

**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 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1978
<b>Ombudsman ID</b>	1002301-O
<b>Date of DIBP's report</b>	27 January 2016
<b>Total days in detention</b>	730 (at date of DIBP's report)

**Detention history**

26 March 2008	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Maribyrnong Immigration Detention Centre (IDC).
17 October 2008	Transferred to criminal custody after being charged with criminal offences.
12 November 2008	Released from criminal custody on bail.
20 August 2014	Re-detained under s 189(1) and transferred to Maribyrnong IDC.
7 August 2015	Transferred to Wickham Point Alternative Place of Detention.

**Visa applications/case progression**

The Department of Immigration and Border Protection (DIBP) advised that Mr X has lived in Australia for over ten years. He has a partner, Ms Y and two minor sons, Master Z and Master Q. <sup>1</sup>	
7 December 2003	Mr X was refused entry to Australia after arriving at Brisbane Airport with a fraudulent passport.
18 November 2004	Mr X entered Australia with a fraudulent passport on an Electronic Travel Authority (ETA) visa.
13 January 2005	Lodged a Protection visa application.
3 February 2005	ETA visa was cancelled under s 109 and he was granted a Bridging visa to regularise his immigration status.
7 February 2005	Appealed to the Migration Review Tribunal (MRT).
1 March 2005	Protection visa application refused.
6 April 2005	Appealed to the Refugee Review Tribunal (RRT).
5 October 2005	MRT affirmed original decision to cancel ETA visa.
10 November 2005	RRT affirmed original decision to refuse the Protection visa application.

<sup>1</sup> Ms Y lives in the community on a Bridging visa, Master Q also holds a Bridging visa and a Protection visa application was lodged on his behalf on 11 December 2015 and Master Z was granted a Protection visa on 18 January 2013.

11 November 2005	Bridging visa expired and Mr X remained in the community as an unlawful non-citizen.
26 March 2008	Located by Victoria Police and detained under s 189(1).
23 April 2008 – 18 January 2013	Requested ministerial intervention under ss 48B and 417 on several occasions. All of which were unsuccessful.
16 October 2008	The Victoria Department of Public Prosecutions issued Mr X with a Criminal Justice Certificate.
17 October 2008	Granted a Criminal Justice visa and transferred to criminal custody.
12 November 2008	As he had a valid Criminal Justice visa he was released from criminal custody on bail.
14 April 2009	Requested judicial review by the Federal Magistrates Court (FMC).
3 September 2009	FMC affirmed original decision.
1 March 2010 – 19 August 2014	Criminal Justice visa was cancelled and he was granted consecutive Bridging visas on departure and ministerial intervention grounds.
7 September 2012	The RRT remitted a decision in relation to Mr X's son Master Z's Protection visa application, which found that Master Z is owed protection under the complementary protection criterion because of the risk to him arising from threats facing his parents should they return to Country A.
27 September 2012	Mr X and Ms Y requested ministerial intervention under s 48B to be joined as a dependant on Master Z's Protection visa application. The same day Mr X's case was found to meet the guidelines for referral to the former Minister under s 48B.
14 December 2012	The former Minister declined to intervene under s 48B.
18 January 2013	Requested ministerial intervention under ss 48B and 417.
8 August 2013	Mr X was notified that his case was affected by the judgment handed down on 3 April 2013 by the FMC <sup>2</sup> which found that s 48A did not prevent a person from making a further Protection visa application and therefore his case was not referred to the former Minister under s 48B.
20 August 2014	Lodged a Bridging visa application.
12 November 2014	Bridging visa application refused under s 501.
5 February 2015	Found not to meet the guidelines for referral to the Minister under s 417.
9 February 2015	Requested ministerial intervention under s 195A. On 28 July 2015 his case was found not to meet the guidelines for referral.
15 May 2015	Request for ministerial intervention under s 417 was not considered.
5 August 2015	Mr X's case was included on a request for ministerial intervention under s 417. On 9 November 2015 his case was found not to meet the guidelines for referral.
21 August 2015	Requested judicial review by the Federal Court of DIBP's decision to refuse him a Bridging visa under s 501.

<sup>2</sup> SZGIZ v Minister for Immigration [2013] FMCA 215.

27 January 2016	<p>DIBP advised that Mr X did not lodge a further Protection visa application before legislative amendments were made in May 2014 and is now subject to the s 48A bar.</p> <p>He continues to await the outcome of judicial review concerning the Bridging visa decision.</p>
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### **Criminal history**

6 August 2008	Mr X was charged with a number of criminal offences relating to drug cultivation, using a false name, property damage and theft.
29 January 2010	He pleaded guilty and received a two-year suspended prison sentence. The conviction order also required he pay over \$14 000 in damages.

### **Health and welfare**

International Health and Medical Services advised that Mr X has not required treatment for any major mental health issues.	
12 September 2014	Mr X was identified as a hepatitis B carrier following routine pathology testing. Liver function tests returned normal results and his condition is monitored.

### **Other matters**

11 May 2015	<p>Mr X lodged a complaint with the Ombudsman's office about Serco's response to an incident at Maribyrnong IDC.</p> <p>Following an investigation by the Ombudsman's office, it was recommended that Serco conduct a further investigation into the matter.</p> <p>The complaint was finalised on 10 November 2015.</p>
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### **Case status**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. At the time of DIBP's review, Mr X was awaiting the outcome of judicial review.
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