

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 045/06

Principal facts

Personal details

1. Mr X is a male aged 42 from the People's Republic of China (PRC). He is divorced from his wife, and his 17-year-old son resides in the PRC with Mr X's parents.

Detention history

2. Mr X arrived in Australia on a short stay business visa in August 1996. In January 1997, he was granted a bridging visa (BV) in connection with his Protection Visa (PV) application (expired November 1998). In October 2002, the NSW Police referred Mr X to the Department (DIMA). He was identified as an unlawful non-citizen, detained under s 189(1) of the *Migration Act 1958* and placed in Villawood Immigration Detention Centre (Villawood IDC).

Visa applications

3. PV refused (January 1997); refusal affirmed by the Refugee Review Tribunal (October 1998); associated BV expired (November 1998); appeal (May 2005) to the Federal Magistrates Court (FMC) disallowed (November 2005); nine requests under s 417 and five requests under s 48B denied (between June 2003 and October 2005); Minister declined to exercise her detention intervention powers (October 2005); DIMA conducting substantive assessment of May 2005 s 48B request (decision pending).

Current immigration status

4. Mr X is currently detained in Villawood IDC.

Removal details

5. DIMA advises that Mr X has been uncooperative in the removal process, refusing to complete any travel documents or bio data documents and refusing to return voluntarily. In November 2004, DIMA lodged a travel document application on Mr X's behalf with the PRC Consulate. In May 2005, a delegation of PRC Consular officials positively identified Mr X as a PRC citizen. DIMA advises that removal arrangements have been stayed pending the finalisation of his s 48B request.

Ombudsman consideration

6. The DIMA report to the Ombudsman under s 486N is dated 23 September 2005. The six-monthly report under s 486N was received on 18 January 2006.
7. Ombudsman staff interviewed Mr X at Villawood IDC on 14 October 2005, with an interpreter.
8. Ombudsman staff have sighted a psychology summary report from Professional Support Services (PSS), dated 28 October 2005, and documents from Mr X's solicitor relating to his FMC appeal.

Key issues

Health and welfare

9. DIMA states that in February 2005, Mr X was involved in a two-day voluntary starvation action with a large number of detainees. PSS reports Mr X has accessed its services on

four occasions between February and July 2005. During his later sessions he presented with depressive symptoms and sleeping problems. DIMA notes that Mr X was placed on suicide and self harm watch between November 2005 and January 2006, after he cut his wrists with a razor blade.

10. During his interview with Ombudsman staff, Mr X advised that his health is generally good. He mentioned that he had gastric problems, but these were 'fixed' by the February hunger strike. He stated that everyone is generally 'mentally sick' in detention, but he sings to feel better.

Religion

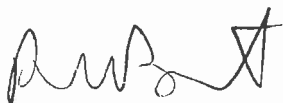
11. Mr X informed Ombudsman staff that he became interested in Christianity while residing in the PRC, after learning about the religion from his uncle. He was introduced to a church in Australia in May 2001, and baptised in April 2002. Mr X's solicitor advises that Mr X's church friends have offered to support and accommodate him should he be released from detention.

Attitude to removal

12. Mr X advised that he is apprehensive about returning to the PRC, as he fears the PRC Government will have a negative reaction to his new religion. Mr X claims that the PRC Government imprisoned his uncle because of his Christian beliefs, and mentioned that he passed away while in prison.

Ombudsman assessment/recommendation

13. Mr X has been in immigration detention for over three years and there does not appear to be any immediate prospect of his removal from Australia. Actions to progress his removal have been hampered by Mr X's numerous s 48B and s 417 requests to the Minister (removal action suspended on each occasion), then by his request for judicial review of the RRT decision in May 2005. DIMA reports that it has again suspended removal action pending the outcome of his s 48B request (made in May 2005).
14. DIMA lodged a request for a travel document with the PRC Consulate in November 2004 and although the PRC positively identified him as a PRC national in May 2005, no travel document has been issued.
15. The Ombudsman **recommends** that the Minister make a decision on Mr X's s 48B application as soon as possible, and in any case, not later than the statutory period prescribed in s 486P for the tabling of this report in Parliament (viz, within 15 sitting days of receiving the report). As there is a risk that Mr X's health will deteriorate with continued detention, especially when there is no certainty in his removal date, the Ombudsman further **recommends** that the Minister consider granting Mr X an appropriate visa, such as a Removal Pending Bridging Visa, with reporting mechanisms to reduce any risk of absconding, while the issues concerning his immigration status and removal from Australia are resolved. There is no evidence that Mr X poses any risk to the community and it is noted that there have been offers made to support him in the community.



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R I Brent
Acting Commonwealth and Immigration Ombudsman

6 February 2006
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Date