IN THE SUPREME COURT OF NAURU

AT YAREN

Appeal No. 35 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:

BI25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before:	Brady J
Dates of Hearing:	24, 25, 27 November 2025
Date of Judgment:	2 December 2025
CITATION:	*BI25 The Republic of Nauru*

CATCHWORDS:

APPEAL - *Refugees – Refugee Status Review Tribunal – Whether Tribunal failed to afford procedural fairness by failing to refer specifically to country information - Whether Tribunal fail to consider important evidence – Whether Tribunal failed to comply with s 34(4)(b) of the Refugees Convention Act 2012 by failing to state reasons - Tribunal did not fail to afford procedural fairness - Tribunal did not fail to consider important evidence – Tribunal did not fail to state reasons - Appeal dismissed.*

LEGISLATION

Refugees Convention Act 2012 (Nr), sections 34, 43, 44.

CASE AUTHORITIES

Minister for Immigration and Citizenship v SZQHH (2012) FCR 223; [2012] FCAFC 45, *AYX16 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 279 FCR 236, *PIM061 v Republic of Nauru* [2018] NRSC 56 at [54]; *QLN107 v Republic of Nauru* [2018] NRSC 23 at [47], *Republic of Nauru v WET040 (No 2)* [2018] HCA 60; 93 ALJR 102.

APPEARANCES:

Counsel for Appellant:	Mr A Aleksov (instructed by International Crossover)
Counsel for Respondent:	Ms K McInnes (instructed by Republic of Nauru)

REASONS FOR JUDGMENT

INTRODUCTION

1. The Appellant is a national of Bangladesh. He claims to be a refugee based on his imputed political opinion as a supporter of the Bangladesh Nationalist Party **(BNP)**.

2. 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 30 June 2025 **(Tribunal Decision)**. The Tribunal affirmed a determination of the Acting Secretary of the Department of Multicultural Affairs **(Secretary)** dated 27

September 2024 **(Secretary's Decision)**. The Secretary decided not to recognise the Appellant as a Refugee under the Act. The Secretary found that the Appellant was also not owed complementary protection under the Act.

3. 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.

GROUNDS OF APPEAL

4. By his Amended Notice of Appeal filed on 12 November 2025, the Appellant advanced two grounds of appeal as follows;

   1. The Tribunal failed to afford procedural fairness in respect of the "Business Standard" article.

   2. The Tribunal failed to consider important evidence relating to both discussed in Reasons [81] [*sic*].

5. In his argument in reply on the appeal, counsel for the Appellant sought leave to further amend the Amended Notice of Appeal to include a third ground in these terms:

   3. The Tribunal failed to comply with s 34(4)(b) of the *Refugees Convention Act* 2012 in that it did not set out any reason as to why the evidence at Reasons [25] was not a satisfactory response to the question of why, if [N] was a JI member, he worked for the BNP.

6. I consider below the question of whether to grant leave to make the further amendment to add ground 3.

PROCEDURAL HISTORY

7. The Appellant arrived in Australia in May 2024. On 1 June 2024, he was transferred to Nauru pursuant to the Memorandum of Understanding between the Governments of Nauru and Australia. On 12 July 2024, the Appellant applied for Refugee Status Determination **(RSD)**.

8. The Secretary's Decision was made on 27 September 2024. The Appellant applied to the Tribunal for review of the Secretary's Decision. The Appellant provided further submissions to the Tribunal and a further statement.

9. On 9 May 2025, the Appellant appeared before the Tribunal to give evidence and to present arguments. He appeared together with his representative and an interpreter.

10. The Tribunal Decision was delivered on 30 June 2025.

11. The Appellant filed a Notice of Appeal in this Court on 4 July 2025. An Amended Notice of Appeal was filed on 12 November 2025. The parties filed their respective outlines of submissions prior to my hearing of this Appeal.

12. I heard submissions on behalf of the Appellant on 24 November 2025. I heard the submissions from the Republic, as well as the Appellant's submissions in reply, on 25 November 2025. I then heard argument on the proposed further ground of appeal on 27 November 2025 (when Mr Aleksov for the Appellant appeared by audio visual link).

THE APPELLANT'S CLAIMS

13. The Appellant's claims for protection were extensive. They are usefully summarised in the submissions of the Republic on this Appeal in the following terms:

> **Events from 2009** - The Appellant claimed that his name appeared on a list of 63 people alleged to be part of a terrorist group, made by a man named [J], who was the general secretary of the ... Awami League **(AL)** party. The Appellant claimed that [J] ordered members of the community to attack the people on the list and to attack their houses. The Appellant claimed to have fled his home, initially to Chittagong, but then later to Dubai.
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> **Events from 2013 to 2016/2017** - The Appellant claimed he returned in about 2013 after a BNP candidate was successful in an election. [J] was re-elected around 2016 or 2017, and the Appellant claimed he was attacked by AL people associated with [J]. The Appellant again fled the country.
>
> **Events from 2020 to 2022** - In 2020, the Appellant's mother paid money to [J] so that the Appellant could return. [J] lost an election in 2022, but was replaced by [Z], another AL politician. [Z] demanded that the Appellant also pay him money, but the Appellant could not do so. The Appellant was then harassed by [Z's] associates.

14. The Appellant claimed that if he returned, he would be harassed and threatened by [Z], [J] and other AL people.

FIRST GROUND OF APPEAL – THE BUSINESS STANDARD ARTICLE

The Appellant's Arguments

15. The Appellant contends that the Tribunal failed to afford him procedural fairness in failing to provide him with notice of the Tribunal's intention to rely on an article from the Business Standard, titled "Stretched Thin But Determined; Local Bureaucrats Are Keeping Governance Alive," dated 16 April 2025 **(Business Standard Article)**. The Appellant argues that the Tribunal relied on the Business Standard Article at particular identified paragraphs and footnotes of the Tribunal Decision. In particular, the Appellant draws attention to the following passages of the Tribunal Decision:

> [46] The applicant stated he feared returning to Bangladesh because it was unsafe, because [J's] AL associate, [Z] held a powerful local position and the AL was still big in his area. The Tribunal discussed with the applicant the political changes in Bangladesh and pointed to the AL not being in national

government and that it had lost the backing of institutions such as the police and it seemed things had changed. The Tribunal also put to the applicant that there was country information that suggested the interim government that replaced the AL had also dismissed elected city mayors and hundreds of public representatives in local government, who were loyal to the AL, and replaced them with interim administrators [footnote 1].

....

[56] The applicant confirmed [Z] had been previously elected under the AL. He stated he was now chairman as an independent. When asked why he was able to do that when everyone knew he was AL, he stated AL did not nominate him. The Tribunal put to him his statement referred to [Z] as an AL politician. He stated now he was an independent. When asked how that worked, given country information said the interim government had dismissed elected city mayors and hundreds of public representatives in local government, who were loyal to the AL and replaced them with interim administrators, [footnote 3] the Applicant said [Z] was going through a hard time and had been beaten. The representative then said not everyone had gone and, in this case, [Z] who was voted in as an independent had been kept in place.

...

[94] The Tribunal put to the applicant that the AL was no longer in power and had lost control over institutions such as the police. It also put to him there was country information that suggested the interim government, which replaced the AL, had dismissed elected city mayors and hundreds of public representatives in local government who were loyal to the AL and replaced them with interim administrators. [footnote 6] The Applicant responded that [Z] had been previously elected under the AL. However, he was now an independent and elected in 2022. While the Tribunal has considered this, the Applicant also stated at hearing chairman terms were for 5 years and the Applicant stated in his RSD statement [Z], was elected in 2022 as an AL politician.

16. The references in the above extract to footnotes 1, 3 and 6 was each a footnote reference to the Business Standard Article.

17. The Appellant contends that the Tribunal's reliance on the Business Standard Article, without specifying or identifying that article to the Appellant, constituted a breach of the requirements of procedural fairness. The Appellant argues that he was not notified of the Tribunal's intention to rely on the article, and thus he was denied procedural fairness in respect of it. The Appellant contends that the information was material to the Tribunal Decision since it supported the view that persons associated with the AL were no longer in positions of local authority. That general position undermined the Appellant's claims in respect of [Z].

18. The Appellant makes two broad arguments. First, when it comes to country information, it will frequently, but not always, be necessary to tell the applicant the source of the relevant country information. In that way, the applicant has a reasonable opportunity to "undermine" the country information. He or she may seek

to do so by the provision of other contrary information. Alternatively, the country information might be undermined in terms of the reliability of its source. Alternatively, the applicant might make an argument about the limitations of the information based on the source itself.

19. Particularly when high levels of detail are involved, it starts to become necessary for the actual source of the country information to be identified to the applicant.

20. The Appellant submits that the touchstone for what constitutes procedural fairness in such a case as this is to identify when there is a realistic capacity on the part of the applicant to contest the facts contained in the country information.

21. In this case, the Appellant contends that, in order to be afforded procedural fairness, he had to be told that the source was the Business Standard Article. Without knowing the source of that information, the Appellant submits that no reasonable opportunity was given to him to undermine the Business Standard Article, nor could he properly assess the reporting in the article, or whether the reporting was able to be challenged.

22. Mr Aleksov submitted that the Tribunal ought to have notified the Appellant of the Business Standard Article prior to the hearing, in accordance with its usual practice, to ensure he was given an opportunity to know the country information prior to the hearing. Alternatively, a letter to the Appellant ought to have been given after the hearing inviting comment concerning the article. The Appellant here was not notified by either means.

23. The second broad argument made by the Appellant in relation to this ground was that the Appellant was overtly misled. My attention was drawn to a passage of the transcript of the hearing before the Tribunal which is found on page 152 of the Court Book:

> Ms Cranston: The country information says that the Awami League is no longer the national government, and as a result has lost the backing of institutions such as the police. So, it does seem as if, I guess, things have changed, and the Awami League has essentially gone at least from the national government. There is some country information for us that also suggests that the interim government that has replaced the Awami League Government has dismissed elected city mayors and hundreds of public representatives from local government across the country who were loyal to the Awami League, and have replaced them with interim administrators. And that is from the UK Country Policy and Information note dated 20 December 2024. There is also some information that suggests that one reason why there has not been - one explanation for the relative lack of violence after the Awami League fell from the national level is that because they did not - Awami League officials did not put up much resistance and that at the grassroots level the BNP operatives quickly moved in. So, the information suggests that they have taken over any of the lucrative rackets

that were previously under the AL control. So - but you are telling me that has not happened in your area?

The interpreter: Yes. It has been happening in my area.

24. Counsel for the Appellant initially submitted that the Tribunal Decision did not refer to the UK Country Policy and Information Note referred to in that exchange. However, he accepted that there is reference to that note dated December 2024 at paragraph [60] of the Tribunal Decision where the Tribunal extracted from that note the following:

> The interim government dismissed elected city mayors and hundreds of public representatives from local government across the country who were loyal to the AL and replaced them with interim administrators.

25. The Appellant submits that the statement by Ms Cranston, a member of the Tribunal, about the country information that she referred to coming from the UK Country Policy and Information Note was misleading. The Appellant submits that this might have been given the impression that the *only* country information that dealt with that matter was the UK report. Instead, as is made clear by reference to paragraphs [46], [53] and [94] of the Tribunal Decision, similar conclusions were reached in the Business Standard Article.

The Republic's Arguments

26. The Republic starts by noting that the argument, as it developed before me, was not about the *content* of the Business Standard Article, but rather whether the *source* of the information was relevant and procedural fairness required that the source be identified to the Appellant by the Tribunal. As the Republic notes, the question here is whether some practical injustice has arisen in this case. Procedural fairness is not an abstract concept.

27. I was taken to the decision of the Full Court of the Federal Court of Australia in *Minister for Immigration and Citizenship v* ***SZQHH*** (2012) FCR 223; [2012] FCAFC 45. The Republic submits that the facts of that case are analogous to the facts presently before this Court.

28. In *SZQHH*, the trial judge had found that there was procedural unfairness because the reviewer had failed to disclose adverse country information in a 2007 article in the Christian Science Monitor (**CSM**) that was said to be credible, relevant and significant to the applicant's claim. The Minister contended that the reviewer had put the substance of the CSM article to the applicant during the review process, and the applicant had a proper and fair opportunity to deal with that matter.

29. At [27] in the judgment of Rares and Jagot JJ, their Honours noted that an administrative decision-maker must determine whether particular information he or she has is credible, relevant and significant before arriving at a final decision. If the decision-maker determined that the information he or she has is first credible, relevant and significant, and second apparently adverse to the interests of the person affected by the decision, then ordinarily procedural fairness requires that the decision-maker must give the affected person an opportunity to deal with the information. That

means, the person should be given "the substance of the potentially adverse information" so that he or she may respond to it. However:

> in general, it is not necessary for the decision-maker to give the person whose interests may be affected a copy of any document containing the information, or to identify its source: *Applicant VEAL of 2002* at [15], [29].

30. At [28], their Honours however recognised that the source of the potentially adverse information may itself be relevant. For example, the source's credibility may bear on the reliability of the information. If the identity of the source is potentially relevant, then the decision-maker may have to consider whether it can or should be given to the person affected.

31. Their Honours recognised that country information may frequently be repetitive, or can summarise information from a variety of sources. However, the reviewer's obligation of procedural fairness does not require the reviewer to put *every* piece of country information to the applicant: at [30]. At [31], their Honours said:

> But the substance of such information is, generally, distinct from the particular mode or source of its expression, which could be in a book, a news or journal article, or in an audio or audio visual form … In general, the decision-maker need not disclose more than the substance of the information, however it has been conveyed to him or her. The position may be different if the particular form in which the information was conveyed itself affects the meaning of the information or because some usual or particular characteristic has a bearing on its credibility, relevance or significance.

32. The Republic draws attention to paragraph [60] of the Tribunal Decision, as extracted above. That set out relevant information from the UK Country Policy and Information Note. The Republic notes that this information was in substance the same information as that said referenced as coming from the Business Standard Article at paragraphs [46], [56] and [94] of the Tribunal Decision. Consistent with the decision in *SZQHH*, the Republic submits that the information footnoted to the Business Standard Article was simply a repetition of the same information as in the UK Country Policy and Information Note, which was expressly referenced in the hearing before the Tribunal: Court Book 152, lines 18-19.

33. Counsel for the Republic submits that in this case there can have been no practical injustice. The relevant information was contained in both the Business Standard Article, as well as the UK Note. The Appellant was given a reasonable opportunity to respond to the information by reason of being informed of the UK Note. The fact that the same information came from two different sources did not need to be imparted to the Appellant. He was told of the relevant information and given an opportunity respond.

34. Unless the source of the relevant information was unusual (for example, it came from a person who might be thought to have interests contrary to the applicant), then procedural fairness would not ordinarily require identification of the particular source. There was nothing obviously controversial in the information referred to in the Business Standard Article, and procedural fairness did not require identification to the

Appellant of the source of that information as coming from the Business Standard Article.

Consideration

35. The Tribunal set out at paragraph [60] of the Tribunal Decision the relevant quote form the UK Country Policy and Information Note referring to the interim government of Bangladesh having dismissed elected city mayors and hundreds of public representatives from local government across the country who were loyal to the AL and replaced them with interim administrators.

36. The Appellant was informed of this information, and its source, at the hearing: CB 152, and see extract at paragraph [23] above.

37. The Tribunal referred to the *same* information at paragraphs [46], [56] and [94] of its decision, and in each instance footnoted the Business Standard Article.

38. The Tribunal has not breached the requirements of procedural fairness in this instance. The Tribunal drew the content of the relevant information to the Appellant's attention and invited a response. That the Tribunal did not specifically refer the Applicant to the same information contained in, and specifically reference, the Business Standard Article, did not deprive the Appellant of the opportunity to respond in substantive terms to the content of the information.

39. I follow the approach of the Federal Court of Australia in *SZQHH* as set out in paragraphs [29] to [31] above. I also note *AYX16 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 279 FCR 236 where at [70] the Full Court said:

> The content of the requirement to put adverse information has received particular attention in the context of migration cases in which the relevant adverse information was contained in country information that was not specific to the person who was the subject of the decision. … The existence and content of an obligation to put adverse country information must be assessed on the common law standard. Country information can be repeated in many documents. This may require a particular focus on whether any failure to put particular documents containing country information was reasonable in the circumstances, or amounted to practical injustice. The person who is the subject of a decision should be given the substance of adverse country information, so that he or she may meaningfully respond to it: plaintiff *M61:2010 E v the Commonwealth of Australia* [2010] HCA 41; 243 CLR 319 at [98] (the Court). **However, procedural fairness does not necessarily require that every detail of the country information be put to the person, or that the person be provided with a copy of every documentary source of country information**: see for example, *Minister for Immigration and Citizenship v SZQHH* [2012] FCAFC45; *(2012)* 200 FCR233; *MZYPY v the Minister for Immigration and Border Protection* [2014] FCAFC68. [Emphasis added]

40. This was not the sort of case where, to use the language of the Court in *SZQHH*, "the particular form in which the information was conveyed itself affects the meaning of the information or, because of some particular characteristic, has a bearing on its

credibility, relevance of significance". There is nothing about this case to take it outside the usual case that the identity of the source is not required to be identified: *SZQHH* at [27]-[31]. It is the content of the information which is significant in this instance, and not its source.

41. In any event, as I have already noted, the same information was also contained in the UK Note, and the Appellant was informed of that source and given an opportunity to respond.

42. No breach of the requirements of procedural fairness bas been established and no practical injustice is demonstrated. This ground of appeal is not made out.

GROUND 2 - IMPORTANT EVIDENCE NOT TAKEN INTO ACCOUNT

Appellant's Arguments

43. The Appellant's argument in relation to this ground starts with the terms of paragraph [81] of the Tribunal Decision.

> [81] The Tribunal considers the Applicant was unable to provide satisfactory responses to many of its questions, such as why, if (N) was a JI member, he worked for the BNP and why the Applicant stated at hearing that in 2000, when he was 15 years old, he worked and voted for the BNP. His RSD statement suggests he became interested in the BNP around 2005 and started following his uncle, who did pro BNP work, towards the end of that year.

44. Counsel for the Appellant draws attention to the fact that the reference to the expression "such as why" in the first sentence of that extract must be understood as being confined to the two points subsequently identified in that sentence. That is to say, if the Tribunal considered that the Tribunal was unable to provide satisfactory responses to others of its questions, it was obliged to so state and give reasons for doing so.

45. The Appellant then dealt with the two questions identified in paragraph [81] in turn. The first question was why, if [N] was a JI member, he worked for the BNP. The Appellant draws attention to his evidence before the Tribunal on this issue, page 135 of the Court Book which was in the following terms,:

Ms Cranston:	And when you say your uncle followed them, what do you mean?
The interpreter:	My uncle's political support was for the BNP political party. My uncle worked for that party, and vote for that party, and he used to attend to all the demands and everything for - on behalf of the party.
Ms Cranston:	So, when you say your uncle, do you mean [N]?
The interpreter:	Yes.
Ms Cranston:	Was he a member of any other party?

The interpreter: JI and Shibir.

Ms Cranston: So, if he was a member of JI, why was he working for the BNP?

The interpreter: B - at that time, JI, Jamaat – e Islami and Shibir, they are the ally of BNP.

Ms Cranston: Well, what's the difference between JI and the BNP? Is there a difference?

The interpreter: Yeah. BNP made promise to Jamaat e Islami, that if they win, they will give them some electorals, some positions.

Ms Cranston: Okay. But is there a difference between the two parties?

The interpreter: Jamaat e Islami is a political party. BNP is …

Ms Cranston: Is this a cultural party?

The interpreter: Political party.

Ms Cranston: Thank you.

The interpreter: BNP is another political party, Awami League is another political party. With Awami League, there are other 17 political parties, work for them. I mean, they are the ally. And with BNP, there are 14 political parties. So Jamaat e Islami is one of them.

Ms Cranston: Well, I'm just a bit curious, why wasn't your uncle working for JI? If he was from the JI party, why was not he actually working for them?

The interpreter: My uncle, although he supports Jamaat e Islami, but he is working for BNP, it's the same. He - if he works for BNP, it reflects that he is supporting Jamaat e Islami, because there is ally party.

Ms Cranston: So, when you say they're an ally party, what do you mean?

The interpreter: So, when BNP told Jamaat e Islami that you stay with us, you work for us, we will work together and if we won the election, then - if we win the election, then we will give you certain positions, certain such positions - number of positions. And it happened during 2005. So they - this party helped BNP. They worked together.

46. Counsel for the Appellant submitted that the Appellant's response to these questions about the relationship between JI and the BNP was, on its face, intelligible. The parties were working in an alliance and effectively working with one another. The Tribunal gave no explanation for why the evidence was regarded as unsatisfactory. The Appellant submits that it is not obviously unsatisfactory on its face. What the Tribunal ought to have done was to have assessed the actual evidence given by the Appellant and then to explain why it was not accepted. The Tribunal failed to do that in this case.

47. The second of the findings made in paragraph [81] of the Tribunal Decision was that the Appellant gave an unsatisfactory response in relation to why he stated at hearing that in 2000, when he was 15 years old, he worked and voted for the BNP.

48. The Appellant submits that there are essentially two aspects of this response. Firstly, the Appellant mentioned the year 2000 during the Tribunal hearing, compared to 2005 which was the year that he referred to in his RSD statement. So there was a potential inconsistency between his evidence at hearing and his evidence given in the RSD process. Secondly, the Tribunal's application of the commencement date of working form the BNP of the year 2000 would have made him at 15 years old. Accordingly, he could not have legally voted.

49. The Tribunal dealt with these inconsistencies during the hearing (at page 136 to 137 of the Court Book) in these terms:

Ms Cranston:	All right. Were you ever a member of the BNP?
The interpreter:	Yes, I was.
Ms Cranston:	You were, I think, in your application, your RSD application, you did not mention that you were a member.
The interpreter:	I worked as a worker for BNP. So, I just entered to the party, and I started working for BNP. I didn't have any position at that time.
Ms Cranston:	When did you do that?
The interpreter:	2000 - in the year 2000, when the MP election happened.
Ms Cranston:	Because I am just reading your statement here, your RSD statement, and I think it says that around 2005, you - the town – ec BNP member [A] came to your madrasa, and you had a talk.
The interpreter:	Yes, that is correct.
Ms Cranston:	But that, and that your uncle said you were too young to start working - to start undertaking BNP activities. But even though he said that, it was towards the end of 2005

	that you started following your uncle around and doing BNP work.
The interpreter:	That all correct.
Mis Cranston:	All right, but that sounds a little different from what you've told me today, which is that you said you started in 2000.
The interpreter:	I wanted to say that in the year 2000, I vote - I cast my vote, but I was young at that time. My - in my voter ID card, my age increased four years to get my vote.
Ms Cranston:	Okay...

50. The Tribunal's conclusion at paragraph [81] was reached, according to the Appellant, without a consideration of the explanation which the Appellant gave for how it was that he could have voted in an election at the age of 15.

51. The Appellant submits that the Tribunal failed to consider and engage with the evidence which he gave on these two questions dealt with at paragraph [81] of the Tribunal Decision.

Republic's Arguments

52. The Republic submits that an error of law may arise where the Tribunal overlooks "substantial and consequential" evidence that goes to a key issue on the review. However, in this case, Ms McInnis for the Republic submitted that there was no reason to infer that the Tribunal failed to consider the evidence that the Appellant contends was overlooked. Although the Tribunal is obliged to provide written reasons for its decision, those reasons do not require every matter raised by a party to be referred to, evaluated, and made the subject of explicit acceptance or rejection: see ***PIM061*** *v Republic of Nauru* [2018] NRSC 56 at [54]; ***QLN107*** *v Republic of Nauru* [2018] NRSC 23 at [47]. Thus, any absence of reference to particular evidence in [81] is not a sound basis from which to infer that it was overlooked.

53. The Republic emphasises that the Tribunal Decision does not suggest that the Appellant failed to respond to its questions, rather, the point was to say that the responses were not *satisfactory*. The Tribunal had plainly turned its mind to the Appellant's evidence that the BNP and the JI were allies. In particular, it recorded the evidence in relation to that in summary form at paragraph [25] in these terms:

> The Applicant stated he followed the BNP because of his father and his uncle [N]. He stated [N] supported, worked for and voted for the BNP. He then stated [N] was a member of JI, or Jamaat e Islami. When asked why [N] worked for the BNP, the Applicant stated at that time, JI was their ally and promised when they won, they would give JI positions. When asked why [N] was not working for JI, he stated they were the same.

54. The Republic submits that the Tribunal therefore considered the Appellant's explanation for why his uncle, as a JI member, worked for the BNP. It nevertheless found that explanation to be unconvincing, which the Republic submits was

understandable, and in those circumstances, the Tribunal considered the evidence to be unsatisfactory. There is no reason to infer that it was overlooked.

55. In relation to the Appellant's claim that he worked for and voted for the BNP in 2000 when he was 15, the Tribunal's concern was not with the age at which he purportedly voted. Rather, the Tribunal's concern lay in the inconsistency between this claim and his RSD statement, which suggested that he did not become interested in the BNP until around 2005. It was the contradiction between these accounts, and not his age, which rendered the evidence unsatisfactory.

56. Accordingly, the Republic submitted that the Appellant had not demonstrated that the Tribunal failed to consider the evidence before it.

Consideration

57. I am not satisfied that the Tribunal failed to consider the evidence underlying both the findings at [81].

58. First, the Tribunal did not say that there were *no* responses to the two questions identified in paragraph [81]. It said that the Appellant was not able to provide *satisfactory* responses to those questions. That carries with it the implication that the Tribunal recognised that explanations were in fact proffered.

59. Second, the Tribunal specifically set out a summary of the Appellant's evidence about why [N] worked for the BNP when he was a member of JI at paragraph [25] of the Tribunal Decision. The Tribunal was not obliged to find this explanation to be satisfactory, and whether or not it persuaded the Tribunal was a matter for the Tribunal. The import, of course, is that the Appellant's evidence on this question clearly was considered by the Tribunal.

60. Third, the Tribunal's observation that the Appellant's explanation for the inconsistency between his RSD statement (when he said that he became interested in the BNP around 2005) and his evidence before the Tribunal (that he worked and voted for the BNP from 2000) was unsatisfactory does not lead me to conclude that the Tribunal failed to consider the Appellant's evidence. The matter was dealt with at the hearing before the Tribunal, as the transcript extract at paragraph [49] above demonstrates. A failure to detail that evidence in paragraph [81] does not lead me to conclude that it was not considered. I am not satisfied that the Tribunal failed to consider the Appellant's evidence in that regard.

61. The Appellant has failed to make out ground 2 of his Amended Notice of Appeal.

POTENTIAL GROUND 3 – FAILURE TO STATE REASONS

The Appellant's Arguments

62. The Appellant, during the course of argument in reply, sought the Court's leave to further amend the Amended Notice of Appeal so as to include a third ground. The proposed ground 3 as it was articulated was that:

> The Tribunal failed to comply with s 34(4)(b) of the *Refugees Convention Act* in that it did not set out any reason as to why the evidence at Reasons [25] was

not a satisfactory response to the question of why, if [NA] was a JI member, he worked for the BNP.

63. The Republic opposed the grant of leave to amend on the basis that the ground of appeal did not enjoy sufficient prospects of success to justify the grant of leave. Accordingly, I heard the parties on the substance of the ground and reserved my decision in relation to the question of leave.

64. The Appellant submitted that the obligation on the Tribunal was to assess the evidence given and to explain why it was not accepted. However, paragraph [81] of the Tribunal Decision did not provide any explanation for why the Appellant's response about his uncle working for BNP was unsatisfactory. In failing to do so, the Appellant submitted that the Tribunal made a legal error in not complying with its obligation under s 34(4)(b) of the Act to provide a written statement that set out the reasons for the decision.

The Republic's Arguments

65. The Republic relied upon the decision of the High Court of Australia when it was the final court of appeal in this jurisdiction in *Republic of Nauru v **WET040** (No 2)* [2018] HCA 60; 93 ALJR 102. The Republic drew particularly on the following extracts from the joint judgment of Gageler, Nettle and Edelman JJ:

> [37] What has been said thus far is sufficient to dispose of the appeal. Counsel for Nauru contended in the alternative, however, that, even if the Tribunal had not given full reasons for regarding the respondent's claims as implausible, the Tribunal's reasons would have satisfied the requirements of s 34(4) of the Refugees Act. Counsel referred in support of that contention to the judgment of McHugh J in *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* regarding the extent of the obligation to give reasons under s 430(1) of the Migration Act.
>
> [38] In *Durairajasingham*, the applicant, who was a Sri Lankan citizen of Tamil ethnicity, challenged the findings of the Refugee Review Tribunal on the basis that *inter alia* the tribunal breached s 430(1) by failing to set out reasons for their finding that the applicant's claim that members of a Tamil party known as PLOTE tried to recruit him was "utterly implausible". McHugh J rejected the challenge as follows:
>
> > "[T]his was essentially a finding as to whether the [applicant] should be believed in his claim - a finding on credibility which is the function of the primary decision maker par excellence. **If the primary decision maker has stated that he or she does not believe a particular witness, no detailed reasons need to be given as to why that particular witness was not believed. The Tribunal must give the reasons for its decision, not the sub-set of reasons why it accepted or rejected individual pieces of evidence. In any event, the reason for the disbelief is apparent in this case from the use of the word 'implausible'. The disbelief arose from the Tribunal's view**

that it was inherently unlikely that the events had occurred as alleged."

> [39] McHugh J's approach in *Durairajasingham* was recently referred to by the Full Court of the Federal Court, in *CQG15 v Minister for Immigration and Border Protection,* as entirely orthodox. Even so, it is necessary to bear in mind that each case ultimately depends on its own facts and circumstances, and that what suffices in one case may not necessarily suffice in another. In this case, as has been seen, the Tribunal gave extensive reasons for regarding the respondent's claims as implausible. There can be no question that the Tribunal's reasons met the requisite standard. [Footnotes omitted, emphasis added]

66. The Republic draws attention to the Tribunal's finding that the Tribunal had concerns with the reliability of the Appellant's evidence in various respects (see para [80] of the Tribunal Decision) as well as the Tribunal's overall impression that the Appellant's evidence changed with each telling, was vague and evasive (see paragraph [87] of the Tribunal Decision). Further, the Tribunal considered that the Appellant was "making up his evidence as he went along" (paragraph [89] of the Tribunal Decision).

67. It is in the context of the conclusions at paragraph [81] of the Tribunal Decision are situated. The finding that the Appellant was unable to provide a satisfactory response to its question as to why if [N] was a JI member, he worked for the BNP is explained by the Tribunal's multiple credibility concerns. That the Appellant's explanation was "unsatisfactory" shows that he did not overcome the Tribunal's concerns about his reliability, so as to reach a state of satisfaction with his explanation.

68. Consistent with the approach set out in *WET040*, the Tribunal did not fail to comply with s 34(4)(b) of the Act.

Consideration

69. As is apparent from the passages of *WET040* set out above, no detailed reasons need to be given as to why the Appellant's explanation as his uncle working for the BNP was not considered satisfactory. The Tribunal's obligation was to give the reasons for its decision, not the sub-set of reasons why it found particular responses to be unsatisfactory.

70. In the context of the other parts of the Tribunal Decision that dealt with the Tribunal's views as to the credit of the Appellant (as set out at paragraph [66] above), the Tribunal provided a sufficient explanation for its conclusion at [81] that the Appellant's response to its question about the position of [N] was "unsatisfactory".

71. Accordingly, if leave were granted to further amend the Amended Notice of Appeal to include this proposed ground 3, the ground would be bound to fail. For that reason, I refuse leave to further amend the Amended Notice of Appeal.

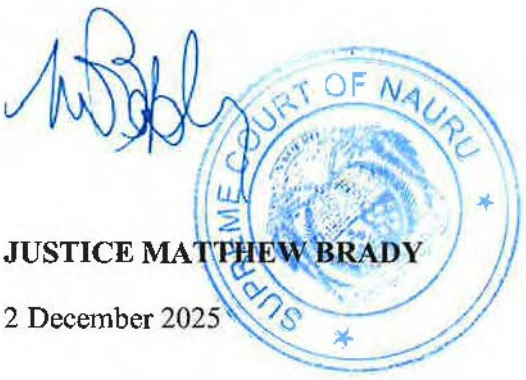
CONCLUSIONS AND DISPOSITION OF THE APPEAL

72. For the reasons which I have set out, the Appellant has failed in respect of the two grounds in his Amended Notice of Appeal. I refuse the Appellant leave to further amend the Amended Notice of Appeal to add proposed ground 3.

73. The Appeal is dismissed.

74. Pursuant to section 44 (1) of the Act, I make an order affirming the Tribunal Decision.

75. I make no order as to the costs of the Appeal.



JUSTICE MATTHEW BRADY

2 December 2025