

YAU026 v REPUBLIC OF NAURU (S160/2017)

Court appealed from: Supreme Court of Nauru
[2017] NRSC 48

Date of judgment: 31 May 2017

This appeal is from a judgment of the Supreme Court of Nauru under the *Refugees Convention Act 2012* (Nauru) (“the Act”).

The Appellant is an asylum seeker from Bangladesh who arrived in Christmas Island on 6 December 2013 and was transferred to Nauru on 11 December 2013, where he remains.

On 28 February 2014 the Appellant made an application to Nauru for recognition as a refugee and for complementary protection under the Act. He relied on grounds based on his fear of persecution by reason of his political opinion as a supporter and executive committee member of the and membership of the Bangladesh Nationalist Party (“BNP”), of which the Chatra Dal the student wing. He claimed to have been beaten and/or threatened with violence or death on a number of occasions as a result of his membership of those organisations.

On 2 November 2014 the Secretary of the Nauru Department of Justice and Border Control determined that the Appellant was not a refugee and was not entitled to complementary protection.

The Appellant made an application for merits review of that decision to the Refugee Status Review Tribunal (“the Tribunal”). On 22 May 2015 the Tribunal affirmed the Secretary’s determination. In so doing it rejected the Appellant’s claimed political involvement as it was unable to be satisfied that his claims were credible. The Tribunal was not satisfied that the Appellant was a member or supporter of the BNP or the Chatra Dal or that he held an executive position in the Chatra Dal. It rejected his claims to have suffered harm in Bangladesh because of his political activities.

The Appellant then appealed to the Supreme Court of Nauru on points of law comprising a failure by the Tribunal to afford him natural justice and a failure to comply with s 37 of the Act, which required that he be afforded procedural fairness. He also appealed on the ground that the Tribunal acted unreasonably and illogically or without probative evidence.

The Appellant contended that at the time of the Tribunal’s decision, s 37 of the Act required the Tribunal to give to the Appellant “clear particulars of information that the Tribunal considers would be the reason, or part of the reason, for affirming the determination that is under review” and to give the Appellant the opportunity to comment on that information. The Supreme Court (Judge Khan) rejected that submission and accepted the Respondent’s argument that the section had been repealed and had no effect on the Tribunal’s review of the Secretary’s decision.

The Supreme Court dismissed the appeal and affirmed the Tribunal’s decision. In so doing it held that the Tribunal had complied with the requirements of procedural

fairness and did not fail to consider an integer of the Appellant's protection claims. Nor did the Tribunal fail to act reasonably or without probative evidence.

On 14 June 2017, the Appellant appealed to the High Court of Australia pursuant to s 5 of the *Nauru (High Court Appeals) Act 1976* (Cth). This Act implements the Agreement between the Governments of Australia and Nauru relating to appeals to the High Court of Australia from the Supreme Court of Nauru signed on 6 September 1976. It provides that in civil cases in which the Supreme Court of Nauru was exercising its original (rather than appellate) jurisdiction such as this one, an appeal lies to the High Court as of right against any final judgment.

The grounds of appeal include:

- The Supreme Court of Nauru erred in rejecting the Appellant's claim that he was denied procedural fairness by the Tribunal. The Supreme Court should have held that:
 - a) the Tribunal relied on information about the relationship between membership and executive positions in the BNP and Chatra Dal to reject the Appellant's claims for protection; and
 - b) section 37 of the Act, or alternatively Nauru's common law obligations of procedural fairness, required the Tribunal to disclose the substance of that information to the Appellant and provide him with the opportunity to respond to that information, rather than merely disclose the conclusions reached from that information.
- In the alternative to the above ground, there was no evidence before the Tribunal to find that there was a difference between membership and executive positions in the BNP and Chatra Dal for the Appellant.