



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

Civil Appeal Number 6 of 2025
Supreme Court Case No 8 of 2025

BETWEEN: AH25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
Palmer JA
Coates JA

Date of Hearing: 12 May 2026
Date of Judgment: 10 June 2026

Case may be cited as: AH25 v The Republic

CATCHWORDS: APPELATE JURISDICTION – Asylum seeker – Claim of denial of procedural fairness – Country information from British Home Office report at hearing – Country information from another source in decision – Country information does not change – Whether all sources need to be supplied – No rule that all sources of information to be supplied – Substance of information to be supplied

Claim of procedural unfairness – consideration of reading, identifying, understanding and evaluating representations not undertaken – Country information – Analysis of structure of Tribunal decision – logical sequence for considerations.

APPEARANCES:

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

JUDGMENT

1. **BY THE COURT:** In this appeal is the allegation that procedural unfairness has occurred in relation to the consideration of the appellant's claim for asylum.
2. The background to the case is that the appellant, born on 12 December 1994, comes from Bangladesh, he arrived illegally in Australia on 3 May 2024 and was transferred to the Republic of Nauru on 1 June 2024 under an agreement between the two countries in relation to asylum seekers.
3. His claim for asylum is based on a well-founded fear of persecution and authorities being unable to protect him in Bangladesh because of his political connections.
4. His salient claims are that:
 - a) He was involved in the student wing of the Bangladesh Nationalist Party (BNP) when at school and at the encouragement of his uncle;
 - b) He actively attended party programs, meetings and rallies and had been beaten up by members of the then ruling Awami League (AL) student wing;
 - c) His family supported the BNP and supporters would congregate at the tea shop owned by his father where the appellant spent time and worked;
 - d) The shop had been attacked seven or eight times by AL supporters and his family home attacked two or three times;
 - e) In 2022 he relocated to the city of Dhaka where he lived and worked with his cousin but AL supporters chased him to where he was living, causing him to move residence;
 - f) AL supporters found his place of employment and told his employer not to employ him any longer and he decided to flee Bangladesh and his parents sold some land to enable him to do so.
5. His position was that while he did not hold a position of influence or power in the BNP, that he was an adamant supporter of the party raised his profile with AL.
6. The Tribunal decision delivered 9 February 2025 did not find he discharged the onus of proof required to meet the standard to be applied for refugee status and complementary protection. The findings were upheld on appeal to the Supreme Court in the judgment delivered 4 July 2025.
7. The appellant seeks that the Supreme Court decision be set aside, the Tribunal decision quashed and the matter given a new hearing by a differently constituted Tribunal.
8. The respondent Republic opposes the appeal and seeks that it be dismissed.

THE APPEAL

9. The appeal is by way of rehearing so that this court forms its own view of whether the judgment in the court below was correct on the ground of appeal being considered.
10. The substance of the appeal is that the Tribunal denied procedural fairness to the appellant by not considering three sets of submissions dated 24 June 2024, August 2024 and 26 September 2024, although the real argument went to consideration of the September 2024 submissions.
11. In summary this court was told that a procedural unfairness had occurred because the Tribunal did not grapple with, that is consider in a substantial way the country information supplied by the appellant, that is reports he relied on about the conditions in Bangladesh upon which he measured his risk.
12. Before going to the particulars of the time, the starting point is to state the nature of the procedural unfairness being alleged, when section 34(4) of the Refugee Convention Act 2012 (the Act) creates a duty to consider the case being put, using the words:

Decision of Tribunal on application for merits review

- (1) The Tribunal may, for the purposes of a merits review of a determination or decision, exercise all the powers and discretions of the person who made the determination or decision.
- ...
- (4) The Tribunal shall give the applicant for review and the Secretary, 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.
29. We agree that read into this provision is the requirement for a full understanding of the submissions of both parties and an analysis of the claims and facts in contention and reference to the evidence, either directly or by inference. However, there are many facets involved in the determination.
30. These were addressed by the High Court of Australia's decision in plaintiff *MI/2021 v Minister for Home Affairs*¹, where the majority stated:

[24] ... there can be no doubt that a decisionmaker must read, identify, understand and evaluate the representations. Adopting and adapting what Kiefel J (as her Honour

¹ (2022)275 CLR 582; [2022] HCA 17.

then was) said in *Tickner v Chapman*², 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.

- [25] It is well established that the requisite level of engagement by the decision maker with representations 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 to 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.³

31. Further the judgment also stated:

- [27] None of the preceding analysis detracts from, or is 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”.⁴

32. The case of the appellant that this had not occurred was built around these statements as applied either to or with the s34 requirements in the Act.

PARTICULARS OF THE CLAIMS

33. As indicated there were a number of written submissions given by the appellant to the Tribunal, three of them stated above and a fourth submission made in December 2024.
34. The Tribunal referred to the June, August and September submissions as generic submissions, an issue taken up by counsel for the appellant in the form of words that he did not know what that exactly meant, a matter we will address.
35. While the three submissions were made it was really the September submission which was before us for close examination as to whether the Tribunal engaged with it so that it is understood that it read, identified, understood and evaluated the representations as required by the *MI* case.

² (1995) 57 FCR 451 at 495.

³ (2022) 275 CLR 582; [2022] HCA 17 at [24]-[25]

⁴ (2022) 275 CLR 582; [2022] HCA 17 at [27]

36. We were taken to the importance of the submission as laid out from pages 355 to 360 of the appeal book, and while it is not our intention to set out everything stated there, it is clear that the submission deals with country information and the background of violent civil unrest in Bangladesh, which saw the departure of the Prime Minister Sheikh Hasina Wazard, and an interim government put in place.
37. The headings in the submission are instructive as to the information conveyed by the appellant to the Tribunal to prove his case - which centered on claims that authorities in Bangladesh could not protect him and so he ought to be granted refugee status.
38. The headings are:

Submission on the availability of state protection in Bangladesh in the light of recent changes in Bangladesh;

Temporary changes do not guarantee long term stability;

Impact on the lives of average citizens and local governance;

The foreseeable future remains uncertain;

The need for fundamental change, and

The Conclusion.

39. Briefly, the submission states that:

While there were some recent suggestions that state protection for Bangladeshi asylum seekers was now available due to the interim government being in place it was premature to declare that the changes were so sufficient that asylum seekers could return safely;

Cyclical patterns of unrest occurred in Bangladesh and that international law establishes that many changes to allow the return of asylum seekers must be substantial, effective and durable with no chance of persecution reoccurring (and here the submission referred to the guidelines on international protection, being cessation of refugee status under article 1C(5) and (6) of the 1951 Convention Relating to the Status of Refugees);

That it was too early to predict how recent developments in Bangladesh would impact the lives of the average person and that rivalry between the BNP and the AL was decades old, deeply entrenched and driven by historical events and that corruption remained deeply ingrained in Bangladesh affecting all levels of government and law enforcement;

The unpredictable nature of global politics and economics further complicated the situation in Bangladesh with the impact of climate change disproportionately affecting Bangladesh due to its geographic location and the potential to cause future displacement, food insecurity, and economic instability, along with natural disasters such as floods;

The cessation of refugee status to be justified meant that changes in the country of origin must be fundamental, durable and wide reaching and the political future of the country and its the stability would depend on a range of factors associated with politics and

particularly the AL and who will dominate it, the role of the army and the future government's handling of social and economic challenges, and

The challenges were entrenched being political instability, corruption, ineffective judicial processes, human rights abuses by state actors, and discrimination against minorities and the availability of protection of citizens was severely compromised.

40. We have set these claims out in reasonable detail to give understanding to the Tribunal and Supreme Court decisions.

41. In support of the appellant's case, we were taken to the Tribunal decision and paragraph 44 which stated:

After the break, the representative said his preliminary view was that any previous generic claims made in previous general submissions were not relevant to this case, however he would look at them in more detail. He referred to the recent submission dated 8 December 2024.

42. That paragraph refers in a footnote, footnote 7, to the only reference to the September submission from the appellant in the Tribunal decision.

43. Counsel for the appellant said while there is reference to the September submission, the better view is that it had not been considered in terms of the *M1* decision of the High Court where it could be seen that it was read, issues identified, understood and evaluated.

44. He used the term that it was not considered "with sufficient effort" in relation to the intellectual exercise to be undertaken by the Tribunal, and that it was a claim by the appellant and the claim was that his political views created the circumstances relevant to his refugee status application.

45. We need here to consider an exchange during the Tribunal hearing. The exchange went thus:

Ms Boddison (member): ... I just want to raise something with you, Franc. (sic) The three generic submissions that raised a number of claims, are those claims relevant to this matter? The fear of people smuggling the failed asylum seeker claims?

Mr Del Monarco: It's true.

Ms Boddison: Or there's also trafficking, someone who's a victim of trafficking.

Mr Del Monarco: (indistinct)

Ms Boddison: (indistinct) Sorry. Can I have it – could you ---

Mr Del Monarco: Well, I will look at them in more detail, I'm sure I've looked at them before, with regards to this particular (indistinct) and I can confirm that the previous submission just in the last few days go has been the same.

That reference to the previous submission of the last few days we determine to be a fourth submission made by the appellant in December 2024, just before the hearing on 13 December 2024.

46. He referred to page 362 of the appeal book, correspondence between Ms Bodison as principal member of the Tribunal and lawyers for the appellant.
47. On 24 September 2024 Ms Bodison sent e-mail correspondence to the appellant's lawyers raising the issue of submissions (June and August) being general submissions and not particularized to any particular applicant. She sought further advice as to whether there were particular applicants being referred to.
48. In response, next day, 25 September 2024, the lawyers stated that general submissions were provided due to a large caseload and it was not practical to respond to every applicant with individual submissions unless there were very specific issues raised at their interviews. It was the intention to provide specific submissions for individuals at a later date. Apparent in that reply was that information to hand indicated that as at August 2024 the situation in Bangladesh was changing rapidly and occurring just prior to the first Tribunal hearing session.
49. This is where the term generic information arose and so it can be understood why the Tribunal framed its questions within terms of general information to hand.
50. This is what is now challenged, relying on the *MI* guidelines, and the claim that there was no engagement with the appellant's country information evidence.
51. Counsel for the Republic said the level of importance put on the September report was misplaced.
52. Referring to page 172 of the appeal book which attached the appellant's submission of December 2024, he said the appellant reiterated all he claims he stated previously about his fears and lack of protection, his support of the BNP, that supports met in the tea ship and his fear of persecution.
53. All submissions were read in conjunction with all other evidence, information and submissions and that the appellant relied on.
54. He emphasized the obvious, that the December submission was produced three months after the September submission for the hearing on 13 December 2024.
55. The three previous submissions of June, August and September were labeled generic because that is what they were and that was confirmed by the correspondence from the appellant's lawyers who prepared general information for a number of Bangladesh asylum seekers whose cases were being prepared for hearing. He said generic was not used in a pejorative sense, and was general information, a submission we agree with, given that the appellant's counsel said he did not know why it was called generic.
56. That the Tribunal referred by way of footnote to the September submission on country information, indicates that it was aware of the submission. The exchange between Ms Bodison and Mr del Marco, as short as it was, and taking into account the indistinct parts

of the recording, indicates that the Tribunal was turning its mind at that time to country information and sought anything further on country information from the appellant.

57. The December submission was considered, with much the same information as previously supplied, and also addressed the question of whether the appellant could relocate and went into reasons which had to be considered.
58. Under a heading Changes in the Political Situation in Bangladesh, at paragraph 37 of the Tribunal decision, this was stated:

The Tribunal discussed with the applicant country information including a November 2024 International Crisis Group report which suggested it was a good time for the BNP and it may be a good time to campaign for them. He stated the BNP had not formed government and it remained unpredictable as to whether they would form government. He stated the Awami League people were in hiding but they were still harming people including the BNP. He also stated the Awami League was attacking indirectly and when asked what he meant, he said the Awami League supporters had come out in Ganabhaban where Hassina had lived (her residence), however police had stopped them and they were trying to create issues because they still wanted power. The Tribunal put to him they had been stopped because they no longer had police backing. He stated the BNP was not in a good position either given the police had stopped them from holding big programs. The Tribunal put to him that most commentators thought if elections were held soon, the BNP would win. He replied there was no election date, no one was safe and there was no guarantee things would be normalized.

59. There is also reference to the Tribunal discussing with the applicant whether he had previously sought police protection to which he said it was unavailable and then he said he did not want to stay and his uncle said no-one was safe and could not guarantee his safety.
60. The Tribunal had before it country information, and we note that paragraph 37 stated above refers to November 2024 information from an International Crises Group report, which is later than the submissions provided in September by the appellant, and then reproduced country information over three pages from paragraph 50 in the judgment.
61. The Tribunal country information came from a number of sources, and indicated it was aware that the replaced regime had persecuted opponents, there had been violence including deaths, that reforming institutions was a major issue, police officers had abandoned their posts in fear of retribution, the new government had an opportunity to build in political reform and possible troubles caused by displaced political activists.
62. The Tribunal also had recourse to media reports from Aljazeera that members of the student wing of the Awami League were forced to flee to India because their organisation was banned.
63. Again, the generic information supplied by the appellant covered some of these issues, there is a reference by way of footnote to his submissions and what must be achieved is an articulation of substantial error so that his case may be made out.

64. The court below identified the detailed consideration of the information given by the Tribunal in its reasons.
65. His Honour examined the “structure, tone and content of the reasons”⁵. He identified that the Tribunal decision did not expressly refer to the generic reports other than in the footnote as stated above.
66. From paragraph 65 of the judgment, his Honour said:
- [65] The structure of the Tribunal reasons also explains why there was no express reference to the generic submissions beyond footnote 7. Starting at [53] the Tribunal addressed what it termed “the substantive issue” of whether the appellant had a well-founded fear of being persecuted for a convention reason. The Tribunal considered in detail the appellant’s claims and in particular the contentions by him that he had previously suffered harm at the hands of ALS supporters.
- [66] The Tribunal did not accept that the appellant was a BNP member: [at 63]. It did not accept that he was physically attacked at his father's shop: at [63]. It found that the appellant was primarily at his father's shop to assist his father and his presence would have been only incidental to informal gathering and at most he would have been on the periphery: at [64]. The Tribunal did not accept that he was physically attacked in Dhaka: at [65]. Nor did it accept that he had to avoid people from his local area or that the AL was able to track his movements in Dhaka: at [65].
67. Later at paragraph 72, his Honour said:
- Having regard to the structure, tone and content of the Tribunal's reasons, I am not prepared to infer that the Tribunal did not engage with the generic submissions. Given the findings that the appellant had not been harmed since he was at school; that he was not a member of the BNP; and that he had not fled his village because of political persecution, there was no need for the Tribunal reasons to deal with the detail of the contents of the generic submissions. The matters set out in those documents were simply not of sufficient relevance to the Tribunal's conclusion to require them to be addressed in the reasons.
68. Counsel for the Republic also pointed to what is very persuasive in our minds and that is the submissions, and particularly those of September, referred to a return of refugees to a country when judged safe to do so, which was a separate consideration irrelevant to the appellant’s claim to be classified as a refugee. He had not been determined to be a refugee, and so the discussion of returning refugees was irrelevant.
69. Both counsels agreed that the court can determine whether the inference which his Honour drew in relation to the consideration of the three reports and particularly that of September was correct and if we found that it was not we could return the matter to be re-heard.

⁵ AH25 and Republic of Nauru, Number 8 of 2025 at [61(b)].

70. The *MI* case directs that 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”
71. It is from that point that the evidence is sifted and given weight or the persuasive quality appropriate, but that is the role of the decision-maker.
72. The *MI* case pointed to this process occurring “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”.⁶
73. This crucial statement of the decision-maker’s role was on the basis that the relevant facts are not “ignored, overlooked or misunderstood”.
74. In the court below, as in the Tribunal, that the facts personal to the appellant were established, that he was not a member of BNP, is the point from where the information regarding the country information was assessed.
75. The concept is reversible, if he were to be found a member of BNP, the next step is to examine country information in terms of the threat he states is posed to him.
76. If his status is not identified first, then it would be an error to consider country information before determining the primary question - what characteristic does the appellant possess to put him in the situation of that fear capable of supporting his application for asylum?
77. His Honour further addressed the situation, as a check, not to determine whether his judgment of the facts was incorrect, but to ensure that a mistake did not put the appellant at risk because an issue was overlooked.
78. From paragraph 76, he stated:
- In light of the findings made by the Tribunal, nothing in the generic submissions demanded attention by way of expressed consideration in the Tribunal decision. Having regard to the Tribunal decision as a whole, the contents and timing of the generic submissions and the Tribunal’s rejection of much of the appellant’s case as to the harm allegedly caused to him previously, I am not persuaded that the Tribunal did not consider the generic submissions. I am further fortified in that view by my consideration of the manner in which the matters contained in the generic submissions were advanced by the appellant.
79. His Honor then put in a heading in the form of a question asking did the appellant clearly advance submissions based on the generic submissions?
80. We do not consider the heading to be part of the substantive reasons but merely a guide to the thought process which is stated in paragraph 77 of the judgment:

⁶ (2022) 275 CLR 582; [2022] HCA 17 at [24]-[25]

Even if I am wrong in my conclusion in the preceding paragraph, I would not in any event be satisfied that the appellant had clearly advanced substantial submissions based on the generic submissions.

81. As he said later, he did not find that the oral submissions were suggesting that there were some substantial submissions based on the generic submissions.
82. In our view then, if another inference could be drawn so as to indicate some substantive issue was not addressed, that would be open to a consideration of error occurring. But the *MI* decision recognizes that these are not determined in a manner separate from reality, and that is why there is reference, once it can be seen that the matter has been read, issues identified, understood and evaluated, to the evidence being sifted by the decision-maker and weight given as the decision-maker deems appropriate.
83. This Tribunal could not discover that the appellant displayed the indicia of a refugee and if he did, then in a logical sequence, other issues such as country information were considered.
84. On that basis we dismiss the appeal.

ORDER

1. The appeal is dismissed

Dated this 10 day of June 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

