

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN
Under s 486O of the Migration Act 1958

Personal identifier: 019/05

Principal facts

Personal details:

1. Mr X is a male aged 45. He is a citizen of the People's Republic of China (China). Mr X advised Ombudsman staff that he has three uncles living in the Australian community.

Detention history:

2. Mr X arrived in Australia in January 2000 as the holder of a short-stay tourism visa, which ceased in February 2000. In September 2002, he was located working illegally and detained under s 189(1) of the *Migration Act 1958* (the Act) as an unlawful non-citizen at Villawood Immigration Detention Centre (Villawood IDC). He was transferred to the Baxter Immigration Detention Facility (Baxter IDF) in March 2005 and, following a fortnight in a hospital, was returned to Villawood IDC in September 2005. In December 2005, Mr X was removed from Australia.

Visa applications:

3. DIMIA advised that Mr X had not applied for any class of visa nor had he sought any form of Ministerial intervention during his time in Australia. DIMIA also advised that a submission to the Minister in respect of her intervention powers was sent in September 2005 and, in October 2005, the Minister decided not to intervene.

Current immigration status:

4. Mr X was removed from Australia on 14 December 2005.

Removal details:

5. DIMIA advised that in July 2005, a travel document application was lodged with the Chinese Embassy and, in November 2005, passport photos were provided to the Chinese Consulate in Canberra in an endeavour to obtain travel documents for Mr X. Mr X was removed from Australia on 14 December 2005.

Ombudsman consideration

6. The DIMIA report to the Ombudsman under s 486N of the Act was dated 30 August 2005.
7. Other documents considered by the Ombudsman were an International Health and Medical Service (IHMS) summary of 12 September 2005, a Professional Support Services (PSS) summary of 13 September 2005; and a Discharge Summary from Dr Y (psychiatrist) undated (circa 13 September 2005).
8. Mr X was interviewed by Ombudsman staff at the Villawood IDC on 14 October 2005, with an interpreter.

Key issues

Health and Welfare

9. IHMS report that during his time in detention, Mr X suffered from depression, high blood pressure and neck pain.
10. DIMIA advised that Mr X had a history of self harm and voluntary starvation and had been placed under Suicide and Self Harm (SASH) observation a number of times, the first being 6 July 2005, and he remained under close supervision to the date of his removal. Mr X was detained under the *Mental Health Act* on two occasions and admitted to hospital. Mr X was assessed by a psychiatrist in August 2005 and voluntarily admitted to a hospital for assessment and treatment due to his suicidal ideation and voluntary starvation. Dr Y diagnosed Mr X with an adjustment disorder with depressive mood. Dr Y further reported that Mr X showed some improvement during his time in the hospital and recommended that: *'It is likely that in the future Mr X will relapse if he remains in detention. It is recommended that his Visa application be expedited.'*
11. The PSS report of 13 September 2005 says that Mr X was on a high level of observations regarding his suicide and self harm risk but, *'he is not amenable, at present, to any psychological interventions that may aim to improve his current mental state.'* The report also says that, *'Mr X's state is linked with his ongoing detention situation and, as such, if this environment continues, his current presentation and risk will most likely continue.'*

Attitude to removal


12. At the interview with Ombudsman staff, Mr X said that initially he wished to return to China; DIMIA confirmed that he was cooperating with efforts to effect this outcome. DIMIA advised that, subsequently, he stopped cooperating with efforts to arrange for his to return to China. The PSS report noted, *'he has requested to go back to China but this has not yet occurred. This has caused him some difficulty in adjusting to the detention environment...'*
13. Mr X told Ombudsman staff at his interview that he did not want to return to China and he would like to stay in Australia. Mr X said that the *'turn around'* in his attitude to removal to China had followed the delay in processing his travel applications, the need to complete a number of applications, the rejection of his initial application for travel approval by the Chinese authorities, his concern with his health issues and China's human rights issues.

Detention Issues

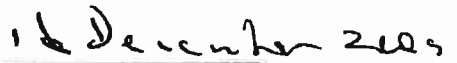
14. Mr X claimed during the interview with Ombudsman staff that a mistake was made with his name and, as a consequence, he was given the wrong medication. Mr X attributes this erroneous medication as the cause of his hypertension. DIMIA advised that, while there was an occasion on record where Mr X's name was incorrect which was amended at the time, there was no indication that Mr X was given incorrect medication.
15. Mr X complained that, when first detained, he was not given the opportunity to get his clothing and personal effects and was unable to change his clothes for the first 4 days of his detention. Ombudsman staff put this allegation to DIMIA who advised that at the time Mr X was detected working illegally he was, with the assistance of an interpreter, given the opportunity to pack any personal belongings from the room in the restaurant where it was believed he was residing – which he refused – and that Mr X did not give any other address to DIMIA. Regarding Mr X's second issue, DIMIA also advised that normal procedures allow for a detainee to request clothing from property or welfare officers at the Villawood IDC.

Ombudsman assessment/recommendation

16. Mr X was removed from Australia as this report was being completed and, therefore, any recommendation made with respect to the appropriateness of his detention arrangements is now obsolete. Nevertheless, Mr X's case raises a concern about the removal process that is worth noting in this report, in particular the length of time taken to process his removal.
17. Mr X did not lodge an application for a visa and without such an application, his claims to remain in Australia could not be assessed. Although Mr X provided various reasons for wishing to remain in Australia, no information was provided to suggest that Mr X was persecuted in the past or would be at risk personally should he be returned to China.
18. Mr X was initially co-operative and was willing to return to China. Following his detention in September 2002, there seemed to be little action until February 2003 when Mr X said he was asked by DIMIA to complete an application for travel form for submission to the Chinese authorities. This application was lodged on 29 August 2003. While DIMIA advised it had contacted the Chinese Consulate on a number of occasions, there seemed to be little progress in securing Mr X's removal until May 2005 when he was interviewed and positively identified by a Chinese delegation. It was not until July 2005 that a new travel document application was lodged with the Chinese Consulate.
19. The Ombudsman notes that Mr X had shown symptoms of deterioration in his health associated with his long-term detention. A quick resolution of Mr X's detention, with a prompt return to China as he had wished, would have been the preferable course of action, which did not occur. The medical evidence suggests that the two main areas of concern were hypertension and his mental state. The IHMS report advised that the management of Mr X's hypertension involved regular checking and medication. There is no evidence that this would not be manageable in China. The Ombudsman was assured that all detainees are assessed to be medically fit to travel prior to removal and that this assessment takes place about 48 hours prior to removal.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date