

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 222/07

Principal facts

Personal details

1. Mr X is aged 38 and is a citizen of the People's Republic of China (PRC). His ex-wife and two children reside in the PRC.

Detention history

2. Mr X arrived in Australia in September 2000 by plane. In November 2003 the Department (DIAC) located Mr X working illegally and detained him under s 189(1) of the *Migration Act 1958*. He was placed at Villawood Immigration Detention Centre (IDC).
3. In November 2003 Mr X was granted a Bridging Visa (BV) and released from Villawood IDC to enable him to depart Australia. Mr X failed to depart, and in September 2004 he was located by DIAC officers and detained under s 189(1), being placed again at Villawood IDC.

Visa applications

4. Mr X arrived in Australia on a Short Stay Visitor Visa (VV) (September 2000); applied for a Protection Visa (PV), VV ceased, granted associated BV (October 2000); PV refused (November 2000); refusal affirmed by the Refugee Review Tribunal (RRT) (November 2001); BV ceased (December 2001); Mr X detained (November 2003); BV application made and withdrawn, \$30,000 security bond paid and BV granted, Mr X released (November 2003); Mr X detained again (September 2004).
5. Mr X sought judicial review of the RRT decision at the Federal Magistrates Court (FMC) (October 2005); BV application lodged (October 2005), and refused, decision affirmed by the Migration Review Tribunal (MRT) (November 2005); FMC dismissed application (May 2006); applied to the Minister under s 417/48B request (June 2006), assessed as not meeting the guidelines for referral to the Minister under s 48B (July 2006), s 417 submission put to the Minister on a schedule (August 2006), request declined (September 2006); combined s 417/48B request lodged (October 2006), requests finalised by DIAC and not referred to the Minister (March 2007); Mr X lodged a combined s 417/48B request (June 2007), requests ongoing.

Current immigration status

6. Mr X is an unlawful non-citizen detained at Villawood IDC.

Removal details

7. DIAC advised that following the interview by a PRC delegation in May/June 2005, the delegation confirmed that a person by that name and date of birth existed as a PRC national, however they were unable to confirm if that person was Mr X. In September 2006 DIAC referred his case to its National Identity Verification and Advice Section (NIVA). In June 2007, Mr X's identity was confirmed by the NSW Identity Verification Team. DIAC has requested travel documents for Mr X from the PRC Consulate.

Ombudsman consideration

8. The DIAC reports to the Ombudsman under s 486N were dated 15 September 2006 and 13 March 2007.
9. Ombudsman staff interviewed Mr X on 29 September 2006 at Villawood IDC.
10. Ombudsman staff have sighted the following documents: two DIAC Ministerial submissions relating to the PRC Delegation cases dated 7 July 2006 and 26 July 2006; a psychological report by Ms Y and Ms Z, psychologists, dated 27 November 2006; a medical summary report from International Health and Medical Services (IHMS) dated 30 January 2007; and a combined s 417/48B request by Mr A from Balmain for Refugees dated 23 January 2007.

Key issues

Health and welfare

11. The advocacy group Balmain for Refugees requested an independent psychological assessment on Mr X in November 2006. The subsequent psychological report stated *'Mr X has been assessed as meeting the criteria of diagnosis for Post Traumatic Stress Disorder [PTSD]. This is a severe disorder requiring skilled and thorough therapeutic treatment if chronic and significant disability is to be lessened. A dual diagnosis of melancholic depression is also evident with suicidal ideation ... The environment is not conducive to a positive therapeutic outcome'*. The report discussed his prognosis: *'Due to Mr X's current and deteriorating psychological PTSD condition, including his depressive mood, he is psychologically fragile, and at severe risk, especially if he were to be deported to China. It would also be detrimental to Mr X's health to remain at Villawood where conditions exacerbate the PTSD symptoms he is experiencing. Mr X is already at risk of self-harm and is unable to receive the psychological therapy required to avoid chronic disability'*.
12. DIAC noted that Mr X was involved in voluntary starvation in November 2006. DIAC advises that Mr X has not been assessed by Professional Support Services (PSS). IHMS reported that in his Mental State Examination in January 2007, Mr X said he felt depressed but declined any mental health intervention.
13. The IHMS report also noted that Mr X has received ongoing physiotherapy for neck and back pain and he has seen a specialist dermatologist for eczema.

Attitude to removal

14. Mr X advised Ombudsman staff that he does not want to return to the PRC, saying the country is *'horrible'*. Mr X said he is concerned about his safety if returned because of his Falun Gong beliefs and the protection claims he made in Australia. He claimed his parents were persecuted because of their Catholic beliefs and his mother was assaulted and subsequently died. He claimed he was tortured in detention in the PRC after he was caught smuggling goods.

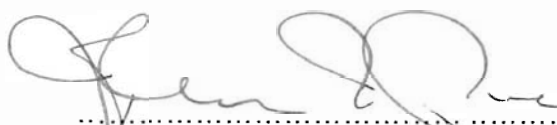
PRC delegation issues

15. DIAC advised that Mr X was one of a group who were interviewed by PRC officials in May/June 2005. DIAC examined the circumstances of this interview following several complaints to the Human Rights and Equal Opportunity Commission (HREOC) to satisfy itself that the individuals interviewed were not exposed to a risk of persecution. The resulting investigation, as detailed in the DIAC Ministerial submission (26 July 2006), concluded Mr X's case did not raise Convention related claims.
16. At interview with Ombudsman staff, Mr X claimed that after speaking with the PRC delegation, his family in the PRC were visited by the Public Security Bureau (PSB) and

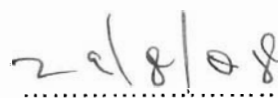
were told that Mr X *'should not criticise the Chinese Communist Party while overseas and that if he came back to China he should report to the PSB immediately or there would be serious consequences'*. The DIAC submission determined that these claims were not credible as Mr X had not raised the issue until a year after the PRC interview.

Ombudsman assessment/recommendation

17. Mr X has been in immigration detention for nearly three years. It appears he was eligible for removal the first year that he was in detention but DIAC were unable to remove him. Mr X's protection claims were heard by the RRT, which affirmed the decision that Mr X was not owed protection. The Ombudsman has no comment to make on this matter.
18. The PRC delegation visit in May 2005 triggered doubt about Mr X's identity. The PRC delegation indicated that a person of his name and date of birth was a PRC citizen, however they could not confirm that he was that person. It is of concern that DIAC did not refer his case to NIVA until September 2006.
19. The Ombudsman notes that there is no outstanding litigation preventing Mr X's removal from Australia. Mr X has now been positively identified and DIAC is pursuing travel documents from the PRC Consulate, which means that the removal of Mr X may be imminent. An external psychological assessment diagnosed Mr X with PTSD and melancholic depression with suicidal ideation. The assessment further noted that he would be at extreme risk if returned to the PRC and expressed the view that it is detrimental to his health to remain in detention. The IHMS report notes that he suffers from depression but also that he has refused any mental health intervention and notes there is nothing to indicate that he could be better managed in a setting other than an IDC. PSS, the contracted psychological services provider, has not assessed Mr X. The Ombudsman **recommends** that DIAC obtain an independent psychiatric assessment and advice on the conflicting opinions currently available. The Ombudsman **recommends** that DIAC take that advice into account in determining what detention arrangements or visa measures may be appropriate while the removal processes are undertaken.
20. The Ombudsman further **recommends** that the Minister make a decision on Mr X's combined s 417/48B application as soon as possible and in any case not later than the statutory period prescribed in s 486P of the Migration Act for reporting to Parliament on this report (viz, within 15 sitting days of receiving the report).



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date