



## HIGH COURT OF AUSTRALIA

15 August 2018

### HFM043 v THE REPUBLIC OF NAURU [2018] HCA 37

Today the High Court unanimously allowed an appeal from the Supreme Court of Nauru. The High Court held that the Supreme Court of Nauru erred in holding that s 31(5) of the *Refugees Convention Act* 2012 (Nr) made it futile to remit the appellant's application for merits review to the Refugee Status Review Tribunal ("the Tribunal").

The appellant applied to the Secretary of the Department of Justice and Border Control of Nauru ("the Secretary") to be recognised as a refugee in January 2014. The Secretary determined that the appellant was not a refugee and that she was not owed complementary protection. In March 2015, the Tribunal affirmed the Secretary's determination. The appellant appealed to the Supreme Court of Nauru. Prior to the determination of her appeal, the appellant married Mr B, who had been recognised as a refugee. The appellant's solicitors sent an email to the Republic of Nauru's Refugee Status Determination Lawyer informing the Government of Nauru of her "dependency on her husband" and attaching submissions and statements in support of her "Application for Derivative Status". A document entitled "Refugee Determination Record" issued to the appellant in August 2016 stated that the Secretary had determined that she was a refugee. There was no dispute that this document refers to the appellant's derivative status as a dependant of her husband.

On 9 June 2017, the Supreme Court of Nauru held that the Tribunal had made an error of law by failing to adjourn the hearing so that the appellant could obtain a full medical report. The Supreme Court of Nauru made an order dismissing the appellant's appeal on the basis that it would be futile to remit the matter to the Tribunal "due to the operation of s 31(5)". Section 31(5) provides that an application for merits review by the Tribunal "that has not been determined at the time the person is given a Refugee Determination Record, is taken to have been validly determined at that time".

The appellant appealed as of right to the High Court. The High Court held that s 31(5) did not apply to the appellant. Section 31(5) applies only to persons who have been given a "Refugee Determination Record" as defined by s 3 of the *Refugees Convention Act*, which confines the meaning of that term to a document issued under s 6(2A). The document issued to the appellant in August 2016 was not a document issued under s 6(2A), as that provision came into effect on 23 December 2016 and was not given retrospective effect. The High Court set aside the orders of the Supreme Court of Nauru and remitted the matter to the Tribunal for determination 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.*