



Friday, 1 November 2024

Weekly Immigration Law Review

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**A Weekly Bulletin listing Decisions
of Superior Courts of Australia covering immigration**

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Executive Summary (One Minute Read)

Minister for Immigration, Citizenship and Multicultural Affairs v Park (FCAFC) - notification of delegate's decision to refuse visa did not state the time in which application for review had to be made with sufficient clarity to comply with s66(2)(d)(ii) of the *Migration Act 1958* (Cth)

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v BMA18 (FCA) - litigation guardians do not need to be appointed for non-citizen children to be bound by judicial review of migration decisions

CJO23 v Minister for Immigration, Citizenship and Multicultural Affairs (FCA) - Tribunal fell into jurisdictional error by not giving considerable weight to fact that applicant had been ordinarily resident in Australia during and since his formative years, as required by Direction 99

BUK24 v Minister for Immigration and Multicultural Affairs (FedCFamC2G) - Tribunal failed to invite comment on issue on the review as required by s 425 of *Migration Act 1958* (Cth), and acted irrationally in discrediting a counsellor's report

Suhian v Minister for Immigration, Migrant Services and Multicultural Affairs (FedCFamC2G) - Tribunal engaged in illogical reasoning regarding applicant's incentive to return to home country

DQB22 v Minister for Immigration, Citizenship and Multicultural Affairs (FedCFamC2G) - Tribunal misconstrued its statutory discretion to reinstate application dismissed for non-appearance

HABEAS CANEM

Pig, Dog and Bougainvillea



Summaries With Link (Five Minute Read)

Minister for Immigration, Citizenship and Multicultural Affairs v Park [2024] FCAFC 136

Full Court of the Federal Court of Australia

Perram, Perry, & Feutrill JJ

Migration - temporary activity (religious work) visa - delegate refused visa - Administrative Appeals Tribunal dismissed review application for non-payment of filing fee - Federal Circuit and Family Court allowed application for judicial review (see Weekly Immigration Benchmark, 15 March 2024) - notification of delegate's decision did not state time in which application for review had to be made with sufficient clarity under s66(2)(d)(ii) of the *Migration Act 1958* (Cth) - question of non-payment of filing fee does not arise - appeal dismissed.

[Minister for Immigration, Citizenship and Multicultural Affairs v Park](#)

[From Benchmark Friday, 1 November 2024]

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v BMA18 [2024] FCA 1230

Federal Court of Australia

Burley J

Migration - safe haven enterprise visas - delegate refused visas to a family unit including two minor children - Immigration Assessment Authority affirmed - Federal Circuit Court dismissed application for judicial review - Federal Court dismissed appeal - Federal Circuit and Family Court allowed a further judicial review application by the minor children - primary judge erred in concluding that the absence of a litigation guardianship order in the earlier proceedings meant the children were not parties to the earlier proceedings and were not bound by them - common law rule that an infant cannot take action except by a next friend or tutor displaced by language and scheme of the *Migration Act 1958* (Cth) - appeal allowed.

[Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v BMA18](#)

[From Benchmark Friday, 1 November 2024]

CJO23 v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 1228

Federal Court of Australia

Feutrill J

Migration - global special humanitarian visa - visa cancelled after criminal convictions - delegate refused to revoke cancellation - Administrative Appeals Tribunal affirmed - Tribunal failed to identify and understand manifest relevance of facts it found on materials before it, and overlooked that applicant had been ordinarily resident in Australia during and since his formative years, which para 8.3(4)(a)(i) of Direction 99 required be given considerable weight - application allowed.

[CJO23](#)

[From Benchmark Friday, 1 November 2024]

BUK24 v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 1097

Federal Circuit and Family Court of Australia (Division 2) General Federal Law
Judge Symonds

Migration - safe haven enterprise visa - delegate refused visa - Administrative Appeals Tribunal affirmed - Tribunal failed to comply with s425 of the *Migration Act 1958* (Cth) and identify for applicant an issue in review, being whether he suffered injuries during the Sri Lankan civil war - further, it was irrational for Tribunal to discredit counsellor's report on basis it contained "questionable" PTSD diagnosis, as report did not contain such a diagnosis and the Tribunal had also misstated report's clinical observations - application allowed.

[BUK24](#)

[From Benchmark Friday, 1 November 2024]

Suhian v Minister for Immigration, Migrant Services and Multicultural Affairs [2024]
FedCFamC2G 1070

Federal Circuit and Family Court of Australia (Division 2) General Federal Law
Judge Kaur-Bains

Migration - student (temporary) visa - delegate refused visa - Administrative Appeals Tribunal affirmed - no logical connection between evidence Tribunal accepted of family and community ties in the Philippines, conclusion Tribunal drew that applicant did not have significant incentive to return to the Philippines, and reason Tribunal expressed that applicant had been able to sustain relationships with family and friends in Philippines - as strength of personal ties to home country was important factor under Direction 69, error was material - application allowed.

[Suhian](#)

[From Benchmark Friday, 1 November 2024]

DQB22 v Minister for Immigration, Citizenship and Multicultural Affairs [2024]
FedCFamC2G 934

Federal Circuit and Family Court of Australia (Division 2) General Federal Law
Judge Coulthard

Migration - protection visa - delegate refused visa - Administrative Appeals Tribunal dismissed application when applicants did not attend and later reinstated application - Tribunal again dismissed application when applicants again did not attend - Tribunal refused to reinstate application - held: Tribunal misconstrued its statutory discretion to reinstate by regarding satisfactory explanation for failure to appear as precondition to exercise of discretion, rather than relevant factor in determining whether reinstatement appropriate - application allowed.

[DQB22](#)

[From Benchmark Friday, 1 November 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Case of Kobaliya v Russia (EUHRTS) - European Court of Justice found that, in its overly broad definition of 'foreign agents', Russia committed multiple violations of the *European Convention on Human Rights*

Summaries With Link (Five Minute Read)

Case of Kobaliya v Russia, No 39446/16

European Court of Human Rights

Pastor Vilanova P, Schukking, Serghides, Roosma, Ktistakis, Mjöll Arnardóttir, & Kovatcheva JJ
Prior to its exclusion from the Council of Europe in 2022, Russia was bound by the *European Convention on Human Rights* and subject to the jurisdiction of the European Court of Human Rights. Here the activity in question occurred between 2012 and 2022 and related to fundamental rights to freedom of expression and assembly as guaranteed by the Convention. Under Russian law, non-governmental organisations (NGOs), media organisations, and individuals who received any foreign support were required to register as 'foreign agents' and conform to restrictions placed on persons so designated. The complainants alleged that the statutory definition was so overly broad as to impinge on rights to freedom of expression and freedom of assembly guaranteed by Articles 10 and 11 of the *European Convention*. The European Court found that the Russian legislation was unlawful because it was overly broad and employed the stigmatising term 'foreign agent' to a very wide universe of parties that could not all be lumped together as 'foreign agents'. Under Russian law, once designated as a foreign agent, substantial regulatory legislation attached curtailing the political rights of the parties so classified. By casting such a wide net, the term 'foreign agent' was used to circumvent basic *European Convention* rights.

[Case of Kobaliya](#)



Poem for Friday

Echo

By Christina Rossetti (1830-1894)

Come to me in the silence of the night;
Come in the speaking silence of a dream;
Come with soft rounded cheeks and eyes as bright
As sunlight on a stream;
Come back in tears,
O memory, hope, love of finished years.

Oh dream how sweet, too sweet, too bitter sweet,
Whose wakening should have been in Paradise,
Where souls brimfull of love abide and meet;
Where thirsting longing eyes
Watch the slow door
That opening, letting in, lets out no more.

Yet come to me in dreams, that I may live
My very life again tho' cold in death:
Come back to me in dreams, that I may give
Pulse for pulse, breath for breath:
Speak low, lean low,
As long ago, my love, how long ago.

Christina Georgina Rossetti, born on 5 December, 1830, was one of the foremost poets of her era. Her father, Gabrielle, was an Italian Poet, and later chair of Italian at King's College, in London. Her mother Frances Polidor, an Anglo-Italian, home schooled her children in a climate of intellectual excellence. From 1845 Christina, by then a prolific poet, suffered an illness, that some consider was at least influenced by mental illness. She continued to have bouts of serious illness throughout her life. Rossetti's poetry, included the collections *Goblin Market and other Poems* (1862), *The Prince's Progress* (1866), *A Pageant* (1881), and *The Face of the Deep* (1882). Christina Rossetti died on 29 December, 1894.

Stanford Chamber Chorale, conductor, Stephen M Sano, with Laura Dahl, pianist, sing Norman Dello Joio's **Come to Me, My Love**, a setting of Christina Rossetti's "Echo"

<https://www.youtube.com/watch?v=NyJs5oqyygs>

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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