

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fourth s 486O assessment on Mr X who has remained in immigration detention for more than 60 months (five years). The previous assessment 1001141-O was 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	1974
Ombudsman ID	1001141-O1
Date of DIBP's reviews	21 March 2017 and 17 September 2017
Total days in detention	1,822 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment, Mr X has remained at Facility B.

Recent visa applications/case progression

23 November 2016	The Independent Reviewer of Adverse Security Assessments concluded its reassessment of Mr X's case and referred the matter to the Australian Security Intelligence Organisation (ASIO) with a recommendation.
2 February 2017	Pursuant to the Independent Reviewer's advice, ASIO reviewed Mr X's case and issued him with a qualified security assessment, which superseded his previous adverse security assessment.
10 April 2017	Mr X lodged a bridging visa application.
16 May 2017	Issued with a Notice of Intention to Consider Refusal of his Protection visa and bridging visa applications under s 501 of the <i>Migration Act 1958</i> . Mr X provided responses on 13 and 23 June 2017.
5 July 2017	Mr X's Protection visa and bridging visa applications were refused under s 501. In refusing Mr X's visa, the Assistant Minister found that he posed no risk to the Australian community and that the refusal of his visa would have a considerable and detrimental impact on his wife and son. However the Assistant Minister ultimately found that, notwithstanding his present good conduct, Mr X's past conduct indicates a lack of enduring moral quality and that the Australian community would expect his visa to be refused.
18 July 2017	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Removal Pending Bridging visa.
17 September 2017	The Department of Immigration and Border Protection (the department) advised that International Health and Medical Services (IHMS) has found that Mr X's health is adversely affected by his current placement and that this information has been included in the ministerial submission for consideration of his case under s 195A.

26 September 2017	The department provided further information, advising that the s 195A ministerial submission was returned from the Minister's Office on 21 August 2017 with a request to re-draft the submission as a first stage submission. The updated first stage submission was referred for consideration on 31 August 2017.
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Health and welfare

<p>IHMS advised that Mr X has continued to receive treatment for a history of torture and trauma, post-traumatic stress disorder (PTSD), depression and chronic psychosis and paranoia. He regularly attended counselling with the mental health team, a psychiatrist and specialist counsellors and was prescribed with antipsychotic medication.</p> <p>In January 2017 Mr X experienced a mild psychotic episode, which his psychiatrist diagnosed as occurring in the context of his PTSD, and in February 2017 he presented with increased anxiety and somatic symptoms, which were linked to his current immigration situation. In July 2017 Mr X's psychiatrist noted that he was developing depression in addition to anxiety and PTSD and on 28 July 2017 an IHMS Medical Director reported that Mr X's health was adversely affected by his current placement as his continuing detention and separation from his family was contributing to his depression and anxiety.</p> <p>IHMS further advised that Mr X received treatment for bradycardia, chest pain, dizziness, headaches and restless legs. His symptoms were considered to most likely be physical manifestations of his mental health concerns. He also received treatment for a historical eye injury and at the time of IHMS's latest report he was awaiting further review by an ophthalmologist and a cardiologist.</p>
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Other matters

9 June 2017	The Office of the Commonwealth Ombudsman opened an investigation into the circumstances of Mr X's ongoing held detention in light of his adverse security assessment being overturned. The Department provided responses on 5 July and 5 September 2017. The investigation remains ongoing.
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Information provided by Mr X

During an interview with Ombudsman staff on 21 June 2017 Mr X advised that in recent years Facility B had been upgraded to be a higher security facility, and that these increased security measures have had a significant impact upon the quality of life for long term detainees such as himself. He said that a few of years ago there was only a low fence around the centre, and the detainees could go on excursions every weekend, such as to play sports. Now he only leaves the centre to attend torture and trauma counselling.

Mr X advised that he has been waiting for a corneal transplant for years, but that his doctor says he cannot have the operation while he remains in detention. He also suffers from significant anxiety and needs medication to help him sleep.

He advised that he has a wife and a young son living in the community, and they are really struggling with his ongoing detention. He said that up until 2016 he was able to visit them at home, which brought them all a lot of psychological relief, but now that program had been cancelled for everyone. His wife and son live far away from Facility B, so now they are only able to visit him once a fortnight. If he was released, he hoped to be able to ease the pressure on his wife by cooking, cleaning and caring for their son. He said that it caused him great anxiety and anguish to be unable to support his loved ones.

Mr X advised that there was previously a very large cohort of detainees from Country A with adverse security assessments at Facility B, but now there are only three of them from that group left and they don't know how to cope anymore. He said that the three of them had been very respectful to the system and had shown great resilience over the years, but humans can only go through so much before they break. He said he just wants a chance to prove himself and asked that the Minister consider his exemplary behaviour over his many years in detention.

Information provided by Mr X's advocate

Mr X's advocate contacted the Ombudsman's office on 12 July 2017 to advise that the recent refusal of Mr X's visas under s 501 had triggered extreme levels of distress in him and the other two remaining long-term detainees from Country A at Facility B. She advised that she was very concerned about the deteriorating mental health of these detainees and said that in all of the years that she has been a pastoral visitor to these men, she has never observed their mental state to be so low.

Ombudsman assessment/recommendation

Mr X has been found to be owed protection under the Refugee Convention and has been held in an immigration detention facility for more than five years.

The Ombudsman's three previous assessments of Mr X's circumstances have articulated significant concerns about his ongoing and seemingly indefinite detention. In responses tabled on 24 February 2016 and 15 February 2017, the Minister advised that as a person with an adverse security assessment, Mr X would remain in held detention rather than live in the community.

On 2 February 2017 Mr X was issued with a qualified security assessment, overturning his adverse security assessment. The Ombudsman notes that in refusing Mr X's Protection visa, the Assistant Minister found that he does not present a risk to the Australian community. Accordingly, the Ombudsman does not consider Mr X's current detention placement to be appropriate.

1. In light of Mr X's protracted immigration pathway, the significant length of time he has remained in detention, his deteriorating mental health and the Assistant Minister's assessment that he does not pose a risk to the Australian community, the Ombudsman recommends that the Minister expedite his current consideration of Mr X's case under s 195A and grant him a bridging visa.

Mr X is part of a cohort of detainees who have been found to engage Australia's *non-refoulement* obligations, but have been held in immigration detention for a significant period of time, due to previously being the subject of an adverse security assessment, and now as the subject of a qualified security assessment.

Mr X's case is currently before the Minister for consideration of the grant of a bridging visa. The Ombudsman notes with serious concern that, if the Minister declines to grant Mr X a bridging visa, it appears he will either be detained indefinitely, or returned to Country A in violation of Australia's obligations under international law.

2. The Ombudsman recommends that the department brief the Minister on management options for the cohort of long-term detainees with qualified security assessments, and that the Minister prioritise finding a solution for this cohort that meets Australia's *non-refoulement* obligations without detaining these individuals indefinitely.

The Ombudsman further considers that the ongoing long-term detention of this cohort of vulnerable individuals in increasingly hardened immigration detention facilities is inappropriate.

3. In the event that the Minister declines to grant Mr X a bridging visa, the Ombudsman recommends that the department transfer him to a lower security detention placement that is more appropriately tailored to accommodating vulnerable individuals facing prolonged immigration detention, such as a designated alternative place of detention in the community.

The Ombudsman also notes with concern that the ongoing separation of Mr X from his wife and son is documented to be adversely affecting the mental health of the whole family. In July 2017, an IHMS Medical Director reported that Mr X's health is adversely affected by his current detention placement.

4. In the event that the Minister declines to grant Mr X a bridging visa, the Ombudsman recommends that the department reinstate regular home visits for Mr X and his family, to minimise the psychological harm associated with their ongoing separation.