

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 055/06

Principal facts

Personal details

1. Mr X is a 39 year old male from the People's Republic of China (PRC). His mother lives in the PRC and he has telephone contact with her each Chinese New Year.

Detention history

2. Mr X came to Australia in June 1996 on a Business (Short Stay) Visa. He was located working illegally by the Department (DIMA) in June 2003. He was detained under s 189(1) of the *Migration Act 1958* and placed in Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X applied for Protection Visa (PV) (September 1996); granted Bridging Visa (BV) (September 1996); PV refused (June 1997); Refugee Review Tribunal (RRT) affirmed the refusal (September 1998); BV expired and further BV application (October 1998); DIMA refused the BV application (October 2005); application to the Federal Magistrates Court (FMC) for an extension of time to seek judicial review (May 2005); refused (September 2005).
4. Applied to the Minister under s 48B (June 2005); rejected (October 2005).

Current immigration status

5. Mr X is currently detained at Villawood IDC.

Removal details

6. DIMA reports that Mr X has refused to complete travel document applications or attend interviews, although it states that Mr X completed part of a travel document application in October 2004 and a biographical data form in June 2005. Officials from the PRC Consulate identified Mr X as a PRC national in May 2005. DIMA advises that he is currently eligible for removal.

Ombudsman consideration

7. Two DIMA reports to the Ombudsman under s 486N dated 20 October 2005 (received 11 November 2005) and 29 December 2005 (received 18 January 2006).
8. Ombudsman staff interviewed Mr X by telephone on 14 December 2005, using a Mandarin interpreter.
9. Professional Support Services (PSS) Psychological Report dated 2 February 2006.

Key issues

Health and welfare

10. During his interview with Ombudsman staff, Mr X reported feeling depressed and under pressure. He said that *'the pressure of life is greater and greater'*. He said he can't sleep at night and has lost his appetite. He said that he hasn't spoken to a psychologist because he did not feel his English was good enough. Following the interview with Mr X,

Ombudsman staff raised concerns about his mental health with DIMA, which ultimately resulted in the PSS report of 2 February 2006.

11. The PSS report states that Mr X is *'presenting symptoms that are consistent with a diagnosis of 296.53 Major Depressive Episode, Severe, without psychotic features (DSM-IV-TR, 2000). He also presented symptoms with features of Posttraumatic Stress Disorders'*. The report states that Mr X *'has endured some traumatic experiences that causes him to develop an intense fear towards the uncertainty of his future...He also appears to display some posttraumatic experiences that are related to his past experience. It also appears that the detention placement has exacerbated some of these psychological problems and without significant change in his environment, it is very unlikely that these issues could be addressed successfully.'*
12. The report also notes that the risk of suicide needs to be monitored. DIMA reports that Mr X was on suicide and self harm alert for several days when he participated in a hunger-strike in February 2005. The psychologist states *'At present, Mr X is not suicidal but given his history of having intense suicidal thoughts whilst in China, his suicidal risk may become more evident in future and would require ongoing monitoring'*.
13. The psychologist relates Mr X's conditions to a number of factors: anxiety related to his health and upbringing; intrusive thoughts resulting from witnessing the Tiananmen Square Massacre; depression and anxiety from his imprisonment and torture in the PRC; and deterioration in his coping mechanisms from his time in immigration detention in Australia. The report also notes *'he ceased having these thoughts since the Ombudsman inquest as he sees this as slight hope in his helpless situation, or at the very least, "someone is listening"'*. She recommends ongoing contact between Mr X and PSS.
14. The report highlights an increased risk if Mr X continues to remain in immigration detention, stating *'It appears that Mr X's only coping strategy at present is to distract his thoughts by engaging in some activities. However the effectiveness of these strategies is questionable as his time in detention increases, given that he is highly anxious, together with limited family and social support'*.

Visa issues

15. Mr X's claims for protection were rejected by the RRT. The RRT accepted that he was present at the Tiananmen Square Massacre in Beijing and questioned and detained by State officials afterwards, although it rejected his claim of being tortured in detention. It also disbelieved his claim of subsequent political activities and that he lost his permanent employment, concluding he was not at risk of persecution in the PRC.

Attitude to removal

16. Mr X told Ombudsman staff that it was unsafe for him to return to the PRC. He said that after his interview with officials from the PRC Consulate, he received a phone-call from his mother in which she advised him that police had visited her wanting to know if he had returned home. He claims that she told him *'don't come home – it's not safe'*.

Other detention issues

17. Mr X was upset about having been interviewed by officials from the PRC Consulate in May 2005. He said that DIMA and the detention centre guards did not tell him who the visitors were and the officials did not identify themselves to him. He reported being kept in a separate part of Villawood IDC for over two weeks following the visit, along with other detainees who had been interviewed. He said *'we had no freedom, we couldn't contact our solicitors, we couldn't see anyone, we were just shut in the room'*.
18. As part of a general Ombudsman enquiry, Ombudsman staff asked DIMA for information about the visit by officials from the PRC Consulate. DIMA confirmed that officials visited Villawood IDC for the purpose of identifying people who were eligible for removal. It

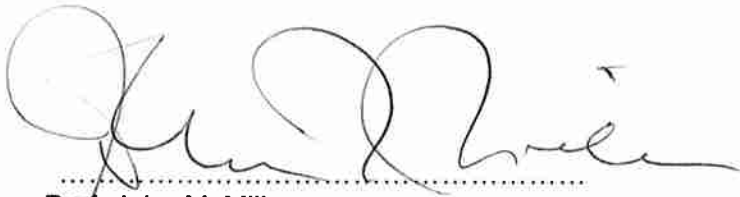
confirmed that the people interviewed were kept separated from other PRC detainees for up to three weeks after their interviews, and were not allowed visitors or telephone calls. DIMA states that this approach was adopted to ensure that *'people who had been interviewed could not relay the questions asked to others'*. DIMA claims *'they were allowed access to solicitors, however, we are unaware of any person in separation detention contacting their solicitor.'*

19. Mr X claims that following this interview, his mother was contacted by the authorities in the PRC and was told to tell the authorities when he returns home. He is concerned that DIMA might have told the consular officials about his claims for protection, and believes he will be persecuted in the PRC because he applied for refugee status in Australia. In a Senate Committee hearing in 2005 in response to a question about the Consular visit, a DIMA official stated *'I am advised that we do not give any information about the nature of any application to remain in Australia. We provide the source country with very limited biodata that may help them identify whether or not the person is a national of that country.... we tell them nothing about any applications that person may have made to stay in Australia or the content of those applications'*.

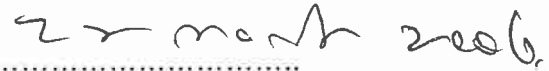
Ombudsman assessment/recommendation

20. Mr X has been in immigration detention for over two and a half years, since June 2003. Prior to being taken into detention he made a claim for refugee status that was tested in the RRT, which found him not to be owed protection under Australian law. During the period of his detention there has been no litigation preventing his removal from Australia, except briefly for the period May-September 2005. Otherwise, the length of Mr X's period of detention stems largely from the difficulty faced by DIMA in removing him from Australia. Mr X has contributed to that difficulty by not cooperating in completing travel documents or attending interviews. However, delay or inability on the part of DIMA to achieve a quicker resolution of Mr X's case seems also to be a contributing factor. The Ombudsman has drawn attention to a similar problem in previous reports.
21. Subject to what is said in the next two paragraphs, Mr X's case is similar to that of many others in which the Ombudsman has gone no further than recommending that the Minister consider granting an RPBV if there is likely to be an indefinite delay in arranging a person's removal from Australia. It is appropriate to make the same recommendation in this case, having regard to the following: the medical evidence available to the Ombudsman suggests that Mr X has developed a serious mental health condition that is likely to worsen if he remains indefinitely in detention; there has been a continuing delay in travel documents being issued by the PRC Consulate since Mr X was positively identified as a PRC citizen in May 2005; and there is no evidence to suggest that Mr X poses any threat to Australian society. Accordingly, the Ombudsman **recommends** that Mr X be released from detention, on an appropriate visa, if there is a continuing delay in his immigration status being resolved or in removal action being taken.
22. There are two other considerations that the Ombudsman wishes to draw to the Minister's attention. First, whilst Mr X's adverse medical condition has been related to factors pre-dating his immigration detention (his upbringing and his exposure to the Tiananmen Square Massacre), his condition seems to have worsened during his lengthy period in detention. This could affect his fitness for travel, and he may be in need of continuing support and psychiatric assistance. Another option, which it is **recommended** that the Minister consider, is whether Mr X should be granted a humanitarian visa (subject to security and character assessment).
23. Secondly, Mr X fears that his interview with the officials from the Chinese Consulate has placed him at risk of persecution if he is returned to the PRC. There is the possibility that Mr X himself may have inadvertently given the officials information about his refugee

claims, particularly if he was confused about the identity of the officials and the nature of their visit. In the course of other assessments, a number of detainees have advised the Ombudsman that DIMA may have recorded the Consular interviews. If so, the Ombudsman **recommends** that DIMA listen to the recording of Mr X's interview and satisfy itself that he has not exposed himself to a risk of persecution during the interview. More broadly, DIMA should discuss with Mr X his fear of persecution to clarify or allay any concern that that he may have on that issue.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date