

# Australia: Baby Ferouz and the children kept behind bars

## Summary

Born in Brisbane to asylum seeker parents in November 2013, baby Ferouz has spent his life moving from detention centre to detention centre. In October 2014, a federal court judge ruled that both he and his family had no right to stay in Australia. Lawyers for Ferouz and other Australian-born babies of people seeking asylum challenged the government's plan to send them to a notorious detention centre, thousands of miles from the mainland.

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## Background

Ferouz Myuddin has just spent his first birthday behind razor wire at a detention centre in Darwin, Australia.

With his Burmese asylum-seeker parents having entered Australia without authorisation in late 2013, baby Ferouz is one of the thousands of individuals living in immigration detention facilities across the country.

Despite being born in Brisbane, a federal court judge ruled in October that his arrival in Australia was unauthorised and that he and the rest of his family were not entitled to apply for protection visas to stay in the country.

As well as the Myuddins, the fate of 100 other families is also wrapped up in what Murray Watt, Senior Associate at [Maurice Blackburn Lawyers](#) who has been representing the families pro-bono, explains is an important “test case in Australian law regarding the rights of babies born on Australian soil to asylum seeker families”.

Watt confirmed that Maurice Blackburn would appeal the decision, while the Australian government has provided an undertaking that it will not seek to remove Ferouz until December 5th.

Since 1992, when the Keating administration began a policy of mandatory detention for all unauthorised immigrants, successive governments have looked to make Australia more unwelcoming to anyone without the relevant papers to settle there.

With Tony Abbott's Liberal Party having maintained a typically conservative attitude to immigration since entering office in 2013, there have been a number of stories in the press about the harsh treatment of immigrants looking to enter the country.

Earlier this summer the United Nations said it had "profound concerns" over the fate of 200 Tamil asylum seekers from Sri Lanka who had been reportedly handed over to the Australian Navy after a short assessment by immigration officials. There have also been reports of [Navy officers beating and even burning asylum seekers](#). And Human Rights Watch has in the past accused the Australian government of ignoring the country's "international legal obligations to protect the rights of asylum seekers and refugees".

### **The journey from Myanmar**

For the Myuddin family, life in detention is nothing compared to the hardship they faced in Myanmar. Members of the Rohingya ethnic group, which is recognised by the UN as one of the most persecuted minorities in the world, Ferouz's father saw his own father murdered by the military when he was just seven-years-old. At 17, with the army pressuring him to perform forced labour, he left the country for Malaysia.

After her family home was confiscated by the military at the age of 20, Ferouz's mother fled to Malaysia, where she met her husband, and from there to Indonesia. The young couple's life in this period was complicated to say the least. Their lack of identification documents meant their time in both countries was dominated by prison stays and negotiations with people smugglers. At the same time, Ferouz's mother gave birth to two children.

When they arrived in Australia in late 2013, Ferouz's mother was heavily pregnant. She was permitted to give birth at a hospital in Brisbane, due to health complications, but after Ferouz was discharged from hospital, the immigration department said it would transfer him and his family to detention on Nauru in the near future.

Due to the media attention around the incident, lawyers from Maurice Blackburn had by now become aware of Ferouz's plight. But initial requests from the firm to present independent medical evidence of his and his mother's condition to travel were refused, as was a request that they be given procedural fairness in the making of any decision to transfer them.

It was only when legal action began that the department agreed to give the Myuddins a fair hearing, before making a decision to transfer them.

"When I see my children and my wife, I feel very sad," Ferouz's father told Guardian Australia. "My children are not happy because they've been a long time here. If it was one or two months, fine, but it has been more than a year now."

**"AS"**

In another case brought by Maurice Blackburn Lawyers, a six-year-old girl is suing the Australian government for negligence after being held at an offshore detention centre for more than a year.

The class action lawsuit led by the girl known as “AS” to protect her identity, was filed in the Victorian Supreme Court in October. It is requesting that the government give proper care to the child, while also compensation for the way she has been treated.

AS has been held at a detention centre on Christmas Island since trying to enter the country in 2013. Situated nearly 2,500km from the mainland, the facility has become characterised in recent years for the harsh treatment of detainees.

Lawyers for AS allege that as well not having a dental infection adequately treated for more than three months while on the island, she has also suffered psychological and physical trauma.

Her lawyer, Katie Robertson from Maurice Blackburn, told [Al Jazeera](#): “She is suffering from post-traumatic stress disorder, bed-wetting, stammering - which is believed to have stemmed from separation anxiety caused when her mother, who was pregnant, was taken to Darwin shortly after they arrived by boat.”

## **Nauru**

There are currently over 800 children held in immigration detention facilities across Australia. On average they are held for a period of over 14 months, costing hundreds of millions of dollars. Child refugee advocate group Chilout has characterised Australia’s attitude to young asylum seekers as “systemic child abuse”.

A recent national inquiry into children in detention led by the Australian Human Rights Commission heard from several witnesses who condemned detention facilities for their lack of medical and psychiatric facilities.

In his testimony Dr Peter Young, once a senior figure at a private contractor which ran offshore detention centres, said that “suffering” is consciously used as a tactic to discourage immigrants from settling in Australia. He also alleged that he was told to not include statistics on child self-harm in his annual reports.

Ferouz and his family have been in detention for more than a year now, and Watt says they have become increasingly concerned for the wellbeing of their children.

“They came to Australia to seek a better life for their children, but instead continue to be denied that opportunity or even the right to plead a fair case as to why they should be able to stay in Australia,” he says.

For the time being, both the Myuddins and the other families of the 100 other infants who have their fate entwined with the case now face an uncertain future and could be sent to the offshore detention centre on the island of Nauru at any time.

With his wife and eldest daughter suffering from a range of health complaints, Ferouz's father worries that a stay in Nauru, which has been criticised by officials for poor sanitation and inadequate medical facilities, would hit his family hard.

He told [Guardian Australia](#): "The reason I'm not happy to go to Nauru is my child's health, she will not have good treatment there.

"The hospital is very limited, we've been to the hospital as well and it's very difficult to get admitted, get treatment."

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## **Q&A**

**Murray Watt**, Senior Associate at [Maurice Blackburn Lawyers](#)

### ***How did lawyers from Maurice Blackburn first hear about the case?***

The case of baby Ferouz and his family first came to public attention after media reports detailed that he had been separated from his mother immediately following his birth at a hospital in Brisbane.

Quite rightly, many Australians were horrified by this story, and the treatment of Ferouz and his family at this time.

Soon after, Ferouz and his family were threatened with removal to Nauru, despite ongoing health concerns, and the Refugee and Immigration Legal Service – with whom a number of Maurice Blackburn lawyers have connections – asked us to represent the family in legal action to prevent their removal.

### ***Can you describe the family's state of mind when you met them?***

Ferouz and his family have remained in detention in Australia for a year now, and not unsurprisingly they are increasingly becoming more despondent and concerned for their wellbeing and in relation to Ferouz's parents, the wellbeing of their children.

They came to Australia to seek a better life for their children, but instead continue to be denied that opportunity or even the right to plead a fair case as to why they should be able to stay in Australia.

### ***What attracted you to the case?***

The case of baby Ferouz is an important test case in Australian law regarding the rights of babies born on Australian soil to asylum seeker families. It is an important case not only from a legal perspective, but from also from a human rights perspective, particularly in relation to the rights of Australian-born babies who are forced to live in detention.

Maurice Blackburn is continuing to run this case on a pro-bono basis because it is the right thing to do: Ferouz and his family need help and we are prepared to run this case for as long as it takes to seek justice for them.

***I've seen that 100 babies face a similar fate to Ferouz. Do you have information on how many families in a similar position to Ferouz's are deported each year from Australia?***

In addition to Ferouz, Maurice Blackburn also acts for 100 other Australian-born babies currently living in detention on the Australian mainland. All of these babies face being sent to offshore detention on Nauru at any time.

The latest Australian Government statistics show Australia is holding nearly 800 children in detention, and they've been held - on average – for more than 14 months, costing hundreds of millions of dollars.

***What is the current status of the Myuddin family? Where are they now?***

Ferouz and his family are currently living in a detention centre in Darwin, in the Northern Territory. They were previously held in detention in Brisbane, but were earlier this year transferred to Darwin against their wishes, despite their medical and legal teams being based here.

***I understand you had an undertaking from the Federal Government that they wouldn't remove Ferouz and other babies without giving notice. Is that still the case?***

That is correct. The Federal Government has provided an undertaking that it will not seek to remove Ferouz until 5 December 2014, while his court appeal remains ongoing. In the event the Government do seek to transfer Ferouz, they have provided a further undertaking that he will be granted two business days' notice of any transfer action, as well as providing sufficient material in relation to any proposed transfer. In addition to this, the Government have also undertaken to give Ferouz, through his legal representatives, 14 days to respond to any such request to transfer.

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**Update (18/12/2014): [Fresh hope for baby Ferouz](#)**

***[Baby Ferouz](#), the child born to asylum seeker parents in Brisbane who gained international attention after a Federal Court ruled he was not eligible for a protection visa, has been granted the right to stay in Australia.***

One-year-old Ferouz Myuddin, and 30 other children who were previously held on the notorious detention centre on the island of Nauru, will be allowed to stay with their families in Australia while their claims to be refugees are assessed. The move follows a surprise intervention by Immigration Minister Scott Morrison.

Ferouz's father, who fled political oppression in Burma to travel down under, welcomed the news. He said in a [statement](#): "this is a very joyful day for my whole family".

Earlier this month the Senate passed [sweeping migration reforms](#) which saw 77 of the 108 children represented by [Maurice Blackburn Lawyers](#) released into Australian society.

Murray Watt, the lawyer representing Ferouz and the other families embroiled in the case, said Morrison's decision was the culmination of more than a year of work.

"Today's announcement means that Australian-born babies of asylum seekers who were transferred here from Nauru will be allowed to remain in Australia and have their protection claims assessed," Watt said.

Watt added that Ferouz and the 30 other families involved in the case had "[only cleared the first hurdle](#)" with this decision and still had to have their bids for refugee status considered.

The decision taken on Thursday has been described by the government as a one-off, which will not impact on other cases. Morrison confirmed that pregnant women detained in Australia's immigration detention facilities "will also be returned to Nauru, with their babies, at an appropriate time".

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## Further information

[For a timeline of Ferouz's case, see this piece of work put together by Maurice Blackburn](#)

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