

**REPORT FOR TABLING IN PARLIAMENT BY THE
COMMONWEALTH OMBUDSMAN**

Under s 486O of the Migration Act 1958

Personal identifier: 050/06

Principal facts

Personal details

1. Mr X is a 25-year-old male from Iran. His family (mother, father and two sisters) continue to reside in Iran. Mr X's fiancé, Ms Y, is an Australian citizen who resides in Melbourne. In 2002, Mr X converted to Christianity while in detention.

Detention history

2. Mr X arrived in Australia by boat in December 2000 and was detained under s 189(2) of the *Migration Act 1958*. On arrival, he was detained at Curtin Immigration Reception and Processing Centre (Curtin IRPC) and was later transferred to Baxter Immigration Detention Facility (Baxter IDF) (September 2001). Mr X escaped from immigration detention in September 2003. He was re-detained in Maribyrnong Immigration Detention Centre (Maribyrnong IDC) in September 2005.

Visa applications

3. Protection Visa (PV) claim (January 2001), refused by DIMA (February 2001); the Refugee Review Tribunal (RRT) affirmed DIMA's decision (April 2001); judicial review to the Federal Court (FC) dismissed (November 2001); appeal to the Full FC dismissed (June 2002); special leave application to the High Court dismissed (October 2003).

Current immigration status

4. In September 2005, requests under s 48B and s 417 were lodged with the Minister on Mr X's behalf. These requests remain outstanding. Mr X is currently detained in Maribyrnong IDC.

Removal details

5. To date, DIMA has not made any arrangements for Mr X's removal from Australia due to ongoing litigation, absconding from detention (between September 2003 and September 2005) and requests before the Minister. DIMA advises that it offered Mr X the Iranian Reintegration Package shortly after his re-detention, which Mr X declined.

Ombudsman consideration

6. The DIMA report to the Ombudsman under s 486N is dated 13 September 2005.
7. Ombudsman staff interviewed Mr X on 20 October 2005 at Maribyrnong IDC.
8. Ombudsman staff have sighted a number of documents, including: medical summary reports from International Health and Medical Services (IHMS) dated 21 November 2005 and Professional Support Services (PSS) dated 24 November 2005; submissions from Mr X's solicitor from the Asylum Seeker Resource Centre (ASRC), including recent s 417 and s 48B requests; information from Ms Y; and numerous letters of support.

Key issues

Health and welfare

9. The DIMA report indicates that Mr X had a history of self-harm and suicide threats while in detention between December 2000 and September 2003, including voluntary starvation. PSS is closely monitoring his mental health, and has diagnosed anxiety and stress, which have exacerbated his nightmares. Current medical issues facing Mr X include: chronic gastric pain, extraction of his wisdom teeth and depression. DIMA advises that Mr X is receiving medical treatment for these ailments.

10. The PSS reports that, *'it is possible the prognosis will change the longer he is detained. At present his presentation and his feelings of anxiety are not overly concerning ... He worries he will be detained for many more months and worries about his future.'* The medical evidence suggests that Ms Y is a positive influence on his behaviour and mental health, however, the PSS report notes that *'the relationship will need to be monitored by PSS as any disturbances will affect his well being in the centre immensely'*.
11. A recent report from the ASRC suggests that Mr X's mental health may be in decline. The ASRC advised that Mr X has become reclusive, is staying in his room, is refusing to see visitors (even his fiancé), and refusing to eat. Mr X's representative from the ASRC advises that an independent psychologist recently assessed Mr X. No report was available at the time of writing this report.

Escape from detention

12. Mr X escaped immigration detention in September 2003 and spent the next two years living unlawfully in the community. The DIMA report indicates that Mr X was attending a specialist medical appointment in Adelaide when he escaped his two accompanying escorts on foot. DIMA advises that South Australian police were informed of his escape but were unsuccessful in their attempts to locate him. In September 2005, Mr X voluntarily approached DIMA and he was re-detained.
13. Mr X does not resile from the fact that he has broken Australian law but the ASRC has submitted that the following mitigating factors are relevant:
 - Mr X escaped detention, *'on account of his strong fear of being deported to Iran and on account of the psychological stress on persons in long-term detention'*;
 - Iran's poor record on human rights issues;
 - there was no violence involved in his escape;
 - he voluntarily surrendered and returned to immigration detention; and
 - he has shown remorse for his actions and accepts the consequences.

Religion

14. Mr X also claims that he escaped from immigration detention because he was under pressure from some Muslim detainees in Baxter IDF and was fearful of being returned to Iran. He said that he became a Christian while in Curtin IRPC and was talking a lot about Christianity, which upset Muslim detainees. He claims that this gave the Muslim detainees cause to dislike him and he became their *'scapegoat'*.
15. Mr X advised that he wished to convert to Christianity while in Iran but could not for fear of persecution. He commenced practising Christianity when in Curtin IRPC and attended church every week thereafter. After his escape in September 2003, Mr X says he continued to practice his new religion and attended church every Sunday to pray. Ombudsman staff have viewed a letter from a parish priest testifying to Mr X's conversion and ongoing commitment to his faith over the past two years. Letters from two nuns also attest to Mr X's good character and conversion to Christianity.
16. A recent DIMA submission to the Minister in respect to other Iranian apostasy cases observes that *'Country information indicates that conversion from Islam to another religion is forbidden under Iranian law and may be punishable by death. While it appears that the Iranian Government is not presently pursuing an active and systemic policy of investigation and prosecution of cases of apostasy, the possibility of apostates facing punishment cannot be ruled out.'* Mr X's current s 417 and s 48B requests contain further information about the persecution faced by Iranian apostates.

Attitude to removal

17. Mr X believes that if he is returned to Iran *'he will face death for sure'* because of his anti-government views. He claims that even today the Iranian Government is looking for him,

recently visiting his home seeking his whereabouts and sending letters from the court requiring him to report to the authorities.

18. As noted, Mr X is now a practising Christian and feels that he will be victimised and persecuted for his religious beliefs if returned to Iran. He says that many Iranian detainees who have already returned to Iran have taken back word of his Christian conversion, which places him in danger. Further, he wants to spread the 'word of God' and tell others about Christianity. There is clear country information indicating that this is a dangerous practice for Christians in Iran, '*proselytizing apostates are likely to face execution*'.¹
19. In January 2005, Mr X became engaged to Ms Y. He said he is committed to his relationship with Ms Y and wants to settle down with her and make a life in Australia. Ombudsman staff have sighted letters and declarations from Ms Y affirming her support for Mr X and attesting to the nature of their relationship. Ms Y visits Mr X at Maribyrnong IDC daily from 1pm to 7pm. She wants Mr X to be granted a permanent visa so that they can be married. Their relationship has the support of Ms Y's family. Ms Y has indicated that the couple has many friends in the community who will assist Mr X find accommodation and employment if released from immigration detention.

Other detention issues

20. Mr X mentioned that he has seen a lot of violence throughout his time in immigration detention. He alleged that guards (of the former detention service provider) had often hit detainees and commented that '*they treat animals better than us.*'
21. Mr X expressed his disappointment that there is no church service at Maribyrnong IDC.

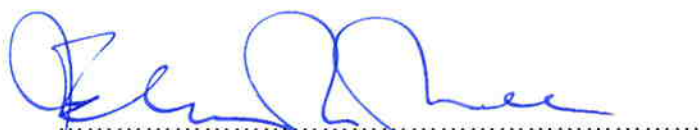
Ombudsman assessment/recommendation

22. Mr X has been in immigration detention for more than three years (plus two years spent living unlawfully in the community). In the past, Mr X carried out self-harm acts and attempted suicide. Although the Ombudsman has not seen the most recent professional opinion of his mental health that has been sought, there is evidence that he is showing signs of anxiety and stress and PSS counsellors are seeing him regularly. The risk that Mr X's mental health will continue to deteriorate must increase with continued detention, especially when there is no end date in sight.
23. Mr X's fear of returning to Iran has increased since his conversion to Christianity. He has not had an opportunity to test a protection claim against a fear of persecution based on religious belief. The Ombudsman is aware that the Minister has favourably exercised her power under s 417 and s 48B in a number of similar cases (Iranian apostates), either granting the applicants substantive visas or allowing them to lodge a further PV application to test their apostasy claims. Further, the Ombudsman understands that many of the s 48B applicants have since been successful in obtaining PVs or humanitarian visas, enabling them to stay in Australia.
24. The Ombudsman **recommends** that the Minister reach a decision on Mr X's s 417 and s 48B requests as soon as possible, and in any case, not later than the statutory period prescribed in s 486P for the tabling of this report in Parliament (viz, within 15 sitting days of receiving the report). The Ombudsman is of the view that an option deserving serious consideration by the Minister is the grant of a permanent visa to Mr X. If there is likely to be a delay in reaching a decision, it is **recommended** that Mr X be granted a Removal Pending Bridging Visa to enable his immediate release from detention.
25. A complicating factor in Mr X's case is that he previously absconded while in immigration detention. The Ombudsman acknowledges the importance of this issue, in a number of respects, including Mr X's behaviour and attitude towards Australian laws and officials, and the risk that he might not observe any reporting conditions if he was released into the community on a visa. That said, the relevance of his earlier behaviour now has to be


¹ 'Asylum in the UK: Iran Assessment', Home Office Country Information and Policy Unit, April 2000.

balanced against later developments. This report has drawn attention to some mitigating factors - that he previously turned himself in to the Department, his strong community ties, his committed relationship with an Australian citizen, the support of her family, and his involvement with a Christian church group.

26. The Ombudsman understands that DIMA is yet to decide whether to seek prosecution of Mr X for his escape from detention. During the process of conducting these two-year detention reviews, the Ombudsman has become aware that there appear to have been some inconsistencies in decisions whether or not to prosecute detainees for escaping. Further, in some cases where prosecution has been pursued the courts have imposed minimal sentences. Prosecution of a former detainee can also have a lasting adverse impact on their ability to gain employment if they have a criminal record. In this context, the Ombudsman notes that Mr X's actions amounted to a 'victimless offence' in that he ran away when he had the opportunity but did no harm to other persons. Further, he turned himself in to DIMIA in due course and has expressed remorse for his actions. Although the Ombudsman makes no recommendations in relation to this matter, he encourages DIMA to give careful consideration to this decision.



.....
Prof. John McMillan
Commonwealth and Immigration Ombudsman



.....
Date