

EMP144 v REPUBLIC OF NAURU (M151/2017)

Court appealed from: Supreme Court of Nauru [2017] NRSC 73

Date of judgment: 27 September 2017

The appellant was born in western Nepal. He is married and has a son born in December 2006. The appellant's father, paternal uncle and older brother were members of Rastriya Prajatantra Party ("RPP"). In 2003, the Nepal Communist Party-Maoist ("NPC-M") came to power in the appellant's area. Within 12 months, the appellant's brother disappeared and has not been seen since. The appellant suspects that NPC-M is responsible for the disappearance. The appellant's father was assaulted by members of NPC-M and departed for India where he has lived for 10 years. In 2008, the appellant joined RPP, and became vice president of a local branch. He experienced several incidents of harassment and violence by the NCP-M, including an incident in December 2012, when a group of seven or eight members of NPC-M broke into his house at night. The appellant was beaten with fists and sticks to the extent that he lost consciousness. He was taken to hospital by neighbours. While there he heard that his house had been burned down when the group of NPC-M members returned four days later. The appellant departed Nepal in 25 May 2013. After spending time in Indonesia, he arrived in Nauru in November 2013. On 29 January 2014 he made an application for refugee status determination under the *Refugees Convention Act 2012 (NR)* ('the Act').

The Secretary of the Nauru Department of Justice and Border Control refused the application on 12 September 2014. The appellant applied for merits review of that decision to the Refugee Status Review Tribunal. The Tribunal affirmed the decision of the Secretary that the appellant was not recognised as a refugee and was not owed complementary protection under the Act.

The appellant then appealed to the Supreme Court of Nauru (Khan J). His grounds of appeal included:

1. The Tribunal erred by failing to consider integers of the objection to relocation raised by the appellant and thereby erred by denying the appellant natural justice in breach of the Act.
2. The Tribunal acted in breach of s 22(b) and/or s 40(1) of the Act by failing to identify the practicability of relocation with the appellant and seeking his response to that issue.
3. The Tribunal erred by importing a relocation test in its analysis of the appellant's 'complementary protection assessment' in breach of s 4(2) of the Act.

With respect to the first ground of appeal, the appellant submitted that the Tribunal failed to deal with specific integers that he told the Tribunal made relocation unreasonable in his personal circumstances. Those integers were: (1) he and his family would face substantial prejudice in accessing education, employment and essential services in Nepal; (2) he lived in hiding when he lived

elsewhere from his home area and he did so, in part, because he wished to ensure that he did not publicly express his political views, which he continues to hold, because there was no freedom to express one's political views throughout Nepal; (3) he does not have any tertiary or professional education, or professional skills; and (4) he holds ongoing fears for the safety of his wife and young son. Khan J found that the four arguments raised by the appellant did not amount to objections and in any event the Tribunal dealt with those issues.

With respect to the second ground, the appellant submitted that the Tribunal erred in that it failed to alert him to the issue that was ultimately dispositive of his claim, namely, the reasonableness of his relocation. Khan J noted that the appellant had addressed the issue of relocation in his written submissions to the Tribunal and his representative also made submissions at the oral hearing. Therefore no procedural unfairness arose as a result of the Tribunal not expressly mentioning to the appellant that the relocation was an issue in review.

Khan J noted that the third ground of appeal was also raised by the appellant in the matter of *DWN027 v The Republic of Nauru* and he repeated the findings he made in that matter, in dismissing this ground.

The grounds of the appeal are similar to the grounds in the Supreme Court appeal, and include:

- The Supreme Court of Nauru erred by failing to conclude that the Tribunal erred by importing a relocation test in its analysis of the appellant's 'complementary protection assessment' in breach of s 4(2) of the Act.

The issue raised by this ground of appeal is also raised in two other appeals, *DWN027 v Republic of Nauru* (M145/2017) and *CRI026 v Republic of Nauru* (M131/2017) and which are all listed for hearing together.