

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 054/06*

## **Principal facts**

### *Personal details*

1. Mr X is a fifty three year old single male citizen of the People's Republic of China (PRC). His family (parents, brother and sister) were residing in the PRC, although he says he has not had contact with them for five years.

### *Detention history*

2. Mr X was detained under s 189(1) of the *Migration Act 1958* on 10 February 2004 at Villawood Immigration Detention Centre (IDC). The police had identified him as a homeless person and referred him to the Department (DIMA).

### *Visa applications*

3. Mr X told DIMA that he arrived in Australia from the PRC in mid 1989. He used his PRC passport to travel to Thailand and then entered Australia on a false passport. He made a protection visa (PV) application (July 1991), refused (August 1994); granted a bridging visa (BV); Refugee Review Tribunal (RRT) affirmed PV refusal (September 1996); BV ceased (October 1996); applied for a Resolution of Status visa (subclass 850) (December 1996); application deemed invalid (June 1998).
4. Requested Ministerial intervention under s 417 (October 1996), which was deemed inappropriate to consider (June 1997). Lodged a s 48B request (June 2005), which was assessed as not meeting the guidelines (October 2005).

### *Current immigration status*

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

### *Removal details*

6. On 6 March 2006, the Department advised that Mr X is to be removed on 14 March 2006. Travel documents were requested twice from the PRC, in October 2004 and again in November 2005. Mr X was identified as a PRC national by a PRC delegation in May 2005 and the Department received travel documents on 17 February 2006.

## **Ombudsman consideration**

7. A DIMA report to the Ombudsman under s 486N dated 2 March 2006 was received on 3 March 2006.
8. Ombudsman staff interviewed Mr X on 7 March 2006 via telephone with a Mandarin speaking interpreter.

## **Key issues**

### *Health and welfare*

9. The Department's report states that '*Mr X has been largely compliant during his time in immigration*'. The report also notes that Mr X had advised his case officer that he had sought medical advice whilst at Villawood in March 2004, December 2005 and February 2006 for an ulcer and ringing in his ears.

10. At interview, Mr X stated that his stomach ulcers resulted in him being sent from Villawood to hospital for three days, after which his ulcers were effectively treated with medication. He said that in 2005 he went deaf in his right ear. He claims that he saw the Villawood doctor who did not investigate or treat him any further but advised him to eat more fresh fruit. He said that he still has right ear deafness, which remains untreated.
11. Mr X said that he had received a closed head injury in a car accident in 2001. His head had struck the windscreen of the car he was driving and he had lost consciousness for 50 minutes. He said he was taken to hospital but not admitted, although he claims that he later went to hospital a number of times. As a consequence of the head injury he reports ongoing memory problems, problems thinking clearly and tiredness. For example, since the injury he had difficulty remembering telephone numbers. He claimed these problems affected his employment and that he was no longer able to hold down a full time job. He said this resulted in financial problems that culminated in him being homeless and the involvement with the police that led, in 2004, to his referral to DIMA. He said that he had spent a lot of his money on treatment for the head injury, both on conventional medicine and traditional Chinese medicine.
12. Mr X said that he had not succeeded in claiming accident insurance or compensation as his car was stolen the day after the accident.
13. Mr X said that he felt sad, disappointed and depressed and that since he had come to Villawood his *'brain didn't think anymore'*. He said that he had not sought the assistance of the counselling services at Villawood.
14. Subsequent to Ombudsman enquiries, DIMA supplied brief health summaries, noting one contact with counselling services in 2006 at the request of DIMA. His health assessment on induction indicated that there was no record of a reported head injury. The assessment did document several attempts at self-harm prior to detention. The advice noted that Mr X was *'booked to see the GP on the 9/3/06 regarding an apparent ear problem. While he did not present to the Medical with this problem it was reported to Medical via a DIMA Case Officer. An initial appointment was made for 7/3/06 but he did not attend.'*

#### *Attitude to removal*

15. At interview, Mr X stated that he had begun to practice Falun Gong in 2002 as treatment for a hernia. He said that a friend had taught him and he used to practice at home alone, continuing the practice at Villawood for the last two years.
16. Mr X does not want to be returned to the PRC. He believes that he will be gaoled for leaving the country, because he has practised Falun Gong and because he had participated in pro-democracy activities in Australia. Mr X viewed immigration detention as a punishment, stating *'I'd rather be punished by the Australian government than the government in China'*.
17. Mr X said he had no visitors and had made no external calls since being detained. He had his parents and two younger siblings in the PRC. He said that after the accident and head injury, he had stopped contacting his family in the PRC. He has not contacted them for five years and he can no longer remember their phone numbers. He was unsure where he would go, if returned.

#### *Other detention issues*

18. Mr X said that he was placed in *'the gaol within a gaol'* for the duration of the Chinese delegation's visit in May 2005. During that time, the amount of food provided to the contained Chinese people was inadequate. He also said that he had little access to fresh fruit at Villawood and found that this conflicted with the doctor's advice to him to include more fruit in his diet.

## Ombudsman assessment/recommendation

19. Mr X has resided in Australia for nearly 16 years. For seven of those years he pursued visa claims and for much of the 16 years he was an unlawful non-citizen. There were considerable delays in the process of considering Mr X's application for protection. Over five years elapsed from his lodgement of an application for Refugee Status with DIMA (1991) until the RRT affirmed the refusal (1996). The Ombudsman is not aware of Mr X contributing to the delay. However, Mr X's claim for protection has been considered and it is not for the Ombudsman to disturb that decision.
20. Mr X says that he has practised Falun Gong for the last four years, initially at his home and then at Villawood IDC. He has not claimed any greater involvement with the organisation than this. Mr X's involvement in Falun Gong commenced after his RRT case and he says he did not raise his concerns about being persecuted on this basis in his s 48B application. He says that he told a DIMA case officer about his involvement in Falun Gong. The Ombudsman is not aware of whether he told the PRC Officials about his participation in Falun Gong. The Ombudsman notes from other cases that the RRT and the courts have consistently found that the mere practice of Falun Gong in solitary, without any greater involvement or leadership role, is unlikely to be sufficient to expose a person to persecution.
21. Mr X has indicated to Ombudsman staff that he has a brain injury as a consequence of a car accident, which, among other things, reduced his capacity for employment. On the evidence available to the Ombudsman, it appears that Mr X has not provided this information to DIMA or to the detention health providers: there is no health record that records this claim being made or that indicates he has been assessed for a head injury or disability. The Ombudsman is concerned that if Mr X does have a health problem it could impact upon his resettlement into PRC society. It is **recommended** that, when DIMA is conducting the assessment of Mr X's fitness to travel, the issues raised with the Ombudsman be considered as part of that assessment.
22. DIMA advises that Mr X is to be removed on 14 March 2006 and that the travel documents for him remain valid until 16 May 2006. The Ombudsman **recommends** that, prior to his removal, DIMA make inquiries so that his relatives in the PRC can be contacted, notified of his impending arrival and be given a little time to make what arrangements they may for Mr X's resettlement into the PRC.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman

13 March 2006  
Date