

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 129/07*

## **Principal facts**

### *Personal details*

1. Ms X is aged 77 and is a citizen of the People's Republic of China (PRC). She has no family in the PRC (with the exception of her former husband). Her younger sister resides in Australia.

### *Detention history*

2. In November 2002, the Department of Immigration and Citizenship (DIAC) identified Ms X as an unlawful non-citizen and detained her under s 189(1) of the *Migration Act 1958*. She was placed in Villawood Immigration Detention Facility (IDF). She was granted a Bridging Visa (BV) and released from detention in July 2005.

### *Visa applications*

3. Ms X entered Australia on a temporary entry permit (April 1993); applied for a Protection Visa (PV) (April 1994); granted an associated BV (September 1994); PV application refused (February 1997); refusal affirmed by the Refugee Review Tribunal (RRT) (February 1998).
4. Class action filed in the Federal Court (FC) (April 2000) and High Court (HC) (June 2000); FC proceeding discontinued (June 2000); HC matter discontinued (March 2001); granted a series of BVs during the litigation period (ending April 2001); granted a BV (July 2005).

### *Current immigration status*

5. On 8 December 2005, the Minister exercised her public interest powers and granted Ms X a Global Special Humanitarian Visa (GSHV).

### *Removal details*

6. DIAC advised that it discussed removal to the PRC with Ms X but did not take any formal steps to progress her removal. Throughout her time in detention, Ms X was offered several BVs, however she declined the offers because she (and her sister) could not raise the necessary security and she would not have access to medical treatment.

## **Ombudsman consideration**

7. The DIAC report to the Ombudsman under s 486N was dated 25 October 2005.
8. Ombudsman staff interviewed Ms X via telephone on 21 February 2006 with the assistance of an interpreter.
9. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 8 March 2006.

## **Key issues**

### *Health and welfare*

10. DIAC advised that Ms X suffers from diabetes. The IHMS report noted that Ms X's diabetes was treated by medication, frequent nursing, medical reviews and a special diet.

It also stated that *'as diabetes is a chronic condition that affects a number of body organs, it is likely that review by external specialists will be required on occasion'*. In her interview with Ombudsman staff Ms X said that while some effort was made by kitchen staff to accommodate her dietary requirements, the food often upset her stomach and was *'not tender or cooked enough'*.

11. DIAC advised that Ms X has numerous other health issues and in her interview with Ombudsman staff she confirmed that she suffers from blurred vision, arthritis, osteoporosis and dizziness. While Ms X stated that she experienced all of these conditions prior to her detention (apart from the osteoporosis), she considered that her time in detention, together with the quality of the food she received over that time, exacerbated her poor health. The IHMS report also noted that Ms X received treatment from a podiatrist, and that the joint pain she experienced was treated with medication. DIAC advised that Ms X was also referred to an optometrist for treatment.
12. Ms X claimed that it was often difficult to access a doctor directly, as the nurses carried out the initial medical assessment and referrals to a doctor were at the nurses' discretion. Ms X recalled one incident when she experienced violent diarrhoea and stomach cramps and claims the attending nurse declined to provide her with medication. Ms X states her persistent complaints of severe pain caused the nurse to reconsider her position and allow Ms X to see the doctor.
13. Ms X commented that during her time in detention she was often unhappy, and felt that she would have died *'from her illnesses'*. She also mentioned that she experienced anxiety from not knowing when she would be released but did not discuss these issues with a psychologist or her doctor.

#### *Attitude to removal*

14. Ms X advised Ombudsman staff that she believes her former husband still resides in Hong Kong and she fears that if she is sent back to the PRC he will locate her and *'beat her to death'*.

#### *Other detention issues*

15. Ms X stated that she found it difficult to communicate with DIAC staff while in detention because she does not speak English, and interpreters were not used for all contacts. Sometimes other detainees translated for her, however she commented that she found the detention experience very isolating. She stated that because of her lack of English she missed out on activities, such as the visiting massage therapist, as she could not understand the announcements over the loud speaker.
16. Ms X stated that the IDF staff *'were ferocious ... they often scolded us and I couldn't understand what they said'*.

#### *Issues post release*

17. Ms X stated in her interview with Ombudsman staff that she initially received financial assistance from the Red Cross when she was released on a BV in July 2005. When she was granted a GSHV, these payments were suspended. Ms X stated it took her some time to get assistance from Centrelink although she was eventually back-paid to her application date of February 2006.
18. It is unclear how long a gap there was between Ms X's Red Cross payments ceasing and her Centrelink payments commencing. DIAC's *Procedures Advice Manual 3, Gen Guide D - Humanitarian Visas* provides that a needs assessment should be conducted for recipients of GSH visas to determine whether referrals to Centrelink are needed. If there was a significant time gap, and if Ms X was without financial support as a result, then it may be appropriate for Ms X to apply for compensation under the Government's Compensation for Detriment Caused by Defective Administration (CDDA) scheme. In the

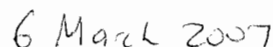
circumstances, considering Ms X's non-English speaking background, it might be appropriate for DIAC to investigate whether Ms X received prompt advice about Centrelink payments and if not, to advise her accordingly.

### **Ombudsman assessment/recommendation**

19. Ms X was held in immigration detention for two and a half years. Over this time, Ms X did not pursue her legal options against adverse decisions regarding her immigration status.
20. DIAC appears to have attempted to release Ms X from detention on a number of occasions by offering her a BV. However, Ms X states that she initially declined these offers because she was unable to raise the required security and felt that she would not have access to essential medical services in the community. It might have been appropriate at these times for DIAC to reconsider the type of visa and the associated conditions it was offering to address Ms X's circumstances, particularly her health needs. A change of approach may have found an earlier solution to Ms X's case. The Ombudsman notes that DIAC arranged for access to Medicare and support by the Red Cross after Ms X's release on a BV in July 2005.
21. The Ombudsman notes that the Minister has granted Ms X a humanitarian visa. This visa provides Ms X with access to Centrelink entitlements and Medicare. As such, the Ombudsman does not make any recommendation.



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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman



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Date