

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 119/07

Principal facts

Personal details

1. Mr X is aged 44 and is a citizen of the People's Republic of China (PRC). His wife and teenage daughter live in the PRC.

Detention history

2. In May 2004 Mr X was located working illegally in NSW and was detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Facility (IDF) on the same day. Mr X was transferred to Baxter IDF in September 2004.

Visa applications

3. Mr X arrived on a Tourist Visa (TV) (April 1999), which ceased (May 1999); applied for a Protection Visa (PV) and a Bridging Visa (BV) concurrently (February 2005); the BV application was deemed invalid and the PV application was refused (March 2005); appeal to the Refugee Review Tribunal (RRT) (March 2005), which affirmed the decision (April 2005); judicial review of the RRT decision sought in the Federal Court (FC) (May 2005); application for a BV was lodged and refused (May 2005); request for Ministerial intervention under s 417 (June 2005) deemed inappropriate to consider due to FC litigation (July 2005); the FC dismissed the matter (March 2006); appeal to Full FC (FFC) (April 2006); a hearing date is yet to be allocated; BV granted (27 June 2006); s 48B request related to PRC delegation visit commenced (11 September 2006), assessed as not meeting s 48B guidelines (October 2006).
4. Mr X told Ombudsman staff that he had also submitted a request under s 417 for Ministerial intervention in relation to his interview at Baxter IDF in May 2005 by officials from the PRC.

Current immigration status

5. As the holder of a BV, Mr X resides in the community as a lawful non-citizen.

Removal details

6. The Department (DIMA) reports that removal options for Mr X remain deferred pending the outcome of his litigation in the FFC and the resolution of issues pertaining to his interview by the PRC officials.

Ombudsman consideration

7. The DIMA report to the Ombudsman under s 486N was dated 5 June 2006.
8. Ombudsman staff interviewed Mr X with the assistance of an interpreter on 28 September 2006.
9. Ombudsman staff sighted a number of documents: a Professional Support Services (PSS) psychology summary report by Ms A dated 10 May 2006, the initial DIMA Ministerial submission in relation to the PRC Delegation cases dated 11 July 2006, and a second Ministerial submission in relation to the PRC Delegation cases dated 19 October 2006.

Key issues

Health and welfare

10. The PSS report states that Mr X has been diagnosed with anxiety and depression. The report notes that he *'is experiencing anxiety mostly related to his detention and fear of returning home'*. The report also says that Mr X is compliant in counselling, has never declined therapy and always attempts to implement interventions; however, he has declined to consult with a psychiatrist and take medication as he says it is against his beliefs. PSS noted *'it is a concern that the longer he is detained his mental health will deteriorate further, which will make it difficult for mental health staff to manage him. At present he is starting to present with more severe symptoms such as the auditory hallucination'*.
11. Mr X commented at interview with Ombudsman staff that he is experiencing severe financial hardship. He said his BV does not allow him to work, access Centrelink payments or Medicare so he has had to borrow a lot of money from his friends. Mr X described a frugal diet in which he eats two meals a day consisting of bread and instant noodles.
12. DIMA has advised that one of the criteria for the grant of a BV is that the client must demonstrate suitable accommodation arrangements and financial support. DIMA also advised that Mr X can approach DIMA if he has concerns about his support arrangements.

Attitude to removal

13. Mr X fears he would be persecuted as a result of his Falun Gong practice if he returns to the PRC.

Other detention issues

14. At interview Mr X commented about his transfer from Villawood IDF to Baxter IDF in September 2004, claiming that the vehicle left at midnight and the journey took twenty hours. Mr X alleges that he was given no notice or reason for the move, was not allowed to call anyone or change his clothes, and that he and the others being transported in the van were initially denied blankets to keep warm. The Ombudsman has received a number of complaints over recent years about the transfers of detainees, which prompted the Ombudsman's office to work with DIMA on this issue. New guidelines concerning the transfer of detainees have been implemented.
15. Mr X claims that it was after midnight when he was released from Baxter IDF. He says that a DIMA officer took him to the Port Augusta bus stop, and that he had to pay for his own ticket to travel to Sydney. The Ombudsman has not pursued this issue with DIMA but notes it for the sake of completeness and so that the DIMA can investigate whether its release procedures are being followed.

Claims for protection


16. The RRT found that *'the applicant has not been truthful and he has invented the claim that he has been a Falun Gong practitioner since mid 2000 ... the actions of the applicant since his own detention and his wife's departure from Australia further evidence his efforts to create a profile for himself that would assist the application for refugee status which was eventually made in February 2005. As the applicant is not a genuine Falun Gong practitioner and has engaged in Falun Gong activities in Australia solely to strengthen his refugee claim the Tribunal finds that he will not seek to practice Falun Gong if he returns to China ... the applicant does not have a well-founded fear of persecution in China for a convention reason'*.

Ombudsman assessment/recommendation

17. The DIMA decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. It is currently before the FFC. The Ombudsman has no comment to make on these matters.
18. The Ombudsman has recommended in a number of reports that DIMA consider what continuing role it should play in providing assistance to detainees whose mental health has suffered while in detention. In its response to the Ombudsman's report No. 4/2006 *Report on Referred Immigration Cases: Mr T*, DIMA noted that it is endeavouring to address these issues through its holistic case management framework which seeks to ensure that all vulnerable clients are comprehensively assessed and a case management plan developed to address their specific individual needs. The response further noted that Case Managers will ensure that appropriate arrangements are in place to assist clients with mental health issues in their transition into the community and that a community care pilot is being implemented to work in partnership with the community to provide supported accommodation and other specialist services.
19. It appears from the evidence available to the Ombudsman that Mr X was released from detention one month after PSS noted a worsening of his mental health and at a time when he was being closely monitored. The medical evidence also indicates that Mr X's anxiety was at least partly related to his detention experience.
20. Mr X was provided with a visa type that does not allow him to work, or have access to either medical or financial support. The Ombudsman notes that Mr X's case highlights the difficulty a person faces when released from detention with no work rights. The Ombudsman **recommends** that if Mr X's removal cannot be facilitated within a reasonable period of time, which seems unlikely when he has an outstanding appeal with the FFC that has yet to be heard, DIMA undertake a review of Mr X's circumstances.



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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman



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Date