

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 77/06

This is the third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined first and second report (058/06). The Ombudsman's report was sent to the Minister on 5/4/06 and tabled in Parliament on 20/6/06. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. Mr X (and his partner, Ms X) are the subject of a combined detention intervention and s 417 submission being prepared for the Minister's consideration.

Current immigration status

2. Mr X remains in immigration detention at Villawood Immigration Detention Centre (IDC). He has been in detention since June 2002. It is believed Mr X is a citizen of the Democratic People's Republic of Korea (North Korea), but DIMA has not been able to confirm this.

Removal details

3. Mr X has not been positively identified and removal options are therefore limited.

Ombudsman consideration

4. A DIMA s 486N report dated 7 July 2006.
5. Ombudsman staff interviewed Mr X by phone with the assistance of a Korean-speaking interpreter on 16 August 2006.

Key issues

Health and welfare

6. DIMA reports that Mr X has had no medical issues while in detention and that he continues to attend education classes, religious excursions and other recreational activities.
7. At interview with Ombudsman staff, Mr X stated that his health was good but being in detention for four years was difficult. He commented favourably on the increased access to Korean vegetables for use in the Villawood IDC kitchen.

Attitude to removal

8. Mr X does not wish to be returned to North Korea nor leave Australia.

Ombudsman assessment/recommendation

9. The Ombudsman's earlier report on Mr X recommended that the Minister reconsider an earlier decision declining to grant Mr X a Removal Pending Bridging Visa (RPBV), or another visa with work rights, to enable his timely release from detention whilst his immigration status is determined. That recommendation took account of the length of time spent by Mr X in detention and that he did not appear to pose a risk to the community, and that on his own account he has friends in the community who are willing to assist him with accommodation and employment. The Minister, in tabling the

Ombudsman's report in Parliament, noted that Mr X was assessed by DIMA as not meeting the guidelines for a s 417 request, and sought a full submission on Mr X to enable the Minister to make a decision on his case.

10. A combined detention intervention and s 417 request for Mr X and his partner, Ms X, is currently being prepared for the Minister's possible consideration. The Ombudsman understands that that submission will canvass options for allowing Mr X to be released from detention at Villawood IDC, possibly by the grant of a RPBV or other visa. The Ombudsman **recommends** that the decisions on the combined detention intervention and s 417 request 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).
11. The Ombudsman also wishes to make some observations on the substantive issue of whether Mr X should be released from detention at Villawood IDC. He has now been in detention at Villawood IDC for over four years. It is possible that he could remain in detention for a further indefinite period. His immigration status is unresolved, and there does not appear to be an immediate prospect that it will be resolved or that arrangements can be put in place for him to be removed from Australia. A significant factor contributing to that difficulty is that he is believed to be a citizen of North Korea. Based on those considerations, the Ombudsman **recommends**, in similar terms to the recommendation in Report 058/06, that the Minister consider granting Mr X a RPBV, or other appropriate visa with work rights to enable his timely release from detention whilst his immigration status is determined. If the matters concerning Mr X's nationality and identity cannot be resolved within a reasonable time, consideration should also be given to whether he should be granted a permanent visa to remain in Australia.
12. The Ombudsman draws attention to a further consideration of growing importance in Mr X's case. A DIMA policy statement published in May 2006, *Detention Reforms*, lists the 'Detention Principles' that are the new operating principles for onshore detention arrangements. Principle 1 provides in part that '*Immigration detention ... is not indefinite ... detention*'. Principle 6 provides that '*Clients are detained for the shortest practicable time, especially in centre-based detention*'. Consistently with those Principles, and for the reasons outlined in this report, the Ombudsman's view is that there is a strong case for Mr X to be released from detention at Villawood IDC while his immigration status is resolved.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

20 September 2006
Date