



**IN THE SUPREME COURT OF NAURU**  
**AT YAREN**

**Appeal No. 17 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:**

**AQ25**

Appellant

**AND:**

**REPUBLIC OF NAURU**

Respondent

Before: Brady J

Date of Hearing: 12 August 2025

Date of Judgment: 19 November 2025

Citation: *AQ25 v Republic of Nauru*

## **CATCHWORDS:**

*APPEAL - Refugees – Refugee Status Review Tribunal – whether Tribunal failed to comply with s.40(1) of the Refugees Convention Act 2012 (Nr) – whether Tribunal failed to consider the Appellant’s evidence - Tribunal did not breach s.40(1) of the Refugees Convention Act – No failure to consider Appellant’s evidence or failure to afford procedural fairness – Appeal dismissed*

## **LEGISLATION:**

*Refugees Convention Act 2012 (Nr), ss.40, 43, 44*

## **CASE AUTHORITY:**

*AN25 v The Republic [2025] NRSC 46, Hicks v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 757, Mustac v Medical Board of Western Australia [2007] WASCA 128, Minister for Immigration and Ethnic Affairs v Wu Shan Liang (1996) 185 CLR 259, HFM038 v Republic of Nauru [2023] NRCA 14*

## **APPEARANCES:**

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

Counsel for Respondent: R O' Shannessy (instructed by Republic of Nauru)

# **REASONS FOR JUDGMENT**

## **INTRODUCTION**

1. The Appellant is a national of Bangladesh. He arrived in Australia in November 2023 and on 24 November 2023 he was transferred to Nauru pursuant to the Memorandum of Understanding between the governments of Nauru and Australia. On 24 April 2024, the Appellant made an application for Refugee Status Determination (**RSD**).
2. The Appellant claims that he fears persecution in Bangladesh should he be returned because he borrowed a lot of money and if he returns there will be a lot of pressure on him to repay the money. He fears that both the bank and other people from whom he borrowed money will make his life unbearable. Accordingly, he claims to be a member of a particular social group of destitute borrowers of usurious loans and is at risk of significant harm in his home country.

3. He also claims to fear return to Bangladesh because he fears harm from the smuggler who arranged his trip to Australia.
4. Pursuant to s.43 of the *Refugees Convention Act 2012* (Nr) (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**Tribunal**) made on 6 March 2025 (**Tribunal Decision**). The Tribunal affirmed a decision of the Acting Secretary (**Secretary**) of the Department of Multicultural Affairs dated 6 August 2024 (**Secretary's Decision**). The Secretary decided not to recognise the Appellant as a refugee under the Act and found that the Appellant was not owed complementary protection under the Act.
5. By s.43(1) of the Act, the Appellant may appeal to this court on a point of law. By s.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.

#### **GROUND OF APPEAL**

6. By his Amended Notice of Appeal dated 13 June 2025, the Appellant pursues two grounds of appeal:
  - (a) the Tribunal failed to comply with s.40(1) of the *Refugees Convention Act*;
  - (b) the Tribunal failed to consider the Appellant's evidence as to how the Appellant knew that the smuggler knew that the Appellant had identified the smuggler to the [Australian Federal Police].

#### **PROCEDURAL HISTORY**

7. The Appellant arrived in Nauru on 24 November 2023. The Appellant was interviewed by an RSD officer after making his RSD application. The Secretary's Decision was made on 6 August 2024.
8. The Appellant then applied to the Tribunal for review of that decision. The Appellant provided submissions to the Tribunal as well as a further statement. He attended a hearing before the Tribunal on 31 October 2024.
9. The Tribunal Decision was delivered on 6 March 2025.
10. On 25 March 2025, the Appellant filed a Notice of Appeal in this court. An Amended Notice of Appeal was filed on 13 June 2025. I heard the appeal on 12 August 2025. The hearing of this appeal was conducted together with the hearings of the appeals in AP25 and AX25, in light of an overlapping ground of appeal in relation to each of those three matters.

#### **THE APPELLANT'S CLAIMS**

11. The Appellant's claims for protection were twofold. Firstly, he contended that he borrowed a considerable amount of money in order to make the trip to Australia and

that if returned to Bangladesh, he would be unable to pay that debt. He fears the ramifications of his inability to repay that debt if he is returned to Bangladesh.

12. Secondly, the Appellant contends that his trip to Australia was arranged by a people smuggler. He fears harm from this person given the fact that the Appellant has participated in interviews with the Australian Federal Police (AFP) in Nauru since his arrival in Nauru.

#### **FIRST GROUND OF APPEAL**

13. The following paragraphs dealing with the first ground of appeal are substantially replicated in my discussion of the same ground of appeal in the reasons for judgment in the matters of AP25 and AX25.
14. The first ground of appeal in this case alleges that the Tribunal failed to adopt the mandatory procedure set out in s.40(1) of the Act. It is convenient here to set out the relevant parts of s.40:

#### **40. Tribunal Shall Invite Applicant to Appear**

- (1) The Tribunal shall invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the determination or decision under review.
- (2) (1) does not apply if:
  - (a) the Tribunal considers that it should decide the review in the Applicant's favour on the basis of the material before it; or
  - (b) the applicant consents to the Tribunal deciding the review without the applicant appearing before it.

#### *Relevant Evidence*

15. As I have noted above, the Appellant was interviewed by the then-constituted Tribunal on 31 October 2024.
16. On 4 December 2024, the principal member of the Tribunal, Ms Boddison, sent an email to Ms Prasad of Craddock Murray Neumann (CMN), the Appellant's representative. That email attached a letter which was relevantly in the following terms:

I have become aware that for the sittings conducted from 30 October to 6 November 2024, the Tribunal was not constituted in accordance with the *Refugees Convention Act 2012* (the Act).

This sitting involved the following Applicants:

...

925-009 [being the boat number of the Appellant]

...

These cases will be reconstituted to a new Tribunal. It is envisaged that the cases will be constituted to two of the members from the original Tribunal with a third new Member.

Could you please advise whether these applicants:

1. wish to be invited to a hearing with the newly constituted Tribunal or whether they consent to the newly constituted Tribunal relying on the evidence they have given at the previous hearing and if this is the case, whether the applicant's consent to the Tribunal deciding the review without the applicant appearing before it pursuant to s.40(2)(b) of the Act.

Or

2. The applicants wish to be invited to and participate in a new hearing.

17. On 5 December 2024, Ms Prasad responded to the Principal Member advising that she would seek instructions and revert.
18. Ms Boddison responded the same day, 5 December 2024, by email advising Ms Prasad that Dr O'Connell had not been appointed in accordance with s.13(2) of the Act and accordingly the Principal Member had formed the view that his appointment to the Tribunal was not valid. Hence, the cases would need to be reconstituted with a new presiding member.
19. On 27 December 2024, Ms Prasad responded by email to the Principal Member advising:

We have received instructions from our clients and confirm the following:

1. ...95-009... would not like to proceed with a new hearing. However, if the reconstituted Tribunal is not satisfied on credibility or otherwise has any adverse concerns, it should exercise its discretion positively under 7(1)(a)(iii) and (vi) of the Act to request further information or have certain information verified by way of statutory declaration (which covers the situation where evidence on a certain matter was not explored orally at hearing).

...

Please do let me know if you require any further clarification in relation to the above.

20. On 3 January 2025, Ms Temaki, the Tribunal Registrar, emailed Ms Prasad with a letter of the same date. The letter was relevantly in the following terms:

I refer to the correspondence of 4 December 2024 and your response dated 27 December 2024.

Could you please confirm that all applicants consent to the reconstituted Tribunal relying on the evidence they have given at the previous hearing.

...

Could you also confirm that all applicants consent to the reconstituted Tribunal deciding the review without the applicant appearing before it pursuant to s.40(2)(b) of the Act. If the applicants do not consent, they will be invited to a further hearing.

Could you please provide your response by 10 January 2025.

21. On 9 January 2025, Mr Zhang of CMN sent an email in response to Ms Temaki. The response was relevantly in these terms:

1. We refer to your letter dated 3 January 2025 regarding the reconstitution of matters which we are instructed to act in and referred to above.
2. Subject to the qualifications at [3]-[5] hereof, the applicants (forthwith, **the Applicants**) assigned the following NOM IDs are *generally* agreeable to the Tribunal promulgating a decision in accordance with s.40(2)(b) of the *Refugees Convention Act 2012* (Nr) (**the Act**) without further appearance from the Applicants:

...

(d) 925-009;

...

3. Whilst the applicants do not oppose the Tribunal relying on the evidence already proffered as a matter of *general* principle, they maintain that depending on the circumstances of each case, there may be an obligation on the Tribunal to exercise certain discretionary powers to ensure that the applicants have been provided a meaningful opportunity to present their case, whether that be in the interests of ensuring procedural fairness and/or natural justice and/or legal reasonableness.
4. The gravamen of this submission was advanced at paragraph [1] of email correspondence from Ms Neha Prasad of our office to the Tribunal dated 27 December 2024. Specifically, it is the applicants' position that if the Tribunal is not positively satisfied on credibility or otherwise has any adverse concerns, the discretionary powers conferred under s.7(1)(a)(iii), 7(1)(a) (v) and 7(1)(a) (vi) and 7(1)(b) of the Act become relevant for the purposes of promulgating a decision. The conferral of these statutory powers allows the Tribunal to request further information or have further information verified by way of statutory declaration (which deals with the situation where evidence on a certain matter was not satisfactorily explored orally at hearing).

5. For the avoidance of doubt, where adverse concerns are a reason or part of a reason for promulgating a decision which affirms the determinations made by the Secretary, the Applicants request notice of such concerns and an opportunity to comment and/or file submissions on such concerns in accordance with well-established legal principles about procedural fairness and/or natural justice and/or legal reasonableness.

#### *Relevant parts of the Tribunal Decision*

22. The Tribunal Decision was delivered on 6 March 2025. The following passage appears from paragraph [10]:

[10] After the hearing the Tribunal became aware that it had not been constituted in accordance with the *Refugees Convention Act* (2012). On 4 December 2024, the Principal Member wrote to the representative advising of this and whether in these circumstances a further hearing with a newly constituted Tribunal was sought.

[11] The Tribunal's view was that all issues in the hearing were properly canvassed and the applicant given ample opportunity to make out his case to the Tribunal at the hearing.

[12] On 3 January 2025, the Tribunal Registrar wrote to the applicant's representative seeking clarification as to whether the applicant wished to be invited to a further hearing with the newly constituted Tribunal, or whether he consented to the Tribunal deciding the review without appearing before it pursuant to s 40(2)(b) of the Act.

[13] On 9 January 2025, the applicant's adviser responded that the applicant does not oppose the Tribunal relying on evidence already provided and is agreeable to proceeding to a decision without a further hearing on the understanding that the Tribunal considered the applicant has been provided a meaningful opportunity to present his case. The adviser further states that subject to "where adverse concerns are a reason or part of a reason for propagating a decision which affirms the determination made by the Secretary the applicant request notice of such concerns and an opportunity to comment and file submissions on such concerns" in accordance with the principles of natural justice. As noted above, the Tribunal considers that the hearing afforded the applicant the opportunity to present his case, including to address any "adverse concerns", and that the principles of natural justice do not require any further correspondence.

#### *The Appellant's Submissions*

23. In his written submissions, counsel for the Appellant argues that the 9 January 2025 letter from CMN does not amount to the "consent" required in order to trigger the application of s.40(2)(b) of the Act. He describes the representative's expression as being "sub-optimal", but that the substance of what was conveyed was that the Appellant consented to proceed without a further hearing, but only if the Tribunal informed him in writing of any adverse issues, as to credit or otherwise, and gave him

an opportunity to put further written evidence or material before the Tribunal on that issue.

24. In that sense, the Appellant submits that he was not giving consent to proceeding without a hearing for the purposes of s.40(2)(b) because he was giving *conditional consent* to that course. It could not be said that “the applicant consents to the Tribunal deciding the review without the applicant appearing before it”, being the words of s.40(2)(b) of the Act, because such “consent” as was given was not consent to the unqualified proposition in s.40(2)(b). It was consent to a different position, which does not match the statutory language required of s.40(2)(b) so as to trigger the operation of the chapeau of s.40(2) so that subsection 40(1) does not apply.
25. By the time of the hearing of the appeal before me on 12 August 2025, Freckelton J of this Court had delivered a decision in *AN25 v The Republic* [2025] NRSC 46 on 8 August 2025.
26. In that case, the same argument was put concerning the question of whether the “consent” required by s.40(2)(b) had been given. Indeed, the Appellant in that case was also named in the same correspondence that I have set out above at paragraphs [14], [17], [18] and [19]. Effectively, the Appellant in *AN25* was in precisely the same factual position concerning the correspondence with the Tribunal as is the Appellant in this case.
27. Having set out the detail of the communications, Freckelton J referred to the correspondence of 3 January 2025 from the Tribunal. His Honour then dealt with this correspondence as follows:
  - [55] The communication from the Tribunal was clear in its meaning, which consisted of asking whether the Appellant consented to the Tribunal determining the review without his appearance but preserving the entitlement to personal appearance if the Appellant did not agree to that course.
  - [56] The situation was clarified by the response of Mr Zhang of Craddock Murray Neumann Lawyers Pty Ltd on 9 January 2025. His response was that the Appellant (and others) was “generally agreeable” to the Tribunal proceeding to a decision in accordance with s.40(2)(b) “without further appearance from the applicants”. It is correct that the expression “generally agreeable” was infelicitous but, in my view the consent provided was not qualified or contingent by reason of the fact that he continued in succeeding paragraphs to negotiate about other matters. He did not do so in a way which was phrased as affecting the provision of s.40(2)(b) consent.
  - [57] I find that the procedure of the Tribunal conformed with what is required by s.40(2)(b) and the consent provided on behalf of the Appellant was sufficiently clear to be regarded as constituting substantive consent to not being invited. It had the consequence that the obligation of the Tribunal under s.40(1) to invite him formally to appear before the reconstituted Tribunal did not apply.
28. His Honour therefore rejected this ground of appeal.

29. Mr Aleksov for the Appellant argued that the decision in *AN25* does not resolve any questions of law. All that it decided is a factual issue. He submitted that the decision does not carry the weight of authority before me, and I am not bound by it. I was invited by the Appellant to give effect to my own view about the evidence, without affording deference in a formal sense to the view expressed by Freckelton J in *AN25*.
30. If the Appellant's submissions in that regard were not accepted and I found that the decision in *AN25* ought to be followed, Mr Aleksov conceded that his Honour's decision was not "clearly wrong" and that I would follow it, whatever my views about the correctness of the Appellant's argument.
31. The Appellant's counsel accepts that the instructions conveyed by CMN ought to have been conveyed more clearly. However, what was being expressed was that the Appellant would not like to proceed with a new hearing but he wanted to be invited to answer any adverse credit concerns in writing. The use of the expression "on the condition" in the 9 January 2025 correspondence makes the position clear, on the Appellant's case.
32. The Appellant submits that his consent to the Tribunal deciding the review without requiring the applicant to appear before it must be unqualified. If there is "murkiness or muddiness or a lack of clarity about whether an applicant has consented to that unqualified proposition", then the requirement of consent for the purposes of s.40(2)(b) has not been met. In effect, the argument is a simple one, that on a proper construction of the correspondence from CMN, s.40(2)(b) was not complied with because no unconditional consent was given.

#### *The Republic's Submissions*

33. The Republic submits that the responses given in writing by Ms Prasad, and then subsequently by Mr Zhang, on behalf of the Appellant, constituted the requisite consent for the purposes of s.40(2)(b) of the Act. The concept of "conditional consent" is not established on the facts of the communications viewed in a holistic context. In particular, the Republic submitted that it is not open to conclude that the Appellant reserved his rights to have a hearing, contrary to the general agreement so conveyed, if (and only if) the Tribunal informed the Appellant in writing that it did not have any adverse issues as to credit or otherwise, and that if it did, he would be given an opportunity to put on further written material. In reality, the Republic submits that the communications were a submission as to the potential exercise of statutory powers of information gathering.
34. The Republic accepts that this Court is not bound by what Freckelton J said in *AN25*. However, the situation of having two different factual findings from two different judges of this Court on precisely the same set of facts (involving precisely the same correspondence) would be undesirable.
35. My attention was drawn to the decision of the Australian Federal Court in *Hicks v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCA 757. French J (as his Honour was before his appointment to the High Court) noted that it is well established that a judge of the Federal Court of Australia should follow an earlier

decision of another judge unless of the view that it is plainly wrong. His Honour cites a number of authorities for that proposition which I will not include here. His Honour also sets out an extract from the decision of Burchett J in *La Macchia v Minister for Primary Industries and Energy* (1992) 110 ALR 201 at 204 where His Honour said:

The doctrine of *stare decisis* does not, of course, compel the conclusion that a judge must always follow a decision of another judge of the same Court. Even a decision of a single justice of the High Court exercising original jurisdiction, while “deserving of the closest and respectful consideration” does not make that demand upon a judge of this Court... But the practice in England, and I think also in Australia, is that “a judge of first instance will, as a matter of judicial comity, usually follow the decision of another judge of first instance unless he is convinced that the judgement was wrong...” The word “usually” indicates that the approach required is a flexible one, and the authorities illustrate that its application may be influenced, either towards or away from an acceptance of the earlier decision, by circumstances so various as to be difficult to comprehend within a single concise formulation of principle...

36. As French J went on to note, the requirements of judicial comity are not merely to advance mutual politeness as between judges, but also to uphold the authority of the Courts and confidence in the law by the value it places upon consistency in judicial decision making.
37. The Republic also drew my attention to authorities to the effect that considerations of judicial comity have no operation in relation to findings of pure fact. In *Mustac v Medical Board of Western Australia* [2007] WASCA 128, the Western Australia Court of Appeal referred to various authorities which do not support the proposition that the considerations of judicial comity extend to issues of fact: see [45] of that decision. That is also supported by comments of Street J in *Bond v Hale* (1969) 89 WN (NSW) (Part 1) 404.
38. The Republic submitted that, ultimately, considerations of judicial comity come down to supporting certainty in the application of the law. It would be undesirable to have two different conclusions arising from precisely the same facts from two different judges of this Court.
39. Accordingly, although I am not bound to follow the decision of Freckelton J, I would usually follow his Honour’s decision unless I was convinced that he was wrong.
40. Mr O’Shannessy in his oral submissions noted that the “qualifications” contained in the 9 January 2025 letter from the Appellant’s representative do not relate to a further hearing. It is instead a plea to the Tribunal to comply with its existing statutory obligations to ensure that procedural fairness is met. Provided a meaningful opportunity to present his case is given, then the issue of whether an invitation is required under s.40(1) is fully disposed of by the response. The consent to proceed without a hearing was not itself conditional. Such consent was unconditional. To the extent that qualifications were made later in that correspondence, those matters related to asking the Tribunal to ensure that the requirements of procedural fairness were met.

It was not an invitation to conduct a further hearing in the event that any concerns were to be raised in relation to the credit of the Appellant or otherwise.

### *Consideration*

41. Because I have independently come to the same conclusion as Freckelton J in *AN25*, it is unnecessary for me to consider the detail of the authorities that address questions of judicial comity. His Honour's conclusions in relation to this aspect of the appeal are precisely the same as the conclusions which I would otherwise have reached without regard to his Honour's own conclusions. Accordingly, it is unnecessary to wade into questions as to what judicial comity might have required in the particular circumstances of this case.
42. I agree with the submissions of the Republic that the consent to proceed without a further hearing was not itself qualified. Whilst paragraph 2 of the 9 January 2025 letter does refer to the agreement to the Tribunal proceeding to a decision in accordance with s.40(2)(b) of the Act without further appearance from the Appellant as being "subject to the qualifications at [3]-[5] hereof", those qualifications are not in fact qualifications dealing with whether consent is given under s.40(2)(b). The "qualifications" did not amount to an indication that the Appellant would require a further hearing to be conducted if the Tribunal was not satisfied of the Appellant's credit or had any other "adverse concerns".
43. In other words, the Appellant's representative made it clear that no further hearing was required. What they did assert was that the Tribunal had an obligation to exercise certain identified discretionary information-gathering powers. However, the Appellant's representative said nothing to suggest that if the Tribunal had a different view about the need to exercise discretionary powers, that a hearing would be required.
44. In particular, at paragraph [5] of the 9 January 2025 letter, the Appellant's representative said that where adverse concerns were a reason, or part of a reason, for making a decision to affirm the Secretary's Decision, the Applicants requested notice of such concerns and "an opportunity to comment and/or file submissions on such concerns". It is tolerably clear in the context of that letter (and the earlier correspondence) that the opportunity requested was an opportunity to make a written comment or submission, not an opportunity to attend a further hearing.
45. The Tribunal made perfectly clear in its correspondence that it was asking whether consent was being given under s.40(2)(b) of the Act. The consent provided was not rendered conditional by reason of the fact that the Appellant's representative then proceeded to raise an argument about how procedural fairness was otherwise to be afforded. The letter was not phrased so as to narrow the consent given consistent with s.40(2)(b).
46. Finally, as the Tribunal itself held at paragraph [13] of the Tribunal Decision, "the Tribunal considers that the hearing afforded the applicant the opportunity to present his case, including to address any "adverse concerns", and that the principles of natural justice do not require any further correspondence." Having reached that

conclusion, the “conditions” that the Appellant argues rendered his apparent consent under s.40(2)(b) ineffective were not met in any event.

47. I am satisfied that the combined responses of CMN on 27 December 2024 and 9 January 2025 constituted consent for the purpose of s.40(1)(b) of the Act. The Tribunal therefore properly proceeded to determine the Appellant’s matter without giving him a further invitation to appear before them. The Appellant has not made out ground 1 of the Amended Notice of Appeal.

## **SECOND GROUND OF APPEAL**

48. The second ground of appeal raised by the Appellant contends that the Tribunal failed to consider his evidence as to how he knew that the people smuggler had knowledge that the Appellant had identified him to the AFP.
49. The Appellant claimed to fear harm at the hands of the people smuggler. His claim was that the Appellant had identified the smuggler to the AFP and that the smuggler had learned of that fact. In turn, the Appellant is concerned that the smuggler might take retribution against the Appellant.
50. Responding to this claim, the Tribunal noted the following matters:

[22] In respect to his fear of harm from the smuggler, the Appellant stated at the hearing that when he was interviewed by the AFP he had, when shown a photo of the smuggler, correctly identified this person to the police as the person who had arranged his travel to Australia. He stated that he continued to be in contact with the person via WhatsApp whilst in Nauru, and that the smuggler knew about his encounter with the AFP and that he identified the smuggler to the police. The applicant was unsure as to how the smuggler knew this and surmised that other people may have told the smuggler. In any event, he feared harm from the smuggler as a result of the AFP encounter.

...

[36] In respect to the Appellant’s claim to be unable to return to Bangladesh as he fears harm from the smuggler engaged for his journey to Australia, the Tribunal finds as follows. The Tribunal accepts that the applicant experienced hardship when in Indonesia and awaiting his boat trip to Australia; that he may well have been confined to a motel room; and that he found the boat journey to be terrifying. It also accepts, as the representative claims, that he was under duress from the smuggler to continue the journey.

[37] However, the Tribunal does not accept that the Appellant's experiences with the smuggler in Indonesia and the extent to which the Appellant was cognisant that he would be entering Australia by boat and not flying to Australia with a visa gives rise to a well-founded fear of persecution of the Appellant on his return to Bangladesh. The past harm which the Appellant may have experienced in Indonesia at the hands of the smuggler does not point to any future harm, serious or otherwise, to the Appellant on his return to Bangladesh. The Appellant departed Bangladesh legally with a valid passport and entered Indonesia legally on a tourist visa.

[38] The Tribunal accepts that the Appellant was, along with the other persons on the boat trip from Indonesia to Australia, interviewed by the AFP who were seeking information about the trip and smugglers. The Tribunal accepts that the AFP may have had information as to the smuggler and were seeking confirmation and showed the Appellant a photo of the person.

[39] The Tribunal does not accept that the Appellant's encounter with the AFP gives rise to a well-founded fear of harm, let alone persecutory harm, to the Appellant from the people smuggler on his return to Bangladesh. The Tribunal considered it to be speculative that the smuggler thought the Appellant had "reported" the smuggler to the AFP and would therefore be seeking retribution. The Tribunal notes that the Appellant has stated he would be available to give evidence in a court in Indonesia if the smuggler was to be arrested and charged, but that this has not eventuated.

#### *The Appellant's submissions*

51. The Appellant particularly focusses upon that part of paragraph [39] of the Tribunal Decision that referred to the Tribunal considering it to be "speculative" that the smuggler thought the Appellant had reported the smuggler to the AFP and would therefore be seeking retribution.
52. The Appellant contends that there was nothing about the Appellant's evidence on this issue which was "speculative". The Appellant's counsel submits that his evidence was that he did not know how the smuggler had learned of his being identified to the AFP by the Appellant, but that the Appellant had learned of the smuggler's state of mind through a Facebook friend. This was not "speculative", but direct evidence, albeit hearsay.
53. The Appellant submits that the Tribunal did not refer to his actual evidence as to how the smuggler knew of the Appellant's communications with the AFP through Facebook messages. The Appellant submits that this was a critical issue in circumstances where the Appellant was accepted in his claims to have dealt with the smuggler, that the smuggler has a presence in Bangladesh and that the smuggler was identified to the AFP. The Tribunal never grappled with the evidence actually given as to the fact that the smuggler knew of the Appellant's communications with the AFP.

#### *The Republic's Submissions*

54. The Republic submits that, viewed in its proper context, the Tribunal's reference at paragraph [39] to "speculative" is to the whole of the relevant sentence in [39]. That is to say, what was found to be "speculative" was the Appellant's claim that the smuggler would seek retribution based on the smuggler having thought that the Appellant had reported him to the AFP. Read in its context, that sentence is not a reference to the Appellant's evidence itself being speculative, at least in the sense that it involved an element of conjecture by the Appellant. Instead, what is being referred to as being "speculative" is the fear that the smuggler would seek retribution.
55. This construction is supported, as the Republic submits, when regard is had to the reference to the Tribunal's reference at paragraph [22] where the Tribunal described

the Appellant as being “unsure as to how the smuggler knew this” and “surmised that other people may have told the smuggler”.

56. The Republic submits that it was entirely open for the Tribunal to come to this conclusion in the circumstances of this case.

#### *Consideration*

57. It is trite that appeals of this nature should not involve the court scrutinising Tribunal decisions with “an eye keenly attuned to error”: *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259. That authority has been applied many times in this jurisdiction – e.g. *HFM038 v Republic of Nauru* [2023] NRCA 14 at [20].
58. In my view, what the Appellant seeks to do here, by fastening upon the word “speculative” in paragraph [39] of the Tribunal Decision, is to read the decision with an eye keenly attuned to error. Reading paragraph [39] in its context, it is plain enough that the Tribunal's reference to considering the Appellant's position to be “speculative” is to the conclusion that the smuggler thought the Appellant had reported him to the AFP and would therefore be seeking retribution. Unlike the way in which the Appellant reads this sentence, it seems to me that there is no legal error in the Tribunal describing the Appellant's fear about retribution as being no more than speculative.
59. I do not agree that this sentence indicates that the Tribunal failed to have regard to the actual evidence of the Appellant. To the contrary, whilst there is no reference to a Facebook exchange at paragraph [22] of the Tribunal Decision, it is plain enough that the Tribunal did have regard to the evidence of the Appellant given on this question.
60. The Appellant has not established that the Tribunal failed to consider his evidence on this issue. Ground two of the Amended Notice of Appeal fails.

#### **CONCLUSION**

61. For the reasons which I have set out, the Appellant has failed in respect of both grounds of his Amended Notice of Appeal. Accordingly, the appeal is dismissed.
62. Pursuant to s. 44(1) of the Act, I make an order affirming the Tribunal Decision. I make no order as to the costs of the appeal.



**JUSTICE MATTHEW BRADY**



19 November 2025