

Australian court ruling means continued imprisonment for Tamil refugees from Biloela

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A Tamil refugee family remains imprisoned on Christmas Island in the Indian Ocean after an Australian Federal Court ruling temporarily halted their immediate deportation to Sri Lanka.

Two years ago, on the orders of the Liberal-National Coalition government, the family of four was snatched up by Australian Federal Police (AFP) and private security firm, Serco, in the early hours of the morning. The family had been living in the rural town of Biloela, in central Queensland.

Parents Nadesalingam (Nades) and Kokilapathmapriya (Priya), fled to Australia separately by boat in 2012 and 2013 respectively. They met in Australia, married, and had two children Kopika, now 4, and Tharunicaa, now 2.

Since their arrest the people of Biloela have mounted a national campaign, entitled “Home to Bilo,” demanding their release and return home to Biloela. The campaign has included appearances on television, numerous media interviews and protests across Australia. A petition demanding their release has nearly reached 300,000 signatures.

Speaking to Nine Entertainment newspapers after the latest court ruling, Priya said she was “very happy” with the decision but said the mental health of her two young daughters was deteriorating.

“It’s very difficult for us to live here. It’s very, very depressing. My children are not having a good time at the centre, I can notice they are having mental health issues because of the long-term detention.

“During this pandemic, it’s very difficult for us to live in this detention centre. It’s very scary, we’re constantly worried about our lives. We’re asking the government to just let us out and let us live peacefully, it’s very depressing to be here. Even to pass one day in this detention centre is very difficult. Our hope is that

we will return to Biloela and live a normal life.”

The Federal Court case was the last legal avenue the family had to prevent their deportation after the court issued a last-minute injunction last September against their removal to Sri Lanka. The current case involves the youngest child, Tharunicaa, who has spent the majority of her life imprisoned. The High Court had already upheld the government’s rejection of the asylum applications for Nades, Priya and Kopika.

After two months of deliberation, Justice Mark Moshinsky handed down his verdict last Friday on two related appeals. The first was in relation to the validity of a visa application submitted for Tharunicaa last September.

Under Australia’s bipartisan anti-refugee regime, any asylum seeker trying to reach the country by boat is declared an “illegal maritime arrival” (IMA), in violation of international law, including the 1951 Refugee Convention, which recognises the legal right to flee persecution.

All children of IMAs, even if they are born in Australia, are also declared IMAs and cannot apply for asylum protection visas.

In July 2017, then Immigration and Border Protection Minister Peter Dutton, exercised his ministerial powers to lift the bar on 7,500 refugees, thus allowing them to apply for visas. Dutton’s moves were part of the government’s attempt to deport, en masse, thousands of asylum seekers stuck in legal limbo after the previous Labor government banned them from applying for visas.

The family’s lawyers argued that Tharunicaa, who was just one month old in 2017, should be allowed to have her visa application, lodged in September 2019, heard, as the lifting of the ban applied to her.

Justice Moshinsky dismissed this claim, stating that

the September 2019 visa claim did not meet the criteria for a Safe Haven Enterprise visa, effectively creating the conditions in which the family can still be deported to Sri Lanka.

The second appeal was based on the fact that, in 2019, Immigration Minister David Coleman asked his department for a brief to determine if he would use his ministerial powers to allow the family to apply for a protection visa. Tharunicaa and her lawyers were not notified of this brief, violating the rules of procedural fairness.

Justice Moshinsky ruled in favour of the family on this point. This means the family will not be immediately deported, but the government has seven days to respond to the ruling. They remain imprisoned on Christmas Island, where they have been since last September.

The conditions of their imprisonment are inhumane. They are the only people detained on the island and see almost nobody except detention centre guards. They are only allowed out of the detention facility twice a week to visit the island's recreational centre. Kopika and Tharunicaa have almost no opportunity to see children their own age.

Angela Fredericks, one of the leaders of the "Home to Bilo" campaign, told the media that the ruling was a partial relief. She said: "The key thing that I want to continue to highlight is yes, while there are such severe complexities with the procedure and the legal process, this can actually be sorted out really quite simply if the minister would actually use his powers and listen to the people."

The Labor Party's immigration spokesperson Kristina Keneally said Labor was "relieved the family will not be deported." She added: "As has always been the case, Home Affairs Minister Peter Dutton could bring this whole process to an end by using his discretion under the Migration Act and allow the family to return home to Biloela."

But the last Labor government created the conditions for this family's deportation. In 2012 the Gillard Labor government, backed by the Greens, reached an agreement with Sri Lankan President Mahinda Rajapakse for the deportation of all Sri Lankan refugees who reached Australia by boat, initially sending back 700.

The arrest of Nades, Priya, Kopika and Tharunicaa is

in line with this agreement. Over the past eight years, thousands of Sri Lankan asylum seekers have been deported in this manner, typically under the cover of darkness. Once returned they face persecution, torture and continued imprisonment.

The vindictive treatment of this family is part of a global attack on refugees, from the Trump administration to governments across Europe, under conditions where more people are fleeing repression and suffering than at any time since World War II. This underscores the necessity for the working class to come to the defence of all asylum seekers, as part of the fight to unify the struggles of workers worldwide against the capitalist nation-state system.



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