

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 497/08

This is the fourth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's third report. The Ombudsman's combined first and second report (331/07) was sent to the Minister on 23 November 2007 and tabled in Parliament on 13 February 2008. The Ombudsman's third report (423/08) was sent to the Minister on 1 May 2008 and tabled in Parliament on 4 June 2008. This report updates the material in those reports and should be read in conjunction with them.

Principal facts

Visa applications

1. Following the Minister's announcement of 12 March 2008 that he would review all long term detainees, the Department (DIAC) sent a submission to the Minister (April 2008). The Minister decided that Mr X's removal from Australia should proceed (May 2008). Mr X lodged a repeat request under s 417 of the *Migration Act 1958* (June 2008); a s 195A submission was referred to the Minister (September 2008), the Minister declined to intervene; s 417 submission referred to the Minister (October 2008); on 7 November 2008 Mr X was granted a Bridging Visa (BV) and released from detention.

Removal details

2. DIAC advises that it has a new tentative removal date for Mr X subject to the People's Republic of China (PRC) Consulate issuing a travel document.
3. Following advice from the PRC Consulate that the previous travel document application and Mr X's passport had been lost, another application was lodged by DIAC in July 2008. The PRC Consulate has indicated that it requires either a copy of Mr X's passport or ID card for an entry permit to be issued.

Ombudsman consideration

4. DIAC's further report to the Ombudsman under s 486N is dated 2 October 2008.
5. Ombudsman staff spoke with Mr X and Mr X's nephew Mr Y by telephone on 12 November 2008.
6. Ombudsman staff sighted a psychological summary report from Professional Support Services dated 15 September 2008 and a medical summary report from International Health and Medical Services (IHMS) dated 16 September 2008.

Key issues

Health and welfare

7. IHMS advises that a mental state examination was conducted in July 2008 where it was noted that Mr X 'was worried, sleep was poor but no thoughts of self harm or harm to others were expressed'.

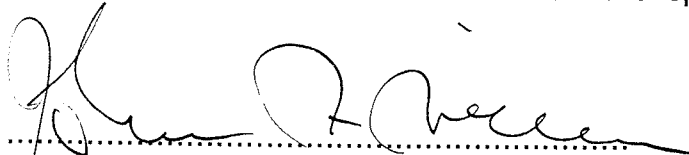
8. Mr X told Ombudsman staff that since his release from Villawood Immigration Detention Centre he feels '*relieved*' and his sleep has improved. To occupy his day Mr X walks and reads Chinese newspapers.
9. Mr X reiterated his fear of being returned to the PRC. He said '*I would like to stay in Australia and work here - I can cook in a restaurant.*'

Community links

10. Mr X's Australian citizen nephew Mr Y confirmed that he is '*sponsoring*' Mr X with accommodation and support.

Ombudsman assessment/recommendation

11. Mr X spent three and a half years in immigration detention. In Report 331/07 the Ombudsman noted that '*Mr X's removal appears to be imminent*' and made no recommendations. In Report 423/08 the Ombudsman again noted that '*Mr X's removal is imminent*' and made no recommendations. The Minister's tabling statement of 4 June 2008 advised that '*As part of my review of long term detainees, I agreed to the Department continuing to make removal arrangements for this person.*'
12. The Ombudsman notes that another tentative removal date has been set for Mr X's removal from Australia and that it is dependent on the outcome of his s 417 submission and DIAC obtaining a travel document from the PRC Consulate. The Ombudsman further notes that DIAC's previous travel document application and Mr X's expired passport was lost by the PRC Consulate. DIAC applied for another travel document in July 2008, however, the PRC Consulate indicated that it requires either a passport or identity card before it will provide a travel document for Mr X. It is therefore unknown whether the planned removal can proceed.
13. DIAC has been trying unsuccessfully to remove Mr X for 12 months. Of concern to the Ombudsman is the time taken to resolve Mr X's immigration status and that he remained in immigration detention during this time. As Mr X has now been granted a BV, the Ombudsman makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

2 November 2008

Date