

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 and Ms Y who remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X (and wife)
Citizenship	Country A
Year of birth	1961

Family details

Family members	Ms Y (wife)
Citizenship	Country A
Year of birth	1968

Ombudsman ID	1002217-O
Date of DIBP's reports	5 November 2015 and 5 May 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

5 November 2013	Mr X and Ms Y were detained under s 189(1) of the <i>Migration Act 1958</i> after living in the community as unlawful non-citizens. They were transferred to Villawood Immigration Detention Centre.
11 April 2014	Transferred to Wickham Point Alternative Place of Detention (APOD).
4 May 2016	Transferred to Melbourne Immigration Transit Accommodation.
14 June 2016	Granted Bridging visas and released from detention.

Visa applications/case progression

29 October 2006	Mr X and Ms Y arrived in Australia as the holders of Visitor visas using fraudulently obtained Country B passports.
29 January 2007	Mr X and Ms Y's Visitor visas expired and they became unlawful non-citizens.
5 November 2013	During their compliance interview Mr X and Ms Y provided their Country A passports and identity cards.
19 November 2013	Lodged a Protection visa application which was found to be invalid.
20 November 2013	Lodged a Protection visa application with an associated Bridging visa application.
22 November 2013	Associated Bridging visa application refused.
9 January 2014	Protection visa application refused.

14 January 2014	Appealed negative Protection visa application to the Refugee Review Tribunal (RRT).
12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X and Ms Y of the unintentional release of personal information ¹ and advised that the privacy breach would be taken into account when considering their protection claims.
24 March 2014	RRT affirmed original decision.
27 March 2014	Found not to meet the guidelines for a referral to the former Minister under s 417.
24 April 2014	Requested ministerial intervention under ss 417 and 48B.
14 July 2014	DIBP invited Mr X and Ms Y to comment on the privacy breach.
27 August 2014	Mr X and Ms Y provided a response in relation to the privacy breach.
28 August 2014	Found not to meet the guidelines for referral to the former Minister under s 48B.
3 September 2014	The former Assistant Minister declined to consider ministerial intervention under s 417.
16 January 2015	DIBP issued Mr X and Ms Y with a letter notifying them of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of their case engage Australia's <i>non-refoulement</i> obligations.
28 January 2015	Mr X and Ms Y provided information in relation to the ITOA.
19 March 2015	DIBP invited Mr X and Ms Y to provide other relevant information in relation to the ITOA. However, they did not provide a response.
7 April 2015	DIBP finalised the ITOA, determining Mr X and Ms Y's case did not engage Australia's <i>non-refoulement</i> obligations.
16 April 2015	Requested judicial review by the Federal Circuit Court (FCC).
5 November 2015	DIBP advised that Mr X and Ms Y's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ² which found that the ITOA process was procedurally unfair.
21 March 2016	The Minister filed a notice in the High Court (HC) to appeal the FFC's decision.
5 May 2016	DIBP advised that Mr X and Ms Y's judicial review by the FCC was adjourned pending the outcome of the Minister's appeal in the HC.
14 June 2016	Granted Bridging visas.

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.

² *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

Health and welfare

Mr X

International Health and Medical Services (IHMS) advised that Mr X did not require treatment for any major mental health issues.	
15 January 2014 – 14 June 2016	Presented to a general practitioner (GP) with stomach pain. He was diagnosed with a bacterial infection and prescribed with medication. Mr X's stomach pain continued and he was later diagnosed with gastro-oesophageal reflux disease. He was prescribed with medication and monitored by a GP.
January 2015 – 14 June 2016	Presented to a GP with further stomach pain and was placed on a public waiting list to see a gastroenterologist.

Ms Y

IHMS advised that Ms Y did not require treatment for any major mental health issues.	
November 2013	During her induction health assessment Ms Y disclosed a history of epigastric pain. She was prescribed with medication.

Other matters

DIBP advised that Mr X and Ms Y's Country A passports are valid until 2023.

Information provided by Mr X and Ms Y

<p>During an interview with Ombudsman staff at Wickham Point APOD on 21 April 2016 Mr X and Ms Y advised they have a solicitor who was assisting them with their immigration case.</p> <p>Mr X stated he has experienced stomach pain for over two and a half years and his prescribed medication was not effective. He said Panadol does not reduce his pain and he has been on a public waiting list for a procedure for over 12 months.</p> <p>Mr X and Ms Y advised they participate in English class and enjoy the gym. They also attend Bible study classes on the weekends.</p>
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Case status

<p>Mr X and Ms Y have been found not to be owed protection under the Refugee Convention and the complementary protection criterion. They are awaiting the outcome of judicial review.</p> <p>Mr X and Ms Y's case is also affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. On 21 March 2016 the Minister filed a notice in the HC to appeal the FFC's decision.</p> <p>Mr X and Ms Y were granted Bridging visas on 14 June 2016 and released from immigration detention.</p>
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