

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 074 /06*

This is the third s 486O report by the Ombudsman on Ms X as she has remained in immigration detention since the Ombudsman's combined first and second report (048/06). The Ombudsman's report was sent to the Minister on 6/2/06 and tabled in Parliament on 29/3/06. This report updates the material in that report and should be read in conjunction with it.

## Principal facts

### *Visa applications*

1. Ms X discontinued her application in the Federal Magistrates Court (10 April 2006) for judicial review of a Refugee Review Tribunal decision that affirmed the Department's (DIMA) refusal of her Protection Visa application.
2. DIMA advises that a submission was sent to the Minister's office on 21 March 2006 for the possible consideration of her detention intervention powers. On 24 July 2006 the Minister began considering a Removal Pending Bridging Visa (RPBV) for Ms X, subject to security and health checks.
3. A request by Ms X under s 417 of the *Migration Act 1958* for the Minister to exercise her discretion was made on 23 March 2006. DIMA advises that a first stage s 417 submission was sent to the Minister on 15 August 2006.
4. On 18 July 2006, a s 48B assessment for Ms X commenced; not allowed (10 August).
5. Ms X applied for a Bridging Visa E on 23 August 2006, refused (1 September 2006). Ms X sought review of that decision by the Migration Review Tribunal (MRT) on 4 September 2006. No outcome is known.

### *Current immigration status*

6. Ms X remains in detention at Villawood Immigration Detention Centre. She has been in detention since January 2003.
7. The DIMA 486N report dated 6 July 2006 notes an error in the 486N report of 30 September 2005. DIMA advises that Ms X's temporary entry permit expired in June 1994, not December 1999 as previously stated. As a result, this error was replicated in the Ombudsman's report 048/06. This means that before being detained Ms X was unlawful in Australia for eight and a half years, not four years.
8. At interview with Ombudsman staff Ms X advised that her case officer had asked her to fill out forms because Ms X was being considered for a Bridging Visa (BV), subject to security and health checks.

### *Removal details*

9. DIMA reports that Ms X has now been positively identified. Any removal action will be dependent on the outcome of the outstanding MRT hearing, and the current requests and submissions to the Minister.

## Ombudsman consideration

10. A further report from DIMA to the Ombudsman under s 486N, dated 6 July 2006.
11. Correspondence addressed to the Minister and forwarded to the Ombudsman from Mr Y, a supporter of Ms X, in relation to her conversion to Christianity whilst in detention.

12. Ms X was interviewed by phone by Ombudsman staff with the assistance of a Cantonese-speaking interpreter on 16 August 2006.

## **Key issues**

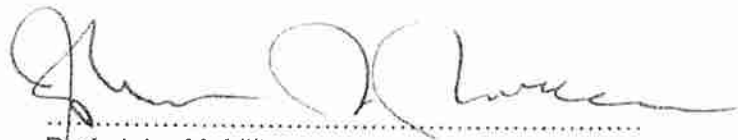
### *Health and welfare*

13. The DIMA report advised that Ms X has been suffering indigestion, and that she was transferred to hospital on one occasion for oesophageal reflux. Ms X said at interview with Ombudsman staff that her health was *'quite good'*.
14. The DIMA report also noted that Ms X was one of a group of women interviewed by DIMA in relation to allegations of sexual harassment. This matter has been the subject of an independent investigation and has been referred to the New South Wales Police and the Australian Federal Police.

## **Ombudsman assessment/recommendation**

15. The Ombudsman's earlier report on Ms X recommended that the Minister consider granting Ms X a RPBV, while the issues concerning her immigration status and removal from Australia are resolved. This recommendation took account of the length of time spent by Ms X in detention, that there was no immediate prospect of her removal from Australia, there was an apparent lack of action by DIMA between January 2003 and November to resolve her case, and she did not appear to pose a risk to the community. The Minister, in tabling the Ombudsman's report, noted that she was not inclined to grant a RPBV at that time, but would keep that option under ongoing review.
16. Ms X's case does not seem to be any closer to resolution. She remains in detention; there are currently a number of submissions or applications before the Minister for decision; there is a fresh application made by her in the MRT for review of a decision to refuse a BV; and there does not appear to be any plan in place for her to be issued with travel documents to be removed to the PRC.
17. A contributing factor to the delay in resolving Ms X's case is that she was one of a number of people in detention who were interviewed by officials from the PRC in May 2005. In the course of other assessments, the Ombudsman has recommended that DIMA investigate the issues surrounding the visit of the PRC officials and satisfy itself that the individuals interviewed were not exposed to a risk of persecution. DIMA is continuing with this review and the Ombudsman is aware that the Minister has 'lifted the bar' in a number of cases, providing individuals with the opportunity to apply afresh for protection. The DIMA submission to the Minister indicated that Ms X is one of a group of individuals whose claims appear to be weaker than others, *'but where we cannot give you assurances that protection issues may not have been raised'*. Ms X's case appears to be complicated by the fact that her interview tape was blank. DIMA is continuing to prepare assessments for the Minister on those cases.
18. The Ombudsman **recommends** that the decisions on Ms X's s 417 application and the assessment in relation to the visit by the PRC officials be progressed without delay 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 the Minister receiving this report).
19. Ms X has been in detention for over three and a half years and, as noted above, it is possible that she could remain in detention for a further indefinite period while the current processes are being finalised. The Ombudsman **recommends**, in similar terms to the recommendation in Report 048/06, that the Minister consider granting Ms X a BV, with work rights and 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 members of her church have indicated that they will assist her with accommodation if

released from detention. Ms X does not consider that she would have any trouble finding employment.

  
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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

24 September 2006  
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Date