

Refugee Advocacy Service of South Australia Inc

A Community Legal Service for Refugees and Asylum Seekers

26 October 2005

Senator Patricia Crossin
Chairperson
Senate Legal and Constitutional References Committee
S161, Department of the Senate
Parliament House
CANBERRA ACT 2600

BY EMAIL TO legcon.sen@aph.gov.au

Dear Senator Crossin,

Inquiry into the Administration and Operation of the Migration Act 1958

We refer to our attendance before the Senate Legal and Constitutional References Committee on Monday 26 September 2005 in Adelaide and two questions taken on notice:

1. Senator Bartlett requested examples of the extra length of time taken to be granted a visa under section 417 of the Act caused by the Ministerial policy of not considering section 417 requests while court proceedings are on foot; and
2. Senator Ludwig queried whether we were able to confirm that it costs our clients \$4.00 to send a fax from a detention centre (and \$1.00 for subsequent pages). Where does that money go? Who collects that? Do we know if that is to the benefit of GSL or DIMIA?

We address those questions below.

1. Even now when many of our clients have been granted protection visas (many only TPVs of course) we are reluctant to publicly identify them for fear of reprisal by DIMIA. We have therefore decided to provide a group of clients rather than individuals as an example of the delay caused by the Minister's policy of not considering section 417 requests while court proceedings are on foot.

That group are the Sabean Madeans whose claims for protection from persecution in Iran and Iraq were almost routinely rejected by the RRT until around 2003 when the stories of many asylum seekers about religious harassment that amounted to serious harm were finally accepted as credible.

On 20 June 2004 all Sabean Mandeans that we know of were granted protection visas except for those who had court proceedings on foot. The following day a further

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Sabean Mandeans family was granted protection visas under section 417 and we suspect this is because their legal case was a particularly strong one, putting the Minister at risk of an adverse judgement. The remaining Sabean Mandeans were required to put their lives on hold while they waited for years for the court process to be completed, despite the logical outcome being a guaranteed visa. These asylum seekers were faced with the cruel choice of giving up their only available legal fight for asylum to rely on a non-compellable, discretionary decision from a Ministry that is known for being inconsistent or waiting out a lengthy court process in order to obtain the asylum that we all knew they deserved.

It is now two years since the RRT clearly acknowledged that Sabean Mandeans are persecuted in Iran and Iraq and we know of one Sabean Mandeans who still has not received a protection visa due to court proceedings continuing well into 2005. This is not only an appalling way to treat genuine asylum seekers but also an extraordinary waste of administrative and judicial resources.

DIMIA cannot dismiss this criticism merely by pretending to defer to the authority of the courts because the Minister has intervened with the granting of a section 417 visa or a section 48B opportunity while court proceedings were on foot; just not at RASSA's request. Again, we will not provide detail of particular cases but we recall a joke often told in the RASSA office at the end of 2004 that one way to get a 417 or a 48B is to make an application for special leave to appeal to the High Court.

Rather than being the exception when the law is not on DIMIA's side, we submit that the Minister and her Department should take action to grant a visa as soon as they are satisfied that an asylum seeker is deserving of protection.

2. We referred Senator Ludwig's query to DIMIA staff at the Baxter IDF but have received no response to date. We are advised by a former detainee recently released that GSL received the money detainees paid to send faxes. Faxes, like photocopying, cost around \$1 per page. This money was paid on a points system as cash is not allowed in Baxter IDF.

Detainees were required to pay upfront and even if faxes were urgent or addressed to lawyers they would not be sent if a detainee had insufficient points. In 2005 a complaint was brought to the managers of DIMIA and GSL at Baxter about a detainee being unable to send a fax to his lawyer because he had insufficient points and they confirmed GSL's position that he was not permitted to send the fax.

Yours sincerely

Refugee Advocacy Service of SA Inc

Per:

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