

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the sixth s 486O assessment on Mr X who has remained in immigration detention for more than 84 months (seven years). The previous assessments are:

1193/13 tabled in Parliament on 26 June 2013
1001084 tabled in Parliament on 18 June 2014
1001642 tabled in Parliament on 11 February 2015
1002120 tabled in Parliament on 10 February 2016
1000512-O tabled in Parliament on 15 February 2017.

This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1000512-O1
Date of DIBP's reviews	15 December 2016 and 20 June 2017
Total days in detention	2,555 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1000512-O), Mr X has remained at Facility B.

Recent visa applications/case progression

27 July 2016	The Minister appealed the Full Federal Court decision ¹ and the High Court found that the International Treaties Obligations Assessment (ITOA) process was not procedurally unfair. ²
12 December 2016	Mr X's case was referred on a ministerial submission for consideration to lift the bar and for the grant of a bridging visa under ss 46A and 195A of the <i>Migration Act 1958</i> . On 3 March 2017 the Department of Immigration and Border Protection (the department) withdrew the ministerial submission and proposed that Mr X be granted a bridging visa.
15 March 2017	Mr X was referred for involuntary removal.
1 May 2017	The Federal Circuit Court (FCC) heard Mr X's application for judicial review of his negative ITOA outcome. The matter was adjourned and judgment was reserved.
20 June 2017	The department advised that the grant of a bridging visa was not considered appropriate as Mr X had been identified for involuntary removal.

¹ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

² *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29.

Health and welfare

International Health and Medical Services advised that Mr X disclosed a history of torture and trauma and presented with symptoms of detention fatigue, including disrupted sleep and feelings of hopelessness. He accepted a referral for specialist counselling and continued to be monitored by the mental health team.

Information provided by Mr X

During an interview with Ombudsman staff at Facility B in May 2017 Mr X advised that he had recently appeared before the FCC and was awaiting an outcome.

Mr X said that he feared being involuntarily returned to Country A as he had spoken against the Country A government while he was detained in Australia. He stated that he would not be safe in Country A because of his religious beliefs.

Mr X reported that he feels sad and frustrated because he has remained in an immigration detention facility for seven years and does not understand why he has not been granted a visa. He said that many of his friends, who have similar immigration cases, had already been released. He advised that he had previously attended specialist counselling but he did not find it helpful.

Mr X advised that he wished to be transferred to Villawood Immigration Detention Centre (IDC) as his lawyer is located in Sydney and he has friends in the Sydney community who would be able to visit him.

Ombudsman assessment/recommendation

Mr X was detained on 22 June 2010 after arriving in Australia by sea and has been held in an immigration detention facility for more than seven years. At the time of the department's latest review, Mr X was awaiting the outcome of judicial review.

The Ombudsman notes that on 3 March 2017 the department proposed that Mr X be granted a bridging visa, but on 15 March 2017 he was referred for involuntary removal. On 20 June 2017 the department advised that the grant of a bridging visa was not considered appropriate as Mr X had been referred for involuntary removal.

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 notes with serious concern the significant length of time Mr X has remained in an immigration detention facility and the absence of any behavioural or security concerns.

- 1. In light of these concerns, the Ombudsman recommends that Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.**
- 2. The Ombudsman further recommends that consideration be given to transferring Mr X to Villawood IDC to enable him to reside closer to his lawyer and support network while he awaits the resolution of his case.**