

## 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 more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1974
<b>Ombudsman ID</b>	1003395
<b>Date of DIBP's reports</b>	7 September 2015 and 2 March 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

2 September 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 842 <i>Zapata</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
3 September 2013	Transferred to Christmas Island Immigration Detention Centre.
8 January 2015	Transferred to Wickham Point APOD.

### Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A.	
13 March 2014	DIBP notified Mr X of the unintentional release of personal information. <sup>1</sup>
7 September 2015	DIBP advised that Mr X's case was being assessed against the guidelines under s 195A for the grant of a Bridging visa.  DIBP further advised that Mr X is considered a person of interest in relation to a previous criminal conviction in Country A.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
4 November 2015	Mr X was notified that he is eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a temporary visa application. He accepted the offer the next day and was assigned a provider.

<sup>1</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

28 January 2016	Mr X's case was referred on a first stage ministerial submission for consideration under s 195A.
4 February 2016	Lodged a Safe Haven Enterprise Visa (SHEV) application with an associated Bridging visa application.
22 February 2016	Associated Bridging visa application was invalid.

### Health and welfare

2 September 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined a referral for specialist counselling.
2 September 2013 – 17 August 2015	Mr X advised IHMS that he was diagnosed with type 2 diabetes prior to his arrival in Australia. IHMS confirmed the diagnosis with blood tests and prescribed him with medication.  He attended regular reviews with an ophthalmologist and podiatrist and no abnormalities were identified, but the podiatrist recommended therapeutic footwear.
21 November 2013	Pathology testing identified previous hepatitis B and syphilis infections. He is considered immune and non-infectious and no treatment is required.
3 June 2015	Presented with low mood, situational stress and difficulty sleeping during a routine mental health assessment. He advised he was feeling isolated and was concerned about his family who are in a refugee camp in Country A.
12 August 2015	Presented to the mental health team with insomnia, nightmares, poor concentration and stress. He requested counselling and was referred to a psychologist.
September 2015	Reviewed by a diabetic educator following a deterioration in his diabetic condition. He disclosed he had no motivation to manage his condition.
November 2015	Mr X requested a referral for specialist counselling as his mental health was deteriorating. His main concern continued to be about the welfare of his family.
12 November 2015 – ongoing	Diagnosed with an abscess and referred for assessment.
December 2015	IHMS reported that Mr X's mental health had deteriorated and this was impacting his physical health. He was referred to a psychiatrist and also to DIBP for internal review of his placement and possible escalation of his case.
21 December 2015	Presented to an IHMS general practitioner (GP) with symptoms of depression. It was noted that his low mood was contributing to the poor management of his diabetes. He was provided with education and regularly monitored by the GP.
21 January 2016	Attended an initial specialist counselling session. IHMS was awaiting confirmation of further appointments.

27 January 2016	IHMS advised that he was awaiting a psychiatric review. IHMS further advised that his physical and mental health are adversely affected by his detention placement and the mental health team noted a significant deterioration in his mental health from December 2015.
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**Information provided by Mr X**

During an interview with Ombudsman staff at Wickham Point APOD on 21 April 2016 Mr X confirmed he had lodged a SHEV application and had received legal assistance through DIBP. He said he has not yet been offered an interview.

Mr X said he struggles to sleep and experiences headaches as he is constantly worried. He attends fortnightly counselling, but is not sure whether the counselling is helping him.

Mr X reported no concerns about the facilities at Wickham Point APOD, however he said he had stopped participating in activities a few months ago as he felt frustrated and distressed about his ongoing detention.

He said his family, including two children aged ten and eight, are located in a refugee camp in Country A. He is concerned about their safety and last spoke with them one month ago.

**Ombudsman assessment/recommendation**

Mr X was detained on 2 September 2013 after arriving in Australia aboard *SIEV Zapata* and has been held in restricted detention for over two and a half years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 4 February 2016 Mr X lodged a SHEV application.

The Ombudsman notes the Government’s duty of care to immigration detainees and the serious risk to mental and physical health that prolonged indefinite restrictive immigration detention may pose. The Ombudsman notes with concern that IHMS reported on 27 January 2016 that Mr X’s mental and physical health has significantly deteriorated and is affected by his detention placement.

The Ombudsman recommends that Mr X be considered for a community detention placement or reconsidered for a Bridging visa while he awaits the outcome of his SHEV application.