

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 042/06

Principal facts

Personal details

1. Mr X is a male, aged 53, and a citizen of the People's Republic of China (PRC). His wife and 23-year-old son are believed to be residing in the PRC, though Mr X did not have any contact with them during his time in Australia.

Detention history

2. Mr X was detained on 14 October 2003 by the Department (DIMIA), pursuant to s 189(1) of the *Migration Act 1958*. He was placed in Villawood Immigration Detention Centre (IDC) from that time, to the date of his removal on 23 January 2006.

Visa applications

3. Arrived in Australia on a tourist visa (April 2001), which expired in May 2001; Protection Visa (PV) refused (May 2001); refusal decision affirmed by the Refugee Review Tribunal (RRT) (June 2002); s 417 request denied (January 2003); two week Bridging Visa E (BVE) granted (March 2003) on the proviso that Mr X depart Australia within that time, which he did not do.

Current immigration status

4. Mr X was removed from Australia on 23 January 2006.

Removal details

5. DIMIA advises that during his time in detention, Mr X was uncooperative with efforts to remove him, in that he did not voluntarily complete a travel document application. In January 2005, DIMIA lodged a travel document application on Mr X's behalf with the PRC Consulate. In May 2005, he was positively identified by a delegation of PRC Consular officials.

Ombudsman consideration

6. The DIMIA report to the Ombudsman under s 486N was dated 7 October 2005 (received 14 October 2005).
7. Ombudsman staff interviewed Mr X at Villawood IDC on 3 November 2005, with an interpreter.

Key issues

Health and Welfare

8. DIMIA does not report Mr X having had any medical issues. Mr X confirmed this during his interview with Ombudsman staff.

Attitude to removal

9. During his interview, Mr X advised that he did not wish to return to the PRC at this time and would only willingly do so when the practice of Falun Gong is legalised. He claimed to have been a Falun Gong practitioner in the PRC and to have worked for an organisation that supported the Falun Gong movement. Mr X further stated that he

believed he would be gaoled if returned to the PRC and alleged that the PRC's Public Security Bureau had attempted to arrest him prior to his departure from the PRC. Mr X advised that he had not continued to practice Falun Gong in Australia.

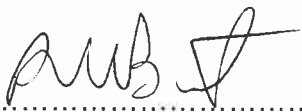
10. Mr X's application for a PV was unsuccessful; it was refused by DIMIA and the decision affirmed by the RRT. The RRT noted in its decision that, despite its invitation for him to do so, Mr X did not appear at the nominated hearing time to provide further evidence. When asked by Ombudsman staff about this, Mr X claimed that he was not aware of the appeal and therefore, the hearing. Mr X indicated a number of concerns about his migration agent.

Detention issues

11. Mr X did not raise any concerns about the detention centre environment. He expressed a desire to remain in detention instead of being released into the community, as he feared that any potential visa given to him would just expire, saying that, *'I may get caught again by an Immigration official and they can quickly send me back to China'*.

Ombudsman assessment/recommendation

12. The Ombudsman notes Mr X's claims that he did not attend his RRT hearing because of failures by his migration agent. These are matters that might have been the subject of a complaint to the Migration Agents Registration Authority (MARA) but Mr X appears not to have raised his concerns with MARA or anyone else until he spoke with Ombudsman staff at interview. The Ombudsman notes that even if Mr X had pursued such a complaint, it is possible that it would not have provided any different outcome for Mr X in relation to his PV claims.
13. Mr X had been in immigration detention for over two years. At the time of his removal, he had no outstanding immigration matters that should have prevented DIMIA from actioning his removal to the PRC.
14. Given Mr X's failure to comply with the conditions of his BVE in March 2003, the Ombudsman provides no comment on the decision to detain him. Nevertheless, from the information presented, there did not appear to have been any immigration matter that should have prevented an earlier removal of Mr X. Mr X's attempts to obtain a PV were made prior to his detention in October 2003. In hindsight, it appears that Mr X has spent longer in detention than necessary. Whilst the Ombudsman notes Mr X's refusal to complete a travel document application that would have resulted in an easy and earlier removal, DIMIA's first advised communication with the PRC Consulate was not until January 2005. By that time, Mr X had been detained for approximately 15 months. The Ombudsman draws attention to this issue because of its general relevance to immigration detention policy and practice.



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R I Brent
Acting Commonwealth and Immigration Ombudsman

..... 25 January 2006
Date