IN THE SUPREME COURT OF NAURU

AT YAREN

Case No. 11 of 2025

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal TFN T24/00461, brought pursuant to s 43 of the *Refugees Convention Act 2012*

BETWEEN

AK 25 Appellant

AND

THE REPUBLIC Respondent

Before:	Justice I Freckelton
Appellant:	Mr A Aleksov
Respondent:	Mr L Brown SC
Date of Hearing:	3 June 2025
Date of Judgment:	8 August 2025

CATCHWORDS

APPEAL — Procedural fairness, Adequacy of consideration of submissions - APPEAL DISMISSED.

JUDGMENT

1. This matter is before the Court pursuant to s 43 of the *Refugees Convention Act 2012* ("the Act") which provides that:

> *(1) A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against that decision on a point of law.*
>
> *(2) The parties to the appeal are the Appellant and the Republic.*
>
> ...

2. A "refugee" is defined by Article 1A(2) of the *Convention Relating to the Status of Refugees 1951 ("the Refugees Convention")*, as modified by the *Protocol Relating to the Status of Refugees 1967* ("the Protocol"), as any person who:

> *Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable to or, owing to such fear, is unwilling to return to it ...*

3. Under s 3 of the Act, "complementary protection" means protection for people who are not refugees but who also cannot be returned or expelled to the frontiers or territories where this would breach Nauru's international obligations.

4. The determinations open to this Court are set out in s 44(1) of the Act:

> *(a) an order affirming the decision of the Tribunal;*
> *(b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.*

5. The Appellant filed an Amended Notice of Appeal dated 15 April 2025 against the decision of the Refugee Status Review Tribunal ("the Tribunal") decision of 27 February 2025 ("the decision"), seeking that the appeal on a point of law should be allowed and that the matter be remitted to the Tribunal and that pursuant to section 44(2)(b) of the Act, the decision of the Tribunal be quashed.

BACKGROUND

6. The Appellant is a 27-year old man, born in Paschimbag Village in the Habiganj District in Bangladesh. He resided in Bangladesh until October 2017 when he travelled to Malaysia.

7. He attended primary school and later a *madrassa* (religious school) and is unmarried without dependent children. His immediate family, including his parents, continue to live in the family home, while his siblings live in his village.

8. The Appellant departed for Australia in May 2024 by boat and was subsequently transferred, upon apprehension, to Nauru where he made his application for refugee status determination.

9. The Appellant has claimed that he fears persecution if he returns to Bangladesh for three reasons:

    - his actual and/or imputed political opinion, as a supporter of Jubo Dal ("JD") and the Bangladesh National Party ("BNP");
    - his membership of a particular social group, his family; and
    - his membership of a particular social group, "political social media users in Bangladesh".

10. The Appellant claims to have become a member of JD, the youth wing of the BNP when he was 15 and that his father was a District Secretary of the BNP between 2012 and 2021. This resulted in the Appellant attending meetings and BNP events with his father.

11. The Appellant claimed to be present at the Shapla protests on 5 May 2013 where at least 44 people died; the Appellant also asserted that he was injured by a rubber bullet during the protest.

12. He stated that he started to receive intimidating phone calls when he moved back to his home town when he was around 17 years of age. He said they threatened to "disappear" him if he continued his political support of the BNP. However, he said he was not dissuaded and continued to support the BNP. After he received more threats, he left for Malaysia, using a falsely obtained passport obtained for him by his father.

13. The Appellant claims to have been unable to obtain a further Malaysian visa due to recent policy changes and that he has been unable to return to Bangladesh because of his fear of persecution.

14. The Tribunal noted having received three generic submissions with country information relating to Bangladesh asylum-seekers from June 2024, September 2024 and October 2024.[1]

15. It is clear that the Tribunal was unimpressed by the evidence given by the Appellant, describing it as "vague and unconvincing" and declined to accept documents that he provided as genuine and accurate political party documents. This had the consequence that it did not place weight on them as evidence to support his claims to have been a formal and active member of the BNP or the JD.[2]

16. It accepted that the Appellant supported the BNP but it classified his claimed BNP membership and activities, and his father's profile, as "vague, unsubstantiated and

[1] Tribunal Reasons, at [36].
[2] Tribunal Reasons, at [63].

lacking credibility."[3] It did not accept that the Appellant's father was a formal member of the BNP or that he was the district secretary or an office-bearer of the BNP or even a powerful person in his district or that he suffered any politically motivated injuries, as the Appellant claimed. [4]

17. The Tribunal also did not accept that the Appellant's father, or anyone else, arranged for him to depart Bangladesh for Malaysia because he held any genuine, deep or urgent fears of political persecution, or that any threats were conveyed to him, directly or indirectly, by any local Awami League ("AL") personalities as he had claimed or by any other persons, prior to his departure.[5]

18. At the end of the hearing the Tribunal noted that the Appellant may wish to consider providing further evidence.

19. On the evidence ultimately provided to it by the Appellant, in its Reasons the Tribunal accepted that the Appellant attended BNP events in Malaysia and that he had posted or shared some anti-government or pro-BNP material on social media accounts in his name or aliases whereby his actual identity was recognisable. However, it found that "these activities are limited in their scope. They do not indicate that the applicant played any significant role against the then AL government in Bangladesh, or that he would be perceived as such." [6]

20. The Tribunal found that country information indicated that the ouster of the AL regime in August 2024 had resulted in the installation of an interim government with AL leaders and functionaries fleeing with the outcome that "they no longer have unchecked power; and the BNP and other political parties have been able to regroup and act politically."[7]

21. The Tribunal acknowledged that many challenges face the interim government, including the holding of new elections, reforming governance and stabilising the economy, but stated, relevantly to the Appellant, that "the net effect of recent developments is that BNP supporters and other opponents of the former AL government face much-reduced risks of harm."[8]

22. Specifically, the Tribunal took into account political changes in Bangladesh, in the course of which the AL leadership had been replaced by an interim government, and it did not accept that the kind of content uploaded by the Appellant in the past or his attendance at BNP events outside Bangladesh "represent provocative content that could result in politically censorial cyberlaws being used against him, if he returns to Bangladesh." [9]

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[3] Tribunal Reasons, at [67].
[4] Tribunal Reasons, at [68].
[5] Tribunal Reasons, at [69].
[6] Tribunal Reasons, at [78].
[7] Tribunal Reasons, at [79].
[8] Tribunal Reasons, at [79].
[9] Tribunal Reasons, at [80].

23. The Tribunal accepted that the Appellant's genuinely held political opinions since 2013 were in favour of the BNP and that his father and others held similar views. However, it emphasised the adverse credibility findings it had made about the extent of the Appellant's associations with the BNP and his father being an office bearer of or on behalf of the BNP. It added that the Appellant's activities outside of Bangladesh "can reasonably be characterised as limited and unprovocative given the political changes" in Bangladesh.[10]

24. It accepted as plausible that the authorities injured the Appellant during the 2013 anti-government protest but it was not satisfied that he was individually targeted or that he acquired any profile as a result of the events of the day.[11]

25. The Tribunal stated that it was its assessment, based on country evidence, that the developments "are generally positive for low-level or ordinary BNP supporters throughout Bangladesh. AL supporters cannot act with the same degree of impunity, reducing the likelihood of low-level BNP supporters encountering violent reprisals."[12]

26. However, accepting that the Appellant is a supporter of the BNP and has a very limited social media profile, in the context of the significant political changes in Bangladeshi national politics, the Tribunal concluded that:

> There is a remote possibility, especially if the applicant returns to his home village, that he may attract attention, or even adverse attention or harm, such as minor harassment. Nonetheless, the Tribunal finds there is no reasonable possibility of the applicant being *subject to serious harm amounting to persecution, for reason of any political opinion*. The Tribunal finds that he does not have a well-founded fear of persecution based on his political opinions. [emphasis added][13]

27. It also found the Appellant did not have a well-founded fear of persecution by reason of his membership of the particular social group, "political social media users in Bangladesh."[14]

28. It made a similar finding in relation to the way his travel to Australia was facilitated and that he is not a refugee on this basis.[15]

29. The Tribunal also concluded that there is not a reasonable possibility that the Appellant will experience prohibited treatment on his return to Bangladesh that would give rise to a breach of Nauru's international obligations and therefore concluded that he is not owed complementary protection.[16]

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[10] Tribunal Reasons, at [81].
[11] Tribunal Reasons, at [82].
[12] Tribunal Reasons, at [83].
[13] Tribunal Reasons, at [84].
[14] Tribunal Reasons, at [87].
[15] Tribunal Reasons, at [93].
[16] Tribunal Reasons, at [100].

THIS APPEAL

30. The Appellant's Amended Notice of Appeal dated 15 April 2025 asserts that:

    1. The Tribunal failed to afford procedural fairness to the appellant by not giving adequate consideration to the submissions dated 24 June 2024, August 2024 and 26 September 2024.
    2. The Tribunal failed to afford procedural fairness to the Appellant by not giving adequate consideration to the submissions date [sic] 30 September 2024.

SUBMISSIONS ON BEHALF OF THE APPELLANT

First Ground

31. On behalf of the Appellant, Mr Aleksov of counsel emphasised that the Appellant's representatives filed three sets of submissions, containing country information, dated 24 June 2024, August 2024 and 26 September 2024.

32. He conceded that the Tribunal explicitly indicated its awareness of two of the submissions – those of 24 June 2024 and 26 September 2024 in its Reasons at paragraph [36]. It also adverted explicitly to 11 October 2024 submissions in its Reasons at paragraph [41]. He characterised the country submissions advanced by CAPs on 4 September 2024,[17] to which the Tribunal did not make explicit reference, as having a position on the country information that was less optimistic that that which the Tribunal identified, especially in relation to the impact of the removal from power of the AL.

33. Mr Aleksov accepted too that the Tribunal (at paragraph [79] of its Reasons) noted the existence of the "country information submissions", describing them as "generic", but he asserted that the Tribunal did not evaluate the submissions "in any degree" and simply stated that its conclusion as to the country information position was based on one report.

34. He argued that this did not constitute "adequate consideration" of the submissions and that they also had the defect of failing to explain why the position contended for on behalf of the Appellant was not accepted by the Tribunal. He relied upon the High Court of Australia decision in *Plaintiff M1/2001 v Minister for Home Affairs.*[18]

35. He emphasised that the obligation of the Tribunal was to deal with what an appellant asks to be dealt with as part of their case[19]: "He put forward a version, he was entitled to have that considered and if not accepted, to an explanation why."[20]

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[17] Court Book, at pp99ff. This incorporated material at fns 7 & 8 that post-dated 7 August 2024, the date of the International Crisis Group's report to which the Tribunal referred at fn 7 in para [79] of its Reasons.
[18] [2022] HCA 17
[19] Tribunal Transcript, at p13.
[20] Tribunal Transcript, at p13.

36. In the alternative, he put it that the Tribunal had not invested "sufficient effort" in expressing its reasons with the result that the Appellant "simply does not know why the position he advanced was not accepted." He characterised this as a denial of procedural fairness.

37. He emphasised that the Appellant did not argue that the Tribunal was obliged to engage in a line by line refutation of the Appellant's arguments but said that as a matter of law the Appellant was entitled to a "serious consideration" of material advanced on his behalf. He argued that the Appellant had not received this level of consideration.

38. On these bases he contended that the Tribunal did not afford procedural fairness to the Appellant by failing to consider submission he had advanced to the Tribunal.

Second Ground

39. Counsel for the Appellant identified that the Appellant's representative made a case-specific submission dated 30 September 2024[21] to which the Tribunal referred on just the one occasion at footnote 1 of its Reasons and did not otherwise engage with the submission. He placed emphasis on the fact that in the section of the Tribunal's Reasons that addresses the country information and what might be taken from it, paragraphs 46 to 53, the Tribunal "has not grappled with that content at all."

40. He argued that the Tribunal was obliged to deal with what was identified as an issue by the Appellant; to have failed to do so was unfair to him.

41. Accordingly, he argued that the Tribunal did not afford procedural fairness to the Appellant by failing to consider submissions he had advanced to the Tribunal.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

Ground One

42. Mr Brown of Senior Counsel for the Respondent contended that the Appellant's first ground of appeal was flawed in that it is apparent that the Tribunal was aware of the submissions dated 24 June 2024, as is apparent from paragraph [36] of its Reasons. He contended that its awareness must be taken to extend to the 19 pages document titled "Bangladesh" provided to the Secretary in relation to another matter.

43. He argued that when the Tribunal's Reasons are read as a whole, it is apparent that the argument advanced on behalf of the Appellant was dealt with by the Tribunal.

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[21] Court Book at pp115ff.

44. He referred in particular to paragraphs [102], fn 3; [103], footnotes 7 and 8; and [105], fn 13.

45. Mr Brown argued that the fact that the Tribunal did not refer to certain matters is not to the point as the Tribunal is not obliged to refer to every piece of country information made available to it. In addition, he contended that there was no material that needed to be referred to by the Tribunal in detail – essentially the issue for the Tribunal was whether the change in government was such that it would affect local areas.

46. Mr Brown noted that the Tribunal is not obliged to conduct a line-by-line refutation of an appellant's evidence, and the selection and assessment of country information is a matter for the Tribunal in the exercise of its fact-finding function. He noted that the Appellant did not nominate any specific country information contained in the "generic" submissions that it can be inferred was material to the Tribunal's decision and was not considered by it, or articulated how any failure to consider material contained in the submissions was indicative of a flaw in the Tribunal's reasoning.

47. He took the Court through the arguments of the Appellant and summarised the position put to the Tribunal as that the effect of political developments was that supporters of the BNP face a low risk of harm, with developments being generally positive for the Appellant. Therefore, he asserted, the reasoning by the Tribunal was adequate and there has been no denial of procedural fairness.

48. He argued too that the Tribunal's conclusion at para [79] that the effect of recent developments was that BNP supporters and other opponents of the AL government face "much reduced risks of harm" was open: "there might have been some country information that post-dated that might lead a decision maker to a different view, nonetheless it was open to this Tribunal to reach the conclusion it did, having appraised the country information in the way that it did."[22]

49. He contended that Tribunal (at para [80]) legitimately used in its reasoning as a stepping stone to conclude an absence of persecutory harm the fact that there had been regime change. He asserted that in this respect too there was no error by the Tribunal.

Ground Two

50. Mr Brown contended that the Tribunal's Reasons accepted that the Appellant attended some BNP events in Malaysia and posted or shared some political material but that his activities were "limited in scope" and not such as to suggest that he played a significant role against the AL or could be so identified. When this was added to the fact of recent developments ,it meant that BNP supporters faced "much-reduced risks of harm". He noted that the Tribunal did not accept (at [80]

[22] Transcript, at p21.

that his conduct could result in politically censorial cyberlaws being used against him, if he returns to Bangladesh."

51. He stated that the submissions on behalf of the Appellant dated 30 September 2024 relied on a report produced by the Australian Department of Foreign Affairs and Trade ("DFAT"), dated 30 November 2022 (see fns 25 and 26), a report by the New South Wales Council of Civil Liberties, dated 16 July 2024 (fn 27), a report by Odhikar, dated 4 January 2024, an OHCHR press release, dated 11 July 2023 (fn 29), a Voice of America report, dated 7 September 2024, and a Reuters news article, dated 24 September 2024 (fn 31).

52. He noted that all but the final two of these sources significantly predate the Tribunal's hearing and decision; therefore, it is unsurprising that the Tribunal would not consider evidence that had become outdated, particularly in view of the evolving and dynamic political situation in Bangladesh. He argued that the fact that a number of high profile Bangladeshis had fled the country, including AL politicians,[23] and that the interim government might continue in operation for some time,[24] is not materially inconsistent with the summary of country information provided by the Tribunal at paragraph [79] of its decision.

CONSIDERATION

Ground 1

53. Both grounds advanced by the Appellant contend that the Tribunal failed to afford him procedural fairness by not giving "adequate consideration" to submissions advanced on his behalf before the Tribunal.

54. I have had close regard to the decision of the High Court of Australia in *Plaintiff M1/2021 v Minister for Home Affairs*[25] and in particular the joint judgment of Kiefel CJ and Keane, Gordon and Steward JJ where they stated that it is well established that:

> "...there can be no doubt that a decision-maker must read, identify, understand and evaluate the representations· Adopting and adapting what Kiefel J (as her Honour then was) said in *Tickner v Chapman*, the decision-maker must have regard to what is said in the representations, bring their mind to bear upon the facts stated in them and the arguments or opinions put forward, and appreciate who is making them. From that point, the decision-maker might sift them, attributing whatever weight or persuasive quality is thought appropriate. The weight to be afforded to the representations is a matter for the decision-maker. And the decision-maker is not obliged "to make actual findings of fact as an adjudication of all material claims" made by a former visa holder. ... The requisite level of engagement by the decision-maker with the representations

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[23] Appeal Book, 124 at [51].
[24] Appeal Book, 124 at [53].
[25] (2022) 275 CLR 582; [2022] HCA 17.

must occur within the bounds of rationality and reasonableness. What is necessary to comply with the statutory requirement for a valid exercise of power will necessarily depend on the nature, form and content of the representations. The requisite level of engagement – the degree of effort needed by the decision-maker – will vary, among other things, according to the length, clarity and degree of relevance of the representations. The decision-maker is not required to consider claims that are not clearly articulated or which do not clearly arise on the materials before them.[26]

55. Their Honours also observed that this analysis does not detract from and is not inconsistent with established principle that:

> If review of a decision-maker's reasons discloses that the decision-maker ignored, overlooked or misunderstood relevant facts or materials or a substantial and clearly articulated argument; misunderstood the applicable law; or misunderstood the case being made by the former visa holder, that may give rise to jurisdictional error.[27]

56. In my view, the Tribunal's reasoning engaged with the essence of what was advanced by the Appellant and does not disclose any relevant form of misunderstanding. The Tribunal applied itself assiduously to its evaluative responsibilities and rejected various accounts advanced on behalf of the Appellant, a form of reasoning that was open to it. This resulted in its concluding (at [78]) that he had not played "any significant role against the then AL government".

57. The Tribunal took into account country information that the new Bangladesh regime meant that the AL leaders no longer had the same degree of power, that (at [79]) "BNP supporters and other opponents of the former AL government face much-reduced risks of harm", and that (at [81]) his activities outside of Bangladesh could be reasonably characterised as "limited and unprovocative" given the changes in Bangladesh.

58. The combination of these two factors is important for assessing the sufficiency of the Tribunal's reasoning as it meant that the Tribunal concluded that the Appellant had had low level involvement with the opponents of the AL and that, anyway, the AL had lost power so he, like other supporters of the opposition to the AL were at much reduced risk that did not reach the level of serious harm.

59. The Tribunal (at [83]) referred, non-specifically, to "the country evidence discussed at hearing", to which it also referred at [79], and concluded that the political developments in Bangladesh were "generally positive" for "low-level or ordinary BNP supporters", such as the Appellant. It accepted (at [84]) there is what it termed "a remote possibility" that the Appellant may attract "attention, or even adverse attention or harm, such as minor harassment" but it evaluated (at [84]) that there is no reasonable possibility of such harm rising to the level of amounting to "serious harm amounting to persecution, for reason of any political opinion". It therefore

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[26] (2022) 275 CLR 582; [2022] HCA 17 at [24]-[25].
[27] (2022) 275 CLR 582; [2022] HCA 17 at [27].

concluded (at [84]) that the Appellant does not have a well-founded fear of persecution based on his political opinions.

60. An aspect of the aggrievement of the Appellant[28] lies in the fact that the Tribunal did not explicitly evaluate the country information submissions by CAPs, which were less optimistic than characterised by the Tribunal, its failure to evaluate them more extensively, in particular as a result of the 30 September 2024 submissions,[29] especially paragraphs 46-63, and make more effort to consider them, resulting in his not being able to understand why the position he advanced was not accepted.

61. However, the 30 September 2024 submissions referred to DFAT reports, and noted, amongst other things, that they had been criticised, and suggested that more solid data were to be found in the Odhikar Report on Human Rights in Bangladesh, which noted that the changes in Bangladesh "have mainly impacted higher profile political activists" and assert that "there is little evidence that there has been significant change at the local level, which is of relevance to the matter currently under consideration." The submissions also asserted that the Appellant was at risk by reason of his membership of his family unit and specifically the fact that his father was a BNP office-bearer, as well as that his social media and online activities placed him at risk. In summary (at [63]), the submissions contended that while there had been political changes in Bangladesh, "there is no Country Information currently available to suggest these widespread practices have ceased and an assessment needs to be made on currently available information, as well as providing consideration to the reasonably foreseeable future."

62. It is clear that the Tribunal was aware of the 30 September 2024 submissions, which post-dated the submissions of 4 September 2024.[30] In fact, it referred to the 30 September submissions in its first footnote in its Reasons. It also referred to the challenges lying ahead for Bangladesh and stated (in footnote 7) that the effect of the developments was that BNP supporters, of whom the Appellant is one, face much-reduced risks of harm. It is correct that it did not descend into an analysis of differential levels of risk for particular categories of BNP supporters but this was in a context of its concluding that the involvement with the BNP of the Appellant and his father was not as he asserted it to be (at [68]). It concluded, as was open to it, that he did not play any significant role against the then AL government (at [78]) and ultimately reached the position in relation to his limited role in participating in BNP activities, and his subsequent "very limited social media profile", that his risk was much-reduced since the loss of power by the AL to the point where the risk of reprisals to him was "remote" and there was no reasonable possibility of his being at risk of "serious harm".

63. It was entirely understandable that the Tribunal did not descend into detailed evaluation of the DFAT report of 30 November 2022 or the Odhikar Report of 4 January 2024, which by the time of the Tribunal's decision had been superseded by other political developments in Bangladesh. The Tribunal did not state that it

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[28] Submissions, 14 April 2025.

[29] Court Book, at pp115ff.

[30] Court Book, at pp99ff. This incorporated material at fns 7 & 8 that post-dated 7 August 2024, the date of the ICG Report to which the Tribunal made reference

accepted or rejected the proposition that matters in Bangladesh were not as positive as asserted on behalf of the Appellant in his 4 September submissions. However, given its findings in relation to the Appellant's involvement with the BNP, it did not need to do so, and, as identified by senior counsel for the Republic, "the material that it referred to was what it considered material to its decision".[31]

64. In context, therefore, in my opinion, the Tribunal's level of engagement with the Appellant's claims – the degree of effort it devoted to his submissions - was sufficient. This conclusion is reached by me, taking into account the findings of fact about the Appellant's credibility and his involvement with the BNP made by the Tribunal, as well as the length, clarity and number of submissions advanced on the Appellant's behalf. In these circumstances, I find that the Appellant was not denied procedural fairness and therefore that neither of his grounds of appeal are made out.

CONCLUSION

65. Under section 44(1)(a) of the *Refugees Convention Act 2012* (Nr), the appeal is dismissed and the decision of the Tribunal dated 27 February 2025 is affirmed.

Ian Freckelton

Justice Ian Freckelton
Dated this 8th day of August 2025

SUPREME COURT OF NAURU

[31] Transcript, at p20.