

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 090/06*

## **Principal facts**

### *Personal details*

1. Mr X is a 38 year old male from the People's Republic of China (PRC). He has a defacto wife and child who reside in the PRC, however he is no longer in contact with them. He said his parents passed away after he left the PRC.

### *Detention history*

2. In September 2003, the Department (DIMA) located Mr X working illegally. He was identified as an unlawful non-citizen, detained under section 189(1) of the *Migration Act 1958* and was placed at Villawood Immigration Detention Centre (IDC).

### *Visa applications*

3. Mr X entered Australia on a visitor's visa (February 2001); applied for a Protection Visa (PV), granted associated Bridging Visa (BV) (March 2001); PV application refused (May 2001); appealed to the Refugee Review Tribunal (RRT) (June 2001); visitor's visa expired (February 2002); RRT affirmed the refusal (June 2002); BV ceased following RRT decision on PV (July 2002); made a second appeal to the RRT which was also unsuccessful (October 2003).
4. Applied to Federal Magistrates Court (FMC) seeking judicial review of RRT decisions (May 2005); s 48B request to Minister (June 2005); application to FMC dismissed (September 2005); submission to the Minister for the possible consideration of her Detention intervention powers (September 2005); submission declined, s 48B deemed inappropriate (October 2005); a further submission to the Minister in relation to any protection issues arising out of interviews conducted by PRC officials is being considered (July 2006); a DIMA initiated s 48B submission sent to Minister's office (August 2006); submissions ongoing.

### *Current immigration status*

5. Mr X is currently an unlawful non-citizen and is detained at Villawood IDC.

### *Removal details*

6. DIMA advises that Mr X has been uncooperative with attempts to remove him to the PRC. In November 2004, DIMA requested a travel document from the PRC Consulate. Mr X has been interviewed by PRC delegates on three occasions: December 2004, May 2005 and November 2005. Members of the PRC Consulate positively identified Mr X as a PRC national in December 2004. In November 2005, DIMA made a further request for a travel document. Both requests remain outstanding. DIMA advises that it will continue to pursue this issue. In September 2006, Mr X was referred to the New South Wales Identity Verification Team as a person requiring identity verification.

### *Ombudsman consideration*

7. Three DIMA reports to the Ombudsman under s 486N, dated 22 September 2005, 10 April 2006 and 29 September 2006.
8. Ombudsman staff interviewed Mr X at Villawood IDC on 22 February 2006, with the assistance of an interpreter.

9. Mr X provided Ombudsman staff with a tape of an interview conducted between himself and DIMA staff, dated 26 April 2001.
10. A DIMA Ministerial Submission relating to the PRC Delegation Cases, dated 7 July 2006.

## **Key issues**

### *Health and welfare*

11. DIMA advises that Mr X has said that he is suffering from depression due to his long term detention, however a mental health examination was undertaken in August 2006 and no evidence of depression was identified. Mr X has elected not to speak with a psychologist.
12. DIMA further advises that Mr X has been suffering from other minor ailments that have been appropriately treated. At interview with Ombudsman staff Mr X did not identify any health concerns.

### *Attitude to removal*

13. Mr X said he is a practitioner of Falun Gong. He claimed to have attracted the attention of the Public Security Bureau (PSB) and *'in order to preserve my own religion and my own freedom I fled China'*. He states that a warrant for his arrest was issued by the PSB and claims that he will be persecuted by the authorities if he is returned to the PRC. The RRT did not accept that Mr X was associated with Falun Gong, or that he had a justified fear of persecution if he returns to the PRC.
14. Mr X stated at interview *'I have no family to return to, my parents are dead and my fiancé and child have left me and so I have nothing to go back to. I am just happy to be here, locked up, where I have the freedom to practice my religion'*. If he is released into the community on a temporary visa he states he does not wish to be removed to the PRC straightaway, as he wishes *'to let the heat pass on Falun Gong'*. DIMA advises that it has initiated a s 48B submission on the basis of Mr X's practice of Falun Gong, which is currently before the Minister.
15. Mr X stated that he has a few good friends in Australia who are permanent residents and can provide a financial surety against the risk of him absconding.

### *Other detention issues*

16. At interview Mr X stated that Villawood IDC is a *'good place'* and that the staff treat him well. He further commented that the food has been satisfactory.
17. DIMA advises that Mr X was one of a group who were interviewed by PRC officials in May 2005. The circumstances of this interview are being examined following several complaints to the Ombudsman's office and to the Human Rights and Equal Opportunity Commission.

## **Ombudsman assessment/recommendation**

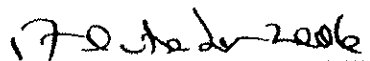
18. Mr X has been in immigration detention for over three years and there does not appear to be any immediate prospect of his removal from Australia. The PRC identified him as a PRC national in December 2004 and DIMA lodged a request for a travel document with the PRC Consulate in November 2004 and November 2005. DIMA advises, however, that it has yet to confirm his identity.
19. In the course of other assessments, the Ombudsman has recommended that DIMA investigate the issues surrounding the May 2005 visit of the PRC officials and satisfy itself that the individuals interviewed were not exposed to a risk of persecution. DIMA's submission to the Minister in relation to the visit notes that Mr X is one of a group *'where*

*the claims appear to be weaker [than others] but where we cannot give you assurances that protection issues may not have been raised'. The submission notes that in Mr X's case his interview tape was blank. The submission indicates that a further briefing will be provided to the Minister on the cases in the same category as Mr X. DIMA has also initiated a s 48B submission that is currently before the Minister. The Ombudsman **recommends** that these submissions be progressed without delay and that a decision in relation to Mr X be made before the time for the tabling of a version of this report in Parliament (viz. within 15 Parliamentary sitting days of receiving this report).*

20. If Mr X is allowed to make another application for a PV, he may remain in detention for some time. Alternatively, if Mr X is unsuccessful in obtaining a visa it is unclear how long it may take DIMA to obtain a travel document. While there are no reports that Mr X's physical or mental health has suffered while in detention, the risk of this occurring must increase with continued detention. Based on all of the information available to the Ombudsman, Mr X is not considered a threat to the Australian community and he does not appear to present a significant security risk. If it is likely that Mr X will remain in detention for a further substantial period of time, the Ombudsman suggests the Minister give consideration to exercising her discretion to grant Mr X a BV with work rights, and with appropriate reporting mechanisms to reduce the risk of absconding.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date