

**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).

Name	Mr X
Citizenship	Country A
Year of birth	1986
Ombudsman ID	1002373-O
Date of DIBP's report	26 April 2016
Total days in detention	743 (at date of DIBP's report)

Detention history

13 July 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 786 <i>Decatur</i> . He was transferred to an Alternative Place of Detention, Christmas Island.
22 July 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
5 August 2013	Transferred to Northern IDC.
14 August 2013	Transferred to Curtin IDC.
4 September 2013	Granted a Bridging visa and released from detention.
6 June 2014	Re-detained under s 189(1) following his release from criminal custody. He was transferred to Adelaide Immigration Transit Accommodation.
13 June 2014	Transferred to Yongah Hill IDC.

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.	
2 September 2013	The former Minister agreed to intervene under s 195A to grant Mr X a Bridging visa valid until 4 September 2014.
9 February 2014	Mr X was arrested, charged and remanded in criminal custody. His Bridging visa was consequently cancelled under s 116.
13 May 2014	Issued with a Criminal Justice Stay Certificate (CJSC). On 26 May 2014 Mr X was refused a Criminal Justice visa.
6 June 2014	The criminal charges against Mr X were dismissed. On the same day he was released from criminal custody and re-detained.
17 June 2014	CJSC cancelled.
17 September 2014	Mr X's case was referred on a ministerial submission for consideration under s 195A. The former Minister declined to intervene.

25 August 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
2 September 2015	DIBP invited Mr X to lodge a temporary visa application.
15 September 2015	Lodged an application for a Temporary Protection visa (TPV).
14 October 2015	Mr X's case was referred on a ministerial submission for consideration under s 195A. The Minister declined to intervene.
15 February 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a new temporary visa application or providing supporting information for his existing application.
16 February 2016	Accepted the PAIS assistance and was assigned a provider.
1 April 2016	Lodged an application for a Safe Haven Enterprise visa (SHEV).
26 April 2016	DIBP asked Mr X to advise whether he wanted to progress his application for a TPV or his application for a SHEV.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for a range of physical health issues. In August 2015 he was transferred to hospital after presenting with chest pain, but investigations identified no abnormalities.</p> <p>IHMS advised that Mr X also received intermittent support from the mental health team to assist him to deal with the stress of his situation.</p>	
28 January 2015	A DIBP Incident Report recorded that Mr X threatened self-harm following a meeting with DIBP.

Other matters

21 May 2015	Mr X lodged a complaint with the Ombudsman's office concerning his continued immigration detention after criminal charges against him were dismissed. Following investigation the Ombudsman's office provided a better explanation to Mr X about DIBP's processes and advised him the decision was made by the Minister. The complaint was finalised on 8 July 2015.
-------------	--

Ombudsman assessment/recommendation

Mr X was detained on 13 July 2013 after arriving in Australia aboard SIEV *Decatur* and on 4 September 2013 he was granted a Bridging visa and released from immigration detention.

On 9 February 2014 Mr X was arrested and his Bridging visa was cancelled. The charges against him were dismissed on 6 June 2014 and he was released from criminal custody and returned to immigration detention. The Ombudsman notes with concern that at the time of this report, Mr X had been held in restricted immigration detention for more than two years following the dismissal of all criminal charges against him.

On 25 August 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa. On 15 September 2015 Mr X lodged a TPV application and on 1 April 2016 he lodged a SHEV application. At the time of its review DIBP was seeking to clarify which visa application Mr X wished to progress.

The Ombudsman notes that the Minister has declined to intervene under s 195A to grant Mr X a Bridging visa on two occasions. In light of the fact that Mr X's original Bridging visa was only cancelled because of criminal charges which were subsequently dismissed, the Ombudsman recommends that the Minister again consider granting Mr X a Bridging visa while he awaits processing of his protection claims.