

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 508/09

Principal facts

Personal details

1. Mr X is aged 33 and is a citizen of the People's Republic of China (PRC). The Department (DIAC) advises Mr X's wife Ms Y lives in the community as an unlawful non-citizen. Their two daughters live with Ms Y's sister in the PRC.

Detention history

2. On 31 August 2005 Mr X was detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC). He was released on a Bridging Visa (BV) with a bond in September 2005. He was discovered working contrary to his visa conditions and redetained at Villawood IDC on 17 October 2006.

Visa applications

3. Mr X entered Australia on a false Taiwanese passport on 4 June 2004 on an Electronic Travel Authority (ETA) Visa, departed on 6 June 2004 and re-entered Australia on an ETA on 19 June 2004; granted a visa valid until September 2004; lodged a Protection Visa (PV) application, refused (August 2004); Refugee Review Tribunal (RRT) affirmed DIAC's refusal (December 2004).
4. Mr X sought review by the Federal Magistrates Court (FMC) (September 2005), DIAC withdrew from proceedings, FMC remitted the matter to the RRT for reconsideration (September 2006); RRT affirmed refusal (November 2006); sought review by the FMC (December 2006), applied for a BV, refused (March 2007); FMC application dismissed (April 2007); sought review by Full Federal Court (FFC), remitted to RRT who affirmed DIAC's decision (November 2007); sought review by FMC, dismissed (May 2008); sought review by the FFC, dismissed (August 2008); sought review by the High Court (September 2008); s 195A submission referred to the Minister as part of the further review of long term detainees; the Minister declined to intervene (August 2008).
5. Mr X was granted a BV on 24 December 2008 pending the outcome of his PV application.

Current immigration status

6. Mr X resides lawfully in the community.

Removal details

7. DIAC advises that removal action will be activated subject to the outcome of Mr X's litigation process.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 29 September 2008.
9. Ombudsman staff interviewed Mr X on 29 October 2008 at Villawood IDC.
10. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 15 September 2008.

Key issues

Health and welfare

11. The IHMS report notes that '*no significant mental health issues have been identified*'.

12. At interview with Ombudsman staff, Mr X said that Villawood IDC is *'much better than detention centres in China ... but mentally, I feel a lot of pressure'*. Mr X was also very worried about his wife who suffers from stomach problems.
13. Mr X said he was only sleeping *'four or five hours'* a night. He said he saw a psychologist who told him to exercise but *'it's not realistic because we have lots of mental pressure here and I'm not in the mood for sports'*.

Attitude to removal

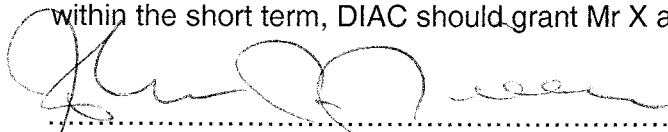
14. Mr X said that he was arrested and tortured in the PRC for protesting against government corruption. He said he was released only after being forced to sign an agreement and *'I felt helpless and decided to come to Australia'*. He said that in 2007 his mother received a subpoena asking him to report to the Public Security Bureau and he is *'not sure what would happen if I returned to China'*.
15. The RRT decision of November 2007 stated that it did not *'accept the applicant's evidence with regard to the problems he claims to have had with the authorities in China'* and was not satisfied that Mr X *'has a well-founded fear of being persecuted ... if he returns to China now or in the reasonably foreseeable future'*.


Other detention issues

16. Mr X said that when he was detained for breaching the 'no work' condition of his BV, *'I didn't understand the procedures'*. He said that when he first applied for refugee status he was allowed to work. Then, during the review process where his case was remitted to the RRT *'I thought I was allowed to work again'*. He further commented that *'I don't know why I'm detained in here because we want to seek protection in Australia, but two years have passed'*.
17. Mr X said that to fill his time in the detention centre he grew vegetables. He explained that he would have liked to move to Sydney Immigration Residential Housing which allows him to cook for himself, however, he did not apply for a transfer because *'I don't speak English so I don't know how'*.

Ombudsman assessment/recommendation

18. Mr X was in immigration detention between October 2006 and December 2008, having previously been detained from August 2005 to September 2005. DIAC's decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed three times by the RRT. The Ombudsman has no further comment on this matter.
19. The Ombudsman notes that Mr X was redetained in October 2006 for breaching the conditions of his BV by working and that Mr X claims that he was not aware of the 'no work' provisions of his visa. The Ombudsman notes that Mr X has been released again on a BV type E that has similar provisions. DIAC advises that it met face to face with Mr X's guarantor and explained the conditions attached to Mr X's visa and that the guarantor acknowledged in writing that if Mr X breaches any of the visa conditions, the security may be forfeited.
20. Mr X is awaiting the outcome of his HC appeal before there can be a resolution of his immigration status. It is the Ombudsman's view that a BVE with no work rights should be for the shortest term possible and if there is no resolution of Mr X's immigration status within the short term, DIAC should grant Mr X a visa with work rights.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date