



IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

**Refugee Appeal
No. 3 of 2019
Supreme Court
Refugee Appeal
Case No. 5 of 2018**

BETWEEN

QLN 105

AND

THE REPUBLIC OF NAURU

APPELLANT

RESPONDENT

BEFORE:

**Justice R. Wimalasena,
President
Justice Sir A. Palmer
Justice Allen K. David**

DATE OF HEARING: **28 August 2025**

DATE OF JUDGMENT: **03 September 2025**

CITATION: **QLN 105 v The Republic of Nauru**

KEYWORDS: Refugee; procedural fairness; identify issues to the Appellant to respond

LEGISLATION: s22(b) & s40(1) of the Refugees Convention Act 2012

CASES CITED: Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd (1994) 49 FCR 576; SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs [2006] HCA 63; F Hoffmann-La Roche and Co AG v Secretary of State for Trade and Industry [1975] AC 295

APPEARANCES:

COUNSEL FOR the Appellant: Mr P. Knowles

COUNSEL FOR the Respondent: Mr R .O' Shannessy

JUDGMENT

1. This is an appeal against the Supreme Court judgment delivered on 21 May 2019 affirming the decision of the Refugee Status Tribunal (second tribunal) made on 4 June 2018.
2. The Appellant is a Sri Lankan national of Tamil ethnicity, from the Jaffna district in Northern Sri Lanka. He is married and has a son who was born in 2012. In August 1990, at the age of 12, the Appellant fled with his family to India by boat, where they resided in the Tamilarkal Vazhalum refugee camp in Pollachi, Tamil Nadu. While in India, he worked as a farmer. On 13 June 2014,

he departed India, and the boat which he was travelling was intercepted by the Australian authorities and he was subsequently transferred to Nauru in August 2014. His wife and son have remained in India.

3. The Appellant applied for Refugee Status Determination on 23 September 2014, to be recognized as a refugee or as a person to whom the Republic of Nauru owes complementary protection under its international obligations. On 7 October 2015, the Secretary for Justice and Border Control (the Secretary) determined that the Appellant was not a refugee and was not owed complementary protection under the Refugees Convention Act 2012 (Refugees Act).
4. On 22 October 2015, the Appellant applied to the Refugee Status Tribunal (the first Tribunal) for a review of the Secretary's determination. On 17 March 2016, the first Tribunal affirmed the Secretary's decision. Being aggrieved by that decision, the Appellant filed a Notice of Appeal to the Supreme Court on 6 June 2016. On 11 September 2017, the Supreme Court remitted the matter to the Tribunal (second Tribunal) for reconsideration, as the first Tribunal had failed to consider the Appellant's claim that the appropriation of his family's land by the Liberation Tigers of Tamil Eelam (LTTE), and its subsequent confiscation by the Sri Lankan Army, increased the risk of the Appellant being perceived as an LTTE supporter or associate upon return to Sri Lanka.
5. On 24 October 2017, the Appellant made a further statement, requesting that it be read in conjunction with all other information previously provided. On 6 November 2017, the hearing before the second Tribunal was conducted and the Appellant attended the hearing with his representative. The Appellants representative subsequently filed post hearing written submissions dated 28 November 2017 for the consideration of the second Tribunal. It is stated in the post hearing submissions that "these submissions are additional and are to be read in conjunction with, all the other information and submissions that have been provided..."

6. The second Tribunal by its decision dated 4 June 2018, affirmed the determination of the Secretary, that the Appellant is not recognized as a refugee and is not owed complimentary protection under the Refugees Act.
7. The Appellant filed an amended Notice of Appeal on 17 October 2018, appealing the decision of the second Tribunal to the Supreme Court. On 21 May 2019, the Supreme Court dismissed the appeal and affirmed the decision of the second Tribunal. Being aggrieved by the Supreme Court judgment, the Appellant filed a Notice of Appeal in the Nauru Court of Appeal on 28 May 2019.
8. The Notice of Appeal sets out the following Grounds of Appeal as follows:

“The primary judge erred by failing to find that the Refugee Status Review Tribunal erred on a point of law when it failed to afford the Appellant natural justice pursuant to s22(b) and failed to comply with its obligations under s40(1) of the Act.”
9. The parties filed written submissions, and the appeal was taken up before the Court of Appeal on 14 September 2022. Following the hearing, the same panel could not be reconstituted to deliver the judgment. Subsequently, the appeal was re-fixed for hearing with the consent of the parties. On 28 August 2025, the appeal was taken up for hearing again before a differently constituted panel of the Court of Appeal. Counsel for both parties requested the Court to rely on their previously filed written submissions and oral arguments and invited the Court to adopt the same. Accordingly, the matter was fixed for judgment.
10. We have considered the submissions made by the parties and their oral arguments. The Appellant contends that the second Tribunal failed to afford a hearing in respect of the new claims raised in the post-hearing submissions, thereby breaching the principles of natural justice as provided under section

22(b), and further failed to fulfil its obligations under section 40(1) of the Refugees Act.

11. Section 22(b) of the Refugees Act provides that the Tribunal shall act according to the principles of natural and the substantial merits of the case. Section 40(1) provides:

“The Tribunal shall invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the determination or decision under review.”

12. The Appellant submitted that the primary judge erred in failing to find that the second Tribunal had denied the Appellant natural justice pursuant to s 22(b) and had failed to comply with its obligations under s 40(1) of the Act, in light of the new claims raised in the post-hearing submissions. The Appellant argued that the primary judge firstly, relied on the fact that the Appellant’s representative did not request a further hearing or an opportunity to lead further evidence and secondly, held that the second Tribunal’s decision did not raise any “new or novel issues.”

13. We have considered the decision of the second Tribunal. It appears that the second Tribunal categorically and in detail acknowledged the claims put forward by the Appellant in his further statement dated 24 October 2017, prior to the hearing before the second Tribunal, as well as the claims advanced in the post-hearing submissions filed by his representatives, as set out in paragraphs 12 and 13 of the decision under the heading “Claims before the presently constituted Tribunal”, specifically noting that “the applicant advances a number of new claims.”

14. In the judgment of the Supreme Court the primary judge acknowledged these new claims as follows:

[24] The Appellant's new claims are summarised at page [11] of the written submissions on the appeal, where the following is said:

11. In the post-hearing submissions under the heading "objective fear", the submission was advanced that the appellant's "personal characteristics" would cause him to be of interest to the Sri Lankan authorities as someone who may be suspected or accused of being a member, associating with or supporting the LTTE and of being a family member of a family member that assisted or supported the LTTE. The "personal characteristics" (of which 11 were identified) included:

11.1 the appellant's ethnicity as a Tamil, particularly being a Tamil male originating from Trhiruvaiyaru, in Kilinochchi, a village in an area with a history of being accused by authorities of supporting and assisting the LTTE and whose population has been persecuted and monitored for the reason;

11.2 the appellant had spent a prolonged period in refugee camps in Tamil Nadu (an area where the LTTE are suspected to have trained cadres, of re-grouping and where the Tamil Sri Lankan diaspora has been suspected of supporting and providing assistance to the (LTTE); and

11.3 the appellant has associated with other Tamil asylum seekers and refugees who might be of interest to the authorities.

12. The submission was made that the "personal characteristics" must be considered both in terms of their individual capacity to increase the significance of all the risk factors and in terms of their cumulative effect.

[footnotes omitted]

15. The Appellant argues that based on the new claims put forward in the post hearing submissions that the second Tribunal was required to identify the

issues for the Appellant and the Appellant should have been given an opportunity to give evidence or present argument relating to those issues. To support this argument the Appellant relied on *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 591-2, where the Full Court of the Federal Court of Australia held:

“It is fundamental principle that where the rules of procedural fairness apply to a decision-making process, the party liable to be directly affected by the decision is to be given the opportunity to be heard. That would ordinarily require the party affected to be given the opportunity of ascertaining the relevant issues and to be informed of the nature and content of adverse material...

Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision-maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision maker. It also extends to require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the term of the statute under which it is made. The decision-maker is required to advise of any adverse conclusion which has been arrived at which would not obviously be open on the known material...(emphasis added)”

16. Further the Appellant relied on *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] HCA 63 where it stated the following at [33]-[35]:

“The applicant is to be invited "to give evidence and present arguments relating to the issues arising in relation to the decision under review".

The reference to "the issues arising in relation to the decision under review" is important.

These issues will not be sufficiently identified in every case by describing them simply as whether the applicant is entitled to a protection visa. The statutory language "arising in relation to the decision under review" is more particular. The issues arising in relation to a decision under review are to be identified having regard not only to the fact that the Tribunal may exercise all the powers and discretions conferred by the Act on the original decision-maker... but also to the fact that the Tribunal is to review that particular decision, for which the decision-maker will have given reasons.

The Tribunal is not confined to whatever may have been the issues that the delegate considered. The issues that arise in relation to the decision are to be identified by the Tribunal. But if the Tribunal takes no step to identify some issue other than those that the delegate considered dispositive, and does not tell the applicant what the other issue is, the applicant is entitled to assume that the issues the delegate considered dispositive are "the issues arising in relation to the decision under review" (emphasis added)."

17. The Respondent argued that the Appellant was already heard, and the Appellant and his representative provided all the information before the hearing. It was submitted that at no point did the Appellant or his representative asked for another hearing. Also, it was contended that the second Tribunal fairly considered the new claims in its decision based on the material that was known to the Appellant and did not introduce any unexpected issues. The Respondent further submitted that procedural fairness does not require a further hearing in such circumstances as it would also encourage parties to withhold claims to secure a fresh hearing. Counsel for the Respondent drew the attention of the Court to Lord Diplock which is quoted in *Alpaone* (supra):

“However, as Lord Diplock said in *F Hoffmann-La Roche and Co AG v Secretary of State for Trade and Industry* [1975] AC 295 at 369:

“... the rules of natural justice do not require the decision-maker to disclose what he is minded to decide so that the parties may have a further opportunity of criticising his mental processes before he reaches a final decision. If that were a rule of natural justice only the most talkative of judges would satisfy it and trial by jury would have to be abolished.”

18. We have considered the judgment of the primary judge. The primary judge discussed the issue of procedural fairness as follows:

[25] The Tribunal rejected the Appellant’s claims, including the additional ones contained in the post-hearing submission. It did not invite the Appellant to a further hearing.

[26] As counsel for the Appellant submits, the purpose of s22(b) and s40(1) of the Act is to allow a review applicant to have reasonable opportunity to present a case and be informed about the issues that are determinative to the review where those issues are not obvious on the known material.

[27] Care must be taken when referring to cases decided under Australian law, as counsel for the Respondent submits, due to exhaustive statement of procedural fairness provided in s422B of the Australian Migration Act 1958(Cth).

[28] To provide fair procedure the Tribunal is not obliged to provide and oral hearing on every issue in the review. As the Full Court of the Federal Court of Australia held in the context of judicial review of an administrative decision:-

“Procedural fairness... extends to require the decision maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the terms of the statute

under which it is made. The decision-maker is required to advise of any adverse conclusion which has not been arrived at which would not obviously be open on the known material.”

[29] In my view the advancing of new claims in post hearing written submissions, without requesting that the Tribunal reconvene, was an adequate way of advancing more claims to the Tribunal. It was open to the Tribunal to convene a further hearing if it so desired but otherwise it was appropriate to deal with the new submissions as advanced in writing.

[30] I see no reason why the Tribunal was obliged to identify the issues arising from the new matters put in post-hearing submissions when those submissions addressed more issues without requesting that the Appellant be permitted to lead evidence in respect of them.

19. The primary judge referred to the new claims and discussed in detail how the second Tribunal dealt with them in paragraphs 37-42 of the judgment. His Honour concluded that the second Tribunal had not raised any new or novel matters in respect of those claims that would have caught the Appellant by surprise, and that the Appellant had not suggested he could have presented further information to rebut the Tribunal’s findings. Accordingly, it was held:

[43] For the foregoing reasons the Court is of the view that there was no denial of natural justice in the way the Tribunal dealt with the new claims contained in the post-hearing submissions. The Court is of the view that the Tribunal complied with its obligations under s 40(1) of the Act to invite the Appellant to give evidence and present arguments in relation to the issues arising in relation to the decision under review. Those issues had been identified by the Appellants in the claims he made in the post-hearing submissions. The Tribunal was not obliged to, in effect, give a draft of its reasons for decision on those issues to the Appellant for comment. The post-hearing submissions were, in effect,

the Appellant's last word on more matters unless the Tribunal's response to them raised new or novel issues which would have come as a surprise to the Appellant or those submissions foreshadowed the provision of other documents. Nothing of that kind occurred in this matter.

20. The decision in *Alphaone* (supra) clearly sets out the requirements for ensuring procedural fairness, a principle conceded by the Respondent as well. The reasoning in that decision affirms that any person directly affected by a Tribunal's determination must be given a fair opportunity to be heard. As raised by the Appellant, it is incumbent upon the Tribunal to ensure that the parties are made aware of the issues material to the decision and are given a fair opportunity to respond. The Tribunal is required to identify the relevant issues in dispute and to disclose the nature of, and any adverse material being relied upon. According to *Alphaone*, where a decision must be made in accordance with procedural fairness, an affected party has the right to present information and submissions to the Tribunal in support of their claims. In the present appeal, there is no dispute that the Appellant was afforded that right, having been permitted to submit information through evidence, further statements, and post-hearing submissions, all of which contained detailed and comprehensive material in support of the claims.
21. Secondly, the requirement of procedural fairness, as explained in *Alphaone* (supra), extends further. Where adverse material from other sources is before the Tribunal, the affected party must be given an opportunity to rebut or qualify it. In the present case, however, no such issue arises because there was no information from other sources tendered to counter the submissions made by the Appellant.
22. Thirdly, if there are issues on which the Tribunal intends to rely that are material to the outcome, but are not apparent from the nature of the case or from the statute itself, the affected party must be informed of them. Therefore,

the Tribunal has a duty to notify the Appellant if issues not reasonably anticipated arise out of the new claims made, so that the Appellant has a fair opportunity to address them before a decision is reached. This ensures that the Appellant is not ambushed by unexpected reasoning. The Appellant's argument is that he was not afforded such an opportunity in the present appeal. We will return to that issue later.

23. Fourthly, Alphaone (*supra*) makes clear that a party must be warned of any adverse conclusion the Tribunal is minded to draw which would not clearly emerge from the known material. However, as the primary judge rightly observed, this does not mean that the Tribunal was obliged to provide, in effect, a draft of its reasons for decision on those issues for the Appellant to comment upon.
24. The Appellant argued that the reasons given by the second Tribunal had the character of 'issues' in the review, and that the second Tribunal failed to identify those issues for the Appellant. It was further submitted that the Tribunal failed to provide an opportunity to respond to those issues, and in support of this contention the Appellant referred to the following reasons relied upon by the second Tribunal in rejecting the new claims:
 - a) The Tribunal's view that there was a lack of credible information to indicate that inhabitants of Thiruvaiyaru had been accused of aiding the LTTE or had suffered persecution ([28]);
 - b) The Tribunal's lack of satisfaction that available country information - including country information provided by the Appellant - indicated that Sri Lankan authorities regarded a history of having fled to Tamil Nadu or having spent long periods in refugee camps there as grounds for suspecting LTTE involvement ([38]);
 - c) The information before the Tribunal indicated that the Appellant's circumstances - including that he had spent most of his life in a

refugee camp in Tamil Nadu – would be familiar to Sri Lankan authorities and not “remarkable or questionable” ([39]);

- d) The Tribunal’s concern that it was not clear whether the Appellant’s interactions with fellow Tamil asylum seekers or refugees of adverse interest to the authorities had occurred in India or Nauru ([41]);
- e) The Tribunal was not aware of any country information to indicate that Tamils who associated with fellow Tamil asylum seekers or refugees of adverse interest to the authorities were viewed with suspicion by Sri Lankan authorities ([41]);
- f) There was nothing in the Appellant’s account of his personal circumstances to indicate that he had ever associated with anyone who had been adversely known to the Sri Lankan authorities ([41]).

25. We have considered how the second Tribunal dealt with these six points raised by the Appellant to support his argument of not affording the right to respond by way of identifying issues. On claim (a) the second Tribunal stated [27]:

“...The claim of targeting of the population of the town is a new one and the Tribunal is not aware of any credible information to indicate that its inhabitants or more generally, the inhabitants of the wider area have been accused of aiding the LTTE or have suffered continued persecution or monitoring simply because their home is in the area.”

26. In respect of the claim associated with (b) the second Tribunal noted:

“However, the Tribunal is not satisfied there is anything in the available country information which indicates that the Sri Lankan authorities regard a history of having fled to Tamil Nadu during the civil war or having spent long periods in refugee camps there as grounds of suspecting LTTE involvement...”

27. With regard to claim (e) and (f) the second Tribunal reasoned that [41]:“it is not accompanied by any country information to indicate that those Tamils who associate with fellow Tamil asylum seekers or refugees of adverse interest to the authorities, in either location, are thereby viewed with suspicion by the Sri Lankan authorities. Further, there is nothing in the applicant’s account of his personal circumstances to indicate he was ever associated with anyone who has been adversely known to the Sri Lankan authorities, whether or not asylum seekers or refugees.”
28. It should be noted that the second Tribunal’s findings in respect of those four claims were based primarily on the lack of credible information to support them. The Tribunal was simply unpersuaded by the evidence available. The Appellant was at all times aware that the second Tribunal would examine the claims against the available country information.
29. In relation to claim (c), the second Tribunal considered the Appellant’s own circumstances together with the available country information concerning the prevalence of such experiences, and concluded, at paragraph 39 of its decision, that they would not attract adverse attention. This was not a new or unknown issue, as the Appellant himself had put forward the circumstances. The Tribunal’s conclusion was plainly open on the known material. We are therefore of the view that it did not give rise to any obligation on the part of the Tribunal to invite the Appellant to respond to that finding.
30. With respect to claim (d), we do not find that the second Tribunal created a new or adverse issue. The Tribunal merely noted the ambiguity in the claim by observing: “It is not clear whether it refers to interactions which the applicant may have had in India or Nauru.” The Tribunal did not stop at raising that point but carefully addressed both possibilities, leaving no gap that would have required further information. It stated: “It is not accompanied by any country information to indicate that those Tamils who associate with fellow Tamil asylum seekers or refugees, in either location, are thereby viewed with

suspicion by the Sri Lankan authorities.” Accordingly, the Tribunal considered both scenarios and rejected the claim in each.

31. It should be noted that merely because the Tribunal does not accept all the claims put forward by the Appellant, it does not follow that there is an obligation on the part of the Tribunal to seek a further response from the Appellant in order to fulfil its obligation to afford natural justice. The Appellant’s representative clearly indicated at the outset of the submissions that they were additional and were to be read in conjunction with all other information and submissions previously provided. This demonstrates that the Appellant’s representative had already put forward all information available, with no indication or request that further material would be provided if necessary. As the primary judge rightly pointed out, it was open to the Tribunal to convene a further hearing if it so desired. However, the Tribunal was not obliged to do so if it was of the opinion that the information available and already known to the Appellant was adequate to address the new claims.
32. We are satisfied that the second Tribunal adopted a consistent approach in its reasoning with regard to all the new claims. The Tribunal clearly examined the Appellant’s claims and tested each against the available country information and the evidence. It gave clear reasons as to why those claims were not persuasive. Most importantly, we are not convinced that the Tribunal introduced new or novel matters that could have taken the Appellant by surprise. The conclusions drawn by the Tribunal were plainly open on the available material, and there was no requirement for it to reconvene or to invite the Appellant to respond to any further issues. We are of the view that the reasoning of the second Tribunal, and the manner in which it approached the claims, satisfied the requirements articulated in *Alphaone* (supra).
33. In the circumstances, we are of the opinion that the second Tribunal did not fail to afford the Appellant natural justice pursuant to s 22(b), nor did it fail to comply with its obligation under s 40(1) of the Act. Accordingly, the primary

judge did not err in law in making the findings set out in the Supreme Court judgment.

34. The appeal is dismissed with costs.

Dated this 03 September 2025.

Justice Rangajeeva Wimalasena



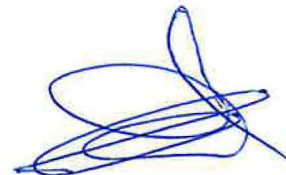
President

Justice Sir Albert Palmer



Justice of Appeal

Justice Allen K David



Justice of Appeal