

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	1969
Ombudsman ID	1002652-O
Date of department's reports	2 May 2017 and 31 October 2017
Total days in detention	912 (at date of department's latest report)

Detention history

28 March 2008	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa under s 501. He was transferred to Brisbane Immigration Transit Accommodation (ITA).
29 March 2008	Transferred to Villawood Immigration Detention Centre (IDC).
29 August 2008	Visa was reinstated and he was released from immigration detention.
9 September 2015	Departed Australia and his visa ceased.
4 October 2015	Re-detained under s 189(1) following the cancellation of his visa under s 116. He was transferred to Brisbane ITA.
14 October 2015	Transferred to Yongah Hill IDC.
24 January 2017	Transferred to Christmas Island IDC.

Visa applications/case progression

Mr X arrived in Australia on 17 April 1984 as a holder of a visa.	
19 July 2006	Issued with a Notice of Intention to Consider Cancellation of his visa under s 501 following criminal convictions.
30 May 2007	Visa cancelled under s 501.
11 April 2008	Applied to the Federal Court (FC) for judicial review of the decision to cancel his visa under s 501. On 29 August 2008 the Minister withdrew from Mr X's judicial review proceedings in the FC and the decision to cancel his visa was set aside. Mr X's visa was reinstated and he was released from immigration detention on the same day.
4 October 2015	Visa cancelled under s 116 at the border following Mr X's arrival in Australia.
26 October 2015	Lodged a Partner visa application.
4 January 2016	Partner visa application refused.

11 January 2016	Applied to the Administrative Appeals Tribunal (AAT) for merits review of the decision to refuse his Partner visa application.
6 April 2016	The AAT remitted Mr X's case to the Department of Home Affairs (the department) with the direction that Mr X met certain criteria for the grant of a Partner visa.
28 August 2016	Lodged an Australian Citizenship by Descent application. ¹
27 April 2017	Australian Citizenship by Descent application refused. He was notified of the decision on 1 May 2017.
24 May 2017	Applied to the AAT for merits review of the decision to refuse his Australian Citizenship by Descent application.
6 June 2017	Issued with a Notice of Intention to Consider Refusal (NOICR) of his Partner visa application. He provided a response on 31 July 2017.

Criminal history

The department advised that Mr X has an extensive criminal history in Australia, including fraud, drug and child sex offences.	
2002 and 2005	Convicted of drug and child sex offences and sentenced to an aggregate period of seven years imprisonment.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma related to his experiences of assault while in prison, from which he sustained a head injury and ongoing cognitive issues. He presented with symptoms of nightmares, flashbacks and hypervigilance related to experiences of past trauma. In February 2016 he was reviewed by a psychiatrist and prescribed with antidepressant medication for an adjustment disorder. The treating psychiatrist recommended that Mr X be transferred to an immigration detention facility closer to his family. He attended further psychiatric reviews in February, April and June 2017 and continued to engage with the mental health team.

Other matters

13 March 2017	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman (the Office) in relation to the department's handling of his request to be transferred from Yongah Hill IDC, and later from Christmas Island IDC, to Villawood IDC to enable him to reside closer to his family. On 22 June 2017 the department provided a response and advised that Mr X's placement was appropriate in order to minimise potential risks related to alleged criminal connections. On 20 September 2017 the Office notified the department that the investigation had been finalised.
The department advised that Mr X's wife is an Australian citizen and that he has two step sons.	

¹ The department advised that Mr X's application was made on the basis that his mother is an Australian citizen.

Ombudsman assessment

Mr X was detained on 28 March 2008 and 4 October 2015 following the cancellation of his visa and has remained in an immigration detention facility for a cumulative period of more than two and a half years.

Mr X was issued with a NOICR of his Partner visa application on 6 June 2017 and he provided a response on 31 July 2017.

At the time of the department's latest report, Mr X was awaiting the outcome of merits review of the decision to refuse his Australian Citizenship by Descent application.

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 IHMS's advice that Mr X required treatment for mental health concerns related to past trauma and that a treating psychiatrist recommended that Mr X be transferred to an immigration detention facility closer to his family.

The Ombudsman further notes that on 13 March 2017 Mr X lodged a complaint with the Office regarding his request to be transferred to Villawood IDC to reside closer to his family. On 22 June 2017 the department provided a response and advised that Mr X's placement was appropriate in order to minimise potential risks related to alleged criminal connections. The Office's investigation was finalised on 20 September 2017.