

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 354/08

Principal facts

Personal details

1. Mr X is aged 37 and is a citizen of the People's Republic of China (PRC). His family, including his ex-wife and son, remain in the PRC.

Detention history

2. Mr X entered Australia three times using fraudulent identities and travel documents. He first entered Australia in April 1998 on a Visitor's Visa (VV), was detained in February 2003 under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC). He was removed to the PRC in March 2004. In April 2004, Mr X re-entered Australia on a VV. He was detained in September 2004 under s 189(1) and placed at Perth IDC. He was removed to the PRC in November 2005.
3. In March 2006, Mr X again entered Australia on a fraudulent travel document. He was refused immigration clearance and the VV was cancelled under s 116. He was detained under s 189(1) and placed at Villawood IDC. In March 2006 he was transferred to Baxter IDC. He was transferred to Cleland House, Glenside Campus Mental Health Service (MHS) on 1 June 2007. On 16 August 2007 Mr X was discharged to Perth IDC, then Perth Immigration Residential Housing and then Perth IDC. On 2 October 2007 he was admitted to Royal Perth Hospital and discharged the same day back to Perth IDC. On 15 October 2007 he was admitted to Bentley Hospital and discharged to Perth IDC on 1 November 2007.

Visa applications

4. Mr X lodged a Protection Visa (PV) application, granted associated Bridging Visa (BV), PV application refused (May 1998); the Refugee Review Tribunal (RRT) affirmed the decision (November 1998); BV ceased (December 1998).
5. Mr X applied for PV (April 2006), application refused (May 2006), the RRT affirmed the decision (September 2006), sought judicial review of the RRT decision in the Federal Magistrates Court (FMC) (October 2006), s 48B and s 417 requests lodged, the Department (DIAC) initiated s 197AB assessment (February 2007), FMC application dismissed (March 2007); s 197AB assessment finalised as not meeting the guidelines for referral to the Minister (May 2007); s 417 and s 48B requests refused, s 417 application lodged and not referred to Minister, s 48B application commenced and refused, s 417 application lodged (September 2007); two s 417 requests lodged and refused, three s 48B requests lodged and two refused (October 2007); Mr X sought a Federal Court (FC) injunction to prevent removal (October 2007). A s 417 request from September 2007, a s 48B request from October 2007, and the FC matter remain outstanding.

Current immigration status

6. Mr X is an unlawful non-citizen in detention at Perth IDC.

Removal details

7. Mr X was to be removed on 2 October 2007 but this was postponed. DIAC advises removal plans are on hold due to the FC injunction application.

Ombudsman consideration

8. DIAC's reports to the Ombudsman under s 486N were dated 30 January 2007 and 12 July 2007.
9. Ombudsman staff interviewed Mr X by telephone on 28 September 2007.
10. Ombudsman staff sighted the following documents: International Health and Medical Services (IHMS) reports dated 8 January 2007 and 9 July 2007; Professional Support Services (PSS) reports dated 10 January 2007 and 18 July 2007; a s 417 request by Ms Y dated 14 April 2007; a psychological report from Dr Z dated 31 May 2007; a letter from Consultant Psychiatrist Dr A to IHMS dated 25 July 2007; a discharge summary from the Glenside Campus MHS by Dr B and Dr A dated 16 August 2007; a s 417 request by the Uniting Church dated 20 September 2007; letters from Dr A dated 28 September 2007 and 4 October 2007; a Global Solutions Limited Incident Report dated 2 October 2007; correspondence from Ms C of the Uniting Church of Australia and Mr D dated 4 October 2007; a letter by Consultant Psychiatrist Dr E relating to his assessment on 2 November 2007; a Mental State Examination Assessment (MSEA) dated 5 November 2007; three undated statements by Mr X; and numerous letters and submissions.

Key issues

Health and welfare

11. The PSS reports of January 2007 and July 2007 stated Mr X was diagnosed with anxiety and depression and had been seen on a weekly to monthly basis, depending on his need. He received cognitive behavioural therapy and psychiatric medication.
12. Mr X has been suicidal. In December 2006 and July 2007, he was placed on Suicide and Self Harm watch. On 25 May 2007, Mr X advised staff he had taken an overdose of medication and was transferred initially to Port Augusta Hospital and then to Glenside Campus MHS as an involuntary patient.
13. Dr Z, Clinical Psychologist, stated in her report dated 31 May 2007 that *'Mr X has presented as a seriously depressed man, with feelings of hopelessness ... should he remain detained over a further lengthy period, he could not be expected to improve'*.
14. Dr A, in a letter dated 25 July 2007, noted Mr X's improvement since he was admitted and stated that a move back to detention would *'inflict a psychological injury due to a loss of essential supports and expose him to increased risk of depressive relapse with associated suicidal behaviour [therefore] the best accommodation option for Mr X would be a community detention'*. The Public Advocate for South Australia was appointed as Mr X's legal guardian.
15. In a letter to the Ombudsman's office dated 4 October 2007, Dr A advised *'from my knowledge of Mr X's fragile mental state it is inevitable that he will try and kill himself again if he is subject to further trauma'*. Dr A diagnosed Mr X as having Major Depression with suicidal intent. Dr A also wrote to the Minister on 28 September 2007 stating *'in [Mr X's] fragile mental state it is very likely he will kill himself rather than face being returned to China'*.
16. Mr X was taken to Royal Perth Hospital on 2 October 2007 after swallowing razor blades. He was admitted to Bentley Hospital on 15 October 2007 following another self-harm attempt and was discharged on 1 November 2007. In the same month, Dr E stated Mr X was *'pre-occupied with ideas of dying and suicide'* and that he presented with *'symptoms of major depression (firm diagnosis) and symptoms suggestive of post traumatic stress disorder PTSD (likely co-morbid diagnosis)'*. He further stated that Mr X was currently unfit to travel by air, his placement in the IDC was counter-therapeutic and *'even if his*

clinical status improved sufficiently for travelling, he will require psychiatric nursing escort, and preparation by psychiatric professional(s) in China to take over when he arrives'.

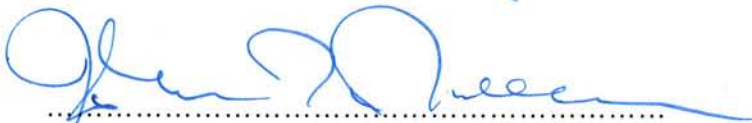
17. The MSEA of 5 November 2007 assessed him as having a 'very high risk at this present time of self-harm'.

Attitude to removal

18. At interview with Ombudsman staff, Mr X claimed it would be 'very dangerous' for him should he be removed to the PRC but he was not specific about what he believed would happen to him.

Ombudsman assessment/recommendation

19. Mr X has been in immigration detention on three occasions totalling over three and a half years, largely as a result of his attempts over the last nine years to enter Australia unlawfully and his pursuit of a PV. Mr X's claims for protection have been assessed twice by the RRT, and both times the RRT affirmed the decision to not grant a PV. The Ombudsman has no further comments to make on this matter.
20. Mr X is diagnosed with a Major Depressive Disorder with suicidal ideation and possibly PTSD. The available psychiatric and clinical advice has recommended alternatives to centre-based detention for Mr X. Removal plans have been placed on hold as he has a FC matter afoot. The Ombudsman **recommends** that Mr X be placed in community detention, with appropriate psychiatric care and support, until his immigration outcome is more certain.
21. At the conclusion of the court matters Mr X may become available for removal. The available psychiatric advice indicates he may be at risk of serious self-harm if removal is attempted. The Ombudsman **recommends** that close and regular monitoring of the impact of removal plans upon Mr X's mental health be maintained in consultation with mental health professionals. The Ombudsman further **recommends** that any fitness to travel assessment specifically address the impact of removal on Mr X's mental health and appropriate strategies that may be necessary to ensure Mr X's safety and well-being.
22. The Ombudsman notes that if Mr X remains in detention, a further report under s 486N will fall due in early 2008. This will provide an opportunity to review DIAC's management of Mr X's case and the impact of detention upon his health.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date