



IN THE SUPREME COURT OF NAURU

AT YAREN

Appeal No. 7 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: AG25

Appellant

AND:

REPUBLIC OF NAURU

Respondent

Before: Brady J

Dates of Hearing: 2 May 2025

Date of Judgment: 8 August 2025

CITATION: *AG25 v Republic of Nauru*

CATCHWORDS:

APPEAL - Refugees – Refugee Status Review Tribunal – Whether the Tribunal failed to complete its review function – Whether the Tribunal failed to consider the actual evidence led by the Appellant – Tribunal found not to have misunderstood or misconstrued the evidence – Whether the Tribunal's reasoning was illogical, irrational or legally unreasonable – Tribunal's reasoning not nonsensical nor involved a want of rationality or logicity amounting to a legal error – No error of law is made out – Appeal Dismissed

LEGISLATION AND OTHER MATERIAL:

Refugees Convention Act 2012 (Nr) ss 43 and 44; Refugee Convention (Amendment) Act 2024.

CASES CITED:

CRI 020 v Republic of Nauru [2021] NRSC 23 at [36]; *Plaintiff M1/2021 v Minister of Home Affairs* (2022) 275 CLR 582 at [22], [24], [27]; *Minister for Immigration and Citizenship v SZRKT* (2013) 212 FCR 99 at [113]-[114]; *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259.

APPEARANCES:

Counsel for Appellant: Mr A Aleksov (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 arrived in Australia in early 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 24 June 2024, the Appellant made an application for refugee status determination (**RSD**).
2. The Appellant claims to fear persecution in Bangladesh due to belonging to a particular social group of “victims of criminal gangs, protected by the Awami League (**AL**) authorities, and therefore the state” and due to his political opinion of being a Bangladesh Nationalist Party (**BNP**) supporter.
3. 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 (**the Tribunal**) made on 31 December 2024 (**Tribunal Decision**). The Tribunal affirmed a decision of the Secretary of the Department of Multicultural Affairs (**the Secretary**) dated 12 August 2024 not to recognise the Appellant as a refugee under the Act as well as that the Appellant is not owed complementary protection under the Act.
4. By s 43(1) of the Act, the Appellant may appeal to this Court on a point of law. This appeal is brought pursuant to that section.
5. 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. The Appellant filed an amended notice of appeal in this Court on 26 March 2025. Whilst there is a single ground of appeal identified, it relates to what are contended to be four separate errors of law. The ground of appeal is in the following terms:
 - “1. The Tribunal failed to complete its review function by committing four errors of law, which either constituted:
 - (a) Failing to consider the actual evidence led by the Appellant at the hearing held by the Tribunal on 1 October 2024; or
 - (b) Reasoning in an illogical, irrational or legally unreasonable manner.”
7. The notice of appeal itself does not identify the four errors of law referred to. However, in his outline of submissions, the Appellant identifies the errors of law as arising from the four “questions” identified by the Tribunal and set out in paragraph [86] of the Tribunal Decision.

8. The Appellant seeks orders that
 - (a) the Tribunal Decision be quashed pursuant to s 44(2)(b) of the Act; and
 - (b) the matter be remitted to the Tribunal for reconsideration pursuant to s 44(1)(b) of the Act.

FACTUAL BACKGROUND

9. The Appellant makes the following claims in support of his application.
10. The Appellant claims that four powerful brothers living in his village in Bangladesh are pursuing him. In September 2018, he contends that they filed false rape charges against him. He fears that they will target him if he returns to Bangladesh by continuing to press the rape charges, making more false accusations against him and/or carrying out their threats to harm or kill him.
11. The Appellant contends that deficiencies in the Bangladesh judicial system, and the risk of the Appellant facing persecutory harm or proscribed treatment during any criminal proceedings, lead him to fear harm. In addition, he claims to fear harm from the social stigma linked with the sexual assault charges.
12. In his original application, the Appellant claimed that the four brothers targeted him, in part, for political reasons, due to their links to the (then) ruling AL and the Appellant's support for the BNP. The Appellant contended that his intervention in a dispute between an uncle and one of the brothers also acted as a trigger for them to pursue him and make false rape charges relating to a woman unknown to him.
13. The situation, as described by the Appellant, had changed significantly by the time of the hearing before the Tribunal. The Appellant claimed to the Tribunal that, in fact, the alleged rape victim was [B], the wife of [K] one of the brothers. The Appellant contended that he had been in a secret relationship with [B]. [K] made the false rape allegations after discovering the "adulterous" relationship between the Appellant and [B]. The Appellant and his representative raised further concerns about his dealings with agents involved in human trafficking and people smuggling and the information which the Appellant gave to the Australian authorities about their activities.

PROCEDURAL HISTORY

14. The Appellant made his RSD application on 29 June 2024. The Appellant appeared before the RSD officer on 9 July 2024. The Secretary made his decision that the Appellant was not recognised as a refugee under the Act, and that he was not owed complementary protection, on 15 August 2024.
15. The Appellant lodged a review application with the Tribunal on 23 August 2024.
16. The Appellant's representative lodged submissions with the Tribunal dated September 2024¹ together with a further statement of the Appellant.

¹ The actual date of the submissions does not descend to more detail than the month.

17. On 1 October 2024, the Appellant appeared before the Tribunal to give evidence and to present arguments. He was assisted by an interpreter in the Bengali and English languages. He also had the assistance of his representative. The Tribunal made its decision to affirm the determination of the Secretary on 31 December 2024.
18. The appeal in this Court was commenced on 10 February 2025. An amended Notice of Appeal was filed in this Court on 26 March 2025. I heard that the appeal on 2 May 2025.

LEAVE TO FILE APPEAL

19. The Tribunal Decision was made on 31 December 2024. The Appellant's representative received a copy of the Tribunal Decision by way of email on 2 January 2025. That is to say, the appeal was filed in this Court approximately 39 days after the Appellant's representative received the written statement of the Tribunal Decision.
20. Unbeknownst to the Appellant's representative, what was previously a 42-day period provided for an appeal to be filed to this Court in s 43(3) of the Act was amended by the *Refugee Convention (Amendment) Act 2024 (Amendment Act)* with effect from 26 November 2024. The period within which an appeal could be filed to this Court from a decision of the Tribunal was reduced from 42 days to 21 days.
21. Section 43(5) of the Act, provides that this Court may, by order, extend the period provided for in s 43(3) as may be considered appropriate if:
 - (a) an application for the order has been made in writing to this Court specifying that the Appellant considers it necessary in the interests of justice to make that order; and
 - (b) this Court is satisfied that it is necessary in the interests of the administration of justice to make that order.
22. The Appellant applies for an order extending the period for filing an appeal in this Court. He relies upon the affidavit of Ms Neha Prasad, sworn 23 April 2025. Ms Prasad deposes that:
 - (a) she is an employee of Craddock Murray Neumann (CMN);
 - (b) CMN is contracted to provide legal assistance to asylum seekers in the conduct of appeals in the Supreme Court of Nauru;
 - (c) Ms Prasad is responsible for commencing proceedings on behalf of Appellants under the Act by filing notices of appeal with the Supreme Court of Nauru;
 - (d) at the time that CMN received the Registrar's email attaching a copy of the Tribunal Decision on 2 January 2025, Ms Prasad was on leave and was not scheduled to return to the office until 13 January 2025;
 - (e) due to a health condition contracted whilst she was abroad, Ms Prasad was unable to return to work until 18 January 2025;

- (f) upon returning to work on 18 January 2025, Ms Prasad began organising and allocating work on the basis of her expectation that the limitation period under s 43(1) of the Act remained 42 days, such that she calculated that the appeal in this matter was due to be filed by 10 February 2025;
 - (g) on 10 March 2025, Ms Prasad received an email from the solicitor for the Republic advising that the time limit for appeals to the Supreme Court was at that point 21 days and asking whether an extension of time would be sought;
 - (h) Ms Prasad deposes that until receipt of Mr O’Shannessy’s email dated 10 March 2025, CMN had not otherwise received any correspondence or notification about the legislative amendments to s 43(3) of the Act;
 - (i) the delay in the filing of the notice of appeal arose from a genuine and honest gap in information on the part of CMN given that the parties had historically operated under the timelines previously in effect; and
 - (j) Ms Prasad notes that the Republic has not opposed applications for extension of time ordinarily whilst fully acknowledging the responsibility of CMN to stay abreast of legislative and/or procedural amendments.
23. Notwithstanding the Republic’s ordinary position as noted by Ms Prasad, in this case the Republic opposes the grant of an extension of time to the Appellant, but only on the basis that the appeal lacks merit.
24. Ms Prasad was not cross-examined on her affidavit and I accept that the explanation given by Ms Prasad for the late filing of the notice of appeal was because she had not received notice of the reduction of the limitation period for the filing of an appeal from 42 days to 21 days after receipt of the Tribunal Decision.
25. As I have already noted, the Republic opposes the grant of an extension and relies upon the decision of the High Court of Australia in *Tu’uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579. The Republic submits that it is appropriate for this Court to determine, after detailed argument, that the proposed appeal does not have merit and thus it is not in the interests of the administration of justice to grant the extension of time.
26. It is necessary for this Court to avoid the error of conflating the application for an extension of time with the substantive appeal by refusing to extend time on the basis of a final determination of the issues raised in the substantive appeal: *Tu’uta Katoa* at [5]. Instead, the nature of this application requires me to consider what I am satisfied is in the interests of the administration of justice: s 43(5)(b) of the Act.
27. Section 43(5) of the Act does not set out any mandatory considerations as to what will inform the Court reaching the state of satisfaction required by section 43(5)(b). In this case, I consider that the following considerations are relevant to the question of whether I am satisfied that it is necessary in the interests of the administration of justice to make an order extending time:
- (a) An explanation for the delay has been given. The explanation has not been challenged by the Republic. It is apparent that the Appellant (through his

representatives) was not aware of the fact that there had been a change to the time period within which an appeal could be filed from 42 days to 21 days;

- (b) The appeal as filed was brought within the 42-day period that the Appellant's representative believed at the time represented the appropriate time period for filing such an appeal.
 - (c) The Republic has not contended that it is prejudiced to any substantial extent by the Appellant's delay in filing this appeal.
 - (d) A failure by this Court to grant an extension of time would have the effect that the Appellant cannot bring an appeal from this decision as of right, but rather any appeal to the Court of Appeal from a refusal to extend time would require leave of this Court or the Court of appeal to pursue: s 19(3)(f) *Nauru Court of Appeal Act 2018* (Nr).
 - (e) The matters which I am required to consider on this appeal are of great consequence to the Appellant. They relate to his future life and safety.
 - (f) I consider that the grounds advanced by the Appellant are at least arguable.
28. Having regard to all of these considerations, I am satisfied that it is necessary in the interests of the administration of justice to make an order extending the period of time provided by s 43(3) of the Act as amended on 26 November 2024 to 5:00 pm on 10 February 2025.
29. In relation to the Republic's argument that the extension of time ought to be refused if I find that the substantive grounds of appeal would fail, I remain cognisant of the need to ensure that I do not conflate an application to extend time with what I decide in relation to the ultimate determination of the substantive grounds of appeal. That is to say, my view about the ultimate outcome is but one of a number of discretionary considerations I have set out above. It is not appropriate for me to substitute my view of the ultimate merits of the ground of appeal with the question of what the interests of the administration of justice require in this case.

THE TRIBUNAL DECISION

30. The ground of appeal identified above relates to four contended errors that are said to arise from paragraph [86] of the Tribunal Decision. To give context to that paragraph, I set out below paragraphs [85] to [89] of the Tribunal Decision:
- [85] At hearing, the [Appellant] confirmed the basic elements of his relationship with [B] and said that he loved her.
 - [86] Drawing on his written statement and the supporting documents, the Tribunal asked a range of questions about the relationship, including how it was conducted and other observational details.
 - The [Appellant] said that he and [B] used to talk to each other about their feelings, their wish to marry and live together, and (increasingly) the pressure that [B] was experiencing at home. He emphasised that [B] had

married young and that [K] was abusive towards her. He described being conflicted about it. On the one hand, he loved her; but he also had the feeling that she was using him to escape the marriage.

- The Tribunal was unable to elicit more meaningful information about their attraction to each other, any common interests or their topics of discussion. The Tribunal takes into account the representative's comments about the [Appellant's] youth, his nerves and the possibility that he finds it difficult to describe the relationship. Even so, it found his responses to its questions unpersuasive.
- Among the questions that the Tribunal explored with the [Appellant] were:
 - *How in the initial stages he managed to keep returning to the area around [K's] house without arousing suspicion*, given his evidence that [K] and the other brothers all lived close to each other, some 1 to 1.5 km from his home, in an AL stronghold area.
 - *Given the brothers' notoriety, what led him to "assume" that [B] must have been [K's] female relative*, and to flirt and later meet up with her without making enquiries. The [Appellant] did not address why he failed to make such enquiries, both as a precaution and also because the brothers' (claimed) profiles suggest that there would be a fair degree of public knowledge about them.
 - *What enquiries he made about [B's] living arrangements*, and how (particularly after he found out about [K] and their ... son) she managed to steal away from her home late at night. The [Appellant] reiterated that he found out about [B's] marriage and her son only later, implying that there had been no discussion between the two about their family situation or living arrangements at all. Even after his claimed discovery of her family situation, it appears he had only the vaguest idea of [K's] work and could not recall whether or not [B] had mentioned her son's name. The first of these is significant. The Tribunal expects that, after learning that [B] was married, a natural follow-up question would be what her husband does and how she leaves the family home late at night, undetected. As noted above, the charge sheet records [K] as a farm worker and a night guard at [F]. Although the [Appellant] knew that [K] was involved in [F], it is striking that he did not appear to link this work with [B's] claimed ability to visit him late at night.
 - *Whether [B], aged about 18 years old at the time, had security concerns or aroused attention*, when she went from her place to his around midnight. The [Appellant] confirmed his claim that it was about 1.5 km from her home to his (although the hand-drawn map he provided suggested that it was a much shorter distance, with some houses and pond between the two). He thought it might have taken her some 20 to 30 minutes to travel; she might have walked half the way (and implicitly, taken some other form of transport for the rest). The Tribunal formed the impression that the [Appellant] was improvising, and had not, in fact, turned his mind to these practical matters.

- [87] The Tribunal also enquired, in an open-ended way, whether the [Appellant] had updated information, keepsakes, or other evidence that would support his claims about the nature of his and [B's] relationship. These enquiries yielded little. The [Appellant] said that while in Malaysia, a friend had obtained for him [B's] new telephone number. They spoke a few times in person, the last time being some 18 months before the hearing (i.e. in about late 2022). He had not made any recent enquiries. In response to questions about other evidence, he said that he had some photographs of her in Malaysia, but these had somehow been deleted. He believed, however, that she was still in an unhappy relationship and subject to abuse.
- [88] In some, the [Appellant] was able to speak to the basic integers of his claim about the relationship. However, he struggled to provide meaningful information beyond this, about such basic matters as the couple's common interests and his knowledge of [B's] personal and family circumstances. Even taking into account the [Appellant's] youth, his cultural background and the possibility that he finds it awkward to about [sic] personal feelings, the Tribunal found his evidence about the relationship to be limited and unpersuasive.
- [89] The above concerns, taken together, lead the Tribunal to find that the [Appellant] did not have an affair with [B] during 2016 to 2018.

THE APPELLANT'S SUBMISSIONS

31. The Appellant argues that the existence of the relationship between him and [B] was a “key element” of the claim that he had been falsely alleged to have raped [B]. The Tribunal rejected the existence of that relationship in paragraph [89] of the Tribunal Decision.
32. The rejection of that relationship was premised on concerns identified in preceding paragraphs of the Tribunal Decision. The Appellant points in particular to paragraph [86] of the Tribunal Decision. Turning to the third bullet point in that paragraph, the Appellant notes that there are four “questions” set out as having been asked by the Tribunal, and a summary of the responses given.
33. The first question identified by the Appellant was “how in the initial stages [the Appellant] managed to keep returning to the area around [K's] house without arousing suspicion”. The Appellant argues that this question was not asked of him in those terms. The transcript does not record any similar question being asked. The transcript records evidence as to how [B] managed to keep attending the place where the Appellant claimed they had met, but there is nothing about the Appellant continuing to attend an area near [K's] house.
34. As to the second question, the Appellant notes that this is in effect, what led the Appellant to “assume” that [B] must have been [K's] female relative. Counsel for the Appellant notes that the Tribunal went on to say that the Appellant did not address why he failed to make such inequities, both as a precaution and also because the profile of the brothers suggests that there would be a fair degree of public knowledge about them.

35. The Appellant notes that the evidence at T15 shows that he had information that [B] was [K's] cousin and not his wife. The Appellant was not otherwise asked about why he failed to make enquiries about this matter. Thus, when the Tribunal said that the Appellant “failed to make enquiries” about the relationship between [B] and [K], that is, according to the Appellant, an “in inapt summary of the evidence”. The Appellant claimed to have information about her relationship to the family, albeit that it turned out to be wrong. In that context, the Appellant submits that it is inapt to speak of him “failing” to seek out information. Further, the unfavourable inference that is embedded in the expression “the [Appellant] did not address why he failed to make such enquiries” was untenable on the evidence. The Appellant did not address this issue because he was not asked to, and it is implausible to think that the Appellant should have known to address the point without being asked to do so.
36. The third question asked was “what enquiries he made about [B's] living arrangements”. The Tribunal went on to say that even after his claimed discovery of her family situation, it appears that he had only the vaguest idea of [K's] work and could not recall whether or not [B] had mentioned her son's name. The Tribunal noted that a “natural follow up question” would be to enquire what her husband does. Although the Appellant knew that [K] worked at [F], the Tribunal noted that it is striking that he did not appear to link this work with [B's] claimed ability to visit him late at night.
37. The Appellant submits that “this is nonsensical”. The Appellant did know, when tested, that [K] worked at [F]. The Tribunal said that he was not able to link that work with [B's] ability to sneak away and meet with the Appellant. It is unclear why the Appellant should have the cognitive or intellectual skills to work this out. The Appellant's intellectual skill is not a legitimate test of whether the Appellant was recalling his own lived experience.
38. The fourth question was “whether [B] aged about 18 years old at the time, had security concerns or aroused attention,” when she went from her place to the Appellant’s around midnight. The relevant exchange in the transcript before the Tribunal is at T17. The Appellant was never asked about any practical matters related to [B's] journey, other than whether she walked and how long it took her to travel. The Appellant answered both of those questions. When the Tribunal says that it formed the impression that the Appellant was “improvising”, the Appellant contends that the basis of that impression needed to have been set out, and it was not. Was it something in the Appellant's demeanour, his eye movements, or were there visual indicia of nervousness or discomfort?
39. Although demeanour remains a legitimate matter for a Tribunal in fact to examine and consider, the Appellant submits that it is not valid to rely on an “impression of improvisation”. Counsel for the Appellant notes that the vice of demeanour as a means of determining whether a witness is truthful or not has been criticised on many occasions in recent years.
40. The Appellant submitted that the first, second and fourth of the questions set out above involve a failure to consider the actual evidence given by the Appellant. This is said to amount to an error of law because the Tribunal's review function obliges it to consider the actual evidence and not some incorrect or imagined evidence. The third

question involved the Tribunal reasoning in an illogical, irrational or legally unreasonable manner.

THE REPUBLIC'S SUBMISSIONS

41. The Republic submits that the Tribunal Reasons do not disclose a misunderstanding of the evidence in respect of the first alleged misunderstanding dealt with above. At the hearing, the Appellant gave evidence that, in the early stages of his relationship with [B], he and [B] would meet at a pond near [K's] house. After that evidence was given, the Tribunal asked the Appellant questions that sought to ascertain how he was able to return to the area near [K's] house without arousing suspicion, including asking the Appellant whether he was comfortable or apprehensive about meeting [B] in the "stronghold" of [K] and whether he had scope to check who the brothers' wives were or what they were doing. The Republic submits that having regard to that evidence as a whole, there was no misunderstanding of the evidence.
42. As to the second alleged misunderstanding noted above, the Republic submits that contrary to the Appellant's written submissions, the Tribunal did ask the Appellant whether he made enquiries as to [B's] relationship to [K]. At T15, the Republic noted the relevant exchange where the Tribunal enquired as to the Appellant's "thoughts about maybe checking whether she was, or her connection was with [K]".
43. The Tribunal's statement that the Appellant failed to make enquiries about [B's] relationship to [K] is consistent with the evidence that was given by the Appellant. Further, it was open to the Tribunal to conclude that the Appellant did not "address" this failure in circumstances where the evidence was that he "did not think about it".
44. As to the third question identified above, that relating to illogicality, irrationality or unreasonableness, the Republic draws my attention to authority of this Court in *CRI 020 v Republic of Nauru* [2021] NRSC 23 at [36] where [this Court referred to the need for an Appellant arguing irrationality to demonstrate reasoning which no rational or logical decision maker could arrive at on the same evidence.
45. Contrary to the Appellant's submission that this aspect of the Tribunal's reasoning was "nonsensical", the Republic submits that the finding was neither irrational nor illogical. It was open to the Tribunal to reason that:
 - (a) If the claim was true, the Appellant would have sought to understand how the affair had not been uncovered to date, including by making enquiries about [K's] work and how [B] was previously able to leave her house late at night, undetected by her husband;
 - (b) The fact that the Appellant did not suggest that [B] was able to further her affair with him late at night due to her husband's work obligations indicated that those enquiries were not made;
 - (c) The absence of those enquiries suggested that the Appellant did not have an affair with [B].
46. As to the alleged fourth misunderstanding, the Republic notes that in his written submissions, the Appellant takes issue with the Tribunal's assessment that the

Appellant's evidence was the product of improvisation. The Republic submits that it is not apparent from those submissions as to how it is said that the Tribunal's reliance on that assessment results in a "failure to consider the actual evidence". In any event, it was permissible for the Tribunal to rely upon the Appellant's demeanour in concluding that he had not turned his mind to whether [B] had security concerns or aroused attention when visiting him at around midnight.

RELEVANT LEGAL PRINCIPLES

47. In the decision of the High Court of Australia in *Plaintiff M1/2021 v Minister of Home Affairs* (2022) 275 CLR 582, the plurality (Kiefel CJ, Keane, Gordon and Steward JJ) commencing at [22] considered the appropriate approach of decision-makers to representations made on behalf of persons appearing before them. The Court addressed the need for a decision-maker to read, identify, understand and evaluate the relevant representations at [24]. At [27] the plurality noted that its analysis was not to detract from, or to be inconsistent with, "established principle that, for example, if review of a decision-maker's reasons discloses that the decision-maker ignored, overlooked or misunderstood relevant facts or materials or a substantial and clearly articulated argument, misunderstood the applicable law, or misunderstood the case being made by the former visa holder, that may give rise to jurisdictional error".

48. In *Minister for Immigration and Citizenship v SZRKT* (2013) 212 FCR 99, Robertson J observed at [113]-[114] the following:

[113] In *NABE v Minister for Immigration and Multicultural and Indigenous Affairs* (No. 2) (2004) 144 FCR 1, referred to in *MZXSA v Minister for Immigration and Citizenship* (2010) 117 ALD 441, [2010] FCAFC 123 at [83], the Full Court discussed extensively errors of fact and jurisdictional error in the Tribunal. The Court said at [63] that a failure by the Tribunal to deal with a claim raised by the evidence and the contentions before it which, if resolved in one way, would or could be dispositive of the review, can constitute a failure of procedural fairness or a failure to conduct the review required by the Act and thereby a jurisdictional error. It follows that if the Tribunal makes an error of fact in misunderstanding or misconstruing a claim advanced by the applicant and bases its conclusion in whole or in part upon the claim so misunderstood or misconstrued, its error was tantamount to a failure to consider the claim and on that basis can constitute jurisdictional error. I do not regard that decision as stating or attempting to state exhaustively the circumstances in which error may or does go to jurisdiction.

[114] As to *Minister for Immigration and Citizenship v SZNPG* (2010) 115 ALD 303; [2010] FCAFC 51 at [28] North and Lander JJ observed that an error of fact based on a misunderstanding of evidence in considering an applicant's claims is not jurisdictional error so long as the error does not mean that the Tribunal has not considered those claims. First, however, the present appeal is not a case of mere misunderstanding, but of failure to take into account corroborative material. Second, I agree with the Federal Magistrate at [32] that the

case is not authority for the proposition that it could never be a jurisdictional error to ignore a critical piece of corroborative evidence.

49. As this Court said in *CRI* at [36]:

[36] Irrationality such as to amount to legal error must involve reasoning which rationale or logical decision-maker could arrive at on the same evidence. The correct approach for this Court is to ask “whether it was open to the Tribunal to engage in the process of reasoning in which it did engage and to make the findings which it did on the material before it.” Put in another way, “If probative evidence can give rise to different processes of reasoning, and if logical or rational or reasonable minds might differ in respectively conclusions to be drawn from that evidence, a decision cannot be said by a reviewing Court to be logical or irrational or unreasonable, simply because one conclusion has been preferred to any other conclusion.”

CONSIDERATION

The First Question

50. The first question is, “How in the initial stages [the Appellant] managed to keep returning to the area around [K’s] house without arousing suspicion?” This question, having been identified by the Tribunal, was not then further addressed by the Tribunal in terms of what evidence was given in response to the above. Nevertheless, the Appellant argues that the question was not asked in its terms at all.
51. The Tribunal's reasons do not disclose a misunderstanding of the evidence. Firstly, this part of the Tribunal decision does not expressly identify particular evidence in response to the identified question. In any event, it is apparent from the transcript of the hearing that this question was, in substance, explored with the Appellant.
52. The relevant part of the transcript commences at T14, line 15, and is in the following terms:

“Mr Silva: You describe in your statement that you initially saw her by a pond next to [K].

The Interpreter: Yes.

Mr Silva: Now you have mentioned to me before that that is about a kilometre or a kilometre and a half from your house. Can you tell me what you were doing that day walking near her house?

The Interpreter: I was going to the shop. I was on the road at that time. I was not near to K's house.

Mr Silva: Okay. But she was – you saw her by the pond next to his house. Is that right?

The Interpreter: Yes.

Mr Silva: So, do I understand you saw her from a distance. Is that what you are saying?

The Interpreter: Yes.

Mr Silva: And tell me, you have described that in a week or so afterwards, you kept on coming to that area and kept seeing her.

The Interpreter: I came to see her but not frequently.

Mr Silva: And during – I think you wrote that in the first week, you saw her most days, you would come by and admire her or catch eyes with her.

The Interpreter: Yes.

Mr Silva: Now, was that an area – it was close to [K's] the pond was next to it. Was that an area that you were comfortable in or because it was in the stronghold of [K] and his brothers, were you a little apprehensive in that area?

The interpreter: I was a little scared.”

53. It is plain in this passage that the Tribunal was exploring with the Appellant his ability to frequent an area close to [K's] house, which was “in the stronghold” of [K] and his brothers.
54. In my view, the Tribunal's summary set out in the question above is fair. The Tribunal has not misunderstood or misconstrued the evidence.

The Second Question

55. The second question identified by the Tribunal in this part of its decision is “What led [the Appellant] to ‘assume’ that [B], must have been [K's] female relative, and to flirt and later meet up with her without making enquiries.”
56. Commencing at T15, line 17, the following appears:

“Mr Silva: You have told me that you felt that way. That was not an area that you were at home with or comfortable with. And she is obviously now an individual woman close to [K's] house. Tell me, what were your thoughts about maybe checking whether she was or her connection was with [K].

The Interpreter: I knew that she was the distant relative of [K].

Mr Silva: And what information did you have? And what was the information when you say you knew she was a distant relative of [K].

The Interpreter: I got the information that she might be the maternal cousin or the paternal cousin of [K].

Mr Silva: With the four brothers being notorious figures or well-known gangsters in the area, would you have had scope to check as to, you know, who their wives were or what they were doing?

The Interpreter: No.

Mr Silva: Did it cross your mind, for instance, that if a woman who is frequently next to [K's] house, or next to the pond, that that's something you should be maybe thinking about or . . .

The interpreter: At that time, I did not follow. I did not think about it."

57. At [86] of the Tribunal Decision, the Tribunal noted that the Appellant did not address why he failed to make enquiries, both as a precaution and also because he knew of the brothers' claimed profiles which suggested that there would be a fair degree of knowledge about them.
58. Again, I do not consider that the Tribunal has misunderstood or misconstrued the evidence given to it.
59. I agree with the submissions made on behalf of the Republic in respect of this question. The Tribunal's statement that the Appellant failed to make enquiries about [B's] relationship to [K] is not inconsistent with the Appellant's evidence. Whilst the Appellant gave evidence that he knew that [B] was a distant relative of [K], the effect of his immediately succeeding evidence was that he did not further inquire, despite the circumstances which might have put him on notice of the possibility that [B] and [K] had some other relationship.
60. It was also open to the Tribunal to conclude that the Appellant did not address this failure in circumstances where his evidence was that he "did not think about" checking who the wives of [K] and his brother were. No error of law is demonstrated.
61. Further, despite the Appellant's description of the Tribunal's summary of the evidence in this regard as "inapt", it is not appropriate to read the Tribunal's Reasons with an eye keenly attuned to the perception of error: *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259. Reading the decision fairly and as a whole, it is apparent that the Tribunal did not misunderstand the effect of the evidence given by the Appellant or the case put by the Appellant.

The Third Question

62. The third question identified by the Tribunal was to ask, "What enquiries the Appellant made about [B's] living arrangement and how (particularly after he found out about [K's] and their ... son), she managed to steal away from her home late."
63. The Tribunal noted that the Appellant reiterated that he found out about [B's] marriage and her son only later, implying that there had been no discussion between the two about their family situation or living arrangements at all. Even after his claimed discovery of her family situation, it appeared that the Appellant had only the vaguest idea about [K's] work and could not recall whether or not [B] had mentioned

this. The Tribunal noted that it expected that upon learning that [B] was married, a natural follow up question would be what her husband did and how it was that she was able to leave her home late at night.

64. The Appellant describes this course of reasoning as “nonsensical.”
65. In my view, the course of the Tribunal's reasoning in this part of its decision was not nonsensical. Nor did it involve a want of rationality or logicity that would amount to a legal error. The course of the Tribunal's reasoning was that:
- (a) If the Appellant's claim was true, it is likely that he would have sought to understand how the affair had not been uncovered to date, including by making enquiries as to how [B] was previously able to leave her home late at night, undetected by her husband.
 - (b) The fact that the Appellant did not suggest that [B] was able to further her affair with him late at night due to her husband's work obligations did not support a conclusion that the Appellant in fact had an affair with [B].
66. In my view, the evidence given to the Tribunal may potentially give rise to different processes of reasoning. However, I consider that the approach of the Tribunal was one open to it. This Court is not satisfied simply because the Appellant would urge a different factual conclusion than the one ultimately reached. That does not make the decision irrational or unreasonable.
67. Nor do I consider that the Tribunal misunderstood or misconstrued the evidence of the Appellant in relation to this matter. Starting at T17, line 21, the following passage appears:

“Mr Silva: And do you know – I'm not asking what you knew at that time, but a general question, who was [B] living with when you started having this close contact or relationship?”

The Interpreter: Later, I came to know that she lived with [K].

Mr Silva: Anyone else?

The Interpreter: No.

Mr Silva: Any children?

The Interpreter: Later, I came to know that she had a kid. So, I revealed it, she had a son.

Mr Silva: And any other relatives?

The Interpreter: I did not know.

Mr Silva: Was that something with a young woman, I think she was 16 or 17 at the time, travelling really quite a distance by herself at night, was that something that you think would not come up in conversation? To say, you're

travelling by yourself at night, quite a distance, and then you're travelling back. Did that never come up in conversation?

The Interpreter: At that time, I thought it would be safe for her.

Mr Silva: Can you give me some examples, though? I'm not expecting anything here, but it seems to me that asking a young woman in that situation who you're living with, what are your circumstances, would be a very basic type of conversation. So, what things did you talk to [B] about?

The Interpreter: So later, I came to know that she got married with [K], but during our relationship, I did not know that.

Mr Silva: But I'll take it then, you're saying that you also didn't ask about it, or it didn't come up in conversation ahead of time.

The Interpreter: I asked her questions at that time.

Mr Silva: And . . .

The Interpreter: I asked her, where do you come from? And she has told me I live in that village and that is my village, the name of the village. She has informed me that sometimes she comes to visit here. Then I came to know that [K] forced her to get married with him.

Mr Silva: You've mentioned that around March 2017, so that would seem to me to be about nine months after you met, and that's when she revealed to you that she was in a relation – she was married to [K] at a young age.

The Interpreter: Yes.

Mr Silva: And if I just summarise, I believe in your statement. You wrote that she was married very young, she was unhappy, and she wanted to have a relationship with you. You both have feelings and felt that you would even like to go a step of marrying.

The Interpreter: Yes.

Mr Silva: [Appellant], up to this point, I just want to say, I'm a little puzzled, maybe you can help me, as to – I know that every relationship is different, but I'm just a little puzzled as to how you could invest so much time and effort into her, but not know some basic things about her. Can you help me understand how that came about?

The Interpreter: I had a relationship with her, and then one day after a long time, she informed me that, I am the wife of [K].

Mr Silva: Now how did you react when she gave you that information?

The Interpreter: When I got that information, I felt very, very sad. I felt scared as well.

Mr Silva: Did you make any resolve? I mean, you've mentioned [K], and his brothers being really dangerous gangsters. Now you found yourself being very close to his wife. That's serious business. So apart from feeling scared, did you feel you needed to take any action at that point?

The Interpreter: See, at that time, I felt scared, okay? And I loved her. I could not ignore her, and I could not accept her as well. And when I knew she is the wife of [K], I felt more scared."

68. The Tribunal said that the Appellant had "only the vaguest idea of [K's] work." The Appellant criticises that and says that, in fact, the Appellant stated what [K] did for work. In particular, I note that at T9, starting at line 34, the following passage appears:

"Mr Silva: (Indistinct), you mentioned [K], as a particular concern to you. Do you know what [K] does?

The Interpreter: So far as I know, he has a [identified business], and it's called [G], in Bengali. So far, I know he was in that [G], and sometimes he was in his house, and sometimes he was in his [G], or the [identified business]. . . .

And do you know – is he busy during the day or the evening, what type of hours he keeps?

The Interpreter: I don't know."

69. It is true that this description of [K's] work may indeed have been more detailed than the description given by the Tribunal in that regard. Nevertheless, the point of this part of the Tribunal Decision is the lack of the Appellant's understanding as to how it was that [B] was able to meet him late at night. In my view, there is nothing in the passages which I have set out above which would indicate that the Tribunal misunderstood or misconstrued the evidence such as to amount to an error of law. The Tribunal has not misstated the evidence in that regard.

Fourth Question

70. The fourth question raised by the Tribunal was in the following terms: "Whether [B], aged about 18 years old at the time, had security concerns or aroused attention?"
71. The Tribunal noted that the Appellant confirmed that it was about 1.5 kilometres from her home to his home. He thought that night had taken her 20 to 30 minutes to travel and that she might have walked half the way. The Tribunal stated that it formed the impression that the Appellant was improvising, and had not, in fact, turned his mind to these practical matters.
72. I have already set out above part of the passage concerning [B's] night-time travel.

73. Starting at T17, line 1, the following passage appears:

“Mr Silva: So, I have here, I think you've described to Ms Robson, there's [K's] house here, there's open land and houses, and there's jungle, and then there's your house to the pavement. And that's where you and [B] met on that first occasion and on later occasions.

The Interpreter: Yes.

Mr Silva: So, this shows [K's] house here, there's a pond and there is a street, open land and houses, and at the end, here, more houses and behind, there is your house, your family house with a pond.

The Interpreter: Yes.

Mr Silva: What would you say is the distance between [K's] house, and your house? Because you said he lived in the Awami League or mostly Awami League area, you're mainly in the BNP area. So, what's the distance between the two of you?

The Interpreter: One and a half kilometres.

Mr Silva: How long do you think it would then take for [B] to walk there or did she use some other means, some means of transport?

The Interpreter: Probably she walked half of the way, and then she took something else to come.

Mr Silva: How long do you think it would have taken her to get from her house to your house?

The Interpreter: Probably 20 or 30 minutes.”

74. In my view, the Tribunal did not fail to consider the actual evidence or misunderstand or misconstrue the evidence given. As it transpired during the course of oral argument before me, it became apparent that the main focus of the Appellant's criticism was the statement that the Tribunal formed the impression that the Appellant was improvising and had not in fact turned his mind to the practical matters concerning [B's] ability to meet the Appellant late at night. The Appellant says that this impression of improvisation must have arisen from his demeanour because the evidence itself showed that the Appellant was answering the questions that he was being asked.

75. Nevertheless, in my view, the evidence given could reasonably have led the Tribunal to conclude that these parts of his evidence were being improvised. In other words, I am not persuaded that it follows that the Tribunal must have been relying upon the Appellant's demeanour to reach the conclusion that he was improvising.

76. In any event, this was a factual matter for the Tribunal. The Tribunal was best placed to consider the content and manner of the Appellant's evidence. In my view, no error of law is made out.

CONCLUSION

77. Pursuant to s 43(5) of the Act, I extend the time for the Appellant to file his appeal to this Court pursuant to s 43(3) of the Act to 5:00 pm on 10 February 2025.

78. I have found that the Appellant has not made out his ground of appeal. The appeal is therefore dismissed.

79. Pursuant to s 44 of the Act, I make an order affirming the Tribunal decision.

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



JUSTICE MATTHEW BRADY

[8] August 2025