

DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

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Minister for Immigration and Multicultural and Indigenous Affairs

Through: Secretary

cc: Minister for Citizenship and Multicultural Affairs
Deputy Secretaries.
FAS, Refugee and Humanitarian
FAS, Migration and Temporary Entry
FAS, Offshore Centre Management and Infrastructure Division AS,
Unauthorised Arrivals and Detention Services
AS. Humanitarian
ASI Onshore Protection
AS. :Temporary Entry
AS, Offshore Asylum Seeker Management
Chief Financial Officer

RETURN OF IRANIAN NATIONALS; UPDATE ON NEGOTIATIONS AND PROPOSED NEXT STEPS

PURPOSE

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To provide you with an update on our recent discussions with Iranian officials on the involuntary return of Iranian nationals and to seek your approval of our proposed next steps including the offer of a financial incentive for voluntary return to those Iranian nationals currently in detention" in Australia.

BACKGROUND

2 In the continuation of our ongoing negotiations with Iran on the involuntary return of their nationals currently in detention in Australia, visited Tehran on 19-21 October and held discussions with senior officials of the Iranian Ministry of Foreign Affairs (MFA), These discussions were primarily aimed at putting before the Foreign Ministry officials the package of cooperation that you have previously approved to secure Iran's agreement .to involuntary returns (Minsub PR2002/5402 dated 27 August 2002 on Return of Iranian Nationals), incorporating:



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the establishment of a Work and Holiday Visa arrangement for young Iranians and Australians to visit and work in the other country;

the offer of a financial incentive for the voluntary return of Iranian nationals currently in detention in Australia and the development of a program of further technical cooperation and capacity building initiatives in the areas of migration management and border control through.

- 3 My visit to Iran confirmed our expectation that the Iranian Foreign Ministry remains committed to working within the Iranian bureaucracy to resolve this issue as an irritant in the bilateral relationship, Foreign Ministry officials have claimed that there is now a broad consensus on the need to resolve the situation of the Iranian nationals in detention in Australia, reporting that the President has instructed all Ministries to cooperate In developing a resolution.

This consensus does not, however automatically translate into cooperation by all the relevant Ministries with our request for assistance with involuntary return; we understand that the Interior Ministry particularly the Bureau of Alien and Foreign Immigrant Affairs/ remain of the view that more should be done to promote voluntary returns.

The only other country to have achieved progress on this issue to date is Switzerland, which has reportedly secured the agreement of the local Embassy to the deportation of up to 100 Iranian nationals. They have advised that they have only achieved only one return to date. We are monitoring this situation to see if it is sustainable, as previous such aberrations have resulted from a lack of knowledge of the broader policy position by particular Embassies and have been quickly reversed when it became known to Tehran.

- 4 Discussions with the Director-General of Consular Affairs Mr Ansari, highlight that a number of Iranian Ministries, including the Foreign Ministry, are very interested in the proposed Work and Holiday Visa (WHV) program with Australia, even though the numbers envisaged for the program are relatively small from the Iranian perspective.
- 5 Iranian officials have raised some concerns with the program, including twelve month limit on the validity of the visa and their perception that the arrangements involved "penalty clauses for Iran should some individuals not comply with their visa conditions (ie. the intention to reduce the size of the program by the number of any protection visa claims or overstayers). I expect that these issues can be relatively easily dealt with and should not cause the discussions to be unnecessarily prolonged.

I have assured the Iranians that the duration of the visa could be reviewed after a few years of successful operation of the program.

We can easily avoid the perception that the program incorporates "penalty

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clauses" by undertaking to conduct the review of the annual allocation under the program envisaged at the beginning of each program year, in the light of overall trends' rather than an accounting for individual instances of no-compliance.

- 6 In my discussions with Mr Ansari, he made it clear that progress on this issue would depend largely on ensuring that the objections that can be raised by other Ministries are minimised. In particular Mr Ansari stressed that the implementation of efforts to minimise the potential involuntary caseload, possible to zero, would be critical. This submission, accordingly, recommends the implementation of a strategy, in cooperation with the Iranian Embassy in Canberra, to maximise the number of voluntary returns in the short term.

This strategy, which we have discussed with the Iranian Foreign Ministry in Tehran and the local Embassy, includes the early offer of the financial incentive for voluntary return.

In return, we would be seeking a clear statement from the Iranian side that they are preparing for the removal of those Iranians who did not volunteer to return.

- 7 In addition any package of cooperation settled in the current negotiations should only apply to the current detainees, not future unauthorised arrivals (with the exception of those arriving under the WHM who subsequently break their visa conditions). I have conceded this point, in the interim, as:

The flow of Iranian nationals attempting to enter Australia illegally appears to have substantially declined, even before the implementation of the offshore processing arrangements.

The demonstration effect that would be provided by the deportation of the current group of detainees' should ensure a significant disincentive to those considering illegal entry to Australia.

Once the current caseload has been dealt with there would be no impediment to seeking to establish these arrangements for future arrivals down the track, At the least these arrangements would provide a precedent for the ir1voluntary removal of later arrivals.

- 8 Throughout my discussions with the Iranian officials I have emphasised 'the urgency of this issue and the need to move forward quickly which they have acknowledged. The Iranians have indicated that their consideration of our proposals could be completed in a matter of weeks but, in our previous experience, is likely to stretch into early 2003, We have been actively following up these issues both in Canberra and Tehran and will continue to do so.

ISSUES

This submission proposes that as a result of these discussions, we implement a range of joint-initiatives with the Iranian authorities to encourage the voluntary

resolution of the Iranian caseload in detention, including:

a program of consular visits to Iranian nationals in detention by officials from the Iranian Embassy 111 Canberra to highlight the desire of the Iranian Government to see these people return to Iran voluntarily;

the consular visit by supported by the distribution of a leaflet to Iranian detainees making it clear that they will be removed if they do not leave voluntarily;

the offer of a financial *incentive* for voluntary return to the Iranians currently in detention; and the development of arrangements: to facilitate the removal of those cases that cause difficulties in detention.

Encouraging voluntary departures

10 The Departments experience suggest that, for all but the hard-core of detainees, the key to enlisting voluntary departure lies in the creation of a credible threat of involuntary removal. We have therefore, previously recommended that the offer of a financial incentive for voluntary return to Iranian detainees be withheld until it is clear that the Iranian authorities will cooperate on involuntary removals if required.

11 In my recent discussions, the Iranian authorities have indicated that they would be prepared to consider making it clear to the detainees that they are considering accepting their involuntary return if it were accompanied by the offer of a financial incentive.

As discussed above, the Foreign Ministry is primarily concerned to be able to discuss the resolution of the caseload with the Interior Ministry in the context where they could say that the involuntary removal caseload was actively being reduced to zero or near-zero.

From our perspective, voluntary removal is preferable in terms of costs cooperation with the airlines and the impact on the remaining detention caseload.

12 To progress this matter the Iranians have also proposed that a representative from the Iranian Embassy undertakes a consular visit to the detention centre to meet with the detainees and to urge them to return to Iran voluntarily. I indicated that this could be acceptable if we could agree on an appropriate form of advice to the Iranian detainees that made it clear that Iran and Australia were reviewing their approach to those whom refuse to return voluntarily.

The majority of Iranian detainees are currently housed in the Woomera, Baxter and Port Headland IRPCs.

13 In line with this approach, we have drafted the leaflet at Attachment A, which could be distributed to the detainees in the context of any consular visit to the detention



centres. The leaflet focuses on encouraging the detainees to actively consider their options and foreshadows the offer of a financial package by the Australian Government.

14 In urging the detainees to consider accepting the package, the leaflet also alludes to consultation between Iran and Australia "on the issue of your removal should you not depart voluntarily". We consider that agreement by the Iranian authorities to the distribution of this leaflet with this text included would provide a substantial incentive to voluntary removal and would warrant an early offer of the financial incentive.

We have provided the draft leaflet to the Iranian embassy in Canberra for their informal feedback on the acceptability of the approach and the language used. We have indicated that we would be prepared to recommend that you offer the financial incentive if they agreed to this approach.

15 We are seeking, therefore your in-principle approval of the offer of a financial incentive to the Iranians if detention in Australia, subject to the development of an acceptably worded leaflet.

16 We suggest that any offer be made on a similar basis as that currently on offer to the Afghan detention caseload and the offshore processing caseloads:

a quantum of \$2,000 per person) up to a maximum of \$10,000 per family (defined as husband/Wife and depend children)

a fixed 28.day period in which to accept the offer:

Australia would meet the costs of the required airfares and travel documents for the return: and

waiving of the debt owed to the Australian Government for the cost of detention, return to Iran and any court costs incurred.

17 From my discussions in Iran I expect that these arrangements will be broadly acceptable to the Iranians.

The Foreign Ministry has suggested in discussions a period of up to 6 months for acceptance of the package as they consider the 28-day limit in our offer to be too short a time. We disagreed with this extended period and, in fact advised the MFA that even with a 28-day time frame, a strong statement on Iran; preparedness to accept enforced removals would crucial.

In any event, we would argue that the 28-day time frame is only the last stage in an extended period of time that these detainees have had many months to consider their options following the failure of their claims to remain legally.

18 If you approve this approach, we will provide further briefing on the logistics for making the offer .

19 Funds are available within International Cooperation Branch for this offer, as the 2.000-01 Budget created \$2 million pilot program for the provision of reintegration assistance, which have not yet been required to utilise.

At \$2,000 per person, and with around 277 Iranians currently in this caseload we would at most need to utilise \$554,000 of the pilot program in this exercise.

Under the terms of the original decision that provided funding *for the* pilot program we are required to seek the agreement of the Department of Finance and Administration's (DOFA) to *the* proposed arrangements, which we expect would be forthcoming, as the arrangements are similar to the arrangements for the: Afghans. We will seek this agreement following receipt of your views. We will also consult with OOFA on the arrangements for the waiver of the detention and removal costs for those who return voluntarily.

Removal arrangements for difficult cases

20 During my discussions with Mr Ansari, he has also suggested that we negotiate arrangements with the local Embassy to secure the involuntary removal of "emergency cases that is those who are disruptive and uncooperative"

21 This move is clearly designed to minimise the potential for public embarrassment for Iran by the misbehaviour of Iranian detainees. It is however, an important move by the MFA as we believe the enforced removal of a group of difficult detainees, Irrespective of the number, is likely to make it easier for others to choose to depart voluntarily.

22 We have pressed the issue with the Iranian Embassy in Canberra to ascertain whether they have received instructions from Tehran that would allow them to commence working on these arrangements. To date it would appear that this is not yet the case. Once the embassy is in a position to discuss the issue, we will seek to define the "emergency" group as broadly as possible in cooperation with unauthorised Arrivals and Detention Division. In particular, we would be seeking to include those who have attempted self-harm or committed acts of violence within the centre.

Next steps in discussions with the Iranian authorities

23 We have indicated to the Iranians that we are prepared to go to Tehran at any stage to negotiate these arrangements. Alternatively we have offered to host a delegation of Iranian officials if it were clear that such a delegation would be in a position to negotiate.

24 In the interim, we have asked the Embassy in Tehran to pursue all available opportunities to press the issue, including through calls on the relevant officials and Deputy Ministers. We will continue our active dialogue with the Embassy in Canberra.