

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 126/07

Principal facts

Personal details

1. Ms X is aged 45 and a citizen of the People's Republic of China (PRC). She advises that she has a husband and four adult children living in the PRC.

Detention history

2. The Department of Immigration and Citizenship (DIAC) reports that Ms X claimed to have arrived in Australia on 5 January 2002. She was located working illegally and was detained under s 189(1) of the *Migration Act 1958* at Villawood Immigration Detention Facility (IDF) (June 2004). Ms X was transferred to Baxter IDF (November 2004) and to the Port Augusta Residential Housing Centre (PARHC) (March 2006).

Visa applications

3. Ms X lodged an application for a Protection Visa (PV) (January 2005); an associated Bridging Visa (BV) refused (January 2005); PV refused (March 2005); application to the Refugee Review Tribunal (RRT) unsuccessful (September 2005); application for judicial review dismissed by the Federal Court (FC) (March 2006); appeal to the Full Federal Court (FFC) was out of time (April 2006); DIAC advised that it supplied Ms X with forms to make an application for an extension of time to the FFC, but there is no record of her having lodged an application.
4. Ms X made an application under s 417 (February 2006), DIAC deemed it inappropriate to consider (March 2006). DIAC advised that a s 48B request (February 2006) and a second s 417 (March 2006) were included in a first stage submission to the Minister (June 2006), resubmitted with new information (October 2006); combined s 195/197AB submission initiated (July 2006), refused (November 2006); the Minister refused to consider the s 417 application but exercised her discretion under s 48B to allow Ms X to make a new application for a PV (January 2007); s 417 application (January 2007).

Current immigration status

5. Ms X remains in detention at the PARHC.

Removal details

6. DIAC indicates that removal considerations for Ms X were deferred pending the outcome of applications to the Minister.

Ombudsman consideration

7. The DIAC reports to the Ombudsman under s 486N are dated 20 June 2006 and 27 November 2006.
8. Ombudsman staff sighted a number of documents: a s 417 application by Ms A of the Asylum Seeker Resource Centre dated 18 July 2006; a submission to the Ombudsman from Ms X dated 20 July 2006; an International Health and Medical Service (IHMS) report by Dr B dated 4 August 2006; an IHMS report dated 2 October 2006 and IHMS notes from October 2005 to August 2006; a Professional Support Services (PSS) summary report by Mr C dated 5 September 2006; an assessment by Dr D dated 26 May 2006; Mental State Examination Assessments dated August 2005, February 2006 and August 2006; PSS psychologist notes for 31 January 2007; and updates from IHMS dated 7 February 2007.

9. Ombudsman staff interviewed Ms X at the PARHC on 24 August 2006, using a Mandarin interpreter, in the presence of a support person.

Key issues

Identity

10. DIAC advises that it has no record of Ms X's arrival in Australia in January 2002. Although the RRT was unable to make a finding on the circumstances of Ms X's arrival, it noted that *'the delegate found that the applicant has complied with s 172 of the Migration Act and is immigration cleared'* based on Ms X's oral evidence. The RRT attempted to confirm details with Ms X of her departure from the PRC and arrival in Australia but she said she did not remember. The RRT stated that there was no evidence of the applicant's real identity although it accepted that Ms X came from Fujian in the PRC. DIAC advises she has not been interviewed or identified by PRC Embassy officials. It referred Ms X's case to the National Identity Verification and Advice Section (NIVA) in September 2006.
11. Given the ongoing concerns about Ms X's identity it is surprising that her case was not referred to NIVA earlier than September 2006.

Health and welfare


12. Dr B reported that *'Ms X was referred to PSS staff because of low mood in March 2005'*. At various times, the psychiatrist's notes have described her condition as *'major depression'* and *'profound depression'*. Ms X was offered voluntary hospitalisation in November 2005, December 2005, February 2006 and March 2006, which she refused, preferring to continue on medication. Her symptoms include ongoing feelings of hopelessness, difficulty sleeping, a poor memory, a reluctance to socialise, poor appetite, and nightmares. In December 2005, the psychiatrist noted that if medication is ineffective then they *'may need to pursue hospitalisation and possible ECT treatment due to the severity of the depression with melancholic features'*.
13. Dr B indicated that Ms X's depression was *'treated with medication, frequent review by members of the mental health team including the visiting psychiatrist and encouragement to participate in meaningful and pleasurable activities'*. He stated *'this lady has remained depressed despite the measures outlined above'*. Psychologist Mr C states *'Ms X had been compliant with treatment provided, however, her preoccupation with the detention experience has contributed to depression of a type that is difficult to resolve'*. He concludes her condition is *'not likely to improve while in detention'*.
14. The Department reports that Ms X was on Suicide and Self Harm (SASH) watch from 8 October 2005 to 5 January 2006 and 8 to 15 September 2006. On 31 January 2007, a psychologist and mental health nurse saw Ms X following reports of concerns for her health and welfare. It appeared that Ms X was *'severely depressed at present. She is also having difficulty in adjusting to negative news she received from DIMA last week'*. Ms X was admitted to hospital briefly from 2 to 5 February 2007 after being found unconscious. A diagnosis of dehydration and depression was noted. DIAC is continuing to monitor the situation.
15. At interview with Ombudsman staff, Ms X complained of her memory problems, for example not remembering when she was born nor the ages of her children, and said *'my mind is not clear anymore'*. Ms X said she was sleeping poorly and had little appetite. This is consistent with the memory loss she reported to the psychiatrist throughout 2005 and early 2006. Subsequent to the interview, Ombudsman staff reported their concerns about the level of Ms X's distress to DIAC.
16. Dr D reports that DIAC asked him to assess whether Ms X had been tortured. He states *'When asked whether she had been tortured, [she] answered by saying she felt sick, then ended the interview'*. DIAC concludes *'Thus, the department is unable to substantiate the claims brought forth by her agent'*.
17. Ms X is a carrier of Hepatitis B.

Attitude to removal

18. Among other claims, Ms X claimed she was at risk of persecution because she breached the PRC's one child policy. She said the PRC government forced her to fit a contraceptive device and she had to escape from the authorities to avoid a forced abortion. After she had her children, they were refused registration and the family was given a large fine. She claimed she was suffering psychological harm as a result of the different treatment given to her children. The RRT noted that more than 15% of the Fujian population were unregistered workers and found the children's lack of an education and the family's circumstances were largely attributable to poverty.
19. The RRT accepted that Ms X was the member of an unregistered home-based Christian group but held that country information indicated there was a minimal chance she would be harmed as a result of her membership of that group. Since then, however, the DIAC submission to the Minister noted it had received new information regarding the treatment of unregistered religious groups in the PRC. It indicated they *'continue to experience varying degrees of official interference and harassment. At a local level, some authorities continue a selective campaign on unregistered churches ... Failure to register renders a group illegal and subject to closure, fines and criminal sanctions'*.

Ombudsman assessment/recommendation

20. Ms X has been in detention for over two and a half years. The Minister recently exercised his discretion under s 48B to allow Ms X to make a new application for a PV. It could take some time for this application to be finalised, particularly if Ms X is unsuccessful in the first instance and pursues her rights of appeal. Further, given the identity issues in Ms X's case, there does not appear to be any prospect of her removal from Australia in the foreseeable future.
21. The issue for current consideration, therefore, is whether Ms X should remain in immigration detention while her immigration status is resolved. The medical evidence available to the Ombudsman is that Ms X is now considered to be severely depressed, that hospitalisation has been considered on more than one occasion, that she may require ECT therapy, that she has been on SASH watch twice and that her condition is not likely to improve while in detention. The Ombudsman **recommends** that the Minister consider making a Residence Determination or granting a suitable visa to enable Ms X's release from immigration detention while her immigration status is resolved.
22. In the event that Ms X is released from detention, the current medical information indicates that she will require ongoing review by mental health services. It would therefore be appropriate for DIAC to consider what continuing role it should play in providing medical assistance to Ms X.
23. In January 2007, Ms X's advocate told Ombudsman staff that Ms X was asked to sign a paper to assist in her removal. Since then, DIAC has advised that plans to obtain travel documents are on hold while her s 417 application is determined. In the event that Ms X is to be removed the Ombudsman **recommends** that close and regular monitoring of the impact of removal plans upon Ms X's mental health be maintained in consultation with mental health professionals. The Ombudsman further **recommends** that any fitness to travel assessment specifically address the impact of removal on Ms X's mental health and appropriate strategies that may be necessary to ensure Ms X's safety and wellbeing.


.....
Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

16 February 2007
.....
Date