

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 220/07

Principal facts

Personal details

1. Mr X is aged 53 and is a citizen of the People's Republic of China (PRC). Mr X's wife and four children reside in the PRC. According to Mr X, his three daughters aged approximately 22, 20, 18, and his son aged 16 live with his mother-in-law and attend university or school. He has a sister residing in Australia.

Detention history

2. Mr X's Bridging Visa (BV) was cancelled on 5 July 2005 under s 116 of the *Migration Act 1958*. He was detained under s 189(1) and transferred to Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X arrived in Australia on 14 May 1996 as the holder of a Tourist Visa (TV); granted a further TV; lodged an application for a Protection Visa (PV) (September 1996); granted Bridging Visa (BV); PV refused (April 1997).
4. Mr X was located working illegally and was granted a BV (April 2005) pending assessment of *Srey* implications; BV cancelled; re-notified of PV refusal; appealed to the Refugee Review Tribunal (RRT) and decision affirmed (August 2005); BV applications refused (August 2005, November 2005 and December 2005); appealed to the Migration Review Tribunal, decision affirmed (December 2005); sought judicial review in the Federal Court (FC), Minister withdrew, FC remitted to the RRT (March 2006); decision re-affirmed (June 2006); sought review at the Federal Magistrates Court (FMC), decision upheld (October 2006).
5. Combined s 417/48B request lodged (November 2006), s 48B request assessed as not meeting the guidelines for referral to the Minister (February 2007), the Minister declined to consider the s 417 request (March 2007); further combined s 417/48B request lodged (March 2007) assessed as not meeting the guidelines for referral to the Minister (July 2007).

Current immigration status

6. Mr X is an unlawful non-citizen currently detained at Villawood IDC.

Removal details

7. The Department (DIAC) advises that Mr X refuses to complete an application for a travel document. In February 2007, DIAC forwarded a request to the PRC Consulate for a travel document for Mr X and advises that Mr X is to be removed from Australia to the PRC on 9 August 2007.

Ombudsman consideration

8. The DIAC report to the Ombudsman under s 486N dated 29 June 2007.
9. Ombudsman staff sighted an International Health and Medical Services (IHMS) medical summary report dated 26 June 2007 and un-translated fax from Mr X, received on 6 August 2007.

10. Ombudsman staff interviewed Mr X by telephone on 6 August 2007.

Key issues

Health and welfare

11. Mr X advised that his health was affected by the stress of his situation. He believed he had an ulcer and his sleep was disturbed; he falls asleep at 5am and wakes at 11am. The IHMS report confirmed 'Mr X has a history of recurrent epigastric discomfort and was commenced on medication'. The report also noted that Mr X's sleep was poor, anger issues were identified and he had experienced suicidal ideation in the past. Mr X stated he had seen the psychologist three times but had lost confidence in their ability to assist him.

Attitude to removal

12. Mr X stated he fears for his safety if removed to the PRC. He provided the Ombudsman's office with an 'ABC News' Internet report (29 June 2007) reporting on a PRC national who had been removed in April 2007 after detention at Villawood IDC. This person was allegedly detained on return to the PRC, had been interrogated for 15 days and had a finger broken by Public Service Bureau officials. Mr X stated this would happen to him because of his breach of the One Child Policy and his actions in protesting while in Villawood IDC. He was also concerned that his family had incurred debts to pay for his four children's education.

Other detention issues

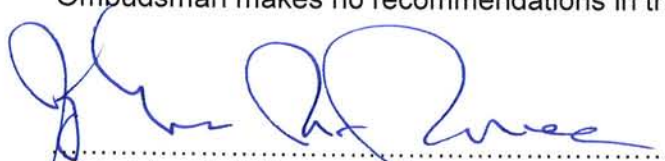
13. Mr X stated that he had joined a global human rights event in March 2006, whilst at Villawood IDC. DIAC advised that Mr X was involved in a joint, peaceful protest and claimed to be undergoing voluntary starvation from 20 November to 22 November 2006.

14. The DIAC notification that Mr X's PV application was refused in 1997 was affected by the Srey decision and he was re-notified in July 2005.

Ombudsman assessment/recommendation

15. Mr X has resided in Australia for 11 years and has been in detention for two years. The DIAC decision that Mr X does not qualify for protection has been reviewed twice by the RRT and affirmed. The Ombudsman has no further comment on this matter.

16. The Ombudsman understands that there are no outstanding matters that would prevent Mr X's removal from Australia and that his removal from Australia is imminent. The Ombudsman makes no recommendations in this report.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date