

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 and his family who remained in immigration detention for more than 24 months (two years).

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1978

Family details

Family members	Ms Y (wife)	Miss Z (daughter)	Master Q (son)
Citizenship	Country A	Country A	Country A
Year of birth	1980	2005	2007

Ombudsman ID	1003037
Date of DIBP's report	31 March 2015
Total days in detention	Not provided

Detention history

26 March 2013	Mr X and his family were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australia mainland aboard Suspected Illegal Entry Vessel (SIEV) 619 <i>Triumph</i> , indicating that they may have arrived as 'direct entry persons'. ¹
9 April 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.	
9 April 2015	Granted Bridging visas with associated THS visas.

¹ 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

International Health and Medical Services (IHMS) provided details of Mr X's health and welfare. No significant ongoing physical health concerns were noted.	
25 September 2014	Disclosed a history of torture and trauma but declined specialist counselling. IHMS advised that he attended supportive group counselling and was monitored by the mental health team.

Ms Y

24 July 2013	Ms Y was reviewed by a general practitioner after a previous hepatitis B infection was identified during pathology testing.
15 February 2014	Admitted to a hospital emergency department after injuring her right hand and wrist. Her forearm was placed in a cast and she was prescribed with pain relief medication. She was discharged with advice to attend two scheduled orthopaedic appointments.
4 August 2014	IHMS reported that Ms Y attended a psychological review. No further information was provided.
22 September 2014	Ms Y's pregnancy was confirmed with an estimated due date in May 2015.

Miss Z

IHMS provided details of Miss Z's health and welfare. No significant ongoing mental health concerns were noted.	
1 October 2013	Transferred to a hospital emergency department after injuring her right leg. A fracture was identified and her leg was placed in a cast. She was provided with crutches and referred to an orthopaedic specialist. IHMS advised that she attended physiotherapy after the cast was removed.

Master Q

IHMS provided details of Master Q's health and welfare. No significant ongoing mental health concerns were noted.	
22 September 2014 – 9 April 2015	Master Q was diagnosed with a blood disorder following pathology testing. IHMS advised that no treatment was required.

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>Triumph</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.
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Ombudsman assessment

Mr X and his family were granted Bridging visas with associated THS visas on 9 April 2015 and released from immigration detention.

Mr X and his family were detained on 26 March 2013 after arriving in Australia aboard SIEV *Triumph* and were held in detention for more than two 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 26 March 2013.

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.