeted by ... groups or persons for persecution on return to Peru, for reasons associated with his political opinion or activities'*.

## Ombudsman assessment/recommendation

13. Mr X has been in immigration detention for two years and four months, largely as a result of his pursuit of a PV. The DIAC decision that Mr X does not qualify for protection has been reviewed and affirmed. The Ombudsman has no further comment to make on this matter.
14. Mr X is reported to have anxiety, depression with psychotic features and symptoms of PTSD. From an examination of his case, it is reasonable to infer that, in the presence of his mental health problems, Mr X has a restricted ability to cooperate in his immigration matters. At the same time, DIAC has needed him to participate in obtaining travel documents. The Peruvian Consulate recently indicated it may accept Mr X travelling on an Australian Certificate of Identity, after it is satisfied that all avenues to obtain his cooperation have been exhausted. However, the Peruvian Consulate may be less likely to agree to this course of action once it becomes aware of Mr X's declining medical condition. There is a risk that the difficulties involved in removing Mr X, combined with his mental health problems, may result in him being detained for a further prolonged period.
15. IHMS reports that Mr X saw a contracted psychiatrist on four occasions in October and November 2007. The Ombudsman **recommends** that DIAC arrange to have Mr X assessed specifically on the issues of his competence to make decisions about his immigration matters and his fitness to travel. The assessment should also address the

appropriateness of the immigration detention environment for managing Mr X's condition. If Mr X is found to be impaired, DIAC may need to consider a guardianship application.

16. The Ombudsman **recommends** that, following the psychiatric assessment, the Minister consider using his detention intervention powers to facilitate the most appropriate living arrangements for Mr X while his immigration matters remain unresolved.
17. The Ombudsman notes that a further report under s 486N for Mr X will fall due in February 2008. The Ombudsman will at that time review the state of Mr X's health, 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

8 January 2008  
.....  
Date