

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 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1993
Ombudsman ID	1002700-O
Date of DIBP's report	28 June 2017
Total days in detention	730 (at date of DIBP's report)

Detention history

8 November 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
10 November 2012	Transferred to Christmas Island Immigration Detention Centre (IDC).
13 March 2013	Transferred to Curtin IDC.
2 June 2013	Transferred to Yongah Hill IDC.
22 August 2013	Granted a bridging visa and released from immigration detention.
11 April 2016	Re-detained under s 189(1) following the cancellation of his bridging visa. He was transferred to Facility B.

Visa applications/case progression

23 November 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
11 April 2016	Bridging visa cancelled under s 116 on character grounds.
29 April 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He accepted the offer on the same day and was assigned a provider.
1 July 2016	Lodged a Safe Haven Enterprise visa (SHEV) application.
24 August 2016	SHEV application refused. Mr X's case was referred to the Immigration Assessment Authority (IAA) for review on the following day.
14 November 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Humanitarian Stay Temporary visa and a bridging visa.
18 November 2016	The IAA affirmed the decision to refuse Mr X's SHEV application.
12 December 2016	The Minister declined to intervene under s 195A.
9 December 2016	Applied to the Federal Circuit Court (FCC) for judicial review of his SHEV refusal.

1 September 2017	FCC dismissed the matter.
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Criminal history

28 March 2016	Mr X was charged with five driving offences. He was fined a total of \$400, disqualified from holding a driver’s licence for three months and was placed under a good behaviour bond for nine months.
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Health and welfare

International Health and Medical Services advised that Mr X attended specialist counselling for the management of a history of torture and trauma. A psychologist advised in February 2017 that Mr X presented with symptoms of depression, anxiety and post-traumatic stress disorder associated with his immigration pathway, worry about his father’s health, and fear of the possibility of being returned to Country A. It was recommended that Mr X continue to attend supportive and specialist counselling and he was monitored by the mental health team and a general practitioner.

Information provided by Mr X

During an interview with Ombudsman staff in September 2017 Mr X advised that he was concerned that his SHEV application had been refused because he did not have access to legal advice when he was interviewed during the process and his mental health was not very good at the time. He explained that the FCC had dismissed his case, and at the time of the interview he had 16 days left to lodge an appeal with the High Court. He stated that his friends had helped him pay for his last appeal and would not help him again as they did not believe he would be successful. He stated that he needs legal assistance, but it is very hard to get in contact with legal aid options without access to a mobile phone.

Mr X stated that he has no hope, and feels dejected and frustrated. He explained that he is very afraid of being returned to Country A and thinks about killing himself if he is going to be forced to return. He explained that he finds counselling helpful, but that there is nothing they can really do for him, so he only feels better temporarily until he starts worrying about his situation again.

Ombudsman assessment/recommendation

Mr X was detained on 8 November 2012 after arriving in Australia by sea and has been held in detention for more than two years.

On 23 November 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 1 July 2016 Mr X lodged an application for a SHEV.

Mr X’s SHEV application was refused on 24 August 2016 and on 18 November 2016 the IAA affirmed the refusal.

On 9 December 2016 Mr X applied to the FCC for judicial review and the matter was dismissed on 1 September 2017.

The Ombudsman notes with concern the government’s duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose. The Ombudsman further notes that Mr X expressed suicidal ideation and presents with symptoms of depression, anxiety and post-traumatic stress disorder.

In light of the length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns, the Ombudsman recommends that Mr X be considered under s 195A for the grant of a bridging visa.