

Australian High Court rubberstamps “fast track” denial of refugee visas

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On April 18, Australia’s supreme court paved the way for the federal government to speed up the deportation of up to 30,000 asylum seekers who managed to escape to the country by boat between August 2012 and January 2014.

Five judges unanimously sanctioned the government’s “fast track” system of rejecting protection visa applications, taking the overturning of the basic legal and democratic rights of refugees to a new level. The case was the first time the system’s legality had been challenged in the High Court.

The judges endorsed the 2016 refusal of a temporary protection visa to an Iranian man, identified only as Plaintiff M174/2016, who had arrived in Australia in 2012. Despite a flagrant violation of procedural fairness, the court backed the Immigration Assessment Authority (IAA) in confirming his rejection by then Immigration (now Home Affairs) Minister Peter Dutton.

The court’s decision will help the Liberal-National Coalition government more quickly send thousands of asylum seekers back to the countries they fled, regardless of whether they face persecution, that is, the risk of death or serious harm.

Over the past year, the government has been trying to remove a “backlog” of an estimated 30,000 refugees who arrived and were detained within Australia before the last Labor government reopened Australia’s offshore detention facilities on Nauru and Papua New Guinea’s Manus Island in 2012.

The government’s measures have included defunding legal advice services and threatening to cut off the limited work and welfare rights of asylum seekers, who have mostly lived in the community on insecure bridging visas while waiting for their applications to be decided.

The IAA was a fig-leaf review body established in 2015 under “fast track” amendments to the Migration Act that gave the immigration minister arbitrary power to deny visas, abolishing previous rights of appeal to a tribunal.

The minister may, as a matter of discretion, permit some applicants to seek review by the IAA, but it has no power to reverse a rejection, only to possibly recommend a ministerial reconsideration. Moreover, the IAA decides cases “on the papers” without the applicant having any right to a hearing, or even to produce new evidence.

The IAA affirmed a decision by the minister’s delegate to refuse Plaintiff M174 a visa after the delegate phoned the reverend of a Melbourne church in order to try to refute the Iranian man’s claim that he faced harm if returned to Iran because he had converted to Christianity.

The reverend reportedly told the delegate that Plaintiff M174 had not attended church regularly for a while, whereupon the delegate concluded that the man had faked Christianity “in order to falsely strengthen his claim for protection.” In reality, the Iranian refugee had moved to another suburb.

The delegate gave the man no opportunity to respond to the reverend’s accusation. This clearly breached the long-established principle of procedural fairness, or natural justice, that an applicant must be informed of, and given the chance to address, any adverse information.

Moreover, the Migration Act states applicants must be made aware of all “relevant information,” including information that may be part of the reason for refusing to grant a visa.

Nonetheless, the High Court found that the delegate and the IAA had not failed to comply with the Act, nor

acted “unreasonably” by not giving Plaintiff M174 the particulars of what the reverend said. Perversely, the judges concluded that the reverend’s information actually supported the refugee’s claim, “so far as it went.”

The plight of the 30,000 refugees is the direct responsibility of the previous Labor government, which was kept in office by the Greens from 2010 to 2013, as well as of the present Coalition government.

After their arrival, the Gillard Labor government declared that all future asylum seekers would be sent to Nauru or Manus. In July 2013, the second Rudd Labor government then shut the border permanently, saying no refugees who arrived by boat would ever to be permitted to settle in Australia.

The Labor governments also pioneered the “fast track” system by initiating the “fast track” processing of Tamil refugees, which they sent back to Sri Lanka in their hundreds without even the right to apply for asylum.

Last September, the High Court also approved the forced removal of asylum seekers to Sri Lanka, even though it was proven they faced appalling conditions of imprisonment in that country, including “torture, maltreatment and violence.”

The court has a long record of rubber-stamping the tearing up of the fundamental legal and democratic rights of refugees by successive Labor and Liberal-National governments. This has included dismissing challenges to Australia’s indefinite detention of refugees on Nauru and Manus Island, including in defiance of a Papua New Guinea Supreme Court ruling that the incarceration on Manus violated the country’s constitution.

This political and judicial record is doubly damning because most of the thousands of refugees who have brutally detained and/or deported have fled the catastrophes created by repeated invasions and military interventions in the Middle East by the US and its partners, including Australia.

Ever since the first Persian Gulf War of 1990–1991, Washington and its allies have been engaged in endless wars to establish their dominance over the oil- and gas-rich regions of the Middle East, Central Asia and North Africa. These wars have shattered entire societies, fomented sectarian conflicts and produced human misery throughout the region.

Having devastated cities and towns, turning millions of people into refugees on a scale not seen since World War II, the Australian ruling class has barred all entry to asylum seekers and gone to ever-greater lengths to overturn core legal rights. It has set a lead that has since been followed by governments across Europe and the US.

The precedents being established are also a threat to the basic rights of all working people. They validate powers, such as detention without trial and deportation without due process, that can and will be used more broadly as the military, economic, social and political situation worsens in Australia and globally.



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