



HIGH COURT OF AUSTRALIA

16 May 2018

DWN027 v THE REPUBLIC OF NAURU
[2018] HCA 20

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 a Sunni Muslim man of Pashtun ethnicity from Peshawar in Pakistan where he resided with his wife and young child. He arrived in the Republic of Nauru ("Nauru") and 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 had a well-founded fear of being persecuted by the Taliban by reason of his actual or imputed political opinion. The Secretary rejected the application. The Tribunal affirmed the Secretary's decision on the basis that, while there was a real possibility that if the appellant were returned to Peshawar he would be harmed by the Taliban, it would be reasonable in the circumstances for him to relocate to another area in Pakistan. 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 in failing to take into account a number of integers said to be relevant to the question of whether he could reasonably relocate. The appellant further alleged that the Tribunal erred in determining his claim for complementary protection without having regard to Nauru's international obligation under the Convention on the Rights of the Child (1989) ("the CRC") to give primary consideration to the best interests of his child.

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. It was also held that the Tribunal had not failed to take into account the factors relevant to the appellant's ability reasonably to relocate within Pakistan. Further, the Court held that it was unnecessary to decide whether the Tribunal were bound to give primary consideration to the best interests of the appellant's child under the CRC because the appellant did not contend before the Tribunal that they were bound to decide his claim for complementary protection by reference to the best interests of his child and, consequently, he did not adduce any persuasive evidence that his child's best interests would be adversely affected by the refusal of his claim. 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.*