

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 229/07

This is a combined fourth and fifth s 486O report by the Ombudsman on Mr X as he remained in immigration detention after the Ombudsman's third report (77/06). The Ombudsman's third report was sent to the Minister on 21 September 2006 and tabled in Parliament on 24 November 2006. The Ombudsman's combined first and second report (58/06) was sent to the Minister on 5 April 2006 and tabled in Parliament on 20 June 2006. This report updates the material in those reports and should be read in conjunction with them.

Principal facts

Detention history

1. Mr X was transferred to Sydney Immigration Residential Housing enabling him to live with his partner Ms Y (Report 228/07) (December 2006); the Minister intervened under s 195A of the *Migration Act 1958* and Mr X and his partner were granted Removal Pending Bridging Visas (RPBVs) and released from detention (July 2007).

Current immigration status

2. Mr X resides lawfully in the community on a RPBV with Ms Y.

Removal details

3. The Department (DIAC) advised that Mr X has not been positively identified and removal considerations have been deferred.

Ombudsman consideration

4. The DIAC reports to the Ombudsman under s 486N are dated 18 December 2006 and 30 May 2007. The Minister's Statement to Parliament in response to the Ombudsman's Report 77/06 is dated 24 November 2006.
5. Ombudsman staff sighted the following documents: an International Health and Medical Services (IHMS) summary report dated 26 September 2006; a Professional Support Services (PSS) psychological summary report dated 4 November 2006.

Key issues

Health and welfare

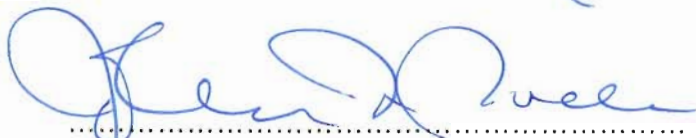
6. Mr X's IHMS report noted that he had received regular treatment for right tennis elbow, epigastric reflux, blurred vision in the right eye and teeth grinding. A review was conducted by the Mental Health Team and no mental health issues were identified.
7. PSS noted that Mr X was seen on one occasion in February 2006 and no issues of concern were noted.

Identity issues

8. DIAC advises that it continues to conduct enquiries targeted at confirming Mr X's identity.

Ombudsman assessment/recommendation

9. The Ombudsman refers to Report 77/06 where, *'The Ombudsman also wishes to make some observations on the substantive issue of whether Mr X should be released from detention at Villawood IDC. He has now been in detention at Villawood IDC for over four years. It is possible that he could remain in detention for a further indefinite period. His immigration status is unresolved, and there does not appear to be an immediate prospect that it will be resolved or that arrangements can be put in place for him to be removed from Australia. A significant factor contributing to that difficulty is that he is believed to be a citizen of North Korea. Based on those considerations, the Ombudsman recommends, in similar terms to the recommendation in Report 058/06, that the Minister consider granting Mr X a RPBV, or other appropriate visa with work rights to enable his timely release from detention whilst his immigration status is determined. If the matters concerning Mr X's nationality and identity cannot be resolved within a reasonable time, consideration should also be given to whether he should be granted a permanent visa to remain in Australia'*.
10. The Ombudsman recommended in April 2006 and again in September 2006 that Mr X be granted a RPBV or other appropriate visa. The Ombudsman notes that Mr X and his partner were granted RPBVs in July 2007 after being transferred to immigration residential housing in December 2006. It is regrettable that he remained in detention a further 10 months after Report 77/06.
11. It is now five years since Mr X was taken into detention and his identity has not been established despite his apparent cooperation with the National Identity and Verification Advice Section. Mr X has maintained that he is from North Korea. DIAC advised in December 2006 that it was conducting enquiries targeted at eliminating the possibility of Mr X being South Korean or from the People's Republic of China, which may support his claims to being North Korean. DIAC advised in May 2007 that it continues to conduct enquiries targeted at confirming Mr X's identity.
12. It appears that, despite DIAC's continued efforts, it is not able to easily establish his identity. In similar terms to the consideration suggested in Report 77/06, the Ombudsman now **recommends** that the Minister give consideration to granting a permanent visa to allow Mr X and Ms Y to remain in Australia.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date