REPORT FOR TABLING IN PARLIAMENT BY
THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN
Under s 486O of the Migration Act 1958

Personal Identifier: 068/06

Principle facts

Personal details

1. Mr X is a 59 year old citizen of the Peoples Republic of China (PRC). He has a defacto partner, Ms Y (also from the PRC), who is detained at the Baxter Immigration Detention Facility (Baxter IDF) (see Report No 069/06). Mr X stated that he is divorced from his wife in the PRC and he has a daughter and an elderly mother living in the PRC.

Detention history

2. Mr X claims that he first arrived in Australia on a false Indonesian passport in the name of Mr Z on 2 January 1998. Mr X is aware that the Department (DIMA) believes that he first arrived in Australia from Indonesia on 2 October 1997 on a short stay business visa and departed Australia twice before returning in January 1998 on a short stay business visa. Mr X was not aware whether the original owner of the passport made previous visits. The visa ceased on 2 April 1998. Mr X was located working illegally by Departmental officers in November 2003. He was detained under s 189(1) of the Migration Act 1958 and placed at Villawood Immigration Detention Centre (Villawood IDC). Mr X was transferred to Baxter IDF in March 2005. Mr X and his partner Ms Y confirmed that they initially declined an offer by DIMA in November 2005 for them to be transferred to the Port Augusta Residential Housing Centre.

Visa applications

3. Mr X applied for a Protection Visa (PV) (February 1998); granted a bridging visa (BV); PV application refused (February 1998); Refugee Review Tribunal (RRT) affirmed the refusal (January 1999); BV ceased (February 1999); application to the Federal Court (FC) (June 2005) seeking judicial review of the RRT decision dismissed (August 2005); appeal to the Full Federal Court (FFC) dismissed (February 2006).

Current immigration status

4. Mr X transferred from Baxter IDF to the Port Augusta Residential Housing Centre in March 2006 with Ms Y.

Removal details

5. DIMA advised that shortly after being taken into detention in November 2003, Mr X said he was attempting to obtain a copy of his identity card from relatives in the PRC as he wished to return to the PRC. DIMA advised that in March 2004, Mr X’s attitude changed and he stated that he would resist being returned to the PRC as he feared persecution resulting from his membership of a pro-democracy group. DIMA advised that Mr X subsequently said he had lost contact with his family in the PRC and was unable to obtain his PRC identity card and he then refused to complete, or only partially completed, travel document applications. Mr X was positively identified as a PRC national following an interview with PRC officials in May 2005. Removal considerations for Mr X have been deferred pending his current treatment for cancer.

Ombudsman consideration

6. The DIMA report to the Ombudsman under s 486N was received on 16 December 2005 (dated 1 December).
7. Mr X was interviewed by Ombudsman staff together with his partner Ms Y, at Baxter IDF on 6 March 2006 with an interpreter.


9. Ombudsman staff viewed a translated letter from Mr X to the Ombudsman’s Office dated 6 December 2005. Submissions were also received on his behalf from Sister C.

Key issues

Health and welfare

10. Staff at Baxter IDF reported that Mr X has consistently been polite and cooperative. DIMA also advised that Mr X's care plan at Baxter IDF included regular blood pressure monitoring. Mr X had complained of ear aches and stomach upset after he was transferred by air from Villawood IDC to Baxter IDF and was seen by medical staff. DIMA's December 2005 report indicated that it was not aware at that time of Mr X having any other significant health issues. In his letter, Mr X stated that he suffers from depression and that he regularly takes antidepressants for this condition. The PSS report (May 2006) indicated that Mr X had been seen by a counsellor regarding treatment for anxiety and mild depression.

11. DIMA advised in May 2006 that Mr X had been diagnosed with stomach cancer and required an operation. The IHMS report (May 2006) indicated that Mr X underwent surgery at the Royal Adelaide Hospital and was transferred to the Port Augusta Hospital. After some post-operative recovery, he was placed in the Port Augusta Residential Housing Centre. The report stated that Mr X would commence chemotherapy treatment to be supervised by a specialist at Whyalla Hospital.

12. Mr X stated that in May 2005:
   
   'four unidentified Chinese persons (I heard they were sent from the Chinese Embassy) interrogated me at the DIMA office in Baxter. They threatened me and tried to extort a confession from me. My application forms and documentation for asylum as well as my photos were placed on the desk. After the tape-recorded interrogation, I was locked up in another compound and was not allowed to contact other people by telephone. On that night I was terrorised and was in extreme despair. My partner and I were even prepared to commit suicide by hanging ourselves. This group of people threatened that I would be sent back to China for interrogations within two months. That's why I think I would rather die in Australia than go back to China where I would certainly be subject to more cruel persecution'.

13. The circumstances of the interview of PRC nationals by the PRC delegation are being examined following several complaints to the Ombudsman's Office and to the Human Rights and Equal Opportunity Commission.

Attitude to removal

14. As previously mentioned, the Department advised that Mr X has not cooperated in relation to his removal to the PRC as he feels he will be persecuted and possibly be arrested and put in gaol due to his support of the pro-democracy movement and his actions prior to coming to Australia.

Other detention issues

15. Mr X stated at interview with Ombudsman staff that he has no complaints about the GSL detention officers, 'the detention centre staff have their job to do'; and that the DIMA case officers at Baxter IDF have been quite helpful. He mentioned that the doctors and nurses at Baxter IDF were supportive and that he has been provided with medication when required. In November 2005, DIMA made an offer to Mr X and Ms Y to transfer out of the detention
centre and into the Port Augusta Residential Housing Centre, however they declined. During the interview, Mr X and Ms Y explained that they felt their lack of English skills would make it harder for them if they transferred out of Baxter IDF where they can have faxes and other materials more easily translated. Following his surgery in May 2006, Mr X and Ms Y moved to the Port Augusta Residential Housing Centre.

Ombudsman assessment/ recommendation

16. Mr X failed to appear before the RRT; the RRT did not consider that Mr X faced persecution if he returns to the PRC and found that he is not owed protection by Australia. Mr X’s claims for protection have been considered and the Ombudsman has nothing further to add in relation to those claims.

17. The Ombudsman recommends that Mr X not be removed from Australia while he is being treated for cancer and that DIMA facilitate the provision of necessary medical assistance to Mr X to aid in his treatment and recovery. In the separate report on Ms Y the Ombudsman has recommended that she not be removed from Australia while Mr X is undergoing treatment, so that she can continue to provide support and care to him.

18. If Mr X and Ms Y remain in Australia during his treatment for stomach cancer, the further issue arising is where they should reside during that period. They have accepted the invitation to reside in the Port Augusta Residential Housing Centre, but it may be that an alternative living arrangement would be more suitable. One option may be an alternative form of detention in a city, with appropriate reporting arrangements to the Department. This may allow more appropriate access to adequate treatment than is possible at the remote locality of Baxter IDF or in the Port Augusta Residential Housing Centre. Dr A stated (May 2006): ‘it is likely that his condition would be better managed if he were in the community of a larger city and had his health needs coordinated by a community general practitioner’. A different residential location may also enable Ms Y to provide support more easily to Mr X by the freer access she would have to shops and community services. It is noted that Mr X is not considered a threat to the Australian community, that he has strong community support and he does not appear to present a significant security risk. Accordingly, the Ombudsman recommends that DIMA examine the options for alternative accommodation or detention for Mr X, and report on its consideration of that issue in the next report to be provided by DIMA under s 486N of the Migration Act.

Prof. John McMillan  
Commonwealth and Immigration Ombudsman  

[Signature]  
Date: 13 June 2006

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