

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1966
Ombudsman ID	1002340
Date of DIBP's reports	19 March 2015 and 15 September 2015
Total days in detention	912 (at date of DIBP's latest report)

Detention history

26 July 2011	On completion of a prison sentence Mr X was detained under s 189(1) of the <i>Migration Act 1958</i> and transferred to Facility B.
7 February 2012	Transferred to Facility C.
23 March 2012	Mr X's Refugee and Humanitarian visa was reinstated and he was released from detention.
23 January 2014	Re-detained under s 189(1) and transferred to Facility C.
16 December 2014	Transferred to Facility D.

Visa applications/case progression

16 November 2006	Arrived in Australia as the holder of a Refugee and Humanitarian (permanent) visa.
1 February 2011	His permanent visa was cancelled by a Department of Immigration and Citizenship delegate under s 501 following his completion of a 27-month prison sentence.
8 February 2011	Appealed to the Administrative Appeals Tribunal (AAT).
21 April 2011	AAT set the visa cancellation aside with direction to reinstate Mr X's permanent visa.
26 May 2011	The Minister requested judicial review of the AAT's decision to the Federal Court (FC).
18 July 2011	The Minister cancelled Mr X's permanent visa under s 501.
25 July 2011	The Minister withdrew the request for judicial review
10 August 2011	Mr X requested judicial review of the Minister's decision at the Federal Magistrates Court (FMC).
23 August 2011	Mr X requested judicial review of the Minister's decision at the FC.
29 September 2011	Mr X withdrew the request for judicial review by the FMC and it was discontinued the same day.

23 March 2012	FC set aside the Minister's cancellation decision and Mr X's permanent visa was reinstated. He was released from immigration detention the same day.
18 December 2012	An International Treaties Obligation Assessment (ITOA) found that Mr X was not owed protection under the Refugee Convention.
13 January 2013	The Minister cancelled Mr X's visa under s 501.
23 January 2013	Mr X was re-detained.
28 June 2013	A new ITOA was conducted and found that Mr X was not owed protection under the Refugee Convention.
10 February 2014	Requested judicial review of the Minister's decision by the FC.
20 June 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. ¹
10 July 2014	He provided a response in relation to the privacy breach and raised claims relating to Australia's protection obligations.
5 August 2014	DIBP notified Mr X that protection obligations are assessed as part of the Protection visa process and provided information on how to have his protection claims formally assessed.
22 August 2014	FC dismissed Mr X's application and found in favour of the Minister.
2 September 2014	Mr X appealed the judgment of the FC to the Federal Circuit Court (FCC).
26 November 2014	FCC reserved judgment.
11 June 2015	Mr X requested voluntary removal from Australia. DIBP advised that it is progressing his removal request.

Criminal history

11 November 2008	Mr X was convicted in the City E District Court of sexual offences. He was sentenced to six years and six months imprisonment for all three offences.
27 April 2009	He successfully appealed his conviction for rape and was re-sentenced to 27 months imprisonment for two counts of unlawful sex with a minor.

¹ In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

Health and welfare

DIBP did not provide an International Health and Medical Services (IHMS) Health Summary Report for Mr X for the period 26 July 2011 to 30 April 2015.

The IHMS report dated 28 August 2015 advised that Mr X had not presented with any significant physical or mental health issues since May 2015.

Other matters

DIBP advised that Mr X has two adult Australian citizen children who were resettled with him as refugees in 2006, and five grandchildren residing in Australia.

Information provided by Mr X

During an interview with Ombudsman staff at Facility D in May 2015 Mr X stated that it is his own fault that he is in detention and expressed remorse for the crime he committed against a minor. He said he had written a letter apologising to his community for his actions, and that he feels he has let the Australian people down because of his offences.

Mr X said he served 18 months of his 27-month prison sentence before being transferred to immigration detention. He said he has no concerns about detention conditions, and views his detention as part of his punishment. He said that his main priority is his family.

Mr X explained that he had come to Australia as a refugee after living in refugee camps for 16 years. He said he arrived with his two children and a grandchild, and now has five grandchildren. He said he speaks with his children often and they have visited him in detention. He said his wife and another child live in Country F. Mr X said he has not lived in Country A since 1990 and as far as he knows he has no close relatives living there.

He said he has no physical health concerns but sees the mental health team about once a month.

Mr X requested a second chance so he can remain in Australia with his children and grandchildren and to ensure the safety of his life. He stated that if he is returned to Country A he is at high risk of being killed for the same reasons he was first granted protection by Australia in 2006.

Case status

Further to Mr X's Refugee and Humanitarian visa being cancelled under s 501, two ITOAs conducted in December 2012 and June 2013 found that Mr X is not owed protection under the Refugee Convention.

In June 2015 Mr X requested voluntary removal from Australia and DIBP is progressing this request.