

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 125/07*

This is the combined second, third and fourth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (30/06). The Ombudsman's first report was sent to the Minister on 17 January 2006 and tabled in Parliament on 9 February 2006. This report updates the material in that report and should be read in conjunction with it.

## **Principal facts**

### *Visa applications*

1. Following the Minister's exercise of discretion under s 48B (December 2005), Mr X lodged a new application for a Protection Visa (PV) on 3 January 2006, which was subsequently refused by the Department of Immigration and Citizenship (DIAC) (January 2006); Mr X appealed to the Refugee Review Tribunal (RRT) (January 2006), original decision affirmed (June 2006); sought judicial review of the RRT decision at the Federal Magistrates Court (June 2006), dismissed (November 2006), sought judicial review with the Full Federal Court (FFC) (December 2006), ongoing.
2. On 27 July 2006 the Minister advised that she may consider a Removal Pending Bridging Visa (RPBV) subject to health and character checks.
3. Mr X was granted a Bridging Visa E (BVE) on 1 February 2007.

### *Current immigration status*

4. Mr X was released from detention on 1 February 2007.

### *Removal details*

5. DIAC advise that future removal considerations will remain deferred pending the outcome of litigation in relation to Mr X's PV application.

## **Ombudsman consideration**

6. DIAC's further reports to the Ombudsman under s 486N of the *Migration Act 1958* are dated 5 January 2006, 6 July 2006 and 29 December 2006 (received 19 January 2007). The Minister's Statement to Parliament in response to the Ombudsman's first report on Mr X was dated 28 March 2006.
7. Ombudsman staff interviewed Mr X by telephone on 5 December 2006, with the aid of an interpreter. Staff also spoke to Ms Y, a friend of Mr X, on 6 December 2006.
8. Ombudsman staff sighted a number of documents: International Health and Medical Services (IHMS) report dated 14 December 2006; a Mental State Examination Assessment (MSEA) dated 13 December 2006; and a letter from Mr X to the Minister dated 8 January 2007.

## **Key issues**

### *Visa issues*

9. Mr X advises that he was 'very happy when I got the news I was getting the RPBV, but then after four and a half months have passed and nothing has happened I keep on thinking about this. Because of that, I have got a lot of tension and stress'. DIAC advised

that it was awaiting the completion of a security check before the process could be completed. On 1 February 2007 Mr X was granted a BVE instead.

#### *Health and welfare*

10. In his November 2005 interview with Ombudsman staff outlined in report 30/06, Mr X advised that he had no significant health concerns, other than some trouble sleeping as '*keep thinking of my children*'. Since then, DIAC advises that cognitive behavioural strategies and counselling have been used to assist Mr X to improve his sleep.
11. On 4 May 2006 Mr X was involved in a dispute with a GSL officer over merit point allocations, where he claims to have been verbally abused. Mr X claims that the GSL officer '*abused me too much ... I got a very bad stress and tension*'. Mr X then grabbed a knife and threatened to kill himself. He self harmed and was subsequently transferred to Liverpool Hospital for treatment of cuts to the arm. On return Mr X was placed on Suicide and Self Harm watch until 12 May 2006.
12. In his December 2006 interview, Mr X describes his time in detention as causing '*a lot of stress and a lot of tension*'. He explains that he is not well '*because of too much thinking and depression*'. Mr X goes on to say that he is having problems with his eyesight due to '*a lot of tension on my head*'.
13. Ombudsman staff referred Mr X's case to DIAC's Detention Health Branch following discussions with Ms Y about his mental health. A subsequent MSEA report showed that there was '*no overt evidence or expression of self-harm ideation*'. The IHMS report states Mr X '*is subject to ongoing review by the Mental Health Team*'.

#### *Attitude to removal*

14. Mr X states that he remains opposed to going back to Pakistan because of ongoing fears for his safety. As discussed in report 30/06, he fears being murdered by the ruling party in his province as part of a vendetta against his family. This claim was rejected by the RRT.
15. Mr X claims that his family in Pakistan has been displaced by the 2005 earthquake and that they are currently living in the house of a family who migrated to Canada, in an area where they are forced to move around to different locations from day to night for safety reasons. Mr X advises that his son is still missing and that his wife is ill, claiming that '*she's stressed because of me and her son who has been lost for some time*'. The RRT has questioned a number of inconsistencies in Mr X's claims. The FFC is yet to consider Mr X's application for judicial review.

#### *Other detention issues*

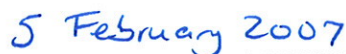
16. Mr X was an active participant in kitchen duties during his time at Villawood IDF, until late 2006 when outside contractors were brought in to perform those duties in place of detainees. Mr X advises that he would work eight to nine hours per day and that he '*never thought about the pay*' but liked to keep busy stating that he '*had no tension because I was busy all the time*'. Mr X says that the kitchen staff miss him and wish that he was still there to work with them. Mr X states that '*no activities cause tension*' and that he now performs whatever tasks GSL says he can do, including painting benches, gardening and working in a shop that operates several hours per week selling products to detainees.
17. The MSEA states '*he attached great importance to his work in the kitchen and the loss of this meaningful activity has had an impact on his physical and mental health – ruminating thoughts, diminished appetite and sleep pattern. Although he has attempted to fill his time ... he feels the loss ... these factors should be taken into consideration if there is further deterioration*'.

## Ombudsman assessment/recommendation

18. Mr X was in detention for over three and a half years, primarily due to ongoing litigation relating to his unsuccessful claims for a PV. The DIAC decisions that Mr X does not qualify for protection have been appealed to, and affirmed by, the RRT. Mr X has sought judicial review, which is ongoing.
19. Although 12 months have elapsed since the Ombudsman's previous report 30/06, Mr X's detention circumstances have been kept under review during that time. In report 30/06, the Ombudsman recommended that the Minister consider granting a RPBV and noted that Mr X has *'been in detention for a long period and, although he is healthy at present, there is a risk that longer detention will lead to a deterioration of his health'*. As discussed, the evidence indicates that Mr X's health has deteriorated since report 30/06 was completed.
20. The Minister noted in her Statement to Parliament on 28 March 2006 that she was not inclined to grant a RPBV at that time. DIAC indicated in its s 486N report of 29 December 2006 that the Minister had indicated on 27 July 2006 that she was considering granting Mr X a RPBV, subject to health and security checks. DIAC advised that it was waiting for the completion of a security assessment.
21. The Ombudsman makes no recommendations in this report but welcomes the granting of a BVE to Mr X to enable his release from detention.



.....  
Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman



.....  
Date