



**IN THE NAURU COURT OF APPEAL
CIVIL APPELLATE JURISDICTION
AT YAREN**

Civil Appeal Number 07 of 2025
Supreme Court Civil Case Number
02 of 2025

BETWEEN: AB25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
Palmer JA
Coates JA

Date of Hearing: 14 May 2026
Date of Judgment: 28 May 2026

Case may be cited as: AB25 v The Republic

CATCHWORDS: Appeal – Inferences and facts - No facts to base inferences upon alleged
- Findings made by Tribunal – Tribunal not bound by strict legal procedure – Tribunal set out
facts it relied on – Tribunal conclusion based on those facts – No error apparent

APPEARANCES:

Counsel for the appellant: A Aleksov (instructed by International Crossover Pty Ltd)
Counsel for the respondent: R O'Shannessy (instructed by the Republic of Nauru)

JUDGMENT

1. This appeal by an asylum seeker challenges the Refugee Status Review Tribunal (the Tribunal) on its findings relied on to dismiss the application for the appellant's refugee status claim.
2. The basis of the claim is that the findings are not supported by evidence, that is, no facts are apparent to support the findings.
3. It was put that such was a failure to comply with s34(4)(d) of the *Refugee Convention Act 2012* (the Act), which, read with the sections as a whole, states of the hearing to be conducted:

The Tribunal shall give the applicant for review and ... a written statement that:

- (a) sets out the decision of the Tribunal on the review;
 - (b) sets out the reasons for the decision;
 - (c) sets out the findings on any material questions of fact; and
 - (d) refers to the evidence or other material on which the findings of fact were based.
4. The substance of counsel's submission was that the section, particularly s34(4)(d), does not allow for findings which are not based on evidence.
 5. In interpreting the subsection on its face, it requires a reference to the evidence considered.
 6. Of course, the provision has to be read with the Act as a whole for understanding and the Act as a whole allows the Tribunal to determine the status of an asylum seeker on an application of those rules specific to this Tribunal as an administrative body.
 7. However, as a matter of statutory interpretation, discovering the full meaning of the words, particularly when applying those rules of interpretation which direct the courts to discover the intent of legislation, will assist in determining the correctness of the case pursued, summed up in *Project Sky Blue V Australian Broadcasting Authority*¹ where the High Court stated:

“The duty of the court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning”.

¹ (1998) 194 CLR 355 at [78]

8. Considering those words, consequential to how the Tribunal applies s34(4)(d) is the objective stated in s22 of the Act, that the Tribunal is not bound by technicalities, legal forms or rules of evidence but is to act according to the principles of natural justice and the “substantial merits of the case”. This section demarcates the Tribunal from a court, particularly the instruction that the Tribunal is to consider the substantial merits of the case, that direction being applied to both sides of a case.
9. Applying the search for meaning stated in *Project Sky Blue*, these two sections raise the issue of inferences from evidence being a proper line of consideration when the Tribunal considers an application, when considering the context and construction of the Act, by applying the plain meaning of the words.
10. We will start from this proposition and recognize that as a matter of law and fact inferences may be used in order to determine a fact. Such is a statement of general legal principle. The law recognizes the drawing of inferences in legislation (such as in the Evidence Act 1977 of Queensland and in the New South Wales Uniform Civil Procedure Rules 2005) and in the authoritative judgments. To understand the appeal run here as to what inferences are and achieve, we turn to the cases for explanation.
11. Inferences to determine facts have a long history at law, recognising that the drawing of inferences are a natural form of thought process.
12. In *Caswell v Powell Duffryn Associated Collieries Ltd*² inferences were considered and the result was that here can be no inference unless there are objective facts from which to infer the other material facts which it is sought to established. Lord Wright stated:

The precise manner in which the accident occurred cannot be ascertained as the unfortunate young man was alone when he was killed. The court therefore is left to inference or circumstantial evidence. Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.³
13. The test is whether from primary facts it is reasonable to draw the inference.⁴
14. For an inference to be reasonable, it must rest on something more than mere conjecture or speculation⁵.

² [1940] AC 152

³ [1940] AC 152 at [157]-[158].

⁴ See *Lane v R* [2013] NSWCCA 317 at [109]–[110]; *Jones v Great Western Railway Co* (1930) 47 TLR 39 at 45.

⁵ See *Gwilliam v R* [2019] NSWCCA 5 at [101], [104]; *Lane v R* at [107].

15. There is a wealth of explanation in the criminal cases, and while those cases rely on the beyond reasonable doubt test as opposed to the balance of probability test of civil cases for the final decision, the principles to be considered are the same.

16. The recent case in *The Queen v Baden-Clay*⁶, per FRENCH CJ, KIEFEL, BELL, KEANE AND GORDON JJ, repeated the principles:

[46] The prosecution case against the respondent was circumstantial. The principles concerning cases that turn upon circumstantial evidence are well settled [1975] HCA 42 In *Barca v The Queen* [1975] HCA 42, Gibbs, Stephen and Mason JJ said:

"When the case against an accused person rests substantially upon circumstantial evidence the jury cannot return a verdict of guilty unless the circumstances are 'such as to be inconsistent with any reasonable hypothesis other than the guilt of the accused': *Peacock v The King* [1911] HCA 66. To enable a jury to be satisfied beyond reasonable doubt of the guilt of the accused it is necessary not only that his guilt should be a rational inference but that it should be 'the only rational inference that the circumstances would enable them to draw': *Plomp v The Queen* [1966] HCA 44; see also *Thomas v The Queen* [1960] HCA 2.

[47] For an inference to be reasonable, it 'must rest upon something more than *mere conjecture*. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference of guilt is the only inference open to reasonable men upon a consideration of all the facts in evidence' [1911] HCA 2 (emphasis added). Further, "in considering a circumstantial case, *all of the circumstances* established by the evidence are to be considered and weighed in deciding whether there is an inference consistent with innocence reasonably open on the evidence"[2007]HCA 13 (emphasis added). The evidence is not to be looked at in a piecemeal fashion, at trial or on appeal [2007] HCA 13."

17. A shorthand explanation then is that from established facts independent of the fact-in-issue, taken together, the fact-in-issue can be determined by inferences drawn from other known facts. Drawing inferences is an important function of fact finding.

18. As with a jury being given directions on how to use evidence, or a judge alone giving self-directions as to tests applied to evidence, a Tribunal is in a different position as it is an administrative decision-maker.

19. Because s22 releases the Tribunal from being bound by technicalities, legal forms and rules of evidence, when applying the rules of natural justice a Tribunal, rather than undertaking a strict form of self-direction as to the issues a judge sitting alone would do, a general awareness of these issues pertaining to inferential evidence would suffice.

20. After an appreciation of what inferential evidence is and how it is used as stated in the authorities, the Tribunal must be aware of and apply the directions stated in s34(4) of the Act, in that it sets out the decision on review, the reasons for the decision, and the material considered to come to its findings.

⁶ (2016) 258 CLR 308 at [47]

21. In this case, matters of fact considered by the Tribunal are issues we cannot interfere with on judicial review, unless such falls into that realm of being so unreasonable no reasonable person could make the decision, or the decision was senseless.
22. Having set the basis for this decision, we can now turn to the case put forward, but before going to the details, we should say that the respondent Republic argued that the appeal submissions were not set out as written grounds of the appeal, a point challenged by the appellant. Given that counsel then addressed the submissions of the appellant, we think it is proper to deal with the appeal as set out in submissions by counsel for the appellant.
23. Some personal background of the appellant relevant to this appeal is required.
24. He is a national of the country of Bangladesh. He was born 19 July 1992. He arrived in Australia illegally 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 and he exercised the right to seek refugee status when in Nauru.
25. The claim is based upon the appellant's story that he is involved with the Bangladesh Nationalist Party (the BNP) and as such he was targeted for violence by people associated with the Awami League (AL) party. He has been actively involved in politics from around 2018 and in that year in the city of Dhaka when working at a clothing store, people came into the shop, grabbed him and beat him. The Tribunal heard and recorded that he had adverse experiences in his home village from members of AL and had received a lot of threats including threats to kill. He claimed an incident occurred in December 2023 when AL supporters, with police, attacked a procession that he was attending. He said he was hurt in that procession. He said in January 2024 people came looking for him and he narrowly escaped to his sister's home. He said AL men had been to his home looking for him on many occasions, intimidating his father and his wife. He paid a people smuggler in January 2024 to leave Bangladesh.
26. So, the appellant is giving his evidence of what he says is the basis for his well-founded fear and the threats he faces which state authorities cannot prevent.
27. His counsel submitted that the Tribunal accepted he was a BNP supporter, a person who participated in large political meetings, that he had been detained at a gathering, that he had been injured and was likely to return to his home area. He asked the rhetorical question, where was the evidence addressed to discuss these issues to allow the Tribunal to find that the appellant did not meet the test of being a refugee? Counsel went further and pointed to the same question being applied to the appellant's claims that there had been no real change in national political developments in Bangladesh and that local political mastaans (thugs) were operating.
28. He referred to the case *AJ24 v Republic of Nauru*⁷, a decision of this court, where it was stated:

A proper process of reasoning may, in appropriate circumstances, involve the drawing of inferences from known facts. However, the Tribunal cannot simply draw inferences

⁷ Refugee Appeal No 3 of 2025, 5 September 2025.

divorced from the evidence before it. It cannot proceed simply on the basis of speculation or conjecture: *WET040 v Republic of Nauru* [2018] HCA 60; (2018) 93 ALJR 102 at [29]-[31]; nor can it engage “in conjectural analysis or mere guesswork”: *WET054 v Republic of Nauru* [2018] NRSC 21 at [35] (an appeal from this judgment was dismissed [2023] NRCA 8).

That case is in line with the cases referred to at the beginning of this decision.

29. At paragraph 86 of the Tribunal decision it is apparent that it accepted that the appellant was a supporter of BNP. It also accepted that he participated in some large meetings and gatherings in Dhaka between about 2016 and 2018, in Chandpur during 2023, that he had been harassed at a rally in Dhaka in 2018 and that he received an injury to his hand during a scuffle at a BNP meeting in December 2023.
30. The Tribunal did not accept that he gained any political or other profile, notoriety we suppose could be an apt description, as a result of attendances at the meetings, nor that AL supporting police targeted him personally, but that he was simply caught up in the general fracas and the conclusion was that his political interests were low key and situational.
31. The Tribunal's decision also found that he was likely to return to his home area if he returned to Bangladesh, and there was (paragraph 100) “only a slim chance that the applicant will, on his own initiative or at the suggestion of someone else, engage in any form of political activity if he returns to Bangladesh”, and that (at paragraph 101) “there is no reasonable possibility of the applicant being seriously harmed for reason of his political opinion, if he were to attend such gatherings or otherwise associate with BNP supporters”... (at paragraph 102) “There is also no reasonable possibility of other AL supporters, including family or community members, or former officials, inflicting serious harm on the applicant for reason of his support of the BNP, or his opposition to the former AL government”.
32. These findings were made against the recognised background of violence in Bangladesh which saw the fall of the AL government and a fluid political atmosphere across Bangladesh, taken from country information.
33. It was submitted that the evidence for these findings must exist, or be seen in inferences, and such were missing, thereby in breach of the requirements of s34(4)(d).
34. Counsel for the respondent Republic submitted that what happened in the past are relevant facts to take into account, the opposite of what counsel for the appellant stated in that the past was the past and it was the future which was to be considered.
35. In reviewing the appellant’s past, counsel’s case was that those facts as found, which were not challenged, indicated that he had what may be called a passing interest or a low-level interest in politics, even though he may suffer injury if he took part in processions that may be attacked by opposition party members.
36. He said although the country information addressed at paragraph 101 said that violent clashes were not uncommon, it was the appellant’s low level of interest and profile, and the collapse of the AL government which used police to target opposition members, that

caused the finding that there was no reasonable possibility of him being seriously harmed by reason of his political opinion.

37. In fact we found from the evidence as a whole that the Tribunal was entitled to draw inferences – that the appellant was a low-level player in politics, that his previous injury was from merely being caught in a fracas, that the AL was no longer in government and no longer controlled the police, together with country information not challenged, to arrive at the conclusions of fact which it did.
38. Each such inference was a fact standing alone which may not see the conclusion reached that he was not under real threat, but together they could be used to make the determination the Tribunal did. The Tribunal assessed the appellant's evidence, and despite the claim that there was no evidence to make the conclusions, there was such evidence.
39. The Tribunal does not have to have evidence of each fact proven on the beyond reasonable doubt test – this is an administrative decision, being made by administrators assessing what the appellant is stating against the background of the country information available, and coming to a decision by way of inference leading to facts and facts which are apparent.
40. It appears to us that the complaint is that the appellant will not reasonably face danger – and there is no evidence of that.
41. That he has no reasonable chance of being injured is not mere conjecture, it is based on his low level of participation in politics. His background is important for this reason. The Tribunal found as a fact, after not accepting parts of his evidence, that his political involvement was low level, and not such that would cause him to individually stand out to ill-willed members of AL so that he would be specifically targeted. So, the Tribunal found a fact, and by inference concluded he would not stand out. The fact, again arrived at by inference, that he was a low-level participant, came from his evidence.
42. If he chose to take part in processions again where there is the possibility of violence, any violence he may suffer would be incidental to him being in such a procession, not because he would be specifically targeted. However, while the country information points to a fluid situation, it does not point to certain violence, or a reasonable chance of certain violence for the appellant if he returned home. These are facts and inferences taken from facts, they are not mere conjecture and are not being addressed piecemeal, but addressed with the whole circumstances facing the appellant being addressed.
43. To insist on all inferences used to come to a conclusion to be stated in full, which is what is being put here, would be to hinder enquiry into claimants unnecessarily and impose on them proceedings more judicial than administrative.
44. Our conclusion then is that the Tribunal set out its decision, set out reasons for the decision, set out findings, and referred to the evidence and other material, using fact and facts drawn from inferences, particularly in relation to the appellant's history and country information, in coming to its conclusion. There is no single way of adequately setting out facts relied on, or facts taken into account to draw inferences from. Some decision-makers will set such out, literally, numerically, others will refer to such in more broader

terms, but the pathway to the conclusion has to be apparent. In this matter, given the release from strict application of legal form, we conclude that the pathway the Tribunal stated has properly adhered to s.34 of the Act in reaching its conclusions.

45. We dismiss the appeal.

ORDER

The appeal is dismissed.

Dated this 28 day of May 2026



Khan P
President of the Nauru Court of Appeal



Palmer JA
Justice of the Nauru Court of Appeal



Coates JA
Justice of the Nauru Court of Appeal

