

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 001/05

Principal facts

1. *Personal details:* Mr X is a male aged 36. He is a citizen of Iran. He is single, and has family in Teheran (mother and brothers and sisters)
2. *Detention history:* Mr X arrived in Australia by boat in June 2000, and was detained under s 189(2) of the Migration Act. He has since been in immigration detention at Curtin (2000-02), Port Hedland (2002-04), and Baxter (2004-05). Mr X was admitted to Glenside Hospital in July 2005, and released on a Bridging (Removal Pending) visa, subclass 070 (RPBV) on 23 August 2005. He currently resides in private accommodation in Western Australia.
3. *Visa applications:* application for a protection visa (PV) lodged in March 2001; refused by Department (DIMIA) (March 2001); refusal affirmed by Refugee Review Tribunal (RRT) (June 2001); appeal to Federal Court dismissed (Dec 2001); appeal to Full Federal Court dismissed (May 2002); special leave application to High Court dismissed (August 2003); application to Minister under s 48B for approval to make a second PV application (May 2004); application approved by Minister (Feb 2005); second PV application lodged (March 2001); refused by DIMIA (April 2005); refusal affirmed by RRT (July 2005); application for review pending in Federal Magistrates Court (FMC).
4. *Current immigration status:* Mr X was granted an RPBV on 23 August 2005 and resides lawfully in the community.
5. *Removal details:* Mr X was offered an Iranian reintegration package in Sept 2003, following his unsuccessful High Court application. He did not accept the offer. In light of the unresolved proceedings in the FMC, Mr X is not presently eligible to be removed from Australia. The Ombudsman has not otherwise been advised of any plans for Mr X to be removed from Australia.

Ombudsman consideration

1. The DIMIA report to the Ombudsman under s 486N of the Migration Act was dated 8 August 2005.
2. Mr X was interviewed by Ombudsman staff at Glenside Hospital on 23 August 2005.
3. The Ombudsman has been provided with a number of medical reports, including a report by a psychiatrist dated 2 August 2005; SSU Multidisciplinary Patient Action plans for August 2004; and a report from Glenside Hospital dated 18 August 2005.
4. The Ombudsman was not provided with any information concerning Mr X's situation since release from Glenside Hospital in August 2005, nor about the suitability of his present living arrangements or his access to support services in the community.

Key issues

Health

1. Mr X has required hospitalisation while in detention: in December 2002 (2 days, after involvement in a hunger strike); in 2004-05 (14 days); in April 2005 (6 days, after overdosing on medication); and in July 2005 (32 days, at Glenside).
2. The psychiatrist's report of 2 August 2005 advises that Mr X "suffers from severe major depression with some elements of post traumatic stress disorder", and that he is at risk of suicide if returned to detention. The report observes that anti-depressant medication may be beneficial, but that Mr X's "greatest improvement is likely to come after he gains a feeling of security in his life by virtue of a permanent visa".
3. Similar issues recur in other medical reports – eg, Mr X's suicidal ideation, propensity to self harm, current medication for depression and anxiety, and ongoing need for psychiatric review.
4. There is no evidence that Mr X had a pre-existing mental health condition. Nor is there any evidence that presents a contrary picture (to that provided above) of his current medical condition.
5. The information appears to indicate that Mr X's current condition stems from his time in detention, and that his situation would worsen if he were returned to an immigration detention centre. In the interview with Ombudsman staff he was strongly critical of the conditions he has endured in detention, the impact that detention has on his peace of mind, and difficulty sleeping.

Security and safety

1. The DIMIA report of August 2005 observes that Mr X is a medium security risk as he has been involved in several incidents: possession of contraband (non-prescription medication), lip stitching, voluntary starvation, and a major incident at Port Hedland in 2003 that resulted in him being transferred to the Management Unit for a short period.
2. Weighing against that assessment is that Mr X has subsequently been released into the community on an RPBV. The risk factors also appear primarily to be matters of self-harm, rather than causing injury to others.

Attitude to removal

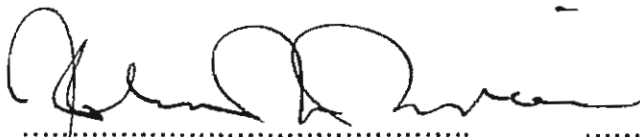
1. Mr X declined to be removed to Iran in 2003. He believes that his safety and that of his family are at risk if he is removed. [*The reason for his concern is spelt out in the report to the Minister.*]
2. Mr X's fear of being returned to Iran was a strong theme in his interview with Ombudsman staff.
3. It seems reasonable to assume that Mr X will not voluntarily agree to a return to Iran, whatever the outcome of his current court proceedings.

Ombudsman assessment/recommendation

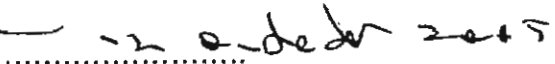
1. Mr X has spent a lengthy period in immigration detention in Australia, principally as a consequence of his unsuccessful pursuit of an application for a protection

visa. That process is ongoing: the Federal Magistrates Court is yet to determine an appeal by Mr X against an adverse decision of the RRT. As a result of those ongoing proceedings, Mr X is not currently eligible to be removed from Australia.

2. The uncontradicted evidence before the Ombudsman indicates that Mr X has suffered a deterioration in his health and psychological condition as a result of his lengthy period in detention. Further, his condition would worsen if he were returned to detention. He has been assessed as suitable by the Minister for the grant of a RPBV, which entitles him to live in the community. It is **recommended** that Mr X not be returned to immigration detention, as matters presently stand.
3. The remaining issue is whether Mr X should now be granted a different class of visa, and in particular, whether he should be granted a humanitarian visa under s 417 of the Migration Act, entitling him to live permanently in Australia (for example, either a Subclass 202 Global Special Humanitarian (Class XB) visa, or a Subclass 866 Protection (Permanent) (Class XA) visa). It may be thought premature for any such decision to be made, pending the outcome of the current proceedings in the Federal Magistrates Court. However, it is a present reality that the length of detention, and the unresolved status of Mr X's protection visa applications, is having a substantial adverse effect on his health, psychology and enjoyment of life. Given Mr X's apparent determination not to be returned to Iran, it is probable that his removal could not be effected easily, even if he were unsuccessful in his appeal to the Federal Magistrates Court. The Ombudsman **recommends** that it is appropriate at this time for the Minister to consider granting Mr X a new category of permanent visa (subject to security and character assessment) and thus end the uncertainty surrounding his immigration status in Australia.
4. Mr X, as the holder of an RPBV, is not presently in immigration detention. Accordingly, he will not in future be subject to the reporting and assessment requirements in ss 468N-486O of the Migration Act. It is nevertheless clear that Mr X may be in continuing need of assistance, including medical and psychiatric assistance. The Department will need to consider what continuing role it plays in providing assistance to Mr X, especially during the period that he is the holder of an RPBV and is in an uncertain position concerning his future residence in Australia.



Prof. John McMillan



Date