

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 451/08

This is the combined second and third s 486O report by the Ombudsman on Mr X as he had remained in immigration detention following the Ombudsman's first report (20/06). The Ombudsman's first report was sent to the Minister on 5 January 2006 and tabled in Parliament on 29 March 2006. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. Mr X sought judicial review of the Refugee Review Tribunal's decision of 2002 in the Federal Magistrates Court (FMC) (January 2006), Minister declined to intervene under s 417 of the *Migration Act 1958* (February 2006); FMC appeal dismissed (May 2006), appealed to Full Federal Court (June 2006), appeal withdrawn, lodged a combined request under s 417/48B (August 2006), s 48B request assessed as not meeting the guidelines for referral to the Minister; request lodged under s 195A (March 2006), the Minister granted Mr X a Removal Pending Bridging Visa (RPBV) on 6 December 2006; combined request lodged under s 417/48B (March 2007), Minister declined to intervene (June 2007); further combined request lodged under s 417/48B (July 2007), stage one submission in relation to s 48B sent to Minister (April 2008), ongoing.

Current immigration status

2. Mr X was granted a RPBV on 6 December 2006 and now lives lawfully in the community.

Removal details

3. The Department (DIAC) advises that removal plans for Mr X are on hold while his outstanding s 48B request is under consideration.

Ombudsman consideration

4. DIAC's further reports to the Ombudsman under s 486N are dated 10 January 2006 and 21 June 2006. The Minister's Statement to Parliament was tabled on 29 March 2006.
5. Ombudsman staff interviewed Mr X by telephone on 7 September 2006.
6. The Ombudsman sighted the following documents: a translated copy of a letter from Mr X's wife, Ms Y, dated 12 January 2006; a letter from a fellow Falun Gong practitioner in the People's Republic of China (PRC), Mr Z, dated 15 January 2006; a copy of a statutory declaration by Mr X, dated 31 August 2006; and a copy of Mr X's combined s 417/48B request to the Minister dated 31 August 2006.

Key issues

Health and welfare

7. At interview, Mr X stated that he regularly suffers back pain (also noted in Report 20/06), and that his *'mental state is not good'*. Mr X advised that his back injury was the basis of his personal injury claim.

Attitude to removal

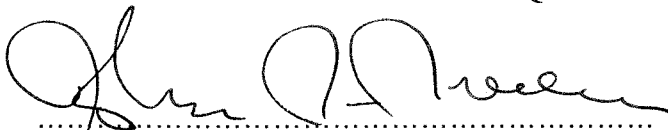
8. At interview, Mr X commented that: 'I would feel terrible if I were sent back to China due to my support for the Falun Gong movement'. He also said he had not been in contact with his wife recently, but at last contact she said she was under surveillance by PRC authorities due to Mr X's support of the Falun Gong movement in Australia and in the PRC.

Other detention issues

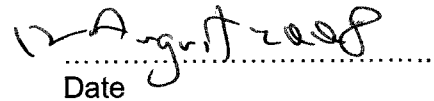
9. DIAC advises that the damages claim by Mr X in relation to a personal injury allegedly sustained during a transfer from Stage Two to Stage One at Villawood Immigration Detention Centre in April 2002 was settled in the District Court of NSW in July 2006.
10. DIAC advises that Mr X formed a relationship with another detainee and has cohabitated with her at Villawood since May 2006. The Ombudsman's office understands that Mr X continues to live in a relationship with his partner who was granted a permanent Protection Visa.

Ombudsman assessment/recommendation

11. In Report 20/06, the Ombudsman recommended that if removal action for Mr X was deferred, the Minister consider granting him a RPBV pending the finalisation of his personal injury claim. The Ombudsman notes that Mr X's personal injury claim was settled in July 2006 and the Minister granted Mr X a RPBV on 6 December 2006. Mr X spent more than four years in immigration detention and his immigration status remains uncertain as he remains on a RPBV. The Ombudsman makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date