



HIGH COURT OF AUSTRALIA

16 May 2018

EMP144 v THE REPUBLIC OF NAURU
[2018] HCA 21

Today the High Court unanimously dismissed an appeal from a decision of the Supreme Court of Nauru that the Refugee Status Review Tribunal ("the Tribunal") had not erred in dismissing the appellant's claim for complementary protection under the *Refugees Convention Act 2012* (Nr) ("the *Refugees Act*").

The appellant was from Pakhu in Nepal where he lived with his wife and child. He was a member and became the vice-president of the local branch of a pro-Royalist political group. He arrived in the Republic of Nauru ("Nauru") in 2013 and applied to the Secretary of the Department of Justice and Border Control of Nauru ("the Secretary") to be recognised as a refugee under the *Refugees Act* or, alternatively, as a person to whom Nauru owed complementary protection under the Act. He claimed that he had a well-founded fear of being persecuted in Nepal by reason of his political views. He alleged that local Maoist groups had previously attacked him and had burned down his home because he did not support the Maoist ideology. The Secretary rejected the application. The Tribunal accepted that the appellant had suffered serious harm amounting to persecution at the hands of particular local Maoist groups because of his political opinion, and that such harm might re-occur in the future if he were to return to the area where he had suffered the harm. The Tribunal affirmed the Secretary's decision, however, on the basis that, because it was localised harm, the appellant could reasonably relocate to elsewhere in Nepal. The Supreme Court dismissed an appeal against the Tribunal's decision.

The appellant appealed as of right to the High Court, alleging that the Tribunal had erred in determining his claim for complementary protection by reference to his ability reasonably to relocate within Nepal. He further alleged that the Tribunal had erred in failing to draw his attention to the determinative issue of whether it would be reasonable for him to relocate within Nepal, and in failing to consider articulated reasons as to why he could not reasonably relocate. It was also claimed that the Tribunal misunderstood country information about Nepali citizenship law.

The High Court held that, having regard to international jurisprudence, unless the feared persecution emanates from or is condoned or tolerated by State actors (which was not an issue in this case), an applicant's ability reasonably to relocate within his or her country of origin, including the ability safely and legally to travel to the place of relocation, is relevant to whether the applicant is in need of complementary protection. The Court further held that, having regard to the evidence and submissions before the Tribunal, the Tribunal had considered the appellant's objections to internal relocation and the appellant and his legal representatives were aware from the outset of the significance of the issue of whether it would be reasonable for him to relocate within Nepal. It was also held that the Tribunal had not failed to take into account the factors relevant to the appellant's claim for complementary protection, and that the Tribunal had not misunderstood the country information about Nepali citizenship. The Court therefore dismissed the appeal.

- *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.*