



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

Appeal No. 43 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:**

**BQ25**

Appellant

**AND:**

**REPUBLIC OF NAURU**

Respondent

Before: Brady J

Dates of Hearing: 25 November 2025

Date of Judgment: 24 February 2026

CITATION: *BQ25 v Republic of Nauru*

## CATCHWORDS:

*APPEAL - Refugees – Refugee Status Review Tribunal – whether Tribunal failed to consider Appellant’s evidence concerning his mental ill health – whether a decision of Tribunal affected by legal unreasonableness because of a failure to exercise power to require psychiatric assessment – Tribunal failed to consider Appellant’s evidence – Tribunal decision not affected by legal unreasonableness - Appeal granted and matter remitted to Tribunal*

## LEGISLATION:

*Refugees Convention Act 2012 (Nr) ss. 24, 43, 44.*

## CASE AUTHORITIES:

*AV25 v Republic of Nauru [2025] NRSC 70; Dranichnikov v Minister for Immigration and Multicultural Affairs (2003) 77 ALJR 1088 at 1092 [24]; AC24 v Republic of Nauru [2025] NRSC 14.*

## APPEARANCES:

Counsel for Appellant: Mr A Aleksov (instructed by International Crossover)

Counsel for Respondent: Ms K McInnes (instructed by Republic of Nauru)

# REASONS FOR JUDGMENT

## INTRODUCTION

1. The Appellant is a citizen of Bangladesh. He initially claimed to fear persecution as a victim of “land grabbing”. The Appellant’s claims to refugee status came to be expanded and included a claim related to his mental health.
2. Pursuant to s 43 of the *Refugees Convention Act 2012 (Nr)* (**the Act**), the Appellant appeals from a decision of the Refugee Status Review Tribunal (**Tribunal**) made on 25 July 2025 (**Tribunal Decision**). The Tribunal affirmed a determination of the Acting Secretary of the Department of Multicultural Affairs (**Secretary**) dated 27 September 2024 (**Secretary’s Decision**). The Secretary decided not to recognise

the Appellant as a refugee under the Act and found that the Appellant was not owed complementary protection under the Act.

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

## GROUND OF APPEAL

4. The Appellant filed an Amended Notice of Appeal on 11 November 2025. The Amended Notice of Appeal records the following three grounds:
  1. The Tribunal failed to consider the Appellant's evidence that there is a risk of harm from the general population in Bangladesh owing to a person's mental ill health.
  2. The decision of the Tribunal is affected by legal unreasonableness because the Tribunal unreasonably failed to exercise the power under s 24(2)(b) of the [Act] to obtain the Appellant's most recent IHMS records.
  3. The decision of the Tribunal is affected by legal unreasonableness because the Tribunal unreasonably failed to exercise the power under s 24(1)(d) of the [Act] to require the Secretary to obtain a psychiatric assessment of the Appellant's current mental state.
5. At the appeal hearing, the Appellant abandoned ground 2 of the Amended Notice of Appeal.
6. In relation to ground 3, Mr Aleksov for the Appellant advised that the ground is maintained, but only on a formal basis given my decision delivered earlier in November 2025 in *AV25 v Republic of Nauru* [2025] NRSC 70. I understand that *AV25* is presently subject to appeal in the Court of Appeal. Mr Aleksov accepted that *AV25* was not clearly wrong, and therefore the ground can only succeed in the event that the appeal from my decision in *AV25* is allowed.

## PROCEDURAL HISTORY

7. The Appellant applied for refugee status determination (**RSD**) on 7 March 2024. The Secretary's Decision was made on 27 September 2024 after the Appellant had been interviewed on 22 May 2024 by the RSD officer considering his claim. The Appellant was represented at that time by a Claims Assistance Provider (**CAPs**) representative and was assisted by an interpreter in the English and Bengali languages.
8. The Appellant filed an application for review by the Tribunal of the Secretary's Decision on 1 October 2024. The Appellant's representative provided further material to the Tribunal, including a statement dated 12 February 2025. On 13

February 2025, a hearing was scheduled before the Tribunal. On that date however, the Tribunal agreed to reschedule the Appellant's hearing as he was not feeling well.

9. On 17 February 2025, the Tribunal wrote to the Appellant's representative recording the Tribunal's earlier agreement to reschedule the Appellant's hearing but advising that the Tribunal would not be prepared to postpone any further hearing for health reasons without supporting medical evidence.
10. On 18 February 2025, the Appellant's representative advised the Tribunal that the Appellant would prefer the Tribunal to decide the matter without him appearing before it, pursuant to s 40(2)(b) of the Act.
11. By letter dated 31 March 2025 from the Tribunal Registrar to the Appellant's representative, the Tribunal raised questions in relation to a number of matters concerning the Appellant's claim, including details as to:
  - (a) the timeframe for repayment of the alleged loan to the Appellant;
  - (b) whether the guarantor of the loan had been pursued;
  - (c) the Appellant's father's involvement in Jamaat-e-Islami (**JeI**);
  - (d) the alleged attempts by Awami League (**AL**) to attempt to seize the Appellant's land;
  - (e) the explanation for inconsistencies in certain police documents;
  - (f) the number of times that the Appellant had been assaulted by a man known as [S];
  - (g) the time that the Appellant had spent in Dhaka before leaving Bangladesh;
  - (h) the arrangements which he had made to leave Bangladesh;
  - (i) an explanation for why the Appellant's wife had tried to return home in approximately November 2024;
  - (j) a request for details as to when and why the Appellant obtained his passport; and
  - (k) a request for the Appellant to address the change in the political situation in Bangladesh since he had left.
12. Under cover of an email dated 10 April 2025, the Appellant provided a statement in response to each of these matters dated 9 April 2025, together with a detailed set of written submissions addressing the Appellant's claim also dated 9 April 2025. The Tribunal was also provided with further documentation, as well as a copy of the Appellant's International Health and Medical Services (**IHMS**) file.
13. The Tribunal Decision was made on 25 July 2025.

14. The Appellant filed a Notice of Appeal to this Court on 4 August 2025. The Notice of Appeal was amended on 12 November 2025. Both the Appellant and the Republic filed written submissions in relation to the grounds raised in the Amended Notice of Appeal. I heard the appeal on 26 November 2025.

### **APPELLANT'S CLAIMS**

15. The Appellant's claims are set out in considerable detail in the Tribunal Decision between paragraphs [28] and [66]. For the purposes of this judgment, it is necessary for me only to summarise those claims.
16. In the written submissions made by the Appellant's representative to the Tribunal dated 9 April 2025, the Appellant's claim to fear persecution should he be returned to Bangladesh was based on the reasons of his:
- (a) actual or imputed political opinion as a supporter of JeI;
  - (b) his particular social group of family members of JeI sympathisers;
  - (c) his particular social group as someone with mental health issues;
  - (d) his particular social group of victims of land grabbing by AL affiliates; and/or
  - (e) his particular social group of debt defaulters who have been publicly shamed or harassed.
17. The Appellant claims that in 2021, his (now late) father developed brain cancer. The Appellant returned to his village and after discussion with his mother, decided they had to sell everything they had in order to obtain treatment for his father. The Appellant had three blocks of rice fields in his village. He leased those fields to a man named [S]. [S] is a member of a wealthy family in the Appellant's village. [S] has strong AL links. The Appellant claims that [S] gave him 500,000 taka. Documents were created to confirm the lease agreement.
18. All of the proceeds from the lease of the fields were then spent on the Appellant's father's treatment, but despite that treatment he unfortunately passed away.
19. Two and a half years later, [S] told the Appellant that he wanted his money back. The Appellant did not have the money to do so, having spent it on his father's treatment.
20. The Appellant went to two non-government organisations (NGOs) and took loans from them. One was for 500,000 taka and one was for 300,000 taka. The Appellant returned the 500,000 taka to [S] and used the rest of the money he had borrowed to improve the land.
21. The Appellant claims that after five and a half months, [S] came to him and asserted that the land now belonged to [S] and that the Appellant could not take the rice he had been growing on the land [S] proceeded to harvest the Appellant's rice.
22. [S] organised some local AL thugs to come to the Appellant's house with weapons. One thug found him and assaulted him. The thug also assaulted his five-year-old son.

23. The Appellant fled his village to Dhaka and then left Bangladesh. If he returns to Bangladesh, he fears that he will be targeted and even killed by [S] and his band of thugs.
24. The Appellant contends that [S] is a powerful man in his area and has strong connections to the AL. The Appellant says that the police would help him.
25. I address further below the specific claims made in respect of the Appellant's mental health challenges insofar as they are relevant to the grounds of appeal now advanced.

### **FIRST GROUND OF APPEAL – FAILURE TO CONSIDER EVIDENCE**

26. The first ground of appeal is that the Tribunal failed to consider the Appellant's evidence that there was a risk of harm from the general population in Bangladesh owing to his mental ill health.

#### **The Appellant's Articulation of his Mental Health Claim**

27. As I have noted above, in his representative's submissions dated 9 April 2025 the Appellant claims to fear persecution, inter alia, for reasons of his membership of a particular social group as someone with "mental health issues". However, that claim was made relatively late in the RSD and Tribunal process.
28. There is nothing in the Appellant's RSD application which raises the state of his mental health as a ground upon which he claims to fear harm should he be returned to Bangladesh. The issue of the Appellant's mental health appears to have first been raised at an interview with the RSD officer on 22 May 2024.
29. On 29 May 2024, the RSD officer wrote to the Appellant's representative requesting further information concerning three matters. The second of those matters related to the Appellant's claimed mental health challenges. The letter from the RSD officer dealt with the issue in these terms:

[The Appellant's] mental health was also the subject of contentions at the conclusion of the interview.

In the Statement of Claim (paragraph 5), [the Appellant] described his mental and physical health as "okay" (although he was distressed). However, [the representative] identified that there was information that might suggest that [the Appellant] had attempted self-harm or had, in fact, self-harmed. There was a reference to a potential attempt to die by suicide. [The representative] sought time to obtain [the Appellant's] records from IHMS in respect of this matter.

30. There was then a considerable delay until 12 August 2024 when the Appellant's representative replied to the RSD officer's request for information. The response from the Appellant was in these terms:

Please find attached [the Appellant's] IHMS health records where we have highlighted relevant information. While [the Appellant] has not actively self-harmed, since his arrival to Nauru he has experienced substantial mood swings. He has expressed suicidal ideation, insomnia, poor appetite and high levels of stress and worry for his wife and children.

At page 30 he reported to IHMS that his wife had made threats to buy poison and take her own life along with their children. He consistently raises concerns about his wife and children who live in profoundly impoverished conditions in a slum in Dhaka and are clearly struggling.

We refer to an article published by Cambridge University on the current state of mental health care in Bangladesh where it reports (citations removed):

With only four hospital beds per 10,000 people, Bangladesh faces an immense burden of illness arising from both communicable and non-communicable diseases, including mental disorders. Mental health care in Bangladesh is enormously inadequate owing to a lack of public mental health facilities, scarcity of skilled mental health professionals, insufficient financial resource distribution and societal stigma. These shortcomings are sustained by the absence of effective stewardship to execute adequate mental health policies.

Despite limited documentation of the burden of mental disorders and challenges in improving mental health care, there has been no comprehensive review of the country's current mental health state at the national level.

We submit should [the Appellant] be forcibly removed to Bangladesh he will not receive adequate health care for his poor mental health further negatively impacting his capacity to provide for his family with potentially fatal consequences.

31. The Secretary's Decision was made on 27 September 2024. The Secretary recorded that the evidence submitted by the Appellant related to his mental health was reviewed. The Secretary agreed that the Appellant had raised a number of times his concerns about the predicament of his wife and children in Bangladesh. He accepted that the Appellant was distressed due to being separated from them and being concerned about their welfare and ability to meet their needs.
32. Under the heading "Is the fear well founded", the Secretary recorded the following:

I have accepted the Appellant has sought mental health support while in Nauru. I note the documentation before me suggests the Appellant has expressed suicidal ideation. I can appreciate that the Appellant is concerned for the welfare of his family and that being apart from them is difficult for him. I note that he has not been diagnosed with any medical condition and has not provided details of any treatment he may require in the foreseeable future, or the availability of such treatment in Bangladesh. It is not suggested that he fears he may be targeted for harm or otherwise endure discriminatory treatment in Bangladesh in the future owing to any mental health condition. I am not satisfied that he faces any chance of harm in Bangladesh in the foreseeable future for any reason related to his engagement with mental health support while in Nauru.

33. In a statement dated 12 February 2025 provided to the Tribunal, the Appellant addressed the issue of his mental health. Under the heading "Capacity", the following passage appears in that statement:

- [3] Since leaving Bangladesh, I have suffered severe trauma and depression due to everything that has happened.
- [4] My wife has also been deeply affected. She has told me she wants to buy poison and take her own life, along with our children, because of the unbearable suffering.
- [5] Since my arrival in Nauru, my mental health has deteriorated. I experience:
- Severe depression and mood swings.
  - Suicidal thoughts.
  - Insomnia and loss of appetite.
  - Constant anxiety about my wife and children's suffering.
- [6] The uncertainties I face in Nauru and the fear of being forced to return to Bangladesh has had an impact on my mental wellbeing and capacity to cope with the challenges I face.
- [7] I feel completely helpless. My mother is sick, my wife is forced to work as a maid, and my children are living in extreme poverty. Sometimes, I think it would be better if I died.

34. The statement of 12 February 2025 then went on to deal with other aspects of the Appellant's claim for refugee status. In particular, under the heading "Ongoing Fear and Risks", the statement explained the Appellant's concerns about returning to Bangladesh and the risks arising to him. That part of the statement was in the following terms:

[21] [S] and his AL gang remain in the area, and my family reports that the situation has not improved.

[22] Three months ago, when my wife later attempted to return home, [S] and 10-15 men came to attack her. She barely escaped. One of my children was kicked during the attack.

[23] I am still at risk because I have defied [S] and his henchmen. They are still angry at me for reporting [S] to the police and refusing to give up his confiscation of my land.

[24] I continue to fear for my safety and that of my family should I return to the area.

35. On 17 February 2025, the Tribunal wrote to the Appellant's representative noting that it had agreed to reschedule the Appellant's hearing because he was not feeling well. The Tribunal noted that no current medical evidence was provided to the Tribunal, although it was understood that the representative had obtained the Appellant's then-current IHMS records. The Tribunal asked that the representative advise regarding

relisting the hearing and whether any particular accommodations should be made such as allowing more time for the hearing or listing the hearing at a particular time.

36. On 18 February 2025, the Appellant's representative emailed the Tribunal and advised that, in light of the Appellant's state of mental health, he would prefer for the Tribunal to decide the review without him appearing before it, pursuant to s 40(2)(b) of the Act. The email also noted that the Appellant had instructed his representatives to prepare submissions and address any adverse credibility concerns that the Tribunal may have.
37. On 31 March 2025, the Tribunal wrote to the Appellant's representative noting that no submission had yet been provided. The Tribunal set out a list of matters that it advised it would be assisted by the Appellant clarifying.
38. By email dated 10 April 2025, the Appellant's representative forwarded to the Tribunal:
  - (a) a statement of the Appellant dated 9 April 2025 in response to questions from the Tribunal (**9 April Statement**); and
  - (b) a set of submissions dated 9 April 2025 (**9 April Submissions**).
39. Relevantly for the purposes of this judgment, the 9 April Statement noted at paragraph [2] that the Appellant would do his best to provide clear and accurate information. However, he advised that his ability to recall certain details may be limited due to the severe emotional distress and psychological impact that he was then experiencing. He stated that his mental health challenges, compounded by the traumatic nature of the events which he had been enduring, had significantly affected his memory and overall wellbeing.
40. The Appellant advised that he remained deeply distressed by the precarious situation of his wife and children in Bangladesh in his absence. He noted that his wife had expressed feelings of despair, stress and a profound sense of helplessness, particularly due to pressure from NGOs and his cousin's family. She had also mentioned that she had suicidal thoughts, which caused the Appellant "immense anguish". He stated that he felt powerless and overwhelmed by the pain of their separation.
41. The 9 April Submissions recorded, as I have set out above at paragraph [16], the five reasons for the Appellant's fear that he would be persecuted should he be returned to Bangladesh. The third of the five listed fears was because of his membership of a particular social group, as someone with mental health issues.
42. This was not a claimed fear of persecution which had been made in clear terms prior to the 9 April Submissions.
43. The 9 April Submissions dealt over the course of about three pages with the Appellant's "mental health issues".
44. Under the heading "Mental Health Issues", the 9 April Submissions recorded:

[69] It is also submitted that given the information contained in his RSD application and at the RSD interview (including his demeanour), there is

an underlying mental health condition. This is likely to come to the attention of the people he fears such as [S] and his gang or more generally, the population of Bangladesh.

45. From [70] to [74], the submissions dealt with the detail of various IHMS clinical records provided to the Tribunal. It is not necessary for me to record the terms of those paragraphs.
46. After consideration of the IHMS documents, the 9 April Submissions continued as follows:

[75] In light of the serious concerns raised regarding [the Appellant's] mental health, we respectfully submit that he be referred for a comprehensive psychiatric evaluation by an appropriately qualified mental health professional. His condition warrants the utmost seriousness, particularly in view of the documented suicidal ideation and emotional distress reflected in the clinical records. Consistent and close monitoring is essential given the Appellant's mental health vulnerabilities and the risk of further deterioration, particularly amid the ongoing uncertainty surrounding his future.

[76] Country information states, including the research conducted by Farouk et al (2023) that mental health issues are stigmatised in Bangladesh. The summary of the situation includes:

Evidence suggests that the delay in seeking care for mental health illness was associated with widespread stigma. The stigma attached to mental health problems can have an adverse impact on help-seeking behaviour with many people suffering in silence and experiencing isolation and discrimination, including human rights abuses...

[77] Stigma surround [sic] mental health in Bangladesh is also described by Hasan et al (2021):

High social stigma attached to mental illness also affects help-seeking behaviour. Consequently, mentally ill persons suffer in silence, with social isolation and discrimination. Morbidity from psychiatric illness remains high and is seldom regarded as a public health concern. Widespread stigma towards the mentally ill in Bangladesh is attributable to superstitions surrounding causation of mental illness. Mental disorder is perceived to be a consequence of possession by evil spirits, as opposed to biological or psychological mechanisms, leading to neglect and abuse of those with mental illness.

[78] There are minimal mental health services in Bangladesh. Hasan et al (2021) summarise the available services as:

Mental health care in Bangladesh is enormously inadequate owing to a lack of public mental health facilities, scarcity of skilled

mental health professionals, insufficient financial resource distribution and societal stigma.

[79] It is submitted there exists stigma around mental health in Bangladesh and that even if assistance is sought it can be difficult to access services due to lack of availability. The likelihood of harm based on his mental health needs to be afforded appropriate consideration, either as a cumulative aspect of the protection claims or as an isolated consideration [sic].

[80] We submit that [the Appellant's] reduced capacity must be taken into account when assessing his evidence. In this regard, we note the Nauru Refugee Status Determination Handbook which instructs decision makers to be mindful of mitigating circumstances impacting behaviour or capacity to present claims, including mental health circumstances. The handbook guides decision makers to be mindful of the possible effect that detention/restrictions on freedom of movement may have on the mental and emotional state of the Appellant and the impact this may have on their ability to give evidence during an interview. Decision makers should be "mindful of unrealistic expectations of precision" when assessing the level of knowledge in light of the Appellant's personal circumstances and characteristics.

[81] We reiterate that adverse credibility concerns should not be made against our client where his evidence is clearly impacted by his significant mental health concerns.

### **The Tribunal Decision**

47. The Tribunal, having set out the background and relevant law and the basis of the application, proceeded to commence consideration of the claims and evidence advanced by the Appellant at paragraph [28]. At paragraph [67], the Tribunal set out in full the terms of the Appellant's 9 April Statement. However, nowhere in the Tribunal Decision did the Tribunal set out, or even summarise, the terms of the 9 April Submissions (as to the relevant parts of which, see paragraphs [41] to [46] above).
48. At paragraph [68], the Tribunal commenced its discussion of its assessment and findings. It started by consideration of the mental health issues raised by the Appellant. The Tribunal accepted that the Appellant was, at the end of December 2024, anxious and depressed about his family situation. It accepted that he was emotionally distressed by his own and his family's situation. As a result of the despair in his situation, the Appellant had expressed suicidal ideation which was explored with mental health clinicians in Nauru. They had assessed him as having a low risk of suicide or self-harm.
49. The Tribunal noted the request that the Appellant be referred for a comprehensive psychiatric evaluation, whilst noting that his condition "warrants the utmost seriousness". The Tribunal observed that all the mental health assessments undertaken in respect of the Appellant indicated that he was not exhibiting any signs or symptoms of mental illness. The Tribunal found no basis to direct that the Appellant be referred

for a comprehensive psychiatric evaluation by an appropriately qualified mental health professional.

50. The Tribunal agreed however that the Appellant's mental health condition should be taken into account when assessing his evidence: at [75]. The Appellant's representative referred to the Appellant's "reduced capacity", but the Tribunal noted that "the medical evidence does not indicate that he has a reduced capacity or memory difficulties, although the Tribunal accepts that the [Appellant] reports difficulty remembering matters": at [75].
51. Having not availed himself of the opportunity to give evidence before the Tribunal and explain some of the inconsistencies in his account and to fill in the gaps, the Tribunal did not accept that any inconsistencies or perceived lack of detail was attributable to the Appellant's mental health condition. Rather, it was indicative of a lack of candour: at [79].
52. Thus, at paragraphs [68] to [79] of the Tribunal Decision, the Tribunal dealt with two principal matters:
  - (a) its decision not to direct that the Appellant be referred for a comprehensive psychiatric evaluation; and
  - (b) its rejection of the submission that any credibility issues were explained by his mental health conditions.
53. Later in the Tribunal Decision, at [125], the Tribunal commenced its assessment of whether the Appellant had demonstrated that he had a well-founded fear for a Convention reason. Having found that the Appellant was not a victim of "land grabbing" and that he did not have a well-founded fear of persecution on that basis (at paragraph [128]), the Tribunal then went on to consider the mental health issues raised by the Appellant.
54. The Tribunal said:
  - [129] It was submitted that the Appellant has an underlying mental health condition that is likely to come to the attention of the people he fears such as [S] and his gang, or more generally, the population of Bangladesh. The representative submitted that mental health issues are stigmatised in Bangladesh and that it can be difficult to access services.
  - [130] The Tribunal finds that the Appellant has experienced anxiety and depression. No evidence has been provided that he continues to experience anxiety and depression or that he has been diagnosed with another mental illness. According to his medical records his anxiety and depression, in the main, is caused by his uncertain future in Nauru, his separation from his family, concern for his family's situation and financial concerns. The Tribunal accepts that if he was to return to Bangladesh he would have financial concerns although some of the other concerns would no longer be playing on his mind. If the Appellant was to continue to experience anxiety and depression on return to Bangladesh (and it is unclear if this is the case), there is no reason why AL supporters or [S] and his gang or the population generally

would be aware of this condition. No material has been provided that indicated that people experiencing anxiety and depression suffer serious harm in Bangladesh from AL supporters, or the general public. It is highly speculative that this would occur [sic].

[131] The Tribunal finds that there is no reasonable possibility the Appellant will be persecuted for having experienced anxiety and depression (or continuing to experience anxiety and depression) or for reason of any other mental illness, and he does not have a well-founded fear of being persecuted on this basis.

55. The Tribunal dealt with the question of complementary protection starting at paragraph [135] of the Tribunal Decision. The Tribunal found that as it had not accepted that the Appellant's land had been seized, he would not suffer prohibited treatment on that basis, or as a consequence of land seizure. The Tribunal found that there was no reasonable possibility, or a real risk, that the Appellant would be arrested and imprisoned on return to Bangladesh. The Tribunal also was not satisfied that there was a reasonable possibility the Appellant would suffer prohibited treatment on return to Bangladesh. It found that he was not owed complementary protection.

### **Appellant's Submissions**

50. The Appellant submits that at paragraph [130] of the Tribunal Decision, the Tribunal stated that no material had been provided that indicated that people experiencing anxiety and depression suffer serious harm in Bangladesh from AL supporters or the general public. The Appellant submits that this is correct insofar as it concerns the AL, but that it is unclear what the Tribunal meant by referring to "general public". Overall, the Appellant submits that it reveals a misstatement of the claim made.
51. The Appellant submits that at paragraphs [69] to [81] of the 9 April Submission, his representative made a clearly articulated argument that the Appellant faced a risk of harm in Bangladesh in connection with his mental ill health. That argument was said to have been put by reference to two sources of country information set out in the submission.
52. Counsel for the Appellant notes that the Tribunal did not mention in its decision the country information cited by the Appellant. The Tribunal did mention the issue of "stigma", but only in rehearsing the submission made by the Appellant. The Tribunal did not make any findings in relation to whether the Appellant would suffer from stigma by reason of the state of his mental health.
53. The Appellant submits that the Tribunal's conclusion that "no material has been provided" that indicated that people suffering from depression suffer serious harm from the general public was "wrong". The Appellant submits that the submissions squarely explained that the attitude - "stigma" - of the general public caused suffering. The Appellant draws particular attention to the quoted passage from the country information that "high social stigma attaches to mental illness" and that this affects help-seeking behaviour and mentally ill persons "suffer in silence with social isolation and discrimination".

54. Counsel for the Appellant submits that the Appellant therefore put forward ostensibly credible country information that persons with mental ill health in Bangladesh do suffer harm from the general public.
55. Whether or not “social isolation and discrimination” is a form of “serious harm” or could result in “serious harm” is, in the submission of the Appellant, a complex question. With that in mind, the Appellant submits that the Tribunal failed to consider the Appellant’s material or claim, or submission of substance, as made at paragraphs [70] - [79] of the 9 April Submission.
56. In his oral submissions, Mr Aleksov submitted that the Appellant made a clearly articulated claim that the stigma associated with his mental health challenges exposed him to a likelihood of harm or a risk of harm “as an isolated consideration”. He accepted that the degree of clarity in relation to that claim was “sub-optimal”. However, in his submission, the mental health claim was sufficiently put on behalf of the Appellant such that the Tribunal was required to consider whether the circumstances of the Appellant was a matter which could give rise to Nauru’s complementary protection obligations or, possibly, a claim under the Act as a member of a particular social group. In his submission, this was at least a “tenable claim”.
57. In response to the Republic’s submission that what the Appellant was now seeking to do was to “re-characterise the claim” made to the Tribunal, Mr Aleksov accepted that the claim initially made by the Appellant was not necessarily “connecting all the dots”. However, the terms of the 9 April Submission were “there in black and white”. The objective quality of that argument, and its capacity for success, was not in issue. The Republic did not submit that the case advanced was hopeless or say that the Tribunal did not need to consider it.
58. The Appellant’s submission was that the issue was specifically addressed in the 9 April Submissions and the Tribunal’s statement that there was “no evidence” that people suffering anxiety and depression suffer serious harm in Bangladesh was simply incorrect. It was a clear indication that the Tribunal did not take account of the evidence which was specifically referred to in those submissions. The terms of the Tribunal Decision would not permit one to infer that the evidence was considered but thought to be material. To say that “no material has been provided” is to say not that material was considered and thought to be immaterial, but rather that from the Tribunal’s perspective there was no such material at all.
59. The Appellant’s case therefore stands or falls on the terms of the submissions that were made, and in particular the 9 April Submissions, and whether I form a view that the case was sufficiently well articulated by those submissions.

### **Republic’s Submissions**

60. The Republic submits that what the Appellant now seeks to do is to “craft a new claim around the country information” referred to at [76] - [77] of the 9 April Submissions, to the effect that stigma might prevent him from accessing services and he accordingly would be socially isolated and discriminated against.

61. Counsel for the Republic submits in sum that what the Appellant now seeks to do is to construct a claim that was never made; it was not the subject of a substantial, clearly articulated argument relying on established facts.
62. Further, if such a claim were made (which the Republic denies) nevertheless a fair reading of the Tribunal's reasons demonstrates that it did consider whether stigma might cause the Appellant to "suffer in silence". The statement that no material had been provided that indicated that people experiencing anxiety and depression suffer serious harm in Bangladesh from AL supporters or the general public reflected a "consolidated assessment and conclusion". The evidence before the Tribunal did not indicate that persons with anxiety or depression in Bangladesh face serious harm at the hands of AL supporters or the broader population.
63. The Republic submits that the evidence highlighted by the Appellant from the country information set out in the 9 April Submissions went "no further than suggesting that some individuals may self-isolate due to stigma". The Republic submits that there is no evidence that this particular Appellant would self-isolate, nor did his evidence describe how such self-isolation could give rise to the required level of serious harm, or indicate systemic or targeted mistreatment. Thus, the Tribunal's identification of this "evidentiary gap" was entirely consistent with its rejection of the claim on the basis that the serious-harm threshold was not met due to the paucity of supporting evidence, rather than any oversight of the limited evidence that was before it.
64. In her oral submissions, Ms McInnes noted that the evidence pointed to by the Appellant did not go to a claim which was the subject of a substantial, clearly articulated argument relying on established facts. Therefore, it did not need to be dealt with and that is why it is not referred to in the reasons. It must be remembered that this ground of appeal is one relating to "failure to consider evidence". The failure to consider evidence is amply understood as arising from the fact that no clearly articulated argument relying on those facts was raised.
65. Alternatively, even if the Tribunal did need to deal with this issue, it was in fact dealt with by the Tribunal in a very brief assessment and conclusion that there were no materials that met the relevant serious harm threshold. That was not to overlook the evidence. It was an observation that the materials provided did not demonstrate serious harm.

### **Consideration of Ground 1**

66. The parties disagree as to:
  - (a) whether the Appellant advanced a substantial and clearly articulated argument concerning his mental ill-health such that the Tribunal was required to address that claim; and
  - (b) whether, if such a claim was adequately articulated and advanced, the Tribunal failed to consider that claim and take account of evidence of the risk of harm to the Appellant from the general population of Bangladesh owing to his mental ill-health.

*Did the Appellant advance a substantial and clearly articulated argument?*

67. For the Tribunal to fail to respond to a substantial, clearly articulated argument relying upon established facts would be at least to fail to accord the Appellant natural justice. The failure of the Tribunal to understand a claim made by the Appellant may also lead it to overlook evidence on the basis that it did not appreciate that the evidence may be relevant to the claims actually made.
68. In this regard, I refer to the decision in *Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 77 ALJR 1088 at 1092 [24], which has been applied many times in this jurisdiction including in *AC24 v Republic of Nauru* [2025] NRSC 14.
69. Whilst there must be some question as to whether the Appellant sufficiently articulated such a claim clearly prior to 9 April 2025, at least from the delivery of the 9 April Submissions to the Tribunal, I am satisfied that a claim was sufficiently clearly articulated.
70. At paragraph 12(c) of the 9 April Submissions, it was made plain that one of the reasons for his fear of persecution was his membership of a particular social group of persons with mental health issues. At paragraphs [76] to [78] of the 9 April Submissions, the Appellant laid out various country information that dealt with the availability of mental health services in Bangladesh, and the stigma attached to persons accessing those services.
71. At paragraph [79], the Appellant's representative submitted that there exists stigma around mental health issues in Bangladesh, and mental health support can be difficult to access. The likelihood of harm to the Appellant based on his mental health needs was submitted to be both a cumulative and a separate aspect of his protection claims.
72. In my view, the terms of the 9 April Submissions in paragraphs [12(c)] and [79], together with the detail of the country information at paragraphs [76] to [78], makes it sufficiently clear that the Appellant advanced a claim that he feared harm for a Convention reason as a member of a social class of persons having mental health concerns. Thus, there was a substantial, clearly articulated claim, based on facts which included those set out in the country information. It is true that the claim could have been articulated more clearly. Nevertheless, for the reasons that I have explained, I consider that it was sufficiently clear that the Tribunal was required to reach a conclusion on it.

*Did the Tribunal consider the Appellant's claim and evidence?*

73. The Republic submits that even if there was a substantial, clearly articulated claim, a fair reading of the Tribunal Decision demonstrates that it did consider that claim and the Appellant's evidence.
74. To the extent that the Tribunal considered this matter, it did so at paragraphs [129] to [131] of the Tribunal Decision.
75. At paragraph [129], the Tribunal noted the Appellant's submission that mental health issues are stigmatised in Bangladesh, and that it can be difficult to access services. It

referred to the Appellant submitting that his underlying mental health condition was likely to come to the attention not just of the people that he feared (i.e. [S] and his gang), but also, more generally the population of Bangladesh.

76. The reference to stigmatisation in paragraph [129] of the Tribunal Decision would appear to be a reference to the effect of the submissions made at paragraphs [76], [77] and [79] of the 9 April Submissions.
77. The Tribunal accepted that the Appellant experienced anxiety and depression. At paragraph [130], the Tribunal found that there was no reason why [S] and his gang, or the population generally, would be aware of his condition. It also found that “no material has been provided” which indicated that people experiencing anxiety and depression suffer serious harm from AL supporters or the general public.
78. There was thus no reasonable possibility that the Appellant would be persecuted for having experienced anxiety or depression or for reason of any mental illness.
79. However, although the Tribunal did reference the concept of “stigma” in its decision, it did not engage with the substance of the country information included in the 9 April Submissions. In particular, it neither referenced, nor engaged with, the information to the effect that the widespread stigma is attributable to superstitions surrounding causation of mental illness and that beliefs that mental illness is a consequence of possession by evil spirits, leading to neglect and abuse of those with mental illness.
80. It seems to me that the Tribunal’s statement that “no material has been provided” that indicated the risk of serious harm from the general public is either to have ignored the country information referenced by the Appellant or was to misunderstand the nature of the claim made by the Appellant.
81. I do not accept the Republic’s submission that this was nothing more than a consolidated expression of assessment and conclusion. It was not framed in a way that showed the Tribunal to have considered the evidence and to have rejected it. Instead, it was a simple statement that there was no such material provided.
82. The failure of the Tribunal to have set out in the Tribunal Decision the detail, or even a summary, of the effect of the country information contained in the 9 April Submissions is not enough, of itself, to have demonstrated that the Tribunal failed to consider that material. However, that fact, coupled with the Tribunal’s statement that there was no material that indicated that persons with mental health challenges suffer serious harm, is a strong indicator that the Tribunal did not consider the country information cited by the Appellant. Moreover, the Tribunal’s failure to directly confront the question of whether the sort of harm indicated in the country information at paragraph [77] of the 9 April Submissions might amount to serious harm, and if not, why not, tips the balance in favour of a finding that the Tribunal failed to consider the material set out in the country information recorded in the submissions. That failure may have arisen from a misunderstanding as to exactly how the Appellant put his case, which the Appellant’s own counsel accepted was “sub-optimal”. Whatever the reason, I am satisfied that the Tribunal failed to take account of information of which it was bound to take account.
83. Ground 1 of the appeal is thus established.

### GROUND 3

84. Ground 3 is that the Tribunal Decision is affected by legal unreasonableness because the Tribunal unreasonably failed to exercise the power to require the Secretary to obtain a psychiatric assessment of the Appellant's current mental state.
85. The relevant passage from the Tribunal Decision is that set out at [74], which is in the following terms:
- [74] All the mental health assessments, although acknowledging the applicant's emotional distress at his situation and that of his family, indicate that he is not exhibiting any signs or symptoms of a mental illness. His lack of motivation, poor appetite and suicidal ideation has been comprehensively discussed in the medical records. Up until at least December 2024 he was being closely monitored by the mental health team. The Tribunal does not know if he has seen the visiting psychiatrist since December 2024. However, prior to that he had regular access to a medical practitioner and a mental health clinician. The Tribunal finds that there is no basis to direct that the applicant be referred for a comprehensive psychiatric evaluation by an appropriately qualified mental health professional.
86. The Appellant's representative requested a medical assessment of the Appellant. The Appellant submits that in the circumstances, this was a request for the Tribunal to require the Secretary to make an enquiry or obtain a medical report under s 24(1)(d) of the Act.
87. The Appellant noted that the Tribunal's response was that nothing in the material before it warranted that course. However, the Appellant submitted that the medical evidence was "equivocal and uncertain". The Appellant submits that it is unclear that a psychiatrist had examined the Appellant for some time and the evidence plainly records suicidal ideation. The Tribunal accepted that the Appellant had experienced anxiety and depression. In circumstances where a critical issue in the case was whether inconsistencies in his evidence were explained by mental ill health, or the product of a lack of candour, the Appellant submitted that it was legally unreasonable not to exercise the power under s 24(1)(d) of the Act.
88. The Republic submitted that there were three reasons that the decision of the Tribunal not to direct that the applicant be referred for a comprehensive psychiatric evaluation was not legally unreasonable.
89. First, the Republic draws upon my decision in *AV25* at [71] where I said that "[t]he mere absence of clear evidence of the Appellant's state of mental health does not render it 'necessary' for the purpose of s 24(1)(d) for the Tribunal to obtain a medical report. Nor does it render any decision made in the absence of such a report legally unreasonable." The Republic submits that the fact that the medical evidence might, on one view, have been regarded as equivocal or uncertain is not determinative of the issue of whether it was "necessary" to obtain a medical report.
90. Second, the Republic submits that the Tribunal considered the Appellant's mental state in the context of whether he had been given an adequate opportunity to present

his claims and whether his mental condition might explain any omissions or inconsistencies in his evidence: see paragraphs [75]-[79] of the Tribunal Decision.

91. Third, as is apparent from paragraph [74] of the Tribunal Decision, the Tribunal did not consider it necessary to exercise its power under s 24 (1)(d). Its reasons for reaching that view were plainly open to it and cannot be said to lack an evident and intelligible justification. Given the consistency of the other assessments, the absence of any diagnosis of mental illness and the absence of contrary medical evidence, the Tribunal was rationally justified in finding no basis to direct a comprehensive psychiatric evaluation.
92. Counsel for the Appellant accepted in argument that in light of my decision in *AV25*, ground 3 was maintained only on a formal basis. *AV25* is the subject of an appeal, but unless and until it is set aside by the Court of Appeal, the application of the principles following from that case would require this ground to be dismissed.
93. Accordingly, for the reasons articulated by the Republic as set out in paragraphs [89] to [91] above, and for the reasons that I explained in *AV25*, I reject the contention that the Tribunal's decision not to exercise the power to require the Secretary to obtain a psychiatric assessment was legally unreasonable. Ground 3 of the Amended Notice of Appeal therefore does not succeed.

## CONCLUSION

94. The Appellant has succeeded in respect of his first ground of appeal and failed in respect of his third ground of appeal. His second ground of appeal was not pursued.
95. Accordingly, the appeal is upheld.
96. I quash the Tribunal Decision and pursuant to s 44(1) of the Act and remit the matter to the Tribunal for reconsideration according to these reasons.
56. I make no order as to costs.



**JUSTICE MATTHEW BRADY**

24 February 2026