

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 136/07*

## **Principal facts**

### *Personal details*

1. Mr X is aged 54 and a citizen of the People's Republic of China (PRC). He said that his parents, wife and son live in the PRC and that he has not been in contact with them since being taken into immigration detention in 2002.

### *Detention history*

2. Department (DIAC) compliance officers located Mr X working on a building site in NSW in September 2002. Mr X was detained under section 189(1) of the *Migration Act 1958* and transferred to Villawood Immigration Detention Facility (IDF).

### *Visa applications*

3. Mr X arrived in Australia (June 1994) on a Business (Short Stay) Visa that ceased (July 1994) and he became unlawful; applied for a Protection Visa (PV) (June 1997), granted an associated Bridging Visa (BV); the PV was refused (November 1997); the Refugee Review Tribunal (RRT) affirmed the PV refusal (March 2000); the associated BV ceased (April 2000); s 417 request initiated (April 2000) and refused (June 2000); a second BV was granted (September 2000) in relation to a High Court (HC) class action; the HC class action was discontinued (March 2001); the second BV ceased (April 2001).
4. After being taken into immigration detention, Mr X made a s 417 request, refused (April 2003); applied to the Federal Magistrates Court (FMC) (June 2005) for judicial review of the RRT PV refusal; Mr X was included in a s 195A detention intervention submission to the Minister (September 2005); the Minister declined to intervene (October 2005); the FMC dismissed the application (November 2005); a s 48B/417 request made (November 2005), denied (November and December 2005 respectively); numerous s 417 requests lodged (January-October 2006); DIAC assessed Mr X's case against s 48B guidelines in relation to a visit by a delegation of PRC officials to Villawood IDF in May – June 2005, deemed as not within guidelines (July 2006); a combined s 417/48B request made (October 2006), assessed as not meeting guidelines (December 2006 and February 2007).

### *Current immigration status*

5. Mr X is currently in detention at Villawood IDF.

### *Removal details*

6. DIAC reports that Mr X has been positively identified by the PRC officials as a PRC citizen, but that no further removal processes have been undertaken due to the outstanding Ministerial requests.
7. When handing down judgment in November 2005 the FMC said '*I am of the view that the respondent Minister would be well advised to make arrangements for the Applicant's removal from Australia at an early stage*'.

## **Ombudsman consideration**

8. The DIAC reports to the Ombudsman under s 486N were dated 22 September 2005, 9 January 2006, 23 July 2006 and 28 December 2006.

9. Ombudsman staff interviewed Mr X at Villawood IDF on 4 November 2005 and spoke to him again by telephone on 1 March 2007.
10. Ombudsman staff sighted a number of documents: the initial DIAC Ministerial submission in relation to the PRC delegation cases dated 11 July 2006, a second Ministerial submission in relation to the PRC delegation cases dated 27 July 2006; an International Health and Medical Services (IHMS) summary report dated 3 October 2006; and a Professional Support Services (PSS) psychology summary report dated 4 November 2006.

## **Key issues**

### *Health and welfare*

11. At his November 2005 interview with Ombudsman staff Mr X said that his detention and the threat of removal to the PRC caused him mental stress. He claimed that he had hallucinated that Chinese Public Security Officers were coming to arrest him. He also complained of occasional headaches, toothaches and what he called a '*muddled head*'. Mr X said that he has overcome his illnesses, that he does not like going to see a doctor, and so had not consulted medical staff at Villawood IDF.
12. As a result of Mr X's behaviour during his appeal to the FMC in November 2005, the FMC recommended that a psychologist examine him. In doing so, the FMC stated '*I am concerned that the Applicant's lengthy period in detention may have had some adverse psychological affect upon him, as some of his statements bordered on the paranoid*'. DIAC reported that it subsequently arranged for Mr X to be assessed by Senior Psychologist Ms Y in November 2005. Ms Y observed that Mr X '*presents with some depressive symptoms and some paranoia but nothing extraordinary for some one who has been in detention for that long. I will continue to have ongoing contact with him and attempt to resolve some of his issues*'.
13. The November 2006 PSS report states that Mr X has presented with mild depressive symptoms, paranoid thoughts, disturbed sleep, psychosomatic problems, hopelessness, psychological symptoms of anxiety, flat mood and anxious behaviour. PSS also reported that without a full assessment any formal diagnosis could not be made but his presentation is consistent with mood disorders. It noted that Mr X said that he had significantly withdrawn from activities and social interactions and that he recently agreed to be referred to the on-site psychiatrist.
14. During his March 2007 interview with Ombudsman staff, Mr X said that he feared that the medication given to him by Villawood IDF staff was meant to slowly kill him, and so he did not take it, and he worried that staff put medication into his food. Mr X also said that he was frightened to continue seeing the counsellors. In relation to his most recent s 48B application, Mr X said that he had been waiting so long now in detention that he really did not care anymore, and that if his case was rejected that there was no point in living.

### *Attitude to removal*

15. Mr X claims that if he returns to the PRC he will be arrested, persecuted and gaoled under suspicion of selling military secrets. The RRT said (March 2000) '*However, his evidence regarding involvement in or knowledge of military secrets was inconsistent, evasive and unconvincing*'. Mr X also claims that he spoke out publicly and distributed pamphlets critical of the Communist Party of China. In his initial interview with the DIAC delegate he claimed to be a Christian and DIAC reports that members of a church visit him regularly. The most recent s 486N report states that Mr X expressed constant fear at the possibility of being deported.

### *PRC delegation issues*

16. Mr X expressed concerns about the visit by the PRC delegation, including the officials not disclosing their identities, the interviews being taped, being locked up separately for about two weeks after the interviews and not being able to communicate with the outside world during this time. He was concerned that the PRC officials may have seen his documentation and were aware of the nature of his applications for refugee status. He said this caused him to *'feel even more terror'*.
17. The FMC also commented on this matter and said *'if what the applicant asserted is in fact true, it is perhaps a matter of some concern that applicants for refugee status should be interviewed in an immigration detention centre by officials of the Chinese government. In my view it is something to which the Minister should have regard'*.
18. Flowing from complaints to the Human Rights and Equal Opportunity Commission and the Ombudsman regarding interviews conducted by the PRC delegation, DIAC reviewed Mr X's case against s 48B guidelines. In July 2006, DIAC decided that the PRC delegation interview raised no s 48B issues, although it noted that the transcript of the interview was incomplete.

### *Other detention issues*

19. At his November 2005 interview with Ombudsman staff, Mr X said that he has a cordial relationship with detention staff, and that they respect each other. He noted that the food was not very good for the Chinese appetite, but raised no objections.

### **Ombudsman assessment/recommendation**

20. Mr X was an unlawful non-citizen for three years before he applied for a PV. DIAC's decision that Mr X is not owed protection by Australia was affirmed by the RRT. Mr X unsuccessfully sought judicial review of that decision in the FMC. The Ombudsman has no comment to make on this issue.
21. Mr X has been in detention for over four years. However, between April 2003 and June 2005, it appears there was no litigation or Ministerial applications afoot that would have prevented Mr X's removal from Australia. DIAC notes that he was uncooperative with removal attempts and refused to complete applications for travel documents. However, DIAC's inability to achieve a quicker resolution of Mr X's case seems to have been a contributing factor to the length of his detention. The Ombudsman has drawn attention to similar problems in previous reports. DIAC advises that the delay in processing Mr X's most recent s 48B submission, which was lodged in October 2006 and not finalised until February 2007, was caused by the need to obtain a translation of the request, changes in client representation and the need to seek medical reports.
22. The Ombudsman has kept Mr X's case under review for over a year. Mr X's most recent s 48B/417 request was unsuccessful however, it is unclear how long it will take DIAC to effect his removal as travel documents from the PRC government have not been obtained. The most recent medical information indicates that Mr X has a number of mental health problems. If there are to be any delays in obtaining travel documents for Mr X's removal, the Ombudsman **recommends** that the Minister consider alternative detention arrangements, or exercising his power to grant Mr X a suitable visa with work rights, subject to appropriate reporting and surety conditions, while his immigration status is resolved.

23. It is noted that DIAC has a new case management approach which puts in place appropriate arrangements to assist clients with mental health issues in their transition into the community. If Mr X is released into the community, the Ombudsman **recommends** that DIAC consider whether it is appropriate to provide him with ongoing case management and mental health support.

*V. Thom*

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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman

*26 March 2007*  
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Date