

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 36 months (three 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	Stateless (claimed), born in Country A
Year of birth	1975
Total days in detention	1,097 (at date of DIBP's latest report)

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Country B	Country B, born in Country C
Year of birth	1981	2001
Total days in detention	1,097 (at date of DIBP's latest report)	

Family members	Master Q (son)	Miss R ² (daughter)
Citizenship	Country B, born in Country C	Unknown, born in Australia
Year of birth	2011	2013
Total days in detention	1,097 (at date of DIBP's latest report)	Not provided

Ombudsman ID	1003290
Date of DIBP's reports	23 February 2015 and 25 August 2015

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 They were transferred to Darwin Airport Lodge Alternative Place of Detention.
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¹ Mr X and his family were previously reported on in a group report of people who arrived on SIEV 419 *Zilzie*.

² Miss R was born in Australia in July 2013 and was subject to an individual report under s 486N. She was previously reported on in Ombudsman report 1003198 and is now included in her 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.

11 December 2012	Transferred to community detention.
27 August 2015	Granted Bridging visas with associated Temporary Humanitarian Stay (THS) 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.	
21 August 2015	Mr X and his family's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.
27 August 2015	Granted Bridging visas with associated THS visas.

Health and welfare

Mr X, Master Z and Master Q

International Health and Medical Services (IHMS) reported that Mr X, Master Z and Master Q did not require treatment for any major physical or mental health issues.
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Ms Y

IHMS provided details of Ms Y's health and welfare. No significant ongoing mental health concerns were noted.	
23 May 2014	Ms Y's pregnancy was confirmed and she was referred for antenatal care.
December 2014	Ms Y gave birth to her son ⁴ without complication.

Miss R

28 October 2014	Miss R was diagnosed with a skin condition and prescribed with medication.
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Other matters

DIBP advised that Mr X was identified as a person of interest in relation to allegations made to Western Australia Police.	
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> .

⁴ Master S was born in Australia in December 2014 and has been in detention for less than two years. He 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>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	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 with associated THS visas on 25 August 2015 and released from immigration detention.

Mr X and his family were detained on 22 August 2012 after arriving in Australia aboard SIEV *Zilzie* 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 22 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.