

THE REPUBLIC OF NAURU v WET040 (M154/2017)

Court appealed from: Supreme Court of Nauru [2017] NRSC 79

Date of judgment: 28 September 2017

The respondent is an Iranian citizen who left Iran for Malaysia in June 2013. From there he travelled to Indonesia where he boarded a boat for Australia, arriving on Christmas Island on 6 August 2013. He was transferred to Nauru on 25 January 2014. The respondent claimed a fear of harm from his wife's family as a result of the breakdown of his marriage and his refusal to follow strict Islamic teachings. He further claimed a fear of harm based on his lack of belief in Islam; his ethnicity as an Azeri Turk; and his membership of the particular social group of failed asylum seekers.

The Secretary of the Nauru Department of Justice and Border Control found that the respondent had no well-founded fear of persecution. The Secretary further considered that there was no evidence to indicate a reasonable possibility of the respondent facing harm if returned to Iran that would breach Nauru's international obligations. He was not, therefore, granted refugee status. The respondent made an application for merits review of that decision to the Refugee Status Review Tribunal. The Tribunal affirmed the decision of the Secretary.

The Tribunal was not satisfied as to the credibility of key parts of the respondent's evidence concerning the attitude of his wife's family toward him. It did not accept there was any credible evidence that the respondent's wife's family ever took action to physically harm him or that they sought to go outside the sphere of the courts to seek restitution from him; that after he left Iran threats were made to his sister or other members of his family that he would be killed or that they themselves would be killed or harmed if he could not be found; or that there was any credible basis for his claim that he would be killed or harmed by his wife's family, or those acting for them if he were to be returned to Iran.

The respondent appealed to the Supreme Court of Nauru (Crulci J). He contended that the Tribunal made errors of law by finding that certain of his allegations were implausible without any rational basis or evidentiary basis for such findings.

Crulci J noted that Australian authorities indicated that when a Tribunal is making a credibility finding, a bare assertion that a claimed event is "implausible" will only stand if the event is "inherently unlikely" or "inherently improbable" or "far out of accord with what was likely to occur". Absent this, the Tribunal must point to "basic inconsistencies" in the evidence, or "probative material" or "independent country information", which led the Tribunal to conclude that the claimed event was "implausible". The reasoning process and supporting evidence that forms the basis on which a finding that evidence was rejected should be disclosed and clear findings made in direct and explicit terms. It was not sufficient simply to make general passing comments on general impressions made by the evidence where the issue was important or significant.

Her Honour examined three key findings of implausibility made by the Tribunal: firstly, that it was implausible that an attack on a car jointly owned by the respondent and his wife could have been intended to prevent them from divorcing; second, it was implausible that, if the police had gone to the trouble of visiting the respondent's house to report an incident involving an unknown perpetrator, they would ignore evidence of the perpetrator's identity and confession on the grounds that the means by which he had discovered it did not constitute legal proof; and third, it was implausible that the wife's brother would have sought out a relationship with the respondent's sister with the purpose of preventing the respondent from divorcing his wife.

Crulci J found that the findings of implausibility made by the Tribunal were not supported by inconsistencies in the respondent's evidence, or probative material or independent country information. The findings were speculative and matters of conjecture. Her Honour was not satisfied that the cumulative weight of the findings made by the Tribunal supported by a rational basis was sufficient to permit the Tribunal to reach the conclusion that the respondent's claims were fabricated. Her Honour allowed the appeal and remitted the matter to the Tribunal for reconsideration.

The Republic filed a notice of appeal as of right in this Court. The notice of appeal was filed one day out of time and the Republic has, by summons, sought an extension of time. The respondent has not filed an appearance or taken part in the appeal.

The ground of the appeal is:

- The Supreme Court of Nauru erred in concluding that the Tribunal had made errors of law by making findings to the effect that certain of the respondent's factual allegations or conjectures were "implausible", and thereby quashing the Tribunal's decision.

In recent months Refugee Legal has sought leave to appear as amicus curiae to assist the Court and has raised the issue as to whether the extension of time sought is able to be granted.