

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

*Under s 486O of the Migration Act 1958*

Personal identifier: 034/06

## **Principal facts**

### *Personal details*

1. Mr X is a single male aged 26. He is a citizen of the People's Republic of China (PRC).

### *Detention history*

2. Mr X was identified as a visa overstayer by the Department (DIMIA) on 23 April 2003, and detained pursuant to s 189(1) of the *Migration Act 1958*. He was placed in Villawood Immigration Detention Centre (Villawood IDC), and later transferred to Baxter Immigration Detention Facility (Baxter IDF) in March 2005.

### *Visa applications*

3. Mr X arrived in Australia in August 1998 on a one-month visitor visa; he did not leave when it expired. In October 2005, the Minister refused to exercise her detention intervention powers in this case. Mr X lodged an application for a Protection Visa (PV) in November 2005, which was refused by DIMIA in December 2005. An appeal to the Refugee Review Tribunal (RRT) remains outstanding.

### *Current immigration status*

4. Mr X is currently detained in Baxter IDF, as an unlawful non-citizen.

### *Removal details*

5. DIMIA advises that Mr X has been uncooperative with removal efforts. In May 2005, a delegation of PRC Consular officials positively identified Mr X as a PRC citizen. In July 2005, DIMIA lodged a travel document application on Mr X's behalf with the PRC Consulate. Despite several follow up inquiries, no travel document has been received to date. Removal action is currently on hold pending the finalisation of Mr X's RRT appeal.

## **Ombudsman consideration**

6. The DIMIA report to the Ombudsman under s 486N was dated 20 September 2005 (received 29 September 2005).
7. Ombudsman staff interviewed Mr X at Baxter IDF on 8 November 2005, with the assistance of an interpreter.

## **Key issues**

### *Health and welfare*

8. In its report, DIMIA noted that in September 2005 Mr X raised sleeping problems with a departmental officer. The officer advised Mr X to seek medical assistance, including consulting a counsellor/psychologist.
9. During his interview with Ombudsman staff, Mr X was asked how he thought his mental health was going. He replied '*not very well*', and said that he has not been sleeping very well. He advised that while he is aware that he can talk to a counsellor, he has not done so. Mr X further mentioned that he works in Baxter IDF to keep himself occupied, as '*if you cannot work, then you just sit there all day, and do nothing, then it's no good*'.
10. Mr X mentioned that he was visited by some Church people when he was in Villawood IDC, and they send him Chinese newspapers from time to time since his transfer to Baxter IDF.

*Attitude to removal*

11. Mr X advised Ombudsman staff that he does not wish to return to the PRC. He stated that his parents had '*kicked him out*', and he can't stay with his uncle in the PRC. He believes his employment prospects are limited as he has two missing fingers. He said that when the PRC Consular officials visited him in May 2005, they told him that as he did not tell them anything, there would be a '*serious outcome*'.
12. Mr X also advised that he commenced practising Falun Gong during his time in Australia, and believes he will suffer persecution if he is returned to the PRC. Mr X had not lodged a PV application until 21 November 2005, and so had not earlier raised that he was a Falun Gong practitioner. Nor did he tell the Chinese authorities when he met them in May 2005.

*Other detention issues*

13. Mr X also makes a number of comments about his time in detention. These are included in this report for the sake of completeness, and so that DIMIA and the detention service provider are aware of them.
14. Mr X advises that the main problem is the food – there is not enough of it, and if you are late to the room, you miss out. He also commented that the Chinese detainees are not able to eat some of the food that is served. He is aware that complaints have been raised before with the guards about these concerns.

**Ombudsman assessment/recommendation**

15. Mr X has been in immigration detention for over two years. As a result of his outstanding RRT appeal, Mr X is currently ineligible for removal from Australia.
16. Apart from Mr X's recent attempts to seek protection, there had been no immigration matters that should have prevented an earlier removal. Following Mr X's detention in April 2003, the first action documented by DIMIA is the PRC Consular officials' visit in May 2005. Furthermore, despite the positive identification by the PRC Consulate, it was not until July 2005 that a travel document application was lodged by DIMIA with the PRC Consulate. It is not clear as to when DIMIA will receive Mr X's travel documents and, therefore, it is unknown when Mr X is likely to be removed. 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 its relevance more generally to immigration detention policy and practice.
17. Mr X has advised that he has recently started to experience sleeping problems, something that may be associated with his long-term detention, although there is no medical evidence that confirms that Mr X's health is deteriorating.
18. The Minister considered Mr X's case in October 2005 and decided not to exercise her detention intervention powers. Nevertheless, the length and continuing nature of Mr X's detention continues to be a matter of concern. Considering Mr X's recent appeal to the RRT and the impact this has on his removal, the Ombudsman **recommends** that the Minister grant Mr X a Removal Pending Bridging Visa, with appropriate reporting and surety provisions if necessary, while the issues concerning his immigration status and removal from Australia are resolved.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date