

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 three years.¹

Name	Mr X
Citizenship	Country A
Year of birth	1976
Ombudsman ID	1002793-O
Date of department's reports	30 October 2017 and 6 April 2018
Total days in detention	1,094 (at date of department's latest report)

Detention history

January 2003	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 Facility B.
July 2003	Resident Return visa reinstated and released from immigration detention.
August 2007	Re-detained under s 189(1) following the Full Federal Court's (FFC) decision. He was transferred to Facility B.
August 2007	Granted a Resident Return visa and released from immigration detention.
October 2015	Re-detained under s 189(1) following the cancellation of his visa under s 501. He was transferred to Facility C.
February 2017	Transferred to Facility D.
June 2017	Transferred to Facility B.

Visa applications/case progression

Mr X arrived in Australia with his aunt in September 1992 on a Refugee visa as a dependant.	
May 1997	Granted a Resident Return visa.
August 2002	Issued with a Notice of Intention to Consider Cancellation (NOICC) of his Resident Return visa.
December 2002	Resident Return visa cancelled under s 501.
July 2003	The Federal Magistrates Court (FMC) set aside the Minister's decision to cancel Mr X's visa under s 501 and Mr X's Resident Return visa was reinstated.
March 2004	The FFC quashed the FMC's decision to set aside the cancellation of Mr X's visa.

¹ The department's 24-month report on Mr X was due on 7 April 2017 and his 30-month report was due on 6 October 2017. The department advised that the delay in provision of these reports was due to the incorrect calculation of his days in detention by departmental systems.

August 2007	The Minister intervened under s 195A to grant Mr X a Resident Return visa.
June 2015	Issued with a NOICC of his Resident Return visa.
October 2015	Resident Return visa cancelled under s 501 and in December 2015 Mr X applied to the Federal Court (FC) for judicial review of the decision to cancel his visa.
November 2015	Lodged a Protection visa application and in June 2016 the application was refused.
April 2016	The FC dismissed Mr X's application for judicial review of the cancellation of his visa.
August 2016	The Administrative Appeals Tribunal (AAT) affirmed the refusal decision and in November 2016 Mr X applied to the Federal Circuit Court (FCC) for judicial review of the AAT's decision.
September 2016	Found not to meet the guidelines under s 417 for the Minister to substitute a more favourable decision.
August 2017	The FCC dismissed Mr X's application for judicial review of the AAT's decision to affirm the refusal of Mr X's Protection visa application.
November 2017	Found not to meet the guidelines under s 417 for the Minister to substitute a more favourable decision.
April 2018	The Department of Home Affairs (the department) advised that as Mr X has no matters before the department, the courts or tribunals, he is on a removal pathway. The department further advised that it was making arrangements with the authorities of Country A to obtain a travel document for Mr X to effect his involuntary removal from Australia.

Criminal history

Between 1994 and 2001 Mr X was convicted of multiple criminal offences and sentenced to multiple terms of imprisonment totalling more than 23 years, many of which were served concurrently.	
December 2011	Convicted of a criminal offence and received a suspended sentence of two years imprisonment suspended for one year.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and engaged with the mental health team for the management of mental health concerns. Mr X attended multiple sessions with a psychologist following a deterioration in his mental health related to family concerns and stress related to his immigration pathway. IHMS further advised that Mr X also received treatment for physical health concerns.	
October 2015	An Incident Report recorded that Mr X was transported to hospital by ambulance after suffering a seizure. He was discharged in November 2015.

Other matters

Mr X's partner and children are Australian citizens and his parents and siblings reside overseas.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in an immigration detention facility for a cumulative period of more than three years. He has no matters before the department, the courts or tribunals and is on a removal pathway.

In April 2018 the department advised that it was making arrangements to obtain a travel document for Mr X in order to affect his involuntary removal from Australia. The matter remained ongoing at the date of the department's latest report.