

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 Miss X who remained in immigration detention for more than 24 months (two years).

Name	Miss X
Citizenship	Unknown (born to parents ¹ in immigration detention)
Year of birth	2013
Ombudsman ID	1003198
Date of DIBP's report	31 July 2015
Total days in detention	730 (at date of DIBP's report)

Detention history

31 July 2013	Following her birth onshore to parents in immigration detention, Miss X was detained under s 189(1) of the <i>Migration Act 1958</i> .
27 August 2015	Miss X and her family were 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, Miss X was born to parents in 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.	
27 August 2015	Granted a Bridging visa with an associated THS visa.

Health and welfare

28 October 2014	International Health and Medical Services advised that Miss X was diagnosed with a skin condition and prescribed with medication.
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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 Suspected Illegal Entry Vessel (SIEV) 662 <i>Lambeth</i> who were detained on the Australian mainland, apparently as 'direct entry persons',² 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>
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¹ Miss X's parents and siblings are the subject of Ombudsman report 1003290. They were granted Bridging visas on 27 August 2015 and released from detention.

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.

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 <i>SIEV Lambeth</i>.</p> <p>The Ombudsman's office also identified that there may be more arrivals, including Miss X's family who arrived on <i>SIEV Zilzie</i>, who arrived in similar circumstances to those of <i>SIEV 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 <i>SIEV 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 <i>SIEV 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

Miss X and her family were granted Bridging visas with associated THS visas on 27 August 2015 and released from immigration detention.

Miss X's family were detained on 23 August 2012 after arriving in Australia aboard SIEV *Zilzie* and were held in detention for over three years before being granted Bridging visas.

The Ombudsman notes that DIBP considers that Miss X and her family are subject to the bar under s 46A and, at the time of its review, no processing of her family's protection claims had commenced.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Miss X and her family may not have been subject to the s 46A bar due to the family's arrival and detention on the Australian mainland as apparent 'direct entry persons' on 23 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.