

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

Under s 486O of the Migration Act 1958

Personal identifier: 124/07

Principal facts

Personal details

1. Mr X is aged 37 and a citizen of Iran. He says his parents and siblings live in Iran.

Detention history

2. On 23 May 1999 Mr X was detained by DIMA under s 189(2) of the *Migration Act 1958* as an unauthorised air arrival and was transferred to Villawood Immigration Detention Facility (Villawood IDF).
3. Mr X escaped from Villawood IDF in March 2001 and was unlawful in the community until he voluntarily approached DIMA in August 2004. He was detained under s 189(1) and was returned to Villawood IDF. He remained there until his release in October 2005.

Visa applications

4. Mr X lodged an application for a Protection Visa (PV) (May 1999), which was refused (June 1999); refusal affirmed by the Refugee Review Tribunal (RRT) (August 1999); application for judicial review of the RRT decision (September 1999) in the Federal Court (FC), dismissed (December 1999); appeal against the FC judgment to the Full Federal Court (FFC) (January 2000), dismissed (May 2000); a joint class action filed in the High Court (HC) (December 2000) was discontinued (March 2001).
5. Three requests for Ministerial intervention under s 417 were lodged (August to October 2000) and refused (through to November 2000); application for judicial review of non-exercise of s 417 powers lodged in the FC (December 2000), discontinued (January 2001); s 417 requests lodged (November 2000 and April 2001), refused (December 2000 and October 2001); further s 417 requests lodged (November 2004, December 2004 and March 2005), refused (November 2004, January 2005 and September 2005).
6. Mr X lodged s 48B requests which were refused (July 2000, October 2000 and August 2004); s 48B request lodged (August 2005), the Minister favourably exercised her discretion and allowed a further PV application (September 2005); Bridging Visa (BV) application lodged, BV application deemed invalid (September 2005); a Temporary Protection Visa (TPV) was granted 12 October 2005.

Current immigration status

7. Mr X is the holder of a TPV and resides lawfully in the community.

Ombudsman consideration

8. DIMA's s 486N report was dated 12 October 2005.
9. Ombudsman staff interviewed Mr X in the community on 28 April 2006.
10. Ombudsman staff sighted a report on Mr X by University of NSW (UNSW) Clinical Psychologist, Ms W, dated 2 May 2006.

Key issues

Health and welfare

11. The DIMA report advised that Mr X had on occasion expressed self-harm thoughts and was placed on Suicide and Self Harm observation in response to those occurrences, while in Villawood IDF. The report also stated that Mr X was treated for panic attacks on several occasions, was regularly seen by the Villawood IDF psychologist, and was prescribed psychotropic medications for depression by Villawood IDF medical staff.
12. The report by Ms W of UNSW in May 2006 concluded that Mr X presented with a major depressive episode and post-traumatic stress disorder (PTSD). The report also indicated that Mr X had experienced symptoms of anxiety such as that of PTSD in Iran due to fear for his physical safety. Ms W said that *'the uncertainty surrounding Mr X's residency status appears to have significantly contributed to aggravating his emotional and somatic symptoms, and that any further delays in his application process will only exacerbate his psychological condition'*.

Attitude to removal

13. The DIMA report stated that Mr X was requested to consider voluntary return to Iran on several occasions, which he declined. He was also offered the Iranian reintegration package in July 2005, but that offer lapsed without a response. Mr X claimed to Ombudsman staff at interview that a DIMA officer tried to force him to sign the Iranian reintegration package.
14. Mr X says that he fears persecution if he returns to Iran due to his conversion from Islam to the Baha'i faith.

Other detention issues

15. At interview with Ombudsman staff Mr X commented that in immigration detention in Stage One of Villawood IDF he was *'treated like a criminal'*. He spoke about the frequent and seemingly unnecessary searches. He also spoke of an incident when he was in Stage Two, when he and other detainees were waiting in line for newspapers and a GSL employee allegedly said *'When I give papers to you it is like giving food to an animal'*.
16. Mr X also commented on his release process from detention. He claims that a DIMA officer gave him ten minutes notice to vacate Villawood IDF after he received notice that he was granted a TPV. Mr X said that his attempts to negotiate a more reasonable period of time for him to organise himself were rejected by the DIMA officer. Mr X alleged that the officer told him that if he did not leave as directed the officer would call the police. Mr X said that his solicitor contacted his case officer, of whom Mr X had a good opinion, and the case officer said that he could stay the rest of the night at Villawood IDF. Mr X said that decision was over-ridden by the other DIMA officer. He said that he was given \$200 cash and no transport, and that he spent three or four hours after his release trying to find accommodation.
17. The Ombudsman has not pursued these claims with DIMA or GSL but includes them for the sake of completeness and, in particular, so that DIMA can consider the potential issues around its release procedures.

Post release issues

18. At interview with Ombudsman staff Mr X said that he could easily find a job as he is a refrigeration and air-conditioning mechanic by trade and also has a welding certificate issued in Iran. However, at the time of his interview, Mr X said that due to his psychological condition, and the medication he takes to manage that condition, he was unable to work at that time. Mr X said that because he was unable to work he was receiving a Special Benefit from Centrelink and was required to provide medical

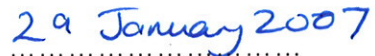
certificates to prove his inability to work. The Ombudsman is unaware of whether or not there have been any changes in Mr X's circumstances since that time.

Ombudsman assessment/recommendation

19. The information available to the Ombudsman indicates that Mr X was suffering from comorbid major depression and PTSD at the time of his release from detention. As noted above, the Ombudsman is unaware of the current status of Mr X's mental health. The clinical psychologist's report of May 2006 noted that the uncertainty associated with his temporary residence status had significantly contributed to aggravating his emotional and somatic symptoms at that time. The medical evidence available to the Ombudsman is that Mr X needs some certainty in order to recover from his psychological problems. In light of this, the Ombudsman **recommends** that the Minister consider exercising discretion to waive the usual 30 month waiting period and allow Mr X to be considered for a permanent visa.
20. It would also be appropriate for DIMA to consider what medical and casework support it should provide to him.
21. As noted in Report No 119/07, in which claims were also made about the adequacy of arrangements for release from detention, the Ombudsman welcomes the new case management approach which will ensure that appropriate arrangements are put in place to assist clients with mental health issues in their transition into the community.



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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman



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Date