

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 137/07*

## **Principal facts**

### *Personal details*

1. Mr X is aged 57 and is a citizen of the People's Republic of China (PRC). At interview with Ombudsman staff Mr X said that he and his first wife had an adult daughter.

### *Detention history*

2. Mr X was located working illegally at a construction site in July 2004 and detained under s 189(1) of the *Migration Act 1958*. Mr X was taken to Villawood Immigration Detention Facility (Villawood IDF), where he remained until 8 October 2006 when he was transferred to Villawood Residential Housing Complex (RHC).

### *Visa applications*

3. Mr X was granted a Short Stay Business Visa (SSBV) offshore (May 2000); he arrived in Australia (June 2000); applied for a Protection Visa (PV) and was granted an associated Bridging Visa (BV) (July 2000); SSBV ceased (July 2000); PV application refused (September 2000); the Refugee Review Tribunal (RRT) affirmed the decision (July 2001); Mr X sought the Minister's discretion to use her detention intervention powers (August 2001); associated BV ceased (September 2001); application for a BV (September 2001); request under s 417 lodged (September 2001); BV application refused (October 2001); intervention request assessed as not meeting guidelines (January 2002); Minister declined to use her s 417 powers (January 2002).
4. Mr X sought judicial review of the RRT decision in the Federal Magistrates Court (FMC) (July 2005), the FMC dismissed the application (January 2006); request for the Minister to exercise her discretion to intervene under s 48B (February 2006); s 417 request lodged (March 2006); s 48B submission sent to Minister (31 August 2006); the Minister exercised her power under s 48B to allow another PV application (26 November 2006); s 417 request refused (22 December 2006); PV application lodged (22 December 2006); the Department (DIAC) assessed the PV application as meeting guidelines, subject to health and character checks (29 December 2006). Mr X was granted a PV on 2 February 2007.

### *Current immigration status*

5. Mr X resides lawfully in the community on a PV.

## **Ombudsman consideration**

6. The DIAC reports to the Ombudsman under s 486N were dated 25 July 2006 and 25 January 2007.
7. Ombudsman staff interviewed Mr X at Villawood IDF on 29 September 2006.

## **Key issues**

### *Health and welfare*

8. DIAC reports that Mr X has had no significant medical issues.
9. At interview Mr X said that his Falun Gong practice had helped improve his health, such as assisting him to give up smoking.

*Attitude to removal*

10. Mr X does not wish to return to the PRC as he believes that he would be persecuted as a result of his Falun Gong practice. At interview Mr X said that he was satisfied as long as he was not sent back to the PRC and that he could not imagine what would happen to him if he were returned. Mr X said *'In the event that I was forced to go back, I would probably take extreme methods ... up to your imagination what that would be'*.

*Other detention Issues*

11. Mr X made a number of comments about his detention experience. In relation to food, he said that initially too much of the menu was Indian curry, but there are more Chinese meals now. He also commented that some Chinese detainees harass the Falun Gong practitioners. An example he gave was that after a poster about Falun Gong and the PRC was put up, other posters criticising the views expressed in the Falun Gong poster appeared. Mr X claimed that there were many PRC spies in Australia collecting the names of Falun Gong practitioners and he thought it was not even safe at Villawood IDF.

**Ombudsman assessment/recommendation**

12. Mr X was initially refused a PV, and that decision was affirmed by the RRT. He sought judicial review of the RRT decision in the FMC and was unsuccessful. The Minister exercised her powers under s 48B and allowed Mr X to make a fresh PV application, which DIAC has assessed as meeting the guidelines. He was released from detention on 2 February 2007. The Ombudsman makes no recommendations in this report.

*U. Thom*

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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman

*26 March 2007*

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Date