WET044 v REPUBLIC OF NAURU (M132/2017)

Court appealed from: Supreme Court of Nauru [2017] NRSC 66

Date of judgment: 29 August 2017

The appellant was born in Illam Province, Iran in August 1982. He is of Faili Kurdish ethnicity. He worked as a farmer with his father from the age of 10, before starting work as a construction labourer and then undertaking compulsory military service a year later. He claimed that he was detained on several occasions, for one to two days, because he wore Kurdish clothing and that he was unable to get a job because of his ethnicity. In 2012 he was stopped in the street by the Iranian Revolutionary Guards, called a "Kurdish clown" and threatened with arrest. In April 2013 he had an altercation with a member of the police when asked for his identity documents.

In May 2013 the appellant fled Iran for Australia, arriving in Christmas Island in July 2013. He was transferred to Nauru in February 2014. A transfer interview was conducted with him on 19 February 2014. On 29 May 2014 he made an application for refugee status determination under the *Refugees Convention Act* 2012 (NR). The appellant claimed a fear of persecution on the basis of his (lack of) nationality, ethnicity, membership of the particular social group of stateless Kurds and being a failed asylum seeker

The Secretary of the Nauru Department of Justice and Border Control refused the application on 30 August 2015. The appellant made an application for merits review of that decision to the Refugee Status Review Tribunal. On 29 November 2015 the appellant's then solicitors made submissions ('the written submissions") to the Tribunal in support of his claims for refugee status and complementary protection, including providing detailed country information in relation to the persecution of both Faili Kurds and failed asylum seekers in Iran. 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 (Crulci J).

His grounds of appeal were:

1. The Tribunal failed to consider the appellant's mental health condition and the impacts that had on his presentation;

2. The Tribunal erred in rejecting the appellant's claim that he was stateless; and

3. The Tribunal was unreasonable in its treatment of inconsistencies in the appellant's evidence and erred in making adverse credibility findings without proper basis against him.

Her Honour held that the Tribunal did take into account the appellant's mental health problems and therefore dismissed ground 1. It was open to the Tribunal to not accept the appellant's evidence that at the transfer interview he was still

suffering from ice withdrawal and mental health problems and therefore confused, given that he asserted that he had last used ice in Indonesia on his way to Australia, some 7 months before his transfer interview. In relation to Ground 2, her Honour did not find any error of law in the Tribunal's finding that the appellant was not stateless, but a citizen of Iran of Faili Kurdish ethnicity. Nor did the Tribunal err in failing to be satisfied that the appellant had suffered serious harm in the past because of his ethnicity and that there was a reasonable possibility that such harm would befall him in the reasonably foreseeable future. As to Ground 3, her Honour held that it was open to the Tribunal to accept the Secretary's findings that there were considerable inconsistencies in the appellant's evidence as to his citizenship and other relevant matters between the transfer interview and a later RSD interview and that various other aspects of the appellant's evidence were not credible.

The appellant appealed to the High Court on 12 September 2017. He relies on a proposed Amended Notice of Appeal which seeks to raise two new grounds of appeal which were not raised by him when he represented himself in the Supreme Court. The first issue for determination at the appeal is whether the appellant should be able to raise the two new grounds of appeal which are:

- The Refugee Status Review Tribunal erred in failing to consider the written submissions and country information with respect to the risks of returning to Iran as a failed asylum seeker in circumstances where that country information had not been before the Secretary, was directly contrary to findings of fact adverse to the appellant's claim for protection and the Tribunal nevertheless adopted the Secretary's reasoning and findings of fact to reject those claims;

- The Refugee Status Review Tribunal acted in a way that was procedurally unfair, by failing to put to the appellant the country information it relied upon concerning the risk of harm to Kurds who are Shia Muslim.