

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

Under s 486O of the Migration Act 1958

Personal identifier: 081/06

Principal facts

Personal details

1. Ms X is a 48 year old citizen of the People's Republic of China (PRC). Her former husband and daughter reside in the PRC.

Detention history

2. Ms X was located illegally working in Sydney by the Department (DIMA) in February 2003. She was detained under s 189(1) of the *Migration Act 1958* and was placed at Villawood Immigration Detention Centre (IDC)

Visa applications

3. Ms X arrived in Australia on a short stay Tourist Visa (TV) (April 2000); TV expired (May 2000); applied for a Protection Visa (PV) and granted associated Bridging Visa (BV); PV claim refused (September 2001); refusal affirmed by the Refugee Review Tribunal (RRT) (October 2002); BV expired (November 2002); applications dismissed by Federal Magistrates Court (September 2004); Full Federal Court (November 2004); and the High Court (April 2005).
4. Eight requests under s 417 initiated and denied (November 2002 – November 2005); a request under 48B initiated (July 2005); BV refused (August and December 2005); s 417 initiated (November 2005); Migration Review Tribunal affirmed the August 2005 decision; two internal submissions sent to the Minister (February and April 2006); submission in regards to PRC delegation visit forwarded to Minister (May 2006); s 48B, s 417 and two internal DIMA submissions currently ongoing.

Current immigration status

5. Ms X is currently an unlawful non-citizen and is detained in Villawood IDC.

Removal details

6. DIMA advised that Ms X was initially cooperative with her removal, completing a travel document application in March 2003. However, she has refused to complete subsequent applications. In November 2004, DIMA lodged a travel document application with the PRC Consulate on Ms X's behalf. PRC Consular officials positively identified Ms X as a PRC citizen in June 2005. DIMA lodged a further travel document application in August 2005 and has advised that this application has been put on hold until all outstanding requests before DIMA are finalised.

Ombudsman consideration

7. Three reports from DIMA to the Ombudsman under s 486N dated 28 September 2005, 5 January 2006 and 7 July 2006.
8. Ms X was interviewed by Ombudsman staff at Villawood IDC on 4 November 2005 with the assistance of an interpreter and in the company of support people, Mr Y and Ms Z. Ms X preferred using Ms Z as her interpreter.
9. Medical summary reports from International Health and Medical Service (IHMS), dated 24 November 2005 and 10 July 2006, and Professional Support Services (PSS), dated 1 December 2005 and 7 July 2006.

Key issues

Health and Welfare

10. DIMA advised that Ms X has a cardiac condition for which she receives medication. She has been hospitalised twice since February 2003, suffering from chest pain and irregular heart beat. IHMS reports Ms X as having a number of medical conditions that are being adequately managed within the detention environment.
11. PSS advised that Ms X met with psychologists on two occasions after the PRC Consulate visit. The PSS report mentions that '*referred to PSS after becoming extremely distressed as the result of a visit by the Chinese delegation ... placed in a holding cell for six hours, where she presented with significant anxiety, distress, anger and frustration*'. Ms X confirmed that she was upset over the PRC Consulate visit in June 2005, reporting that she nearly had a nervous breakdown and found that she couldn't sleep at all.
12. Ms X advised that she is often distressed. She fears returning to the PRC and feels a lot of pressure because of her current placement in detention. She also mentioned that her health problems surfaced (high blood pressure, sleeping and eating problems), or worsened (heart problems) during her time in detention, and that she did not have to take as much medication when she was in the community.
13. During her interview with Ombudsman staff, Ms X displayed some anxiety and breathing problems, especially when talking about her reasons for leaving the PRC. The interview was interrupted several times to provide Ms X with the opportunity to calm down.

Attitude to removal

14. Ms X stated that she does not wish to return to the PRC, as she fears she would suffer persecution from the Chinese Government due to her practice of Falun Gong. Ms X claims that she was arrested and detained by Chinese government officials in 1999 when she lodged an objection against the banning of Falun Gong. She says she escaped with the aid of a friend, but fears for her safety if re-detained by the government. She mentioned that she has no home to return to, as her former husband claimed all the assets after their divorce.
15. [Paragraph removed to protect identity].
16. The circumstances of the interview of PRC nationals by the PRC delegation are being examined following several complaints to the Ombudsman's Office and to the Human Rights and Equal Opportunity Commission.

Other detention issues

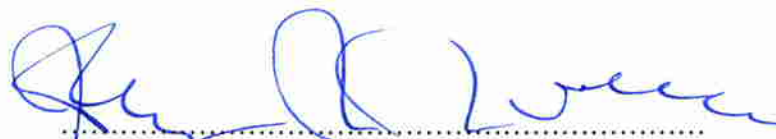
17. Ms X raised a number of concerns about the detention environment, particularly the women's dormitory (Lima). She stated that the detainees in Lima are treated like prisoners, having their rooms searched constantly. She mentioned that her mental stress reduced somewhat when she was transferred to the Stage 2 dormitory, as it is less strict and the detention service provider officers are nicer.

Ombudsman assessment/recommendation

18. Ms X has been in immigration detention for over three and a half years. During that time there were significant periods in which Ms X had no litigation on foot and she was available for removal from Australia. While the Department sought travel documents for Ms X on three occasions, it appears that the main impediment to her removal has been a lack of success in obtaining a valid travel document from the PRC Consulate.
19. A further impediment to removal has been the visit by PRC Consulate officials to a number of detainees in 2005. Ms X is concerned that her interview with the officials from the Chinese Consulate has placed her at risk if she is returned to the PRC. 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. The Ombudsman understands that, as a result of those reviews, Ms X is one of a number of detainees for whom the Minister has decided to lift the s 48A bar and allow Ms X to reapply for protection. A number of other submissions are also being considered in relation to Ms X. It is possible, therefore, that she could remain in detention for a further indefinite period while the current processes are being finalised.

20. The Ombudsman **recommends** 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 she has support from members of her church. In addition, Ms X has a number of medical ailments, including anxiety episodes and palpitations, and it is of concern that her health may further deteriorate the longer she remains in detention.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date