

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 362/08

This is the combined fourth, fifth and sixth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's third report (97/06). The Ombudsman's third report was sent to the Minister on 23 October 2006 and tabled in Parliament on 4 December 2006. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. On 24 July 2006 the Minister decided not to intervene in Mr X's case with regard to an 18 April 2006 submission for possible consideration of her detention intervention powers under s 195A/197AB of the *Migration Act 1958*; Refugee Review Tribunal (RRT) affirmed the Department's (DIAC) decision to refuse Mr X's Protection Visa application; appeal to the High Court (HC) from the judgment of the Full Federal Court (FFC); request made under s 417 seeking favourable exercise of the Minister's humanitarian discretion (September 2006), s 417 request found to not meet the guidelines (December 2006), FFC dismissed Mr X's application for judicial review of the adverse RRT decision; DIAC wrote to HC requesting that Mr X's case be given scheduling priority (March 2007), HC dismissed Mr X's application; DIAC commenced a request for the possible consideration of the Minister's detention intervention powers under s 195A, request did not meet the guidelines for referral to the Minister (May 2007), request made under s 48B, appeal of the third review by the RRT to the Federal Magistrates Court (FMC) (June 2007), appeal to FMC dismissed (July 2007), Minister declined to exercise his powers under s48B (October 2007), s 195A found not to meet the guidelines for referral to the Minister (November 2007).

Current immigration status

2. Mr X is an unlawful non-citizen detained at Villawood Immigration Detention Centre.

Removal details

3. DIAC advises that though Mr X remains uncooperative with removal action and has refused to sign a travel document application, it has a travel document for Mr X that is valid until 25 February 2008. However, it has advised that involuntary removal action has been temporarily suspended pending direction from the Minister in relation to relevant policy settings.

Ombudsman consideration

4. DIAC's further reports to the Ombudsman under s 486N are dated 20 December 2006, 4 June 2007 and 26 November 2007, and the Minister's Statement to Parliament is dated 4 June 2007.
5. Ombudsman staff interviewed Mr X by telephone on 12 October 2007.
6. Ombudsman staff sighted three International Health and Medical Services (IHMS) Summary Reports dated 13 December 2006, 2 October 2007 and 26 November 2007.

Key issues

Health and welfare

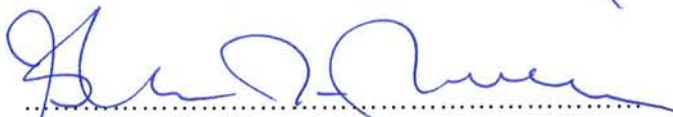
7. The IHMS report of December 2006 states that *'A mental examination was performed on 3/7/06 and the client denies any mental health issues at the time though did express feelings of hopelessness.'* IHMS advises that Mr X has had two mental state examinations in July and November 2007 and that *'no issues of concern were identified'*.
8. IHMS advised in November 2007 that Mr X is on the hospital waiting list to have a cyst removed from the back of his head.
9. At interview with Ombudsman staff Mr X said *'when I was first in detention I had a very bad mood but ... Falun Gong practice makes me feel very calm and I do not think about too many things'*.

Attitude to removal

10. At interview Mr X stated that he has no friends or relatives in China that he is in contact with. He said *'I already became homeless in China and I believe that I will be the subject of persecution if I was to return ...if I am forced to return I will not be too far away from death'*. He stated that he would never be able to get work in China in his previous profession due to the past events that forced him to leave. He stated that due to his age he would find trouble gaining employment anywhere else because he has no skills and that *'in China I would have already retired'*.

Ombudsman assessment/recommendation

11. Mr X has been in detention since May 2002 and turns 60 years of age in 2008. In Reports 53/06 and 97/06 the Ombudsman identified the length and continuing nature of Mr X's detention to be a matter of concern. Report 97/06 observed, correctly as events have transpired, that *'there is likely to be further considerable delay before Mr X is either released lawfully or removed to the PRC'*. It was noted that Mr X's partner had been granted a Bridging Visa, that Mr X is not considered a threat to the Australian community, and that he does not appear to present a significant security risk. For these reasons, and to avoid indefinite detention, both reports recommended that Mr X be granted a Removal Pending Bridging Visa. Those recommendations were not accepted, and Mr X has now been in immigration detention for nearly six years.
12. DIAC advises that it is in possession of a travel document for Mr X valid until 25 February 2008. DIAC has temporarily suspended involuntary removal action pending direction from the Minister. It is unclear how long this issue may take to be resolved. If Mr X is not removed from Australia by that date, the Ombudsman **recommends** that the Minister exercise his powers under s 195A to grant Mr X a suitable visa with work rights, subject to appropriate health and security checks, or otherwise implement an alternative detention arrangement.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

17 January 2008
Date