CRI026 v REPUBLIC OF NAURU (M131/2017)

Court appealed from: Supreme Court of Nauru [2017] NRSC 67

Date of judgment: 29 August 2017

The appellant was born in Punjab Province, Pakistan. He is a Mohajir and a Sunni Muslim. He claims a fear of harm arising out of a dispute at a cricket game with a man who was a senior member of the Muttahida Quami Movement ("MQM"). The appellant claims that the MQM will find him anywhere in Pakistan and seek revenge. He also claims a fear of harm from ongoing civil and political violence in Pakistan. After moving around within Pakistan for several years, including living in Karachi, the appellant left for Malaysia in 2011, and then travelled to Indonesia in 2012. In December 2013, the appellant left Indonesia for Australia and arrived on Christmas Island on 15 December 2013. On 19 December 2013, the Appellant was transferred to Nauru where he made an application for refugee status determination under the *Refugees Convention Act* 2012 (NR).

The Secretary of the Nauru Department of Justice and Border Control concluded that the appellant's claimed fear of harm on the basis of the feud with the member of MQM, and the ongoing civil and political violence in Pakistan was not well-founded, and the appellant did not attract refugee status. For the same reasons, the appellant would not face harm if returned to Pakistan in a manner that would breach Nauru's international obligations. Consequently, the appellant was not owed complementary protection. The appellant made an application for merits review of that decision to the Refugee Status Review Tribunal. The Tribunal affirmed the decision of the Secretary.

The appellant then appealed to the Supreme Court of Nauru (Crulci J). He did not file written submissions and did not attend the hearing, where he was not represented. The issues raised by the appellant in his Notice of Appeal included:

1. In finding that the appellant could safely and reasonably relocate elsewhere in Punjab, did the Tribunal misapply legal principles relating to internal relocation?

2. Does an erroneous reference by the Tribunal in its decision to the appellant as a Tamil from Sri Lanka, which error was subsequently corrected, give rise to any error of law?

Crulci J noted the questions laid out by Hathaway and Foster in *The Law of Refugee Status* should be taken into account when considering the reasonableness of relocation. These questions include:

1. Can the appellant safely, legally and practically access an internal site of protection?

2. Will the appellant enjoy protection from the original risk of being persecuted?

3. Will the site provide protection against any new risks of being persecuted or of any indirect *refoulement*?

4. Will the appellant have access to basic civil, political and socio-economic rights provided by the home country or State?

Her Honour considered that the Tribunal decision record indicated that the Tribunal took into account matters relevant to those questions in determining whether it would be reasonable for the appellant to relocate elsewhere in Punjab Province. Those matters included: the fact that the appellant lived in other areas in Punjab between 2003 and 2011 without experiencing any harm; Punjab is the most prosperous province in Pakistan and is a large industrial and manufacturing base; the appellant speaks and reads Urdu, which is spoken widely throughout Punjab, and also speaks some Punjabi; the appellant has a portable skill and training and would likely be able to obtain employment; and Punjab is relatively secure. Crulci J concluded that the Tribunal therefore applied the correct principles in determining that the appellant could safely and reasonably relocate to Punjab Province.

With respect to the error in the decision record that the appellant was a Tamil from Sri Lanka, her Honour considered that taken as a whole, the decision record indicated that the Tribunal was alert to the particular circumstances of the Appellant. The error in the decision record therefore did not give rise to any error of law.

The grounds of the appeal include:

- The Supreme Court of Nauru erred by failing to conclude:

    (a) that the Refugee Status Review Tribunal had misapplied the Nauruan law of complementary protection (as embodied in s 4(2) of the *Refugees Convention Act* 2012 (NR)), namely by identifying and applying a "reasonable relocation" test in relation to complementary protection, where there is no such test as a matter of law;

    (b) that it followed, on the basis of the Tribunal's finding that there was a real possibility of harm if the appellant were to return, that the appellant was entitled to complementary protection.

The issue raised by ground of appeal (a) is also raised in two other appeals, namely *DWN027 v Republic of Nauru* (M145/2017) and *EMP144 v Republic of Nauru* (M151/2017) which are all listed for hearing together.