



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

Civil Appeal Number 19 of 2025
Supreme Court Civil Case Number
19 of 2025

BETWEEN: AS25 Appellant

AND: Republic of Nauru Respondent

BEFORE: Khan P
Palmer JA
Coates JA

Date of Hearing: 07 May 2026
Date of Judgment: 22 May 2026

Case may be cited as: AS25 v The Republic

CATCHWORDS: Asylum seeker – Secretary of Multicultural Affairs does not grant refugee status – Refugee Status Review Tribunal upholds Secretary’s decision – Supreme Court dismisses appeal – Claim that the Tribunal did not properly engage with the evidence – one mistake identified.

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 is an appeal in which it is alleged that the Refugee Status Review Tribunal (the Tribunal) failed to understand and consider the evidence.
2. The scope of this alleged failure is limited to a single issue, that the appellant could not say when a political party was deregistered.
3. In submission it was said that even if the failure to understand the evidence was on a small issue, the decision by the court below had to be set aside.

LEGAL EVENTS

4. The appellant comes from Bangladesh. He arrived illegally in Australia in May 2024. Pursuant to a memorandum of understanding between Nauru and Australia in relation to asylum seekers, he was transferred to Nauru in early June 2024.
5. The Secretary for Multicultural Affairs determined that he did not attract refugee status or complementary protection under the Refugees Convention Act 2012 (the Act).
6. On 29 June 2024, the appellant exercised his right and made application for a refugee status determination.
7. He appeared before the Tribunal on 13 March 2025, with a representative and an interpreter.
8. The Tribunal decision was delivered on 30 March 2025, which affirmed the decision of the Secretary that the appellant was not recognised as a refugee to whom protection was owed under the Act.
9. The appellant failed in his subsequent appeal to the Supreme Court, which delivered written judgment on 19 November 2025, dismissing the appeal.

RELEVANT PERSONAL ANTECEDENTS

10. The appellant's relevant history of risk is adequately covered in both the Supreme Court judgement and the Tribunal decision.
11. From those two decisions it is the appellant's case that his fears of persecution if he returns to Bangladesh arises from his political opinions and acts, as a supporter of the political organisation Jamaat-e-Islami (JeI).
12. He said at the age of 13 in 2013, he became involved with a Mr A who was a JeI party member and over the years he performed such work for him as a workshop labourer, workshop supervisor, what appears to be a claim of being Mr A's driver and then as one of his security guards.
13. He said Mr A began receiving threats including death threats. He said in February 2016 Mr A went missing and the appellant suspected members of a rival political group (and governing party), the Awami League (AL), were responsible.

14. He said he fled to India and resided with family and friends because of his fear and in April 2016 he said Mr A contacted him, said he had been released from detention and asked the appellant to return to Bangladesh which he did and commenced working in the workshop.
15. He said in January 2018 Mr. A was arrested on false charges and as a result of the arrest the appellant subsequently made arrangements through a trafficking agent and in February 2018 went to Malaysia.
16. While residing in Malaysia people associated with JeI took possession of land owned by the appellant's family.
17. The claims went on that Mr A was eventually released from police custody but while in prison some men visited the appellant's family home and threatened the appellant's brother and on one occasion in 2021, they assaulted the appellant's brother and threatened to harm him because he was the appellant's brother.
18. In October 2020 Mr A died and the death contributed to his fear of returning to Bangladesh because he would be without protection should he return.
19. So the claims are built around these issues that he has fears because of his political associations, the fears being well founded of being persecuted and that he would get no protection in his own country.
20. The Supreme Court upheld the decision of the Tribunal which found no persuasive evidence that the appellant required protection.
21. We point out that the Tribunal did confirm Mr A's election to the Bangladeshi parliament, and that there had been a great deal of political and legal proceedings with regard to JeI and the party was deregistered in 2013, with the ban not lifted until August 2024, after a change of government.

APPEAL

22. In this appeal it is submitted that the matter falls into that area of review where the Tribunal has failed to understand and evaluate the evidence, and if that is found, then the decision must be quashed.
23. This concept of understanding was addressed by the High Court of Australia decision in *Plaintiff M1/2021 the Minister for Home Affairs*¹, 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) I said in *Tickner the Chapman*, the decisionmaker 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... the requisite level of engagement by the decision maker with representations must occur within the

¹ (2022)275 CLR 582; [2022] HCA 17.

bounds of rationality and reasonableness. And 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 river representations. The requisite level of engagement – the degree of effort needed by the decisionmaker – will vary, among other things, according to the links, clarity and degree of relevance of the representations. The decisionmaker is not required to consider claims that are not clearly articulate or which do not clearly arise on the materials before them.²

24. In determining claims about political affiliation, there were questions directed to the appellant about his involvement with the JeI party.
25. In a passage from the transcript beginning at line 35, page 146 of the appeal book, an exchange takes place where the appellant is asked about his uncle contesting an election, with the appellant confirming that he did so for the JeI party, then changing the evidence to contesting it as an independent because the JeI had been deregistered. The Tribunal was testing for knowledge and involvement with the party.
26. Immediately following, the appellant's counsel identified this exchange to base the case on:

MS BODDISON: And the hearing is resumed at 11:21. I just wanted to clarify. Did Jamaat-e-Islami contest the election that you helped in in 2013? In their own name?

The INTEPRETER: My uncle's own name

MS BODDISON: No? [We think this should have been an exclamation mark but nothing turns on that]. But did Jamaat-e-Islami contest the election as the Jamaat-e-Islami party?

The INTEPRETER: Yes, they did.

MS BODDISON: Because we understood that they were deregistered at that time, and didn't – couldn't contest the election in their own name.

The INTEPRETER: He was contesting as an independent candidate.

MS BODDISON: But I thought you just said he was contesting as a Jamaat-e-Islami supporter?

The INTEPRETER: I'm not getting anything.

MS BODDISON: Can you just interpret what's been said, and then we'll clarify.

The INTEPRETER: Sorry? Can you please ask the question one more [sic]?

MS BODDISON: I said that, I thought your evidence that you told us was that the – your uncle contested, the election as Jamaat-e-Islami politician in the name of the Jamaat-e-Islami party?

The INTEPRETER: Yeah, he contested from Jamaat-e-Islami.

MS BODDISON: But then you said, he contested as an independent, so I am wondering, which is it?

² (2022) 275 CLR 582; [2022] HCA 17 at [24]-[25]

The INTEPRETER: That's what I want to mention that, yes, as you mention that, like, their registration has been deregistered. Their registration has been cancelled. That's why he went for independent candidate.

MS BODDISON: Right. When was it cancelled? When was their registration cancelled?

The INTEPRETER: Around 2013.

27. It is the two last questions and answer which counsel submitted displayed a misunderstanding the evidence.
28. In explaining the misunderstanding he went to paragraph 51 of the Tribunal decision, which stated:

“[51] At hearing, the applicant was also unaware that in August 2013 JeI was deregistered. Initially he stated that in the 2013 election Abu Sayeed represented JeI, and that four or five years later, Abu Sayeed again represented JeI. He only changed that evidence after he was told JeI had been deregistered.”
29. He said this paragraph displayed the misunderstanding, because the Tribunal held that the appellant did not know when JeI was deregistered, yet unprompted, as recorded in the transcript above, he stated it was deregistered “around 2013”.
30. He said his Honour erred, “in construing the Tribunal’s reasons at reasons [51] in this respect as relating to some other issue, which his Honour seems to have understood as a paragraph directed to whether a particular person had run as a candidate at an election as a JeI member. That is not to the point – as the Tribunal itself said, it was concerned with the appellant’s lack of knowledge of when JeI was deregistered. It might be accepted that the Tribunal also had other concerns, but that does not diminish this argument”.
31. He said it was wrong for the Tribunal to take the view that the appellant did not know when JeI was deregistered as he did know, and that amounts to a misunderstanding of the evidence.
32. His submission was to the effect that at its highest, the appellant gave a spontaneous answer so he knew when the party was deregistered, which indicates his association and thus the fear he states he has.
33. Counsel for the Republic said the Tribunal determined that the appellant lacked credibility after examining his claimed political affiliations.
34. These were particularised in the Supreme Court judgment as the appellant lacking basic knowledge of Abu Sayeed’s political career despite claims he worked for him, that when he said he first worked for him he could only have been six years old, that he was unaware in August 2013 that JeI had been deregistered and changed evidence once told JeI had been deregistered.
35. The judgment deals with the same proposition put to us, that the answer to the question of when JeI was deregistered was a spontaneous answer using the words “around 2013”.
36. There is an apparent mistake in paragraph 51 of the Tribunal’s decision.

37. The question before us is whether such amounts to a misunderstanding of the evidence, such that it fails to conform with the statement in the M1/2021 case test stated above.
38. Or to put that succinctly, did the Tribunal, based on the mistake of saying that the appellant did not know when JeI was deregistered, have regard to what was said and bring its mind, that is engage with, the evidence and the submissions?
39. His Honour considered the issue by considering that the alleged misconstruction would have to be “beyond a mere error in the Tribunal’s fact finding³, that an error of law would be established if there was a failure to consider the claim, and we say the whole of the claim⁴ (and he referred to the authorities), and he was not persuaded that an error of fact had occurred so as to amount to an error of law⁵.
40. In that last statement, that he was not persuaded, he could only be referring to an unspecified quality within cogent evidence which would persuade him to consider that the alleged misunderstanding was so serious that the whole matter ought run again.
41. Our conclusion then is this, *NABE v Minister for Immigration and Multicultural and Indigenous Affairs*⁶, referred to by his Honour, set the framework for the establishment of error on the basis claimed, that even if referring to a contention, there was a failure to consider the claim.
42. So, is an error established? The appellant stated when the party was deregistered, and the Tribunal said he did not know.
43. While the Republic argued that there was no error, and in fact pointed to some evidence which suggested the appellant may have simply adopted what he had been told of the date of deregistration, as seems to have been referred to by the Tribunal, the benefit of the doubt will be extended to the appellant that there was a factual error.
44. Being only one error brings into consideration whether it is trivial or immaterial to the consideration of the other evidence undertaken by the Tribunal.
45. The foreign authorities have addressed that question, and of persuasive consideration is the short and pointed statement of Mason CJ in *Australian Broadcasting Tribunal v Bond*⁷, that:

A decision does not ‘involve’ an error of law unless the error is material to the decision in the sense that it contributes to it so that, but for the error, the decision would have been, or might have been, different.

46. Justices Toohey and Gaudron expanded on that sentiment,⁸stating:

³ Paragraph 38 AS25 and Republic of Nauru 19 of 2025

⁴ Paragraph 39 AS25 and Republic of Nauru 19 of 2025

⁵ Paragraph 40 AS25 and Republic of Nauru 19 of 2025

⁶ (No 2)(2004) 144 FCR 1 at [55] - [63], adopted in this jurisdiction in TTY 167 v Republic of Nauru [2022] NRSC 30 at [73 – [76]; QLN 107 v Republic of Nauru [2018] NRSC 23 at [47]-[52].

⁷ (1990) 170 CLR 321 at 353

⁸ (1990) 170 CLR 321 at 384

For an error of law to be involved in a decision, something more in the mere occurrence of error is necessary. The error must have contributed to the decision in some way, or, at the very least, it must be impossible to say that it did not so contribute. Conversely, an error it's not involved in a decision if it did not contribute to the decision, or if the decision must have been the same, regardless of the error. Thus, to show that an error of law is involved in the decision, it is necessary, at the very least, to show that the decision may have been different if the error had not occurred.

47. It is apparent that the error contributed to the decision to reject the appellant's claims.
48. However, as is apparent from the Republic's submissions, the reasons outline all of the reasons for the decision, this error merely being one of them.
49. Whether he changed his evidence because he was told the date of the deregistration or not is an issue which requires no consideration, as the totality of the Tribunal's reasoning is apparent, even without this strand of evidence, the decision would, with a high degree of probability, not have changed. An error of fact has occurred then which does not amount to an error of law, applying Mason CJ's test as stated in the Bond case.
50. The appeal is dismissed.

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