

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 035/06

Principal facts

Personal details

1. Mr X is a 64-year-old male. He is a citizen of the People's Republic of China (PRC). His wife and two adult children reside in the PRC.

Detention history

2. Mr X was detained on 20 August 2002, under s 189(1) of the *Migration Act 1958*, and placed in Villawood Immigration Detention Centre (Villawood IDC).

Visa applications

3. Arrived in Australia on a short stay visitor visa (February 2000); Protection Visa (PV) refused by the Department (DIMIA) (March 2000); refusal decision affirmed by the Refugee Review Tribunal (RRT) (November 2001); bridging visa (BV) expired (December 2001); BVs refused (December 2001 and August 2002); second BV refusal decision affirmed by the Migration Review Tribunal (MRT) (September 2002); s 417 request deemed inappropriate to consider (May 2002); s 48B request denied (October 2005).

Current immigration status

4. Mr X is currently detained in Villawood IDC as an unlawful non-citizen.

Removal details

5. DIMIA advises that Mr X has refused to depart Australia voluntarily and that he has consistently refused to complete travel document applications and bio data forms. In May 2005, a delegation of PRC Consular officials positively identified Mr X as a PRC citizen. In October 2005, DIMIA forwarded a request for a travel document for Mr X to the PRC Consulate.

Ombudsman consideration

6. The DIMIA report to the Ombudsman under s 486N was dated 28 September 2005 (received 6 October 2005).
7. Ombudsman staff interviewed Mr X at Villawood IDC on 3 November 2005, with the aid of an interpreter.

Key issues

Health and welfare

8. DIMIA advises that it is not aware of Mr X having any significant health issues. During his interview with Ombudsman staff, Mr X advised that his eyesight has worsened during his time in detention, in that he experiences double vision. He has been prescribed eye drops, but feels that this is only a short-term solution. He said that both his legs are sore. When he raised this issue with the doctor, the doctor replied that it was not a big problem and that it was probably his muscles, as he has not been using them much.
9. Mr X further stated, *'It's so hard to pass the time here, not to say a few years, but even a few months would be hard to pass. I can't bear the conditions here ... Even a healthy*

person once locked in here for a few years, everything [in] his body would deteriorate. You look at the ceiling and you know nothing about the outside world. There is nothing you can do inside here.'

Mr X's Claim for a Protection Visa

10. Much of the interview between Ombudsman staff and Mr X at Villawood IDC dealt with the details of his application for a PV. Mr X advised Ombudsman staff that his former migration agent had not correctly raised his reasons for seeking protection. Mr X claimed that he is a Falun Gong practitioner and that he left the PRC as he feared persecution as a result of it. In his PV application, however, Mr X had based his claims on alleged persecution because his parents were land owners and targeted after the Cultural Revolution; and that he had two children which was against the PRC's one child policy. Mr X advised Ombudsman staff that he commenced practising Falun Gong in the PRC as a result of his health problems (runny nose, bleeding in the stomach, skin allergies). He advised that he has continued practising Falun Gong in Australia, and in detention, as it has improved his health.
11. Mr X did not appear before the RRT. No Falun Gong claims were mentioned in the MRT decision record on his BV application appeal. The MRT stated, *'The Tribunal asked the visa applicant why he had not departed Australia when his last visa had expired. The visa applicant stated that he found Australia to be a good place that was helpful in the treatment of his medical conditions.'*
12. During his interview with Ombudsman staff, Mr X stated that he had raised Falun Gong in his initial DIMIA interview. He also claimed that he advised PRC Consular officials, during their visit to the detention centre, of his Falun Gong faith. Mr X reported that the PRC Consular officials told him that he would certainly be gaoled on his return to the PRC, as he needs to be re-educated about the Falun Gong.

Attitude to removal

13. Mr X has expressed a fervent desire not to return to the PRC at this point in time, as he believes he would suffer persecution and be gaoled upon his return, even more so because of the PRC Consular official's statement. He stated to Ombudsman staff, *'I miss my home very much, I got a wife, I got children back in China, I really miss my home, but if I go back to China, I would certainly be persecuted. If China does not persecute Falun Gong, then I would be more than happy to go back to China as that is where my home is. But now, I just can't go back. Why do I put myself in such a situation? The culture difference is so great so what's the point in coming to Australia if not for the persecution. China is still persecuting the Falun Gong, whenever they pick up any Falun Gong practitioner, they would put them in gaol, so I have to run.'*
14. Mr X advised that he would only voluntarily return to the PRC if the Chinese Ambassador provided a letter of assurance that he would not be persecuted on the basis of his faith.

Detention issues

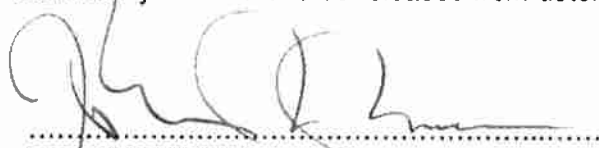
15. Since Mr X is presently in detention at Villawood IDC, it is proper to record the comments he made in his interview with Ombudsman staff about the conditions in Villawood IDC in this report. These issues have not been put to DIMIA or to GSL, but are included in this report for the sake of completeness and so that DIMIA can consider them.
16. Mr X claimed that the detention service provider serves too much curry and that the cooks don't wash the meat properly before they cook it. He advised that the detainees may have raised these concerns before with the detention centre guards, but feels that it is generally useless to complain as nothing is ever done in response. Mr X gave as one example, a petition that was lodged by a group of Chinese detainees requesting that the

detention centre serve Chinese food. The detention centre guard's response was to 'take [the food] or leave it'.

17. Mr X also raised concerns about the access to medical services; he advised that he had to wait a week for his eye drops.

Ombudsman assessment/recommendation

18. The Ombudsman is not inclined to make any recommendations in respect of Mr X's claims for protection. They have been considered and rejected by the appropriate bodies. It appears that Mr X may not have raised claims with any Australian authority about being a Falun Gong practitioner prior to his interview with Ombudsman staff (although the Ombudsman has not sighted any evidence in relation to Mr X's claim that he raised Falun Gong in his initial DIMIA interview). The Ombudsman notes that Mr X has had ample opportunity to pursue Falun Gong claims with the appropriate authorities and has failed to do so.
19. Mr X has further advised that during the recent visit by PRC Consular officials in May 2005, they informed him that he would be imprisoned upon his return to the PRC because of his practice of Falun Gong. It is the Ombudsman's understanding that the interview with PRC officials was (possibly) taped and a DIMIA officer may have been present at these interviews. The Ombudsman suggests that, prior to any removal action, DIMIA consider these assertions and the evidence available with a view to determining whether Mr X's fears are well founded and what impact this may have on arrangements for his return to the PRC.
20. Mr X has been in immigration detention for over three years and it is regrettable that his detention has continued for such a long period of time. While DIMIA's comments are noted regarding Mr X's lack of co-operation, there appears to have been little action by DIMIA in negotiating Mr X's removal with the PRC government from the commencement of his detention in August 2002 until the PRC Consular officials' visit in May 2005. Mr X's attempts to obtain legal status since his detention (a BV application in August 2002 and a s 48B request between June-October 2005) would not have impacted substantially on DIMIA's removal efforts. More troubling perhaps is that, even though DIMIA received confirmation of Mr X's nationality in May 2005, a travel document application was not lodged with the PRC Consulate until October 2005. 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.
21. It is possible that arrangements for Mr X's removal to the PRC may soon be finalised. If there is any further delay in effecting Mr X's removal, the Ombudsman **recommends** that it would be appropriate for the Minister to consider granting Mr X a Removal Pending Bridging Visa, with appropriate reporting and surety provisions if considered necessary. There is no evidence to suggest that Mr X would be considered a threat to the Australian community if he were to be released from detention.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman

16 January 2006
Date