

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 052/06

Principal facts

Personal details

1. Mr X is a man of uncertain age¹ from the People's Republic of China (PRC). His wife and two children reside in the PRC.

Detention history

2. In September 2002, Mr X was located working in Sydney by Departmental (DIMA) officers. He was identified as an unlawful non-citizen, detained under s 189(1) of the *Migration Act 1958* and placed in Villawood Immigration Detention Centre (Villawood IDC).

Visa applications

3. Arrived on a South Korean passport, in the name of Y, holding an electronic travel authority visitor visa (September 1998); Protection Visa (PV) under a Korean alias refused by DIMA (October 1998); Refugee Review Tribunal (RRT) affirmed DIMA's decision (September 1999); BV expired (October 1999); applications for further BVs refused (June 2000 and October 2004).
4. Request under s 417 (October 1999), Minister declined to exercise discretion (February 2000); s 48B and s 351 requests lodged (June 2005), the s 48B request found not to meet the Minister's guidelines (November 2005), s 351 request considered invalid because the Migration Review Tribunal (MRT) had not considered the matter. A s 417 request initiated (February 2006) remains outstanding.
5. A second RRT application was filed in June 2005 under the name of Mr X, recording him as a citizen of the PRC. The RRT ruled that it had no jurisdiction to review a previously considered PV application. DIMA reported that the Minister declined to exercise her detention intervention powers (October 2005).

Current immigration status

6. Mr X is currently detained at Villawood IDC.

Removal details

7. DIMA advises that Mr X has been uncooperative in effecting his removal from Australia. A travel document application was sent to the Chinese Consulate in September 2002. The Chinese Consulate informed DIMA in August 2003 that the application contained insufficient detail to issue a travel document. As Mr X does not have any outstanding visa requests with the Minister or litigation pending, DIMA advised that it has lodged an application for travel documents for Mr X (November 2005). DIMA has advised that Mr X continues to remain uncooperative in removal processes.

¹ Mr X advised Ombudsman staff that he is 53 years old. DIMA reports that Mr X recently stated that his date of birth is 5 March 1963 (making him 42 years old). DIMA also advises that since 1998, Mr X has reported a number of different aliases and listed his date of birth as 5 March 1963 or 14 January 1944 (neither birth date corresponds with the age reported to Ombudsman staff).

Ombudsman consideration

8. Two reports from DIMA to the Ombudsman under s 486N dated 27 September 2005 (received on 4 October 2005) and 9 January 2006 (received 18 January 2006).
9. Ombudsman staff interviewed Mr X at Villawood IDC on 3 November 2005 with an interpreter.

Key issues

Nationality and protection claims

10. Mr X entered Australia on a false South Korean passport. His initial PV application was lodged under his Korean alias. He based his protection claims on a fear of persecution if returned to South Korea because he publicly expressed views opposing the government and organised anti-government rallies. The RRT notice of decision states *'The applicant travelled to Australia on a passport issued by the Republic of Korea. He claims to be a national of the Republic of Korea and there is no evidence to the contrary. I therefore accept that claim.'* Mr X alleges a migration agent, Mr Z, submitted his protection claim and that he was not privy to the content of the claim. Since the completion of the RRT process, Mr X purported to be a citizen of the PRC.
11. DIMA advises that in January 2004, Mr X renewed his assertions that he was a citizen of South Korea. Consequently, DIMA approached the Korean Consulate seeking a travel document. Requests to the Korean Consulate were abandoned in October 2004 when DIMA located a property receipt, dated 18 September 2002, for his Chinese identification (although the original item was not located).
12. In May 2005, officials from the Chinese Consulate positively identified Mr X as being from the PRC.
13. At interview with Ombudsman staff, Mr X advised that he was born in South Korea, but taken to the PRC when he was one year old and *'raised as Chinese'*. He explained that he was naturalised in the PRC and is therefore unable to obtain a valid South Korean passport.

Health and welfare

14. DIMA advised that Mr X was taken to Liverpool Hospital in July 2005 after complaining of severe abdominal pain. He underwent a range of medical tests, and was returned to Villawood IDC eight days later. Mr X informed Ombudsman staff that the tests did not identify any abnormalities and follow up checks have cleared him of any serious illness.

Attitude to removal

15. Mr X informed Ombudsman staff that he fears that his family, particularly his children, will face hardship for the rest of their lives if he is returned to the PRC. He claims that he came to Australia to earn money to help put his children through university. He says his children are intelligent and were accepted to university, but he did not have the money to pay for their education. Mr X advised that he has pledged his house in the PRC as a guarantee and will forfeit ownership if he returns to the PRC without fully honouring his debts. He also claims that his children will be forced to withdraw from university. Mr X wishes for the Minister to allow him to stay in Australia for two to three more years to enable him to earn enough to repay his debts and return to the PRC an *'honourable man'*.
16. Mr X advised that he was asked to sign a Refugee Rights petition by another Chinese detainee. He says that he was unsure of what he was signing, but did so anyway. He is concerned that his inclusion on the petition may place him in a difficult situation, especially as he has now learned that the petition has been linked to the *'defecting*

Chinese official'. Mr X claims his name does not belong on the petition. He believes he will be gaoled and fined on return to the PRC for his connection to the petition and also for using a false South Korean passport.


17. Mr X advised that while *'he loves Australia, he also loves China as that is where his family are'*. He has commented that there is *'no chance of him remaining behind'* in Australia if he were to be given a temporary visa enabling him to work in Australia. Mr X informed Ombudsman staff that if his request to the Minister is unsuccessful, he would prefer to purchase his own airline ticket and obtain his own travel documents (through his family), rather than being forcibly removed by the Australian Government. He is concerned that if he is *'deported'* the Chinese Government will find out and he will be *'doomed because of hardship'*.

Other detention issues

18. Mr X raised concerns with Ombudsman staff about the Chinese Consulate visit to Villawood IDC in May 2005. He claims that at that the interview Chinese Consulate officials did not reveal their identify. He claims that DIMA officers asked a lot of questions and recorded the interview without his consent, which he believes is disrespectful and a breach of his human rights. He said he was placed in the management unit for two weeks after the visit. He commented that *'people don't deserve to be treated so inhumanely, deprived of every human right'* and said that *'he has not committed any crimes (other than arriving on a false passport) and should not be treated like a criminal'*.

Ombudsman assessment/recommendation

19. Mr X has been in immigration detention for more than three years, largely because of his failure to co-operate with establishing his true identity and the Chinese Embassy's reluctance to issue travel documents. His reason for coming to Australia appears to be mainly economic, which is not of itself a ground for protection under Australian law relating to refugee protection.
20. The Department has concluded that Mr X does not have valid claims to remain in Australia. The Ombudsman does not have any evidence that would lead to a different conclusion.
21. The Ombudsman notes Mr X's stated desire to facilitate his own return to the PRC, if that is the only alternative left to him, so that he will not come to the attention of the Chinese authorities and be an embarrassment to his family. The Ombudsman **recommends** that DIMA conduct further discussions with Mr X, noting the conclusions reached by the Ombudsman in this report, to determine how his removal might best be undertaken.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

6 March 2006
Date