

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	1978

Family details

Family members	Ms Y (wife)	Master Z (son)
Citizenship	Stateless (claimed)	Stateless (claimed)
Year of birth	1979	1999

Family members	Miss Q (daughter)	Miss R (daughter)	Master S (son)
Citizenship	Stateless (claimed)	Stateless (claimed)	Stateless (claimed)
Year of birth	2000	2005	2010

Ombudsman ID	1002846
Date of DIBP's report	13 May 2015
Total days in detention	Not provided

Recent 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
18 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.

¹ Mr X and his family were 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 bar.

18 June 2015	Granted Bridging visas.
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Health and welfare

Mr X

22 November 2012	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma and attended specialist counselling.
30 November 2012	Diagnosed with latent tuberculosis (TB) and placed on a treatment plan.
3 October 2013	Mr X was referred to a psychologist after a general practitioner (GP) noted he was experiencing anger management and relationship concerns. IHMS could not confirm whether he attended the referral.
November 2013	IHMS advised that Mr X completed his TB treatment however he did not attend several scheduled appointments. No further information was provided.

Ms Y

22 November 2012	Disclosed a history of torture and trauma and accepted a referral for specialist counselling.
30 November 2012	Ms Y was diagnosed with latent TB and placed on a treatment plan.
May 2013	Ms Y gave birth ³ without complication.
14 June 2013	Presented to a GP with symptoms of depression and relationship concerns. She was referred to a psychologist.
5 July 2013	During a consultation with a psychologist it was noted that Ms Y was experiencing low mood related to situational stress. It was recommended that she attend further counselling, however IHMS could not confirm her attendance.
23 August 2013 – 12 September 2013	Ms Y was admitted to a hospital psychiatric unit following auditory hallucinations. She was diagnosed with depression with psychotic symptoms and prescribed with medication. Following improvements in her mental health, she was discharged into the care of a psychologist and GP.
2 October 2013 – 24 October 2013	Ms Y was admitted to a hospital psychiatric unit following a deterioration in her mental health. IHMS advised that she refused food and fluid and became socially withdrawn. She was provided with treatment and discharged into the care of a GP. Prior to her release from detention, her mental health was regularly monitored by a GP.
23 August 2014	Ms Y completed her TB treatment and was monitored as per state policy.

³ Mr X and Ms Y's fifth child (name and gender not provided) was born in Australia in May 2013. The child has been in detention for less than two years and is not subject to reporting under s 486N.

Miss Z

IHMS provided details of Miss Z's health and welfare. No significant ongoing mental health concerns were noted.	
14 December 2012	Miss Z was diagnosed with latent TB and monitored as per state policy.

Master Q

IHMS provided details of Master Q's health and welfare. No significant ongoing mental health concerns were noted.	
23 February 2013	Master Q was identified as a TB contact and monitored as per state policy.
10 September 2013 – 12 September 2013	Admitted to hospital for surgery after he injured his thumb. His condition was monitored by an orthopaedic clinic and no concerns were raised.

Miss R

IHMS provided details of Miss R's health and welfare. No significant ongoing mental health concerns were noted.	
30 November 2012	Miss R was identified as a TB contact and monitored as per state policy.

Master S

DIBP did not provide an IHMS Health Summary Report for Master S for the period November 2012 to 11 February 2015.	
12 February 2015 – 26 May 2015	IHMS provided details of Master S's health and welfare. No significant ongoing mental or physical health concerns were noted.
26 May 2015	IHMS reported that Master S was identified as a TB contact and monitored as per state policy.

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	<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

Mr X and his family were granted Bridging visas on 18 June 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.