

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 117/06

Principal facts

Personal details

1. The Department (DIMA) describes Mr X as a 30 year old citizen of Iran. His claim is that he is from Iraq, and that he was expelled from Iraq to Iran in 1980. He says that he is not recognised as a citizen in either country. Mr X's mother, two sisters, three stepsisters and brother reside in Iran.

Detention history

2. In November 2000, Mr X arrived in Australia by boat. He was detained under s 189(2) of the *Migration Act 1958* and placed at Curtin Immigration Reception and Processing Centre (IRPC). In August 2002, he was transferred to Perth Immigration Detention Centre, and was returned to Curtin IRPC two days later. In September 2002, he was transferred to Baxter Immigration Detention Facility (IDF). In August 2005, Mr X was released from immigration detention on a Removal Pending Bridging Visa (RPBV).

Visa applications

3. Mr X arrived in Australia (November 2000); applied for and was refused a Protection Visa (PV) (June 2001); the Refugee Review Tribunal (RRT) affirmed the refusal (August 2001); application for judicial review of the RRT decision by the Federal Court (FC) (September 2001), dismissed (April 2002); appealed to the Full Federal Court (FFC) (May 2002), dismissed (September 2002); filed an application for special leave to appeal to the High Court (HC) (September 2002); Mr X discontinued special leave application and filed a draft nisi application in the HC (May 2004); HC application remitted to the FC (August 2004); the Minister conceded the FC application and the matter was remitted to the RRT (November 2004); RRT affirmed refusal (February 2005); application to FC seeking judicial review of decision (March 2005); dismissed (October 2005); application to FFC dismissed (June 2006).
4. Request initiated to Minister under s 417 (January 2004); request deemed inappropriate to consider (March 2004); combined s 417/48B request lodged (August 2006); request ongoing.

Current immigration status

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

Removal details

6. DIMA advised that Mr X was offered the Iranian reintegration package in April 2004. In May 2004, the offer lapsed without response. DIMA advised that Mr X has not been available for removal due to outstanding Ministerial and court matters relating to his PV application.

Nationality issues

7. Upon arrival in Australia, Mr X said that he was born in Iran, however in his PV claim the following year he stated that he was a Shi'a Arab born in Iraq. He claimed that he originally made this up because he was afraid of being deported to Iraq. He said that in 1980 the Iraqi Government expelled him and his family to Iran. Amnesty International reports that in that year, following the advent of the Iran-Iraq war, the Iraqi Government

deported thousands of families to Iran. These people were primarily Shi'a Arabs and were stripped of their Iraqi identification documents, properties and possessions. In October 2005, Mr X was able to source a certified copy of his Iraqi birth certificate, which he provided to DIMA.

Ombudsman consideration

8. The DIMA report to the Ombudsman under s 486N was dated 20 October 2005.
9. Ombudsman staff interviewed Mr X in Adelaide on 7 March 2006.
10. Ombudsman staff sighted a number of documents: a psychological report from Mr Y, a Clinical Psychologist from the Central Northern Adelaide Health Service (CNAHS), dated 31 March 2006; a psychosocial report by Mr Z, a senior counsellor from Supporting Survivors of Torture and Trauma (STTARS), dated 3 April 2006; a certified copy (and English translation) of Mr X's birth certificate; a combined s 417/48B submission prepared by the Refugee and Immigration Legal Centre (RILC), dated 7 August 2006; numerous support letters and character references from people in the community; and an Amnesty International report *Disappearance: Unresolved cases since the early 1980's*, May 1997.

Key issues

Health and welfare

11. The CNAHS psychological report notes that Mr X has been diagnosed with a Major Depressive Disorder and that he also has symptoms indicative of Post Traumatic Stress Disorder. It notes that these symptoms are *'causally related to the traumatic experience of mandatory immigration detention and to his inability to achieve effective refugee protection'*. Mr X stated that while in detention he sought psychological help and was prescribed anti-depressants, *'I had a lot of mental problems, psychological problems. I wasn't able to sleep ... the last year that I was in the camp I felt that my memory was fading really bad'*. The STTARS psychological report notes that *'the detention experience was reminiscent of his time in Iran: a loss of rights, ill treatment by some of the guards, endless checks on his behaviour, solitary confinement and constant fear of deportation'*.
12. The CNAHS report of March 2006, following Mr X's release into the community, notes that *'the stress of the uncertain conditions under which [Mr X] lives place him at risk of developing dissociative problems and he is at risk of developing psychotic symptoms, reactive to stress, which may result in permanent psychotic illness'*. The STTARS report notes that he continues to experience intrusive thoughts about the past, short and long term memory impairment, hyper-vigilance, feelings of isolation and detachment from others, a loss of trust and hope, and a sense of a foreshortened future. These conditions have manifested in physiological side effects such as headaches, migraine episodes (which include loss of peripheral vision, blurred vision, photo sensitivity and an unsteady gait), chronic onset and maintenance insomnia, and fearful nightmares.
13. Mr X stated his anxiety has not decreased, due to the uncertainty of being on a RPBV. He said, *'I don't have a future, I just want to settle, and to have official citizenship to know where I belong, so I can live a normal life. Seven years I have been in Australia and I still don't have any official status'*. He is currently registered at TAFE, but is unable to *'comprehend and concentrate ... my mind is on many things, I am very concerned about my condition'*. He takes antidepressants and sleeping tablets, however he stated *'they are not working ... I don't sleep, maybe an hour or two a night'*.
14. Mr X complained that while in detention he had four appointments with the doctor over five months concerning abdominal pain and the doctor repeatedly told him *'this is just from stress, you don't have a problem'*. DIMA advised that in February 2005, Mr X was

transferred to Port Augusta Hospital after complaining of severe abdominal pain, however he was returned on the same day to the Baxter IDF medical centre for overnight observation. He was again taken to hospital in May 2005, where he was diagnosed with gallstones, and underwent a cholecystectomy operation. He was discharged three days later and returned to Baxter IDF.

15. Mr X said that it took between three to six weeks to secure an appointment with a doctor while in detention, saying that if *'anyone causes trouble by getting upset or complaining [about this delay] they would lock him in the management unit'*. He advised that a guard would undertake a medical assessment in the first instance, and referral to a nurse was at the guard's discretion. The nurse would then determine if referral to a doctor was necessary. The Ombudsman notes that Mr X was in detention for a considerable period and, although this may have been a feature of his earlier detention experience, it does not reflect the current approach to facilitating medical appointments.

Impact of mental health on visa processes

16. The two RRT hearings, conducted while Mr X was in detention, found that he displayed an *'overall lack of credibility'*. Since his release into the community, psychological testing has provided further insight into Mr X's mental health. The STTARS report notes, *'there have been events in this client's past which have resulted in an impairment of memory and concentration and this has adversely affected his ability to construct self or autobiographical narratives'*. It further notes that *'the inconsistencies and lack of reliable recall displayed in his interviews and hearings were also manifested in therapeutic sessions. In view of the fact these illogical and inconsistent statements have not strengthened his refugee claims, I am inclined to see this as part of his symptomatology rather than a deliberate and conscious strategy to advance his case'*.

Attitude to removal

17. Mr X does not wish to return to Iran. He stated that the Iranian Intelligence Service believes he is affiliated with a dissident party and once detained him for twelve days. He claims he was beaten and interrogated at this time, saying *'many people they killed. It is not unusual that they take someone and they never return'*. He also does not believe Iran will accept him, saying, *'when I left Iran I was a refugee, so I forfeited my rights to be there, so there is no way I can go back'*. The RRT rejected Mr X's claim that he was at risk of persecution if removed to Iran.
18. Mr X also stated that he does not wish to return to Iraq. While the RRT rejected Mr X's claims that he was from Iraq, the RILC current combined s 417/48B submission highlights that he has recently obtained a copy of his Iraqi birth certificate. It may be that this information will, upon further inquiry, lead to an acceptance that Mr X is an Iraqi citizen. The submission notes that the risk to Mr X's personal safety needs to be reviewed, if consideration were to be given to removing him to Iraq. Recent country information would also be relevant to any such decision.

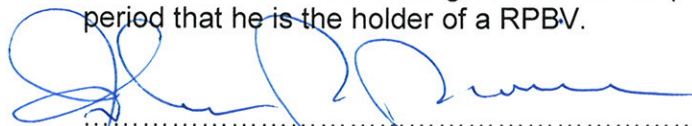
Other detention issues

19. Mr X stated that in regards to his detention experience *'there is nothing good to remember, it was all bad memories. I was detained, I was hit ... I was beaten many times, not only once or twice'*. He believed the guards (primarily at Curtin IRPC) *'used to create the problems to make life more difficult for us ... our main punishment was that we were confined to our rooms and keeping ourselves busy in our rooms'*.
20. Mr X said that when he first arrived at Curtin IRPC to be processed there were fires in part of the Centre, so the guards put him and other new detainees in *'prison'* for one month before they were interviewed. He said that they were not involved with starting the fires, however they were forced to sleep *'on the concrete without any mattresses or any blankets'* until they could be housed in an appropriate area. The Ombudsman notes

that these claims have not been put to DIMA or the then service provider, Australasian Correctional Management, but includes them for the sake of completeness.

Ombudsman assessment/recommendation

21. Mr X spent four and a half years in immigration detention in Australia. His prolonged detention experience resulted primarily from his unsuccessful attempt to obtain a permanent visa, which was based on a continued supposition that Mr X was born in Iran. While the Ombudsman recognises that it was Mr X who initially stated in 2001 that he was an Iranian citizen, in the following year he said he was Iraqi. Mr X spent a further four years in detention, during which time it appears that limited endeavours were made to determine if he was in fact from Iraq. The RRT refused his claims for protection primarily because of its unfavourable assessment of his overall credibility and the conclusion that he was an Iranian national. Mr Z's report suggests that Mr X's PTSD may have contributed to his extremes of forgetting, which may have impaired his ability to accurately present his claims for protection. Mr X has now been on a RPBV for eighteen months living in the community, yet in March 2006, Mr Y from the CNAHS noted that the stress of Mr X's current uncertain conditions may result in permanent psychotic illness. It is understood that the Minister is currently considering Mr X's combined s 417/48B request. The Ombudsman **recommends** that the Minister reach a decision on Mr X's s 417/48B requests as soon as possible, but no 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).
22. The Ombudsman has been advised that since the fall of the Hussein regime, Mr X has obtained his birth certificate from Iraq and has provided this to the Minister as part of his combined s 417/48B request. It is possible that further confirmation of Mr X's nationality will be deemed necessary, which may take some time. If it is accepted that Mr X is a citizen of Iraq, the Minister may wish to consider allowing him to lodge a new PV claim under s 48B. The drawback of this option is that it may significantly extend the period during which Mr X is without a definitive decision regarding his future. An alternative option may be for the Minister to consider granting him a permanent visa. The uncontradicted medical evidence before the Ombudsman indicates that Mr X is now suffering from two serious psychological conditions. These conditions are causally linked to his prolonged detention experience and to the uncertainty experienced concerning his future residence in Australia. If he is able to achieve an adequate level of stability and security this may assist his recovery. The Ombudsman considers that the length of Mr X's detention and his mental state need to be given substantial weight in any consideration in relation to his future.
23. In the interim, Mr X is likely to need ongoing psychiatric assistance and DIMA will need to consider what continuing role it should play in this respect, especially during the period that he is the holder of a RPBV.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date