

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 503/09

Principal facts

Personal details

1. The X family comprises Mr X aged 34, Ms Y aged 33, and their son Z, aged six. They are all citizens of the People's Republic of China (PRC). Mr X and Ms Y also have a 13-year-old son in the PRC, and Ms Y is pregnant with their third child.

Detention history

2. On 12 October 2006 Ms Y and Z were detained under s 189(1) of the *Migration Act 1958* as Bridging Visa (BV) over-stayers and placed at Sydney Immigration Residential Housing (IRH). In November 2006 they were transferred to Community Detention.
3. On 8 November 2006 Mr X was detained under s 189(1) as a BV over-stayer and placed at Villawood Immigration Detention Centre (IDC). On 20 December 2006 Mr X was transferred to Community Detention with his wife and son.

Visa applications

4. Mr X arrived in Australia on a Visitor Visa (VV) using a false Hong Kong passport (April 1998); applied for a Protection Visa (PV), granted an associated BV (May 1998), PV refused (October 1998); Refugee Review Tribunal (RRT) affirmed the Department's (DIAC) decision (May 1999); BV ceased (June 1999); s 417 request lodged (July 1999); referred to the Minister on a schedule (January 2000), the Minister declined to intervene (February 2000); s 417 request lodged and not referred (July 2003); submission referred to the Minister as part of the further review of people in detention (September 2008), the Minister agreed to consider granting the X family Resident Return Visas (RRVs) subject to health and character checks.
5. Ms Y arrived in Australia on a VV using a false Malaysian passport in October 1999; applied for a PV, refused (November 1999); RRT affirmed decision (April 2000); appealed RRT decision to the Federal Court (FC) (May 2000), dismissed (October 2000); lodged s 48B request (December 2000), request did not meet the guidelines for referral to the Minister (December 2000); s 417 request lodged (January 2001), assessed as not meeting the guidelines but referred to the Minister on a schedule (April 2001), the Minister declined to intervene (May 2001); lodged PV application in Z's name with Ms Y as a dependent applicant (February 2004), refused (March 2004); RRT affirmed decision (October 2004); Ms Y and Z referred to the Minister on a schedule under s 417, the Minister declined to intervene (February 2007); lodged a repeat combined request under s 417/48B (June 2008); the Minister agreed to consider granting the X family RRVs subject to health and character checks (September 2008).

Current immigration status

6. The X family are unlawful non-citizens detained in the community.

Removal details

7. DIAC advises that since the Minister has agreed to consider granting the X family visas, it will no longer pursue removal efforts.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 2 October 2008.
9. Ombudsman staff interviewed Mr X and Ms Y on 19 November 2008.
10. Ombudsman staff sighted medical summary reports from International Health and Medical Services (IHMS) for Ms Y and Z dated 16 September 2008, and an IHMS report for Mr X dated 21 October 2008.

Key issues

Health and welfare

11. DIAC advises that in April 2008 Mr X overdosed after receiving a negative Ministerial Intervention decision. The IHMS report states that Mr X *'was reviewed at Auburn Hospital on 1/4/08 following attempted self harm and discharged on 2/4/08'*, and received follow up care from the Auburn Mental Health Team and the Richmond Fellowship.
12. IHMS advises that Ms Y's ante-natal care is managed by a community practice and Westmead Hospital ante-natal clinic, and that she has *'previously been engaged by the Auburn Mental Health Team for depression'*.
13. At interview with Ombudsman staff Ms Y and Mr X said that their mental and physical health has deteriorated, they are experiencing *'pretty heavy pressure'* and they are having difficulty sleeping.

Attitude to removal

14. Mr X said that he and Ms Y left the PRC to avoid being arrested for their political and religious affiliations and that they *'couldn't imagine'* returning. Mr X said that it was very difficult to leave his family behind, *'especially my older son'* who lives with Mr X's parents. However, Ms Y said *'we [did] not have other options'* but to leave the PRC.

Other detention issues

15. Mr X said that he and Ms Y report weekly to their DIAC case officer and receive a fortnightly visit. He commented that the Australian Red Cross are *'really helpful'*. He said that to fill their time they study English at church, however it is difficult to remain motivated as *'we do not have the mood to do anything'*.

Community links

16. Mr X said that he and Ms Y have friends and community support through their church. He also said that he has contacts in the construction industry from his work experience prior to detention and if they are granted a visa *'we will work well'*. Ms Y said that she hopes they will be granted visas *'so that we can have a normal life'*.

Ombudsman assessment/recommendation

17. The Ombudsman notes that Mr X, Ms Y and Z are being considered for RRVs subject to health and character checks. The Ombudsman makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date