

WET 052 v THE REPUBLIC OF NAURU (S267/2017)

Court appealed from: Supreme Court of Nauru
[2017] NRSC 96

Date of judgment: 6 November 2017

The appellant is a citizen of Iran who fled from that country in June 2013. He travelled to Indonesia on a tourist visa and then (without an Australian visa) to Christmas Island, from where he was transferred to Nauru.

The appellant first gave information about his reasons for leaving Iran during an interview conducted by a Nauruan officer in February 2014 (“the transfer interview”).

In May 2014 the appellant applied for a determination that he was a refugee, claiming that he feared persecution, assault and death in Iran. Those fears were on account of both his father and the Iranian authorities. The appellant gave further details of his claim for refugee status when interviewed in July 2014 as part of the assessment process (“the RSD interview”). The appellant claimed that his father had for many years physically abused him and had forced him to transport drugs in quantities that would see him face the death penalty if he were caught. In 2013 his father attacked him with a knife and threatened to kill him. The appellant also feared that he may be viewed in Iran as having contravened Sharia Law and as being politically opposed to the government, the latter partly on account of his having applied for asylum in a Western country. On 28 September 2015 the Secretary of the Nauruan Department of Justice and Border Control (“the Secretary”) determined that the appellant was not recognised as a refugee under the *Refugees Convention Act* 2012 (Nauru), nor was he owed complementary protection by Nauru under the Refugees Convention.

The appellant applied for a review of the decision of the Secretary by the Refugee Status Review Tribunal (“the Tribunal”). Before the Tribunal, the appellant made the additional claim that he feared being jailed or even executed in Iran on account of his Christian faith, he having converted to Christianity from Shia Islam while in Nauru. On 1 February 2016 the Tribunal affirmed the Secretary’s decision. The Tribunal did not accept the appellant’s claims in relation to his father being a drug dealer who had forced him to transport drugs. In addition to discrepancies in certain statements made by the appellant during the RSD interview and at the Tribunal hearing, the Tribunal found it adverse to the appellant’s credibility that he did not mention his father’s drug dealing during the transfer interview. The Tribunal also found that the appellant’s conversion to Christianity was not genuine and that it was likely done to bolster his claim for refugee status. The Tribunal was not satisfied that the appellant would face persecution in Iran due to his having sought asylum in the West, nor was it satisfied that the appellant would be at risk of harm from his father.

An appeal by the appellant to the Supreme Court of Nauru was dismissed by Judge Khan. His Honour held that the Tribunal had not acted unreasonably in rejecting the appellant’s claims in relation to either his Christianity or his father.

Judge Khan held that the Tribunal had properly considered relevant considerations and that it had given the appellant procedural fairness in relation to both his claimed conversion to Christianity and his credibility in general.

On 20 November 2017 the appellant appealed to the High Court, invoking its jurisdiction to hear and determine appeals from the Supreme Court of Nauru by virtue of s 5 of the *Nauru (High Court Appeals) Act 1976* (Cth) and Article 1A(b)(i) of an agreement between the governments of Australia and Nauru relating to such appeals that was signed on 6 September 1976.

The grounds of appeal, should the appellant be granted leave to amend them as he has sought, will be:

- The Tribunal's adverse and determinative credibility finding, that certain claims for protection concerning drug trafficking were untrue because they had not been mentioned at the transfer interview, was without logical and probative foundation or was legally unreasonable;
- The Tribunal erred by failing to consider an integer of the appellant's claims to protection and/or to consider his claims cumulatively, namely,
 - a) that he had a political profile which would lead him to be at particular risk as a failed asylum seeker from the West; or
 - b) that he was at risk as a failed asylum seeker per se.