

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 288/07*

## **Principal facts**

### *Personal details*

1. Mr X is aged 37 and is a citizen of Sri Lanka. He claims his parents and other siblings are still living in Sri Lanka and that his parents' house, in the coastal city of Galle, was destroyed during the tsunami in December 2004 and they were forced to relocate to Colombo.

### *Detention history*

2. Mr X arrived in Australia on 8 January 1996 as a holder of a short stay Tourist Visa which ceased on 12 January 1996. In October 2003 he was located and detained under s 189(1) of the *Migration Act 1958* and held at the South Australian Adelaide Remand Centre then transferred to Baxter Immigration Detention Centre (IDC). In November 2003 Mr X was removed to Sri Lanka. He returned to Australia in February 2004 under a false name on a fraudulently obtained Sri Lankan passport. In March 2004 he was located by Departmental (DIAC) officers while residing with his Australian citizen partner in South Australia. Mr X was held at the Adelaide City Watch House and then placed at Baxter IDC in April 2005. On 18 December 2006 he was admitted to Toowong Private Hospital (TPH) for treatment and transferred to Maribyrnong IDC on 21 March 2007. On 30 March 2007 he was released on a Bridging Visa (BV).

### *Visa applications*

3. Mr X was granted a Sri Lankan Temporary Visa (TV) (January 1996) valid until July 1996; an additional TV was granted valid to July 1997; granted BVs in January and July 1996; applied for a Protection Visa (PV) (June 1997), refused (August 1997); the Refugee Review Tribunal (RRT) affirmed the decision (March 2000); request under s 417 seeking the Minister's humanitarian discretion lodged (June 2000), deemed inappropriate to consider (October 2000); joined the *'Nancy Lie and Others'* class action (December 2000); associated BV granted (January 2001), BV ceased (July 2003); application for a BV refused (April 2004); applied to the Migration Review Tribunal (MRT) and decision affirmed (May 2004); second application for PV refused (June 2004); applied to the RRT (July 2004), decision affirmed (August 2004); application for a BV refused, applied to MRT and decision affirmed (December 2004); application to the Federal Court dismissed (February 2005); application to the Full Federal Court dismissed (August 2005).
4. A number of s 417 requests lodged (April to July 2005), deemed inappropriate to consider (June and July 2005); s 48B request lodged (June 2005), assessed as not meeting the Minister's guidelines for referral (September 2005); a s 417 submission to the former Minister (November 2005) was declined (March 2006); a combined s 417/48B request assessed as not meeting the Minister's guidelines for referral and declined (May 2006); s 48B request (June 2006) and s 417 request lodged (August 2006), s 417 request refused (December 2006); the former Minister exercised her s 48B power to allow Mr X to lodge another PV application (November 2006), third PV application lodged (December 2006), associated BV refused (January 2007), PV application refused, applied to RRT for review of PV refusal (March 2007); BV granted (March 2007); RRT matter remains ongoing (August 2007).

### *Current immigration status*

5. Mr X resides lawfully in the community on a BV.

### *Removal details*

6. DIAC advises that since Mr X's detention in March 2004, his removal was put on hold by an ongoing intervention request, litigation and judicial reviews. DIAC advises that Mr X was scheduled to be removed in May 2006, but a consultant psychiatrist deemed him medically unfit to travel until his mental health condition was treated and stabilised. Current removal considerations are deferred while Mr X's matter is before the RRT.

### **Ombudsman consideration**

7. DIAC's reports to the Ombudsman under s 486N are dated 3 April 2006, 20 September 2006 and 28 March 2007.
8. Ombudsman staff interviewed Mr X on 15 June 2006 at Baxter IDC.
9. Ombudsman staff sighted a number of documents including: medical summary reports by International Health and Medical Services (IHMS) dated 4 April 2006, 22 September 2006, 31 January 2007 and 16 February 2007; psychological summary reports by Professional Support Services (PSS) dated 5 September 2006 and 28 February 2007; psychiatric reports by Dr Y dated 14 May 2006 and 30 August 2006; a letter from the Human Rights Commissioner, Graeme Innes AM dated 18 December 2006; a submission by Mr Z from Spare Lawyers for Refugees, received 1 August 2006; a psychiatric report by Dr W from TPH to the DIAC Intake Officer at Maribyrnong IDC dated 21 March 2007; numerous letters of support for Mr X and the *'Report on the review of the discharge and transfer of Mr X from Toowong Hospital'* completed by DIAC on 6 September 2007.

### **Key issues**

#### *Health and welfare*

10. The IHMS report noted that a psychiatrist diagnosed Mr X in February and March 2006 with having a *'Panic Disorder with Generalised Anxiety'*. The report noted that he was being treated with ongoing psychological counselling, education in relaxation techniques and stress management, encouragement of meaningful activities, and with medication as required. DIAC reported that Mr X was placed on Suicide and Self Harm (SASH) observation on three occasions in June and July 2006 and again on three occasions from October 2006 to March 2007. At interview with Ombudsman staff Mr X stated that he has trouble sleeping, concentrating, and is troubled by his current situation, which often manifests itself in the form of nightmares and thoughts of self-harm.
11. Dr Y (May 2006) stated that Mr X was reviewed in March 2006 and *'he complained of significant symptoms of anxiety, particularly somatic symptoms ... when I subsequently reviewed Mr X in April ... he continued to experience symptoms of depression which were associated with feelings of hopelessness ... it appears that we have seen the deterioration of Mr X's state from one of anxiety to more recently depression with feelings of hopelessness and despair'*. Dr W (March 2007) noted that Mr X was trialled on various medications *'without response'* for his depression while at Baxter IDC.
12. DIAC advises that Mr X was involuntarily admitted to Royal Adelaide Hospital for psychiatric treatment for 10 days in July 2006. Ongoing support from the Baxter IDC Mental Health Team continued, however it was noted that he was unlikely to respond to medication while in detention and that there were limited options in regard to his future management at Baxter IDC. IHMS reported in September 2006 that Mr X was deemed fit to travel by the psychiatrist, *'as long as he had an appropriate medical escort, there was an appropriate handover to health services in Sri Lanka and that sedative medication was*

*available to Mr X if it was needed to assist with the anticipated anxiety of his return to Sri Lanka'.*

13. The Human Rights Commissioner wrote to the Ombudsman supporting the release of Mr X from Baxter IDC, and any other closed detention facility, pending the outcome of his substantive visa claim on the basis that *'it is clear to us that Baxter detention centre is currently a toxic environment for Mr Pathirana'.*
14. DIAC advised that Mr X had initially refused an offer to be admitted to TPH for treatment, however he accepted the offer in December 2006. Dr W noted in his discharge report a diagnosis of Major Depressive Disorder and Post-traumatic Stress Disorder (PTSD). Dr W also noted that after admittance at TPH *'his major depressive episode gradually improved. Post traumatic symptoms continued to persist ... his mental state had recently improved to the point of him being able to interact and socialise with other co-patients, experiencing relative periods of stable mood ... and denying any suicidal ideation or deliberate self harm'.* Dr W also reported that *'unfortunately he has been recently upset by the news of his return to detention, and in particular, to detention in Melbourne rather than Adelaide (where he has friends). He is at risk of acute deterioration on return to detention'.*
15. Mr X was transferred to Maribyrnong IDC on 21 March 2007 and released on a BV nine days later.

#### *Attitude to removal*

16. Mr X stated at interview that he fears for his life if sent back to Sri Lanka for the reasons associated with arms dealing that he raised at the RRT. He also said that, if he had no option but to return to Sri Lanka, he would rather be sent to India.
17. Ombudsman staff sighted many letters of support for Mr X attesting to his good character, that he has a good command of English, he is a hard worker, and would contribute to the Australian community if he were given a permanent visa.

#### *Removal from Toowong Hospital*

18. In response to complaints made by Mr X to the Ombudsman and to DIAC by his migration agent and a community advocate, DIAC conducted a review in relation to the manner in which he was removed from TPH in March 2007. DIAC completed this review on 6 September 2007. DIAC's review addressed the following areas of concern raised by the complainants: the lack of consultation with key stakeholders about his discharge and placement; the perceived *'heavy-handed'* methods and behaviour of DIAC and Global Solutions Limited (GSL) staff in carrying out his discharge; the withdrawal of options for placement in Adelaide and lack of guarantee of his placement in the community care pilot; inadequate medical handover in Melbourne; that Mr X did not receive his medication; and the inability of Mr X to contact his friends and advocates due to withdrawal of his mobile phone at Maribyrnong IDC.
19. A key finding of the review was that *'overall ... the transfer and discharge process was well managed with intensive planning and consultation with a range of stakeholders including Mr X. While the review found some areas for improvement their impact on the overall successful management of the transfer was minimal.'*
20. The review identified the following areas for improvement:
  - DIAC's Detention Health area should finalise procedures that provide guidance to DIAC staff when transferring people in immigration detention from hospitals to a place in the detention network
  - DIAC should consider, on a case by case basis, the approach of consulting more closely with migration agents and advocates prior to transfer

- DIAC staff should endeavour to ensure that all conversations of a confidential nature are undertaken in private areas where possible
- DIAC's Detention Health area should consult with IHMS with a view to expanding the current contractual arrangements to ensure these arrangements provide for off-site medical handovers in transfers where clinically recommended.

### **Ombudsman assessment/recommendation**

21. Mr X was once removed from Australia and returned three months later on a false passport. He was detained for over three years before he was released on a BV in March 2007. The DIAC decision that Mr X does not qualify for protection is currently before the RRT. The Ombudsman has no further comment on this matter.
22. The Human Rights Commissioner strongly supported the view that it was in the best interests of Mr X that he be allowed to wait for the outcome of his new PV review application outside of a closed detention facility. The Ombudsman notes that Mr X was released into the community under the assistance of the Community Care Pilot program. The Ombudsman understands that the BV granted to Mr X does not allow him to work, therefore it will be necessary for DIAC to review the no work provision of the visa once Mr X's health has stabilised.
23. Mr X has been diagnosed with a Major Depressive Disorder and PTSD. Medical evidence indicates that his depressive episode began whilst in detention. The depression was complicated by symptoms of PTSD related to past events in Sri Lanka and compounded by Mr X's experiences in immigration detention. The Ombudsman **recommends** that Mr X not be returned to an immigration detention facility unless the medical opinion is that his mental health will not deteriorate as a result.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date