



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

Civil Appeal Number 11 of 2025
Supreme Court Civil Case Number
11 of 2025

BETWEEN: AK25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
 Palmer JA
 Coates JA

Date of Hearing: 06 May 2026
Date of Judgment: 22 May 2026

Case may be cited as AK25 v The Republic

CATCHWORDS:

JUDGMENT

1. **BY THE COURT:** After receiving adverse decisions from the Refugee Status Review Tribunal (the Tribunal) (delivered 27 February 2025) and the Supreme Court on appeal (delivered 8 August 2025), the appellant brings this further appeal based on an alleged failure to afford procedural fairness.
2. The ground of appeal is worded:

The Tribunal failed to afford procedural fairness to the appellant by not giving adequate consideration to the [written] submissions dated 30 September 2024.

3. The essential claim is that those submissions contained country information favourable to the appellant's application for refugee status, in what was referred to as the Odhikar Report on Human Rights in Bangladesh, which the Tribunal did not properly or fully consider.
4. The appellant seeks that the Supreme Court decision be overturned, and consequently, the decision of the Tribunal dealing with this matter be quashed and returned to a differently constituted Tribunal for reconsideration.
5. The respondent Republic opposes the application.

RELEVANT ANTECEDENT HISTORY

6. The judgment in the Supreme Court records what was also known by the Tribunal - that the appellant, at the time of hearing, was aged 27 and came from Paschimbag Village in the Habiganj District of Bangladesh. He resided in Bangladesh until October 2017 when he travelled to Malaysia. He arrived in Australia in May 2024 by boat and was determined to have illegally entered the country. He was transferred to Nauru under an agreement between the governments of Australia¹ and Nauru in relation to asylum seekers. He made his application for refugee status in Nauru.
7. His claim for refugee status, based on a fear of persecution and lack of protection if he returns to Bangladesh, was summed up by his Honour in the Supreme Court appeal as being connected to his political affiliations and family, who have similar political connections.
8. These connections are to be viewed in the light of various events which we accept occurred relating to political unrest, troubles and protests in Bangladesh over the past few years which have seen violence erupt and a change of Government.
9. As recorded in the judgment below, the appellant said his fears of persecution if he returned to Bangladesh are based on his actual or imputed political opinions as a supporter of the Jubal Dal (JD) organization which is the youth wing of the Bangladesh National Party (the BNP), his membership of a particular social group and family, and his membership of a particular social group being social media users in Bangladesh. These are all obviously linked to the political belief aspect of his case.
10. His Honour recorded necessary evidence from the appellant as to threats including intimidating phone calls if he moved back to his home village, threats that he would disappear if he continued to support the BNP, and threats that if he left for Malaysia it would be claimed that he obtained a false passport through his father. In these matters, the recording of particulars seems disjointed and random and not of great value, however, these allegations are always taken seriously and do not need further adjectival description to understand that allegations of violence and threat are taken at face value before the facts are determined.

¹ TCXM v Minister for Immigration and Citizenship [2026] HCA 13 held the Australian agreement to be lawful.

11. The appellant did actually go to Malaysia but had to return due to visa requirements being changed by the Malaysian government.
12. His Honour recorded the Tribunal's finding that the appellant's evidence was vague and unconvincing in relation to his fears and it declined to accept his documents as being genuine and an accurate representation of his political involvement, although it accepted that he supported the BNP.
13. His Honour, as did the Tribunal, properly had regard to violent political troubles in Bangladesh centered around political differences between the Awami League (AL), which governed Bangladesh, and the BNP.
14. In considering both the judgment below and the Tribunal judgment there is no issue in our minds that there were serious threats of harm and actual harm to some people involved in politics in Bangladesh at material times applicable to this appellant's case.

THE PROCEDURAL FAIRNESS ISSUE

15. The lack of procedural fairness was addressed by counsel for the appellant with reliance on what we loosely call the engagement principle – that is engagement by the decision maker with all relevant and persuasive elements of the case being considered.
16. Counsel properly addressed the authorities which have insisted that this entails that the decision maker, and in this case the Tribunal, reads, identifies, understands, and evaluates the nature of the case being presented, and obviously, such is to be reflected in the reasons given.
17. He said errors were committed in the Tribunal below.
18. Counsel took the court to section 34(4) of the Refugee Convention Act 2012 (the Act), stating that the statute required reasons to cover the claims of the appellant, so as to reflect a reading, and identification, and understanding, and evaluation of the appellant's case.
19. He said the Tribunal's mandatory duty was created under section 34(4) of the Act.
20. It is worth re-producing the whole of that section for an understanding of this appeal, and the claim that procedural fairness was not afforded to the appellant.
21. The whole section states:

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.
- (2) On a merits review of a determination or decision, the Tribunal may:
 - (a) affirm the determination or decision;

- (b) vary the determination or decision;
- (c) remit the matter to the Secretary for reconsideration in accordance with directions or recommendations of the Tribunal;
- (d) set the determination or decision aside and substitute a new determination or decision; or
- (e) determine that a dependent, of the person in respect of whom the determination or decision was made, is recognised as a refugee or is owed complementary protection.

[subs (2) am Act 5 of 2017 s 8, opn 5 May 2017]

(3) Where the Tribunal:

- (a) varies the determination or decision; or
- (b) sets aside the determination or decision and substitutes a new determination or decision, the determination or decision as varied or substituted is taken, except for the purpose of appeals from decisions of the Tribunal, to be a determination or decision of the Secretary.

(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.
- (e) [repealed]

[subs (4) am Act 56 of 2016 s 23, opn 23 Dec 2016; Act 5 of 2017 s 8, opn 5 May 2017]

(5) A decision on a review is taken to have been made on the date of the written statement.

22. We agree that a mandatory duty is created under section 34(4) to provide a written statement from the hearing, which sets out the decision on review, the reasons for the decision, material questions of fact, and reference to the evidence or other material, on which the findings of fact are based.

23. That submission of course was based upon the High Court of Australia's decision in plaintiff M1/2021 v Minister for Home Affairs², where it was stated:

... 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 then was) said in *Tickner v Chapman*³, 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.

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.⁴

24. This crucial statement of the decision maker's role was considered by the Judge below, as was another statement from the same case, being:

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".⁵

25. The case presented by the appellant was built around these statements as applied either to or with the section 34 requirements.
26. The case presented in both written and oral submission was that the Tribunal breached these necessary principles and so did not adequately engage with the case by not properly or explicitly considering the Odhikar Report with its country information supplied by the appellant.
27. His Honour indicated that the Tribunal was aware of that report, and he stated, from paragraph 61 of his judgment:

[61] However, the 30 September 2020 submissions referred to DFAT [Department of Foreign Affairs and Trade] reports, and noted, amongst other things, that they have been criticised, and suggested that more solid data were to be found in the Odhikar

² (2022)275 CLR 582; [2022] HCA 17.

³ (1995) 57 FCR 451 at 495.

⁴ (2022) 275 CLR 582; [2022] HCA 17 at [24]-[25]

⁵ (2022) 275 CLR 582; [2022] HCA 17 at [27]

Report on Human Rights in Bangladesh, which noted that the changes in Bangladesh “have mainly impacted higher profile political activists” and assert that “there is little evidence that there has been significant change at the local level, which is of relevance to the matter currently under consideration”. The submissions also asserted that the appellant was at risk by reason of his membership of his family unit and specifically the fact that his father was a BNP office-bearer, as well as that his social media and online activities placed him at risk. In summary (at [63]), the submissions contended that while there had been political changes in Bangladesh, “there is no Country Information currently available to suggest these widespread practices have ceased and an assessment needs to be made on currently available information, as well as providing consideration to the recently foreseeable future.”

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

[63] It was entirely understandable that the tribunal did not descend into detailed evaluation of the DFAT report of 30 November 2022 or the Odhikar Report of 4 January 2024, which by the time of the Tribunal’s decision had been superseded by other political developments in Bangladesh. The tribunal did not state that it accepted or rejected the proposition that matters in Bangladesh were not as positive as asserted on behalf of the appellant in his 4 September submissions. However, given its findings in relation to the appellant’s involvement with the BNP, it did not need to do so, and, as identified by senior council for the Republic, “the material that it referred to was what it considered material to its decision”.

28. We have to rehear this matter, that is we must determine whether the orders made below were correctly made, and to achieve that we review the decision for breach of an Act, of natural justice or some other apparent violation which would render the administrative decision under review open to be quashed. We do not substitute our view for that of the administrative decision maker.⁶ That is also a subsequent result from an application of the principles in *M1/2021 v Minister for Home Affairs*, referred to above and relied upon here, in identifying error in terms of lack of procedural fairness.

⁶ *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 162 CLR 24 at 40-41 per Mason J.

29. The M1/2021 decision provides an accepted framework for this examination as to whether the Tribunal can be determined to have not afforded procedural fairness within the confines of not properly assessing the Odhikar Report and the appellant's country information.
30. We have produced the three paragraphs from the judgment below to assist in that assessment, keeping in mind that there is no challenge that the facts were incorrectly stated in those three paragraphs, and in fact counsel for the appellant describing the whole judgment as impeccable.
31. As the nature of the complaint seems to be that the Tribunal failed to properly consider submissions from the appellant which included the Odhikar Report, in a manner which the appellant could understand, the starting point must be to identify that it was aware of the report and being aware of the report, gave it consideration. Having said that, there is no submission that the Tribunal was not aware of the report.
32. A factual finding by his Honour at paragraph 63, and one we accept, is that it was "understandable" that the Tribunal did not "descend into detailed evaluation" of either a DFAT report of November 2022 or the Odhikar Report of January 2024, because, and this is also our assessment on the facts presented below, other political developments in relation to government in Bangladesh had superseded those reports when the Tribunal made its decision. This in worded so that it may be understood, in reality, that the Tribunal had read the material, identified the issues surrounding country information, understood that there had been a change in circumstances being a change in government and evaluated that very important issue against the appellant's claims of fear.
33. And we agree with his view that the evidence also shows that the Tribunal did not accept the depth of the appellant's claimed involvement with politics in Bangladesh which would put him at risk at the time the decision was delivered.
34. It is now that we turn to an application of the law or rather the law as stated in the authorities and particularly the M1/2021 case, to test our views. M1/2021 does require the decision maker to read, identify, understand and evaluate the representations, that is, that the decision maker must engage with the case before it, so that the nature of the representations are understood in order to consider the facts. However this is not engagement with the case at large where anything goes, because if that was the case, each and every strand of evidence said to be a fact would have to be considered and stated, and that is why the extract of the M1/2021 judgment stated above points to the decision maker sifting the evidence, the submissions and the facts and attributing whatever weight or persuasive quality is thought appropriate. That is why the extract from that judgment states that the decision maker is not obliged to make actual findings of fact as an adjudication on all claims. The other rider of course identified in the passage was that representations must occur within the bounds of rationality and reasonableness.
35. With that in mind, counsel for the Republic said there was no failure to consider the most up-to-date country information, on the basis stated in the Nauruan Supreme Court decision QLV136 v the Republic of Nauru⁷, where Wheatly J stated:

⁷ Appeal 40 of 2016; QLN 136 and Republic of Nauru

53. It is generally open for the Tribunal to select the country information it chooses to rely upon and what weight to put on that evidence. Khan ACJ observed in *DWN111 v Republic of Nauru* [2017] NRSC 56 at [33]- [34] (footnotes omitted):

“[33] The respondent in response submits “as to country information, what the Tribunal chooses to rely on is a question of fact for the Tribunal”. The respondent also relies on NAHI v Minister for Immigration and Multicultural Affairs [reference omitted] and submits at [18(a)] of its written submission “the assessment of country information, and the weight to be given it, is entirely a matter for the Tribunal in the discharge of its merits review task”.

[34] ... In any event, as discussed above, the country information that the Tribunal chooses to rely on is a question of fact for the Tribunal.”

36. There is nothing in the three quoted paragraphs of his Honour which were challenged and those paragraphs indicated that the Tribunal was aware of the different reports which arrived in three separate submissions from the appellant.
37. According to the decision in DWN111, the reliance on country information is a question of fact for the Tribunal. That is an unchallengeable statement.
38. For that to amount to a lack of procedural fairness would require that the country information put forward for consideration by the appellant was ignored.
39. Examining the alleged failure to not engage with the country information put forward by the appellant, the M1/2021 decision states that we must be aware of the representations within the bounds of rationality and reasonableness. The Judge below identified that the Tribunal was aware that political events in Pakistan had changed, moved on, and were superseded by August 2024 from the information supplied, and not accepting the appellant’s personal claims of his involvement with politics, dismissed his case as he was not being able to establish that he would be persecuted. What stands out is that concept identified in M1/2021, the Tribunal’s engagement with both the DFAT and Odhikar Report also took into account the change in the political circumstances in Bangladesh according to the latest country information available. In other words, the Tribunal sifted the information given, and determined the weight or persuasiveness of various strands of evidence, particularly in relation to the change of government.
40. The reasoning undertaken by the Tribunal is not that in which it can be plainly seen that it did not afford procedural fairness to the appellant. Applying the reasonable and rational assessment to the evidence as required by the M1/2021 decision, it took into account the recent events, and thus discharged its duty under section 34 of the Act.
41. On that conclusion, we dismiss the appeal.

ORDER

1. The appeal is dismissed.

Dated this 22 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