



## HIGH COURT OF AUSTRALIA

15 November 2017

HFM045 v THE REPUBLIC OF NAURU  
[2017] HCA 50

Today the High Court unanimously allowed an appeal from the Supreme Court of Nauru. The High Court held that the Supreme Court erred in failing to hold that the Refugee Status Review Tribunal ("the Tribunal") had failed to accord the appellant procedural fairness.

The appellant is a Nepalese citizen and has spent most of his life in the Jhapa district of Nepal. He is a member of the Chhetri caste. In September 2013, the appellant arrived by boat at Christmas Island. He was subsequently transferred to the Republic of Nauru ("Nauru") under the regional processing arrangement between Australia and Nauru. There he applied to the Secretary of the Department of Justice and Border Control of Nauru ("the Secretary") for a refugee status determination. As part of that application, the appellant claimed to fear persecution in Nepal from Maoists on account of his political opinion. He also claimed to fear persecution from Mongols (members of the Limbu tribe in particular) in his home district of Jhapa on account of his membership of the Chhetri caste. The Secretary determined that the appellant was not a refugee and that his return to Nepal would not breach Nauru's international obligations ("complementary protection").

The appellant applied unsuccessfully to the Tribunal for a merits review of the Secretary's determination. The Tribunal rejected aspects of the appellant's account, including that Maoist militia had been absorbed into the police force and army. The Tribunal referred to a report published on the website of the Nepalese army stating that "Chhetris are heavily represented in the army". The Tribunal was not satisfied that the appellant faced a real possibility of persecution if he returned to Nepal or that he was owed complementary protection by Nauru. The appellant appealed to the Supreme Court of Nauru contending, among other things, that the Tribunal had denied him procedural fairness by failing to put him on notice of the information concerning the Nepalese army and had applied the wrong test to the determination of the complementary protection claim. The Supreme Court of Nauru dismissed the appeal.

The appellant appealed to the High Court as of right. The High Court held that the Tribunal was obliged to put the appellant on notice of the significance that it was disposed to attach to the reported level of representation of Chhetris in the Nepalese Army and to give him the opportunity to address the issue. The Court upheld the Supreme Court's conclusion that the Tribunal had not applied the wrong test in determining the appellant's complementary protection claim. The appeal was allowed and the appellant's application for review of the Secretary's decision was remitted to the Tribunal to be dealt with according to law.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*