

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

*Under s 486O of the Migration Act 1958*

Personal identifier: 235/07

## **Principal facts**

### *Personal details*

1. Mr X is aged 29 and is a citizen of India. At interview with Ombudsman staff Mr X said that his sister and three younger brothers live in India. He said his brothers live in a hostel and he speaks with their school principal once a month.

### *Detention history*

2. In April 2005 the Department (DIAC) located Mr X and detained him as a Bridging Visa (BV) overstay under section 189(1) of the *Migration Act 1958*. He was placed at Villawood Immigration Detention Centre (IDC). In November 2006 Mr X was transferred to Villawood Immigration Residential Housing (IRH).

### *Visa applications*

3. Mr X entered Australia on a Student Visa (SV) (December 1998), SV ceased, applied for a Temporary Business Entry Visa (TBEV); granted a BV (December 2000); TBEV application refused (May 2001); further application for TBEV (May 2002), withdrew application (August 2002); the Migration Review Tribunal (MRT) affirmed the refusal decision (November 2002); Mr X sought judicial review of the MRT decision at the High Court (HC) (December 2002), which remitted the matter back to the Federal Court (FC) (February 2003), the FC dismissed the matter (August 2003); Mr X made a BV application (September 2003), BV granted, lodged a s 351 request to the Minister to substitute a more favourable decision for the MRT decision (October 2003), request assessed as not meeting the guidelines and was referred to the Minister on a schedule (December 2003); BV expired (January 2004); BV application made and granted (February 2004); the Minister declined to intervene under s 351, BV expired (April 2004).
4. Mr X made a Protection Visa (PV) application, refused, associated BV application withdrawn (May 2005); the Refugee Review Tribunal (RRT) affirmed DIAC's decision, Mr X sought judicial review of the decision to the FC (September 2005), matter dismissed (December 2005); appeal to the Full Federal Court (FFC) (January 2006); withdrew a BV application (May 2006); FFC dismissed matter (October 2006); applied for special leave to the HC to appeal the FFC decision (November 2006), HC matter ongoing.

### *Current immigration status*

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

### *Removal details*

6. DIAC advises that Mr X has been unable to locate his passport and has refused to complete a passport application form. DIAC further advises that it is currently unable to pursue Mr X's removal due to his outstanding HC matter.

## **Ombudsman consideration**

7. The DIAC report to the Ombudsman under s 486N is dated 11 April 2007.
8. Ombudsman staff interviewed Mr X on 6 July 2007. Ms Y and Mr Z were present as support people.

9. Ombudsman staff have sighted the following documents: a letter from DIAC to the Ombudsman's office dated 4 October 2006; a letter from Mr X to the Minister dated 27 November 2006; a letter from Mr X and a fellow detainee to DIAC dated 27 November 2006; a psychological report by Ms W from the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) dated 22 December 2006; a note by Dr V dated 23 January 2007; a medical summary report from International Health and Medical Services (IHMS) dated 5 April 2007; a psychological summary report from Professional Support Services (PSS) dated 11 April 2007; a letter from Dr U to Dr V dated 29 June 2007; and a copy of an Investigation Report by Mr T, undated.

## Key issues

### *Assaults at Villawood IDC*

10. Mr X said that he has been the victim of assaults while a detainee at Villawood IDC in that he was verbally abused, manhandled and followed by a fellow detainee. He claimed that the police advised him *'you are illegal, we can't do anything'* when they initiated the investigation into the assault in May 2006. DIAC advised that in May 2006 Mr X was involved in an altercation with this detainee and appeared to have suffered blows to the head area. He complained of pain in the ear region, cheek and abdomen and was taken to hospital for x-rays and further assessment. IHMS noted that in September 2006 Mr X complained of being bullied and he threatened to self-harm, which resulted in him being placed on Suicide and Self Harm (SASH) observation for five days. At interview with Ombudsman staff Mr X disputed that he had threatened to self-harm but had instead told IHMS that he felt *'mentally sick'*.
11. DIAC advised that in response to the ongoing claims of bullying and physical assault a Management Plan was implemented in September 2006. Consequently a Global Solutions Limited (GSL) officer was to escort Mr X to and from the mosque and the detainee responsible for the bullying was moved to another compound. In October 2006 Mr X was again placed under SASH observation after complaints of bullying by another detainee.
12. DIAC advised that at around 12am on 26 November 2006, approximately 15 detainees assaulted Mr X and his roommate in their room, binding them to their beds with sheets. After the assault Mr X and his roommate were assessed by IHMS and it was found that Mr X had sustained a small graze on his forehead. Mr X was escorted to hospital at 3pm the following afternoon.
13. In a letter to the Minister dated 27 November 2006, Mr X and his roommate claimed that prior to the assault, the *'gang'* of 15 detainees had stolen property from their room. They said they reported this to GSL, however no action was taken. They then contacted the NSW police who came and took a report about this incident. Shortly after this they claim the *'gang'* threatened to assault them and they again contacted GSL, however no action was taken to protect them nor to investigate the allegations.
14. At interview Mr X expressed concern to Ombudsman staff about several aspects of the 26 November 2006 assault, saying that he did not feel that *'management'* took sufficient action in response to the assault. He claimed that after the assault the GSL manager behaved aggressively towards him and his roommate, accusing them of provoking the attack, and discouraging them from contacting the police. Mr X further said that when the police arrived they did not have a camera with them and they made no effort to collect the discarded gloves or other evidence. Mr X said they were then left alone in their room for nearly an hour without a security presence before being transferred to Stage One. He said that they were very scared, and pulled their mattresses onto the floor to enable them to sleep together.
15. Mr X said that GSL had refused to take them to hospital immediately after the attack but were assessed onsite by a nurse. He claims it was not until the following afternoon when

a visiting friend complained on their behalf to DIAC that they were taken to hospital for further assessment. The relevant GSL Generic Operational Procedure No. 12.04 (4.2.3) on Assaults states that the GSL manager is required to *'facilitate the appropriate level of medical support including examination ... Counselling and associated support should be arranged for those involved in the incident'*. There is some doubt in this case as to whether GSL met these requirements in the hours following this event and, in light of the seriousness of the assault, whether timely counselling and support was extended to Mr X.

16. The Investigation Report, commissioned by GSL in response to the assault and other events that took place in Villawood IDC that night, commented that it was inappropriate that the attackers should have been placed in Stage Three rather than Stage One in the first place because of their criminal history and other factors. *'Such antecedents ... causes serious disharmony, such individuals cannot help but standover and harass other clients'*. It recommended that *'The process of determining in which Stage of this facility individual clients should be accommodated need to be reviewed'*. The Ombudsman understands that since this report was written, DIAC have introduced a pilot Client Placement Model which addresses some of these issues.
17. The Investigation Report found that this *'was a highly organised and unprovoked attack ... accompanied by offences of burglary, assault and assault occasioning bodily harm ... It is my considered opinion that the evidence in respect to these offences is clear and sufficient to warrant a prosecution'*. DIAC advised that while seven detainees involved in the assault were transferred to another compound for the *'good order and security of VIDC'*, the NSW Police elected not to refer the matter to the Director of Public Prosecutions. Although the matter was referred to the Australian Federal Police, it declined to investigate the matter further.

#### *Health and welfare*

18. The PSS report noted that Mr X had been diagnosed with Post-traumatic Stress Disorder (PTSD) with depressed mood. The psychological assessment report from STARTTS reached the same diagnosis, noting that *'the initial clinical diagnostic impression of Mr X is that of a client with Post traumatic stress disorder with depressive features. His symptoms and presentation appear consistent with the background details warranted by him. Ongoing anxiety not only related to his refugee determination process, but the fear at the prospect of either having to return to "Stage Two" in detention and facing the inmates who attacked him'*. The PSS report noted that Mr X displayed anxiety and post-traumatic stress following his assault, however his symptoms became less pronounced when he was relocated to Villawood IRH.
19. The PSS report noted that recently, however, Mr X has *'started displaying an increase in depressive and anxiety symptoms'*. Mr X said that after speaking to the psychologist he feels good for a short time but then can't follow through with their advice. He said that since the attack he has been experiencing ongoing sleeping problems, panic, headaches and anxiety, and feels that he cannot *'control'* his body or his mind. He said that when he sees people connected to that assault he cries and shakes. Mr X said that he feels tired, *'old and useless'*, and mostly stays in his room and elects not to participate in the external excursions provided. He said that *'every night is like a year'* and *'my life is gone'*. Mr X said that as a result of the attack, his elbow and thumb continue to hurt, and that if he walks more than 10 minutes his ankle hurts. IHMS noted that *'Previous complaints of right wrist and left elbow pain were investigated with normal results for both the ultrasound and x-ray respectively'*.
20. The PSS report noted that his *'mental health is likely to deteriorate further as his immigration detention continues or if he is returned to a home country'*. The IHMS report noted that he is currently on medication for both depression and insomnia. Dr U recommended that Mr X *'should be transferred to Brisbane and continue regular CBT [Cognitive Behavioural Therapy]'*. Mr X said that he would find it beneficial to be


admitted to a psychiatric hospital, either in Brisbane or Sydney, for treatment. He commented that he was finding his symptoms difficult to cope with and was not sure he was ready to be released into the community where he would be provided with less support.

#### *Attitude to removal*

21. Mr X stated that he had initially planned to return to India, however after speaking with his sister about the situation in India he decided that it did not seem safe to return. He claims that his parents and sister were murdered during riots in Gujarat in 2002.

#### **Ombudsman assessment/recommendation**

22. Mr X has been in immigration detention at Villawood IRH for over two years, primarily due to ongoing litigation relating to the cancellation of his SV and his subsequent PV claim. There is ongoing litigation before the HC. Removal considerations are currently on hold.
23. It is unknown how long it will be before Mr X's immigration status is resolved, following the outcome of the HC proceedings. If Mr X is unsuccessful, it may take DIAC considerable time to arrange his removal from Australia to India. DIAC has yet to obtain a travel document and it advises that, so far, Mr X has refused to complete a passport application, as he wants to await the outcome of his litigation.
24. The issue of current concern in Mr X's case is whether he should remain in detention at Villawood IRH while his immigration status is resolved. The length of Mr X's detention is largely attributable to the circumstances that he has not cooperated in arranging his removal from Australia and he has instigated a course of unsuccessful litigation to challenge his denial of a PV. On the other hand, he has been diagnosed with PTSD with depressed mood. The STARTTS psychologist has noted that his ongoing anxiety is related to the process of claiming a PV, the fear of having to return to Stage Two in Villawood IDC and facing the detainees who attacked him, and the possibility of being released into the community without work rights and getting caught for breach of a visa condition and being returned to detention. The PSS report indicates that his depressive and anxiety symptoms have increased despite his transfer to the Villawood IRH and that his mental health is likely to deteriorate further as his immigration detention at that facility continues. Mr X has indicated he does not feel well enough to live in the community without support and has requested a transfer to a psychiatric hospital, which appears to have some support from his GP. This is a matter for DIAC to determine based upon medical advice. The Ombudsman **recommends** that DIAC consider placing Mr X in an alternative detention arrangement including placing Mr X in community detention, which would allow him to live in the community with support.
25. Mr X has been the victim of a serious assault within the detention centre and the Ombudsman understands that DIAC is still investigating this matter with a view to providing suitable remedies, such as compensation. As the matter is ongoing, the Ombudsman has no further comment to make in this report.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman

15 October 2007  
Date