

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Mr X who has remained in 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	1964
Ombudsman ID	1002575-O
Date of DIBP's reports	17 January 2017 and 17 July 2017
Total days in detention	913 (at date of DIBP's latest report)

Detention history

16 January 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Yongah Hill Immigration Detention Centre (IDC).
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Visa applications/case progression

Mr X arrived in Australia on 2 May 2007 on a temporary work visa.	
28 March 2011	Granted a bridging visa.
29 March 2011	Temporary work visa ceased.
1 March 2012	Bridging visa ceased. Mr X was granted an Employer Nomination Scheme visa on the same day.
11 July 2014	Employer Nomination Scheme visa cancelled under s 109.
23 July 2014	Applied to Migration Review Tribunal (MRT) for merits review of the decision to cancel his Employer Nomination Scheme visa.
9 January 2015	MRT affirmed original decision.
30 January 2015	Lodged a bridging visa application.
10 February 2015	Requested ministerial intervention under s 351 for the Minister to substitute a more favourable decision.
9 May 2015	The Minister declined to intervene under s 351.
15 July 2015 and 5 August 2015	Lodged Protection visa applications, both of which were found to be invalid.
4 September 2015	Lodged a Protection visa application.
10 September 2015	Granted a bridging visa, which was cancelled under s 116 on the same day.
11 September 2015	Applied to the MRT for merits review of the decision to cancel his bridging visa.
23 September 2015	MRT affirmed original decision.

27 February 2016	Mr X was referred for removal, however the referral was cancelled due to his ongoing Protection visa application.
13 July 2016	Protection visa application refused.
22 July 2016	Applied to the Administrative Appeals Tribunal (AAT) for merits review of the decision to refuse his Protection visa application.
12 December 2016	AAT affirmed original decision.
5 January 2017	Mr X stated that he will not voluntarily depart Australia.
17 January 2017	Applied to the Federal Circuit Court (FCC) for judicial review of the AAT's decision to affirm the refusal of his Protection visa application. A hearing was scheduled for 28 August 2017. The Department of Immigration and Border Protection (the department) advised that Mr X has been identified as a person of interest to the department in relation to alleged offshore criminal matters.

Other legal matters

June 2012	Placed on a nine-month conditional release order relating to an assault charge.
November 2014	Issued with a Violence Restraining Order concerning his partner and daughters.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was reviewed by an IHMS psychiatrist and diagnosed with a depressive disorder on 8 July 2016. He was prescribed with medication and referred for counselling, however he subsequently ceased taking his medication. IHMS further advised that Mr X was provided with treatment and attended physiotherapy for the management of right leg and back pain related to a spinal condition.	
October 2015	An Incident Report recorded that Mr X was transported to hospital by ambulance after presenting with chest pain.
22 February 2016	An Incident Report recorded that Mr X threatened self-harm.

Other matters

Mr X's estranged partner and two daughters from a previous marriage reside in the community on bridging visas.
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Information provided by Mr X

During an interview with Ombudsman staff on 24 May 2017 Mr X advised that prior to being detained he held a temporary work visa for eight years. He said that his application for permanent residency was denied because he failed to disclose a criminal charge in Country A. He claimed that the charge was the result of a misunderstanding and related to an offence committed by his brother, rather than him. He also stated that he was found not guilty of the offence in 2012.

Mr X advised that he experiences back and hip pain and headaches. He said that the pain has been investigated, but the doctors were unable to determine the cause. He advised that his mental health has deteriorated while he has been in immigration detention and he takes antidepressant and sleeping medication. He said that the medication makes it difficult for him to wake up.

Mr X said that his daughters reside in Australia and he regularly talks to them through Skype. He said that his daughters are currently studying, but they are unable to attend university because they do not have permanent residency and cannot afford to study as international students.

Mr X reported that the rules had recently changed on the number of USB devices that detainees are able to hold at one time. He said the new restrictions means that he does not have the capacity to store his legal documents.

Case status

Mr X was detained on 16 January 2015 after living unlawfully in the community and has remained in an immigration detention facility for more than two and a half years.

On 11 July 2014 Mr X's Employee Nomination Scheme visa was cancelled under s 109 and the decision was affirmed by the MRT on 9 January 2015. On 10 September 2015 Mr X was granted a bridging visa which was subsequently cancelled under s 116 and the decision was affirmed by the MRT on 23 September 2015.

On 4 September 2015 Mr X lodged a Protection visa application and on 13 July 2016 his application was refused. At the time of the department's latest report Mr X was awaiting the outcome of judicial review.