

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 085/06

Principal facts

Personal details

1. Ms X is a female aged 24 from the People's Republic of China (PRC). Her parents, and a brother and sister are believed to be living in the PRC and she claims to have a sister living in the USA. Ms X claims to have qualifications and experience in nursing. Ms X was married in Sydney on 1 July 2006 to an Australian permanent resident.

Detention history

2. Ms X left the PRC on a false PRC passport and arrived in Australia in February 2004 on a Visitor Visa, using a fraudulent Portuguese passport she obtained en route to Malaysia. She was refused immigration clearance and her Visitor Visa was cancelled under s 116(1)(d) of the *Migration Act 1958*. She was subsequently detained under s 189(2) and placed at Villawood Immigration Detention Centre (IDC). Ms X has remained at Villawood IDC since she was detained.

Visa applications

3. Ms X lodged an application for a Protection Visa (PV), refused (March 2004); the RRT affirmed (June 2004); application to the Federal Magistrates Court (FMC) (June 2004) and the matter was remitted to the RRT for reconsideration; the RRT affirmed the original decision (January 2005); applied to the FMC and remitted to the RRT; original decision affirmed (December 2005); application to the FMC (December 2005) dismissed (April 2006); application for a Bridging Visa (BV) deemed invalid on three occasions (March 2004; October 2004 and August 2005); appeal to the Full Federal Court (18 May 2006); notice of discontinuance filed by Ms X withdrawing from proceedings (18 July 2006).
4. Submission for possible consideration by the Minister to exercise her detention intervention powers forwarded to Minister on 2 May 2006. Ms X's solicitor wrote to the Minister on 19 May 2006 requesting intervention. On 12 July 2006, a request under s 417 was initiated on Ms X's behalf seeking favourable exercise of the Minister's humanitarian discretion based, in part, on her marriage to an Australian permanent resident. The request is under initial consideration by DIMA.

Current immigration status

5. Ms X remains detained at Villawood IDC.

Removal details

6. DIMA advised that future removal of Ms X has been stayed pending the outcome of the submission to the Minister and continuing efforts to positively identify Ms X.

Ombudsman consideration

7. DIMA reports to the Ombudsman under s 486N dated 9 March 2006 and 29 August 2006.
8. Ombudsman staff interviewed Ms X on 27 April 2006 with the assistance of an interpreter and in the presence of an advocate.
9. Ombudsman staff examined a psychological assessment report by Ms A (dated 9 December 2005); Professional Support Services (PSS) psychologist's reports (dated 6

April 2006 and 15 September 2006); and an International Health Medical Service (IHMS) report (dated 7 March 2006).

10. Information provided by Ms B (Ms X's Solicitor) and a submission from Mr C (advocate) dated 26 June 2006.

Key issues

Basis for PV application

11. At the RRT hearing in May 2004, Ms X claimed that she fled the PRC because the family planning authorities were forcing her to have an IUD inserted because she was temporarily cohabitating with her boyfriend. She also claimed that she lost her job in a pharmacy because she refused to have the IUD. Ms X claimed that the family planning authorities said that it was illegal for her to be living together with her boyfriend without being married. Ms X decided to leave the PRC so that she would not be harassed further by the Chinese authorities.

Health and welfare

12. DIMA reports that Ms X was placed on suicide and self harm (SASH) watch on 2 December 2005 for six days, on 31 March 2006 for seven days and again on 1 August 2006, which remains current.
13. The psychological assessment report by Ms A (December 2005) found that Ms X was diagnosed with *'chronic Major Depressive Illness and Panic Disorder without Agoraphobia. Additional Post Traumatic Stress Disorder symptomology was noted though not sufficiently severe to warrant a formal diagnosis'*. The report also stated that Ms X had persistent dental problems particularly bleeding gums and toothache and that *'these complaints continue to be untreated despite repeated requests in the last 12 months'*.
14. Ms X reported to Ombudsman staff that she was experiencing a lot of dental and gum pain and that her gums were bleeding quite often. Ombudsman staff contacted DIMA about Ms X's complaint. In June 2006, DIMA advised that Ms X had been receiving treatment since April, that she had seen a specialist and had completed a course of antibiotics and analgesics for a dental abscess.
15. The PSS report (April 2006) stated that Ms X was first seen by PSS on 5 July 2004 and has remained in contact since then, but contact had increased considerably since the middle of 2005. Ms X initially presented with anxiety and sadness but more recently *'with a depressed mood, helplessness, hopelessness, isolation, and withdrawal. Ms X has presented with suicide and self-harm issues and recently committed an act of self-harm'*. The report stated that *'Ms X was prescribed an anti-depressant and her presentation is consistent with diagnosis of major depression'*.
16. DIMA's second s 486N report to the Ombudsman noted *'Since the last report ... she has regular contact with Professional Support Services (PSS) and receives support from the psychiatrist who has prescribed psychotropic medications'* and that she *'continues to receive treatment for her dental and gum complaints, including by a specialist Endodontist'*. The PSS report of 15 September 2006 stated that *'Ms X continues to present depressive and anxiety symptoms. Her current psychological presentation appears to have deteriorated over the past 2 months since her marriage in July 2006'*. It also stated that Ms X has withdrawn from many activities from which she used to derive some pleasure and has a lack of interest in engaging with PSS.
17. The PSS report stated that *'it appears that the detention environment is the main factor affecting the possibility of improvements in her mental health state at present'* and that *'it appears unlikely that Ms X's psychological difficulties could be addressed in an effective*

manner without a change of environment'. DIMA advised (August 2006) that since Ms X's marriage on 1 July 2006, special arrangements had been made to allow her to visit her husband every Saturday at his place of residence, with GSL escorts.

Attitude to removal

18. Ms X stated that she fears going back to the PRC as she feels she would be forced to have an IUD and she could be fined, beaten and/or goaled if she refuses. She also fears that because she left the PRC on a false passport, she would be detained and possibly imprisoned on her return. While in detention, Ms X became a practising Christian (advice indicates that she was baptised in June 2005) and she also fears she would not be able to practise her faith if she returns to the PRC and could be persecuted for her beliefs.

Other detention issues

19. Ms X commented during the interview that she sometimes feels anger towards the detention centre staff for keeping her locked up but she said she understands that it is not their fault.

Issues around identity

20. DIMA has advised that it is continuing to endeavour to positively identify Ms X and that she has been uncooperative in attempts to locate her birth certificate. Ms X stated during the interview with Ombudsman staff that her mother had sent an original birth certificate and graduation certificate to her while at Villawood IDC and that the property section had lost these originals. DIMA advised that a copy of Ms X's original birth certificate was held in the Property unit at Villawood IDC but GSL has since been unable to locate it despite an extensive search. DIMA advised that Ms X's husband is currently contacting Ms X's family in China to obtain an official copy of Ms X's birth certificate to be provided to the Department.

Community support

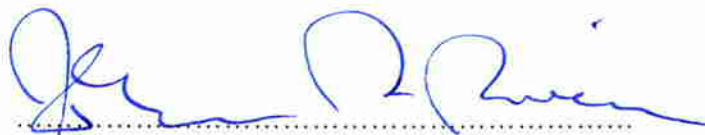
21. Based on submissions to the Ombudsman, Ms X has the support of many people in the community, particularly from the church group to which she and her husband belong.

Ombudsman assessment/recommendation

22. Ms X's claims were heard by the RRT on three occasions, which concluded she was not owed protection from Australia. The Ombudsman has no further comment to make in relation to her claims for a protection visa.
23. The Ombudsman notes that DIMA is continuing to pursue issues around Ms X's identity, including the loss of her original birth certificate. It is unlikely, therefore, that Ms X could be removed from Australia in the foreseeable future. This gives rise to a short term, and a possible long term, issue: whether she should remain in detention at Villawood IDC while issues concerning her immigration status and residence in Australia are resolved; and, if there is no satisfactory resolution of those issues in the near future, whether she should be granted a visa allowing her to remain in Australia.
24. As to the short term issue, the Ombudsman notes the commendable steps taken to provide some flexibility in Ms X's detention arrangements. She and a friend were allowed to leave Villawood IDC to attend Ms X's marriage in the community; and she is permitted to visit her husband at weekends. Nevertheless, it is a worrying circumstance that she has now been in detention for over two and a half years, even though that is a consequence of how she entered Australia and her own unsuccessful attempts to seek a PV. The uncontradicted evidence before the Ombudsman is that there are serious concerns for Ms X's mental health if she were to remain in detention. Three medical professionals have indicated that recovery is better indicated outside the detention environment. The Ombudsman therefore **recommends** that an alternative arrangement

be made for Ms X's residence. In this respect, a residential determination or a suitable visa, enabling her to live with her husband, would appear to be appropriate. There is no indication that Ms X is considered a threat to the community if she were to be released into the care of her husband and, from available medical evidence, this would assist her mental health recovery. Given the support that Ms X has in the community and her marriage to an Australian permanent resident, it is unlikely that Ms X will abscond.

25. The Ombudsman understands the Minister is considering exercising her detention intervention powers and that all relevant information including Ms X's mental health and recent marriage is before the Minister. The Ombudsman **recommends** that the Minister make a decision on Ms X's s 417 request and other submissions as soon as possible, and in any case not later than the statutory period prescribed in s 486P of the Migration Act for tabling this report in Parliament (viz, within 15 sitting days of receiving the report).
26. If Ms X is released into the community, it is clear from the recent medical evidence that she will be in need of psychiatric assistance. The Ombudsman suggests that DIMA consider what ongoing support it may need to provide to Ms X.
27. A longer term issue will arise if Ms X's identity cannot be resolved in a manner that facilitates her removal (voluntary or otherwise) from Australia. Although, in one sense, this is an issue that will squarely arise at a later stage, it is not an issue that can be altogether ignored at this stage. The issue of Ms X's identity has been unresolved for some time. The evidence suggests that her mental health has deteriorated in the last two and a half years. She has married an Australian permanent resident during that period, and also has considerable community support. It is safe to assume that she would be better able to recover her mental health if she were to remain with her husband in the community. In the Ombudsman's view, it is appropriate for the Department and Minister to take heed of those considerations at this stage, and in considering Ms X's short term arrangements, consider also the longer term issue of whether she should be allowed to remain in Australia.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date