



## HIGH COURT OF AUSTRALIA

17 October 2018

### ETA067 v THE REPUBLIC OF NAURU [2018] HCA 46

Today the High Court unanimously dismissed an appeal from the Supreme Court of Nauru. The Court held that the Supreme Court was correct to find that the Refugee Status Review Tribunal ("the Tribunal") had not failed to "act according to the principles of natural justice", as required by s 22(b) of the *Refugees Convention Act 2012* (Nr) ("the Refugees Act").

The appellant is a citizen of Bangladesh. Until he left Bangladesh, the appellant had always lived in the same suburb. In 2013, the appellant arrived in Australia as an unauthorised maritime arrival and was subsequently transferred to the Republic of Nauru. In 2014, the appellant applied to the Secretary of the Department of Justice and Border Control ("the Secretary") under s 5 of the Refugees Act to be recognised as a refugee on the basis that he feared harm by reason of his affiliation with the Bangladesh Nationalist Party ("BNP") and his actual or imputed opposition to the Awami League political group. The Secretary refused that application.

The appellant applied to the Tribunal for review of the Secretary's decision. The Tribunal found that the appellant had not suffered harm amounting to persecution in the past by reason of an imputed political opinion and was also not satisfied that his fear of persecution, by reason of his political opinion, was well-founded. The Tribunal further considered that even if it accepted that some harm might befall the appellant on return to Bangladesh, that harm would be "very localised".

The Supreme Court affirmed the decision of the Tribunal. The Supreme Court rejected the appellant's contention that the Tribunal had breached the requirement in s 22(b) of the Refugees Act to act according to the principles of natural justice, in determining whether he had a well-founded fear of persecution, by failing to assess relevant evidence provided by the appellant in relation to assaults by supporters of the Awami League against persons who had refused to join, or attend meetings with, the Awami League ("the Awami League Assault Evidence"). Having rejected that contention, the Supreme Court considered it unnecessary to address the appellant's second contention that, in determining that the appellant could relocate elsewhere, the Tribunal had not given the appellant an opportunity to comment on whether he was ever a formal member of the BNP.

The appellant appealed as of right to the High Court, raising substantially the same grounds as were before the Supreme Court. The High Court held that there was no error on the part of the Tribunal in relation to the Awami League Assault Evidence and the Supreme Court was correct to reject that complaint. The absence of an express reference to that evidence did not justify an inference that it was not considered, and the Awami League Assault Evidence was not material to the assessment of the well-foundedness of the appellant's fear. Having found that there was no error in the Tribunal's conclusion that the appellant did not have a well-founded fear of persecution, the Court concluded that the issues relevant to relocation need not be considered.

- *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.*