

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 353/08

This is a combined second and third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (121/07). The Ombudsman's first report was sent to the Minister on 11 January 2007 and tabled in Parliament on 21 March 2007. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. The Department (DIAC) commenced an assessment of Mr X's case under s 48B of the *Migration Act 1958* (August 2006), assessed as not meeting the guidelines for referral to the Minister (November 2006); s 417 request submitted to the Minister (November 2006), request not considered (December 2006); DIAC initiated a combined s 48B/417 request (February 2007), assessed as not meeting the guidelines for referral to the Minister (July 2007); a combined s 48B/417 request (August 2007) is ongoing.
2. DIAC initiated a request for exercise of the Minister's s 195A detention intervention powers (September 2006), assessed as not meeting the guidelines for referral to the Minister (January 2007); DIAC initiated a s 195A request (June 2007), the Minister declined to consider the request (August 2007).

Current immigration status

3. Mr X remains in detention at Villawood Immigration Detention Centre.

Removal details

4. DIAC advises that it is progressing the removal of Mr X and is pursuing a travel document application lodged with the PRC Consulate in September 2007.

Ombudsman consideration

5. DIAC's further reports to the Ombudsman under s 486N are dated 2 February 2007 and 20 July 2007 and the Minister's Statement to Parliament is dated 20 March 2007.
6. Ombudsman staff interviewed Mr X by telephone on 2 November 2007.
7. Ombudsman staff sighted two International Health and Medical Services (IHMS) summary reports dated 15 January 2007 and 10 July 2007, and a Professional Support Services (PSS) summary report dated 10 July 2007.

Key issues

Identity

8. DIAC reports that the National Identity Verification and Advice Section (NIVA) confirmed Mr X's identity on 29 June 2007. DIAC also advises that the PRC Consulate had previously advised that it could not positively identify Mr X.

Health and welfare

9. The IHMS and PSS reports indicated no significant medical issues. At interview with Ombudsman staff, Mr X said he had '*bad thoughts*' and he could not sleep. He said he did not feel well and wanted a general medical check up.

Attitude to removal

10. Mr X stated at interview that he has a submission before the Minister seeking to remain in Australia because of his, and his family's, adherence to the practice of Falun Gong. He stated that *'I will be unfairly treated, I won't have an ID card, I won't enjoy the benefit of being a citizen'*. Mr X stated he would have trouble obtaining work without an ID card.
11. In Report 121/07, the Ombudsman advised that Mr X preferred to be removed to Taiwan. DIAC's s 486N report dated 20 July 2007 states *'Mr X has confirmed he does not wish to return to Taiwan. The Department is pursuing a travel document with the PRC Consulate for his removal'*. At interview with Ombudsman staff in November 2007, Mr X stated he has not been asked by DIAC about his preference to be removed to Taiwan. He stated he still wished to go to Taiwan.

Ombudsman assessment/recommendation

12. Mr X has been in immigration detention for three years and five months.
13. It appears that the processing of Mr X's case could have been expedited. Three DIAC-initiated, ministerial intervention submissions have taken between three and five months to determine that they did not meet the guidelines for referral to the Minister. A combined s 48B/417 request by Mr X, in August 2007, remains outstanding.
14. The major causes of delay appear to be identity issues and difficulty obtaining PRC travel documents, neither of which is within DIAC's control. The Ombudsman **recommends** that the Minister make a decision on Mr X's outstanding combined s 48B/417 request as soon as possible and in any case not later than the statutory period prescribed in s 486P of the Migration Act for the tabling of this report in Parliament (*viz.* within 15 sitting days of receiving this report).
15. There appears to be confusion concerning the country Mr X would prefer to be removed to. The Ombudsman **recommends** that DIAC confirm his preferred destination.
16. In his first s 486O report for Mr X, the Ombudsman said that he would consider further recommendations if Mr X remained in detention. If there are further delays in removing Mr X, the Ombudsman **recommends** that DIAC consider Mr X for alternative detention, with such safeguards as DIAC considers appropriate.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date