



HIGH COURT OF AUSTRALIA

17 October 2018

WET052 v THE REPUBLIC OF NAURU
[2018] HCA 47

Today the High Court unanimously dismissed an appeal from a judgment of the Supreme Court of Nauru. The appellant, an Iranian citizen, arrived on Christmas Island in 2013, and was subsequently transferred to the Republic of Nauru. In May 2014, the appellant applied under the *Refugees Convention Act 2012* (Nr) to the Secretary of the Department of Justice and Border Control ("the Secretary") to be recognised as a refugee or, alternatively, as a person owed complementary protection. His application was refused by the Secretary. The appellant applied for merits review of the Secretary's decision to the Refugee Status Review Tribunal ("the Tribunal").

The appellant claimed that he had a well-founded fear of being persecuted by reason of his association with his father, who he alleged was physically abusive, an alcoholic and drug addict, engaged in drug trafficking and compelled the appellant to engage in drug trafficking with him. The Tribunal identified concerns with some of the appellant's claims. The appellant did not satisfactorily explain why, in his initial interview upon transfer to Nauru, he did not mention his father's involvement in the use and supply of illicit drugs. The Tribunal also found the appellant's claim that his father would force him to distribute drugs on an almost full-time basis for three or four years, and the proposition that his father would deliberately implicate the appellant and himself in drug dealing, difficult to accept. Based on these concerns, the Tribunal concluded that it was not satisfied of the credibility of the appellant's claims as to his father's drug use and trafficking ("the adverse credibility finding"). Partly because of this finding, the Tribunal affirmed the Secretary's decision. The appellant appealed to the Supreme Court of Nauru, which dismissed his appeal.

The appellant appealed as of right to the High Court. The appeal raised one ground of appeal and one proposed ground of appeal, the latter of which required leave to be pursued. As to the former, the appellant claimed that the adverse credibility finding was illogical and was wrongly treated by the Tribunal as determinative against his claim for recognition as a refugee. The appellant's argument focused on the Tribunal's concern about his failure to explain why he had not mentioned his father's drug use and trafficking at the transfer interview. The High Court rejected this ground. The Tribunal had not found that the appellant's claims as to his father's drug use and trafficking were untrue merely because those claims were not mentioned at the transfer interview. Rather, the Tribunal had based its adverse credibility finding on an accumulated set of concerns that were all open to the Tribunal to identify. There was nothing illogical or irrational about that finding.

As to the proposed ground of appeal, the appellant contended that the Tribunal had not properly considered whether he was at risk of persecution in Iran either as a returned asylum seeker who had an adverse political profile ("the particular claim") or as a returned asylum seeker per se ("the general claim"). The High Court held that the appellant had not in fact advanced the particular claim before the Tribunal, and therefore it was not necessary for the Tribunal to have considered it. The High Court also held that the Tribunal had considered and indeed come to a conclusion on the general claim, and that the Tribunal's conclusion was open to it. For those reasons, the High Court refused the appellant leave to raise the proposed ground of appeal. The appeal was dismissed.

- *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.*