

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O report on Mr X who remained in immigration detention for more than 78 months (six and a half years). The previous reports are:

- 976/12 tabled in Parliament on 26 June 2013
- 1001069 tabled in Parliament on 5 March 2014
- 1001606 tabled in Parliament on 4 March 2015
- 1002085 was tabled in Parliament on 12 August 2015.

This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Country A
Year of birth	1982
Ombudsman ID	1002678
Date of DIBP's reports	9 June 2015, 10 December 2015 and 4 June 2016
Total days in detention	2368 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002085), Mr X remained in community detention.	
13 September 2016	Granted a Bridging visa and released from detention.

Recent visa applications/case progression

30 April 2015	The Department of Immigration and Border Protection (DIBP) notified Mr X that there had been a change of officer undertaking his Protection Obligations Evaluation (POE). DIBP had commenced the POE following a Federal Magistrates Court declaration on 9 November 2013 that there was an error of law in Mr X's second Independent Merits Review. Mr X was asked to provide any comments in relation to the change of decision maker within 28 days.
13 May 2015	Mr X's agent provided a response which did not raise any new claims and outlined additional country information.
24 June 2015	The POE found that Mr X was not owed protection.
5 August 2015	Requested judicial review by the Federal Circuit Court (FCC) of DIBP's negative POE assessment.

28 October 2015	The FCC directed that Mr X's application for judicial review of the POE be listed for a directions hearing following determination of the Minister's application for special leave to appeal, and any subsequent appeal, from the judgement handed down on 2 September 2015 by the Full Federal Court (FFC) ¹ which found that the ITOA process was procedurally unfair.
16 May 2016	DIBP found that Mr X met the guidelines under s 195A of the <i>Migration Act 1958</i> for referral to the Minister. It stated it was preparing a ministerial intervention submission for grant of a Bridging visa.
27 July 2016	Following an appeal by the Minister of the FFC's decision of 2 September 2015, the High Court (HC) found that the ITOA process was not procedurally unfair. ²
13 September 2016	Granted a Bridging visa.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X did not require treatment for any major physical or mental health issues since the Ombudsman's previous report.

Other matters

Mr X resided in community detention with his cousin Mr Y, who is disabled, providing assistance with his care. DIBP advised that Mr Y has been found to be owed protection under the complementary protection criterion and has been invited to lodge a temporary visa application.

Mr Y is the subject of Ombudsman report 1002679.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 6 September 2016 Mr X advised that he came to Australia with his cousin who had a hearing disability and significant mental health issues. He said he provided care to his cousin.

Mr X advised that no hearing date had yet been allocated in relation to his proceedings in the FCC.

He considered his health to be satisfactory. He was just worried about his visa situation.

He spent his time on the internet, watching television, meeting friends and talking with his family in Country A.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. Mr X is awaiting the outcome of judicial review.

Mr X was granted a Bridging visa on 13 September 2016 and released from immigration detention.

¹ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

² *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.