

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 063/06

Principal facts

Personal details

1. Mr X is a 48-year-old man from the People's Republic of China (PRC) (and a former resident of Hong Kong). His wife and two children (aged 6 and 17) live in Hong Kong.

Detention history

2. Mr X held a series of visas between August 1999 and January 2002. In February 2002, the Department (DIMA) detained him under s 189(1) of the *Migration Act 1958* and placed him in immigration detention at Villawood Immigration Detention Centre (IDC).

Visa applications

3. Arrived on a short stay visitor visa (August 1999); granted a Student Visa (SV) (November 1999); applied for a further SV (December 2000); original SV expired and he was granted a Bridging Visa (BV) (January 2001); the Minister refused further SV pursuant to s 501(3) and BV cancelled (January 2002); the Minister declined to revoke decision to refuse SV (May 2002); Minister presented with new character information (January 2005) but declined to re-examine decision, stating no power to review (April 2005).

Litigation in relation to the Student Visa

4. Mr X lodged court actions against the decisions of the Minister made in January 2002 to refuse his SV application ('initial decision') and in May 2002 not to revoke that decision ('non-revocation decision'). His appeals to the Federal Court (FC) and the Full Federal Court (FFC) were unsuccessful, however an application to the High Court (HC) for constitutional relief resulted in the matter being remitted back to the FC. The 'non-revocation decision' was quashed by the FC on grounds that the Minister failed to give Mr X information referred to in s 501C. An order of *mandamus* was issued requiring the Minister to comply with obligations under s 501C. This decision was set aside by the FFC and an appeal to the HC for special leave was refused.
5. In February 2005, Mr X made a fresh application to the FC seeking a new hearing on the basis of new information; this proceeding remains outstanding.

Litigation in relation to access to information

6. DIMA refused Mr X access to certain documents, claiming the information was protected under s 503A; application to the Administrative Appeals Tribunal (AAT) (September 2002); preliminary ruling that documents not protected by s 503A (August 2003); Minister attempted to seek judicial review at the FC but the FC held that it did not have jurisdiction to consider the appeal (February 2004); Mr X continued his action in the AAT in relation to other documents, the AAT has reserved its decision. In September 2004, Mr X was given access to some documents held by DIMA.
7. Mr X's solicitors have commenced an action seeking judicial review of a certificate issued by the Attorney-General in April 2004 under s 36 of the *Administrative Appeals Tribunal Act 1975*, denying Mr X access to documents, and preventing him from questioning witnesses.