

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 Ms X who has remained in immigration detention for a cumulative period of more than 24 months (two years).

Name	Ms X
Citizenship	Country A
Year of birth	1978
Ombudsman ID	1002732-O
Date of DIBP's report	6 August 2017
Total days in detention	730 (at date of DIBP's report)

Detention history

10 September 2010	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of her visa. She was transferred to Facility B.
13 September 2010	Absconded from immigration detention and remained unlawfully in the community.
10 August 2015	Re-detained under s 189(1) and transferred to Facility C.

Visa applications/case progression

<p>Ms X first arrived in Australia in December 1992 and then departed and returned to Australia on multiple occasions between 1997 and 2006.</p> <p>On 19 March 2009 Ms X arrived in Australia on a visa using a false identity and holding a fraudulent passport.</p>	
10 September 2010	Following multiple criminal convictions, the Department of Immigration and Border Protection (the department) cancelled Ms X's visa under s 109 as a result of declaring false information to the department.
16 September 2015	Requested ministerial intervention under s 351 for the Minister to substitute a more favourable decision. The request was deemed invalid on 21 September 2016 as no decision had yet been made by the Administrative Appeals Tribunal (AAT) under s 349.
21 September 2015	Lodged a Protection visa application.
21 September 2015 – 2 February 2017	Lodged 11 bridging visa applications which were either refused or deemed invalid. The AAT affirmed the refusal of Ms X's bridging visa applications on eight occasions and the Federal Circuit Court (FCC) dismissed Ms X's applications for judicial review on two occasions.
20 November 2015 and 25 February 2016	Requested ministerial intervention under s 351. The requests were determined to be inappropriate while her Protection visa application remained under consideration.
16 December 2015	Protection visa application refused.
23 January 2016	Applied to the AAT for merits review. On 18 February 2016 the AAT advised that it had no jurisdiction in this matter.

21 March 2016	Applied to the FCC for judicial review.
4 April 2016	FCC remitted the matter to the AAT for reconsideration.
6 April 2016	Found not to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.
5 August 2016	AAT affirmed original decision.
10 August 2016, 24 October 2016 and 29 March 2017	Requested ministerial intervention under s 417 for the Minister to substitute a more favourable decision. Found not to meet the guidelines for referral to the Minister on all three occasions.
14 September 2016	Applied to the Federal Circuit Court (FCC) for judicial review of the AAT's decision regarding her negative Protection visa outcome.
1 December 2016	Found not to meet the guidelines for referral to the Minister under s 195A.
5 April 2017	Lodged a further bridging visa application which was refused on the following day.
7 April 2017	Applied to the AAT for merits review of the bridging visa refusal.
20 April 2017	AAT remitted the matter to the department with the direction that Ms X meets the criterion for a bridging visa.
16 May 2017	Issued with a Notice of Intention to Consider Refusal of her bridging visa application under s 501.
14 June 2017	FCC remitted the matter regarding the Protection visa application refusal to the AAT for reconsideration.
11 July 2017	Bridging visa application refused under s 501. On the same day Ms X applied to the AAT for merits review.

Criminal history

Ms X has a history of criminal convictions in Country A between 1994 and 2007 including driving offences, dishonesty offences, theft, property damage, assault and breach of a judicial order.	
10 September 2010 – 9 February 2015	Fined a total of \$600 and sentenced to 28 days imprisonment for assault, using a false name, and drug possession offences.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Ms X reported a history of anxiety and depression. Following her placement in an immigration detention facility, she further reported symptoms of panic attacks, insomnia and low motivation.</p> <p>Ms X's condition reportedly deteriorated after she was assaulted in December 2015 and February 2016. Following the assaults, Ms X reported ongoing neck pain, stiffness, and a reduced range of motion. Scans indicated degenerative changes in her spine with a possible root nerve compression. She was referred for physiotherapy and neurosurgical review. Ms X reported associated flashbacks and nightmares and was prescribed with antidepressant medication.</p> <p>In June and November 2016 Ms X was closely monitored by Serco officers following threats of self-harm and concerns around her behaviour. In December 2016 Ms X was diagnosed with an adjustment disorder with anxious mood and was prescribed with medication. Ms X declined to continue taking the medication after reporting no improvement in her condition.</p>

19 December 2015	An Incident Report recorded that Ms X sustained minor injuries after being involved in an altercation with another detainee.
25 February 2016	An Incident Report recorded that Ms X was allegedly assaulted by another detainee. She was provided with medical assistance and required hospitalisation.
9 June 2016 – 21 November 2016	Incident Reports recorded that Ms X threatened self-harm on three occasions.

Detention incidents

Ms X has allegedly been involved in numerous incidents in detention including physical altercations and displaying abusive and aggressive behaviour towards other detainees and detention centre staff.	
23 March 2016	An Incident Report recorded that Ms X allegedly assaulted another detainee.

Other matters

18 October 2015	Ms X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to concerns regarding medical treatment, the refusal of her bridging visa applications, and her case manager's conduct at Facility C. On 13 November 2015 the department provided a response and on the same day the complaint was finalised.
27 July 2016	The department was notified that Ms X lodged a complaint with the Australian Human Rights Commission. On 6 March 2017 the department provided a response. The matter remained ongoing at the time of the department's report.
Ms X married an Australian citizen on 1 February 2017 at Facility C. Ms X has two sons, one of which is an Australian citizen, and the other resides in Country A.	

Information provided by Ms X

<p>During an interview with Ombudsman staff on 5 September 2017 Ms X advised that she has severe anxiety and depression, and often cries all day. She explained that after being assaulted by other detainees, she often has panic attacks, and her anxiety inhibits her ability to engage in activities. She stated that she does not feel safe at Facility C, which further exacerbates her anxiety. She also explained that she has back and dental concerns, but stated that she feels like IHMS does not really help and does not provide her with the treatment she needs.</p> <p>Ms X stated that her husband visits her nearly every day, and her son in Australia visits her every couple of weeks. She explained that both her husband and son are negatively affected by her ongoing separation from them, and that she feels like her son is lost and confused without her.</p> <p>She stated that she could not return to Country A as there were a number of gang members that thought she had acted as a police informant, and she was afraid for her safety. Ms X also advised that she had a number of concerns about her previous case manager, and the use of what she described as false information in her case. She explained that this information was very distressing for her and related to her son in Country A. Upon clarification with the department it was advised that this particular information and the conduct of the case manager remained under investigation.</p>
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Ombudsman assessment

Ms X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in detention for a cumulative period of more than two years.

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. IHMS has advised that Ms X has a history of anxiety and depression and has reported symptoms of panic attacks and flashbacks following two incidents of assault. IHMS further advised that Ms X was closely monitored by Serco officers following threats of self-harm.

The Ombudsman further notes that on 16 May 2017 Ms X was issued with a Notice of Intention to Consider Refusal of her bridging visa application under s 501.

At the time of the department's report Ms X was awaiting the outcome of merits review of both the refusal of her Protection visa application and a bridging visa application.