REPORT FOR TABLING IN PARLIAMENT BY
THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 069/06

Principal facts

Personal details

1. Ms Y is a 55 year old citizen of the People’s Republic of China (PRC). She entered Hong Kong (HK) unlawfully in 1985 and was granted permanent residency there in 1989. Her de facto partner Mr X (see Report No 068/06) is also an unlawful non-citizen, currently being detained at the Port Augusta Residential Housing Centre.

Detention history

2. Ms Y travelled to Australia on a HK Certificate of Identity, arriving in January 1998 on a short stay tourist visa issued on a false passport (expired April 1998). She was granted a bridging visa in February 1998 (expired January 2001). In June 2002, Ms Y was located by the Department (DIMA) working illegally. She was detained under s 189(1) of the Migration Act 1958 and placed in Villawood Immigration Detention Centre (IDC). She was subsequently transferred to Baxter Immigration Detention Facility (IDF) (January 2005).

Visa application

3. Ms Y’s application for a Protection Visa (PV) was refused (February 1998); Refugee Review Tribunal (RRT) affirmed refusal (November 2000); application to the Federal Court (FC) dismissed (August 2005); appeal to the Full Federal Court (FFC) lodged (September 2005); decision pending. The Minister declined to exercise her detention intervention powers in Ms Y’s case (October 2005). A s 417 request was initiated on Ms Y’s behalf (May 2006) that remains outstanding.

Current immigration status

4. Ms Y and Mr X declined places offered by DIMA at the Port Augusta Residential Housing Centre in November 2005. Ms Y remained detained at Baxter IDF until transferring with Mr X to the Port Augusta Residential Housing Centre in March 2006, following Mr X’s release from hospital after treatment for cancer.

Removal details

5. DIMA advises that it has encouraged Ms Y to consider her voluntary return to HK on a number of occasions. However, DIMA reports that Ms Y has consistently been uncooperative with removal efforts, refusing to reveal her identity or complete travel document applications. In May 2005, Ms Y was positively identified as a PRC national by a PRC Consular delegation. DIMA advises that removal actions will be stayed until her FFC appeal is decided and further verification of her identity is made.

Ombudsman consideration


7. Ms Y was interviewed by Ombudsman staff at Baxter IDF on 9 November 2005, with the assistance of a telephone interpreter.

8. Ombudsman staff have viewed a number of documents, including: medical summary reports from Professional Support Service (PSS) and International Health and Medical
Services, both dated 21 November 2005, and letters from Ms Y, dated 10 and 12 November 2005. Submissions were also received on Ms Y’s behalf from Sister C.

Key issues

Health and welfare

9. DIMA advises that Ms Y was diagnosed with diabetes in June 2005 and reports that her condition is being managed through a combination of special diet and regular exercise.

10. The PSS report notes that Ms Y has accessed its services regularly since September 2005. PSS states that Ms Y presented as ‘flat in affect, restless, worried about sending back and suffered from memory loss, lack of concentration, dizziness and headache’. It went on to say that ‘as the psychological problems of the detainee are the outcomes of being in detention, her prognosis is not good and will not change should she remain in the same situation’.

11. During the interview with Ombudsman staff, Ms Y was emotionally upset and had difficulty concentrating. She said that her long time in detention and her concern about being sent back to the PRC is having an adverse effect on her physical and mental health. She believes that if she remains in detention much longer, she may attempt to take her life by drinking shampoo. Ms Y stated in her letter of 10 November 2005 that during her time at Baxter IDF, she and her partner had made ropes out of bed sheets in an attempt to hang themselves. The most recent DIMA report noted that Ms Y is taking anti-depressants and she was put on Suicide and Self Harm (SASH) watch for the period 23 to 30 December 2005.

Attitude to removal

12. Ms Y claims that her participation in the pro-democracy movement and her anti-Chinese government opinions make her a target for persecution by the PRC Government. She also fears for her safety due to her alleged involvement with the death of a PRC mother and child during a late-term abortion performed while she was employed in a family planning clinic.

13. Ms Y also stated that if she is returned to the PRC, her relationship with her defacto husband would end, and this would be very distressing to her, as they are ‘inseparable’. She stated that she ‘would rather die in Australia, than go back to China.’

Other detention issues

14. Ms Y stated in a letter to the Ombudsman’s Office dated 12 November 2005:

‘In May 2005, we were interrogated by four unidentified Chinese persons, who claimed to be from the Chinese Embassy and the National Security Bureau. But they didn’t show us any identification. My partner and I were called upon for the interrogation. They knew everything about me. It was the Immigration Department that had provided them information in relation to my application for asylum. They threatened to have me deported back to China in a couple of month’s time and put me into jail again’.

It is alleged by Ms Y that it was after this incident that she and her partner had considered hanging themselves. 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.

Ombudsman assessment/ recommendation

15. Ms Y’s claims of persecution were examined by the RRT and the tribunal found that Ms Y was not owed protection by Australia. The Ombudsman has nothing further to add in relation to these claims.
16. Two aspects of Ms Y's case overlap but require separate comment and consideration: her relationship to Mr X; and her own physical and mental health, and ongoing litigation and Ministerial application.

17. As to the first issue, it is noted earlier in this report and in the separate Report No 068/06 for Mr X, that Ms Y is the de facto partner of Mr X and is providing care and support to him in the Port Augusta Residential Housing Centre. The Ombudsman has recommended that Mr X not be removed from Australia while he is being treated and that consideration be given to an alternative form of accommodation or detention to enable him to have more appropriate access to adequate treatment. The Ombudsman recommends that the same decisions be made for Ms Y, so that she may continue her role as partner and carer for Mr X.

18. As to the second issue, Ms Y has been held in detention for nearly four years. DIMA has taken some steps to facilitate her removal from Australia, but there is no certainty as to when this could occur. Travel documents have not been issued, and she has not lent cooperation to that process. Her unresolved FFC appeal and current s 417 application provide a further temporary barrier to her removal. The medical evidence available to the Ombudsman concerning Ms Y's mental health suggests that her long-term prognosis is not promising and is unlikely to change if she remains in the same situation. There are recent reports that she was prescribed anti-depressant medication in December 2005, attended numerous medical appointments over this time and was placed on SASH watch for a period of eight days. Sister C recently reported that Ms Y is in a very distressed state due to her partner being diagnosed with cancer.

19. In other s 4860 reports, the Ombudsman has recommended on a similar basis that consideration be given to placing a person in an alternative form of detention or that they be granted a Return Pending Bridging Visa to enable residence in the community while their immigration situation is resolved. There is no need to make a similar recommendation for Ms Y, given that she is currently in a residential housing centre, and recommendations are made earlier in this report concerning alternative accommodation or detention. However, the matters referred to in the previous paragraph provide added weight to those recommendations.

Prof. John McMillan  
Commonwealth and Immigration Ombudsman  

..................................  
Date  
13 June 2006