

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 056/06

Principal facts

Personal details

1. Mr X is a 49 year old male citizen of the Democratic People's Republic of Korea (North Korea). He claims that his real name is Mr Y. He believes his wife and 24-year-old son are living in the People's Republic of China (PRC), but he has not spoken with them for two and a half years. His other son (27 years old) lives with his sister in North Korea.

Detention history

2. In November 2002, Mr X arrived in Australia on an Electronic Travel Authority, using a fraudulent South Korean passport. He was granted a bridging visa (BV) in January 2003 in connection with his Protection Visa (PV) claim. He was located by the Department (DIMA) in May 2003, at which time his BV was cancelled under s 109 of the *Migration Act 1958* (use of a fraudulent document). He was detained under s 189(1) and placed in Villawood Immigration Detention Centre (Villawood IDC). He was transferred to Baxter Immigration Detention Facility (Baxter IDF) in July 2005.

Visa applications

3. PV refused (March 2003); associated BV cancelled (May 2003); BV cancellation affirmed by the Migration Review Tribunal and further BV application refused (June 2003); PV refusal affirmed by the Refugee Review Tribunal (RRT) (July 2003); requests under s 417 and s 48B (June 2005 and September 2005); s 417 request denied (March 2006); advice was received from DIMA on 14 March 2006 that the s 48B request has been granted, and a fresh PV application by Mr X will therefore be allowed; PV application lodged (March 2006), currently outstanding; associated BVE refused (March 2006).

Current immigration status

4. Mr X is currently detained in Baxter IDF.

Removal details

5. DIMA advises that it is still in the process of trying to establish Mr X's true identity. DIMA has not yet commenced discussions with the North Korean Consulate, but reports that it will do so once it has established his nationality and a decision is reached on his s 48B request (since approved). His case was referred to DIMA's National Identification Verification Advice Unit in January 2006 for identity investigation.

Ombudsman consideration

6. Two reports from DIMA under s 486N dated 29 September 2005 and 10 January 2006.
7. Ombudsman staff interviewed Mr X at Baxter IDF on 8 November 2005, with the assistance of an interpreter.

Key issues

Claim for a PV and nationality

8. Mr X's PV claims were based on his assertions that he was from South Korea, fleeing after he refused to pay bribes to corrupt government officers and fearing that he would be