

Australia's High Court denies four-year-old asylum seeker the right to appeal visa refusal

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The High Court of Australia last week ruled against four-year-old asylum seeker Tharnicaa Murugappan, the youngest of a family of four from Biloela, a town in central Queensland. Without providing any real explanation, two judges summarily rejected her application to appeal against a decision to deny her a protection visa to stay in Australia.

As a result, the threat of deportation to Sri Lanka again hangs over the head of Tharnicaa and her family, with their fate left in the hands of federal Liberal-National Coalition government.

After Tharnicaa developed a life-threatening blood condition due to improper medical treatment, the family was flown to Perth, the state capital of Western Australia, in June following three years of being locked up in immigration prisons, most recently on the remote Christmas Island outpost in the Indian Ocean.

Despite widespread anger over the family's treatment, and a long and determined campaign by the people of Biloela demanding the family's freedom and return to their hometown, the government placed the family in "community detention" in Perth.

Eventually Tharnicaa's father and mother, Nades and Priya, as well as her six-year-old sister Kopika, were granted bridging visas, but the family was barred from returning to Biloela.

The two High Court judges simply said the appeal "has insufficient prospects of success to warrant a grant of special leave." No other explanation was provided, despite the prominence of the case and the strong popular support for the family. Tharnicaa's was one of four refugee cases before the court that day, all likewise summarily dismissed.

The decision upholds a Full Federal Court ruling that dismissed an appeal by the family to lift the government's ban on Tharnicaa's visa application,

even though that court also found that the infant had been denied procedural fairness. In the Federal Court, Justice Mark Moshinsky had declared that her claim did not meet the criteria for a visa.

This is not the first time the High Court has ruled against the family. In previous legal appeals the court upheld the government's decision to refuse asylum applications for Nades, Priya and Kopika.

The family has been in a more than three-year battle against deportation since the government seized them from their family home in Biloela in a pre-dawn raid in March 2018 involving the para-military Border Force, police and security guards.

Carina Ford, the family's lawyer, indicated that the latest court ruling has all but exhausted the legal avenues for appeal. "The matter is now in the hands of the immigration minister," she wrote in a statement.

Ford said Immigration Minister Alex Hawke "is able at any point in time to grant a visa including a visa that would allow the family to return to and live in Biloela." She added: "The Australian people's support, in this case, has been overwhelming as they have related to the family's hardship and the fact both children were born in Australia."

Priya said in a statement that doctors in Western Australia had contacted the government asking for the family to be returned to Biloela, with both daughters receiving ongoing medical treatment for recurring infections and mental health issues.

Priya posted a video statement on Twitter, saying that while her daughters still needed to see doctors "this could happen back in my community of Biloela. Biloela is where the girls will get better and be safe." She concluded: "Please Minister Hawke, let us return to our community in Biloela."

Hawke continued to refuse to comment, insisting it

was “inappropriate” for him to do so, because “the family has a number of other ongoing legal matters.” Some legal processes remain, with a separate case being heard in the Federal Court in September, but that does not legally prevent Hawke from exercising his discretion to grant visas to the family.

The government’s continued defiance points to the danger of any illusion that popular pressure will change the inhumane immigration policy. While some members of the major parliamentary parties have on occasions cynically offered support for the family, they are all firmly united on the underlying national-based “border protection” regime.

The policies that have created the suffering for this family did not start with the current government. It was the Hawke Labor government that, in 1986, passed the Australian Citizenship Amendment Act. It removed the right of *Jus soli* or citizenship by birthright. It established that children born in Australia on or after August 20, 1986, could only be citizens if at least one parent was a citizen or permanent resident.

This meant any children born to refugees who had yet been granted a permanent visa would not become citizens and had no basic rights in Australia.

In 1992, the Keating Labor government instigated the policy of mandatory detention of all asylum seekers who arrive by boat.

The Howard Coalition government extended this policy to send refugees to “offshore” detention centres. These hellholes were reopened in 2012 by the Gillard and then Rudd Labor governments, which were propped up by the Greens even after they declared that no asylum seekers who arrived by boat would ever be allowed to settle in Australia.

The fight led by the residents of Biloela must be taken up by workers and youth and linked to a broader struggle to free all asylum seekers worldwide. This struggle should demand that all working people, regardless of their national background, have the basic democratic right to live and work wherever they choose around the globe with all the benefits of citizenship.



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