

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABELING 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 36 months (three years).

The first report 1001917¹ was tabled in Parliament on 13 May 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	Country A
Year of birth	1975

Family details

Family members	Ms Y (wife)	Miss Z (daughter)	Mr Q (cousin)
Citizenship	Country A	Country A	Country A
Year of birth	1985	2010	1995

Ombudsman ID	1003334
Date of DIBP's reports	14 April 2015 and 30 September 2015
Total days in detention	1,094 (at date of DIBP's latest report)

Detention history

1 October 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) 456 <i>Kalang</i> , indicating that they may have arrived as 'direct entry persons'. ² The family were transferred to Darwin Airport Lodge Alternative Place of Detention.
10 October 2012	Transferred to community detention.
29 October 2015	Granted Bridging visas and released from 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.

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

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.

13 March 2014	DIBP notified the family of the unintentional release of personal information ³ and advised that the privacy breach would be taken into account when considering their protection claims.
30 September 2015	DIBP advised that the family's case was being assessed against the guidelines under s 195A for referral to the Minister.
29 October 2015	Granted Bridging visas.

Health and welfare

Mr X

International Health and Medical Services (IHMS) provided details of Mr X's health and welfare. No significant ongoing mental health concerns were noted.	
January 2013 – December 2014	Presented to a general practitioner on a number of occasions with skin irritations, including abscesses and hand lesions. He was prescribed with antibiotic medication and referred to a dermatology clinic.

Ms Y

10 July 2013	Returned a positive pregnancy test and was referred for antenatal care.
February 2014	Ms Y gave birth to her son ⁴ without complication.
28 January 2015	Returned a positive pregnancy test and was referred for antenatal care.
July 2015	Ms Y gave birth to her second daughter ⁵ without complication.
14 August 2015	Referred to a psychologist after presenting with symptoms of post-natal depression. IHMS advised that it could not confirm whether the referral was attended.

Miss Z and Mr Q

IHMS advised that Miss Z and Mr Q did not require treatment for any major physical or mental health concerns.

³ 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.

⁴ Master R was born in Australia in February 2014 and has been in detention for less than two years. He is not subject to reporting under s 486N.

⁵ Miss S was born in Australia in July 2015 and has been in detention for less than two years. She is not subject to reporting under s 486N.

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	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>Kalang</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

Mr X and his family were granted Bridging visas on 29 October 2015 and released from immigration detention.

Mr X and his family were detained on 1 October 2012 after arriving in Australia aboard SIEV *Kalang* and were held in detention for more than three 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 1 October 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.