

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

Under s 486O of the Migration Act 1958

Personal identifier: 437/08

Principal facts

Personal details

1. Mr X is aged 32 and is a citizen of the People's Republic of China (PRC). His wife and son reside in the PRC and he is in regular contact with them.

Detention history

2. Mr X was detained on 3 May 2006 under s 189(1) of the *Migration Act 1958* and transferred to Villawood Immigration Detention Centre (IDC) where he remains.

Visa applications

3. Mr X arrived in Australia on a Tourist Visa using a photo-substituted passport in the name of Mr Y (May 2005); Protection Visa (PV) application lodged in the name of Mr Y, associated Bridging Visa (BV) granted (May 2005); PV application refused by the Department (DIAC) (August 2005); sought merits review of the PV refusal at the Refugee Review Tribunal (RRT) (October 2005), RRT affirmed the DIAC decision (December 2005); sought judicial review of the RRT decision by the Federal Magistrates Court (FMC) (January 2006), associated BV granted (February 2006).
4. Mr X's true identity was revealed during a DIAC compliance activity, BV cancelled under s 109 and detained (May 2006).
5. Mr X lodged a request under s 48B, request assessed as not meeting the guidelines and finalised (June 2006); FMC application withdrawn (July 2006); two further s 48B requests lodged (August 2006 and November 2006), assessed as not meeting the guidelines (September 2006 and January 2007); combined s 417/48B request lodged (February 2007), assessed as meeting the guidelines and submissions referred to the Minister (March 2007), Minister declined to intervene (August 2007); sought judicial review of the RRT decision by the FMC (August 2007), dismissed by FMC (October 2007); s 417 request lodged (January 2008), assessed as not meeting the guidelines and not referred to the Minister (May 2008).

Current immigration status

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

Removal details

7. Mr X's identity was confirmed in November 2006. DIAC advises that it had previously put efforts to obtain a travel document for Mr X on hold while his requests for Ministerial intervention were being assessed and that it most recently made contact with the PRC Consulate in January 2008 in relation to a travel document. DIAC advises that a date has been set for Mr X's removal from Australia.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 7 May 2008.
9. Ombudsman staff interviewed Mr X on 14 May 2008 at Villawood IDC.

10. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 13 March 2008 and a psychological summary report from Professional Support Services (PSS) dated 21 April 2008.

Key issues

Health and welfare

11. The IHMS report outlined that Mr X has a history of depressed mood and suffers from sleep disturbance.
12. The PSS report noted that Mr X claimed to have been arrested by the police in the PRC and was beaten daily over a four to five day period while in custody. PSS indicated that Mr X is being monitored and there is an option of referral to Treatment and Rehabilitation of Torture and Trauma Survivors for assessment if required. At interview with Ombudsman staff Mr X said that he had had several sessions with a psychologist. IHMS advised that *'there is nothing to indicate that Mr X's medical conditions could be better managed in a setting other than an IDC'*.
13. DIAC advises that Mr X has participated in voluntary hunger strikes, including one in April 2007 during which he was placed on Suicide and Self Harm watch for one week.

Attitude to removal

14. At interview Mr X advised that he fears returning to the PRC due to the lack of freedom he would face due to his involvement in the practice of Falun Gong. Mr X outlined the PRC Government *'crack down'* on the practice of Falun Gong which led to an occasion in 2004 where he and his parents, who were fellow practitioners, were detained by PRC authorities and subjected to *'inhumane treatment'*. Mr X explained that they were beaten with batons and electrically shocked, and that he was whipped *'until you could see my muscles'*. Mr X said that he and his parents were only released after a friend paid money to the Public Security Bureau (PSB) chief.
15. Mr X believes that his parents have since been arrested and may have been tried and sentenced. He explained that he has lost contact with them and commented that Falun Gong trials are conducted in secret. Mr X stated that he believes that he will be arrested again if he returns to the PRC, and that his wife receives visits to their home from the PSB asking for him to report to its local office.

Protection application issues

16. On arrival Mr X obtained the assistance of a Migration Agent whom he claimed advised that it would not be problematic if Mr X lodged his claim using the false identity he used to travel to Australia.
17. Mr X's PV application was rejected by DIAC and he again sought the assistance of the same Migration Agent who facilitated a request for merits review with the RRT. Mr X claimed to have accepted the advice of his Migration Agent who advised him not to attend the RRT hearing, saying if he did so, he would *'most likely be deported back to China'*. Consequently, the RRT made its decision on the papers and was unable to explore any of Mr X's claims.
18. Mr X explained that his claims for protection are best outlined in his subsequent requests for Ministerial intervention that he prepared himself, rather than in the information provided with his PV claim prepared by his agent. Mr X stated that the initial information that was provided on his behalf is inaccurate.

Ombudsman assessment/recommendation

19. Mr X has been in immigration detention since May 2006 and was not considered in the recent Ministerial Review of Long Term Detainees announced in April 2008. The former Minister declined to intervene in August 2007 and DIAC's International Obligations and Intervention Section assessed a request from Mr X in January 2008 for the Minister's humanitarian discretion as not meeting the guidelines for referral to the Minister. DIAC's decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. The Ombudsman has no further comment on this matter.
20. DIAC advises that a date has been set for Mr X's removal from Australia. The Ombudsman notes that if Mr X's removal is delayed and he remains in detention, a further report under s 486N will fall due in November 2008. At the time of completing the next s 486O report on Mr X, the Ombudsman will review his circumstances, considering any impact of detention on his health and the suitability of continued detention.



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

3 July 2008
.....
Date