

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 121/07*

## **Principal facts**

### *Personal details*

1. Mr X is aged 21 and is a citizen of the Peoples' Republic of China (PRC). He claims that his parents fled the PRC and live in Taiwan and he has a sister in the PRC.

### *Detention history*

2. The Department (DIMA) detained Mr X in July 2004 under s 189(1) of the *Migration Act 1958* and placed him at Villawood Immigration Detention Facility (IDF).

### *Visa applications*

3. Mr X came to Australia in September 2001 on a Student Visa (SV), valid until December 2001. Mr X was granted a further SV (December 2001), which was cancelled in January 2003 under s 116 due to a breach of the visa conditions. Mr X applied for a Protection Visa (PV) and a Bridging Visa (BV) (April 2005); BV refused (April 2005); PV refused (May 2005); applied to the Refugee Review Tribunal (RRT) (May 2005); PV refusal affirmed by RRT (July 2005); application to Federal Magistrates Court (FMC) (October 2005) was discontinued (February 2006). A s 417 submission was sent to the Minister on a schedule on 20 November 2006.

### *Current immigration status*

4. Mr X is an unlawful non-citizen, currently detained at Villawood IDF.

### *Removal details*

5. DIMA advised that Mr X has been uncooperative with removal efforts and that he refuses to supply identifying documents or sign requests for travel documentation until money in a bank account in Sydney is retrieved for him, but that he has not assisted in attempts to retrieve the money. Mr X advised during interview with Ombudsman staff that the bank account balance is a few hundred dollars and that it is mainly used for the cost of translating his letters into English, such as those he has sent to the Minister.
6. Applications for travel documents had been submitted to the PRC Consulate on two occasions in October 2004 and September 2005, but these were not pursued further due to the review by the RRT and appeal to the FMC. Another request was made in February 2006. DIMA followed up on this application in July 2006 and the Consul agreed to follow it up with the PRC.

## **Ombudsman consideration**

7. The DIMA report to the Ombudsman under s 486N was dated 25 July 2006.
8. Ombudsman staff interviewed Mr X at Villawood IDF on 29 September 2006 with an interpreter.
9. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 1 August 2006.

## Key issues

### Health and welfare

10. The DIMA report stated that Mr X has been uncooperative and has not attended several scheduled welfare checks. However, he has participated in some recreational and educational opportunities.
11. The IHMS report stated that a mental state examination was conducted in July 2006 and it confirmed that Mr X had a *'lowered/anxious mood and poor sleep patterns'*, which predated his period in detention. The report also stated that Mr X was *'treated with medication for infection of his middle and outer ear and for ringing in his ears. He was also treated for a rash on his back with topical medication'*. During the interview with Ombudsman staff, Mr X said that medication for the rash has not helped. Mr X said that he has trouble sleeping at night and mostly sleeps during the day. He said that his Falun Gong practice at Villawood IDF helps him to cope and helps to stabilise his health.

### Attitude to removal

12. At interview with Ombudsman staff, Mr X stated that he fears returning to the PRC as he is a Falun Gong practitioner and his father and mother fled to Taiwan due to being persecuted for their Falun Gong beliefs and practice. He stated that he mainly started practising Falun Gong since coming to Australia. Country information reflected in recent RRT decisions suggests that PRC nationals who claim to be Falun Gong practitioners may face the risk of persecution. Mr X said that if the only option were removal to the PRC, he would prefer to go to Taiwan to live with his parents, although he has not explored that option to date.

### Other detention issues

13. During the interview with Ombudsman staff, Mr X commented that he doesn't like the food at Villawood IDF as there is too much chicken and not enough pork. He said that the detention centre staff generally treat him well and he relates well with other detainees, particularly those from the PRC. Mr X stated that he likes the gym at Villawood IDF and the company of other Falun Gong practitioners who sometimes visit.

## Ombudsman assessment/recommendation

14. Mr X's protection claims were heard by the RRT, which found that it was *'not satisfied that the applicant is a genuine Falun Gong practitioner'*. The RRT found that Mr X was not owed protection and the Ombudsman has no comment to make on this matter.
15. Mr X has spent two and a half years in immigration detention, primarily as a result of his pursuit of a PV. The Ombudsman notes that travel documents have been requested from the PRC and that a s 417 submission is with the Minister. The resolution of Mr X's immigration status may therefore be imminent. The Ombudsman **recommends** that the Minister make a decision on Mr X's s 417 submission as soon as possible and in any case not later than the statutory period prescribed in s 486P of the Migration Act for the tabling of this report in Parliament (*viz.* within 15 sitting days of receiving this report). The Ombudsman notes that a further s 486N report on Mr X is due on 15 February 2007. If it appears likely that there will be further delays in resolving Mr X's situation, the Ombudsman will consider making further recommendations at that time. The Ombudsman notes Mr X's expressed preference for removal to Taiwan and suggests that DIMA also consider this option.

*V. Thom*

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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman

*11 January 2007*  
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Date