

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 524/09*

## **Principal facts**

### *Personal details*

1. Mr X is aged 37 and is a citizen of the People's Republic of China (PRC). Mr X is in regular contact with his family in the PRC.

### *Detention history*

2. Mr X was detained on 22 January 2007 under s 189(1) of the *Migration Act 1958* by the Department (DIAC) after he was found working in breach of his visa conditions, and placed at Villawood Immigration Detention Centre. On 19 February 2009 Mr X was granted a Bridging Visa (BV) E and released from immigration detention.

### *Visa applications*

3. Mr X entered Australia on a Taiwanese passport as a visitor (June 2004); applied for a Protection Visa (PV); the Department (DIAC) refused the application (August 2004); refusal affirmed by the Refugee Review Tribunal (RRT) (March 2005); decision appealed to the Federal Court (April 2005), affirmed (September 2006); decision appealed to the Full Federal Court (FFC) (October 2006), granted an associated BV (October 2006); BV cancelled after Mr X found working in breach of his visa condition (January 2007); applied for a BV, refused (February 2007); refusal affirmed by the Migration Review Tribunal (MRT) (March 2007); applied for BV, refused (April 2007); PV refusal affirmed by the FFC (April 2007); BV refusal affirmed by the MRT (May 2007); applied for a PV (May 2007); application finalised (October 2007); lodged combined s 417/48B request, assessed as not meeting the guidelines and referred to the Minister on a schedule; the Minister declined to consider s 417 request and s 48B request not referred (October 2007); lodged repeat combined s 417/48B request (November 2007), application did not meet the guidelines and not referred to the Minister (April 2008).
4. DIAC initiated s 195A request (August 2008), referred Mr X's case to the Minister for consideration as part of the review of all cases in detention (September 2008); the Minister agreed that Mr X should remain in detention (October 2008); lodged BV application, withdrawn (October 2008); lodged repeat s 417 request (September 2008), assessed as not meeting the guidelines and not referred (November 2008); lodged PV application, deemed to be s 48B barred (November 2008); lodged BV application, withdrawn (November 2008); sought special leave to appeal to the High Court (HC) from a judgment of the FFC, ongoing.

### *Current immigration status*

5. Mr X resides lawfully in the community on a BV (E).

### *Removal details*

6. DIAC states that its requests for a travel document were refused on five occasions in 2008 by the PRC Consulate due to identity issues. However, it advises that the PRC Public Security Bureau confirmed Mr X's identity in December 2008 and that Mr X will be removed as soon as practicable subject to his outstanding litigation and after receipt of a travel document.

## Ombudsman consideration

7. DIAC's report to the Ombudsman under s 486N is dated 11 February 2009.
8. Ombudsman staff interviewed Mr X by telephone on 24 February 2009.
9. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 31 December 2008.

## Key issues

### Health and welfare

10. The IHMS report states that a Mental State Examination was conducted with Mr X in November 2008 *'at which time it was noted that his sleep was poor, mood lowered and no thoughts of self harm or harm to others were expressed'*.
11. At interview with Ombudsman staff Mr X said that he filled his days in immigration detention playing cards and video games. He said that he only slept between four to five hours a night but had refused IHMS's offer of sleep medication. He commented that after two years in detention *'my head isn't thinking straight ... if I had to stay in longer I might go crazy'*.
12. Mr X commented that he did not like the food supplied by the detention centre and rarely went to the canteen. He said that his friends in the community supplied him with food which he cooked in his room.

### Attitude to removal


13. Mr X stated that he fears being removed to the PRC because of his anti-government ideologies and if he were returned *'I would be persecuted—I would be gaoled for three to four years'*.

### Post-release issues

14. Mr X told Ombudsman staff that he is *'relieved'* to be out of immigration detention and is already sleeping an additional two hours per night.
15. It appears that Mr X has good community support, however he expressed a desire to be allowed to work, saying he could easily find a job with his experience in the construction industry. He stated that he would like the opportunity to live a *'normal life'*; not have to rely on his friends financially; and be able to send money to his family in the PRC. He said his parents who are peasants are supporting his wife, two sons and adopted daughter and *'it is not an easy life'*.

## Ombudsman assessment/recommendation

16. Mr X spent two years in immigration detention before his release on a BV. The DIAC decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. Mr X has a matter before the HC.
17. As a condition of his BV Mr X is not able to work. He is being supported by friends but feels that this support may not be indefinite. In many previous reports the Ombudsman has highlighted problems associated with visas that do not allow work rights. If Mr X was to work in breach of his visa conditions, he risks being redetained. The Ombudsman **recommends** that Mr X be granted work rights to allow him to live independently in the community while his immigration status is resolved.

  
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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman

9 April 2009  
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Date