

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 359/08

Principal facts

Personal details

1. Mr X is aged 37 and is a citizen of Russia. His ex-wife, 14-year-old daughter and two brothers all live in Russia. At interview with Ombudsman staff Mr X said that he is no longer in contact with them.

Detention history

2. In July 2005 the Department (DIAC) detained Mr X under s 189(1) of the *Migration Act 1958*. He was placed at Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X arrived in Australia with his wife and daughter in September 2000 on a Tourist Visa (TV); Protection Visa (PV) application lodged, associated BV granted (October 2000), PV application refused (August 2002); merits review of the decision sought at the Refugee Review Tribunal (RRT) (September 2002), RRT affirmed decision (October 2003); appeal of RRT decision to the Federal Magistrate's Court (FMC) (December 2003), associated BV granted (January 2004), FMC dismissed application (November 2004), BV ceased (December 2004); Mr X's family remained on a series of BVs until they departed Australia in September 2005.
4. Request for Ministerial intervention under s 417 lodged (May 2007), Mr X assessed as meeting the guidelines for referral to the Minister under s 195A and submission drafted (June 2007), Minister declined to intervene under s 417 (October 2007), s 195A submission ongoing.

Current immigration status

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

Removal details

6. DIAC has advised that removal of Mr X cannot be processed at present because he has refused to sign a passport application and the Embassy of the Russian Federation will not issue a passport or travel document unless the client signs the application form. Furthermore, the NSW Identity Verification Team has yet to establish Mr X's identity.
7. DIAC has advised that it is in the process of approaching the Embassy of Russia about developing a Memorandum of Understanding that will clarify the procedure for such cases. A timeframe has not been provided.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 28 June 2007.
9. Ombudsman staff interviewed Mr X on 24 October 2007 at Villawood IDC.

10. Ombudsman staff sighted the following documents: a s 417 Ministerial Submission by Mr X dated 14 May 2007; a psychological summary report from Professional Support Services (PSS) dated 12 June 2007; an International Health and Medical Services (IHMS) report dated July 2007; and a joint psychological assessment report prepared for a refugee support group (Balmain for Refugees) by registered psychologist Ms Y and psychoanalyst and analytical psychologist Ms Z dated 9 November 2007.

Key issues

Health and welfare

11. PSS reports that Mr X presents with '*alcohol abuse, self-harm ideation, depression, insomnia, [and] anger frustration*'. It indicates that he has received treatment for these issues but did not respond to treatment.
12. The November 2007 psychological report draws a link between Mr X's condition and his continuing detention. '*It is detrimental to Mr X's health to remain at Villawood IDC where his psychological condition is in decline due to a now chronic fear of deportation, insomnia and isolation, which aggravates already extensive PTSD symptoms of distress ... The Villawood IDC environment is not conducive to a positive therapeutic outcome, however if he were released he would be able to access appropriate community support services, which are on offer to him*'.
13. DIAC advises that Mr X has been placed on Suicide and Self-Harm observation 47 times between December 2005 and June 2007 for periods ranging from one day to three weeks. On at least four occasions DIAC reports that he harmed himself.

Attitude to removal

14. At interview Mr X became distressed at having to recount the events leading up to his arrival in Australia and the reasons he fears returning to Russia. He explained '*I have told my story so many times ... it makes me sick ... having to keep retelling it makes me more mental*'. He said he was forced to flee Russia because he was '*opposed to the current political system*'. Mr X said his fear of persecution is so great that he would choose to spend the rest of his life in detention in Australia rather than voluntarily go back. He also fears that if he returns to Russia his wife and daughter will be persecuted.

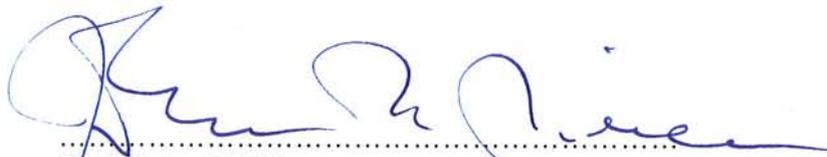
Links to the community

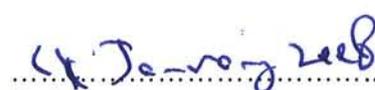
15. Mr X advised Ombudsman staff that he obtained qualifications in Russia and worked as an aircraft technician. He said that he has acquired extensive work experience in the timber-flooring industry and that he can also do electrical work. Mr X also claims to have worked in the farming industry in Mudgee.
16. At interview Mr X's support person, Ms A of Balmain for Refugees, advised that he has a '*huge support network*' in the community and would not have trouble finding employment and accommodation.

Ombudsman assessment/recommendation

17. The DIAC decision that Mr X does not qualify for protection has been reviewed and affirmed. The Ombudsman has no further comment on this matter. Mr X has been in immigration detention since July 2005. There appears to be no immediate solution to his immigration status nor is his removal likely to be effected in the near future as his identity is yet to be confirmed and DIAC are yet to obtain a passport or travel documents from the Embassy of Russia.

18. Mr X has not cooperated in agreeing to his removal from Australia, and did not join his family when they departed Australia two months after they were taken into detention in July 2005. It is important that active steps are taken by the Department to resolve Mr X's immigration status or to arrange for his removal from Australia as soon as possible. The most recent medical evidence indicates that Mr X has significant health issues and his health may worsen the longer he remains in detention. The Ombudsman will further review these matters when a further report is received early in 2008 if Mr X remains in detention.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date