

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 488/08

Principal facts

Personal details

1. Mr X is aged 59 and is a citizen of the People's Republic of China (PRC). Mr X said he is separated from his wife who lives in the PRC. His daughter lives in Australia and was granted a Permanent Sponsored Skilled Visa in September 2006.

Detention history

2. Mr X was detained in March 2004 and transferred to Villawood Immigration Detention Centre (IDC) under s 189(1) of the *Migration Act 1958*. He was granted a Bridging Visa (BV) on 9 November 2007 when it was determined that his case was affected by the Veau¹ decision.

Visa applications

3. Mr X arrived in Australia on a Short Stay Visitor Visa (July 2000) and was granted a Bridging Visa (BV) while a request for Long Stay Visa (LSV) was being processed (August 2000); granted an LSV (September 2000); applied for Protection Visa (PV), granted a BV associated with that claim (October 2000); PV refused (November 2001), Refugee Review Tribunal (RRT) affirmed decision (December 2003); assessed as not meeting the criteria for Ministerial intervention (January 2004); BV cancelled (February 2004); BV application lodged and withdrawn (May 2006).
4. Mr X applied to the Minister under s 48B (June 2005); did not meet the Minister's guidelines for referral (September 2005); s 417 application forwarded to the Minister (March 2006), the Minister declined to exercise s 417 powers (December 2006); s 48B application lodged (May 2006), did not meet the Minister's guidelines for referral (July 2006); combined s 48B/417 request submitted (February 2007), did not meet the Minister's guidelines for referral (April 2007); three s 48B requests submitted (May, June, August 2007), requests did not meet the Minister's guidelines for referral.
5. In June 2008 the Minister indicated that he would consider granting Mr X a Global Special Humanitarian Visa (GSHV) subject to public criteria checks. Mr X has satisfied those checks and DIAC is preparing a submission for the Minister under s 417.

Current immigration status

6. Mr X resides lawfully in the community on a BV.

Ombudsman consideration

7. The Department's (DIAC) reports to the Ombudsman under s 486N are dated 29 March 2006, 15 September 2006, 21 March 2007 and 31 August 2007.
8. Ombudsman staff interviewed Mr X on 27 April 2006 at Villawood IDC and spoke with him by telephone on 1 May 2007.
9. Ombudsman staff sighted the following documents: a Ministerial submission regarding PRC nationals who were visited in 2005 by PRC government officials, dated 7 July 2006;

¹ *Veau of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 311*

three medical summary reports from the International Health and Medical Services (IHMS) dated 24 November 2006, 30 January 2007 and 20 August 2007; and two psychological summary reports from Professional Support Services (PSS) dated 8 February 2007 and 24 August 2007.

Key issues

Health and welfare

10. In February 2007 PSS noted that Mr X presented with '*sleeping difficulties and low mood [and] increased irritability*'. PSS reported that a significant stressor for Mr X was the perceived neglect of his case by DIAC. At interview Mr X told Ombudsman staff that although the physical conditions at Villawood IDC were manageable, '*the problem [I] probably need to deal with is the mental pressure ... [I feel] uncertain about the future*'.

Attitude to removal

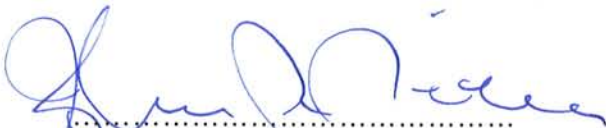
11. Mr X has consistently stated that he fears being returned to the PRC because of his involvement in the *Falun Gong* movement. He said that because he was a leading *Falun Gong* member in the PRC he was publicly named as being connected to the movement, lost his employment, and his house was ransacked by a PRC government representative. Mr X also said that while working as editor-in-chief of the Melbourne-based *Chinese Commercial Weekly* newspaper, he was critical of PRC government policies relating to the *Falun Gong* movement.

PRC delegation visit

12. DIAC advises that Mr X was one of a group who were interviewed by PRC officials in May 2005. Following complaints to the Human Rights Commission and the Ombudsman regarding interviews conducted by the PRC delegation, DIAC reviewed Mr X's case against s 48B guidelines. In July 2006, DIAC decided that the PRC delegation interview raised no s 48B issues.

Ombudsman assessment/recommendation

13. The Ombudsman notes that the Minister is considering granting Mr X a GSHV and makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date