

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 109/06

This is a combined second and third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (39/06). The Ombudsman's first report was sent to the Minister on 17/1/06 and tabled in Parliament on 29/3/06. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. The Department (DIMA) advised that a s 417 request (May 2005) was deemed inappropriate to consider (February 2006); a s 48B request (August 2005) was found not to meet Minister's guidelines (February 2006); a combined submission forwarded to the Minister (March 2006) for consideration under her detention intervention powers was declined (July 2006). Mr X applied to the Federal Magistrates Court (FMC) (April 2006) seeking judicial review of the Refugee Review Tribunal (RRT) decision of March 2005; dismissed by FMC (August 2006). Section 417 and s 48B submissions sent to the Minister (May 2006 & June 2006 respectively) assessed as not meeting the guidelines and not referred to the Minister; a combined s 417/s 48B request sent to the Minister (August 2006) remains outstanding. Mr X stated at interview that he is preparing an application to the Federal Court of Australia.

Current immigration status

2. Mr X remains detained at Baxter IDF.

Removal details

3. DIMA advised that Mr X's removal had been deferred pending the outcome of his litigation and requests for Ministerial intervention.

Ombudsman consideration

4. Two further reports from DIMA to the Ombudsman under s 486N, dated 9 January 2006 and 7 July 2006; the Minister's Statement to Parliament dated 28 March 2006; a Professional Support Services (PSS) report dated 12 September 2006 and an International Health Medical Service (IHMS) report dated 27 September 2006.
5. Follow-up telephone interviews of Mr X, with an interpreter, were held on 4 August 2006 and 8 September 2006. Ombudsman staff sighted a number of documents, including a letter to the Ombudsman's office from Mr X dated 4 August 2006; Mr X's s 417 request to the Minister dated 16 August 2006; a letter from Mr X's wife (Ms Y) dated 31 December 2005; and a letter from a supporter dated 13 January 2006.

Key issues

Health and welfare

6. DIMA advised (July 2006) that Mr X had participated in some recreational and educational opportunities and that he had not presented with any significant medical issues. He was placed on Suicide and Self Harm (SASH) watch for seven days following his transfer to Red One compound after he was implicated in a fire and disturbance on 12 November 2005.

7. During the interview (4 August 2006) with Ombudsman staff, Mr X stated that he has headaches quite often and feels weak; he said he sees a psychologist regularly for counselling but he does not believe in taking any medication and concentrates on his Falun Gong practice to stay healthy. He also stated in his letter to the Ombudsman's office '*sometimes I want suicide*'. Mr X advised on 8 September 2006 that he was mentally unstable and sometimes felt dizzy; he said he has an abnormal thyroid reading and further tests are yet to be conducted.
8. The PSS report stated that Mr X presented with a '*labile mood, periods of anxiety and depression, sleep and somatic complaints and a sense of hopelessness*'. The IHMS report noted that '*The main source of his anxiety was his immigration process and this at times caused him anger and frustration ... Clearly, his anxiety would be reduced if his visa application process is resolved*'. The report also indicated that although medication had been prescribed for Mr X's anxiety and other symptoms, he is at times non compliant in taking it.

Attitude to removal

9. Mr X stated to Ombudsman staff that his DIMA case officer had given him contact details from the internet and suggested he should try and seek asylum in Taiwan; Mr X said that this was very inappropriate behaviour of DIMA staff to do this as he would like to stay in Australia as he '*likes the culture and people*'. He reiterated that he fears being sent back to the PRC due to his Falun Gong practices and anti-communist party political views. In Mr X's letter to the Minister (August 2006), he stated that his qualifications and skills as a marine engineer would be sought after, if he were allowed to remain in Australia.

Other detention issues

10. Mr X in his letter to the Ombudsman's office stated that he leads the Falun Gong practitioners at Baxter IDF and promotes the relevant books, particularly *Zhuan Falun*. He also claims that he assists with interpreting for other PRC detainees at Baxter IDF.
11. In a translated letter (December 2005) Mr X's wife claimed that she lost her job in China for more than one year due to her husband's anti-government activities and published articles and that their daughter was unable to go to school during this time. Mr X in his letter (August 2006) indicated that his wife had managed to secure new employment however, during the conversation on 8 September 2006, Mr X said that his wife had been dismissed after only 2 weeks in the job, due to government pressure. Mr X claimed that his wife asked for a divorce on 19 July 2006 and he agreed.

Ombudsman assessment/recommendation

12. In Report 39/06, the Ombudsman recommended that the Minister consider granting Mr X an appropriate visa, such as a Removal Pending Bridging Visa (RPBV) while the issues concerning his immigration status and removal from Australia are resolved. The Minister, in her response to the Ombudsman's tabled report, stated that she had declined to intervene under s 417 and had not allowed a further protection visa application under s 48B of the Act. The Minister also stated that she was not inclined to grant a RPBV at that time, but stated this option would be kept under ongoing review.
13. The length and continuing nature of Mr X's detention continues to be a matter of concern. Mr X has now been continuously detained for over three and a half years, largely as a result of his unsuccessful pursuit of a protection visa. Mr X's most recent FMC application was dismissed in August 2006. The only outstanding matter in resolving Mr X's immigration status is the combined s 417/s 48B request with the Minister. The Ombudsman **recommends** that the Minister make a decision on Mr X's combined s 417/s 48B application as soon as possible and in any case not later than the statutory

period prescribed in s 486P of the Migration Act for tabling this report in Parliament (viz, within 15 sitting days of receiving this report).

14. There are a number of possible outcomes of the Minister's consideration of Mr X's application. If any of those outcomes were to result in Mr X remaining in immigration detention for a further lengthy period, the Ombudsman again **recommends** that Mr X be considered for the grant of a RPBV to enable his release from detention while his immigration status is resolved or his removal from Australia is arranged. The risk that his physical and mental health will deteriorate is likely to increase with continued detention, especially when there is no end date in sight. The PSS report indicates anxiety and depression and notes that Mr X is likely to continue presenting with increasing anxiety and somatic complaints.



.....
Dr Vivienne Thom
A/g Commonwealth and Immigration Ombudsman

7 November 2006

.....
Date