

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

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

The first report 1001837¹ was tabled in Parliament on 3 December 2014. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1984

Family details

Family members	Ms Y (wife)	Miss Z (daughter)
Citizenship	Country B	Country B
Year of birth	1986	2005

Family members	Miss Q (daughter)	Master R ² (son)
Citizenship	Country B	Unknown, born in Australia
Year of birth	2008	2012

Ombudsman ID	1003286
Date of DIBP's report	23 February 2015
Total days in detention	Not provided

Detention history

23 August 2012	Mr X and his family were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 419 <i>Zilzie</i> , indicating that they may have arrived as 'direct entry persons'. ³
30 July 2015	Granted Bridging visas with associated Temporary Humanitarian Stay (THS) visas and released from community detention.

¹ Mr X and his family were previously reported on in a group report of people who arrived on SIEV 419 *Zilzie*.

² Master R was born in Australia in November 2012 and was previously reported on in a group report of children born in Australia between September 2012 and December 2012. He was detained on 9 December 2012 and was previously reported on in Ombudsman report 1002167. He is now included in his family's report.

³ A maritime arrival to Australia's mainland who is seeking protection. Maritime arrivals who arrived as 'direct entry persons' after 13 August 2012 and before 20 May 2013 are not subject to the s 46A bar.

Recent visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to being released from detention, Mr X and his family were part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and the Minister had not lifted the bar under s 46A.	
30 July 2015	Granted Bridging visas with associated THS visas.
13 August 2015	The Minister lifted the bar under s 46A to allow the family to lodge a temporary visa application.

Health and welfare

Mr X

30 August 2012	International Health and Medical Services (IHMS) advised that Mr X was diagnosed with hepatitis B following routine pathology testing. He was provided with education and monitored as per state policy.
7 September 2012	Referred for an audiogram after presenting with recurring ear infections and hearing loss.
3 October 2012	An audiogram identified mild hearing loss and he was referred to an ear, nose and throat specialist.
January 2013	Mr X reported that his hearing had improved during a review with a general practitioner (GP).
14 January 2014	Referred for specialist counselling after presenting with symptoms of depression and relationship issues following an alleged domestic violence incident on 27 December 2013.
8 April 2014	Follow up pathology testing was conducted and the GP referred him to a liver specialist to evaluate his liver function.

Ms Y

23 August 2012	Ms Y informed IHMS that she was pregnant. She was referred for antenatal care.
November 2012	Ms Y gave birth to her son without complication.
14 January 2014	Referred for psychological counselling after presenting to a GP with symptoms of low mood and situational stress.

Miss Z, Miss Q and Master R

IHMS advised that Miss Z, Miss Q and Master R did not require treatment for any major physical or mental health issues.

Other matters

28 July 2015	<p>The Ombudsman's office requested information from DIBP about the circumstances of the arrival of a number of people from SIEV 662 <i>Lambeth</i> who were detained on the Australian mainland, apparently as 'direct entry persons', but have been subject to the bar under s 46A.</p> <p>The Ombudsman's office also identified that there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p>
30 July 2015 – 25 August 2015	<p>DIBP advised on four occasions that it expected to provide clarification as soon as information had been sourced from other areas within DIBP.</p>
1 September 2015	<p>The Ombudsman's office opened an investigation into the arrival and detention circumstances of people who arrived in Australian waters on 17 April 2013 aboard SIEV <i>Lambeth</i>.</p> <p>The Ombudsman's office also identified that there may be more arrivals, including Mr X and his family who arrived on SIEV <i>Zilzie</i>, who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p> <p>A response from DIBP was requested by 30 September 2015 but not received.</p>
2 October 2015 – 22 October 2015	<p>DIBP advised on three occasions that its response was awaiting clearance and would be delayed.</p>
13 November 2015	<p>The Ombudsman's office requested further information under its own motion powers into the arrival and detention circumstances of people who arrived in Australian waters between 13 August 2012 and 20 May 2013 who appeared to have been detained on the Australian mainland as 'direct entry persons' but remained subject to the s 46A bar.</p>
26 November 2015	<p>The matter was raised at a meeting with senior DIBP staff and it was requested that a response to the investigation into the people who arrived on SIEV <i>Lambeth</i> be provided to the Ombudsman's office by 10 December 2015.</p>
16 December 2015	<p>DIBP provided a response to the Ombudsman's request for information.</p>
23 December 2015	<p>The Ombudsman notified the Minister for Immigration and Border Protection of his intention to conduct an investigation under his own motion powers into DIBP's administration of the detention of people who arrived in Australian waters on SIEV <i>Lambeth</i>.</p> <p>The Ombudsman further advised the Minister that he would ask DIBP to look further at other boats where the arrivals were detained in Darwin around the same period of time.</p>
25 February 2016	<p>DIBP advised that an internal investigation had commenced to examine the issues raised by the Ombudsman's own motion investigation and that it will keep the Ombudsman advised as this progresses.</p>

20 April 2016

DIBP provided its response to the Ombudsman's investigation.

Ombudsman assessment

Mr X and his family were granted Bridging visas with associated THS visas on 30 July 2015 and released from immigration detention.

Mr X and his family were detained on 23 August 2012 after arriving in Australia aboard SIEV *Zilzie* and were held in detention for more than two and a half years before being granted Bridging visas.

The Ombudsman notes that DIBP considered that Mr X and his family were subject to the bar under s 46A for more than two years until the Minister lifted the bar on 13 August 2015 to allow Mr X and his family to apply for a temporary visa.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Mr X and his family may not have been subject to the s 46A bar due to their arrival and detention on the Australian mainland as apparent 'direct entry persons' on 23 August 2012.

The Ombudsman notes that DIBP has commenced an internal investigation into the issues raised by the Ombudsman's own motion investigation and provided a response to some of the issues on 20 April 2016. The Ombudsman is considering DIBP's response and makes no recommendations in this report.