

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 083/06

Principal facts

Personal details

1. Mr X is aged 57 and states he is a North Korean national named Mr Y. He has a wife and two sons and believes they are residing in the People's Republic of China (PRC), although they may have been repatriated to North Korea. He has a younger brother who still resides in North Korea. He is not in contact with his family.

Detention history

2. In October 2003, Mr X arrived in Australia by plane, on a false South Korean passport. In February 2004, the Department (DIMA) located Mr X working illegally and identified him as an unlawful non-citizen, detaining him under s 189(1) of the *Migration Act 1958*. He was placed at Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X entered Australia on a visitor's visa (October 2003); visa ceased (January 2004); Mr X detained (February 2004); applied for and refused Protection Visa (PV) (January 2005); Refugee Review Tribunal (RRT) affirmed the refusal (February 2005).
4. Applied to Federal Court (FC) seeking judicial review of RRT decision (March 2005); application dismissed (August 2005); appealed to Full Federal Court (FFC); application dismissed (December 2005); request for possible consideration of the Minister's detention intervention powers lodged (February 2006), submission being replaced with a DIMA group submission on North Korean nationals; s 48B request (July 2006) seeking exercise of the Minister's discretion to allow Mr X to lodge a further PV application.

Current immigration status

5. Mr X is an unlawful non-citizen, currently detained in Villawood IDC.

Removal details

6. DIMA advised that Mr X initially refused to voluntarily depart Australia and was uncooperative with efforts to establish his identity or apply for travel documents to facilitate his removal. Mr X stated that he was not intentionally uncooperative with efforts to establish his identity and claimed that *'I answered all the questions they wanted out of me, but they kept requesting me to supply them with an identity card or identity documents which I don't have ... I didn't have those documents in China ... the people who have escaped from North Korea get rid of everything that is North Korean because that can be used as evidence later on'*.
7. DIMA advised that Mr X has no outstanding litigation preventing his removal from Australia.

Identity issues

8. DIMA's report states that *'there is still doubt in respect of the true identity of Mr X, and his case is being considered'*. DIMA's first report to the Ombudsman did not identify what attempts it had made in the previous two years to establish his identity. The second 486N report indicated that Mr X's case had been referred to the National Identity Verification and Advice Section (NIVA) on 25 October 2005. It is noted that the RRT accepted that Mr X is from North Korea in February 2005.