

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

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

Name	Mr X
Citizenship	Country A
Year of birth	1968
Ombudsman ID	1002458
Date of DIBP's reports	28 April 2015 and 26 October 2015
Total days in detention	916 (at date of DIBP's latest report)

Detention history

26 October 2007	Mr X arrived in Australia as the holder of a Student Guardian visa.
31 July 2009	Mr X's Student Guardian visa expired and he became an unlawful non-citizen.
23 April 2013	Mr X was located by the Department of Immigration and Citizenship and detained under s 189(1) of the <i>Migration Act 1958</i> . On the same day he was transferred to Villawood Immigration Detention Centre (IDC).
18 February 2015	Transferred to Yongah Hill IDC.

Visa applications/case progression

8 May 2013	Lodged a Protection visa application with an associated Bridging visa application.
10 May 2013	Associated Bridging visa application refused. On the same day he appealed to the Migration Review Tribunal (MRT).
21 May 2013	MRT affirmed original decision.
22 July 2013	Found not to be owed protection.
24 July 2013	Appealed the Protection visa application decision to the Refugee Review Tribunal (RRT).
26 September 2013	RRT affirmed original decision.
30 September 2013	Found not to meet the guidelines for referral to the former Minister under s 417.
31 October 2013	Requested judicial review by the Federal Circuit Court (FCC).
27 May 2014	Lodged a Bridging visa application.
29 May 2014	Bridging visa application refused.
7 November 2014	FCC dismissed judicial review.

13 January 2015	The Department of Immigration and Border Protection (DIBP) commenced an International Treaties Obligations Assessment (ITOA) to assess whether there were any <i>non-refoulement</i> obligations which would prevent it from referring Mr X for removal action.
19 February 2015	DIBP invited Mr X to provide further information in relation to the ITOA.
20 February 2015	Mr X provided further protection related claims.
17 March 2015	DIBP finalised Mr X's ITOA and found that his case did not engage Australia's <i>non-refoulement</i> obligations.
24 March 2015	Requested judicial review by the FCC. A directions hearing was scheduled for 22 July 2015 but was adjourned until 18 February 2016.
2 September 2015	DIBP advised that Mr X's case is affected by the judgment handed down by the Full Federal Court (FFC) ¹ which found that the ITOA process was procedurally unfair. DIBP further advised that it is in the process of seeking legal advice in relation to the judgment.

Health and welfare

April 2013 – September 2014	International Health and Medical Services (IHMS) did not record any health summary information during this 17-month period.
3 April 2014	A DIBP Incident Report recorded that Mr X advised that he was undertaking voluntary starvation. No further information was provided.
30 October 2014	Attended an external psychiatric assessment. No further information was provided.
14 February 2015	A DIBP Incident Report recorded that Mr X threatened to self-harm. No further information provided.
15 February 2015	Placed on Psychological Support Program observations following threats of self-harm related to concerns about room placements and transfer to another detention facility.
17 February 2015	A DIBP Incident Report recorded that he threatened self-harm if he was transferred to another detention facility. No further information was provided.
March 2015 - October 2015	IHMS advised that Mr X has not required treatment for any major physical or mental health issues during this reporting period.

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

Other matters

DIBP advised that Mr X's daughter and granddaughter were granted Bridging visas on 5 June 2013. Their Bridging visas expired on 18 June 2014 and they are living in the community unlawfully.

DIBP further advised that Mr X is the holder of a Country A passport which expired on 28 July 2010. His expired passport is in the custody of DIBP.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 3 September 2015 Mr X advised that he is awaiting the outcome of his FCC hearing held in July 2015.

He said that following his transfer to Yongah Hill IDC in February 2015, he has lost 10 kilograms as a result of stress and not knowing when his detention will end. He said that he has seen IHMS staff on a few occasions but they cannot assist him. He advised that his physical health is fine but he believes if he remains in restricted detention he will go 'crazy'.

He said that he has a wife and daughter in Country A and is concerned for their safety. He also stated that he cannot return to Country A because DIBP disclosed his personal information on the internet,² compromising his safety.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of judicial review.

Mr X's case is also affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP advised that it is seeking legal advice in relation to the judgment.

² In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.