



IN THE SUPREME COURT OF NAURU

AT YAREN

Appeal No. 38 of 2025

IN THE MATTER OF an appeal against
a decision of the Refugee Status Review
Tribunal brought pursuant to s.43 of the
Refugees Convention Act 2012

BETWEEN:

BL25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Dates of Hearing: 25 November 2025

Date of Judgment: 2 December 2025

Citation: *BS25 v Republic of Nauru*

CATCHWORDS:

APPEAL - Refugees – Refugee Status Review Tribunal – Whether Tribunal did not correctly understand or apply the test for state protection – Whether Tribunal failed to consider the Appellant’s submissions on state protection – Tribunal correctly understood and applied the test for state protection and considered the Appellant’s submissions – Appeal Dismissed

LEGISLATION:

Refugees Convention Act 2012 (Nr) s.40, 43

CASE AUTHORITIES:

CR1026 v The Republic of Nauru [2018] HCA 19, Minister for Immigration and Multicultural Affairs v S152/2003 (2004) 222 CLR 1.

APPEARANCES:

Counsel for the Appellant: Mr A Aleksov (instructed by International Crossover)

Counsel for the Respondent: Ms K McInnes (instructed by Republic of Nauru)

REASONS FOR JUDGMENT

INTRODUCTION

1. The Appellant is a Bangladeshi citizen. He claims to be a refugee because his aunt's family was persecuting him on the basis of his imputed political opinion as a supporter of the Bangladesh Nationalist Party (**BNP**) and an opponent of the Awami League (**AL**). He also claimed membership of a particular social group, as a family member of a victim of “land grabbing” by politically connected relatives. The Appellant claims to have been assaulted by his cousin in 2022 and that he continued to receive death threats from his cousin.
2. The Appellant also claims to be owed complementary protection obligations. He says that he is unable to access effective state protection because his persecutors are powerful and corrupt. He also claims he is unable to access effective protection from the state given the presence of the current interim government. The Appellant contends

that the previous failure of the Bangladeshi authorities to act against his politically connected family members demonstrates that the family members acted with impunity or state acquiescence.

3. Pursuant to s.43 of the *Refugees Convention Act 2012* (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**Tribunal**) made on 29 June 2025 (**Tribunal Decision**). The Tribunal affirmed a determination of the Acting Secretary of the Department of Multicultural Affairs (**Secretary**) dated 4 September 2024 (**Secretary's Decision**). The Secretary determined that the Appellant was not recognised as a refugee under the Act. It further determined that he was not owed complementary protection under the Act.
4. By s.43(1) of the Act, the Appellant may appeal to this Court on a point of law. By s. 44(1) of the Act, this Court may make either of the two following orders:
 - (a) an order affirming the Tribunal Decision; or
 - (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of this Court.

Grounds of Appeal

5. By his Amended Notice of Appeal filed 12 November 2025, the Appellant pursues the following two grounds of appeal:
 - (a) the Tribunal did not correctly understand or apply the test for state protection; and
 - (b) the Tribunal failed to consider the Appellant's submissions on state protection.

Procedural History

6. The Appellant arrived in Australia in May 2024. On 1 June 2024, he was transferred to Nauru pursuant to the memorandum of understanding between the governments of Nauru and Australia. On 25 June 2024, the Appellant applied for a refugee status determination (**RSD application**).
7. The Secretary's Decision was made on 4 September 2024 refusing the Appellant recognition as a refugee and refusing the claim to complementary protection.
8. The Appellant applied to the Tribunal for review of the Secretary's Decision on 19 September 2024. Further submissions were made to the Tribunal on behalf of the Appellant, supported by various other documents including a further statement of the Appellant dated 16 January 2025. The Appellant appeared before the Tribunal to give evidence and present arguments on 23 January 2025. He was assisted by an interpreter, and his representative also attended the hearing.
9. The Tribunal Decision was made on 29 June 2025. The Tribunal affirmed the Secretary's Decision. Accordingly, on 4 July 2025, the Appellant appealed to this Court. The Amended Notice of Appeal was filed on 12 November 2025. I heard argument on the appeal on 25 November 2025.

First Ground of Appeal

The Appellant's Submissions

10. Ground 1 contends that the Tribunal did not correctly understand or apply the test for state protection.
11. The Appellant draws particular attention to passages of the Tribunal Decision which deal with its assessment of the complementary protection claim. The Tribunal's assessment of the complementary protection claim commenced at paragraph [99] of the Tribunal Decision:

[99] It was submitted that the assault on the applicant amounted to cruel and inhuman treatment or punishment and constitutes harm from private actors due to political influence.

[100] The Tribunal has accepted that the applicant and his father may have been assaulted in the past. The Tribunal is satisfied that, in his father's case, the local chairman and village elders negotiated an apology and compensation, and, in the Applicant's case, the police laid charges against the accused and, despite the accused having links to the AL, those charges are still in place. The Tribunal is satisfied the applicant can obtain protection in the event of any assault in the future. Further, the country information above indicates that, since the collapse of the AL government and the loss of power and patronage that flowed from the AL government to local affiliates, and the reforms being implemented by the interim government, the police are no longer likely to act at the behest of AL leaders or powerful associates in the event of criminal activity by people associated with the AL. The Tribunal accepts there may still be uncertainty in the political landscape in Bangladesh, however, it is now 10 months since the AL government collapsed, the violence and unrest has calmed, and it is expected that the BNP will most likely win the election when it is held. **In these circumstances, the Tribunal is satisfied the applicant will be able to access state protection should he be subject to any criminal conduct in the future.**

...

[102] The applicant's representative has submitted that returning the applicant to Bangladesh would be a breach of Nauru's obligations under articles 2, 3 and 16 of the CAT.¹ The Tribunal does not accept this submission. Having regard to the findings above in relation to past harm or the possibility of future harm, the Tribunal does not accept the applicant faces a reasonable possibility of being tortured or subject to cruel or inhuman or degrading treatment or punishment in Bangladesh. [emphasis added]

¹ This is a reference to the Convention Against Torture

12. The Appellant submits that, in substance, the extract above is a finding that there was adequate “state protection” available to the Appellant. The Appellant submits that it is unclear how the Tribunal understood “state protection” to operate in the case of complementary protection.
13. The Appellant submits that the notion of “state protection” arises from the Refugees Convention, with the theory being that if there is effective state protection, then it cannot be said that the person is outside of their country of nationality “owing to” the threat of harm. That is so because the relevant threat is (objectively) addressed by the availability of the protection of the state.
14. The Appellant submits that the concept of state protection operates in the same way in relation to a complementary protection claim. Where there is available protection from the state, it cannot be said that a person faces a risk of serious harm. Put another way, it cannot be said that harm is a “necessary” or “foreseeable” result of returning a person to their country of nationality if, despite animus from non-state actors, the state is willing and able to protect an applicant. This aligns with the reasoning in relation to “relocation” in complementary protection claims: see e.g. *CRI026 v The Republic of Nauru* [2018] HCA 19.
15. The Appellant submits that if one accepts that the complementary protection rules as to state protection align with those of the Refugees Convention, then it should also be accepted that the criteria for determining where state protection is available are those described by the High Court of Australia in *Minister for Immigration and Multicultural Affairs v S152/2003* (2004) 222 CLR 1. That is, there must exist an appropriate criminal law, and there must also be the provision of a reasonably effective and impartial police force and justice system. The Appellant submits that those are matters of fact to be determined in each case and ought not simply be assumed.
16. The Appellant contends that in this case, the Tribunal did not make any findings directed to whether circumstances in Bangladesh have met the test for adequate or effective state protection. In not making such findings, the Appellant argues that it should be inferred that the Tribunal misunderstood the test as to what was needed to be established before the state protection carve out could be relied upon.
17. In his oral submissions, Mr Aleksov for the Appellant submitted that it was common ground between parties that the law regarding state protection as between consideration of a Refugees Convention claim and a claim for complementary protection are the same. The same findings would need to be made about state protection in a complementary protection claim as would need to be made in a Refugees Convention claim.
18. The Appellant submits that it “appears common ground” that the findings necessary for a conclusion of state protection were not made.
19. The area of difference between the parties is as to whether the Tribunal relied upon its findings as to state protection in its determination of the complementary protection claim, or whether the comments at [100] about the availability of state protection were matters of “mere surplusage”.

20. The Appellant notes that the Tribunal accepted that his father “may have been assaulted in 2016 or 2017”, apparently as a result of an argument between the Appellant's father and his cousins: see Tribunal Decision at paragraph [77]. Further, the Tribunal accepted that the Appellant sustained a head injury in 2022, “perhaps in an assault”: see Tribunal Decision at [78].
21. The Appellant draws particular attention to paragraphs [87] – [89] of the Tribunal Decision:
 - [87] The Tribunal does not accept that the applicant’s cousins have threatened to kill the applicant or kill his children if they cannot get him as the Tribunal does not accept that the applicant’s aunt or cousins have been harassing the applicant's father to swap the land or have assaulted the applicant or his father over his father's refusal to swap the land or have locked the Applicant’s father's shop. Or that they have threatened the applicant and his family because of the report to the police. The Tribunal does not accept that there is a reasonable possibility that the applicant would be harmed [by] the cousins, uncles or other family members on return to Bangladesh.
 - [88] The Tribunal does not accept that the applicant's father or the applicant are in dispute with the applicant’s aunt, uncle or his cousins over the applicant's father's land. The Tribunal therefore does not accept that there is a land dispute motivated by the respective political opinions of the applicant and his aunt's family, or that his aunt's family have been able to assault the applicant and his father and locked his father's shop with impunity because they have power due to their wealth and their AL connections, or that they have targeted the applicant and his father because they are BNP supporters.
 - [89] The Tribunal finds that the applicant does not face a reasonable possibility of persecution in Bangladesh because of his actual or imputed political opinion or his membership of a particular social group of people subject to a land grab or people subject to a land grab from family members or a particular social group comprising his family and he is not a refugee on these bases.
22. The Appellant submits that what survives from these findings between paragraphs [77] and [89] is acceptance by the Tribunal that the Appellant was assaulted in 2022 and that his father was assaulted in 2016–2017.
23. The Appellant notes that the use of the word “assault” in the Tribunal’s description of the Appellant’s head injury is consistent with a reference to criminal conduct. A claim for protection from criminal conduct would lack the characteristics necessary for a successful claim under the Refugees Convention. However, it could succeed under the International Covenant on Civil and Political Rights (**ICCPR**) definition of “significant harm” for the purposes of the complementary protection claims.
24. Counsel for the Appellant submits that it is not appropriate to read the reasons about the claim that the Appellant and his father were assaulted as meaning that “nothing survived” the findings in the Refugees Convention claim. The Appellant submits that

paragraph [100] of the Tribunal Decision should not be read as mere surplusage. Clearly, the Tribunal did not think it was surplus to requirements to consider the issues which it did at [100], nor did the Tribunal express paragraph [100] as some sort of alternative claim.

25. Instead, paragraph [100] proceeds upon an acceptance of the assaults in the past. The Appellant submits, particularly having regard to the last sentence of paragraph [100], that the Tribunal was not ruling out the possibility of the Appellant's assault in the future. Accordingly, it did rely on the concept of state protection in making its determination in relation to the complementary protection claim. The Tribunal's failure to consider the underlying requirements of state protection means that it did not properly understand the test which it was required to apply to determine whether state protection was available.

The Republic's Submissions

26. The Republic accepts that the concept of state protection operates in the same way in relation to claims for complementary protection as well as claims under the Refugees Convention. However, the Republic submits that the concept of state protection played no part in the Tribunal Decision, and the Tribunal therefore did not misunderstand, or fail to apply, the test for state protection.
27. The Republic submits that, on a proper understanding of the Tribunal Decision, the Tribunal did not accept that the Appellant faced any risk of being assaulted in the future. It draws attention to the findings at [87] of the Tribunal Decision that there was no reasonable possibility that the Appellant would be harmed by his cousins, uncles or other family members on return to Bangladesh. The complementary protection claim was based on the same alleged "persecutors". Having found no reasonable possibility of harm from those persons, the complementary claim based on harm from those persons was also, by necessary implication, rejected.
28. There was therefore no occasion for the Tribunal to decide whether the Appellant would receive effective state protection from harm which he has been found not to have any reasonable possibility of suffering.
29. The Tribunal's observations at paragraph [100] of the Tribunal Decision were therefore not operative findings on the adequacy of state protection. They were instead directed at responding to the Appellant's submission that the Bangladeshi authorities' past conduct (particularly their alleged failure to act against politically connected family members) demonstrated impunity, or state acquiescence, and that the instability "given the presence of the current interim government" heightened that claimed risk.
30. The Tribunals' rejection of those submissions did not amount to, nor was it expressed as, an application of the legal test of state protection. Even if (contrary to the Republic's primary submission) the Tribunal's comments at paragraph [100] could be construed as involving a misapplication of the state protection test, the comments were in any event "strictly superfluous and immaterial to the outcome".

Consideration

31. It is first appropriate to identify with clarity the nature of the relevant claim by the Appellant.
32. In his initial statement of claim in the RSD process, under the heading “state protection” the Appellant at paragraph [33] said:

[33] Whilst the Police did not initially assist us due to grievous injury I sustained, my 2 cousins who had been arrested were released after bribing the police. The police cannot protect me as my aunt and her family have more money, resources and the backing of Awami League.
33. Thus, it can be seen that the initial statement of the Appellant’s claim involved a claimed fear of harm from his aunt and her family.
34. In written submissions made on the Appellant’s behalf to the Tribunal on 18 January 2025, the Appellant’s representative made specific submissions about the Appellant’s complementary protection claim at paragraphs [112] – [116]. The submission culminates in paragraph [116]:

[116] We submit that the Applicant’s persecutors are powerful and corrupt non-state actors. Given the presence of the current interim government, the Applicant is unable to access effective protection from the state.
35. Again, this was an acknowledgement that the Appellant’s claimed fear of harm for the purposes of his complementary protection claim was from his “persecutors” – identified in the submissions as “his aunt’s family, who are influential and associated with the AL”: see paragraph [30] of the submission, summarising the Appellant’s claims. This is also underscored elsewhere in the submission: see e.g. paragraph [134] where the harm faced by the Appellant was described as stemming from “private actors acting with impunity due to political influence and state acquiescence”.
36. I also note the terms of the oral submissions made by the Appellant’s representative at the hearing before the Tribunal that confirms that the Appellant’s claims of harm arose from fear of persecution by his aunt and her family because of “land grabbing”: see Court Book p.194 lines 23 – 43. That same position was advanced in respect of the complementary protection claim: Court Book p.195 at lines 31 – 42.
37. There is nothing in the material before the Tribunal to suggest that the Appellant feared harm generally, for example from randomised violence. His fear of harm was said to arise specifically from his aunt’s family.
38. I reject the notion that the use of the word “assault” in the Tribunal’s description of the Appellant’s head injury expanded the nature of the Appellant’s claims to a more general reference to fear of criminal conduct. The Appellant’s claim to complementary protection was clear – it involved fear of harm from identified family members, and not to generalised fear of violence or assault.
39. Paragraph [87] of the Tribunal Decision was a rejection of there being any reasonable possibility that the Appellant would be harmed by his family members on return to

Bangladesh. At paragraph [88], the Tribunal squarely rejected the Appellant's contention that the Appellant's father was in dispute with his aunt's family over land.

40. Thus, the Tribunal ultimately rejected the Appellant's claim to fear harm from his family members.
41. It was that same claimed harm that also founded the complementary protection claim. Having rejected the contention that there was any reasonable possibility that the Appellant would be harmed by his family, the Tribunal had no need to consider the question of state protection. The anterior question having been decided against the Appellant, the Tribunal did not need to consider the subsequent question whether the state of Bangladesh could give effective protection from the Appellant's persecution.
42. What then was the purpose of the Tribunal's comment at paragraph [100] to the effect that the Appellant "will be able to access state protection should he be subject to any criminal conduct in the future"? Reading the Tribunal Decision fairly and as a whole, I consider that the Tribunal's words at [100] were a response to the claim at paragraph [116] of the Appellant's written submission to the Tribunal to the effect that, in respect of the claim for complementary protection, the Appellant's persecutors were "powerful and corrupt non-state actors ... [and] the [Appellant] is unable to access effective protection from the state".
43. In my view, the statement about access to state protection in paragraph [100] of the Tribunal Decision was no more than a response to the Appellant's submission. It was unnecessary, in light of the Tribunal's prior findings about whether the Appellant had any reasonable risk of harm from his family members, for such a conclusion to be reached. Its inclusion was, no doubt, apt to lead to an unhelpful level of confusion. Nevertheless, in light of the anterior findings by the Tribunal, I agree with the Republic's submission that the Tribunal's statement about state protection at paragraph [100] was "strictly superfluous and immaterial to the outcome". It did not represent some implied expansion of the Appellant's complementary protection claim to more general concerns about being assaulted by other, unidentified, persons.
44. No error of law is demonstrated. Ground 1 of the Amended Notice of Appeal is not made out.

Ground 2

45. Both parties agree that Ground 2 rises or falls on the outcome of Ground 1. I have found that Ground 1 is not established. Accordingly, Ground 2 also fails.

Conclusion

46. For the reasons that I have set out, the Appellant has failed in both of his grounds of appeal. The appeal is dismissed.
47. Pursuant to s.44(1) of the Act, I make an order affirming the Tribunal Decision.

48. I make no order as to costs.



JUSTICE MATTHEW BRADY

2 December 2025