

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 347/08

Principal facts

Personal details

1. Mr X is aged 30 and is a citizen of Syria. Mr X's family live in Syria and he has some contact with them. Mr X also has a brother in Qatar and an uncle and cousin in Britain.

Detention history

2. In August 2005 Mr X was detained as a Bridging Visa (BV) over-stayer under s 189(1) of the *Migration Act 1958* and taken to Bankstown Hospital. Mr X was transferred to Villawood Immigration Detention Centre (IDC) the following day.

Visa applications

3. Mr X arrived in Australia on a Tourist Visa (TV), TV ceased (November 2000), BV granted, BV expired (June 2005), Protection Visa (PV) application lodged, PV refused, merits review of decision sought at the Refugee Review Tribunal (RRT) (September 2005), RRT affirmed decision (February 2006), appeal to the Federal Magistrates Court (FMC) (March 2006), Minister withdrew from the appeal due to a possible *SZEEU* jurisdictional error, relating to the RRT not having complied with the requirements of s 424A which requires it to give the applicant the chance to comment on adverse material, matter set aside by the FMC and remitted to the RRT for reconsideration (May 2006), RRT affirmed PV refusal (September 2006), judicial review of decision sought at the FMC (November 2006), the Department (DIAC) initiated a request under s 197AB of the Act on behalf of Mr X (March 2007), request assessed as not meeting the guidelines (April 2007), the FMC dismissed application (July 2007), appeal of FMC decision to the Full Federal Court (August 2007), appeal dismissed (October 2007).

Current immigration status

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

Removal details

5. DIAC advises that plans for Mr X's removal are being progressed. The Syrian Consulate reportedly agreed to renew Mr X's expired passport after the conclusion of his litigation.

Ombudsman consideration

6. DIAC's report to the Ombudsman under s 486N is dated 17 August 2007.
7. Ombudsman staff interviewed Mr X on 25 October 2007 at Villawood IDC.
8. Ombudsman staff sighted the following documents: a medical summary report from International Health and Medical Services (IHMS) dated 10 August 2007; and a psychological summary report from Professional Support Services (PSS) dated 14 August 2007.

Key issues

Health and welfare

9. DIAC advises that Mr X has been diagnosed with *Grand Mal* epilepsy and related high blood pressure and that he has suffered from epilepsy since childhood. The IHMS report

stated he *'is currently managed with a combination of education, medications, specialist Neurological consultations, regular GP reviews and investigations as recommended and indicated. Despite such measures seizure activity is regular'*.

10. It is noted that Mr X has refused to take his medication at various times since being detained and that this problem has been addressed with *'counselling and ongoing encouragement'*. At interview with Ombudsman staff Mr X explained that he refused the medication during the periods he was on a hunger strike as part of his protest. DIAC advised that Mr X was on voluntary starvation for 23 days in December 2006 and then again on several occasions in 2007.
11. At interview Mr X said that despite being on medication the frequency of attacks is significantly greater than when he was living in the community. He said that prior to detention he only experienced seizures once every three or four months. However, since being detained he experiences seizures between seven and eight times a week and in some cases five times a day. DIAC confirms that Mr X had four seizures in one day on at least one occasion. Mr X stated that his required dosage of medication has also more than doubled. He said *'this is a psychological condition linked to the nerves. While in detention I do not have access to appropriate treatment'*.
12. Mr X's PSS psychological summary report of August 2007 indicates that he has been diagnosed with *'panic attacks, depression, seizures, suicidal ideation, frustration, conflict with other detainees and anger'*. Mr X has been provided with treatment to manage these issues, however his report states that he *'was not very responsive to these interventions'* and that he *'has a poor prognosis due to his lack of compliance with treatment strategies'*. Mr X attended a Mental State Examination in August 2007 at which time *'his mood was noted to be low'*.
13. DIAC advises that the Human Rights and Equal Opportunity Commission has questioned whether an IDC is a suitable environment for Mr X due to his epilepsy. At interview Mr X stated that he has made several requests to DIAC that he either be placed in alternative detention or be granted a BV so he can access external treatment for his condition. The PSS report stated that *'although Mr X is currently being managed adequately in Detention, his mental health is likely to deteriorate with prolonged detention'*. The IHMS report concluded that *'It is likely that this client will need to access external specialist services on a regular basis'* and that his *'medical conditions could be better managed in a less stressful setting other than an IDC'*.
14. These assessments contrast with a Detention Health Services assessment in October 2007, which stated that Mr X's medical needs can be met in the detention environment. DIAC advises that placement options for Mr X are limited due to the level of support he requires for his epilepsy, and that DIAC considers short-term options such as alternative detention or a BV to be inappropriate for Mr X.

Attitude to removal

15. At interview Mr X said *'I cannot go back to my country under any circumstances'* because he believes he will be the subject of an honour killing after his girlfriend became pregnant outside of marriage. In September 2006, the RRT stated it *'does not accept that the applicant had a girlfriend ... with whom he had an intimate sexual relationship that resulted in pregnancy ... the Tribunal does not accept that the applicant has suffered any of the claimed harm or that there is a real chance of such harm occurring in the reasonably foreseeable future'*.

Other detention issues

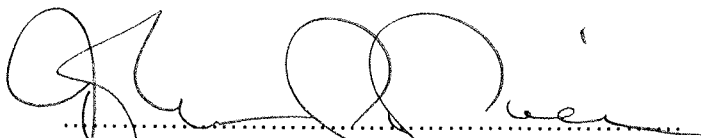
16. Mr X lodged a complaint with the Ombudsman in early November 2007 regarding his transfer from Stage Two to Stage One at Villawood IDC, following allegations that he hit a Global Solutions Limited guard whilst having an epileptic seizure. Mr X complained that

being in Stage One worsened his medical problems. He stated that although he had been consulting a psychologist on a regular basis, he needed more help than was being provided to him. He advised that he was on a hunger strike and was refusing to take his medication. The complaint is currently being investigated.

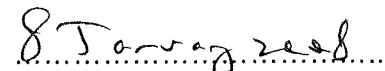
17. At interview Mr X explained that he is upset because he believes that the nurses in detention do not take his condition seriously. He recounted an incident where *'I felt my chest collapsing. I went to find a guard and they thought I was acting ... the nurse put the oxygen mask on my face but did not turn it on.'* He said *'the doctor told me it was a result of stress ... an anxiety attack'*. He said this has happened to him four times over the past year and a half.

Ombudsman assessment/recommendation

18. Mr X has been in detention for over two years. The DIAC decision that he does not qualify for protection has been reviewed twice by the RRT and affirmed. The Ombudsman has no further comment to make on this matter.
19. The current issue for consideration is whether Mr X should remain in detention while his immigration status is resolved. The Ombudsman notes that DIAC considers that there are limited placement options for Mr X due to the level of support required for his epilepsy. By contrast, the August 2007 medical and psychological assessment reports suggest that Mr X's medical condition would be better managed in a less stressful setting than an IDC. Furthermore, medical evidence suggests that Mr X is likely to need to access external health providers on a regular basis and that prolonged detention may lead to deterioration of his mental health.
20. The Ombudsman understands that there are now no outstanding matters that would prevent Mr X's removal from Australia and that his removal is imminent. However, for the above reasons, if Mr X's removal is delayed the Ombudsman **recommends** that DIAC again consider alternatives to detention including Community Detention or Immigration Residential Housing. It may be that DIAC will need to take extra measures to provide Mr X with a sufficient level of support in the community to manage his medical issues.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date