

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)
Citizenship	Country A	Country A
Year of birth	1985	2009

Ombudsman ID	1003038
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 Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 619 <i>Triumph</i> , indicating that they may have arrived as 'direct entry persons'. ¹
4 June 2015	Granted Bridging 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.	
4 June 2015	Granted Bridging visas.
1 December 2015	The Minister lifted the bar under s 46A to allow the family to lodge a temporary visa application.

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.

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.

6 April 2013	Disclosed a history of torture and trauma and attended specialist counselling. IHMS advised that following his transfer into community detention, no further mental health concerns were raised.
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Ms Y

IHMS provided details of Ms Y's health and welfare. No significant ongoing mental health concerns were noted.	
15 May 2013	Ms Y's pregnancy was confirmed and she was referred for antenatal care.
December 2013	Ms Y gave birth to her second child ² without complication.

Miss Z

IHMS advised that Miss Z did not require treatment for any major physical or mental health issues.
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Other matters

28 July 2015	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. The Ombudsman's office also identified that there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i> .
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	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> . 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> . A response from DIBP was requested by 30 September 2015 but not received.
2 October 2015 – 22 October 2015	DIBP advised on three occasions that its response was awaiting clearance and would be delayed.

² Mr X and Ms Y's second child (name and gender not provided) was born in Australia in December 2013 and was in detention for less than two years. The child is not subject to reporting under s 486N.

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	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> . 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.
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 4 June 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 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 1 December 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 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.