

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 223/07

Principal facts

Personal details

1. Mr X is aged 55 and is a citizen of the People's Republic of China (PRC). Mr X is divorced from his wife and has one son, aged 29, who resides in the PRC.

Detention history

2. Mr X arrived in Australia in February 2005 on a Tourist Visa (TV). In May 2005, the Department (DIAC) cancelled his visa because he allegedly violated the no-work condition. He was detained under s 189(1) of the *Migration Act 1958*, and placed in Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X sought review from the Migration Review Tribunal (MRT) regarding the cancellation of his TV (May 2005); Protection Visa (PV) application lodged, refused (June 2005); appealed decision to the Refugee Review Tribunal (RRT), decision affirmed (September 2005); sought judicial review at the Federal Magistrates Court (FMC) and the MRT deemed TV cancellation ineligible for review (October 2005), FMC dismissed application (March 2006); Bridging Visa application lodged and refused (September 2006).
4. Mr X lodged a s 48B request (June 2006), assessed as not meeting the guidelines by DIAC (October 2006); combined s 48B/417 application lodged (November 2006), s 48B request assessed as not meeting the guidelines for referral to the Minister, s 417 request referred to the Minister, Minister declined to consider (February 2007); s 48B request lodged (March 2007), s 417 submission lodged (May 2007), s 417 submission assessed as not meeting the guidelines for referral to the Minister (June 2007); s 48B request refused by the Minister, DIAC initiated a s 195A submission but not referred to the Minister as Mr X was found to not meet the Detention Intervention Guidelines (July 2007); s 48B/417 request lodged, refused (August 2007).

Current immigration status

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

Removal details

6. DIAC advises Mr X is to be removed to the PRC on 31 August 2007.

Ombudsman consideration

7. The DIAC report to the Ombudsman under s 486N dated 16 May 2007.
8. Ombudsman staff interviewed Mr X at Villawood IDC on 4 July 2007.
9. Ombudsman staff sighted the following documents: a Notice of Intention to consider cancellation of a visa dated 23 May 2005; a letter to the Minister written by Mr X dated 12 March 2007; and an International Health and Medical Services (IHMS) summary report dated 6 May 2007.

Key issues

Health and welfare

10. IHMS's report noted Mr X was diagnosed with depression in March 2007. DIAC advised Mr X was placed on Suicide and Self Harm observation between 16 and 21 March 2007 because *'he had expressed suicidal thoughts'*. Mr X was prescribed medication and DIAC reports that a psychiatrist is managing his case.
11. Mr X was diagnosed with cellulitis that required him to be hospitalised for nine days in June and July 2006.

Attitude to removal

12. Mr X stated that he feared to be returned to the PRC because of his involvement in Falun Gong activities, both in the PRC and in Australia. He said he was imprisoned several times while in the PRC and tortured. The RRT considered his claims and found *'I do not accept that he was a Falun Gong practitioner in China ... I do not accept that he was detained or otherwise had problems with the Chinese authorities for this reason'*.

Ombudsman assessment/recommendation

13. Mr X has spent over two years in immigration detention, primarily due to his unsuccessful pursuit of protection in Australia. The DIAC decision to refuse his claim for protection was reviewed and affirmed by the RRT. As Mr X's removal to the PRC is imminent, the Ombudsman has no further comments to make on this issue and makes no recommendations.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date