

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 504/09*

## **Case overview**

1. Ms X is aged 58 and is a citizen of the People's Republic of China.
2. In August 2006 Ms X was located and detained under s 189(1) of the *Migration Act 1958* as a Bridging Visa (BV) over-stayer and placed at Villawood Immigration Detention Centre. In June 2007 Ms X was transferred to Sydney Immigration Residential Housing (IRH).
3. Ms X arrived in Australia on a Short Stay Tourist Visa in December 2001; lodged a Protection Visa (PV) request, granted an associated BV (December 2001); PV application refused; the Refugee Review Tribunal (RRT) affirmed the Department's (DIAC) decision (May 2002). Ms X made a request under s 417 (June 2002), the Minister declined request (October 2002); applied to the Federal Magistrates Court (FMC) seeking review of the May 2002 RRT decision (October 2006), FMC found it had jurisdiction to entertain Ms X's application rejecting the Minister's contention that the proceedings were filed out of time (April 2007); DIAC initiated a s 197AB request (May 2007); the Minister appealed the FMC's decision to the Full Federal Court (FFC), FFC disallowed the Minister's appeal (July 2007); s 197AB request of May 2007 did not meet guidelines (August 2007); the Minister appealed FFC decision to the High Court (HC), HC granted the Minister special leave to appeal (February 2008), the Minister withdrew his appeal (May 2008); matter resumed in the FMC where Ms X made a new claim alleging fraud by her migration agent, DIAC conceded the case and the matter was remitted to the RRT which then remitted it to DIAC (August 2008); on 15 September 2008 Ms X was granted a PV and released from detention.

## **Ombudsman consideration**

4. DIAC's report to the Ombudsman under s 486N is dated 2 July 2008.
5. Ombudsman staff spoke with Ms X by telephone on 7 November and 15 December 2008.
6. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) and a psychological summary report from Professional Support Services (PSS) both dated 22 July 2008. Ombudsman staff also spoke with Australian Red Cross (ARC) staff on 10 and 12 November 2008 and had email contact with ACL Pty Ltd (ACL) staff on 25 November 2008.

## **Key issues**

### *Health and welfare*

7. The IHMS report notes that Ms X received physiotherapy and acupuncture treatment for shoulder tendonitis in 2007 and 2008 and was also prescribed medication for gastric reflux. Prior to this it reports that Ms X was consulted extensively '*for a variety of ailments including bilateral earache and associated inflamed neck muscles*'.


8. The PSS report notes that Ms X *'reported the following depressive and anxiety symptoms, including low mood, tearfulness, sleeping difficulty, social withdrawal, feeling of hopelessness and suicidal ideations'*. It also reported that *'recent increase of contact with Ms X may be indicative of decline in her mental health state as a result of future uncertainty and reduced resilience. These factors may become barriers to provide adequate management for Ms X in future'*.
9. After her relocation to more permanent accommodation Ms X told Ombudsman staff that her *'health is still not good'* and she does not feel she is getting adequate medical care due to the scarcity of Chinese-speaking doctors. However, she confirmed that ACL staff always arrange for her to be taken to her medical appointments and she is now feeling *'more settled'*.

*Post-release issues*

10. DIAC advised that on Ms X's release from Sydney IRH on 15 September 2008 it arranged for temporary transitional accommodation at a hotel. It further stated that it extended the hotel arrangement several times until a two-year lease was signed for a Department of Housing unit on 20 November 2008.
11. DIAC reported that *'due to [Ms X's] health and difficulty finding suitable housing, ARC engagement was approved'*. However, Ms X refused to engage with ARC and so on 11 November 2008, DIAC arranged for ACL to replace ARC to provide support for her.

**Ombudsman assessment/recommendation**

12. The Ombudsman notes that Ms X's post-release accommodation issues were addressed in a timely manner by DIAC. The Ombudsman further notes that Ms X is now the holder of a PV and makes no recommendations in this report.

  
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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

  
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Date