

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 450/08

Principal facts

Personal details

1. Mr X is aged 23 and is a citizen of the People's Republic of China (PRC). His parents reside in the PRC.

Detention history

2. On 30 March 2006, Mr X entered a Police Station in Sydney claiming to be destitute and with no identity documents. Mr X was interviewed and detained under s 189(1) of the *Migration Act 1958* and transferred to Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X entered Australia on a Schools Sector Visa (SSV) (April 2003), SSV ceased and he was granted a further SSV (June 2003); applied for a third SSV (March 2005), refused (May 2005), associated Bridging Visa (BV) ceased (June 2005).
4. Mr X lodged a Protection Visa (PV) and associated BV application, BV and PV refused (June 2006); the Refugee Review Tribunal (RRT) affirmed the PV refusal (August 2006); sought judicial review at the Federal Magistrates Court (April 2007), dismissed (October 2007); the Department (DIAC) received separate ss 48B and 417 requests (September 2006), ss 48B and 417 requests did not meet the guidelines for referral to Minister but s 417 request referred to Minister on a schedule (November 2006), Minister declined to intervene; further s 417 request lodged (December 2006), assessed as not meeting the guidelines for referral to the Minister (February 2007); DIAC received a repeat combined s 417/48B request (November 2007); sought leave to appeal the FMC decision at the Full Federal Court (FFC) (March 2008); case considered by the Minister in his review of long term detainees (May 2008) with decision to progress removal; leave to appeal the FMC decision not granted (July 2008).

Current immigration status

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

Removal details

6. DIAC advises that Mr X's removal was postponed on a number of occasions due to ongoing court applications or requests for Ministerial Intervention.

Ombudsman consideration

7. DIAC's report to the Ombudsman under s 486N is dated 20 March 2008.
8. Ombudsman staff interviewed Mr X on 14 May 2008 at Villawood IDC and spoke to him by telephone on 14 July 2008 and 21 July 2008.
9. Ombudsman staff sighted the following documents: a psychological summary report by Professional Support Services dated 28 February 2008; a medical summary report by International Health and Medical Services (IHMS) dated 6 March 2008; and a Client Placement Assessment Report dated 1 July 2008.

Key issues

Health and welfare

10. IHMS noted that a Mental State Examination was last conducted in November 2007 *'and no mental health issues were identified'*. Mr X complained of sleep difficulties but declined to see a Psychiatrist or Psychologist.
11. Mr X is reported to have seen PSS once in October 2006 and it was noted that he *'did not appear to present with significant mental health problems during his last contact'*.

Attitude to removal

12. At interview with Ombudsman staff, Mr X explained that both his parents had been arrested and jailed by PRC authorities due to allegations that they were Falun Gong practitioners. Mr X said that his parents have never been Falun Gong practitioners but because his father had exposed corruption, he had been falsely accused of practising Falun Gong. Mr X said that he would return to the PRC if his parents were released from gaol and were no longer in danger of persecution. Mr X reiterated that he does not think it is safe for him to return to the PRC and that he will continue to appeal his case. Mr X later explained to Ombudsman staff that he cannot return to the PRC as he does not have a *'Chinese ID'*. Mr X said that without the identification document a person cannot be employed and if he were stopped by police, he would be detained.

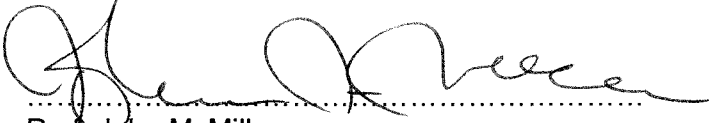
Other detention issues


13. At interview Mr X expressed his concern about remaining in Stage One of Villawood IDC. Mr X said that he was a student prior to being detained and he continues to study in detention, but in Stage One, he is surrounded by criminals. He said *'I am the youngest here. I don't feel safe. I am always looking behind my back, I'm scared someone [will] stab me.'* Mr X explained that when he was transferred to Stage One, he did not like the decision but he understood it because he was involved in a brawl. Since being moved to Stage One in November 2007, Mr X said he has not been involved in any incidents and his request to be moved from Stage One was refused.
14. DIAC advises that Mr X was involved in five incidents of assault. After the third alleged incident, he was placed in Stage One between 9 April and 21 August 2007. He was transferred out of Stage One, was involved in another two incidents of assault and was again placed in Stage One in November 2007.
15. DIAC reports that Mr X and two other detainees made a complaint in December 2007 that they were threatened by other detainees in Stage One and requested a transfer. The request was assessed and it was determined that the detainees remain in Stage One. In May 2008, Mr X submitted another request to be moved from Stage One to Stage Three claiming that he was at risk from a group of detainees located in Stage One.
16. DIAC considered the request and in July 2008 refused the request. The Client Placement Assessment Report states that the placement recommendation is related to the duty of care to Mr X, and not to the duty of care to other detainees in the facility. The Report noted that Mr X complained of receiving death threats from a group of detainees but that *'there have been no incidents in Stage One which would conform with the client's claims of being at risk there.'*
17. On 18 July 2008 Mr X described how a detainee became aggressive after he accused Mr X of taking too much food and Mr X denied this. Mr X said that the detainee picked up a chair and tried to hit him with it but the chair caught the edge of a table and the chair broke. Mr X said that *'things like this happen all the time'*.
18. On 21 July 2008 Mr X advised Ombudsman staff that he was moved to Stage Three on 18 July 2008 as a result of a media release concerning the use of drugs in Villawood IDC.

Mr X explained that the detainees in Stage One believe that he provided information to the media and he was told that he was being moved for his own protection.

Ombudsman assessment/recommendation

19. The Ombudsman notes that Mr X has been in immigration detention since March 2006. The decision to refuse Mr X's claim for protection by Australia has been reviewed and affirmed. The Ombudsman notes Mr X's case was part of the Minister's review of long term detainees with the decision made to progress his removal from Australia. The Ombudsman has no further comment on these matters.
20. Of some concern to the Ombudsman is the reason DIAC provided for Mr X's request to be placed in a different Stage of Villawood IDC. The Client Placement Assessment Report indicates the reason Mr X was moved to Stage One was due to incidents of assault. Mr X does not deny these claims and understands the decision made by DIAC. The Report states the reason for Mr X's continued placement in Stage One was for his own protection, however, the detainees from whom Mr X said he had received death threats were also placed in Stage One. The Ombudsman notes that Mr X was recently moved to Stage Three and therefore does not make any recommendations in this report.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date