IN THE SUPREME COURT OF NAURU

AT YAREN

Appeal No. 46 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:

BT25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Date of Hearing: 25 November 2025

Date of Judgment: 24 February 2026

Citation: *BT25 v Republic of Nauru*

CATCHWORDS:

APPEAL – *Refugees – Refugee Status Review Tribunal – Whether the Tribunal fail to make adequate findings to rely on state protection or misunderstood the law in that respect– Question of state protection was immaterial to the outcome of the application given finding as to no reasonable possibility of persecution - Appeal Dismissed*

LEGISLATION:

Refugees Convention Act 2012 (Nr), ss 40, 43

CASE AUTHORITIES:

BL25 v Republic of Nauru [2025] NRSC 74; *Minister for Immigration and Multicultural Affairs v S152/2003* (2004) 222 CLR 1; *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323

APPEARANCES:

Counsel for Appellant:	Mr A Aleksov (instructed by International Crossover)
Counsel for Respondent:	Ms K McInnes (instructed by Republic of Nauru)

REASONS FOR JUDGMENT

INTRODUCTION

1. The Appellant is a citizen of Bangladesh. He claims to be a refugee because he is a supporter of a political party, the Bangladesh National Party (**BNP).** He claims to be a person who held an executive position in the BNP student union in his village, known as the Chhatra Dal (**CD**).

2. The Appellant says that he fears that if he returns to Bangladesh, he will be killed by members or supporters of the Awami League (**AL**) or its student wing.

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 31 July 2025 (**Tribunal Decision**). The Tribunal affirmed a determination of the Secretary of the Department of Multicultural Affairs (**Secretary**) dated 10 September 2024 (**Secretary's Decision**). The Secretary determined that the Appellant was not recognised as a refugee under the Act. He further determined that the Appellant 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. The Appellant filed an Amended Notice of Appeal on 19 November 2025. That Amended Notice of Appeal contained four grounds. Counsel for the Appellant did not press grounds 3 and 4 at the hearing of the appeal. Accordingly, the following two grounds from the amended Notice of Appeal are the subject of this judgment:

   (a) The Tribunal failed to make adequate findings to rely on "state protection" or misunderstood the law in that respect.

   (b) The Tribunal failed to give adequate consideration to the Appellant's submissions on state protection, or failed to comply with ss 34(4)(b) or 34(4)(c) in relation to state protection.

PROCEDURAL HISTORY

6. The Appellant arrived in Australia in February 2024. On 18 February 2024, he was transferred to Nauru pursuant to the Memorandum of Understanding between the Governments of Nauru and Australia. On 7 March 2024, he made an application for refugee status determination (**RSD application**).

7. The Secretary's Decision was made on 10 September 2024. As I have already noted, the Secretary's Decision refused the Appellant recognition as a refugee and refused his claim to complementary protection.

8. The Appellant applied to the Tribunal for review of the Secretary's Decision on 26 September 2024. The Appellant provided a further statement to the Tribunal dated 29 January 2025 as well as further submissions prepared by his representative also dated 29 January 2025.

9. On 31 January 2025, the Appellant appeared before the Tribunal for a hearing, together with his representative and an interpreter. The Tribunal delivered its decision on 31 July 2025.

10. The Appellant filed a Notice of Appeal to this Court on 4 August 2025. The Amended Notice of Appeal was filed on 19 November 2025. I heard the appeal on 25 November 2025.

FIRST GROUND OF APPEAL

The Appellant's Submissions

11. At paragraph [111] of the Tribunal Decision, the Tribunal found that, in light of changed country information, the Appellant would be able to access state protection upon any return to Bangladesh.

12. The Appellant contends however that in its findings, the Tribunal did not make the findings necessary to conclude that state protection would be available to the Appellant upon any return to Bangladesh. Alternatively, the Appellant submits that the Tribunal misunderstood the law in relation to state protection.

13. The Tribunal commenced a detailed consideration of the Appellant's claims and evidence at [87] of the Tribunal Decision. The Tribunal then set out its summary of those findings, followed by its conclusions arising from those findings, starting at [108] of the Tribunal Decision, in these terms:

> [108] In summary, the Tribunal accepts that the applicant was a low-level supporter of the CD and BNP who was opposed to illegal activities in his village and local area, namely sand dredging and the selling of illicit drugs. However, for the reasons given above, the Tribunal is not satisfied that the applicant was the vice-president of his local chapter of the CD or played a prominent or leadership role in activities to thwart illegal sand dredging and drug trafficker in his local area [sic]. Nor does the Tribunal accept that he was threatened, attacked or his family and their home were attacked because of his opposition to illegal sand dredging and drug trafficking.
>
> [109] The Tribunal finds that the applicant did not have any prominence for reason of his support of CD and BNP or his concerns about illegal activities in the local area. He did not experience threats or other harm amounting to persecution for reasons of any such political opinion, actual or imputed or his membership of any associated particular social group and he did not leave Bangladesh fearing for his safety. This leads the Tribunal to infer that there is no reasonable possibility of him being persecuted in Bangladesh due to his political opinion or membership of any particular social group arising from these claims.
>
> [110] The significant changes to the political landscape since August 2024, discussed at the hearing, reinforce this conclusion. They mean that AL-affiliated people in his local area would not be able to act with impunity, and the authorities would be more likely to offer him assistance and protection if he experienced conflict with people engaged in criminal behaviour such as drug dealing and drug dealing [sic].
>
> [111] The Tribunal is therefore satisfied that if the applicant returns to Bangladesh, he will have access to state protection from AL supporters,

illegal sand dredges and drug traffickers in his village and that their affiliation with the AL will not prevent his access to such protection. In making this assessment, the Tribunal considers that the country information suggests that the influence of AL leaders (at both the national and local level) has been diminished by reason of the changes which have taken place since the change of government in August 2024.

14. The Tribunal then dealt with the Appellant's complementary protection claims starting at paragraph [115]. Having summarised Nauru's international obligations under the various conventions and statutory instruments, the Tribunal concluded as follows:

> [117] Based on the findings above about the applicant's circumstances and prospects, the Tribunal does not accept that there is a reasonable possibility or real risk he would be arbitrarily deprived of his life or be subject to cruel, inhuman (or inhumane) or degrading treatment or punishment.
>
> [118] Given all its earlier findings, the Tribunal is not satisfied that there is a reasonable possibility the applicant would suffer prohibited treatment on return to Bangladesh, and the Tribunal finds returning the applicant to Bangladesh would not breach Nauru's international obligations and therefore, he is not owed complementary protection.

15. Counsel for the Appellant embraced submissions that he had made in an earlier case of ***BL25*** *v Republic of Nauru* [2025] NRSC 74 concerning how the concept of state protection works generally. In essence there, the Appellant submitted 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.

16. 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.

17. The Appellant submitted in *BL25* that if one accepts that the complementary protection rules as to state protection align with those in 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. Those criteria are that there must exist an appropriate criminal law, and there must also be provision of a reasonably effective and impartial police force and justice system. The Appellant submitted that those are matters of fact to be determined in each case and could not simply be assumed.

18. The Appellant notes the Tribunal's conclusion at the end of paragraph [109] of the Tribunal Decision that there was no reasonable possibility of him being persecuted in

Bangladesh due to his political opinion or membership of any particular social group arising from the claims which he made. However, the Tribunal then went on at [110] and [111] to consider the "political landscape" which had evolved since August 2024. AL affiliated people in his local area would no longer be able to act with impunity, and the authorities would be more likely to offer the Appellant assistance and protection if he experienced conflict with people engaged in criminal behaviour, such as drug dealing or illegal sand dredging.

19. The Tribunal concluded then at [111] that it was satisfied that if the Appellant returned to Bangladesh, he would have access to state protection from AL supporters, illegal sand dredgers and drug traffickers in his village. In making that assessment, the Tribunal considered that the country information suggested that the influence of AL leaders at both the national and local level had been diminished by reason of the changes which had taken place in the government of Bangladesh since August 2024.

20. Counsel for the Appellant submitted that there were no findings that would be adequate to fulfil the requirements of establishing state protection as set out in *S152/2003*. Thus, the contest between the parties was whether the conclusions at [110] and [111] of the Tribunal Decision were nothing more than "mere surplusage".

21. The Appellant submits that to conclude that those paragraphs were "mere surplusage" would be an unlikely reading of a document of this kind, unless the Tribunal itself indicated that it was an "even if" type of analysis, or if the Tribunal said that it was performing the analysis out of an abundance of caution, or otherwise to respond to something that was being put to it. The Appellant contends that none of those considerations apply in this case.

22. The Appellant then went on to submit that although paragraphs [110] and [111] were written in the context of dismissing the Appellant's claim under the Refugees Convention, paragraphs [115] to [118] pick up and deploy the same reasoning for the purpose of dismissing the complementary protection claim. Counsel for the Appellant submitted a fair reading of paragraphs [108] to [110] makes it plain that the Tribunal does not rule out the possibility of conflict with people engaged in criminal behaviours, such as illegal sand dredging and drug dealing. Such criminal behaviour would not meet the requirements necessary for the grant of protection under the Refugees Convention. Nevertheless, what the Tribunal did at paragraphs [108] and [110] of the Tribunal Decision was to recognise that the Appellant's opposition to illegal activities meant that there were some risks of him engaging in conflict with those people (that is, people involved in illegal dredging or drug trafficking).

23. Counsel for the Appellant accepted that in relation to the Refugee Convention claim, the findings at [110] and [111] might properly be thought to be "surplus". That is because of the finding at [109] that there was no reasonable possibility of the Appellant being persecuted in Bangladesh due to his political opinion or membership of any particular social group. Having reached that conclusion, there was no reason, at least for the purposes of the Refugee's Convention claims, for the Tribunal then to "reinforce" this conclusion with its findings at [110] and [111].

24. However, the Appellant submits that the position in relation to the complementary protection claim is different. The complementary protection claim was not concluded by the finding at [109] that the Appellant had no reasonable possibility of being

persecuted in Bangladesh for a Convention reason. The Tribunal's approach to the complementary protection claim was "based on the findings above" and "given all its earlier findings". The Appellant submits that the Tribunal apparently accepted the possibility of the Appellant being at risk from those engaged in criminal behaviour. Accordingly, the claim for complementary protection was not resolved by the findings about risks for a Convention reason.

25. The Appellant contends that the Tribunal simply failed to apply the correct criteria laid out in *S152/2003* in assessing the question of state protection and says that, at least insofar as the complementary protection claim is concerned, the failure of the Tribunal to do so properly amounted to an error of law.

26. Mr Aleksov submitted in reply that the premise to start from is that when the Tribunal was mentioning state protection, it was doing so because it thought it needed to do so. Accordingly, one should not proceed, as the Republic would have it, that paragraphs [110] and [111] were wholly unnecessary. When the Tribunal mentioned state protection, it did so because it thought it needed to do so. It makes very little sense to do so if there was no risk of harm in the future. Accordingly, even to deal with issues about state protection is, in effect, an acceptance that there must be a risk of future harm at least in relation to those engaged in illegal sand dredging or drug trafficking.

The Republic's Submissions

27. The Republic submits that this ground of appeal misunderstands the Tribunal's reasons. Read properly and in context, the Tribunal's observations at [111] were not operative findings on the adequacy of internal protection in Bangladesh.

28. The Tribunal's conclusion that there was no reasonable possibility that the Appellant would suffer harm on return (see paragraph [109]), was, according to the Republic, dispositive, meaning it was then unnecessary for the Tribunal to consider internal protection. Neither the Tribunal's observation at [110] about the changes in the political landscape since August 2024, nor the Tribunal's reference at [111] to "state protection" indicated that the Tribunal purported to embark on an application of the legal test of internal protection laid out in *S152/2003*. Even if the Tribunal's comments could be characterised as involving a misstatement of the internal protection test - which the Republic denies was the case - they were strictly superfluous and immaterial to the outcome of the review.

29. In her oral submissions, Ms McInnes for the Republic submitted that what came after the first sentence of [110] was to do no more than reinforce the conclusion already drawn that there was no reasonable possibility of the Appellant being persecuted in Bangladesh due to his political opinion or membership of any social group. In relation to the complementary protection claim, the Republic submits that the Tribunal found that there was no reasonable possibility of harm being caused to the Appellant by the illegal sand dredgers or drug dealers. When asked where those findings were made, Ms McInnes for the Republic stated that such findings could not be found "explicitly" in the Tribunal reasons, but that, read fairly, paragraphs [108] and [109] do not accept that there is any residual risk of harm given the Appellant's low-level lack of prominence and lack of any harm experienced in the past. According to counsel for the Republic, there is "simply nothing in there to support an acceptance of harm in the future based on that profile".

30. The Republic therefore submits that there is an implicit finding that the Appellant is not at risk from illegal sand dredgers or drug traffickers and that is part of the conclusion that is referred to at paragraph [109]. That finding is then reinforced by reference to the conclusions set out otherwise in paragaphs [110] and [111].

31. In effect, the implicit nature of the findings advanced by the Republic was because of the combination of the express findings of the Appellant's lack of a prominent or leadership role in activities to thwart illegal sand dredging and drug traffickers in his local area and the Tribunal's lack of acceptance that he was threatened or his family attacked because of his opposition to illegal sand dredging and drug trafficking.

32. The Republic submits that there was no necessity for the statement in paragraph [111] about the Appellant's access to state protection whether in relation to the Appellant's refugee's convention claim or his claim for complementary protection.

Consideration

33. In his initial Statement of Claim dated 7 March 2024, the Appellant explained in some detail why he left Bangladesh and what he feared may happen in the future if he went back. He then proceeded to deal with the issue of state protection as follows:

> **State Protection**
>
> [35] The police support the AL they do not protect people who do not support the AL. The AL have been in power for a very long time so the police are completely controlled them. [sic]
>
> [36] The AL also control the army and government officials.

34. In a further statement to the Tribunal dated 29 January 2025, the Appellant dealt in some detail between paragraphs [10] and [28] with his anti-drug activities and his participation in anti-illegal sand dredging activities. It is not necessary for present purposes to outline the detail of that statement.

35. However, the submissions made to the Tribunal also dated 29 January 2025 dealt both with the issue of effective state protection and also a complementary protection claim. The submissions in respect of effective state protection were in the following terms:

> **Effective State Protection**
>
> [72] It is submitted the Bangladeshi authorities, including the police, are unable to prevent the feared harm. As is evidenced by Country Information, police in Bangladesh are poorly paid, poorly trained and poorly equipped, and susceptible to corruption and bribery, as well as occasionally being involved in human rights abuses. The UK Home Office (2023) also refers to extensive shortcomings of the police, with widespread corruption and human rights abuses.
>
> [73] According to the Applicant, Bangladeshi police were indifferent to the activities of drug dealers, and it is plausible that given the level of police corruption in Bangladesh, and the wealth of the drug dealers,

they act to protect the drug dealers and will deny protection to the Applicant for this reason.

[74] It is further submitted that Country Information suggests that sand dredging continues with interruption [*recte*, without] by Bangladeshi authorities, and that police are unable to enforce laws in relation to this activity. It is also plausible that given the level of police corruption referred to above and the relative wealth of the sand dredging operators, the police will act in a way to protect the illegal operators.

[75] While we acknowledge there are recent political changes in Bangladesh, there is no Country Information currently available to suggest these widespread practises have ceased and an assessment needs to be made on currently available information, as well as providing consideration as to what is reasonably possible in the foreseeable future.

36. The claims to complementary protection start at paragraph [82] of the same submissions. The relevant provisions of the Act and Convention/Covenant are then set out by the Appellant's representative. At [85], the representative said:

[85] It is submitted that the harmful action of political opponents, as well as drug dealers and/or sand dredging operators, may be in breach of these conventions.

37. The summary of the integers of the Appellant's claims to fear harm for a Convention reason is set out at paragraph [17] of the Appellant's submissions in these terms:

Reasons for Persecution

[17] We submit the following are the essential and significant reasons for the applicant's claimed fear of persecution:

i. his actual and/or imputed political opinion, as a supporter of the Bangladesh Nationalist Party (BNP) and the student wing of the BNP, Chhatra Dal (**Integer A**);

ii. his actual and/or imputed political opinion that drug dealing within the applicant's locality causes damage to the community and that drug dealers engage in harmful actions which affect families (**Integer B**);

iii. his actual and/or imputed political opinion of being opposed to the "*illegal and harmful sand removal which has been taking place in my local area*" (**Integer C**);

iv. his actual and/or imputed membership of a particular social group, anti-drug campaigners in Bangladesh (**Integer D**); and

v. his actual and/or imputed membership of a particular social group, Environmental Campaigners in Bangladesh (**Integer E**).

38. Thus, on a fair reading of the Appellant's submissions to the Tribunal, the Appellant:

(a) claimed to fear persecution for a Convention reason for each of the 5 reasons as set out in the preceding paragraph;

(b) claimed that the Bangladesh authorities were unable to prevent his feared harm in respect of *any* of the five integers of his Convention claim, and thus there was no effective state protection available to him in Bangladesh; and

(c) claimed that the harmful actions of political opponents as well as illegal sand dredgers and drug dealers give rise to a claim for complementary protection under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment* (**CAT**), and the *International Covenant on Civil and Political Rights* (**ICCPR**).

39. It is against this background of claims that the Tribunal came to consider the matters that it did between paragraphs [108] and [118] of the Tribunal Decision.

40. The Tribunal first accepted at [108] that the Appellant was a low-level supporter of the CD and the BNP and was opposed to illegal sand dredging and selling of illicit drugs.

41. However, also at [108], the Tribunal rejected the contention that the Appellant played a prominent of leadership role in either the CD or in activities to thwart illegal sand dredging and drug trafficking. It also rejected the contention that the Appellant was attacked or threatened because of his opposition to illegal sand dredging and drug trafficking. That conclusion was repeated at paragraph [109].

42. At the last sentence of [109], the Tribunal inferred that there was no reasonable possibility of the Appellant being persecuted "due to his political opinion, *or membership of any particular social group arising from these claims*". In the context of the discussion of the claims in paragraphs [108] and [109], and having regard to the way in which the Appellant framed his claims in particular at paragraph [17] of his submissions to the Tribunal, it is clear enough that this was a reference to the Tribunal finding that there was no reasonable possibility of him being persecuted due to his membership of the social groups identified as integers D and E of the summary of his claims.

43. In other words, because the Appellant did not have any prominence as a result of his concerns about illegal activities, and because he had not in the past been threatened or attacked in relation to those things, then even if he was a member of the relevant social groups (being the identified groups of anti-drug campaigners and environmental campaigners), there was no reasonable possibility of him being persecuted.

44. The Appellant contends that a fair reading of the Tribunal Decision makes it plain that the Tribunal did not rule out the possibility of conflict with people engaged in criminal sand dredging and drug dealing. It is true that the findings do not rule out the possibility of future conflict. But it does rule out the possibility of conflict with those persons amounting to persecution. Paragraphs [108] and [109] together demonstrates that the Tribunal found that there was *no* reasonable possibility of him being

persecuted due to him being an environmental campaigner or an anti-drug campaigner. It also made that finding in respect of his support of the CD and the BNP. For the same reason, the Tribunal found that there was no reasonable possibility or real risk that the Appellant would be deprived of his life or be subject to cruel, inhuman or degrading treatment or punishment. In other words, the Tribunal rejected the Appellant's contention that if he was returned to Bangladesh, he would face the real risk of significant harm.

45. Having found that there was no reasonable possibility of the Appellant being persecuted (or subject to treatment that might lead to a successful complementary claim because return would otherwise breach Nauru's international obligations), it was strictly unnecessary for the Tribunal to then bolster that conclusion by the further observations and findings it made in paragraphs [110] and [111]. Nevertheless, the Tribunal referred to the significant changes since August 2024 (i.e. the fall of the Hasina government) which had the effect that AL affiliated people would not be able to act with impunity and the Appellant would be more likely to receive assistance if he experienced conflict with those engaged in criminal behaviour. It followed that the Appellant would have access to state protection from AL supporters, illegal sand dredgers and drug traffickers.

46. The Tribunal's efforts to reinforce its prior conclusions by reference to the availability of state protection, without any detailed analysis of that question consistent with the approach in *S152/2003,* is perhaps unfortunate. It has led to this appeal being advanced in respect of a finding that was itself unnecessary and which was, to use the term employed by the parties before me, "mere surplusage".

47. It was equally unnecessary in relation to the Refugee Convention claims made as it was in relation to the claim for complementary protection. The finding that there was no reasonable possibility of persecution by reason of his activities in opposition to sand mining and to drug trafficking were consistent with the findings at [117] that there was no reasonable possibility or real risk that the Appellant would be arbitrarily deprived of his life or be subject to cruel, inhuman (or inhumane) or degrading treatment or punishment.

48. It is possible that the Tribunal felt compelled to mention the issue of state protection because the Appellant's representative had raised it in his submissions. Perhaps it was simply a matter of reinforcing a prior conclusion. Regardless of the reason, the finding that there was no reasonable risk of persecution was dispositive of the Refugees Convention claim. The finding that there was otherwise no reasonable possibility or real risk of other treatment which would trigger Nauru's complementary protection obligations was similarly dispositive in relation to the complementary protection claim. Reluctant as I am to conclude that two paragraphs in a decision of a statutory body such as the Tribunal were mere surplusage and of no operative effect, it seems to me that such a conclusion is compelled by fairly reading the totality of the Tribunal Decision in context.

49. The Tribunal's findings about state protection at paragraphs [110] and [111] were therefore entirely irrelevant to the outcome of the application to the Tribunal, whether as to the Refugees Convention claim or the complementary protection claim. The factual findings made by the Tribunal necessarily and inevitably denied a lack of state protection as a basis for a claim for protection, whether under the Refugees

Convention or otherwise: see *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at 354 [95] per McHugh, Gummow and Hayne JJ

50. No error or law is demonstrated and ground 1 of the Amended Notice of Appeal fails.

GROUND 2

51. The second ground of the amended notice of appeal is that the Tribunal failed to adequately consider the Appellant's submissions on state protection. However, for the reasons I have explained above, the Tribunal was not obliged to address the submissions on state protection in detail given the factual findings that had been made that there was no reasonable possibility of future persecution or serious harm.

52. Accordingly, to the extent that the question of state protection was addressed at all by the Tribunal, that was unnecessary and of no operative effect to the decision. Ground 2 must therefore also fail. No material error of law is made out.

CONCLUSION

53. For the reasons that I have sent out, the Appellant has failed in both of his grounds of appeal. The appeal is therefore dismissed.

54. Pursuant to section 44(1) of the Act, I make an order affirming the Tribunal decision. I make no order as to cost.

JUSTICE MATTHEW BRADY

24 February 2026