

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 238/07

Principal facts

Personal details

1. Mr X is aged 50 and is a citizen of the People's Republic of China (PRC). Mr X advised that his wife and a daughter aged 22 reside in the PRC and until recently, he was in contact with them once or twice a month.

Detention history

2. Mr X was detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC) from September 1999 to October 1999. He was re-detained in April 2005 and again placed at Villawood IDC.

Visa applications

3. Mr X arrived in Australia as the holder of a Short Stay Business Visa (October 1996), ceased, applied for Protection Visa (PV), granted BV (November 1996), PV refused (August 1997); sought review at Refugee Review Tribunal (September 1997), decision affirmed (January 1999); BV ceased (February 1999); s 417 request lodged (March 1999), declined (August 1999); BV granted on the condition that he depart Australia, BV ceased (October 1999).
4. Sought judicial review at the Federal Magistrates Court (FMC) (May 2005), dismissed (August 2005); appealed to Full Federal Court (December 2005), refused (March 2006); s 417 request lodged (April 2006), assessed as not meeting the guidelines for referral to the Minister (August 2006); s 417 request lodged (September 2006), assessed as not meeting the guidelines for referral to the Minister; s 48B request lodged (November 2006), assessed as not meeting the guidelines for referral to the Minister (January 2007), combined s 417/48B request lodged (March 2007), Minister declined to intervene (September 2007).

Current immigration status

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

Removal details

6. Mr X's removal was planned for May 2005 but aborted when he lodged a FMC application. The Department (DIAC) advises that the combined s 417/48B requests had placed plans for Mr X's removal on hold until the Minister declined to intervene in September 2007.

Ombudsman consideration

7. The DIAC report to the Ombudsman under s 486N is dated 20 April 2007.
8. Ombudsman staff interviewed Mr X on 4 July 2007 at Villawood IDC.
9. Ombudsman staff sighted the following documents: Mr X's combined requests under s 417/48B dated 19 March 2007 and 23 May 2007; a medical summary report from International Health and Medical Services (IHMS) dated 3 April 2007; and a psychology summary report from Professional Support Services (PSS) dated 11 April 2007.

Key issues

Health and welfare

10. IHMS advises that Mr X has a history of hypertension and thrombocytopaenia, or low platelet count. Mr X advises that in April 2007 he was seen by a specialist, Dr A, who diagnosed his condition as Myelodysplastic Syndrome, an abnormality of the bone marrow, which affects its capacity to produce normal cells. DIAC advises that Dr A has requested a second opinion in relation to Mr X's condition and this is currently being organised. Mr X claims that his specialist has told him there is a chance that he could develop either leukaemia or bone marrow failure. DIAC has noted that if he requires transfusions the suitability of his current accommodation may need to be reviewed. PSS noted Mr X presented as *'mildly depressed with physical health issues'*.

Attitude to removal

11. Mr X claims he would be persecuted in the PRC because he had previously revealed corrupt behaviour by officials and had produced a pro-democracy publication. The RRT considered these claims and accepted *'he had been involved in some anti-corruption activity, been reprimanded by his boss, been questioned by the authorities ... [and been] punished with a demotion'*. However, it held he would be unlikely to be persecuted if he was returned to the PRC as the government was taking a softer line towards exposure of corruption and pro-democracy activities.
12. Mr X raised several new matters in his recent s 417/48B request: he claims that authorities questioned his wife for months on his whereabouts and then in December 2006 imprisoned her on the charge of *'covering-up subversive and anti-government crimes'*; he asserts that the PRC authorities arrested the other people involved in his pro-democracy publication; and he claims he is unlikely to receive the treatment he needs for his medical condition if he is returned to the PRC. Mr X claims he will be unable to find work if he is returned to the PRC. He said that he would be identified as someone who had sought protection in Australia, who is no longer young and does not have any skills in demand. Mr X also claims that his relatives are not in a position to help him with the cost of treatment.

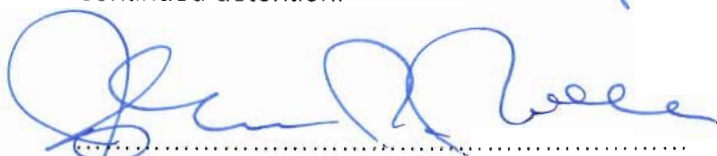
Other matters

13. Mr X advised that after 10 years in the Australian community he has a supportive network of good friends. He claims to have worked as a carpenter and joiner for a number of Australian companies.

Ombudsman assessment/recommendation

14. The Ombudsman notes that Mr X has resided in Australia for over 10 years and has spent over two years in detention, largely because of his unsuccessful pursuit of a PV and his applications to the Minister. The Ombudsman notes that the Minister declined a request under s 417/48B from Mr X on 21 September 2007.
15. The current issue for consideration is whether Mr X should remain in detention while removal arrangements are made. IHMS advises that there is nothing to indicate that Mr X's medical condition could be better managed in a setting other than an IDC, however, he is likely to need regular access to external medical services. When DIAC receives the second medical opinion, it will be appropriate to review whether an IDC remains an appropriate setting for the management of his medical condition.
16. The length of Mr X's detention, together with his health, are matters of increasing concern. A contributing factor to the length of Mr X's detention is the time taken to decide some of his applications: for example, it took four months to decide that his s 417 application lodged in April 2006 did not meet the guidelines for referral to the Minister;

and six months elapsed before a decision was made to reject his s 417/48B application lodged in March 2007. Although Mr X did not leave Australia in 1999 when he was granted a BV for that purpose, there is nothing to indicate that he is a risk to the Australian community nor is there any evidence that he is likely to abscond given his need for medical attention. The Ombudsman notes that if Mr X remains in detention, a second report under s 486N will fall due in early November 2007. At the time of completing the next s 486O report on Mr X, the Ombudsman will review his circumstances, considering any impact of detention on his health and the suitability of continued detention.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman

15 October 2007
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Date