REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 067/06

Principal facts

Personal details

1. This report concerns six people from the same family: Ms X; four children born to Ms X and her de facto husband, Mr Y (who is the subject of a separate report: Report 062/06, dated 24 April 2006); and another child, Master Z, born to Ms X, but of disputed paternity.

2. Ms X is 38 years old and a citizen of Taiwan. She lives in the community with her de facto husband, Mr Y, and the five children. Two of the children, Master Z and Ms A, were born in Australia.

Detention history

3. Ms X arrived in Australia with her de facto husband and the elder three children on a tourist visa in November 2002. Their visas ceased in February 2003. Mr Y was located by Department (DIMA) compliance officers on 17 October 2003 and was detained under s 189(1) of the Migration Act 1958 at Villawood Immigration Detention Centre (IDC). Ms X, and her then four children, contacted the Department on 3 November 2003 and consequently were detained under s 189(1) at Villawood IDC. On 28 July 2005, Ms X, Mr Y and the children were transferred into the community on a Residence Determination (RD).

Visa applications

4. In July 2003, Ms X applied for a partner visa, citing marriage to Mr B, and listing her children as dependants. Ms X was advised that the visa was refused (September 2003) because the relationship with Mr B was not continuing, they no longer lived together and they had not demonstrated a mutual commitment to a shared life. Associated family Bridging Visas (BV) ceased (October 2003).

5. Mr Y applied for a Protection Visa (PV) naming Ms X and family as dependants, and was refused (November 2003); refusal affirmed by the Refugee Review Tribunal (RRT) (February 2004); an application for judicial review by the Federal Magistrates Court was dismissed (September 2004); appeal to the Federal Court dismissed (October 2004). Ms X applied for a PV in her own name and was refused (July 2005); refusal affirmed by the RRT (September 2005). Ms X has not sought judicial review of the RRT decision. Ms X’s youngest child, Ms A was the applicant for a PV (June 2005), refused (July 2005); refusal affirmed by the RRT (September 2005).

Current immigration status

6. Ms X and family remain in the community on a RD with support from the Australian Red Cross.

Removal details

7. In June 2005, DIMA advised Ms X (and Mr Y) that removal was being considered. In May 2006 DIMA reported that it was continuing its efforts to satisfy the requirements of the Taiwanese authorities so that travel documents can be issued. The Department advises that neither Ms X nor Mr Y are cooperating with removal efforts, refusing to disclose the location of their passports and refusing to complete new travel document applications.
8. Taiwanese authorities have said they will issue travel documents for the family after the paternity of the son, Master Z, has been determined and after they receive immunisation records for the youngest two children, Master Z and Ms A.

**Ombudsman consideration**


10. Ombudsman staff interviewed Ms X on 21 February 2006, with a Mandarin interpreter, in the presence of her husband.

11. An International Health and Medical Services (IHMS) report dated 14 March 2006; a report by a clinical psychologist, of the Transcultural Mental Health Centre dated 22 August 2005.

**Key issues**

**Health and welfare**

12. Ms X and her husband, by their choice, were interviewed together. Ms X was cooperative and she appeared tired. Ms X’s husband reported that she is pregnant; DIMA confirmed that her baby is due in September 2006. The Red Cross reported that Ms X is disinclined to be interviewed by their staff, tending to refer matters to her husband.

13. The IHMS report echoes this, noting that *The management of her [then] pregnancy was complicated by her non compliance with recommended treatment, such as folic acid supplementation, and her insistence that her husband accompany her to all clinics. Her husband declined an ultrasound and glucose tolerance test recommended by Fairfield Hospital on behalf of his wife*.

14. Ms X reported a speech impediment, long-term shyness and social disability that she said was secondary to an untreated tongue-tie. As a consequence she had had no friends, had been teased and had low self-esteem. Ms X said that this had interfered with her primary school education so that she was unable to read. Ms X also said she had experienced constant pain in Taiwan (by which it seems she meant emotional pain).

15. The Red Cross report that the home is clean, the elder children attend school, that Mr Y is in contact with the school, and the children’s health care needs are met. The Red Cross also stated that Ms X now appears happy and animated, she is engaged and playful with her children, and that Mr Y recently requested that they put $600 of the family’s fortnightly income into Ms X’s account as he is teaching her how to manage money.

16. The Red Cross was able to get Ms X’s husband, Mr Y, to agree to a psychological assessment. A Mandarin-speaking clinical psychologist from the Trans-Cultural Mental Health Service, assessed Mr Y. In a report dated 22 August 2005, the psychologist stated his opinion, [Mr Y] might have been suffering from a chronic schizophrenia form of paranoid delusional psychosis. He showed that he experienced moderate anxiety and depression. Pharmaceutical treatment might be beneficial to his condition. The Red Cross reported that Mr Y refused to be referred to a psychiatrist and refused medication.

17. The clinical psychologist also recommended: ‘once, when the diagnosis is confirmed, counselling support to the children might be useful to minimize the impact of his illness onto them’. The Red Cross reported that at present Mr Y appears to be managing well. This second recommendation is relevant if a removal process commences and if Mr Y’s illness exacerbates under the stress of such removal.
Attitude to removal and paternity of Australian-born child

18. Ms X did not contradict her husband’s statements that he would not return to Taiwan as he had been persecuted and would be unable to earn a living there, and that he wished the family to remain in Australia.

19. Ms X’s son, Master Z, was born in Australia. His birth certificate identifies Mr B, an Australian citizen, as his father. Ms X married Mr B on 17 January 2003. The Department reports that Mr B has stated he is not Master Z’s father and in April 2006, approached the Registrar (NSW) to have his name removed from the birth certificate, and that Births, Deaths and Marriages are examining the matter. The Department reports that Taiwanese authorities will not issue a travel document for Master Z until his paternity is resolved and that Mr B is no longer recorded as the child’s father on the birth certificate.

20. The Department reports that Ms X and Mr Y have, at various times, advised the Department that Mr B is not Master Z’s father. Despite initially agreeing to do so, Ms X has withdrawn consent for Master Z to be DNA tested. Mr Y has also refused to undergo DNA testing. The issue of paternity has been referred to the Department’s National Identity Verification and Advice Section (NIVAS), which will coordinate the ongoing investigation.

Other detention issues

21. Ms X’s youngest child, Ms A, was born on 1 October 2004, while the family were in detention. The Department reports that, in May 2005, Ms X and Mr Y refused the offer of a transfer to the Port Augusta Residential Housing Project.

Ombudsman assessment/recommendation

22. Ms X has been detained with her defacto husband and children since November 2003, following the family overstaying their tourist visas. The family appears to have benefited from their move in July 2005 from a detention facility to a RD, and from the support of the Red Cross.

23. Ms X has lived with her defacto husband, Mr Y, for about 12 years. The Ombudsman has already reported on Mr Y in a separate s 4860 report (Report 062/06, dated 24 April 2006). The Ombudsman noted in that report that Mr Y may have a serious mental illness. Mr Y’s mental health has implications for Ms X and their children.

24. Mr Y is reported by DIMA and PSS to have demonstrated that he has difficulty making sound medical decisions. For example, it was reported that he had refused tests for Ms X, which Fairfield Hospital had recommended during her recent pregnancy. A PSS psychologist stated, [Mr Y] did have a reduced capacity to make well-informed decisions, such as issues relating to medical concerns and legal representation ... He refused to follow dentists advise [sic] that decaying teeth needed to be removed from daughter’s mouth while requesting that dentist remove healthy tooth’. Both IHMS and the Red Cross have indicated that Ms X defers to her husband in such matters. Mr Y’s condition and Ms X’s record of deferring to her husband may partly explain why DIMA reports that the family continues to be uncooperative with removal efforts and attempts to establish Master Z’s paternity.

25. DIMA reports that the Taiwanese authorities will not issue a travel document for the child Master Z until the issue of paternity has been resolved and the birth certificate amended to remove Mr B as the father. The paternity of Master Z is an important issue as, if he was born in Australia to an Australian citizen father, then he is an Australian citizen with a presumptive right to residence in Australia. DIMA reports it is seeking expert medical opinion to help resolve the issue of paternity. The Ombudsman recommends that
removal plans be delayed until the paternity of Master Z is conclusively determined and any claims arising are considered.

26. The Ombudsman notes that the Red Cross has expressed concern that the stress of any future removal attempt may exacerbate Mr Y's reported mental health condition. The Ombudsman reiterates comments made in Report 062/06 about monitoring and managing the impact on Mr Y's mental health if removal is to be attempted. The Ombudsman further suggests that DIMA make attempts to develop and maintain positive contact with Ms X before and during any planned removal process, in case her husband's illness becomes more apparent and impacts negatively on the family. The best interests of the children should be a primary consideration in any decisions DIMA makes.

Prof. John McMillan
Commonwealth and Immigration Ombudsman

Date