

**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. Mr X has remained in restricted immigration detention for more than 36 months (three years) and his family remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X (and family)
Citizenship	Country A
Year of birth	1985
Total days in detention	1094 (at date of DIBP's latest report)

Family details

Family members	Ms Y (wife)	Miss Z (daughter)
Citizenship	Country A	Country A, born on board Suspected Illegal Entry Vessel (SIEV) 657 <i>Fowley</i>
Year of birth	1991	2013
Total days in detention	912 (as at DIBP's report dated 13 October 2015)	

Ombudsman ID	1003088
Date of DIBP's reports	21 April 2015, 13 October 2015 and 12 April 2016

Detention history

14 April 2013	Mr X and his family were detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Broome, Australia aboard SIEV <i>Fowley</i> , indicating that they arrived as 'direct entry persons'. ¹ They were transferred to Curtin Immigration Detention Centre (IDC). Mr X and his family arrived with his brother, Mr P. Mr P was granted a Bridging visa on 9 December 2014.
18 April 2013	Transferred to Darwin Airport Lodge Alternative Place of Detention (APOD).
8 May 2013	Transferred to Wickham Point IDC.
27 May 2013	Transferred to Wickham Point APOD.
28 June 2014	Transferred to Bladin APOD.
26 February 2015	Transferred to Wickham Point APOD.

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.

27 October 2015	Ms Y, her daughter, Miss Z, and her son, Master Q, ² were granted Bridging visas and released from detention. The Department of Immigration and Border Protection (DIBP) advised that Mr X remained at Wickham Point APOD.
12 April 2016	DIBP advised that Mr X's request to be transferred to Brisbane Immigration Transit Accommodation (ITA) so he can be closer to his family was approved and being progressed.

Visa applications/case progression

12 September 2013	The family lodged a Protection visa application with an associated Bridging visa.
13 October 2013	Associated Bridging visa application was considered invalid.
5 March 2014	DIBP notified Mr X and his family of the unintentional release of personal information ³ and advised that the privacy breach would be taken into account when considering the family's protection claims.
14 April 2014	The family's case was referred on a ministerial submission for consideration under s 197AB.
16 April 2014	The former Minister agreed to intervene under s 197AB. However, DIBP advised that the family's placement was placed on hold while awaiting the outcome of a ministerial submission to revoke the residence determination following allegations of people smuggling made against Mr X and Ms Y.
6 June 2014	The former Minister revoked the family's community detention placement.
13 August 2014	Interview conducted for Protection visa application.
10 October 2014	Protection visa application refused.
20 October 2014	Appealed to the Refugee Review Tribunal (RRT).
12 November 2014	RRT hearing adjourned
10 December 2014	RRT affirmed original decision.
15 December 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
18 December 2014	Requested judicial review by the Federal Circuit Court (FCC).
15 April 2015	The FCC adjourned the family's hearing and reserved judgment.

² Master Q was born in Australia in June 2015 and has been in detention for less than two years. He is not subject to reporting under s 486N.

³ In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

9 June 2015	The family's case was referred on a first stage submission under s 195A for consideration of a Bridging visa and s 197AB for consideration of a community detention placement.
26 June 2015	The Minister agreed to consider a submission under s 195A but declined to consider intervening under s 197AB.
31 July 2015	The family's case was referred on a ministerial submission for consideration under s 195A.
19 October 2015	The family's case was resubmitted on a second stage submission for consideration under ss 195A and 197AB.
27 October 2015	The Minister declined to intervene under s 197AD in the family's case and under s 195A in Mr X's case but agreed to intervene in Ms Y, Miss Z and Master Q's case. They were granted Bridging visas that day. DIBP advised that Ms Y and Miss Z have been granted a Bridging visa in association with their Protection visa application and Master Q's Bridging visa is valid until 27 April 2016.
11 January 2016	The FCC dismissed the family's application.
28 January 2016	Mr X requested judicial review by the Federal Court (FC). A hearing is scheduled for 4 May 2016.
12 April 2016	DIBP advised that Mr X is no longer a person of interest.

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.	
14 April 2013 – 23 September 2015	IHMS advised that Mr X had regular contact with the mental health team for counselling but declined to follow up with a psychiatrist.
5 November 2015	At his mental health review Mr X reported sleeping difficulties and that he was missing his family.
17 February 2016	He presented emotionally distressed during his mental health review and was concerned he could not look after his family. IHMS advised that no formal thought disorder was identified and he denied thoughts of self-harm. He was assessed to be low risk and self-refers as required.

Ms Y

IHMS reported that Ms Y was provided with antenatal and postnatal care and was also treated for a thyroid cyst and gestational diabetes. No significant ongoing mental health concerns were noted.	
14 April 2013	On arrival Ms Y was assessed by IHMS and taken to hospital after giving birth to Miss Z on board SIEV <i>Fowley</i> . No complications were recorded and she was discharged (date not provided).
1 June 2015	She gave birth to her son, Master Q.

Miss Z

IHMS advised that on arrival Miss Z was assessed by IHMS and taken to hospital with her mother. She was treated for neonatal jaundice. She did not require treatment for any major physical or mental health concerns.

Other matters

24 March 2015	DIBP received a complaint from the Australian Human Rights Commission (AHRC) on behalf of Mr X and his family. DIBP provided responses to AHRC on 13 April 2015, 16 June 2015 and 17 December 2015. On 18 January 2016 AHRC notified DIBP that the family's complaint was referred to its legal section for further investigation.
13 October 2015	DIBP advised that Ms Y's brother, Mr R, arrived in Australia on 9 November 2012. Mr R absconded from Maribyrnong IDC on 12 December 2013 and his location is unknown.

Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 18 April 2016 Mr X advised he has a hearing scheduled at the FC and understands that he cannot be granted a visa until his court case is finalised, but he does not understand why he is still in restricted detention.

Mr X said he contacted the Australian Federal Police (AFP) a year ago because he was concerned he had been wrongly detained and the AFP told him it had no concerns about him.

Mr X advised his wife and children are living in Queensland with friends and are relying on charity for support. He said he is happy that they are no longer in detention but he still worries about them.

He said prior to his family's release he did not have any health concerns but he now has problems with sleeping because he is so worried about his children. He said he has regular contact with IHMS.

Mr X said he has requested to be transferred to Brisbane ITA so his family can visit him and ultimately he wants to be reunited with his family.

Case status

Mr X and his family were detained on 14 April 2013 after arriving in Australia aboard *SIEV Fowley*. Mr X has been held in immigration detention for over three years and his wife and children were held in immigration detention for more than two and a half years.

The family have been found not to be owed protection under the Refugee Convention and complementary protection criterion. They are awaiting the outcome of judicial review.

Mr X's family were granted Bridging visas on 27 October 2015 and released from immigration detention. Mr X remains in restricted immigration detention while he awaits the outcome of judicial review.