

HFM045 v. REPUBLIC OF NAURU (M27/2017)

Court appealed from: Supreme Court of Nauru
[2017] NRSC 12

Date of judgment: 22 February 2017

This appeal is from a judgment of the Supreme Court of Nauru under the *Refugees Convention Act 2012 (Nr)* ('the RCA').

The Appellant is a Hindu, a member of the Chhetri tribe and a national of Nepal who has unsuccessfully applied to the Republic of Nauru for refugee status determination. Having left Nepal in May 2013 he travelled by boat from Indonesia to Christmas Island in September 2013. On 2 November 2013 he was transferred to detention in Nauru pursuant to the regional processing arrangement between Australia and Nauru, where he remains.

On 29 January 2014 the Appellant made an application to Nauru for refugee status determination under the *RCA*, relying on grounds based on his alleged fear of harm if he were returned to Nepal: he claimed that the Maoists would target him because of his political activities and the Mongols would target him because of his membership of the Chhetri tribe. He also claimed the Nepalese authorities would not afford him any protection.

On 12 September 2014 the Secretary of the Nauru Department of Justice and Border Control determined that the Appellant was not a refugee and was not entitled to complementary protection. In so doing he found that the Appellant's evidence in several respects was unreliable. The Appellant made an application for merits review of that decision to the Refugee Status Review Tribunal ("the Tribunal"). The Tribunal affirmed the Secretary's determination on 16 January 2015. The Appellant then appealed to the Supreme Court of Nauru on points of law comprising a failure by the Tribunal to comply with s37 of the *RCA* and thus afford him procedural fairness and the misapplication of the law as to complementary protection.

The Supreme Court of Nauru dismissed the appeal and affirmed the Tribunal's decision.

On 8 March 2017, the Appellant appealed to the High Court of Australia pursuant to s5 of the *Nauru (High Court Appeals) Act 1976 (Cth)*. This Act implements the Agreement between the Governments of Australia and Nauru relating to appeals to the High Court of Australia from the Supreme Court of Nauru signed on 6 September 1976. It provides that in civil cases in which the Supreme Court of Nauru was exercising its original (rather than appellate) jurisdiction such as this one, an appeal lies to the High Court as of right against any final judgment.

The grounds of the appeal include:

- That the Supreme Court erred in holding that the Tribunal did not deny the Appellant procedural fairness or natural justice in circumstances where:

(a) the primary judge failed to consider the requirements of s 37 of the RCA,
and

(b) [*in various respects*], the Tribunal “sought independent information”;

- That the Supreme Court erred in holding that the Tribunal did not apply the wrong test or misinterpret the law in determining the Appellant’s complementary protection claim [*in various circumstances*].