

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 062/06

Principal facts

Personal details

1. Mr X is a 46-year-old male citizen of Taiwan. He lives in the community in Sydney with his de-facto wife (Ms Y) and five children. He stated that his wife is pregnant.

Detention history

2. Mr X and his family overstayed on a tourist visa. On 17 October 2003, he came to the attention of NSW police and was referred to Departmental (DIMA) compliance officers. He was detained on the same date, under s 189(1) of the *Migration Act 1958*, at Villawood Immigration Detention Centre (IDC). His wife and four eldest children were detained on 3 November 2003. Their youngest child was born in detention.

Visa applications

3. Mr X arrived in Australia on 15 November 2002 on a tourist visa. His tourist visa ceased on 15 February 2003. Mr X's protection visa (PV) application, naming his wife and the elder four children was refused (November 2003); refusal affirmed by the Refugee Review Tribunal (RRT) (February 2004); application for judicial review dismissed by Federal Magistrates Court (FMC) (September 2004); appeal to the Federal Court (FC) dismissed (October 2004).
4. Mr X's youngest child, Ms Z's PV application (June 2005) was refused (July 2005); refusal affirmed by the RRT (September 2005).
5. On 5 December 2005 the Department initiated a submission to the Minister regarding the possible grant of a Removal Pending Bridging Visa (RPBV).

Current immigration status

6. Mr X and his family have resided in the community on a residence determination (RD) since 28 July 2005, supported by the Australian Red Cross.

Removal details

7. The Department advised that Mr X and his family are not cooperating with Departmental officers or Taiwanese officials to effect their removal. The Department advised that it is seeking the issue of travel documents from Taiwanese authorities and this will take some time.

Ombudsman consideration

8. The DIMA report to the Ombudsman under s 486N dated 30 September 2005 was received on 14 October 2005.
9. Ombudsman staff interviewed Mr X and his wife, Ms Y, in Sydney on 21 February 2006 with a Mandarin interpreter.
10. A report by a clinical psychologist from Professional Support Services (PSS) dated 13 October 2005; an International Health and Medical Services (IHMS) response to an information request from DIMA, by a doctor dated 17 October 2005; an IHMS, Report for Commonwealth Ombudsman, by a doctor dated 13 March 2006.
11. A report by a clinical psychologist from an external agency dated 22 August 2005.

Key Issues

Health and welfare

12. From the available evidence, Mr X appears to have a serious mental illness, a psychotic disorder, either a form of schizophrenia or a paranoid delusional disorder. This illness appears to be affecting his judgement in areas related to his delusional thinking. From his own account, Mr X has been labelled with a mental illness since age 18 or 19. He states that he was hospitalised involuntarily in Taiwan for three to six months at age 25. He believes that the Taiwanese Government is persecuting him, both by labelling him as mentally ill and (he believes) by preventing the publication of two books that he wrote, which were critical of western medicine. He also believes that his rooms were bugged in Taiwan, that he was under surveillance and that people had stolen and profited from his ideas.
13. The PSS psychologist provides a diagnosis of Delusional Disorder, stating *'Mr X did have a reduced capacity to make well-informed decisions, such as issues relating to medical concerns and legal representation'*. DIMA report that *'Mr X presents as being both delusional and paranoid, particularly in regards to government departments'*.
14. The RRT noted that *'the combination of what he says has happened to him in the past and his general demeanour at the hearing suggests that he may suffer some form of mental illness'*.
15. The Australian Red Cross obtained Mr X's agreement to have a psychological assessment. A Mandarin-speaking clinical psychologist from an external agency assessed Mr X. In a report dated 22 August 2005, the assessing psychologist stated his opinion, *'Mr X might have been suffering from a chronic schizophrenia form of paranoid delusional psychosis. He showed that he experienced moderate anxiety and depression. Pharmaceutical treatment might be beneficial to his condition'*. The Red Cross reported that Mr X refused to be referred to a psychiatrist and refused medication. The assessing psychologist also recommended *'once, when the diagnosis is confirmed, counselling support to the children might be useful to minimize the impact of his illness onto them'*.
16. The Department confirmed that there is no record of Mr X being assessed by a psychiatrist whilst in detention or during the period of his residence determination. There is no mention of Mr X's mental health problems in the brief IHMS reports.
17. Mr X was cooperative at interview with Ombudsman staff. He demonstrated partial insight, in that he was aware that other people thought he was mentally ill and he recognised that *'my mental health was under pressure'* prior to leaving Taiwan. He denied any mental illness. He said that when hospitalised in Taiwan he was diagnosed with schizophrenia. His beliefs included that *'over the last 20 years I was sabotaged by Taiwanese'*, his accommodation was bugged and his phone was tapped, the state interfered with the publication of his books and, when he was dead, he would be recognised as a great writer and *'earn a place in history'*. He said he was pursuing a repeat CT Scan and a second neurological consult that would show some damage to his body and would prove he had been persecuted. He expressed the belief that DIMA and medical staff were covering up the truth about his CT scans. When asked, Mr X reported experiencing no persecutory ideas or phenomena related to his current residence in Sydney.
18. The Red Cross has developed an effective relationship with Mr X and family and report that he is settled and able to cope.

Attitude to removal

19. At interview Mr X stated that he would not cooperate with removal until DIMA cooperated with him and assisted him to prove (by CT Scan) that the Taiwanese government had damaged his physical health and persecuted him. Mr X does not wish

to return to Taiwan as he believes that he was and will again be persecuted, if he returns. He said he loved being in Australia.

Other detention issues


20. Mr X has benefited from the change from an immigration detention facility to a RD. The release from a detention centre and support available seem to have reduced the prominence and distressing nature of his delusions. His older children are in school; he reports that he has good access to housing, food and medical care for his family. He did not report boredom despite no-longer writing or working.
21. The Red Cross reported that other former detainee families have remarked about how well Mr X appears now, and how much improved he is from the agitated and distressed man they were used to seeing when they were residing in the detention centre together.

Ombudsman assessment/recommendation

22. Mr X and his family remain in immigration detention, although living in the community under a RD, under the care of the Australian Red Cross.
23. The Department has concluded that Mr X and his family do not have valid claims to remain in Australia and that decision has been affirmed by the RRT. The lawyer acting for Mr X wrote to the Department on 13 November 2003 and asked the Department to arrange a formal psychological assessment before proceeding with his PV application. The Ombudsman is not aware of what, if any, consideration was given to this request, but the RRT reports that a psychological assessment was not carried out. On 19 November 2003, the delegate for the Department decided to refuse the protection visa. The RRT hearing went ahead as the Tribunal was satisfied that Mr X was able to understand the nature of the Tribunal proceedings. The Tribunal was not satisfied that any harm done to Mr X in the past, or that he may suffer in the future, amounts to serious harm or that it would be directed at him for one of the reasons in the Refugees Convention. The Ombudsman does not have any information that would lead to a different conclusion.
24. It seems unlikely that Mr X will cooperate in arranging his removal, given his delusional ideas about the Taiwanese state and about his physical health. The Red Cross has a close supportive relationship with Mr X and is concerned that if removal becomes imminent he could react adversely and deteriorate mentally.
25. The Department appears to have little option but to wait for Taiwanese authorities to issue travel documents. Additional complications appear to have arisen with the Taiwanese authorities regarding the registration of his Australian born children and some confusion over paternity of one of Mr X's children. DIMA reports that the issue of travel documents is expected to take some time.
26. As far as the Ombudsman is aware, Mr X has not had an examination by a psychiatrist in Australia. There is evidence to support the assessing psychologist's clinical opinion that Mr X has a chronic form of schizophrenia. Mr X reports that he was hospitalised involuntarily and diagnosed in Taiwan 20 years ago.
27. The PSS psychology report provides a diagnosis of Delusional Disorder and the IHMS medical summary makes no mention of any psychiatric issues. The psychology report examines Mr X's symptoms in the light of his psychiatric difficulties, whereas the IHMS report presents them as wholly physical symptoms. This disparity in assessment may suggest that there is a need for greater coordination between the detention health services in mental health matters.
28. Mr X is reported to have refused a referral to a psychiatrist, and no steps have otherwise been taken by DIMA to arrange for a psychiatric examination. The question now arising is whether an involuntary referral should be considered, in line with the principle of the

right to treatment. This principle can apply where a person has disabling symptoms of mental illness, they have limited insight about their condition, and the benefits arising from involuntary referral could outweigh the risks. The Ombudsman **recommends** that DIMA refer Mr X's case to a psychiatrist and a mental health multi-disciplinary team who may be able to confirm the diagnosis, advise on management issues, and make a professional recommendation on the option of involuntary treatment.

29. If Mr X were to be treated, and he recovered sufficiently, he may be able to cooperate with a return to Taiwan. Alternatively, with effective treatment, he and his family may suffer less distress if they are removed.
30. Being out of a detention facility on a RD, coupled with the high level of support from the Red Cross, appears to have benefited this family. The Ombudsman has not recommended the grant of a RPBV as there is evidence that Mr X may experience difficulty in maintaining adequate employment and his family appear to be well supported under the current arrangements.
31. If removal is to be attempted, the Ombudsman **recommends** that close and regular monitoring of the impact of removal plans upon Mr X's mental health be maintained including ongoing consultation with mental health professionals.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman

24 April 2006
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Date