



IN THE SUPREME COURT OF NAURU
AT YAREN

Appeal No. 6 of 2025

IN THE MATTER OF an appeal
against a decision of the Refugee Status
Review Tribunal brought pursuant to
s.43 of the *Refugees Convention Act*
2012

BETWEEN:

AF25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Dates of Hearing: 30 April and 5 June 2025

Date of Judgment: 04 July 2025

CITATION: *AF25 v Republic of Nauru*

CATCHWORDS:

APPEAL – Refugees – Refugee Status Review Tribunal – Whether it is in the interests of the administration of justice to grant an extension of time pursuant to s 45(5) *Refugees Convention Act* – Extension of time granted – Whether decision of the Tribunal is illogical or irrational or unreasonable – Decision not irrational or illogical or unreasonable – Whether Tribunal breached requirements of s 34(4) *Refugees Convention Act* – No breach by Tribunal of s 34(4) – APPEAL DISMISSED.

LEGISLATION AND OTHER MATERIAL:

Refugees Convention Act 2012 (Nr) ss 34, 43, 44; DFAT country report 30 November 2022.

CASES CITED:

AJ24 v Republic of Nauru [2025] NRSC 15 at [145]; *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 at [5]; *Minister for Immigration and Border Protection v MZYTS* [2013] FCAFC 114 at [38]-[45]; *CRI 020 v The Republic* [2021] NRSC 23 at [36].

APPEARANCES:

Counsel for Appellant: Mr A Aleksov (instructed by Craddock Murray Neumann)

Counsel for Respondent: Mr N Wood SC (30 April 2025) and Mr R O'Shannessy (5 June 2025) (both instructed by the Republic of Nauru)

JUDGMENT

INTRODUCTION

1. The Appellant is a national of Bangladesh. He left Bangladesh and arrived in Australia and 1 about June 2024, he was transferred to Nauru pursuant to the Memorandum of Understanding between the governments of Nauru and Australia. On 27 June 2024, the Appellant made an application for Refugee Status Determination (**RSD**).
2. The Appellant claims to have supported the Bangladesh National Party (**BNP**). He says that he fears harm from Awami League (**AL**) supporters should he be returned to Bangladesh. Pursuant to section 43 of the *Refugees Convention Act 2012* (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**the Tribunal**) made on 15 November 2024 (**Tribunal Decision**). The Tribunal affirmed a decision of the Secretary of the Department of Multicultural

Affairs (**the Secretary**) dated 9 August 2024 not to recognise the Appellant as a refugee and the finding that the Appellant is not owed complementary protection under the Act.

3. By subsection 43 (1) of the Act, the Appellant may appeal to this Court on a point of law. This appeal is brought pursuant to that section.
4. By section 44 (1) of the Act, this Court may make either of the two following orders:
 - (a) an order affirming the Tribunal Decision; or
 - (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of this Court.

GROUNDS OF APPEAL

5. The Appellant originally pursued one ground of appeal in his amended notice of appeal dated 20 March 2025. It was in these terms:
 - “1. The decision of the Tribunal is affected by illogicality or irrationality, in that the Tribunal failed to give a logical or rational response to the Appellant’s argument that national level changes in Bangladesh did not impact the risk he faced at the local level.”
6. On 30 April 2025, the Appellant sought leave to further amend his notice of appeal in light of a decision that I delivered in this Court on 28 April 2025, *AJ24 v Republic of Nauru* [2025] NRSC 15. The Republic did not oppose the grant of leave to make the further amendment subject to being given time to respond to the further ground. I accordingly gave the Appellant leave to further amend his notice of appeal to add an additional ground 2 in these terms:
 - “2. The Tribunal failed to comply with s 34(1)(d) of [the Act] in failing to give adequate reasons for why it rejected the claim that the [AL] was still in power in the Appellant’s home area.”
7. The Appellant seeks orders that:
 - (a) the matter be remitted to the Tribunal for reconsideration; and
 - (b) the decision of the Tribunal be quashed.”

FACTUAL BACKGROUND

8. The Appellant makes the following claims in support of his application.
9. The Appellant is a supporter of the BNP. From around mid-2022, after the Appellant returned to Bangladesh from Malaysia where he had lived since 2014, he became more interested in local politics and started attending BNP meetings and rallies.

10. Elections were scheduled to take place on 7 January 2023 and the Appellant was a regular attendee at meetings and rallies in the lead up to that election. The Appellant submits that local AL supporters threatened BNP supporters to make them join the AL. After the AL candidate won the election, the threats increased and became more serious. AL supporters went house-to-house threatening BNP supporters.
11. The Appellant contends that AL supporters attended his father's house. They said that they knew the Appellant regularly attended BNP rallies and meetings and threatened to harm or kill him unless he stopped and joined them instead. The Appellant's father told him to leave the country as his life was in danger.
12. In December 2023, the Appellant travelled to Malaysia illegally using a false passport. The Appellant was fearful of being caught in Malaysia and returned to Bangladesh so he made arrangements in March 2024 to travel to Australia to seek asylum.

PROCEDURAL HISTORY

13. The Appellant made his RSD application on 27 June 2024. The Appellant appeared before the RSD officer and on 9 August 2024, the Secretary made his decision that the Appellant was not recognised as a refugee under the Act.
14. The Appellant lodged a review application with the Tribunal on 8 August 2024.
15. On 26 September 2024, the Appellant's solicitors filed submissions and further evidence with the Tribunal. That further evidence included a further statement from the Appellant dated 24 September 2024.
16. The Appellant appeared before the Tribunal on 30 September 2024. The Appellant was assisted by an interpreter in the Bengali and English languages and had his representative also attend the hearing.
17. On 15 November 2024, the Tribunal made its decision to affirm the determination of the Secretary that the Appellant is not recognised as a refugee and is not owed complementary protection under the Act.
18. The Appellant appealed to this Court by notice of appeal filed on 10 February 2025.
19. On 30 April 2025, I heard the appeal in respect of ground 1. Having given leave to further amend the notice of appeal that day to include ground 2, I adjourned the hearing of the second ground of appeal. Further written submissions were filed, and I heard argument in relation to ground 2 on 5 June 2025.

LEAVE TO FILE APPEAL

20. As I have noted above, the Tribunal Decision was made on 15 November 2024. At that time, s 43(3) of the Act provided that any appeal to this Court must be filed within 43 days after the Appellant received the written statement of the Tribunal's

decision.¹ That notification occurred on 20 November 2024. Thus, the 42-day period allowed for an appeal to this Court expired on 1 January 2025.

21. The appeal to this Court was not filed until 10 February 2025. That is, the appeal was filed about 40 days after the expiration of the 42-day period provided in s 43(3).
22. Section 43(5) of the Act provides that this Court may, by order, extend the period provided for in s 43(3) as may be considered appropriate if:
 - (a) an application for the order has been made in writing to this Court specifying that the appellant considers it necessary in the interests of justice to make that order; and
 - (b) this Court is satisfied that it is necessary in the interests of the administration of justice to make that order.
23. The Appellant applies for an order extending the period for filing an appeal in this Court. He relies upon the affidavit of Ms Neha Prasad sworn 23 April 2025. Ms Prasad deposes that:
 - (a) she is an employee of the Appellant's solicitors, Craddock Murray Neumann (CMN);
 - (b) she received a copy of the Tribunal Decision by email on 20 November 2024;
 - (c) after receiving the Tribunal Decision, she attempted to contact the Appellant, but her calls and messages went unanswered;
 - (d) the offices of CMN were closed between 20 December 2024 and 6 January 2025;
 - (e) Ms Prasad's return to work was delayed until 18 January 2025;
 - (f) between 18 January and 4 February 2025, staff of CMN were unable to establish communication with the Appellant for the purpose of advising him about the outcome of the Tribunal Decision and to obtain instructions as to a possible appeal; and
 - (g) on 4 February 2025, staff of CMN were able to establish telephone contact with the Appellant and obtained instructions to file an appeal from the Tribunal Decision.
24. The Republic opposes the grant of an extension of time to the Appellant, but only on the basis that the appeal lacks merit. The Republic relies on the decision of the High Court of Australia in *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 to submit that it is appropriate for this Court to determine, after detailed argument, that the proposed appeal does not have merit and thus it is not in the interests of the administration of justice to grant the extension of time.

¹ I note that subsequent to the Tribunal Decision in this case, s 43(3) was amended to provide for a 21-day period for lodging appeals to this Court. That shorter period is not relevant to this case.

25. It is necessary for this Court to avoid the error of conflating the application for an extension of time with the substantive appeal by refusing to extend time on the basis of a final determination of the issues raised in the substantive appeal.² Instead, I am required to consider what I am satisfied is in the interests of the administration of justice: s 43(5)(b) of the Act.
26. On its face, the power to extend time in s 43(5) is unfettered, except by the requirements of a written application in conformity with 43(5)(a).³ In the absence of mandatory considerations as to whether I have reached the state of satisfaction required by s 43(5)(b), I consider that the following considerations⁴ are relevant:
- (a) An explanation for the delay has been given. It is apparent that the Appellant was not aware of the Tribunal Decision until 4 February 2025, and the appeal was filed promptly after that date.
 - (b) The Republic is not prejudiced to any substantial extent by the Appellant's delay in filing this appeal.
 - (c) A failure by this Court to grant an extension of time has the effect that the Appellant cannot bring an appeal from this decision as of right, but rather any appeal to the Court of Appeal from a refusal to extend time requires leave of this Court or the Court of Appeal to pursue: s 19(3)(f) *Nauru Court of Appeal Act 2018* (Nr).
 - (d) The nature of the matters in consideration on this appeal are very consequential, including relating to the future life and safety of the Appellant.
 - (e) I consider the grounds advanced by the Appellant to be at least arguable.
27. Having regard to those considerations, I am satisfied that it is necessary in the interests of the administration of justice to make an order extending the period of time provided by s 43(3) to 10 February 2025.
28. I have had regard to the Republic's argument that I ought to refuse an extension of time if I find that the substantive grounds advanced by the Appellant would fail. However, consistent with the admonition of the High Court in *Tu'uta Katoa* to ensure that I do not conflate an application to extend time with the ultimate determination of the substantive grounds of appeal, I am satisfied, having regard to *all* relevant considerations (not just my ultimate view on the merits of the grounds of appeal), that an extension of time is necessary in this case in the interests of the administration of justice. I shall now proceed to determine the merits of the substantive grounds of appeal.

² *Tu'uta Katoa* at [5], per Kiefel CJ, Gageler, Keane and Gleeson JJ

³ As was also the case in *Tu-uta Katoa* in respect of the statutory scheme relevant there, at [12]

⁴ See *Hunter Valley Developments Pty Ltd v Cohen* (1984) 3 FCR 344 at 348-349 per Wilcox J for a range of relevant considerations.

GROUND 1 – IRRATIONALITY OR ILLOGICALITY

The Appellant's Submissions before the Tribunal

29. The Appellant's representative provided submissions to the Tribunal dated 26 September 2024 (**the Submission**). The Submission comprehensively set out the Appellant's claims to refugee status and complementary protection. Part of the Submission included a detailed consideration under the heading "Recent Developments in Bangladesh". As the Submission made clear, this part of the document was to be read in conjunction with another "generic" submission entitled "Recent changes in Bangladesh" provided to the Tribunal in August 2024 (**the Generic Submission**).
30. Whilst the Submission is comprehensive, it is sufficient to note the following matters:
- (a) At [76] - [77] of the Submission, the Appellant submitted that low-level BNP supporters often face threats, harassment and physical violence, especially during periods of heightened political activity. Local cadres affiliated with the AL may target low-level BNP supporters using violence as a means to suppress BNP activities at the grassroots level. For instance, during election periods, there have been reports of BNP supporters being attacked whilst campaigning or attending rallies. Targeting of low-level BNP supporters can be attributed to factors including that it helps the AL maintain control over political narratives and electoral outcomes and low-profile supporters are often more vulnerable due to their lack of resources and connections, making them easier targets and discouraging broader participation in politics.
 - (b) At [78] – [79] of the Submission, the Appellant submitted that low-level BNP supporters are also at risk of arbitrary arrests and detentions and security forces have been accused of arresting opposition supporters on flimsy or fabricated charges. Also, low-level BNP supporters often face social and economic harassment including being ostracised by their communities, losing employment or being denied access to public services.
 - (c) At [137] – [138] of the Submission, the Appellant's representative noted that a Bangladeshi-American geopolitical columnist had written that "Hasina's political DNA is found in every corner of Bangladeshi state she left behind. Her hand-picked judges, bureaucrats, police and military commanders are still running the show." It was said to be still too early to be able to predict how the fall of the Hasina Government would impact the lives of average people in Bangladesh, particularly those in rural areas, whose lives are subject to local administrations and security authorities, the majority of which have acted with impunity, particularly as AL power brokers.
 - (d) The Appellant referenced at [139] of the Submission a DFAT country report from 30 November 2022 which provides that "[l]ocal governments, even at the Union Parishad level, can significantly influence the day-to-day lives of citizens. They have influence and run programs and departments that deal with matters of community development, social welfare and law and order within the limits of their administrative units."

- (e) At [143] of the Submission, the Appellant submitted that the assessment of the recent changes in Bangladesh should take into consideration the nature and degree of the change and its durability, how that change might affect the Appellant's particular situation, whether the reasons for his fear of persecution still exist, whether the feared agents of persecution are still present in Bangladesh and are still inclined to harm the Appellant, as well as whether there are new grounds of fear as a result of the new change which is likely to be chaotic for the foreseeable future.

The Relevant Parts of the Tribunal Decision

31. The Tribunal started by setting out the basis of the Appellant's claims. At [12] of the Tribunal Decision, the Tribunal noted that the Appellant's representative had submitted three generic undated post RSD interview submissions. The Tribunal extracted relevant parts of those submissions, particularly concerning the availability of state protection in Bangladesh in light of recent changes in Bangladesh. At [13], the Tribunal set out the relevant parts of the Appellant's statement dated 24 September 2024.

32. Starting at [15], the Tribunal noted that the Appellant appeared before it on 30 September 2024 and summarised the effect of his evidence in the following paragraphs.

33. At paragraphs [39] and [40] of the Tribunal Decision, the Tribunal said:

“[39] The advisor submitted recent changes in Bangladesh had been addressed in their recent changes in Bangladesh submission. He also referred to the Secretary's determination and said the situation was dynamic and fluid. He also stated that the director of the South Asian Institute at the US Wilson Centre, said on 25 September 2024 in a podcast that focused on Bangladesh, that there were many uncertainties about Bangladesh, that the election had not been called and it was uncertain how long the interim government would be in power. The advisor also referred to about [sic] an article dealing with Islamic extremists creating insecurity in Bangladesh. ‘Chaos in Bangladesh Opens Door to Islamic Extremists’. He submitted what happened next was unclear, that the threat of sectarian violence was growing and the garment sector was in decline. He also submitted the interim government had little experience navigating the life and death politics of Bangladesh and it was unclear who was in charge, that the interim government was controlled by the military and it was unclear what was going to happen.

[40] He also stated the Awami League was still in power in the [Appellant's] area and nothing had changed.”

34. The Tribunal found that the Appellant's evidence in relation to when and why he was a BNP supporter had changed over time. It said:

[54] ...In addition, even if the Tribunal accepts that the [Appellant] consistently stated that he was involved in a local thana/upazila election as opposed to the national election, and if it accepts that he was mistaken as to the date of

that election, the [Appellant] also stated at the RSD interview on 20 August 2024 that as far as he knew of no election was held this year in Bangladesh.

[55] At hearing, the [Appellant] claimed that despite what was said at the RSD interview he did know there was a national election in 2024 but because the BNP did not participate, he did not consider it to be an election.

[56] Given the powerful political message a boycott brings, the Tribunal does not accept that if the [Appellant] knew the BNP had boycotted the 2024 national election, he would not have stated this in his RSD interview.”

35. Starting at [59] of the Tribunal Decision, the following passage appears:

“[59] ... The changing nature of the [Appellant’s] evidence about where he worked and lived in Bangladesh from May 2022 to December 2023, the changing nature of the [Appellant’s] evidence in relation to why he was a BNP supporter and the [Appellant’s] lack of displayed knowledge at RSD interview about the 2024 national election, leads the Tribunal to conclude that while it accepts the [Appellant] may support the BNP, the nature and strength of his BNP was minimal and without any notable adverse profile among Awami League and other pro-government actors at the time. [sic]

[60] The Tribunal does not accept the [Appellant] participated in the Thana election nor that he actively campaigned for [AH]. Neither does it accept he attended meetings and rallies, asked his friends and relatives to attend nor that he distributed publicity material, put up posters and served tea. Neither does the Tribunal accept the [Appellant’s] support or his political convictions resulted in him being targeted by the Awami League in the past nor that he relocated as a result. Neither does it accept his father subsequently received Awami League threats that involved the [Appellant] or that his father continues to receive threats.

[61] Furthermore, the Tribunal does not accept the late claim that the [Appellant’s] interest in politics was due to his grandfather’s well-known association and participation with the BNP. Nor does it accept that he moved to another village to avoid persecution.

[62] While the Tribunal accepts the [Appellant] left Bangladesh illegally, given the Tribunal does not accept he was targeted by the Awami League in the past, neither does it accept his motivation for not applying for a genuine passport was because of his fear of being targeted by the Awami League or for any personally held fears about being harmed about his political opinion.

[63] The advisor submitted it is still too early to predict how the recent changes in Bangladesh will impact the lives of average people in Bangladesh, particularly those in rural areas. However, and as put to the [Appellant] at hearing, the recent political changes in Bangladesh are substantial in that prime minister Sheikh Hasina has fled and a new interim government has been sworn in tasked to restore peace, law and order, fight corruption and prepare for new elections at which the BNP is seen as having the greatest chance of winning. See for example How is Bangladesh Doing 1 Month

After Sheikh Hasina's Exit? – The Diplomat dated 5 September 2024 and The Diplomat Bangladesh Must Move Beyond the Politics of Revenge, by Imrul Islam, 26 August 2024 The Diplomat.

- [64] In his initial statement, the [Appellant] stated that most of his village were BNP supporters although the Awami League supporters were more powerful as they had the backing of the ruling party. The recent political developments in Bangladesh mean that this is no longer the case. The Awami League is no longer the national government and as a result has lost the backing of institutions such as the police which means it can no longer operate with impunity. Accordingly, the Tribunal does not accept the Awami League current power brokers nor that the machinery of government that meant they could act with impunity in the past, continues. Neither does it accept that those at the local level are still subject to local Awami League administrations and security authorities, who can continue to act with impunity.
- [65] As discussed in the hearing, political events in Bangladesh following the removal of former prime minister Sheikh Hasina and the installation of an interim government are dramatic. Some of those changes are substantially favourable to the BNP, including the release of some key BNP political prisoners and the announcement of elections. The Tribunal is mindful that there remains uncertainty about these developments and that broader national trends have not swept away local and municipal level rivalries and animosities between the Awami League and BNP supports [sic]. However, it is the Tribunal's assessment at the time of making this decision that the developments are generally positive for low level or ordinary BNP supporters throughout Bangladesh. For the foreseeable future, there is no reasonable possibility of such actors facing persecutory harm based on their political opinion.
- [66] The Tribunal has already found it does not consider the [Appellant's] support for the BNP resulted in him being targeted by the Awami League in the past. That in conjunction with the recent changes, means that the Tribunal finds there is no reasonable possibility the [Appellant] would be harmed by anyone because of his continuing BNP support or his real or imputed political opinion. His fear of persecution is not well-founded and he is not a refugee on this basis.”

The Appellant's Arguments

36. The Appellant argues that a key aspect of his submissions made to the Tribunal was that the AL was still in power in the Appellant's local area. Thus, there remained a risk to the Appellant, even as a low-level supporter of the BNP.
37. The Appellant argues that the Tribunal's response to this point is found at [64] of the Tribunal Decision. It is to the effect that the changes at the *national level* mean that the AL does not have control of institutions such as the police, and thus they cannot act with impunity.

38. The Appellant contends that this reasoning does not meet the Appellant's submissions at [76]-[77] of the Submission to the effect that low level BNP supporters often face threats, harassment and physical violence and that local cadres affiliated with the AL may target these individuals using violence as a means to suppress rival parties' activities at the grassroots level.
39. The Appellant contends that the Tribunal's reasons fail to provide a logical response to this aspect of the Appellant's case based on local AL conduct *without* reference to the national level political situation. For example, the Appellant says that at [13] of the Tribunal Decision, the Appellant is specifically recorded as saying that although there may have been some changes in Bangladesh, he did not believe this makes any difference to his fear of returning to the country. The AL members and thugs were still very much entrenched.
40. The Appellant submits that the Tribunal does not at any point respond to the submission that local level officials, such as police, were appointed by the AL and thus, at a local level, the AL might well still enjoy the support of some officers within these institutions, even if they are not controlled overall by the AL.
41. The Appellant argues that when the Tribunal said in its reasons at [64] that it did not accept that those at the local level were still subject to AL administration and continue to act with impunity, it is not a logical and rational response to the Appellant's claimed fears of harm at the local level.
42. The Appellant argues that the totality of the Tribunal Decision in this respect turns on national level changes, which the Appellant recognised as important but then took his argument one step further by reference to the impact such national level changes would have (or not have) at the local level. That is to say, the Appellant argued that there would be little impact of the national changes at the local level. The Appellant submits that the Tribunal did not respond to that next step in the sense that there is not any intelligible justification for the finding that the *local level* concerns have dissipated. The mention of national level changes does not meet the Appellant's case about why those national level changes do not translate to the local level. It says nothing about local level cadres, or local affiliates harassing and harming low-level BNP supporters. In effect, the Appellant contends that the Tribunal simply did not evaluate the local level uncertainties and issues.
43. The Appellant relies upon the decision of the Full Court of the Federal Court of Australia in *Minister for Immigration and Border Protection v MZYTS* [2013] FCAFC 114, in at paragraphs [38]-[45]. *MZYTS* was a case concerning a contended failure to consider evidence on the part of the tribunal there. Recognising that this case is not framed as a failure to consider evidence, but rather is based on a ground of irrationality or illogicality, counsel for the Appellant nevertheless submitted that the legal context in which the rationality arguments are put must be considered. And the legal context in this case is, consistent with the approach in *MZYTS*, to ask whether the reasons disclose a rational response or a rational evaluation of the claims put by the Appellant. Counsel for the Appellant submitted that it is not sufficient for a Tribunal to be aware of the *existence* of some relevant evidence, but not to properly engage with it and provide a rational response to the claims put.

The Republic's Arguments

44. Counsel for the Republic submits at the outset that it is important to recall that this is a challenge on grounds of irrationality, not a failure to consider evidence. Accordingly, the Republic says that the significance of *MZYTS* is difficult to understand as it was not a case about irrationality.
45. The Republic submits that the major flaw in the Appellant's case is his attempt to "slice up" or "pigeon-hole" the Tribunal's reasons. In particular, the Republic criticizes the contention that the only part of the Tribunal's reasons that purports to respond to the Appellant's claim to fear harm as a low-level supporter of the BNP is [64] of the Tribunal decision.
46. The Republic urges this Court to read the reasons of the Tribunal fairly and as a whole. It is a matter for the Tribunal as to the choice and weight of country information that it relies upon.
47. Reading the Tribunal's decision as a whole, the Republic submits that the Tribunal found:
 - (a) While it accepts that the Appellant may support the BNP, the nature and strength of his BNP support was minimal and without any notable profile among AL and other pro-government actors at the time (at [59]);
 - (b) The Tribunal did not accept that the Appellant's support or his political convictions resulted in him being targeted by the AL in the past, nor that he relocated as a result (at [50] and [62]);
 - (c) The Tribunal did not accept that the Appellant's father received or receives AL threats that related to the Appellant or that the Appellant's interest in politics was due to his grandfather's well-known association with the BNP. Nor did it accept that the Appellant moved to another village to avoid persecution or that the Appellant left Bangladesh due to any fears about being harmed about his political opinions (at [61] and [62]);
 - (d) There had been "substantial" and "dramatic" recent political changes in Bangladesh and a new interim government had been sworn in tasked to restore peace, law and order (at [63] and [65]).
 - (e) The AL, which is no longer the national government and has lost the backing of institutions such as the police, can no longer operate with impunity (at [64]);
 - (f) The Tribunal did not accept that those at the local level are still subject to local AL administration and security authorities who continue to act with impunity (at [64]);
 - (g) In respect of low-level BNP supporters, for the foreseeable future, there is no reasonable possibility of such actors facing persecutory harm based on their political opinion (at [65]); and
 - (h) In circumstances where it found that it did not consider the Appellant's support resulted in him being targeted by the AL in the past, and in conjunction with the recent changes, there was no reasonable possibility the

Appellant would be harmed by anyone because of his continuing BNP support (at [66]).

48. The Republic submits that this is a rational response to the Appellant's claim to fear harm due to being a low-level supporter of the BNP. The Tribunal's response to the Appellant's claim was not isolated to its reasoning in [64]. The Tribunal's reasoning included that:
- (a) the Appellant had not been harmed in the past;
 - (b) since then, the situation had improved and for the foreseeable future there was no reasonable possibility of low-level supporters in the BNP being harmed on the basis of their political opinions; and
 - (c) accordingly, there was no reasonable possibility of the Appellant being harmed on the basis of low-level support for the BNP in the future.
49. The Republic also referred to the decision of Freckelton J of this Court in *CRI 020 v The Republic* [2021] NRSC 23. At [36], his Honour referred to the application of the relevant principles of irrationality in this Court in these terms (footnotes omitted):

“Irrationality such as to amount to legal error must involve reasoning which no rational or logical decision-maker could arrive at on the same evidence. The correct approach for this Court is to ask “whether it was open to the Tribunal to engage in the process of reasoning in which it did engage and to make the findings which it did on the material before it.” Put another way, “If probative evidence can give rise to different processes of reasoning and if logical or rational or reasonable minds might differ in respect of the conclusions to be drawn from that evidence, a decision cannot be said by a reviewing court to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another conclusion.”

Consideration of Ground 1

50. The Appellant's approach to the Tribunal Decision is one which seeks impermissibly to consider passages of the reasons divorced from the totality of the decision.
51. Paragraph [64] of the Tribunal Decision squarely addresses the Appellant's own contention that the AL supporters in his village were “more powerful as they had the backing of the ruling party”: see also Appellant's Statement of Claim dated 27 June 2024, paragraph [6] (p.29 of Appeal Book of Documents). That paragraph [64] does not deal with local conditions is thus entirely explicable because it was simply addressing the Appellant's own argument.
52. The Tribunal did not accept that the Appellant was any more than a low-level supporter of the BNP. The nature and strength of his support was “minimal” and he was “without any notable profile”. The Tribunal rejected his various claims about participation in elections and his contended role in campaigning.
53. The Tribunal noted that the Appellant's adviser had submitted that it is still too early to predict how the (then) recent changes in Bangladesh would impact the lives of average people in Bangladesh. However, it found that the recent political changes

were substantial, dramatic, and substantially favourable to the BNP. Whilst mindful that there remains uncertainty about these developments and that broader national trends had not “swept away” animosities between the AL and BNP supporters, the changes were generally positive for low level BNP supporters such as the Appellant throughout Bangladesh. For the foreseeable future, there is no reasonable possibility of BNP supporters facing persecutory harm based on their political opinion.

54. The Tribunal found that the Appellant’s support for the BNP had not resulted in him being targeted by the AL. That, *in conjunction with* the recent changes, means that there was no reasonable possibility that the Appellant would be harmed because of his continuing BNP support or his real or imputed political opinion.
55. The conclusion reached by the Tribunal at [66] of the Tribunal Decision is in no sense irrational or illogical. The reasoning process is set out fully at paragraphs [59] to [66]. It was open to the Tribunal to engage in that process of reasoning and to make the findings which it did.
56. I reject the contention that the Tribunal Decision is affected by illogicality or irrationality because the Tribunal failed to give a logical or rational response to his argument that national level changes in Bangladesh did not impact the risk he faced at the local level. The Tribunal addressed that issue at [63] to [65]. It then expressed its conclusions on this aspect of the matter at [66].
57. Its findings in those paragraphs were neither illogical nor irrational, in the sense described by the Court in *CRI 020*. Whilst accepting that there remained uncertainty about developments in Bangladesh and that local rivalries have not been swept aside, the Tribunal found that recent developments were generally positive. That was a finding open to it. When the Tribunal’s finding that the Appellant was *not* in the past targeted by AL supporters (which conclusion is not challenged on this appeal) is coupled with the positive recent changes, it can be seen that the Tribunal’s conclusions were indeed legally rational and open to it.
58. The Appellant has not established ground 1.

GROUND 2 – FAILURE TO COMPLY WITH SECTION 34(4) OF THE ACT

The Appellant’s Arguments

59. Counsel for the Appellant submits that “looming large over the case was the Tribunal’s view ... that changes at the national level in Bangladesh have ameliorated risks for BNP supporters and members”. The Appellant notes that he specifically raised in submissions before the Tribunal the issue of “local level” circumstances, claiming that the national level changes had not had any material impact at the local level.
60. The Tribunal rejected that proposition and, in doing so, cited two items of country information in footnotes referring generally to the national level changes at a high level of generality.
61. Counsel for the Appellant submits that the Tribunal Decision at [64] address only one element of the Appellant’s case, which was that the local level AL persons had the

backing of the ruling party nationally. However, the Tribunal went on to reject that those at the local level are still subject to local AL administrations who can continue to act with impunity.

62. The Appellant submits that no evidence is referenced to support this proposition. There is said to be no mention of evidence, or the reasoning, on which the Tribunal based its findings that local level AL control in the Appellant's area had ceased.
63. The Appellant submits that the Tribunal's failure to refer to evidence on this point constitutes a breach of s 34(4)(d) of the Act which requires the Tribunal to refer to the evidence or other material on which the findings of fact were based. The proper course for this Court is then to quash the decision for an error of law and remit the matter to the Tribunal for consideration according to law.

The Republic's Arguments

64. The Republic makes two submissions in respect of ground 2. First, it submits that there was no breach of the requirements of s 34(4)(d) by the Tribunal. Second, it submits that if it is wrong about its first submission, *AJ24* was wrongly decided and the appropriate relief for this Court to grant in the event of a finding of breach of s 34(4) by the Tribunal is to remit the matter to the Tribunal for the provision of further reasons, but not to quash the Tribunal's decision.
65. As to whether the Tribunal breached s 34(4)(d) of the Act, the Republic notes that the conclusion impugned by the Appellant is that in the final sentence of paragraph [64] that the Tribunal did not accept that those at the local level are still subject to local AL administrations and security authorities who can continue to act with impunity. The Republic submits that this conclusion was the Tribunal's final part of the response to the Appellant's statement made in his initial statement. The Tribunal had earlier addressed the recent political developments in Bangladesh that meant that AL supporters in the Appellant's village no longer had the backing of the ruling party. It submits that the description of the political developments founds the Tribunal's rejection of two propositions:
 - (a) That the AL are *current* powerbrokers and the machinery of government that mean they could continue to act with impunity; and
 - (b) That those at the local level are still subject to local AL administrations and security authorities who can continue to act with impunity.
66. The Republic submits that it is plain that the evidence or other material on which the impugned proposition was based is the "recent political developments" in Bangladesh.
67. Further, the Tribunal's description of the most recent events in Bangladesh was based on the material referred to in:
 - (a) the three generic submissions on behalf of the Appellant and identified at Tribunal Reasons [12];
 - (b) the further submission identified at Tribunal Reasons [14];

- (c) the “changes in Bangladesh submission” identified at Tribunal Reasons [39]; and
 - (d) the three reports identified at Tribunal reasons [63].
68. The Republic then made detailed and helpful submissions as to the potential application of *AJ24*, and whether it ought to be followed, to the facts of this case. For the reasons I have set out below, it is not necessary for me to set out the detail of those submissions.

Consideration of Ground 2

69. The Tribunal did, in my view, refer to the evidence or other material on which its relevant findings of fact were based. No breach of s 34(4)(d) is made out.
70. The relevant finding of fact is identified by the Appellant as being the Tribunal’s rejection of the contention that those at a local level are still subject to local AL administrations and security authorities who can continue to act with impunity. It is apparent that this finding was inferred from the evidence described at paragraph [63] (including by reference to two articles from *The Diplomat* and the International Crisis Group report described therein) and the initial part of paragraph [64]. That is to say, the Tribunal’s rejection of the proposition that the AL could continue to act with impunity at a local level is explained by the evidence described in the Tribunal Decision. The dramatic changes at the national level as described in the Tribunal Decision meant that the ability of the AL to act with impunity as it did in the past no longer continues. The finding of fact challenged by the Appellant here naturally follows from these prior conclusions. The evidence on which those conclusions were based is thus referred to in the Tribunal Decision.
71. As I said in *AJ24* at [145], a proper process of reasoning may, in appropriate circumstances, involve the drawing of inferences from known facts. That is the process of reasoning engaged in by the Tribunal here. The Tribunal did not simply draw inferences divorced from the evidence before it: nor is there any proper basis to suggest in this case that the Tribunal engaged in mere speculation or conjecture.
72. Unlike in *AJ24*, the process of the Tribunal’s reasoning in this issue is clearly derived from the evidence identified by the Tribunal in its decision. No breach of s 34(4)(d) of the Act is demonstrated.
73. In light of that conclusion, I am not required to consider the Republic’s second argument concerning the correctness of *AJ24* insofar as it related to the nature of the orders that ought to have been made in that case.

CONCLUSION AND DISPOSITION OF THE APPEAL

74. Pursuant to s 43(5) of the Act, I extend the time for the Appellant to file his appeal to this Court pursuant to 43(3) to 10 February 2025.
75. I have found that the Appellant has not made out either of the two grounds ultimately pursued on this appeal. The appeal is therefore dismissed.

76. Pursuant to section 44 of the Act, I make an order affirming the Tribunal decision.

77. I make no order as to the costs of the appeal.



JUSTICE MATTHEW BRADY

04 July 2025