

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1002691-O
Date of department's reports	30 May 2017 and 17 August 2017
Total days in detention	912 (at date of department's latest report)

Detention history

17 February 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cessation of his tourist visa. He was transferred to Yongah Hill Immigration Detention Centre (IDC).
5 November 2015	Transferred to a correctional facility. ¹
26 February 2017	Transferred to Yongah Hill IDC.
2 November 2017	Transferred to Christmas Island IDC.

Visa applications/case progression

Mr X first arrived in Australia on 20 April 2007 on a student visa, granted on 22 March 2007.	
26 February 2008	Student visa cancelled under s 116 due to non-compliance.
7 April 2009	Lodged a Protection visa application and granted a bridging visa.
8 July 2009	Protection visa application refused.
15 September 2009	Bridging visa ceased.
23 September 2009 – 15 April 2013	Granted multiple bridging visas, the latest of which ceased on 16 February 2015.
28 September 2009	Requested ministerial intervention under s 48B. He withdrew this request on 2 October 2009.
2 October 2009	Lodged a Combined Partner visa application.
17 November 2009	Combined Partner visa application refused.
3 December 2009	Applied to the Migration Review Tribunal (MRT) for merits review of the Department of Immigration and Border Protection's (the department) decision to refuse his Combined Partner visa application. On 21 February 2012 the MRT affirmed the original decision.

¹ On 30 May 2017 the department advised that Mr X continued to be detained under s 189(1) while he was placed in a correctional facility serving a custodial sentence.

26 October 2012	Requested ministerial intervention under s 351 for the Minister to substitute a more favourable decision. Mr X was subsequently granted a tourist visa on 17 January 2013.
15 April 2013	Lodged a second Combined Partner visa application.
17 April 2013	Tourist visa ceased.
4 November 2014	Second Combined Partner visa application refused.
9 December 2014	Applied to the MRT for merits review of the department's decision to refuse his second Combined Partner visa application. On 19 January 2015 the MRT was determined to not have jurisdiction to review the decision.
4 March 2015	Lodged a bridging visa application that was refused the following day.
18 March 2015	Applied to the Federal Circuit Court (FCC) for judicial review of the MRT's decision. On 4 November 2015 the FCC remitted the case to the Administrative Appeals Tribunal (AAT). ²
22 April 2015	Granted a bridging visa on judicial review grounds which was cancelled under s 116 on the same day.
24 April 2015	Applied to the MRT for merits review of the department's decision to cancel his bridging visa under s 116. The MRT affirmed the original decision on 4 May 2015.
12 May 2016	The AAT remitted the department's decision to refuse Mr X's second Combined Partner visa application to the department for reconsideration with the direction that Mr X meets some requirements under the <i>Migration Regulations 1994</i> .
14 June 2016	The department commenced reassessing Mr X's second Combined Partner visa application.
10 August 2017	Mr X was notified that consideration would be given to whether his Combined Partner visa application should be refused under s 501 due to his character record. Mr X was invited to respond within 28 days.

Criminal history

February 2014	Convicted of assault and sentenced to a six month intensive supervision order.
August 2014	Convicted of possessing a prohibited drug and issued with a fine.
August 2014	Convicted of breaching the intensive supervision order without reasonable excuse and received a six-month suspended sentence.
October 2015	Remanded at a correctional facility on outstanding charges of possessing prohibited drugs with intent to supply. He was subsequently sentenced to one year and four months imprisonment in January 2016.

² On 1 July 2015 the MRT and Refugee Review Tribunal were merged into the AAT.

Health and welfare

The department advised that from 5 November 2015 to 26 February 2017 Mr X's health and welfare was managed by the Department of Corrective Services, State B.

International Health and Medical Services advised that Mr X was reviewed by a mental health nurse in July 2015 and reported that his prescribed medication for sleeping difficulties was ineffective. In May 2017 Mr X's prescribed medication was adjusted by a general practitioner and he reported that he was missing his family and struggled to sleep. In July 2017 Mr X ceased taking his prescribed medication.

Other matters

5 February 2015	Mr X's wife, Ms Y, lodged a complaint on Mr X's behalf with the Office of the Commonwealth Ombudsman in relation to the department's decision to refuse his application for a partner visa. The department provided a response on 19 March 2015 and on 20 April 2015 the complaint was finalised.
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Case status

Mr X was detained on 17 February 2015 following the cessation of his tourist visa and has remained in immigration detention, both in a detention facility and a correctional facility, for more than two and a half years.

On 15 April 2013 Mr X lodged a second Combined Partner visa application and on 4 November 2014 his application was refused.

On 9 December 2014 Mr X applied to the MRT for merits review and the MRT was determined not to have jurisdiction. Mr X subsequently applied to the FCC for judicial review and on 4 November 2015 the case was remitted to the AAT.

On 12 May 2016 the AAT remitted the matter to the department for reconsideration with the direction that Mr X meets some requirements under the *Migration Regulations 1994*.

On 14 June 2016 the department began reassessing his Combined Partner visa application and on 10 August 2017 Mr X was advised that consideration was to be given as to whether his application should be refused under s 501.