



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

Civil Appeal Number 13 of 2025
Supreme Court Civil Case Number
13 of 2025

BETWEEN: AM25 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: AM25 v The Republic

CATCHWORDS: Appeal – Asylum seeker – Claim of irrational decision based on statistical information – Claim that initial finding that Muslims at risk in India should have been applied to appellant – High bar to claim irrational decision – No irrationality found

APPEARANCES:

Counsel for the appellant: A Aleksov (instructed by International Crossover Pty Ltd)
Counsel for the respondent: J Lucas (instructed by the Republic of Nauru)

JUDGMENT

1. **BY THE COURT:** This appeal seeks to overturn adverse decisions claiming they were irrational or illogical based on statistical information considered in relation to the personal risk the asylum seeker claimed existed.
2. If so, an error of law would exist.
3. The appellant's case is that risk underlies his well-founded fear, within the meaning of the Convention Relating to the Status of Refugees 1951 and adopted in Nauru in the Refugee Convention Act 2012 (the Act), of returning to his homeland.
4. He says the risk is real and authorities cannot protect him.
5. The appellant failed in his bid to gain refugee status or be given complementary protection by the Refugee Status Review Tribunal (the Tribunal) in its decision of 26 February 2025, that decision upheld on appeal by the Supreme Court in its judgment delivered 8 August 2025.
6. The alleged error of law is that "the Tribunal acted irrationally or illogically or failed to apply the real chance test in adopting a statistical analysis". The statistics were available in country information before the Tribunal.
7. The appellant claims that as a Muslim he was a person at risk in India where Muslims are in the minority.
8. The appellant seeks to vary or reverse the decision of the Supreme Court, and then orders which would quash the Tribunal decision and remit the matter to a differently constituted Tribunal for reconsideration.
9. The Republic of Nauru opposes the appeal and seeks that it be dismissed.

BACKGROUND

10. The appellant was born 10 December 1987, and is aged 39. He is a national of India.
11. He arrived in Australia by boat in February 2024.
12. Having no legal basis to be in Australia, pursuant to an agreement between the governments of Nauru and Australia he was transferred to Nauru on 18 February 2024.
13. On 3 September 2024 the (acting) Secretary for Multicultural Affairs determined that he was not a refugee and he subsequently exercised his right under the Act to seek a decision from the Tribunal, and subsequently from the Supreme Court on appeal.
14. The appellant's claims not accepted were that he is a Muslim and as such is at risk in India. The circumstances for an understanding of his case are that his family lived in a

Hindu area in north west Kolkata, and as an orphan he inherited his family home. He was harassed by Hindus who wanted the home and apparently moved in. He went to Kolkata, worked, married had a child, fled India, returned to sell his property and with his family moved to Bangladesh. That appears to be around 2023 or 2024. He feared harm on return to India as a Muslim but predominantly feared harm from Hindus from his village.

15. The Tribunal recorded that in 2017 he was working at a railway station at Shielah and people from the Bharatiya Janata Party (BJP) from his village approached him and told him not to come back or they would kill him.
16. This was against the background of an Imam allegedly saying to him that his village was in a Hindu area and it would never be safe for him there.
17. He also claimed that in 2014 when Narendra Modi was elected as Prime Minister he had a strong anti-Muslim agenda.
18. The Tribunal concluded that his confused and contradictory evidence was inconsistent with his original evidence given when he made his application for refugee status, that he was evasive and appeared to be deliberately obfuscatory and it was not satisfied with basic facts.
19. The appeal book indicates that the Tribunal went into great detail about his background, but of relevance to this application, the Tribunal focused on statistical information and his claims that he was bullied and harassed over a period of time by the majority Hindu population, who would drink and take drugs.

IRRATIONALITY

20. Counsel for the appellant said the Tribunal accepted that Muslims in India may suffer discrimination and communal violence which can result in serious harm. He said that was a critical finding. He said the term serious harm is the language used in Nauru for people seeking protection, a comment which we indicate comes from the authorities when considering such applications, not necessarily words in the legislation.
21. He put it this way:

So if a person is at risk of serious harm and that has a connection with his religion then they are a refugee.
22. He said the finding that Muslims are at risk of serious harm establishes the appellant's case.
23. Counsel put a rhetorical question:

But why did he lose? He lost because of paragraph 122.
24. That paragraph of the Tribunal decision states:

The Tribunal also takes into account that there are around 200 million Muslims in India. Where the applicant was born, West Bengal, located in eastern India, has a notable

Muslim population, comprising about 27% [sic] of its total population. This translates to over 24 million Muslims as per the 2011 Census.

25. The Tribunal was relying on country information and counsel called this statistical information. Of it, he said:

West Bengal is a massive place. The applicant will live in one place. When one does an analysis that says there are 90 million of you in West Bengal, 24,000,000 of you are Muslims and you're just one of them. That is useless in understanding what happens in his village.

26. He stressed that while his past profile is not accepted, the Tribunal established that risks occur in India for Muslims, but he is not at risk because he was one of 24 million Muslims. He said that process of reasoning was wrong.
27. He said this was not a rational response by the Tribunal.
28. He said in *CGA15 v Minister for Home Affairs*¹ similar circumstances saw the High Court state:

[50] While it may be open to the Tribunal to rely on the sort of statistical analysis that it did, there are dangers in relying on such an approach when its fundamental task is to consider the risk that this visa applicant would face if returned: see *DZADQ v Minister for Immigration and Border Protection* (2014) 143 ALD 659; [2014] FCA 754 at [65]-[67] (Mansfield J); *Minister for Immigration and Multicultural Affairs v S152/2003* (2004) 222 CLR 1 at [80]-[82] (McHugh J). In our view, if the Tribunal is to engage in this sort of statistical analysis, it must give careful attention to ensuring that it correctly assesses the population across which the relevant risk of serious or significant harm is said to spread.

...

[52] The fundamental problem with the Tribunal's approach is that, while addressing the possibility that the appellant might safely relocate to Islamabad or Rawalpindi it engaged in a statistical analysis of the risk of serious harm that the appellant would face in Islamabad or Rawalpindi by reference to the Shia population across the whole of Pakistan. The Tribunal states that the appellant will "most likely be at risk because he is a Shia when he attends Shia religious processions or is at a location where large numbers of Shias gather". It then concludes that, having regard to the sporadic nature of the attacks and "considered in the context of the size of the Shia population which is reportedly approximately one quarter of the population of almost 200 people" the risk of the appellant suffering harm on this ground is remote.²

29. His submission was that the analysis undertaken by the Tribunal here was that the figures used were for the whole area and not the appellant's local area as indicated they should be in the CGA15 decision.
30. What is being referred to is the real chance test of the risk.

¹ (2019) 268 FCR 362

² (2019) 268 FCR 362 [50] and [52]

31. Ms Lucas, for the respondent Republic said the critical reasoning of the real chance test in *CGA15* case is at paragraph 23, which we will quote, but the decision at paragraph 22 puts a perspective on the test:

[22] To satisfy the refugee criterion under s32(2)(a) of the Act the appellant was required to show that he has a “well- founded” fear of persecution for a convention reason if he returns to his country of origin. A fear of persecution will be well-founded if there is a real chance that the applicant will suffer the claimed persecution in the reasonably foreseeable future. A “real chance” is a prospect that is not remote or far-fetched: *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (Mason CJ), 398 (Dawson J), 407 (Toohey J) and 429 (McHugh J).

[23] The tests of whether there is a real chance that an applicant for protection will suffer harm in a place is not a relative one, and it is not determinative whether the risk in one place is less severe than in another place. It is plain that the mere fact that a person might be safer in place B than place A does not entail that the person does not face a real chance of persecution in place B. For example, if place A is very unsafe and place B is relatively safer it might still be the case that the person faces a real chance of serious harm in place B. What matters is the actual level of risk in any particular place: see *CID15* at 35 (the Court had referred earlier in the decision to *CID15 v Minister for Immigration and Border Protection* [2017 FCA 780]).

32. Ms Lucas said the real chance test is not then whether the risk of harm is less severe in one place than another.
33. It is whether there is an actual risk in a particular place.
34. She said the Court dealt with this at paragraph 28 of the decision:

[28] It is central to our view that although the Tribunal expressed some findings as to the risk of harm the appellant would face in relative terms, it made other significant findings as to that risk in plainly objective terms. Importantly the Tribunal found the following (at [40])

... In general (other than in some areas, like the applicant’s region), **there is a low risk of sectarian violence for Shias** by militant groups and attacks against Ashura processions pose the greatest risk for most Shias. However, given the size and yearly frequency and the violence is mitigated by significant efforts of authorities to process processional routes and protection **DFAT** [Australian Department of Foreign Affairs and Trade] **assesses the overall risk to be low** (emphasis added).³

35. She said the assessment goes to the risk to the appellant, and in that aspect it reflects the same submission as counsel for the appellant, and that is what must be examined in both the Tribunal decision and the judgment on appeal.

³ (2019) 268 FCR 362 [28]

36. She said the Tribunal accepted that Muslims were discriminated against generally, that there were instances of communal violence that could result in serious harm, and that the appellant stated that when he lived in Mumbai there were clashes but he did not get involved.
37. The Tribunal found as a fact that he had suffered no harm in the past and that generally the country information indicated that Muslims are not generally at risk in India.
38. The matters relevant to the applicant are that he has not suffered harm, despite his claims of harm occurring to Muslims.
39. She said the country information from the Australian Department of Foreign Affairs and Trade assessed that there was a low risk of societal violence to Muslims but when it did occur the consequences could be serious and even result in death.
40. Most of that violence applies to low caste and poorer Muslims and this appellant was not in that class.
41. Further, the Tribunal found that the appellant had not suffered significant economic hardship which threatened his capacity to subsist and that he appears to be educated, he had rented accommodation and had supported his wife and child.
42. Irrationality claimed to exist here is based on facts found by the Tribunal and not applied in a logical sequence to arrive at the point where it is considered an error. Counsel, as recorded above, put it thus - that the Tribunal's finding that Muslims are at risk of serious harm establishes the appellant's case.
43. In *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002*⁴—
[45] is authority for the high standard to be met for those seeking to rely on review of irrationality in fact finding process. Serious irrationality was referred to but in the sense that if the irrational decision was the basis for setting aside a decision, then it must be serious.
44. Despite some views that refugee status exists before a legal decision is made, be that as it may, the legal decision has to be made for an applicant in this jurisdiction to be determined to be a refugee before complementary protection under the Act is afforded to him or her.
45. The Tribunal's assessment of the country information merely determined that Muslims may face discrimination of a nature so as to present a risk to them, but this particular appellant put forward evidence which was not accepted, including the actual risk of harm to him.
46. Those findings were open to the Tribunal. The statistical information was one of a number of strands of evidence relied upon to come to its decision and that information formed the general finding that Muslims can suffer risk and harm in India, quite a proper finding. The Tribunal then went on, knowing that, to determine this appellant's actual

⁴ (2003) 198 CLR 59

position in light of that finding. The findings appear to be both rational and logical, not a mere guess which had to be determined and whether such was permissible in the circumstances, see *Director of Animal and Plant Quarantine v Australian Pork Ltd*⁵.

47. To succeed on a claim of irrational decision-making, the alleged flaw has to be identified with precision, and it is not as put here.
48. The Supreme Court made no error, nor did the Tribunal.
49. 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

⁵ (2005) 146 FCR 368