

## REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 044/06*

### **Principal facts**

#### *Personal details*

1. Ms X is a 35-year-old woman born in the Democratic People's Republic of Korea (North Korea), but moved to the People's Republic of China (PRC) with her family as a teenager. Ms X is also known by the names, Ms W and Ms Y. Ms X's ten-year-old daughter lives with Ms X's parents in the PRC. In August 2002, Ms X's de facto husband, Mr Z, was killed in Sydney.

#### *Detention history*

2. In September 2002, Ms X was identified as an unlawful non-citizen by the Department (DIMA), detained under s 189(1) of the *Migration Act 1958* and placed in Villawood Immigration Detention Centre (IDC). She was released from detention in March 2003 and granted a Criminal Justice Stay Visa (CJSV) to allow her to provide evidence at the trial of her husband's alleged killer. She was re-detained by DIMA in March 2004 (four months after her CJSV expired) and returned to Villawood IDC.

#### *Visa applications*

3. Entered Australia on an electronic travel authority visitor visa using a false South Korean passport (April 2002); visa expired (July 2002); granted a CJSV (February 2003); CJSV expired (November 2003). Ms X did not lodge any substantive visa applications or requests to the Minister during her time in Australia.

#### *Current immigration status*

4. Ms X was removed to the PRC on 3 February 2006.

#### *Removal details*

5. DIMA reports that Ms X was uncooperative with efforts to remove her from Australia, refusing to complete a travel document application or provide identification. Ms X was positively identified as a PRC citizen in May 2005, after being interviewed by PRC Consular officials. DIMA lodged a travel document application on Ms X's behalf shortly thereafter. Ms X informed DIMA that she was not prepared to voluntarily depart Australia until her application to the NSW Victims Compensation Tribunal was finalised.

### **Ombudsman consideration**

6. The DIMA report to the Ombudsman under s 486N is dated 21 December 2005.
7. Ombudsman staff interviewed Ms X via telephone on 30 January 2006, with the assistance of an interpreter.
8. Ombudsman staff sighted medical summary reports from Professional Support Services (PSS), dated 3 January 2006, and International Health and Medical Services (IHMS), dated 4 January 2006.

**Key issues**

*Health and welfare*

- 9. PSS advises that Ms X accessed their services in September 2005 after she was informed that Mr Z's belongings were available for collection. It notes that she was provided with supportive counselling, but did not present with any depressive symptoms.
- 10. IHMS reports that Ms X has complained of several ailments during her time in detention, including: pelvic and abdominal pain, epigastric discomfort and back and joint pain. Ms X accessed external specialist medical services on a regular basis and her medical problems were addressed with medication and physiotherapy.
- 11. At interview, Ms X advised that she suffers from insomnia, which causes her severe headaches. She claimed that her medication is ineffective. She also reported feeling anxious because of the uncertainty about her future. When asked for her view on the quality of health services received, she said she is '*looked after quite well*'.

*Attitude to removal*

- 12. At the time of her interview with Ombudsman staff, Ms X advised that she would cooperate with her removal if DIMA organised to return her to the PRC (instead of North Korea) and arranged for PRC identity information to be issued to her. This information was passed to DIMA following the interview with Ms X.

*Victim's compensation*

- 13. DIMA advises that proceedings before the Victims Compensation Tribunal wound up in November 2005 and a large sum of money was despatched to Mr Z's family in the PRC by Ms X's solicitor. Ms X informed Ombudsman staff that as this matter is completed, she is prepared to cooperate with her removal.

**Ombudsman assessment/recommendation**

- 14. Ms X was held in detention for a cumulative period of two years and four months (consisting of two separate periods: six months and 22 months). Since her arrival in Australia, Ms X has not lodged any substantive visa applications. Indications are that her removal could have been effected as early as March 2004 (her re-detention), however it appears that DIMA allowed Ms X to explore victims compensation, which resulted in a successful grant in November 2005. In the circumstances, the delay in her removal appears appropriate.



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R I Brent  
Acting Commonwealth and Immigration Ombudsman

6 February  
2006

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Date