

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 022/06

Principal facts

Personal details

1. Mr X is a male aged 41. He is a citizen of the Peoples Republic of China. His wife and son live in China and he is in contact with them by phone. He advised Ombudsman staff that his name is actually Mr Y, although he acknowledges that he has applied for a visa in the name of Mr X. In this report, he will be referred to as Mr X.

Detention history

2. Mr X arrived in Australia in 1996 as the holder of a Business Short Stay visa. Mr X was detected by DIMIA Compliance officers in August 2003 working illegally in a factory and was taken into detention at Villawood IDC.

Visa applications

3. Mr X applied for a protection visa (PV) in November 1996 and the Department (DIMIA) refused his application in April 1997. His appeal to the Refugee Review Tribunal (RRT) was dismissed in April 1998. He applied for a favourable exercise of the Minister's discretion under s 417 (May 1998) but DIMIA deemed that request inappropriate to continue (September 1998). Mr X sought review of the RRT decision in the Federal Magistrates Court in March 2005 and his application was dismissed on 31 August 2005. A s 417 application was lodged with the Minister on 2 December 2005 and remains outstanding.

Current immigration status

4. Mr X is being detained as an unlawful non-citizen.

Removal details

5. DIMIA reports that staff have seen Mr X on a monthly basis to discuss removal and other issues. In October 2004, the Department sent the Chinese Consulate a request for a travel document.

Ombudsman consideration

6. The DIMIA report to the Ombudsman under s 486N of the Migration Act was received 18 August 2005 (dated 10 August).
7. Ombudsman staff interviewed Mr X at Villawood on 13 September 2005, with an interpreter and received his written submission on 1 December 2005.
8. Ombudsman staff spoke to the Dermatology Clinic at Liverpool Health Service on 19 October 2005, at Mr X's request.
9. The Ombudsman received medical reports from a doctor dated 25 October 2005 and the International Health and Medical Service (IHMS) dated 21 October 2005.

Key issues

Health and welfare

10. The IHMS report of 21 October 2005 reports that Mr X has psoriasis and thrombocytopenia, an autoimmune condition, which results in a low platelet count.
11. Mr X reported that he had psoriasis prior to detention and it worsened significantly after he had been detained for around six months. He describes the spots getting thicker and spreading over his whole body. He says that he has difficulty sleeping because of the itching and takes sleeping tablets. A doctor's report of 25 October 2005 confirms that Mr X's psoriasis is widespread and covers greater than 30% of his body. The doctor's report says that the tablets prescribed to Mr X cause dry lips, peeling of the hands and feet, and muscle weakness. Mr X said that he also experienced side effects of split lips and liver problems.
12. Mr X attributes his worsening psoriasis to his unhappiness in detention. He writes '*Under the pressure of mental problem, my physical healthy getting worth (sic) day by day*'. The doctor notes that there has not been sufficient research to establish a link but states, '*I suspect the stress of being in a detention centre may have contributed to Mr X's severe psoriasis*'.
13. Mr X says that he saw a specialist dermatologist at Liverpool Health Service. He says that he continues to have relapses and the condition is worse each time. He feels that the Department is not treating his illness seriously. The doctor's report says that Mr X has seen a dermatologist nine times in 2004/05. He notes, '*The course of psoriasis is unpredictable. When Mr X was last seen in our clinic he was relatively well-controlled but this may easily change again. I would expect that he will have ongoing problems as psoriasis is a chronic recurrent condition*'.

Attitude to removal

14. Mr X said that he fears returning to China, because he fears being bashed by the authorities and imprisoned.
15. The Department's report says that Mr X has said that he refuses to return to China until his skin condition is cured. Ombudsman staff discussed removal with Mr X. He confirmed that he would like his condition to be fixed; however, he said he would cooperate with removal if he were released from detention on a Removal Pending Bridging Visa (RPBV).
16. Mr X says that he has community support if released from detention.

Detention arrangements

17. Given that Mr X has been detained at Villawood since 2003, it is appropriate to discuss his detention experience. Mr X said that he had a mixed experience of GSL guards and that some had been good and others had been racially prejudiced. He says that he has had difficulty getting to see visitors sometimes. He claims that he initially had to wait two months for medical attention.

Ombudsman assessment/recommendation

18. It is important to consider why Mr X has been in detention for more than two years. He was taken into detention in August 2003. From August 2003 until March 2005 there was no litigation on foot that prevented Mr X's removal from Australia. DIMIA notes that Mr X was reluctant to cooperate with removal attempts, but gives no other explanation for its failure to remove him during this period. DIMIA did not send the Chinese Consulate a request for a travel

document until October 2004. The only litigation that would have prevented Mr X's removal was commenced in the Federal Magistrates Court in March 2005, and was dismissed in late August 2005. In hindsight it is regrettable that Mr X has spent such a long period in detention, perhaps unnecessarily. There may have been a risk that he would abscond if granted a visa in Australia while removal action was being planned, but this issue could have been given greater attention by DIMIA in its management of Mr X. The Ombudsman draws attention to this issue because of its continuing relevance to Mr X, but also because of its relevance more generally to immigration detention policy and practice.

19. The medical evidence is that Mr X has psoriasis, which is periodically severe, and an autoimmune condition that is not currently serious. Mr X's psoriasis causes him a degree of discomfort, including itching, sleeplessness, and unpleasant side effects from medication. The doctor says that the stress of detention may have contributed to Mr X's condition, while Mr X draws a clear link between detention and his skin condition.
20. Mr X has already spent a lengthy period in detention; an explanation and justification for the length of the detention has not been provided. The DIMIA application to the Chinese Consulate for travel documents is yet to be determined. Furthermore, Mr X's medical conditions are causing him some discomfort within the detention environment. There is no evidence to suggest that Mr X is considered a threat to the Australian community if he were to be released from immigration detention. The Ombudsman **recommends** that the Minister consider granting Mr X an RPBV (subject to conditions that DIMIA deem necessary to ensure that Mr X does not abscond) while the issues concerning his immigration status and removal from Australia are resolved.
21. The Ombudsman further **recommends** that the Minister make a decision on Mr X's s 417 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 the report).



Prof. John McMillan
Commonwealth and Immigration Ombudsman

5 January 2006

Date