

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 231/07*

## **Principal facts**

### *Personal details*

1. Mr X is aged 37 and is a citizen of Tanzania. Mr X claims that he has four siblings in Tanzania and that his parents are deceased.

### *Detention history*

2. On 10 August 2004 Mr X arrived in Australia as an unauthorised boat arrival. He was detained under s 189(1) of the *Migration Act 1958* and placed at a Police Watch House until he was transferred to: Arthur Gorrie Correctional Centre (AGCC) (12 August 2004); Baxter Immigration Detention Centre (IDC) (22 August 2004); Port Augusta Hospital (PAH) (8 December 2006); Port Augusta Immigration Residential Housing (IRH) (10 December 2006); Quest Apartments (12 December 2006); Royal Adelaide Hospital (RAH) (14 December 2006); Glenside Psychiatric Hospital (GPH) (15 December 2006); Baxter IDC (19 February 2007); PAH (9 March 2007); GPH (10 March 2006); an Alternative Detention (AD) arrangement in the community (April 2007); Perth IDC (July 2007); and Perth IRH (August 2007).

### *Visa applications*

3. Mr X applied for a Protection Visa (PV) and a Bridging Visa (BV) (August 2004), PV and BV refused, Refugee Review Tribunal (RRT) affirmed decision (December 2004); sought judicial review at the Federal Court (FC) (December 2004), Minister withdrew from proceedings and remitted the matter back to the RRT for reconsideration (July 2005); decision affirmed by RRT (November 2005); applied to Federal Magistrates Court (FMC) for judicial review of second RRT decision (January 2006); a s 417 request seeking favourable exercise of the Minister's humanitarian discretion was lodged and deemed inappropriate to consider (February 2006); FMC application dismissed (May 2006); appeal to the Full Federal Court (FFC) (June 2006), judgment reserved (August 2006); a combined s 417/48B request lodged (February 2007); FFC appeal dismissed (March 2007); the Department (DIAC) commenced an assessment of Mr X's case against s 197AB, request not referred to the Minister as it was determined that Mr X's health had improved (May 2007); combined s 417/48B submission referred to the Minister (August 2007), the Minister declined to intervene (September 2007).

### *Removal details*

4. DIAC advises that Mr X was removed on 25 September 2007.

## **Ombudsman consideration**

5. DIAC reports to the Ombudsman under s 486N were dated 25 August 2006, 1 March 2007 and 3 August 2007.
6. Ombudsman staff interviewed Mr X by telephone on 29 May 2007 with the assistance of an interpreter.
7. The Ombudsman has sighted the following documents: International Health and Medical Services (IHMS) medical summary reports dated 8 August 2006, 14 December 2006, 18 January 2007 and 20 July 2007; Professional Support Services (PSS) psychological summary reports dated 20 December 2006 and 18 July 2007; a medical report by

Assoc Prof A, Clinical Director, GPH, dated 12 February 2007; a psychiatric report by Dr B dated 27 February 2007; a letter to DIAC from Ms C, Office of the Public Advocate (Mr X's Guardian), dated 6 March 2007; a combined s 417/48B submission from Ms D, migration agent, dated 17 February 2007; a discharge summary by Dr E and Dr F, dated 13 April 2007; a letter from Dr F, Senior Consultant Psychiatrist, GPS, dated 22 June 2007.

## Key issues

### Health and welfare

8. The August 2006 IHMS report stated that after Mr X presented with symptoms of anxiety and depressed mood in July 2005 he was referred to the visiting psychiatrist, treated with medication and reviewed regularly by PSS. In September and December 2006 Mr X was placed on Suicide and Self Harm observation. The December 2006 PSS report noted that he had been diagnosed with *'depression and adjustment disorder'*. It further noted that Mr X *'has been variable in terms of engagement'*, there had been difficulty in setting up appointments due to *'limited access'* to Ki-Swahili interpreters and his mental health and self esteem declined when he lost his kitchen duties due to the introduction of *'the new point system'*.
9. DIAC advises that on 8 December 2006 Mr X jumped into a waste oil bin at Baxter IDC, which he later informed Assoc Prof A was an attempt to drown himself. He then ran off and climbed onto the roof of a compound within the IDC, tied clothing to the roof and around his neck and jumped off. He was caught by a Baxter IDC staff member before reaching the ground. He was treated at the PAH and placed in the High Dependency ward. On 10 December 2006 Mr X was cleared for return to Baxter IDC. When advised of this he threatened to self-harm and was instead placed at the Port Augusta IRH. IHMS advises that Mr X was scheduled under the *SA Mental Health Act 1993* on 11 December 2006 and admitted to the RAH. On 15 December 2006 he was admitted to GPH for ongoing mental health assessment and treatment.
10. Assoc Prof A reported on 12 February 2007 that Mr X was suffering from *'an agitated depressive illness with panic attacks. There are elements of post-traumatic stress disorder [PTSD] in this ... He is best managed in a domestic community setting with constant support. Return to confinement is contraindicated. The availability of management of his condition in his home country is almost non-existent'*. Mr X was returned to Baxter IDC on 19 February 2007.
11. Dr B assessed Mr X about a week after his return to Baxter IDC. He concurred with Assoc Prof A' diagnosis and noted that Mr X was *'anhedonic [unable to experience pleasure] since his return to Baxter ... I also concur with Professor A that he should not be placed in detention ... I therefore recommended his immediate removal from Baxter'*.
12. Mr X's Delegated Guardian, Ms C, was critical of the decision to return Mr X to Baxter IDC and raised her concerns in a letter to DIAC dated 6 March 2007. DIAC advises that on 9 March 2007 Mr X was transferred to PAH, and on the following day was admitted to GPH, diagnosed with major depression with psychotic features. On 5 April 2007, Mr X was placed in an AD arrangement in the community.
13. Dr F was treating Mr X as a GPH outpatient and noted in June 2007 that he *'looks to be slowly improving in his mental health with some reactivity in his mood but he remains anxious about his long term future in Australia'*.
14. DIAC advises that Mr X was relocated to Perth in July 2007 following a Client Placement assessment, which assessed him as suitable for placement at the Perth IRH. DIAC noted that *'Mr X no longer needed 24 hour psychosocial support ... PIRH was considered the best placement option for Mr X as there are other African men residing there, some of whom speak Swahili, and the accommodation is located in metropolitan Perth'*.

15. DIAC also advises that Mr X had reported a range of health concerns, such as neck and back soreness, headaches, blurred vision and trouble sleeping. The August 2006 IHMS report noted that Mr X has been treated for chronic back pain and had been provided medication for gastritis. Mr X was referred to an eye specialist who diagnosed him with glaucoma for which he was receiving treatment.

*Attitude to removal*

16. At interview with Ombudsman staff, Mr X said that due to his father's involvement in a political party his father was arrested and killed by the police. He said that after his father's death he was also attacked by the police and believes that he will still be at risk if returned to Tanzania. Mr X said that he feels happy in Australia and that his life is 'safe' here. The RRT noted that he *'has not claimed, nor does the evidence suggest, that he has ever been questioned, detained or otherwise noticed by the authorities for reason of his political opinions'*.
17. Mr X also expressed concern that he would not be able to access adequate health treatment in Tanzania and that there would be no access to medication and treatment. Ms D, in her s 417/48B request, provided country information highlighting that there are fewer than 15 professionally trained psychiatrists in Tanzania with a population of over 30 million people. Ms D commented that *'there is a strong probability that [Mr X] will face severe discrimination because of his mental health issues and a high likelihood that he will not be able to obtain suitable and ongoing psychiatric treatment'* in Tanzania.

**Ombudsman assessment/recommendation**

18. Mr X was in immigration detention for three years primarily due to his unsuccessful pursuit of protection in Australia. The DIAC decision that Mr X did not qualify for protection by Australia was reviewed and affirmed. The Ombudsman has no further comment on this matter.
19. The medical evidence available to the Ombudsman notes that Mr X's diagnoses progressed from anxiety and depressed mood, adjustment disorder, agitated depressive illness with panic attacks and elements of PTSD, to major depression with psychotic features. DIAC advises that recent advice from the Richmond Fellowship noted that Mr X's mental state improved and the Ombudsman notes that Mr X's move to Perth was following a Client Placement assessment by DIAC and that he was managed by its Case Management Unit WA.
20. The Ombudsman understands that Mr X was removed in September 2007 and makes no recommendations in this report.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date