

Backgrounder – Case of baby Ferouz

Who is baby Ferouz?

Ferouz is an 11 month old Australian-born baby, currently living in detention in Darwin. Ferouz's family are Rohingya, a persecuted minority group from Myanmar. The government of Myanmar denies the Rohingyas' right to citizenship of that country, so they are therefore deemed to be stateless.

He was born in Brisbane's Mater Hospital in early November 2013 where his plight first came to light, following reports his mother was returned to detention while he remained in hospital, and was only allowed to visit him for a few hours a day.

Since he was born, he has been living in detention with his family, first in Brisbane and now in Darwin.

What legal action is currently underway for Ferouz?

Three separate legal proceedings are underway for Ferouz. The main proceeding, to be heard on 14 October 2014, is a challenge to the decision of the Department of Immigration and Border Protection ("the Department") to reject Ferouz's application for a Protection Visa (PV). The Department's decision was based on its view that Ferouz is an Unauthorised Maritime Arrival (UMA) and, therefore, his application for a PV is invalid. This ignores the reality that Ferouz was born in Australia.

Ferouz has also applied for Australian citizenship, on the basis that he was born on Australian soil, and is not eligible for citizenship in Myanmar, or any other country. His application for citizenship remains ongoing. Ten months later, and despite several requests for action, the Department has still not advised the outcome. This is well outside the Department's normal service standards in relation to citizenship applications.

What is happening at the hearing on Tuesday 14 October?

A Federal Circuit Court hearing is being held on Tuesday 14 October 2014 in an attempt to overturn the decision that Ferouz's PV application is invalid.

This hearing is significant as Ferouz's case is a landmark test case that will serve as a precedent for all Australian-born babies born to asylum seekers who arrived via boat, in arguing that such babies have a legal right to protection from the Australian Government.

The fate of around 100 other babies Maurice Blackburn is acting for who were born on Australian shores also rests on the Ferouz case, with the Government previously undertaking not to transfer the babies until Ferouz's case is decided.

What impact will recent amendments to the Migration Act introduced by the Federal Government have on babies in detention like Ferouz?

These amendments are buried in Schedule 6 to the Bill. They seek to retrospectively remove a range of rights currently available to babies of asylum seekers, even when those babies were born in Australia. In particular, the amendments seek to retrospectively declare all babies born to asylum seekers who arrived by boat to be UMAs, irrespective of whether they were born in Australia.

These amendments are known as the 'Ferouz amendments' because:

- their retrospective nature is clearly designed to interfere with Ferouz's court case; and
- Their introduction is an admission by the Federal Government that they were wrong to have rejected Ferouz's PV application in January.

This means that, on the Government's own figures, Australian taxpayers have spent over \$1 million detaining Ferouz and his family, due to the error of the Australian Government.

Maurice Blackburn has also launched a lobbying campaign to convince MPs and Senators to vote down the Ferouz amendments.

What happens if the Ferouz amendments are passed?

- (a) The Federal Government will effectively be giving itself the right to transfer Australian-born children to Nauru.
- (b) All 100 babies Maurice Blackburn acts for currently would be retrospectively deemed to be UMAs, because their parents entered Australia by sea.
- (c) All 100 babies would therefore retrospectively lose their right to apply for a permanent Protection Visa. Under the current law, they have this right.
- (d) All 100 babies "must" be taken to Nauru or Manus "as soon as reasonably practicable". Some may qualify for SHEVs or/TPVs under other amendments proposed in the Bill, but only if the Minister allows the babies and their parents to apply for protection here in Australia.
- (e) Around 31 of these 100 babies, who "must" be taken to Nauru or Manus, are eligible to apply for Australian citizenship. These babies "must" be taken to Nauru or Manus, unless they are granted Australian citizenship. Even if they are granted Australian citizenship, their families "must" be taken to Nauru or Manus as a result of the Ferouz amendments. This is discussed further below.
- (f) Around 16 babies would be retrospectively deemed to be transitory persons, because their parents have previously been detained on Nauru and/or Manus.
- (g) At least these 16 babies would not be eligible for TPVs/SHEVs under other amendments proposed the Bill, as their parents have been brought to the mainland from Nauru or Manus, and the Minister has said that he will not be allowing these babies and their families to apply for protection in Australia.

What are the impacts of the Ferouz amendments on the Oct 14 hearing?

The amendments are a gross interference in the current legal proceedings underway for Ferouz, which have already been before the High Court, and will be heard by the Federal Circuit Court on 14 October 2014.

Because the amendments are retrospective, the decision of the court in relation to Ferouz will potentially mean nothing.

It is obvious the Government are seeking to move the goalposts at the last minute in an admission they were wrong to have rejected Ferouz's PV application in the first instance in January.