

New Zealand: "Climate Change Refugee" Case Overview

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New Zealand: "Climate Change Refugee"

Case Overview

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I. Introduction

A New Zealand case involving an application for refugee status based on the effects of climate change in the Pacific Island nation of Kiribati has received media attention around the world. The proceedings in the case came to a close in July 2015, when the Supreme Court of New Zealand, the highest court in the country, dismissed an application for leave to appeal the Court of Appeal's decision in which it ruled against the applicant.

This report summarizes the decisions of the different courts that issued rulings in the case and provides information on other Australian and New Zealand cases that involved refugee claims based on the impacts of climate change in different countries. Links to media articles and academic writings that include discussion of the New Zealand case are provided at the end of this report.

II. Case Summary

Mr. Ioane Teitiota and his wife moved to New Zealand from Kiribati in 2007. They subsequently had three children, who were born in New Zealand but not entitled to New Zealand citizenship under the [Citizenship Act 1977](#). The family remained in the country illegally following the expiration of their visas in October 2010. To avoid deportation, Mr. Teitiota applied for refugee status under Part 5 of the [Immigration Act 2009](#). This legislation incorporates into domestic law the [1951 Convention Relating to the Status of Refugees](#).

Mr. Teitiota claimed that he was entitled to be recognized as a refugee "on the basis of changes to his environment in Kiribati caused by sea-level-rise associated with climate change."¹ A refugee and protection officer declined to grant refugee status, and this decision was upheld by the Immigration and Protection Tribunal. Mr. Teitiota subsequently sought leave from the High Court to appeal the Tribunal's decision on questions of law under section 245 of the Immigration Act 2009. His application for leave to appeal to the High Court was declined by both the High Court and Court of Appeal in 2013 and 2014, respectively. On July 20, 2015, the Supreme Court upheld the decisions of the lower courts and dismissed Mr. Teitiota's application for leave to appeal.

¹ *AF (Kiribati)* [2013] NZIPT 800413 (25 June 2013), at [2], https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref_20130625_800413.pdf. The decision is also available in the New Zealand Legal Information Institute (NZLII) databases, at <http://www.nzlii.org/nz/cases/NZIPT/2013/800413.html>.

III. Court Decisions

A. Immigration and Protection Tribunal

The Immigration and Protection Tribunal (IPT) is an independent body that hears appeals from decisions made by Immigration New Zealand, including those of refugee and protection officers within the [Refugee Status Branch](#). Immigration New Zealand is part of the Ministry of Business, Innovation and Employment (MBIE).

The IPT dismissed Mr. Teitiota's appeal in a decision issued in June 2013. It noted that "the limited capacity of South Tarawa to carry its population is being significantly compromised by the effects of population growth, urbanisation, and limited infrastructure development, particularly in relation to sanitation. The negative impacts of these factors on the carrying capacity of the land on Tarawa atoll are being exacerbated by the effects of both sudden onset environmental events (storms) and slow-onset processes (sea-level-rise)."² However, the IPT considered that the appellant "has undertaken what may be termed a voluntary adaptive migration," and that his decision to migrate to New Zealand could not be seen as "forced."³

In examining the concept of persecution under New Zealand and international refugee law, the IPT stated that it involves either failure of the state to control its own agents who commit human rights violations, or failure to take steps to reduce the risk of harm being perpetrated by non-state actors.⁴ However, it did note that "this requirement of some form of human agency does not mean that environmental degradation, whether associated with climate change or not, can never create pathways into the Refugee Convention or protected person jurisdiction."⁵

The IPT went on to consider international law with respect to natural disasters and environmental degradation, stating that while these can involve significant human rights issues, the claimant must still establish that they meet the legal criteria set out in the Refugee Convention. In the New Zealand context, this means showing "a real chance of a sustained or systemic violation of a core human right demonstrative of a failure of state protection which has sufficient nexus to a Convention ground."⁶

The IPT found that the evidence did not show that the environmental conditions faced, or likely faced, by the appellant should he return to Kiribati "are so parlous that his life will be placed in jeopardy, or that he and his family will not be able to resume their prior subsistence life with dignity."⁷ In any event, it considered that the effects of environmental degradation on his standard of living were being faced by the population generally, and it had not been suggested that the Kiribati government has failed to take adequate steps to protect the appellant from

² *AF (Kiribati)* [2013] NZIPT 800413 at [39].

³ *Id.* at [49].

⁴ *Id.* at [54].

⁵ *Id.* at [55].

⁶ *Id.* at [65].

⁷ *Id.* at [74].

harm.⁸ Therefore, the IPT found that the appellant was not a refugee within the meaning of the Refugee Convention.⁹

B. High Court

Mr. Teitiota applied to the High Court for leave to appeal the IPT's decision on points of law. In refusing to grant leave to appeal, the High Court called the appellant's arguments "novel and optimistic" but found them "unconvincing."¹⁰ In essence, the judge agreed with the IPT's findings and stated that it was not for the Court to alter the scope of the Refugee Convention so as to entitle people facing medium-term economic deprivation or the immediate consequences of natural disasters or warfare to protection.¹¹ He stated that "a 'sociological' refugee or person seeking to better his or her life by escaping the perceived results of climate change is not a person to whom Article 1A(2) of the Refugee Convention applies."¹²

C. Court of Appeal

Mr. Teitiota sought to overturn the High Court's decision by applying to the Court of Appeal. The Court of Appeal also held that the IPT's reasoning had not been erroneous in law and declined to grant leave to appeal, stating that

the Tribunal essentially applied well developed law, which it correctly understood, to the undisputed facts of Mr Teitiota's case. The short point is that the effects of climate change on Mr Teitiota, and indeed on the population of Kiribati generally, do not bring him within the Convention. That is the position even if the most sympathetic, ambulatory approach permissible to interpreting the Convention is taken. The Convention is quite simply not the solution to Kiribati's problem.¹³

The Court further stated that, although it has "every sympathy with the people of Kiribati, Mr. Teitiota's claim for recognition as a refugee is fundamentally misconceived. It attempts to stand the Convention on its head."¹⁴

⁸ *Id.* at [75].

⁹ *Id.* at [97].

¹⁰ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 3125 (26 November 2013), at [51], <https://forms.justice.govt.nz/search/Documents/pdf/jdo/56/alfresco/service/api/node/content/workspace/SpacesStore/6f4d600a-373f-4ff8-8ba1-500fb7cc94b0/6f4d600a-373f-4ff8-8ba1-500fb7cc94b0.pdf>. The High Court decision is also available through NZLII, at <http://www.nzlii.org/nz/cases/NZHC/2013/3125.html>.

¹¹ *Id.*

¹² *Id.* at [54].

¹³ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 173 (8 May 2014), at [21], <https://forms.justice.govt.nz/search/Documents/pdf/jdo/b8/alfresco/service/api/node/content/workspace/SpacesStore/70056dfa-a205-4baf-9d8d-e97-ed5244899/70056dfa-a205-4baf-9d8d-e97-ed5244899.pdf>. The Court of Appeal's decision is also available through NZLII, at <http://www.nzlii.org/nz/cases/NZCA/2014/173.html>.

¹⁴ *Id.* at [40].

D. Supreme Court

Mr. Teitiota subsequently applied to the Supreme Court for leave to appeal against the decision of the Court of Appeal. According to news reports, on June 10, 2015, the Supreme Court ruled that it had jurisdiction to consider the application and ordered the appellant to file and serve submissions by June 26, 2015, and that the MBIE file and serve its submissions by July 3, 2015.¹⁵

The Supreme Court's decision was subsequently issued on July 20, 2015.¹⁶ In agreeing with the courts below, the five-member panel held that "in the particular factual context of this case (even with the addition of the new evidence), the questions identified raise no arguable question of law of general or public importance."¹⁷ The new evidence referred to was the November 2014 [Synthesis Report of the Fifth Assessment Report of the Intergovernmental Panel on Climate Change](#), as well as the original MBIE decision. It confirmed the lower courts' findings that, in relation to the Refugee Convention, Mr. Teitiota does not face "serious harm" and further that "there is no evidence that the Government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it can."¹⁸

The Supreme Court did note, however, the statements of the IPT and High Court that their decisions "did not mean that environmental degradation resulting from climate change or other natural disasters could never create a pathway into the Refugee Convention or protected person jurisdiction."¹⁹ The Court similarly explicitly stated that its decision in this particular case "should not be taken as ruling out that possibility in an appropriate case."²⁰

¹⁵ *Supreme Court to Hear Climate Refugee's Appeal*, RADIO NEW ZEALAND (June 11, 2015), <http://www.radionz.co.nz/news/national/275955/supreme-court-to-hear-climate-refugee%27s-appeal>.) (*Supreme Court Reserved Decisions (As at 26 June 2015): Case Number SC 7/2015*, COURTS OF NEW ZEALAND, <https://www.courtsofnz.govt.nz/from/reserved-decisions-supreme> (last visited July 8, 2015).) *Case Summaries 2015: Case Number SC 7/2015*, COURTS OF NEW ZEALAND, <https://www.courtsofnz.govt.nz/about/supreme/case-summaries/case-summaries-2015> (last visited July 8, 2015).)

¹⁶ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 (20 July 2015, https://www.courtsofnz.govt.nz/cases/ioane-teitiotoa-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/at_download/fileDecision). The decision is also available through NZLII, at <http://www.nzlii.org/nz/cases/NZSC/2015/107.html>.

¹⁷ *Id.* at [12].

¹⁸ *Id.*

¹⁹ *Id.* at [13].

²⁰ *Id.*

IV. Other Refugee Cases Involving Climate Change

The decision of the IPT in the Teitiota case notes that there were a number of cases in 2000 that involved claimants from Tuvalu seeking recognition as refugees in New Zealand due to various environmental factors, including “inundation, coastal erosion, salination of the water table, combined with factors at the individual and household levels.”²¹ The IPT lists the following seven such cases, in which all of the claims were dismissed by the New Zealand Refugee Status Appeals Authority, the predecessor of the IPT, “because the indiscriminate nature of these events and processes gave rise to no nexus to a [Refugee] Convention ground”:²²

- [Refugee Appeal No 72185 \[2000\] NZRSAA \(10 August 2000\)](#)
- [Refugee Appeal No 72186 \[2000\] NZRSAA 336 \(10 August 2000\)](#)
- [Refugee Appeal Nos 72189–72195 \[2000\] NZRSAA 355 \(17 August 2000\)](#)
- [Refugee Appeal Nos 72179–72181 \[2000\] NZRSAA 385 \(31 August 2000\)](#)
- [Refugee Appeal No 72313 \[2000\] NZRSAA 491 \(19 October 2000\)](#)
- [Refugee Appeal No 72314 \[2000\] NZRSAA 492 \(19 October 2000\)](#)
- [Refugee Appeal No 72315 \[2000\] NZRSAA 493 \(19 October 2000\)](#)
- [Refugee Appeal No 72316 \[2000\] NZRSAA 464 \(19 October 2000\)](#)

In the High Court, Mr. Teitiota’s lawyer “candidly submitted” that he had been unable to find “any New Zealand, Australian, Canadian, United Kingdom, United States, or European authority which had extended the protection of the Refugee Convention to a person adversely affected by climate change.”²³ The High Court judge noted that “[t]o the contrary, there are many decisions rejecting claims by people from Kiribati, Tuvalu, Tonga, Bangladesh, and Fiji on the grounds that the harm feared (environmental problems in low-lying countries attributable to climate change) does not amount to persecution and there were no differential impacts on the applicants.”²⁴ Among the cases he cited were the following:²⁵

- [Mohammed Matahir Ali v Minister of Immigration \[1994\] FCA 887](#) (Federal Court of Australia)
- [0907346 \[2009\] RRTA 1168 \(10 December 2009\) \(Kiribati\)](#) (Refugee Review Tribunal of Australia)
- [1004726 \[2010\] RRTA 845 \(30 September 2010\) \(Tonga\)](#) (Refugee Review Tribunal of Australia)

²¹ *AF (Kiribati)* [2013] NZIPT 800413, at [67].

²² *Id.*

²³ *Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 3125, at [45].

²⁴ *Id.*

²⁵ *Id.* at note 22.

- [Refugee Appeal No 70965/98, NZRSAA \(27 August 1998\) \(Fiji\)](#) (New Zealand Refugee Status Appeals Authority)

In the Australian Refugee Review Tribunal Decision in 0907346 [2009] RRTA 1168, the Tribunal affirmed the decision to decline a refugee visa to an applicant from Kiribati, finding that “[t]here appears no doubt that the circumstances the applicant, and others living in Kiribati, face are serious and deserving of significant Governmental consideration and attention. They are not matters against which, however, the Refugees Convention as it applies in Australia is able to provide protection.”²⁶

In a 2010 paper on climate change displacement, in addition to some of the cases referred to above, an Australian expert on refugee law cited the following Australian refugee or protection visa cases, decided by the Refugee Review Tribunal of Australia, that refer to the impacts of climate change in Tuvalu:²⁷

- [N00/34089 \[2000\] RRTA 1052 \(17 November 2000\)](#)
- [N95/09386 \[1996\] RRTA 3191 \(7 November 1996\)](#)
- [N96/10806 \[1996\] RRTA 3195 \(7 November 1996\)](#)
- [N99/30231 \[2000\] PPTA 17 \(10 January 2000\)](#)
- [V94/02840 \[1995\] RRTA 2383 \(23 October 1995\)](#)

More recently, in 2014, the IPT similarly dismissed an appeal from a Tuvalu family that had sought refugee status in New Zealand on the basis of the effects of climate change in their home country.²⁸ However, in a separate decision, the IPT allowed the family to remain in New Zealand due to “exceptional circumstances of a humanitarian nature, which would make it unjust or unduly harsh for the appellants to be removed from New Zealand.”²⁹ The relevant circumstances involved close family ties within the country that would be severely disrupted by removal. This case received some media coverage outside of New Zealand and is discussed in an article by the same Australian legal expert referred to above.³⁰

²⁶ 0907346 [2009] RRTA 1168, at [54].

²⁷ Jane McAdam, *Climate Change Displacement and International Law*, at note 6 (Side Event to the High Commissioner’s Dialogue on Protection Challenges, Dec. 8, 2010, Geneva), <http://www.refworld.org/pdfid/4d95a1532.pdf>

²⁸ *AC (Tuvalu)* [2014] NZIPT 800517-520 (4 June 2014), https://forms.justice.govt.nz/search/IPT/Documents/RefugeeProtection/pdf/ref_20140604_800517.pdf; <http://www.nzlii.org/nz/cases/NZIPT/2014/800517.html>.

²⁹ *AD (Tuvalu)* [2014] NZIPT 501370-371, at [30] (4 June 2014), https://forms.justice.govt.nz/search/IPT/Documents/Deportation/pdf/rem_20140604_501370.pdf; <http://www.nzlii.org/nz/cases/NZIPT/2014/501370.html>.

³⁰ Jane McAdam, *No “Climate Refugees” in New Zealand*, BROOKINGS (Aug. 13, 2014), <http://www.brookings.edu/blogs/planetpolicy/posts/2014/08/13-climate-refugees-new-zealand-mcadam>.

V. Media Reports and Other Commentary

Mr. Teitiota's case has been the subject of reports published by multiple media organizations around the world. The following are a selection of articles published by various English-language news outlets in the past two years:

A. 2013 Articles

- Gyles Beckford, [*Pacific Man Seeks Climate Change Asylum in New Zealand*](#), REUTERS (Oct. 16, 2013).
- [*World's First Climate Change Refugee Fights to Stay in NZ*](#), NEW ZEALAND HERALD (Oct. 17, 2013).
- Elliot Hannon, [*Man Attempts to Become World's First Climate Change Refugee*](#), SLATE (Oct. 17, 2013).
- [*Man Seeks 'Climate Change Asylum' in New Zealand*](#), BBC NEWS (Oct. 17, 2013).
- [*Pacific Islander Ioane Teitiota Fails in Bid to Be First Climate Change Refugee*](#), ABC NEWS (Nov. 26, 2013).
- Nick Perry, [*Ioane Teitiota, Kiribati Man, Sees Climate Change Refugee Claim Rejected by New Zealand Judge*](#), HUFFINGTON POST (Nov. 26, 2013).
- Nora Caplan-Bricker, [*Climate Change Will Force Pacific Islanders to Flee. Should the U.S. be Forced to Take Them In?*](#), NEW REPUBLIC (Dec. 2, 2013).

B. 2014 Articles

- Morgan Godfrey, [*New Zealand Refuses Climate Change Refugees – Mass Action is Now Needed*](#), THE GUARDIAN (May 11, 2014).
- Kathy Marks, [*World's First 'Climate Change Refugee' Has Appeal Rejected as New Zealand Rules Ioane Teitiota Must Return to South Pacific Island Nation of Kiribati*](#), THE INDEPENDENT (May 12, 2014).
- James Eng, *Man Loses Bid in New Zealand to Become First 'Climate Change Refugee'*, NBC NEWS (May 12, 2014),
- Hannah Osborne, [*Kiribati: World's First 'Climate Change Refugee' Ioane Teitiota Loses New Zealand Asylum Bid*](#), INTERNATIONAL BUSINESS TIMES (May 13, 2014).

C. 2015 Articles

- Kenneth R. Weiss, [*The Making of a Climate Refugee*](#), FOREIGN POLICY (Jan. 28, 2015),
- Emma O'Brien, [*An Islander's Bid to be the World's First Climate Refugee*](#), BLOOMBERG (Mar. 30, 2015).
- Jonathan Pearlman, [*Pacific Islander Loses Bid to be World's First 'Climate Change Refugee'*](#), THE TELEGRAPH (July 21, 2015).

- Pierre Longeray & Pierre-Louis Caron, [*New Zealand Supreme Court Rejects Kiribati Man's Bid to Become a 'Climate Refugee'*](#), VICE NEWS (July 21, 2015).
- [*Kiribati Man Faces Deportation After New Zealand Court Rejects His Bid to be First Climate Change Refugee*](#), ABC News (July 21, 2015).
- Sean Martin, [*World's First 'Climate Change Refugee' Loses Appeal to Stay in New Zealand*](#), INTERNATIONAL BUSINESS TIMES (July 22, 2015).
- Kalyan Kumar, [*New Zealand Rejects Climate Refugee's Appeal: Top Court Says Persecution the Sole Ground to Grant Refugee Status*](#), INTERNATIONAL BUSINESS TIMES (July 23, 2015).

D. Other Publications

The Teitiota case has also been discussed by academics and analysts in a range of other publications, for example:

- Margaretha Wewerinke, [*A Right to Enjoy Culture in the Face of Climate Change: Implications for "Climate Migrants"*](#) (CGHR Working Paper 6/4MCR Working Paper 7, University of Cambridge, Dec. 2013).
- [*Feature: Should International Refugee Law Accommodate Climate Change?*](#), UN NEWS CENTRE (July 3, 2014).
- Xing-Yin Ni, [*A Nation Going Under: Legal Protection for "Climate Change Refugees"*](#), 38(2) B.C. INT'L & COMP. L. REV 329 (2015).
- Jane McAdam, [*The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement*](#), 3(1) MIGRAT. STUD. 131 (2015).