

QLN146 v THE REPUBLIC OF NAURU (M26/2018)

Court appealed from: Supreme Court of Nauru [2018] NRSC 1

Date of judgment: 20 February 2018

The appellant is a citizen of Sri Lanka, of Tamil ethnicity and Christian religion. He departed Sri Lanka for India in 2008, and boarded a boat in India that arrived in Australia in July 2014. He was transferred to Nauru in August 2014.

He claimed refugee status on the basis of a fear of harm deriving from his provision of buses to the Liberation Tigers of Tamil Eelam (“LTTE”) to use during their political campaign for the 2005 Presidential election, as he feared that he would be imputed with the political opinion of a supporter of the LTTE. He also feared harm on the basis of being a Tamil from North Sri Lanka, and being a member of the particular social group of failed asylum seekers.

On 26 November 2016 the Refugee Status Review Tribunal of Nauru (“the Tribunal”) affirmed the decision of the Secretary of the Department of Justice and Border Control that the appellant was not recognised as a refugee under the 1951 *Refugees Convention relating to the Status of Refugees*, and was not owed complementary protection under the *Refugees Convention Act 2012* (Nr) (“the Act”). The Tribunal set out five reasons which cumulatively led it to reject the appellant’s claim to have been targeted by the authorities for his support of the LTTE. Those reasons concerned the appellant’s credibility.

The appellant appealed to the Supreme Court of Nauru (Marshall J). He contended, inter alia, that the Tribunal erred in finding his claim concerning the circumstances of his departure from his home region “difficult to believe”. The appellant claimed that he and his family had left from the airport near his hometown and flown to Colombo. He said he paid a bribe equal to \$1,750 AUD to a local army commander to allow him to escape. The Tribunal stated that it did not underestimate the extent of corruption in Sri Lanka and was willing to accept that the applicant may have had access to some wealth even though he claimed at the hearing that he was running low on funds toward the end of his time in Colombo. But even giving these considerations due weight the Tribunal was not satisfied that this conduct was consistent with that of a person who was terrified of being detected by the authorities.

Marshall J considered that the Tribunal had complied with its obligation under s 34(4) of the Act to set out its reasons for decision, its finding on any material questions of fact and to refer to the evidence on which findings of fact were made, and there was no error of law contained in the Tribunal’s reasons for doubting the appellant’s credibility.

The grounds of the appeal include:

- The Supreme Court of Nauru erred in affirming the decision of the Refugee Status Review Tribunal.
- The Supreme Court of Nauru erred by accepting the Republic’s characterisation of the Tribunal’s reasons. Thus, the Court found that the Tribunal accepted that the appellant may have bribed an army commander to

facilitate his escape ..., and did not find that the commander would not accept a bribe.