

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 364/08*

## **Principal facts**

### *Personal details*

1. Mr X is a male aged 36 from the People's Republic of China (PRC). Mr X states his wife and three children are residing in the PRC.

### *Detention history*

2. In August 2005, Mr X's visa was cancelled under s 116 of the *Migration Act 1958*, he was detained under s 189(1) and placed at Villawood Immigration Detention Centre (IDC).

### *Visa applications*

3. Mr X arrived in Australia in June 2005 on a false PRC passport and on an ETA Visitor Visa; lodged an application for a Protection Visa (PV) (August 2005), application refused (August 2005); appealed to the Refugee Review Tribunal (RRT), decision affirmed (October 2005); sought judicial review at the Federal Magistrates Court (FMC) (November 2005), application dismissed (April 2006); during PV process, lodged seven applications for Bridging Visas (BV); three refused, one deemed invalid, three withdrawn; appealed one BV refusal at the Migration Review Tribunal (MRT), decision affirmed (October 2005).
4. Mr X lodged a combined s 417/48B request (May 2006); s 48B request assessed as not meeting the guidelines for referral to the Minister, s 417 was referred to the Minister who declined to consider it (November 2006); lodged s 417/48B request (February 2007); associated BV application was refused (April 2007); appealed at the MRT, decision affirmed (April 2007); s 417 assessed as not meeting the guidelines for referral to the Minister (June 2007), s 48B referred to the Minister who declined to consider it (July 2007); lodged further s 417/48B request (July 2007), Minister lifted the s 48B bar allowing Mr X to lodge a fresh PV application (November 2007), application submitted (December 2007) and currently under consideration.

### *Current immigration status*

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

### *Removal details*

6. The Department (DIAC) advises that it contacted the PRC Consulate for a travel document and is awaiting a response. DIAC advises that he will not be removed while he has an outstanding PV application.

## **Ombudsman consideration**

7. DIAC's report to the Ombudsman under s 486N is dated 6 August 2007.
8. Ombudsman staff interviewed Mr X on 25 October 2007 at Villawood IDC in the presence of a support person, Mr A.
9. Ombudsman staff sighted an International Health and Medical Services (IHMS) report dated 17 July 2007, a Professional Support Services (PSS) report dated 25 July 2007 and information provided by Mr A dated 26 October 2007.

## **Key issues**

### *Identity issues*

10. Mr X told Ombudsman staff at interview that due to his involvement with an unregistered Christian church, he had to leave the PRC and using a false passport was the only way to achieve this. Mr X informed DIAC of his real identity when he lodged his first PV application in August 2005. DIAC advise that it confirmed Mr X's identity on 20 July 2007.

### *Health and welfare*

11. IHMS reports that in September 2006 a psychiatrist noted that Mr X's mood was low and he was depressed. He was prescribed a course of anti-depressant medication and a Mental State Examination was conducted on 26 June 2007 where no mental health issues were noted.
12. IHMS also reports that while in detention, Mr X had epigastric discomfort and was prescribed medication. Mr X also has reduced hearing in the left ear due to past history of a ruptured eardrum.

### *Attitude to removal*

13. DIAC advises that Mr X has been uncooperative with completing an application for a travel document. At interview with Ombudsman staff, Mr X stated that he fears returning to the PRC as he believes he will be rearrested and put in prison due to his association with the Christian church.

### *Community support*

14. DIAC advises that Mr X has a brother who is a permanent resident of Australia and is currently living in Melbourne. Mr X's brother has indicated that he is happy to provide financial support and accommodation should Mr X be released from detention. At interview with Ombudsman staff, Mr X stated that he also has the support of Mr A.

## **Ombudsman assessment/recommendation**

15. Mr X has been in detention since August 2005. The original DIAC decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. The Ombudsman notes that Mr X has an ongoing PV application currently under consideration by DIAC and that removal plans have been deferred pending the outcome of his application. Bearing in mind that Mr X has been in detention for over two years, it is important that his PV application be considered promptly and given a high priority by DIAC.
16. The Ombudsman notes that if Mr X were to remain in detention, a further report under s 486N will fall due in February 2008. 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.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman

  
Date