



IN THE SUPREME COURT OF NAURU
AT YAREN

Appeal No. 6 of 2024

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:

AF 24

Appellant

AND:

REPUBLIC OF NAURU

Respondent

BEFORE:

Brady J

DATE OF HEARING: 11 February 2025

DATE OF JUDGMENT: 28 April 2025

CITATION:

AF v Republic of Nauru

CATCHWORDS:

APPEAL - Refugees – Refugee Status Review Tribunal – Whether Tribunal failed to consider relevant evidence or made an irrational finding in agreeing with the conclusion of the Secretary – Whether Tribunal made an irrational decision as to current political situation in Bangladesh – Tribunal did not fail to consider relevant evidence or make irrational finding in agreeing with conclusion of Secretary – Tribunal did not make irrational finding about current political situation – No legal error in Tribunal’s findings – APPEAL DISMISSED

LEGISLATION: *Refugees Convention Act 2012 (Nr) ss 43, 44*

CASES CITED: *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 651 at [135]; *WET 054 v Republic of Nauru* [2018] NRSC 21 at [27]; *ARG15 v Minister for Immigration and Border Protection* [2016] FCAFC 174; (2016) 250 FCR 109; *ETA 080 v Republic of Nauru* [2017] NRSC 45; *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 271-272; *DNQ18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 275 FCR 517 at [53]; *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* (2021) 274 CLR 398 at [17]; *QLN 142 v Republic of Nauru* [2024] NRCA 12 at [21]

APPEARANCES:

Counsel for Appellant: Dr A McBeth (instructed by Craddock Murray Neumann)

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

JUDGMENT

INTRODUCTION

1. The Appellant is a national of Bangladesh. He left Bangladesh in February 2024 and arrived in Australia by boat later that same month. He was transferred to Nauru on 19 February 2024.
2. The Appellant claims to be involved in, and to support, the Bangladesh National Party (BNP). He claims to fear harm from Awami League supporters should he be returned to Bangladesh.
3. Pursuant to section 43 of the *Refugees Convention Act 2012 (Nr)* (**the Act**), the Appellant appeals from a decision of the Refugee Status Tribunal (**Tribunal**) made on

5 November 2024 (**Tribunal Decision**). The Tribunal affirmed a decision of the Secretary of Multicultural Affairs (**the Secretary**) dated 5 July 2024 (**Secretary's Decision**) not to recognise the Appellant as a refugee and the finding that the Appellant is not owed complementary protection under the Act.

4. By subsection 43(1) of the Act, the Appellant may appeal to this Court on a point of law.
5. 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 consideration in accordance with any directions of this Court.

GROUND OF APPEAL

6. The Appellant relies upon two substantive grounds in his amended notice of appeal:
 - “1. The Tribunal made a finding which was irrational, or alternatively, failed to consider the evidence before the Tribunal, or in the further alternative, critically misunderstood the evidence proffered by the Appellant.

Particulars

- a. The Tribunal at [72] adopted the supposed conclusion of the RSD Officer.
 - b. The actual finding of the Secretary (RSD Officer) was materially different to that perceived by the Tribunal.
 - c. Further, the Tribunal had before it country information supporting the fact that police arrested family members when they could not locate or apprehend the targeted individuals.
 - d. The Tribunal's conclusion at [72] that “There would be no reason for his brother to be pursued once he left the village” was based on both an irrational reading of the Secretary's decision and a failure to consider the country information before it.
 - e. The Tribunal's conclusion at [83] that it did not accept that the Appellant's brother was arrested by police was based substantially on the erroneous finding in [72].
2. The Tribunal made a finding which was irrational or based on no evidence.

Particulars

- a. The Tribunal at [95] made findings as to the political situation at the “lower level” in Bangladesh that was based on no evidence and/or contradicted the evidence before the Tribunal.

- b. Further and alternatively, the Tribunal at [96] made findings as to the political situation in the reasonably foreseeable future based on no evidence and which was entirely speculative and/or purely conjecture.
- c. The findings at [95] and [96] substantially contributed to the Tribunal's conclusion at [97] that there was no reasonable possibility the Appellant would be seriously harmed due to his political activities on return to Bangladesh."

FACTUAL BACKGROUND

- 7. The Appellant is a married man from a village in the Chandapur District, Bangladesh. He left Bangladesh in February 2024 and arrived in Australia by boat that same month. As already noted, he was transferred to Nauru on 19 February 2024.
- 8. The Appellant's wife, parents, and sisters are still living in his home village in Bangladesh. The Appellant also has two brothers. His older brother [M] resides in Dhaka. His younger brother [S] lives abroad and has done so for some years.
- 9. The Appellant claims to fear harm on his return to Bangladesh. That harm is said to arise from Awami League supporters as a result of his involvement in, and support of, the BNP.
- 10. The Appellant described in his first statement that his family were followers of the BNP. In that initial statement, which is dated 9 March 2024, the Appellant says that as a result of him and his family being followers of the BNP, his brother was beaten and he was threatened. The statement does not state which of the Appellant's two brothers was ill-treated. He describes the circumstances in these terms:
 - 9. "My family and I are followers of the Bangladesh National Party.
 - 10. As a result, my brother was beaten and I was threatened.
 - 11. When Awami Support people saw me on the street, they would threaten to beat of [sic] harm me. Sometimes they would slap me.
 - 12. Before the elections, I did some campaigning work for BNP. I went to people and encouraged them to vote for BNP. The Awami League people tried to beat me with a wooden stick and their hands. When they did this we ran away.
 - 13. Also, we noticed when we went to vote on the election day that someone had voted in our name. Our vote was stolen. When we spoke up about it the Awami League people became physical with us. I was slapped and they wanted to beat me with a wooden stick, but we ran away.
 - 14. Sometimes the police would randomly check our phone. If there was any information about BNP, they would delete that information. If we had had information about the Awami League, we would have been allowed to keep that.
 - 15. If I return to Bangladesh, the Awami League will definitely beat me. They may do worse. They may even kill me."

11. The basic facts of this statement were expanded upon in his Refugee Status Determination (RSD) interview. The Appellant said that his father and uncle were involved in the BNP. A relative also stood for chairman of the local area and his father and uncle worked for him. When the Appellant was 18, he helped this relative with publicity. He also distributed blankets and food during Ramadan on behalf of this relative. This relative [H] was elected in 2016 but not 2021. I note that the Appellant later clarified that [H] was actually not a relative of his.
12. The Appellant gave evidence both in his RSD interview and also before the Tribunal about his participation in various political events during and after 2016. He described that during campaigning he suffered verbal threats and assaults from Awami League supporters and was hit one or two times with sticks.
13. At the RSD interview, he expanded upon what he was referring to when he mentioned in his first statement the fact that his brother was beaten. He said that he was referring to his older brother, [M]. The Appellant said that in 2021, the Awami League threatened him over the telephone and told him not to work for [H]. They then came to his home. At that time, the Appellant was away. Because the Awami League could not find the Appellant, they beat his brother [M], ransacked his home and then took his brother to the police station. His brother was held for four to five days and his family had to pay money to have him released. The Appellant also gave evidence about another time when his brother was detained for two to three days.
14. The Appellant also told the Tribunal that in mid-2023, the police were looking for him and could not find him. He was not at home, so they arrested his brother. He was told that his brother would not be released until the Appellant presented to the police station. His brother was held for 10 to 12 days.
15. In his RSD interview, the Appellant claimed that the same night that his brother was taken in 2021, the Awami League supporters came back and set fire to the Appellant's home. He had not mentioned this incident in his first statement.
16. According to the Appellant, his entire home was burned down and everything was destroyed. After that, the family initially moved to his uncle's place. They then obtained help and rebuilt the house in the same place and went back to live there.
17. The Appellant also gave evidence in relation to other incidents in which he was involved, including violence at a political procession in 2023, an attack on [H]'s house after elections on 7 January 2024, his escape to Dhaka, and eventual flight from there because of fears that he had for his safety.
18. The Appellant also claimed that in May 2024, Awami League supporters came to his home in Bangladesh looking for him. They attacked his mother with a hockey stick and broke her ankle.

PROCEDURAL HISTORY

Initial Application for Refugee Status Determination

19. On 9 March 2024, the Appellant made his RSD application to the Republic in order to be recognised as a refugee or a person owed complementary protection. The Appellant attended an RSD interview where his claims were explored and tested.
20. On 5 July 2024, the Secretary decided that the Appellant was not recognised as a refugee under the Act. The Secretary also determined that the Appellant was not owed complementary protection under the Act because he was not a person to whom Nauru owed protection obligations under the Refugee Convention.
21. I shall explain further below some pertinent details of the Secretary's Decision when dealing with Ground 1 of the Notice of Appeal.

Refugee Status Review Tribunal

22. The Appellant lodged a review application with the Tribunal dated 10 July 2024.
23. On 27 August 2024, the Appellant's solicitors filed submissions and further evidence with the Tribunal.
24. On 3 September 2024, the Appellant appeared in a hearing before the Tribunal to give evidence and make arguments. He was assisted by an interpreter and his representative also attended the hearing.
25. On 5 November 2024, the Tribunal made a decision affirming the determination of the Secretary that the Appellant is not recognised as a refugee and is not owed complementary protection under the Act.

GROUND 1 – IRRATIONALITY/FAILING TO CONSIDER EVIDENCE

Summary of the ground

26. There are effectively two limbs to the Appellant's first ground of appeal. Both limbs relate to the findings at [72] and [83] of the Tribunal Decision.
27. At [72], the Tribunal agreed with the conclusion of the RSD officer¹ that as [M] was not involved in politics, and the Appellant claimed that he was only targeted because of his (that is, the Appellant's) involvement with the BNP, there would be no reason for [M] to be pursued once the Appellant left the village.
28. The Appellant contends that this purported adoption of the Secretary's reasons on this point by the Tribunal:
 - a. was irrational because the actual finding of the Secretary was materially different to that perceived by the Tribunal; and

¹ Scil, the Secretary.

- b. was made notwithstanding a failure of the Tribunal to consider relevant country information which was before it.
29. The Appellant contends that these errors then led to the Tribunal's decision at [83] to reject his claim that [M] was arrested twice by the police.

Relevant aspects of the Tribunal's Decision

30. The Appellant contends that the Tribunal rejected his claim that his brother had twice been arrested by police because the people associated with the Awami League could not find the Appellant. The Appellant describes that claim as "critical to the Appellant's narrative as to the reasons there was a reasonable possibility he would face persecution on return to Bangladesh".
31. Paragraph 83 of the Tribunal's reasons is in these terms:
- "83. For the reasons set out above, including his failure to mention significant matters at an earlier time and also because the applicant and his family did not have the profile to warrant such attention, the Tribunal does not accept that the Appellant's brother was twice arrested by the police as the AL could not find the [Appellant]. The Tribunal does not accept that the [Appellant] had to flee the village as a result of an incident at a procession or because [H] was arrested."
32. The Appellant contends that the findings set out in [83] were based in substantial part on the Tribunal's reasoning at [72]. Paragraph [72] is in these terms:
- "72. The [Appellant] told the RSD Officer his brother was arrested once in 2021 and after this he went to Dhaka. Whilst in Dhaka his brother continued to be pursued by AL supporters. His account to the Tribunal was that his brother was arrested again in 2023 and he was still living at home at that time. This is inconsistent with him having fled to Dhaka in 2021. Further, we agree with the conclusion of the RSD Officer that as the brother was not involved in politics and the [Appellant] claimed he was only targeted because of his involvement, there would be no reason for his brother to be pursued once he left the village."
33. The Appellant contends that the proposition that there was no reason for the Appellant's brother to be pursued was central to the Tribunal's disbelief of the Appellant's claim. However, the Appellant argues that the decision of the Secretary did not state that the Appellant's brother was not involved in politics. To the contrary, the Appellant contends that the Secretary repeatedly stated that the Appellant had said he was *more* involved in politics than his brother, implying that his brother was involved, but to a lesser degree.
34. The Appellant therefore contends that the Tribunal purported to adopt reasoning by the Secretary that never in fact existed. The finding at [83], and the basis for that finding at [72] was, according to the Appellant, simply not open on a proper reading of the Secretary's Decision.

The Secretary's Decision

35. The relevant passages of the Secretary's Decision, apparently referred to by the Tribunal, are set out below:²

"In his RSD interview, the [Appellant] said in 2021 AL members visited his home, but he was not there at the time as he was delivering a letter on behalf of [H]. The [Appellant] said that because the AL members could not find him, they beat his older brother [M], and his father instead. Then they took his older brother. The [Appellant] said that *he was more involved in the BNP than his brother was*. However, [M] was the one taken into police custody. It is noted that this aspect was not referred to in the [Appellant's] written statement of claim - the only reference was to his brother being beaten.

The [Appellant] said that his family had to pay a lot of money to free [M], also including money provided by [H]. ... While [M] was captured, the AL members beat him. The [Appellant] was told that his brother would be freed if he ceased working for [H] and the BNP. The [Appellant] said that his brother was held in police custody for about 5 days, until the family paid 500,000 taka to [MS], the politician. This statement is consistent with the country information which referred to opponents of AL being arrested or disappearing between January and October 2021. Once [M] was released the family sent him to Dhaka and he has moved from place to place for his safety since then. The [Appellant] said that the AL kept pressuring [M]. The [Appellant] said that the AL were annoyed that they could find him (i.e. the [Appellant]) so they attacked his brother instead. Whilst I accept there may have been more time available during the RSD interview as opposed to when preparing his statement of claim, I expected the detention of [M] and the costs relating to his release to be significant in the mind of the [Appellant] and should have been referred to in his statement. I accept that the brother was beaten, however the omission of the period of detention and the costs relating to release, I find is indicative of this claim being embellished.

Following the beating of [M], the [Appellant] said that his parents sent him to Dhaka. However, [M] keeps moving around, the [Appellant] said, to avoid being hassled by the AL. While there is country information in an Odhikar report which states that many opposition activists (particularly those aligned with BNP) had to flee their residences across the country, the [Appellant] was clear in his evidence *that [M] was not as involved in politics as he was*. Additionally, his parents sent his younger brother [S] overseas to work in Malaysia in 2021. Given that the population of Dhaka is nearly 24 million, I find it on balance to be unlikely that AL would continue to pursue [M] in Shaka – *particularly as the [Appellant] was credible in his evidence that he was more involved with the BNP than [M]*."

...

As the [Appellant] stated during his RSD interview that *he was more involved in BNP activities than either of his brothers*, it may have been expected that the

² Pages 95-97 of the Appeal Book

[Appellant] would similarly leave Chandapur District – therefore I find it more likely that his brothers were also motivated to leave their District to find work ...

(footnotes omitted, emphasis added)

The Odhikar Report

36. The Appellant further contends that the Secretary's Decision also recorded a country information report referred to as the **Odhikar Report**, which was footnoted with a hyperlink and referred to in the above extract of the Secretary's Decision.³ The Secretary expressly noted that there is country information relating to attacks on family members of BNP activists, although the Secretary was mindful that the Appellant was not a BNP leader, activist or member.⁴
37. Counsel for the Appellant has set out a passage from the Odhikar Report relied on by the Secretary. My attention is drawn in particular to the following words:

“Awami League members have been involved in attacking BNP leaders and activists, as well as vandalising their residences. ... As a result of the attacks by Awami League members, many family members of BNP leaders and activists have fled in order to escape further harm. During house raids, the police have reportedly subjected family members of opposition leaders and activists to abuse and threats, in the absence of the targeted individuals. There are also allegations that the police have been arresting family members, including a wife, fathers, children and brothers of BNP leaders and activists when they are unable to locate or apprehend the targeted individuals.”

(emphasis in the original)

38. The Appellant argues that the Odhikar Report, as noted in the Secretary's decision record, provided direct support for the opposite proposition to the one that the Tribunal accepted at [72] in its stated agreement with the conclusion of the RSD Officer (that is to say, the delegate of the Secretary) that his brother was not involved in politics.

Appellant's Arguments

39. The Appellant contends that there are really two separate errors in the Tribunal's approach in respect of this ground of appeal. First, the Tribunal purported to adopt a finding by the Secretary which did not exist. This constituted an error of law because the finding was irrational. Second, the Tribunal failed to consider the very evidence that the Secretary's reasoning was referring to. That was critical evidence because it provided direct support for the very proposition that the Tribunal was rejecting.
40. Counsel for the Appellant relies on the decision of the High Court of Australia (at a time when it was the final court of appeal for Nauru) in *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 651 at [135], said to have been adopted by this Court in *WET 054 v Republic of Nauru* [2018] NRSC 21 at [27], to the effect that if

³ Odhikar, *Bangladesh Annual Human Rights Report 2023*, 4 January 2024.

⁴ Page 99 of the Appeal Book.

the decision to which the decision-maker came was simply not open on the evidence or if there is no logical connection between the evidence and the inferences or conclusions drawn, a decision might be said to be illogical or irrational.

41. According to the Appellant, the Secretary's "adoption" of purported reasoning by the Secretary was irrational because it both misunderstood the Secretary's conclusion and also the reasons for it.
42. The Odhikar Report was part of the Secretary's Decision record and the Appellant contends that it provided direct support for the opposite conclusion to the one accepted by the Tribunal at [72]. Had the Tribunal referred to the Odhikar Report, the Tribunal's misapprehension of the Secretary's reasoning may not have occurred, with the result that the reasoning may have been different. However, the Appellant contends that the Tribunal simply did not refer to the Odhikar Report.
43. The Appellant argues that the Tribunal was obliged to set out its findings of material fact, and its reasons. If the Tribunal had independently formed the view that [M] was not involved in politics, rather than adopting the Secretary's reasons, one would expect the Tribunal to have set out the parts of the evidence that it was relying on in reaching its decision.
44. Further, the Appellant relies on the decision of the Full Court of the Federal Court of Australia in *ARG15 v Minister for Immigration and Border Protection* [2016] FCAFC 174; (2016) 250 FCR 109. My attention was specifically drawn to paragraph [74] where the Full Court held that it was evident from the Tribunal's reasons that those reasons were cumulative. It was significant that the reasoning was accompanied by a series of proposition which were preceded by the word "further". In other words, the Tribunal relied upon a series of adverse findings in coming to its ultimate conclusion. Accordingly, the Minister's submission in that case that the Tribunal's reasons in one of its findings provided an independent and sufficient basis for the ultimate decision to dismiss the application for review could not be accepted. The Appellant argued that the same process of reasoning occurred in this case.
45. The Appellant also drew support from the decision of this Court in *ETA 080 v Republic of Nauru* [2017] NRSC 45. Crulci J, at paragraphs [40] (where first appearing) and [37] to [40] (where second appearing) adopted Australian authorities that the Appellant argues are to the effect that the question is whether the evidence which was ignored was important to the Appellant's claims. In this case, the Appellant argues the evidence not referred to (i.e. the Odhikar Report) was plainly relevant to the Appellant's claims because it corroborated them.

Republic's Arguments

46. The Republic submits that there was no evidence before the Secretary, or before the Tribunal, that [M] was "involved" in politics at all. The Appellant's evidence at his RSD interview was to the effect that only his father and uncle were "involved" with the BNP, whilst the balance of his family supported the BNP.
47. The Republic contends therefore, that there is no basis to infer from the Secretary's use of comparative language (i.e. [M] was "not as involved in politics as" the Appellant) that there was a positive finding that [M] had actual involvement with the

BNP. Instead, the Republic argues that the approach adopted by the Appellant involves the sort of over-zealous scrutiny that the Court ought not to give to the reasons of an administrative decision-maker. Counsel for the Republic said in oral argument that the Republic did not accept for a moment that it is implicit in the Secretary's decision that [M] was involved in politics.

48. When the Tribunal Decision is read fairly and as a whole, the Republic submits that it is apparent that the Tribunal understood the Appellant's claim, including because at [78] it expressly accepted that the Appellant and his family members were supporters of the BNP.
49. The Republic submits that the words "[w]e agree with the conclusion of the RSD officer" at [72] of the Tribunal Decision should be given a "very anodyne normal reading".⁵ The Tribunal was aware of the conclusion of the RSD officer and expressed its agreement with that conclusion. In doing so, it did not say that it adopted the reasons of the RSD officer, nor to import that conclusion into its reasons. All it was doing was noting the consistency of its reasons with the conclusion of the RSD officer on this point.
50. To the extent that the Tribunal erred in its description of the Secretary's finding (which it denies occurred), it was an error of fact and not an error of law. It is apparent that the matters referred to in [72] of the Tribunal's reasons constituted an objectively minor aspect of the Tribunal's reasoning concerning [M]. In particular, at [83], the Tribunal identified the key matters it relied on in relation to its finding about the Appellant's brother. The conclusion that the Appellant failed to mention significant matters at an earlier time, and also, that his family did not have the profile to warrant such attention, was consistent with the evidence before the Tribunal (and the before the Secretary).
51. During the course of oral argument, Ms O'Shannessy for the Republic broadly accepted, however, that the Tribunal had put its own gloss on the Secretary's determination, although the Tribunals' reasons must stand on their own.
52. As to the Odhikar Report, counsel for the Republic submits that the Tribunal expressly found that the Appellant (and his family) lacked the profile to be targeted in the way alleged. The relevant passage of the Odhikar Report was about attacks on BNP leaders and activists, and that passage is irrelevant given the finding of the Appellant being only a low-level supporter of the BNP.
53. Accordingly, there can have been no error on the part of the Tribunal in not referring to the relevant passage from the Odhikar Report.

Consideration of Ground 1

54. The focus of Ground 1 of appeal is the last sentence of paragraph [72] of the Tribunal Decision. The sentence must be understood in its context. Paragraph [68] deals with the Appellant's failure to mention at an earlier time that [M] was arrested and detained on two occasions allegedly due to the Appellant's involvement with the BNP. Paragraph [72] commences with the statement that the Appellant told the RSD

⁵ T 32, lines 31-32.

officer that [M] was arrested once in 2021 and after this, he went to Dhaka. Whilst in Dhaka, the Appellant contends that his brother continued to be pursued by Awami League supporters.

55. The Appellant's account to the Tribunal was that [M] was arrested again in 2023. It is said that [M] was still living at home at that time. This was found by the Tribunal to be inconsistent with him having fled to Dhaka in 2021.
56. It is only at that point that the Tribunal found that "further," it agreed with the *conclusion* of the RSD officer. The terms of the final sentence of paragraph [72] are clear enough that it was the Secretary's *conclusion* on this aspect with which the Tribunal agreed. The Secretary's conclusion was, relevantly, that it was unlikely that the Awami League would continue to pursue [M] in Dhaka.
57. I do not accept the Appellant's submission that the Tribunal "adopted" the reasoning of the Secretary in [72] of the Tribunal Decision. The Tribunal stated its agreement with the conclusion of the Secretary that he did not accept that the Awami League would continue to pursue [M] in Dhaka. In stating that agreement, the Tribunal was not "adopting" every facet of the process of reasoning of the Secretary leading to that conclusion. Instead, the Tribunal set out in some detail the process of reasoning by which it reached that conclusion, unconnected to the Secretary's Decision.
58. I do not accept the Appellant's submission that the words of [72] adopted a finding of the Secretary that did not exist. The Tribunal agreed with the Secretary's conclusion. The Secretary found that it was unlikely that the Awami League would continue to pursue [M] in Dhaka. In my view, there is no material difference between that conclusion and the words used in the Tribunal's conclusion that there would be no reason for [M] to be pursued once he left the village and moved to Dhaka.
59. It is true that the Secretary did not find that [M] was "not involved in politics". It found that he was "not *as* involved in politics as" the Appellant. However, this does not constitute a finding, as the Appellant contends, that [M] had *some* involvement. Indeed, there was no evidence that [M] had any involvement at all with the BNP.
60. In the context of the Tribunal's Decision, the difference drawn by the Appellant between "not involved" and "not as involved" is, with respect, no more than a semantic quibble. It is to seek to read the decision with an eye keenly attuned to error in a manner inconsistent with the requirements of *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 271-272. The Court should not be concerned with looseness of language, nor with unhappy phrasing of reasons.
61. Whether [M] was not involved in BNP politics at all, or was involved only at a very low level (having regard to the fact that the Appellant himself was found to be no more than a supporter of the BNP and not a leader or an activist) can have made no difference to the conclusion that [M] was unlikely to be pursued in Dhaka. The real point of the Tribunal was that the Appellant claimed that [M] was targeted because of his relationship with the Appellant rather than [M]'s own involvement with the BNP. As the Tribunal accepted that contention, there can be no element of irrationality or illogicality in the Tribunal's conclusion that there would thus be no reason for [M] to continue to be pursued once he left the village.

62. Giving paragraph [72] a fair reading, and in the context of the overall decision, it is apparent that the last sentence of that paragraph is fundamentally a conclusion that there was no reason for [M] to be pursued once he left the village because of his lack of meaningful involvement in the BNP and because (according to the Appellant) he was only targeted because of his relationship to the Appellant.
63. The Tribunal was undertaking its own *de novo* review of the merits of the application. It has exposed its reasons for its conclusion in paragraph [72] as required by s 34(4) of the Act. There is a connection between the evidence before the Tribunal and its finding at [72]. I do not consider that there is any lack of logic or want of rationality in the Tribunal's conclusion in this regard such as to give rise to a legal error.
64. For the same reason, the Appellant has failed to demonstrate any legal error in [83] of the Tribunal Decision.
65. As to the Appellant's submission that the Odhikar report was ignored by the Tribunal, I am not satisfied that the relevant parts were ignored by the Tribunal as the Appellant contends. The passages identified in the Odhikar Report were ultimately not important to the Appellant's claims as explained in *ETA 080*. That is for two reasons.
66. First, as I have explained above, evidence that the family members of BNP leaders and activists may have been arrested when police were unable to locate the targeted individuals (in this instance, the Appellant) is irrelevant when the relative has left the family village and moved to a very large city. Even if the Tribunal were to have accepted that family members were targeted in such a way as described in the Odhikar Report, it is ultimately of no relevance when [M] had already fled the village.
67. Secondly, the Appellant (and his family) were found to have lacked the profile to be targeted in the way alleged. The relevant passages of the Odhikar Report were about attacks on BNP *leaders and activists*. The Appellant was not found to be such a person. He was no more than a "supporter". Given his relatively low-level as a BNP supporter, the identified passages of the Odhikar Report were not relevant to his circumstances.
68. The Appellant has therefore failed to make out both aspects of Ground 1 of his Notice of Appeal.

GROUND 2 – IRRATIONAL FINDING BASED ON NO EVIDENCE

Summary of Ground 2

69. By Ground 2 in the Notice of Appeal, the Appellant contends that the Tribunal's findings as to the political situation at the "lower level" in Bangladesh, and as to the political situation there in the reasonably foreseeable future, were based on no evidence or were irrational.

Relevant findings

70. The Tribunal started addressing the current situation in Bangladesh at [90] of its reasons. The Tribunal extracted relevant passages from an International Crisis Group report from August 2024. It noted a Human Rights Watch report that the interim

Government had set up a commission of inquiry. The Tribunal also extracted a relevant passage from a report from The Diplomat dated 26 August 2024.

71. The Tribunal then noted the Appellant's most recent statement to the effect that although there had been some political changes at the top, at the lower level nothing had changed, and risks to his safety remained. The Appellant did acknowledge at the hearing that some changes had come to the police administration, but he said that the situation was different at a local level and there was no certainty about when an election would be held and whether the BNP would win.
72. The relevant parts of the Tribunal's reasons are then found at [95] to [97] which are in these terms:

“[95] The Tribunal finds that the political landscape has significantly changed. The [Awami League] is no longer in a position to harass its opposition. Although most of the changes have occurred at the upper level, the lower level relied on the support of the upper level people and the support of the police to act with impunity. The lower level [Awami League] people no longer have that position.

[96] In the generic submissions reference was made to the cessation clauses in the convention and the UNHCR handbook. The applicant had not been found to be a refugee therefore the cessation clauses are not relevant to the assessment of his claim. It was also submitted that the political situation was still too uncertain and ‘too early to be able to predict how these changes will impact the lives of average person in Bangladesh, particularly those in rural areas, whose lives are subject to local administrations and security authorities the majority of which what acted with impunity’. The Tribunal finds that, although it is still uncertain when elections will be held, it is clear that the [Awami League] is no longer in power in Bangladesh and will not be in power in the reasonably foreseeable future and its supporters can no longer act with impunity.

[97] In these circumstances the Tribunal finds that any risk the [Appellant] may have faced as a result of his support for the BNP has diminished and there is no reasonable possibility that the [Appellant] would be seriously harmed due to his political activities with the BNP or his association with [MH] and any fear of persecution is not well-founded and he is not a refugee within the meaning of the Convention.”

Appellant's Arguments

73. The Appellant argues that there was no evidence before the Tribunal capable of supporting the conclusion that the Awami League was not in a position to harass its opponents and that the “lower level” relied on the support of the “upper level” and the police to act with impunity, and the “lower level” no longer had the support.
74. The Appellant also argues that there was no evidence capable of supporting the finding that although it was uncertain when elections would be held, it was clear that the Awami League was no longer in power in Bangladesh and would not be in power

in the reasonably foreseeable future and its supporters could no longer act with impunity.

75. The Appellant relies on the decision of the Full Federal Court of Australia in *DNQ18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 275 FCR 517 at [53] where the Court held that the material contained in the relevant DFAT report was not probative of the finding made by the Authority. The Authority's finding, reaching well beyond the material before it, involved it making a finding for which there was no evidence.
76. An alternative argument is made that there is no logical connection between the findings made by the Tribunal and the evidence on which it relied for that finding, in reliance on *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 651 at [153].

Republic's Arguments

77. The Republic submits that to succeed on a "no evidence ground," the Court must be satisfied there is "not a skerrick" of evidence to support the finding, in reliance on *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* (2021) 274 CLR 398 at [17], cited with approval by the Court of Appeal of this Court in *QLN 142 v Republic of Nauru* [2024] NRCA 12 at [21].
78. The Republic submits that the conclusion that the "lower level" Awami League people relied on the support of "upper level" people is an "obvious inference to draw in the case of any political system, controlled by a single political party, that represses its citizens." It is so obvious that it is not something that required direct evidence to support it.
79. In any event, the Republic submits that there was evidence before the Tribunal to support that conclusion. It was stated in the Odhikar Report that "In 2023, members of law enforcement agencies enjoyed impunity *at the behest of the government*" (emphasis added). Whilst the Odhikar report was not referred to in [95] of the Tribunal Decision, when reading the Tribunal Decision as a whole, the Odhikar Report does provide a sufficient evidentiary basis for the Tribunal to make the finding it did at [95]. For the same reasons, the Republic contends that the finding was not irrational.
80. The Republic further submits, in reliance on *Viane* at [18], that it can be assumed that the findings of the Tribunal proceeded from the Tribunal's personal or specialised knowledge or were matters commonly known, such that no error of law arises.
81. As to the findings in [96], the Republic submits that the Tribunal had before it country information that stated that the interim government would hold free and fair elections after the interim government fulfils its mandate of carrying out necessary reforms. There had also been mass arrests of ministers who had served in the Awami League government. It was open to the Tribunal therefore to conclude that the Awami League would not return to government in the reasonably foreseeable future.

Consideration of Ground 2

82. As to paragraph [95] of the Tribunal Decision, it is plain enough that the Tribunal's acceptance of the political landscape having significantly changed and that most of the recent changes had occurred at the "upper level" of the political system in Bangladesh, is supported by the reports described in paragraphs [91] to [93] of the Tribunal's decision. There can be no suggestion that those conclusions were made without any evidential basis.
83. The conclusion that (before the recent changes) the lower-level people associated with the Awami League relied on the support of the upper-level people, and the support of the police, to act with impunity, is not expressly stated in those reports referenced in [91] to [93]. However, it is consistent with other evidence referred to in the Tribunal Decision. For example, paragraph [81] finds (based on footnoted evidence) that ruling parties use state institutions to attack and repress political opponents. The Awami League politicised state institutions, making them subservient to its agenda. The police and others were "lead agencies" in targeting political opponents with impunity.
84. The conclusion that the lower level Awami League people no longer have the support they previously enjoyed (given that the Awami League government had fallen) was an inference open to the Tribunal based on the evidence noted by the Tribunal in its decision. Once it is accepted that the lower level Awami League supporters no longer enjoyed the same support of the government to target their opponents with impunity that they did before the fall of its government, then the finding that the Awami League was no longer in a position to harass its opponents was a factual finding which cannot be said to have been made without any evidence. Nor was it irrational in the relevant sense. It did not involve any error of law. It was an inference of fact from the underlying evidence that was open to the Tribunal. The Tribunal set out the relevant evidence supporting its conclusion and in that regard complied with its obligation under s 34(4) of the Act.
85. As to paragraph [96], the finding that the Awami League supporters can no longer act with impunity is consistent with the finding in paragraph [95] and for the same reasons as explained above, there was no legal error in that finding.
86. As to the finding that the Awami League would not be in power in the reasonably foreseeable future, that is a factual conclusion which was based on the evidence that:
- a. the interim government would hold free and fair elections after it fulfilled its mandate to carry out necessary reforms (as noted at [91] of the Tribunal Decision);
 - b. the interim government had replaced heads of the Supreme Court and central bank and detained former members of the Awami League government (as noted at [91] and [93] of the Tribunal Decision); and
 - c. the interim leader faced considerable obstacles for reform without a mandate to pass laws or amend the constitution (as noted at [91] of the Tribunal Decision).

87. In my view, it was an inference open to the Tribunal to draw from those facts that the Awami League would not be in power in the reasonably foreseeable future. In any event, it cannot be said that this conclusion was reached on the basis of no evidence whatsoever, nor that it involved some irrationality or illogicality (in the legal sense) in reasoning.

88. The Appellant has failed to make out Ground 2 of the Notice of Appeal.

CONCLUSION AND DISPOSITION OF THE APPEAL

89. For the reasons set out in this judgment, I have found that I ought not to accede to the Appellant's appeal in respect of each of Grounds 1 and 2 of the Notice of Appeal. The Appeal is dismissed.

90. Pursuant to s.44(1) of the Act, I make an order affirming the decision of the Tribunal.

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



JUSTICE MATTHEW BRADY

28 April 2025