

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 Ms Y who remained in immigration detention for more than 24 months (two years).

Name	Mr X (and wife)
Citizenship	Stateless (claimed)
Year of birth	1983

Family details

Family members	Ms Y (wife)
Citizenship	Stateless (claimed)
Year of birth	1992

Ombudsman ID	1003028
Date of DIBP's report	25 February 2015
Total days in detention	Not provided

Detention history

25 February 2013	Mr X and Ms Y 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) 597 <i>Xenia</i> , indicating that they may have arrived as 'direct entry persons'. ¹ They arrived with their nephew, Master Z, who is the subject of Ombudsman report 1003365.
20 May 2015	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, Mr X and Ms Y was 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.	
20 May 2015	Granted Bridging visas with associated THS visas.
1 December 2015	The Minister lifted the bar under s 46A to allow Mr X and Ms Y to lodge a temporary visa application.

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.

Health and welfare

Mr X

25 February 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined specialist counselling.
10 April 2013	Mr X was diagnosed with latent tuberculosis (TB) during an assessment at a specialist clinic and was prescribed with medication. IHMS advised that Mr X's treatment was completed in February 2014 and he was discharged.
12 February 2014	Admitted to hospital for an endoscopy to determine the cause of his ongoing abdominal pain. He was diagnosed with a bacterial infection and prescribed with medication. No further concerns were reported.

Ms Y

25 February 2013	During her induction health assessment, Ms X advised that she was pregnant. She was referred for antenatal care. She also disclosed a history of torture and trauma but declined specialist counselling.
27 March 2013	Ms Y was referred to a TB clinic for assessment after she returned a positive Mantoux test.
10 April 2013	Following assessment at a specialist TB clinic Ms Y was diagnosed with latent TB. It was recommended that her treatment be reviewed after the birth of her child.
October 2013	Ms Y gave birth to her daughter ² without complication.
21 January 2014	Ms Y was assessed at a TB clinic and no abnormalities were identified. She was prescribed with medication and monitored as per state policy.
February 2014	During a consultation with a general practitioner (GP) Ms Y advised that she wished to cease her TB medication as she was breastfeeding. She was advised to self-refer to the GP if she experienced any TB symptoms.
10 June 2014	Ms Y's second pregnancy was confirmed.
15 August 2014	The GP reported the need to recommence TB preventative medication after the birth of her second child.
January 2015	Ms Y gave birth to her son ³ without complication.

² Mr X and Ms Y's daughter (name not provided), was born in Australia in October 2013 and has been in detention for less than two years. She is not subject to reporting under s 486N.

³ Mr X and Ms Y's son (name not provided), was born in Australia in January 2015 and has been in detention for less than two years. He 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 Ms Y who arrived on SIEV <i>Xenia</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.
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Ombudsman assessment

Mr X and Ms Y were granted Bridging visas with associated THS visas on 20 May 2015 and released from immigration detention.

Mr X and Ms Y were detained on 25 February 2013 after arriving in Australia aboard SIEV *Xenia* 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 Ms Y 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 them 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 Ms Y 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 25 February 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.