

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 1002017¹ was tabled in Parliament on 12 August 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X (and family)
Citizenship	Stateless (claimed)
Year of birth	1984

Family details

Family members	Ms Y (wife)	Miss Z (daughter)
Citizenship	Stateless (claimed)	Stateless (claimed)
Year of birth	1979	2010

Ombudsman ID	1002843
Date of DIBP's reports	13 May 2015
Total days in detention	Not provided

Detention history

12 November 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) 524 <i>Cadillac</i> , indicating that they may have arrived as 'direct entry persons'. ²
27 August 2015	Granted Bridging visas with associated Temporary Humanitarian Stay (THS) visas and released from community detention.

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.	
27 August 2015	Granted Bridging visas with associated THS visas.

¹ Mr X and his family was previously reported on in a group report of people who arrived on SIEV 524 *Cadillac*.

² 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.

Health and welfare

Mr X

DIBP did not provide an International Health and Medical Services (IHMS) Health Summary Report for Mr X for the period 12 November 2012 to 17 February 2015.	
February 2015	IHMS advised that Mr X had been previously diagnosed with latent tuberculosis (TB) and was reviewed at a specialist clinic. Prior to his release from detention, his condition was monitored by a general practitioner through regular x-rays.

Ms Y

IHMS provided details of Ms Y's health and welfare. No significant ongoing mental health concerns were noted.	
14 November 2012	Diagnosed with latent TB after returning a positive Mantoux test. She was referred to a specialist clinic and commenced on preventative treatment.
9 August 2013	Ms Y completed the preventative treatment and continued to be monitored as per state policy.
January 2014	Ms Y gave birth to her son. ³ IHMS advised that her son was born with Down syndrome and a congenital heart condition.
15 October 2014	Ms Y's pregnancy was confirmed with an estimated delivery date in June 2015. She was referred for genetic counselling and antenatal care.

Miss Z

IHMS provided details of Miss Z's health and welfare. No significant ongoing mental health concerns were noted.	
27 November 2012	Diagnosed with latent TB after returning a positive Mantoux test. She was referred to a specialist clinic and commenced on preventative medication.
24 July 2013	Miss Z completed the preventative treatment and continued to be monitored as per state policy.

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>
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³ Master Q was born in Australia in January 2014 and detained on 4 March 2014. He has been in detention for less than two years and is not subject to reporting under s 486N.

30 July 2015 – 25 August 2015	DIBP advised on four occasions that it expected to provide clarification as soon as information had been sourced from other areas within DIBP.
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>Cadillac</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	DIBP advised on three occasions that its response was awaiting clearance and would be delayed.
13 November 2015	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.
26 November 2015	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.
16 December 2015	DIBP provided a response to the Ombudsman's request for information.
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	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.
20 April 2016	DIBP provided its response to the Ombudsman's investigation.

Ombudsman assessment/recommendation

Mr X and his family were granted Bridging visas with associated THS visas on 27 August 2015 and released from immigration detention.

Mr X and his family were detained on 12 November 2012 after arriving in Australia aboard SIEV *Cadillac* and were held in detention for more than two and a half years before being granted Bridging visas.

The Ombudsman notes that DIBP considers that Mr X and his family are subject to the bar under s 46A and, at the time of its review, no processing of their protection claims had commenced.

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 12 November 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.