

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 357/08

Principal facts

Personal details

1. Mr X is aged 30 and is a citizen of Nigeria. His mother and three siblings reside in Nigeria.

Detention history

2. On arrival in Australia on 30 August 2005, Mr X was detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC). He was transferred to Baxter IDC on 3 September 2005, and then to Port Augusta Hospital and Adelaide Hospital after a self-harm attempt on 12 December 2006. Upon discharge from hospital, Mr X was transferred to Villawood IDC where he remains.

Visa applications

3. On arrival, Mr X's Business (Short Stay) Visa was cancelled under s 116; Protection Visa (PV) application refused (September 2005); sought review at the Refugee Review Tribunal (RRT) (February 2006), decision affirmed (April 2006); sought judicial review at the Federal Magistrates Court (FMC) (May 2006), decision set aside and case remitted to the RRT (July 2007), the RRT affirmed the decision (October 2007); sought review at the Federal Court (November 2007), ongoing.

Current immigration status

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

Removal details

5. DIAC have advised Mr X will not be removed while legal processes are ongoing.

Ombudsman consideration

6. DIAC's report to the Ombudsman under s 486N is dated 9 August 2007.
7. Ombudsman staff interviewed Mr X on 25 October 2007 at Villawood IDC.
8. Ombudsman staff sighted the following documents: Global Solutions Limited (GSL) Security Risk Assessments for Mr X dated 20 December 2006, 25 January 2007, 6 February 2007, 19 April 2007, 2 May 2007, 8 May 2007, 11 June 2007 and 22 November 2007; correspondence between Dr Y, Clinical Director Mental Health, Royal Adelaide Hospital (RAH) and Mr Z of DIAC dated 21 December 2006; a GSL Personal Behavioural Management Plan and Operational Order dated 8 May 2007; a report by Psychiatrist Dr A and Psychiatric Registrar Dr B of the Prince of Wales Hospital dated 12 July 2007; a psychosocial report by psychologists Mr C and Ms D of the Transcultural Mental Health Centre dated 31 July 2007; a Professional Support Services (PSS) report dated 14 August 2007; an International Health and Medical Services (IHMS) report dated 14 August 2007; and the DIAC policy document '*Application of Security Risk Assessments in the Detention Environment*' dated 18 December 2007.

Key issues

Health and welfare

9. On 12 December 2006, Mr X made several small cuts to his arms and attempted to hang himself. He was admitted first to Port Augusta Hospital and then, on a mental health order, to RAH. He was returned to detention on 20 December and remained on Suicide and Self Harm watch until 27 December 2006. Dr Y stated it was her assessment, after several days of observation at RAH, that Mr X was *'feigning psychiatric symptoms and does not have any major psychiatric illness that requires hospital admission. He has attempted to harm himself while in RAH in response to imminent return to Baxter and is likely to do so again'*.
10. At interview with Ombudsman staff, Mr X stated he did not recall his self-harm attempt of December 2006. This is consistent with the report dated July 2007 by psychologists from the Transcultural Mental Health Centre, which noted he had memory and concentration issues, and that his current level of medication may be an influence. The report concluded that his *'presentation and symptoms are consistent with Posttraumatic Stress Disorder [PTSD] according to DSMIV-TR criteria ... [and] Major Depressive Disorder with psychotic symptoms. There was no evidence of falsification. It is likely that inconsistencies in his story relate to cultural norms, symptoms related to his mental health and side effects to medication'*.
11. Dr A and Dr B, in their report of July 2007, stated that Mr X forgot things easily, had headaches and felt very depressed. Mr X said *'when I came here I was strong'*. He also said he often felt angry for no reason, had insomnia and suffered from nightmares. Mr X met the criteria for PTSD and major depression with melancholia and possible psychotic features. His symptoms were described as severe. Dr A stated, *'his hope of escaping his current environment is diminishing. This fuels his depression and also his traumatic memories, thus impairing his functioning and reinforcing his symptomatology. Some resolution of Mr X's affairs and removal from detention seems the only option that will interrupt this deterioration'*.
12. Mr X, in his October 2007 interview with Ombudsman staff, reported ongoing tiredness, insomnia, poor memory and that he was still regularly taking medication. He said he continued to hear voices calling to him, usually repeating his name.
13. General health issues noted in the IHMS report included chronic insomnia, pain in the lower back and left wrist, and anxiety. The report concluded, *'while Mr X's medical and mental health conditions can be managed in an IDC it is generally considered that people with mental health issues are better managed in the community'*. The PSS report recommended, *'given Mr X's trauma history his mental health would be better managed outside of detention'*.

Attitude to removal

14. Mr X stated that did not wish to be returned to Nigeria because he feared religious persecution from local Muslim groups. He also said his father had been the target of persecution from followers of traditional religion because his father refused to support them, and that these people continued to pose a threat to Mr X and his family.

Other detention issues


15. On 9 May 2007, Mr X was moved within Villawood IDC from Stage Two to Stage Three because GSL formed the view that he and two other detainees were to make an escape attempt. At interview with Ombudsman staff, Mr X stated that the three were discussing an escape rather than intending to escape themselves. DIAC confirms that there had been a recent escape on 20 April 2007 but as there had been two separate reports regarding Mr X's interest in escape, the information was acted upon. GSL did not seek

information from the three detainees about their intentions, before or after transfer to Stage Three. GSL has rated Mr X as a high security risk since 20 December 2006 due to incidents of fighting, aggressive behaviour, abusive behaviour, and non-compliance with directions.

16. The DIAC policy document '*Application of Security Risk Assessments in the Detention Environment*' states that '[GSL] reviews of risk ratings occur during the initial reception of the client into immigration detention, monthly thereafter, and upon various triggers'. According to the information provided to the Ombudsman, Mr X's risk rating was not reviewed between 11 June 2007 and 22 November 2007 and the most recent review made no mention of specific events or incidents that had taken place after the May 2007 report.

Ombudsman assessment/recommendation

17. Mr X has been in immigration detention for two years and three months, primarily due to his unsuccessful pursuit of a protection visa. DIAC's decision that he does not qualify for protection by Australia has been reviewed and affirmed and Mr X has sought judicial review, which is ongoing. The Ombudsman has no further comment to make on this matter.
18. The available clinical reports indicate that long-term detention is having a negative effect on Mr X's mental health. PSS, IHMS, and the treating Psychiatrist, Dr A, have indicated that Mr X's mental health condition would be better managed in the community.
19. Mr X continues to be assessed as a High security risk by GSL, although there is no specific incident detailed after May 2007 that illustrates why this rating is current. This rating also does not necessarily correlate with the risk Mr X may present should he be placed in an alternative form of detention. The Ombudsman **recommends** that DIAC review Mr X's suitability for alternative detention in the community.
20. The Ombudsman notes that if Mr X were to remain in detention, a further report under s 486N would fall due in February 2008. The Ombudsman will, at that time, review Mr X's circumstances, considering again the impact of detention upon his health.


Prof. John McMillan
Commonwealth and Immigration Ombudsman


Date