

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 065/06*

## **Principal facts**

### *Personal details*

1. Mr X is a single male aged 43, and a citizen of the People's Republic of China (PRC). His parents are deceased. The Refugee Review Tribunal's (RRT) notice of decision mentions Mr X as having lived with an uncle between 1967 and 1984. However, his uncle's current whereabouts is unknown. Mr X said that he has no more relatives in China.

### *Detention history*

2. Mr X arrived in Australia in August 1992 by boat. He was detained under s 189(1) of the *Migration Act 1958* and placed in Port Hedland Immigration Reception and Processing Centre. Throughout 1995, Mr X was granted a series of bridging visas (BVs), enabling his release from detention. Mr X became unlawful in the community and in February 2003 he was located and identified by the Department (DIMA) as a visa overstayer and detained in the Villawood Immigration Detention Centre (Villawood IDC) since that time.

### *Visa applications*

3. Mr X's claim for refugee status was refused (September 1992); decision affirmed by the Refugee Status Review Committee (June 1993). The Federal Court (FC) considered an appeal lodged by a group of unlawful detainees, including Mr X, against the refusal decisions. Part of the appeal was dismissed in February 1994, but in May 1994, Mr X's matter was remitted back to the RRT for reconsideration as a claim for a Protection Visa (PV). The RRT affirmed the refusal of the PV (December 1994). Mr X appealed to the FC, and was granted several BVs pending the outcome of this matter. The FC dismissed his appeal (November 1995), and his associated BV expired (December 1995). Mr X lodged a further application for a BV in November 2003, which was refused by DIMA. The Migration Review Tribunal affirmed DIMA's decision.
4. Mr X has lodged two requests under s 417 with the Minister; both were deemed inappropriate to consider (March 1997 and March 2004). DIMA advises that in November 2005 the Minister declined to exercise her detention intervention powers, however, it is noted that a further submission was prepared for the Minister for reconsideration in December 2005. A decision on this submission remains outstanding.

### *Current immigration status*

5. Mr X is currently detained in Villawood IDC.

### *Removal details*

6. DIMA has advised that Mr X has not been co-operative with removal efforts, in that he has not agreed to voluntarily depart Australia. DIMA advises that in August 2003, a travel document application was forwarded to the PRC Consulate on Mr X's behalf. In May 2005, a delegation of PRC Consular officials positively identified Mr X as a PRC citizen. As a result, a further travel document application was lodged with the PRC Consulate by DIMA. DIMA reports that despite the positive identification of Mr X in May 2005, the PRC Consulate has since advised that his identification cannot be established. Mr X was re-interviewed by PRC Consular officials in January 2006.

## Ombudsman consideration

7. The DIMA report to the Ombudsman under s 486N received 19 September 2005 (dated 6 September 2005) and the six monthly report under s 486N which was received 18 January 2006 (dated 10 January 2006).
8. Ombudsman staff interviewed Mr X at Villawood IDC on 14 October 2005.
9. The Ombudsman has sighted medical summary reports from Professional Support Services (PSS), dated 18 November 2005; and International Health and Medical Services (IHMS), dated 21 November 2005; and a number of documents from Mr X and his migration agent.

## Key issues

### *Health and welfare*

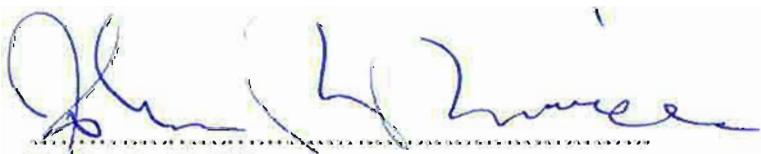
10. DIMA advises that Mr X has suffered from muscle strain, has a history of bronchitis and consults the onsite psychologist on a regular basis.
11. The IHMS report does not list any key medical problems, but notes that Mr X has raised some dental concerns and has exhibited elevated liver function readings. Mr X has declined further investigation into these problems.
12. Although not mentioned in the medical reports, Mr X reports that he has been diagnosed with Hepatitis B, which formed the basis of one of his PV claims. Mr X advised Ombudsman staff that *'Ever since I was in Port Hedland, I had Hepatitis B. I had never received any medical treatment. They took some of the blood to take tests, but nobody ever gave me any medicine. And right now, occasionally, I feel everywhere, I feel pain everywhere, I feel pain – two legs, two arms. Very weak. No point. No energy. The only medicine they gave me was Panadol'*.
13. In his letter to the Ombudsman's office (dated 23 August 2005), Mr X states *'I have been under enormous stress as the result of loss of personal freedom. What makes it particularly unbearable is the fact that I am still in detention up to the present date. I have no idea when I will be able to walk out of the gate of this detention facilities with barbed wires and high security ... The past 2 years have been an exceptionally long period of time for me and I have been under considerable stress. I can hardly imagine how I spend each and every single day during this period of time. I can hardly breathe under such enormous psychological and physiological stress. Enormous damage has been caused to my physical health and my mental health is on the verge of collapse. All I have left for myself is an exhausted body for health. My mind is full of terrible thoughts each night and I can't fall asleep. I am concerned about my case every single minute at the moment'*.
14. The PSS report mentions that Mr X has met with PSS psychologists on a fortnightly basis since December 2004. The report states, *'Mr X presents with depressive symptoms (sleeping difficulties, depressed mood, hopelessness, amotivation, fatigue, suicidal ideation, and poor concentration). He also presents with significant frustration and confusion over his immigration situation. Following the visit by the Chinese delegation in June 2005, Mr X voiced significant concerns that he did not consent to this visit and he felt very scared and fearful if he returns to China, as they were now aware he had applied for a protection visa'. The PSS report goes on to say, 'No formal assessment and diagnosis has been completed, however, Mr X's presentation is consistent with major depression ... Mr X's current detention and immigration situation is the main issue that prevents further improvements in his mental state ... At present, he reports feeling hopeless and helpless to change his situation and the deterioration in mental health is apparent ... The prognosis for a further reduction in depressive symptoms is poor should his situation remain the same'*.

### Attitude to removal

15. Mr X informed Ombudsman staff that he does not wish to return to the PRC, as he feels he would suffer persecution from the PRC Government, and will be imprisoned for his outspoken support of the student democratic movement at Tiananmen Square. Mr X was working in a factory at the time and said he was sacked for his views and this resulted in him fleeing China. He believes that as a result of the PRC Consular officials visit in May 2005, the PRC Government now knows everything about him, including his claim for refugee status. Mr X is also concerned that he would not survive in China, as he has not been there since 1992, he has no relatives to contact, and he has no money.

### Ombudsman assessment/recommendation

16. Mr X has been in immigration detention for a cumulative period of approximately five and a half years (although there was a break of eight years between his periods of detention). While there are no outstanding immigration matters before the courts, with DIMA or the Minister that could defer Mr X's removal from Australia, it is understood that removal cannot occur until a travel document has been obtained. It is noted that DIMA initially lodged a travel document request with the PRC Consulate in August 2003 without success and it is continuing to liaise with the PRC authorities regarding confirmation of Mr X's identity and the issue of a travel document. It appears that the PRC Consulate has withdrawn its earlier positive identification of Mr X. Therefore, it is unlikely that a travel document will be obtained for Mr X in the near future.
17. Medical evidence considered by the Ombudsman states that Mr X has demonstrated a number of symptoms associated with Major Depression. It is possible that Mr X's health will further deteriorate while he remains in detention. The inability to confirm Mr X's identity as a PRC citizen and the subsequent lack of travel documents mean that there is no certainty in the date of his removal. Continued indefinite detention is not desirable and yet there is no end in sight. This gives rise to the need for further consideration of Mr X's detention arrangements. The Minister was provided with a submission in December 2005 for consideration of her detention intervention powers, which remains outstanding. The issue of current concern in Mr X's case is whether he should remain in detention while DIMA awaits advice from the Chinese Consulate about his citizenship and removal to the PRC. Accordingly, the Ombudsman **recommends** that the Minister make a decision on the DIMA submission for her intervention powers 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). If it is not already part of the DIMA submission, the Minister should consider whether to grant 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.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date