

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 048/06

Principal facts

Personal details

1. Ms X is a 48 year old woman from the People's Republic of China (PRC). Her parents continue to reside in the PRC.

Detention history

2. In January 2003, Departmental (DIMA) officers identified Ms X as an unlawful non-citizen and took her into immigration detention under s 189(1) of the *Migration Act 1958*. She was placed in Villawood Immigration Detention Centre (Villawood IDC).

Visa applications

3. Arrived in Australia on a student entry permit (November 1988); Temporary Entry Permit granted (March 1991, expiring December 1999); Protection Visa (PV) refused (June 2005); refusal decision affirmed by the Refugee Review Tribunal (RRT) (November 2005). Application seeking judicial review of the RRT's decision to the Federal Magistrates Court (FMC) lodged (November 2005). This matter remains outstanding; a substantive hearing is set down for April 2006.

Current immigration status

4. Ms X is currently detained in Villawood IDC.

Removal details

5. DIMA advises that Ms X has been uncooperative with efforts to remove her from Australia and has refused to complete a travel document application. In November 2004, DIMA lodged a travel document application with the PRC Consulate on Ms X's behalf. In May 2005, PRC Consular officials positively identified Ms X as a PRC citizen. DIMA advised that Ms X is not available for removal while her litigation is outstanding.

Ombudsman consideration

6. Two reports from DIMA to the Ombudsman under s 486N dated 30 September 2005 and the six-monthly report dated 4 January 2006.
7. Ombudsman staff interviewed Ms X by telephone on 16 December 2005, with the assistance of an interpreter.

Key issues

Health and welfare

8. DIMA advises that it is not aware of Ms X having any significant health issues. It states that she received treatment for minor medical issues in December 2004.
9. During her interview with Ombudsman staff, Ms X advised that she has low blood pressure and recently experienced a dizzy spell, which caused blurry vision. She advised that she consulted a nurse and was told to keep drinking hot water. She also stated that she is under a lot of emotional stress and does not think she is emotionally stable. She feels sad, finds herself crying at times, and finds it hard to breathe. Ms X advised that she spoke to a psychiatrist approximately two months ago, but despite assurances that they would return, she has not seen them since.

Attitude to removal

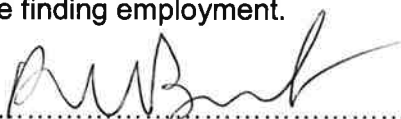
10. Ms X advised Ombudsman staff that she believes she will suffer persecution if she is returned to the PRC, because of her support for the democracy movement and participation in demonstrations outside the Chinese Embassy in Australia in 1989. Ms X said that she has converted to Christianity in May 2005, and feels that she will be 'targeted' in the PRC because of her new religion.

Other detention issues

11. Ms X informed Ombudsman staff that PRC Consular officials visited her in May 2005 asking her to sign a travel document application and return to the PRC. She told them that she did not want to return to the PRC because she was scared, having been in Australia for such a long time, and feared persecution. Ms X said they commented, 'Even if you don't sign, we have all your evidence and your details ... we know what you have done in Australia.' She claims she was forced to attend the interview that lasted more than 1 ½ hours, and was not allowed to leave until the Consular officials gave her permission. Ms X said that after seeing these people, she felt scared and decided to lodge a PV application.
12. Ms X advised that detention service provider officers search her room once a month and give her a full body pat down (conducted by a female officer). She commented that 'they touch me all over, even touching my breasts'. Ms X expressed concern over this practice stating that the physical contact is inappropriate and unnecessary.

Ombudsman assessment/recommendation

13. Ms X has resided in Australia since November 1988. Her lawful status expired in December 1999 when her temporary entry visa expired. She claims that she did not approach DIMA to renew her visa as her passport had been stolen. Ms X only recently applied for a PV and currently has an appeal before the FMC.
14. There is no immediate prospect of Ms X's removal from Australia and therefore it is relevant to consider if Ms X should remain in detention while her outstanding litigation is resolved, and if unsuccessful, then while DIMA arranges her removal. Ms X has been in detention for three years.
15. It is regrettable that Ms X may have spent a longer period in detention than was necessary. It appears that little action was taken for Ms X's removal from Australia from the date of her detention in January 2003 until November 2004 when DIMA approached the PRC Consulate for a travel document. Ms X did not have any active visa applications, matters in litigation or requests before the Minister over this period. The Ombudsman draws attention to this issue because of its continuing relevance to Ms X, and more generally to immigration detention policy and practice.
16. The Ombudsman **recommends** that the Minister consider granting Ms X a Removal Pending Bridging Visa, with appropriate reporting mechanisms to reduce any risk of absconding, while the issues concerning her immigration status and removal from Australia are resolved. There is no evidence that Ms X constitutes a risk to the community and she has indicated that members of her church will assist her with accommodation if released from detention and she does not think she will have any trouble finding employment.


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R I Brent
Acting Commonwealth and Immigration Ombudsman


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Date