



HIGH COURT OF AUSTRALIA

16 May 2018

CRI026 v THE REPUBLIC OF NAURU
[2018] HCA 19

Today the High Court unanimously dismissed an appeal from a decision of the Supreme Court of Nauru that the Refugee Status Review Tribunal ("the Tribunal") had not erred in dismissing the appellant's claim for complementary protection under the *Refugees Convention Act 2012* (Nr) ("the *Refugees Act*").

The appellant was born in Sialkot in Pakistan but had lived most of his life in Karachi. His family lived in Sialkot. He arrived in the Republic of Nauru ("Nauru") in 2013 and shortly thereafter applied to the Secretary of the Department of Justice and Border Control of Nauru ("the Secretary") to be recognised as a refugee under the *Refugees Act* or, alternatively, as a person to whom Nauru owed complementary protection under the Act. He claimed that he could not or did not want to return to Pakistan because he feared that upon his return he would be harmed by members of the Muttahida Qaumi Movement ("the MQM") by reason of an injury he had inflicted on one of their senior members, and also because they viewed him as a political dissident. The Secretary rejected the application. The Tribunal affirmed the Secretary's decision on the basis that it would be reasonable in the circumstances for him to relocate to Punjab in Pakistan where the MQM had no power or influence and the risk of being harmed was remote and not a real possibility. Towards the end of their reasons, the Tribunal made the evidently incongruous observation that the appellant would not face a real possibility of persecution in Sri Lanka and referred to him being of Tamil ethnicity. The Supreme Court dismissed an appeal against the Tribunal's decision.

The appellant appealed as of right to the High Court, alleging that the Tribunal had erred in determining his claim for complementary protection by reference to his ability reasonably to relocate within Pakistan and his circumstances in the event he were returned to Sri Lanka, as opposed to Pakistan. He further alleged that the Tribunal erred in failing to consider whether it was reasonable for his family to relocate to Punjab and in finding that the MQM had no power or influence in Punjab.

The High Court held that, having regard to international jurisprudence, unless the feared persecution emanates from or is condoned or tolerated by State actors (which was not an issue in this case), an applicant's ability reasonably to relocate within his or her country of origin, including the ability safely and legally to travel to the place of relocation, is relevant to whether the applicant is in need of complementary protection. Further, the Court held that, reading the Tribunal's reasons as a whole, the incongruous observation which referred to Sri Lanka and Tamils rather than Karachi and the MQM was a typographical error and did not disclose that the Tribunal's reasoning process was affected by error. Accordingly, it was not necessary to consider whether the Tribunal had the power to issue the corrigendum correcting the error. In relation to the alleged failure to take into account the appellant's family in determining his claim for complementary protection, the Court found that there was no substantial, clearly articulated argument of the kind suggested by the appellant and thus the Tribunal was not required to consider it. As regards the finding that the MQM had no power or influence in Punjab, the Court concluded that there was nothing to say that there was insufficient evidence to sustain the Tribunal's finding. The Court therefore dismissed the appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*