

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 217/07

Principal facts

Personal details

1. Mr X is aged 33 and is a citizen of the People's Republic of China (PRC). He states that he is in contact with his parents who live in the PRC and his younger sister who lives in the United States of America.

Detention history

2. In June 2004, after completing a criminal sentence at Silverwater Correctional Centre, Mr X was detained under section 189(1) of the *Migration Act 1958* and transferred to Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X entered Australia on a short stay Tourist Visa (TV) in the name of Mr Y (March 1996), TV ceased (June 1996); applied for a Protection Visa (PV), granted associated Bridging Visa (BV) (October 1996); BV ceased, new BV granted (May 1997); PV application refused (November 1997); the Refugee Review Tribunal (RRT) affirmed the refusal (September 1998); s 417 request lodged (October 1998); BV ceased (November 1998); Minister declined to intervene under s 417 (September 1999).
4. Mr X joined the *Singh* class action, granted BV (November 2000), withdrew from class action, BV ceased (April 2001); Mr X lodged a request under s 48B (August 2005), withdrawn (November 2005); sought judicial review of RRT decision in Federal Magistrates Court (November 2005), application dismissed (April 2006); appealed to the Full Federal Court (May 2006), appeal dismissed (July 2006).
5. Four BV applications lodged (November 2005 to March 2006), one deemed invalid and three refused; the Migration Review Tribunal reviewed and affirmed two of the decisions (December 2005 and February 2006); the Department (DIAC) initiated a s 48B request on behalf of Mr X (May 2006), request assessed as not meeting the guidelines for referral to the Minister (July 2006); s 417 requests initiated (November 2006 and February 2007), assessed as not meeting the guidelines for referral to the Minister (January 2007 and March 2007).

Current immigration status

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

Removal details

7. DIAC advises that Mr X has been uncooperative with attempts to remove him to the PRC and refuses to sign a passport application. Travel documents for Mr X were requested from the PRC Consulate in February 2007 and the request was followed up in May 2007.

Ombudsman consideration

8. DIAC reports to the Ombudsman under s 486N were dated 19 June 2006, 6 December 2006 and 8 June 2007.
9. Ombudsman staff interviewed Mr X at Villawood IDC on 3 August 2006.

10. Ombudsman staff sighted an International Health and Medical Services (IHMS) summary report dated 26 September 2006 and two DIAC Ministerial submissions relating to the PRC Delegation cases, dated 7 July 2006 and 26 July 2006.

Key issues

Criminal history

11. DIAC advises that Mr X was convicted of demanding property with menace in September 2003 and was sentenced to one year and three months in gaol.

Health and welfare

12. At interview with Ombudsman staff, Mr X said that he often feels unwell and had sought medical treatment. He said he has been prescribed painkillers, however has not sought follow-up treatment.
13. The IHMS report noted that in August 2006 a mental state examination revealed *'frustration, low mood and poor sleep'*. It further noted that these conditions would be likely to improve outside of detention. IHMS also noted that Mr X has frequently complained of abdominal pain and was diagnosed with gastritis, which was treated with medication. Further investigations included an abdominal ultrasound and CT scan, which were normal, and a colonoscopy, which found nothing significant.
14. DIAC advises that Mr X is being treated symptomatically for irritable bowel syndrome. He has also had problems with his ears and associated persistent headaches. A CT scan of Mr X's head was normal.

Attitude to removal

15. Mr X said that he does not want to return to the PRC as he fears being harmed or imprisoned by authorities as he deserted the army approximately 12 years ago. Mr X claimed that soldiers are forbidden to participate in religion and he was sentenced to several months in military prison because he was caught worshipping Buddha. He said he escaped prison after paying a bribe to some officials. He then bought a passport and travelled to Australia.
16. The RRT found that Mr X would not face persecution on the basis that he is a Buddhist as Buddhists enjoy a reasonable degree of freedom in the PRC. It found that any punishment he faced for desertion would be for *'breach of laws of general application and not for one of the Convention Reasons'*.


Other detention issues

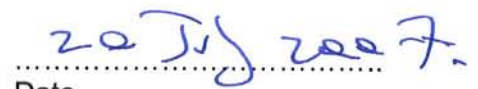
17. DIAC advised that Mr X was one of a group of detainees interviewed by PRC officials in May 2005. DIAC examined the circumstances of these interviews following several complaints to the Ombudsman and the Human Rights and Equal Opportunity Commission, to satisfy itself that the individuals interviewed were not exposed to a risk of persecution. The resulting investigation, as detailed in the DIAC Ministerial submission, concluded that Mr X's case posed no issues and removal could proceed.

Ombudsman assessment/recommendation

18. Mr X has been in immigration detention for three years, primarily due to his ongoing pursuit of a PV and requests to the Minister. The DIAC decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. The Ombudsman also notes that had Mr X been the holder of a permanent visa, DIAC may have considered cancellation of that visa under the provisions of s 501 on the basis that Mr X had failed the character test when he was sentenced to imprisonment for more than 12 months.

19. The Ombudsman notes that there are no outstanding applications preventing Mr X's removal from Australia. Mr X was positively identified by the PRC delegation in May 2005. DIAC is now pursuing travel documents from the PRC Consulate, which means that removal of Mr X may be imminent. While he does not appear to have any major health issues that would be better managed outside of the detention environment, the risk to Mr X's mental health must increase with continued detention. The Ombudsman does not make any recommendations in this report, however, should Mr X remain in detention, a further report from DIAC under s 486N will fall due in December 2007. The Ombudsman will, at that time, review Mr X's circumstances, considering again the impact of detention upon him and the suitability of continued detention in an immigration facility.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date