

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 107/06

Principal facts

Personal details

1. Ms X is a 36 year old married woman from the People's Republic of China (PRC). Miss Y is Ms X's 4 year old Australian born daughter. Ms X said her two other children reside in China, one with her mother and the other with a friend. Miss Y's father is also from the PRC, and is believed by DIMA to be an unlawful non-citizen in Australia.

Detention history

2. The Department (DIMA) located Ms X in July 2001, working illegally in a bakery. She was detained pursuant to s 189(1) of the *Migration Act 1958*, and transferred to Villawood Immigration Detention Facility (Villawood IDF). She was released from detention on a Bridging Visa E (BVE) in July 2001, on the basis of paying a bond and agreeing to reporting conditions. Ms X failed to abide by the reporting conditions, absconded, and her BVE was cancelled on 29 July 2001.
3. Ms X was located and detained by DIMA compliance officers in March 2002, and again transferred to Villawood IDF. Ms X's daughter, Miss Y, was born one month later. Both Ms X and Miss Y were placed in the Baxter Immigration Detention Facility (Baxter IDF) in July 2004, and moved to the Port Augusta Residential Housing Project three days later. In July 2005, the Minister signed a residence determination (RD) for Ms X and her daughter and placed them in community detention coordinated by the Australian Red Cross.

Visa applications

4. Ms X came to Australia on a Short Stay Business Visa (SSBV) (October 2000); applied for a Long Stay Business Visa (LSBV) and an associated Bridging Visa (BV) granted (November 2000); LSBV refused (May 2001); BV ceased (June 2001). After being taken into immigration detention, Ms X was granted a BVE to facilitate her release (July 2001); she absconded, BVE cancelled (July 2001); application for a Protection Visa (PV) (May 2002), refused (June 2002); PV refusal decision affirmed by the Refugee Review Tribunal (RRT) (September 2002); application for judicial review in the Federal Magistrates Court (FMC) (September 2002), dismissed (January 2003); appeal to the Full Federal Court (FFC) (February 2003); dismissed (April 2003).
5. Section 417 request (September 2003), refused (December 2003); two more s 417 requests (May 2004 and May 2005), refused (June 2004 & July 2005); another s 417 request lodged and refused (December 2005); DIMA put a combined s 417 and s 48B submission to the Minister (March 2006); the s 417 request was not considered.
6. As a result of issues relating to a visit by PRC officials in May 2005, the Minister exercised her discretion under s 48B (4 July 2006) to allow Ms X and her daughter to lodge new PV claims (12 July 2006).

Current immigration status

7. Ms X and her daughter are currently detained in the community under RD arrangements.

Removal details

8. DIMA advised that it had been pursuing the removal of Ms X and her daughter, and that they were positively identified as PRC citizens by PRC officials in May 2005. DIMA also reports that

Ms X was uncooperative with removal efforts. Removal options are on hold pending resolution of Ms X's recent PV application.

Ombudsman consideration

9. Three DIMA reports to the Ombudsman under s 486N, for both Ms X and Miss Y, were dated 28 July 2005, 12 January 2006, and 7 July 2006.
10. Ombudsman staff interviewed Ms X on 21 February 2006 in Sydney, with the assistance of an interpreter.
11. Ombudsman staff sighted a number of documents: a letter from Ms X dated 18 March 2006; information advanced by Ms A (in two submissions received on 31 January and 22 February 2006), which included a psychiatric assessment report referred by Ms X's solicitor, Ms C, and prepared by Dr B and Dr D (Sydney Children's Hospital and Prince of Wales Hospital), dated 20 December 2005; an email to Ombudsman staff from Ms X's solicitor, Ms C, dated 28 March 2006; and a confidential report, *'Investigation of the basis for Allegations of Availability of Illicit drugs & Sexual Assault of Female Detainees at Villawood Immigration Detention Facility'*, by Mr M AM, dated 13 June 2006.

Key issues

Health and welfare

12. Ms X stated that her current RD placement was good, the accommodation and food was adequate, but there is little to occupy her days. She expressed some concern over her access to medical services, noting that several doctors had refused service even though she had presented a DIMA letter setting out her circumstances as per instructions from the Red Cross.
13. During her interview with Ombudsman staff, Ms X advised that she has been prescribed antidepressant tablets and medication for her stomach pain. Ms X said that she stopped taking the antidepressant tablets because the medication aggravated her stomach pains. DIMA reports that departmental officers recently encouraged Ms X to discuss psychological counselling with the Australian Red Cross. The medical report prepared by Drs B and D, which was obtained by Ms X's solicitor, referred to two consultations conducted late last year.
14. Ms X's solicitor, Ms C reported to the Ombudsman that *'While Ms X was detained at Villawood [IDF], she was sexually assaulted. She reported this to a nurse. The nurse asked if she wanted to report it to the police. Ms X answered no as she was still afraid of the fellow detainee. The nurse said she couldn't do anything and did not report it to management. So the assaults continued until Ms X was sent to Baxter'*.
15. Drs B and D stated that *'Ms X disclosed that she had been sexually assaulted by a male detainee in VIDC over a period of about six months. She explained that her deep feeling of shame about this had prevented her from disclosing the matter to centre staff at the time when it first happened; however, she stated that she later disclosed it to a DIMA psychologist. The psychologist had asked whether she wished to lay charges against this individual, and reportedly did not pursue the matter further after Ms X stated that she did not wish to lay charges'*.
16. Drs B and D note that *'It is common for victims of sexual assault and abuse to often feel ashamed or guilty about it, and they are unable to admit the occurrence of such events. When a disclosure is made to a health professional, there is a duty of care to ensure that the victims receive appropriate care and counselling; and in this circumstance, also to ensure that the safety of others is not also compromised by the individual concerned. It appears that these steps were not taken in this instance'*.
17. In their Summary of Clinical Findings and Recommendations, Drs B and D say *'Both Ms X and Miss Y have experienced a significant amount of trauma during their confinement in*

immigration detention, especially in VIDC. Most directly traumatic is the six-month period during which Ms X was a victim of ongoing sexual abuse, which has not yet been properly dealt with, on a personal and official level. She appears to be suffering ongoing Depression, and anxiety symptoms as a result of the abuse that are consistent with a picture of Post Traumatic Stress Disorder.

18. In respect to Miss Y, Drs B and D note that *'Miss Y is already exhibiting some difficulties with her ability to socialise with other children, and to regulate her own emotions, which is also often seen in traumatised children. She seems to exhibit Separation Anxiety being away from her mother. She also displayed evidence of disordered attachment to her mother'*. Further, the report notes *'It is noteworthy that Miss Y's statelessness has probably contributed to the difficulties in accessing adequate care and support (including psychosocial, medical and nutritional care) for her, despite Ms X's efforts to do so'*. Ms X advised Drs B and D that since living in the community, her daughter's appetite is better and she smiles more often than before.
19. DIMA advised that Ms X has not made a formal complaint about the alleged sexual assault. In April 2006, DIMA initiated an independent inquiry into allegations of sexual assaults at Villawood IDF, conducted by Mr M AM. Mr M's final report of 13 June 2006 was provided to the Australian Federal Police, and NSW Police on 20 June 2006. The Ombudsman's office has also been provided with a copy. The investigation by Mr M noted that, on more than one occasion *'DIMA officers attempted to verify the veracity of the claim that the alleged victim had raised the allegation with a DIMA psychologist around July 2004'*, but that there was no evidence of the matter being reported *'to the department'*. The report recommended that DIMA refer any information in its possession relating to the alleged assault to the police for review to ascertain whether any police action is warranted. The Ombudsman notes that DIMA does not directly provide nurses or psychologists at detention centres. Further police inquiries may reveal that, while the matter may have not been reported to DIMA, it may have been reported to one of DIMA's detention service providers.

Attitude to removal

20. During her interview with Ombudsman staff, Ms X said that she did not wish to return to the PRC, as she believes that she and her family would suffer persecution from the PRC Government as a result of her breaches of the one child policy.

Other detention issues and Residence Determination

21. Ms X declined to provide any comments about her time in Villawood IDF at interview with Ombudsman staff. However, in her letter to the Ombudsman, Ms X said that at Villawood IDF her daughter was not able to get enough food when she needed food supplements other than breast milk. Ms X provided an example of a detainee cooking special meals for the children, during which time the children's diet was good. However the chef stopped this arrangement and the only nutritional supplements Ms X could get was when kitchen staff would *'give me some fresh eggs under the table'*. When they were shifted to Baxter IDF, the children gained weight and their health improved a lot but the term of detention was longer and there were more arguments between adults and children. Ms X gave examples of how the detention was hard on the children.

Ombudsman assessment/recommendation

Ms X

22. Ms X has been detained for over 4½ years. The psychiatric evidence available to the Ombudsman indicates that Ms X is suffering from depression and anxiety symptoms, consistent with Post Traumatic Stress Disorder as a result of her detention experiences. Although Ms X has indicated that she does not wish to make a formal complaint to the police about the alleged sexual abuse in detention, the medical evidence available to the Ombudsman

indicates that there have been significant emotional and psychological ramifications flowing from her detention. Ms X has been given the opportunity to undertake counselling to assist in resolving psychological issues flowing from her time in a detention centre. DIMA will need to consider what continuing role it plays in providing assistance to Ms X, with respect to her physical and mental health.

23. Ms X and her daughter Miss Y are currently under a RD arrangement and, therefore, are still detained under immigration law. These arrangements allow them to reside in the community with the support of the Red Cross. Ms X has expressed general satisfaction with these arrangements but noted she is not able to work. It may be that the RD, with the support from the Red Cross, is the most suitable arrangement for Ms X at this time.
24. The Ombudsman notes that, following the visit by PRC officials in 2005, the Minister intervened and raised the s 48A bar, on 7 July 2006, allowing Ms X to lodge a fresh application for a PV. Reasons for this included the inappropriate discussions with Ms X regarding her refugee claims and that the delegation did not properly introduce itself and explain the reasons for its visit. The submission also notes that *'Current country information on PRC's coercive family planning laws may strengthen the case'*. The Ombudsman **recommends** that DIMA progress Ms X's PV application 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 receiving the report).
25. There appears to be no immediate prospect of Ms X's removal from Australia. If her PV claim is rejected, it is possible that Ms X may continue to be detained for a lengthy period, particularly if she appeals the decision and seeks judicial review. It is also unclear how long it may take DIMA to obtain a travel document to effect removal.

Miss Y

26. Miss Y was born in detention and she has been detained all her life – over 3 of those years were in an immigration detention facility. The medical evidence available to the Ombudsman is that Miss Y has exhibited Separation Anxiety and disordered attachment to her mother. The DIMA submission to the Minister in relation to the visit by the PRC officials noted that Miss Y *'is likely to experience a degree of discrimination due to her status as a "black child"'* if she were removed to China. In the event that Ms X's PV claim is unsuccessful, the Ombudsman **recommends** that her case be further considered on humanitarian grounds, giving considerable weight to the issues surrounding Miss Y. These include the impact of her prolonged detention and the prospects for her life if she were to be removed to China, particularly at a time when she is likely to start school shortly and has no experiences outside those in Australia.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date

NOTE: At the time of completing this report, DIMA advised the Ombudsman that the Minister had granted both Ms X and Miss Y Class XO 866 Permanent Protection Visas on 5 September 2006. The recommendations made in this report therefore no longer apply. The Ombudsman nonetheless submits this report unchanged, because of the general (and in some respects, continuing) importance of the issues in the report and the discussion.