

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fourth s 486O assessment on Mr X who has remained in immigration detention for more than 54 months (four and a half years). The previous assessment 1001237-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1971 |
| Ombudsman ID | 1001237-O1 |
| Date of DIBP's reports | 27 January 2017 and 28 July 2017 |
| Total days in detention | 1,640 (at date of DIBP's latest report) |

Recent detention history

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| Since the Ombudsman's previous assessment, Mr X has remained at Facility B. | |
| 23 March 2017 | Transferred to Facility C. |
| August 2017 | The Department of Immigration and Border Protection (the department) advised that Mr X had been transferred to Facility D. |

Recent visa applications/case progression

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| 18 August 2016 | The Federal Circuit Court (FCC) reviewed the Administrative Appeals Tribunal's (AAT) decision to affirm the refusal of Mr X' Protection visa application and remitted the case to the AAT for reconsideration. |
| 26 August 2016 and 14 December 2016 | Bridging visa applications deemed invalid under s 501 of the <i>Migration Act 1958</i> . |
| 8 November 2016 | Applied to the Federal Court (FC) for judicial review of the AAT's decision to affirm the department's decision to cancel his Skilled Independent visa under s 501. |
| 27 January 2017 | Mr X is considered a person of interest to the department in relation to an allegation that he misappropriated the medical data of another detainee with the intention of fraudulently assisting his own case. |
| 22 March 2017 | FC adjourned and reserved judgment. |
| 11 May 2017 | AAT affirmed the original decision to refuse Mr X's Protection visa application. |
| 13 June 2017 | Applied to the FCC for judicial review of the AAT's decision to affirm the refusal of his Protection visa application. A directions hearing was scheduled for 30 August 2017. |

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has a history of anxiety and body dysmorphic disorder and presented with low mood, anxiety and situational stress related to his immigration pathway. During a psychiatric review, Mr X was provided with education about antidepressant medication and agreed to consider taking medication to improve his mental health symptoms. His condition continued to be regularly monitored by IHMS.

IHMS further advised that Mr X presented with headaches related to stress and poor sleep. He was provided with pain relief medication and continued to be monitored by a general practitioner.

Other matters

Mr X's wife and son are Australian citizens and reside in State E.

Information provided by Mr X

During interviews with Ombudsman staff on 25 May 2017 and 2 November 2017 Mr X advised that he was separated from his wife and 13 year old son when he was transferred to Facility D in August 2017. He stated that being separated from his family has been difficult and his detention was negatively impacting his son's mental health. He said he misses spending quality time with his family and does not understand why he was moved from Facility C. He also advised that it is difficult to speak with his family over the phone and they feel uncomfortable during Skype sessions because Serco officers are present.

Mr X advised that he appealed the department's decision to cancel his Skilled Independent visa at the FC, but has withdrawn his appeal at the FCC in relation to his Protection visa application. He explained that he represented himself during these proceedings and had to withdraw from the FCC because it was too difficult to manage his case from Facility D. He said that managing his legal matters is hard because legal research is complicated and English is not his first language.

Mr X said he tries to focus on being positive and staying busy in detention and that his religious beliefs and support networks have helped him cope. He said he enjoyed taking practical classes at Facility C because they gave him a sense of purpose and he often assists other detainees with their legal cases. He advised that he feels down and struggles to sleep because the future is uncertain and he is constantly surrounded by other people. He also said that the mental health team encouraged him to take antidepressant medication but he declined because he never experienced any mental health conditions before detention and is worried he would lose his sense of self.

Mr X stated that he is automatically assessed as a high risk detainee because his visa was cancelled under s 501 and he felt this was unfair. He said that he has not been involved in any incidents in detention and believes the department should take these individual factors into consideration.

Ombudsman assessment/recommendation

Mr X was detained on 30 January 2013 following his release from a correctional facility and has been held in an immigration detention facility for more than four and a half years. At the time of the department's latest report, Mr X was awaiting the outcome of judicial review.

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. Mr X has continued to present with low mood, anxiety and situational stress related to his immigration pathway.

The Ombudsman further notes that Mr X's wife and son reside in State D and in August 2017 he was separated from them when he was transferred from Facility C to Facility D. Mr X advised that being separated from his family is very difficult and his son's mental health has been negatively impacted.

In light of this advice, the Ombudsman recommends that Mr X be transferred to Facility B or Facility C to enable him to reside closer to his family while he awaits the resolution of his immigration pathway.