

Friday, 3 April 2020

## Weekly Immigration Law Review A Weekly Bulletin listing Decisions of Superior Courts of Australia covering immigration

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### Executive Summary (1 minute read)

**BFH16 v Minister for Immigration and Border Protection** (FCAFC) - migration law - refusal to grant protection visas - Tribunal's reasoning irrational - appeals allowed

**Hernandez v Minister for Home Affairs** (FCA) - migration law - refusal to revoke cancellation of Class BB Subclass 155 Five Year Resident Return visa - failure to determine merits and consider 'non-refoulment issue' - judicial review application upheld

**Minister for Home Affairs v Stowers** (FCA) - migration law - revocation of 'cancellation decision' in respect of respondent's Class TY Subclass 444 Special Category (Temporary) visa - failure by Tribunal to comply with Direction 79 and to deal with Minister's case - judicial review application upheld

**DCC18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (FCA) - migration law - refusal to revoke cancellation of applicant's Class XB Subclass 202 Global Humanitarian visa - failure to consider applicant's representations - Minister's decision quashed

### Summaries With Link (Five Minute Read)

**[BFH16 v Minister for Immigration and Border Protection \[2020\] FCAFC 54](#)**

Full Court of the Federal Court of Australia

Murphy, O'Bryan & Snaden JJ

Migration law - Minister's delegate refused to grant appellants protection visas - Administrative Appeals Tribunal affirmed delegate's decisions - Judge A Kelly of Federal Circuit Court of Australia dismissed judicial review applications - appellants had each sought protection on basis of their homosexuality, claiming 'well-founded fear persecution in Pakistan' due to being a member 'of a particular social group' of 'homosexual males' - appellants contended 'certain factual findings' by Tribunal lacked 'evident and intelligible justification', or that Tribunal's reasoning was not open on evidence, or 'lacked a logical connection between' evidence and conclusions - held: reasoning of Tribunal was 'logically flawed and thereby irrational' - Tribunal's error was material - appeals allowed.

[BFH16](#)

[From Benchmark Friday, 3 April 2020]

## **Hernandez v Minister for Home Affairs [2020] FCA 415**

Federal Court of Australia

Charlesworth J

Migration law - Minister's delegate cancelled applicant's Class BB Subclass 155 Five Year Resident Return visa (cancellation decision) - delegate not satisfied applicant passed 'character test' in s501(6) *Migration Act 1958* (Cth) (Migration Act) - cancellation decision 'mandated by' s501(3A) Migration Act - Minister refused to revoke cancellation decision - applicant sought judicial review - held: Minister failed to consider merits of applicant's claim of harm beyond that faced by population generally and to consider 'non-refoulement issue' - - material error established - judicial review application upheld.

[Hernandez](#)

[From Benchmark Friday, 3 April 2020]

## **Minister for Home Affairs v Stowers [2020] FCA 407**

Federal Court of Australia

Yates J

Migration law - delegate of Minister cancelled respondent's Class TY Subclass 444 Special Category (Temporary) visa on basis respondent did not pass 'character test' due to 'substantial criminal record' under s501(6)(a) *Migration Act 1958* (Cth) and was serving prison sentence at time of decision (cancellation decision) - Assistant Minister refused to revoke cancellation decision - respondent succeeded on judicial review application - matter remitted - delegate of Minister refused to revoke cancellation decision (non-revocation decision) - Administrative Appeals Tribunal set aside non-revocation decision and revoked cancellation decision - Minister sought judicial review - held: Tribunal failed to comply with Direction 79 - Tribunal also failed to deal with Minister's case concerning minor children's best interests and community protection - judicial review application upheld - Tribunal's decision quashed - matter remitted.

[Minister for Home Affairs](#)

[From Benchmark Friday, 3 April 2020]

## **DCC18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural**



**Affairs [2020] FCA 395**

Federal Court of Australia

Wheelahan J

Migration law - Minister's delegate cancelled applicant's Class XB Subclass 202 Global Humanitarian visa on ground applicant did not pass character test and was serving prison sentence (cancellation decision) - cancellation decision mandatory under s501(3A) *Migration Act 1958* (Cth) (Migration Act) - Minister refused to revoke cancellation decision - applicant contended Minister failed to have regard to consequences to applicant of visa's cancellation and of 'removal to South Sudan' - 'fear of harm' - 'non-refoulement obligations' - held: Minister failed 'to consider significant matters' which appellant's representations raised - Minister failed to consider claim of harm independently of non-refoulement obligations - jurisdictional error established - Minister's decision quashed.

[DCC18](#)

[From Benchmark Friday, 3 April 2020]



# Benchmark

## **The Wind**

**By:** Harold Monro

SO wayward is the wind to-night

'Twill send the planets tumbling down;

And all the waving trees are dight

In gauzes wafted from the moon.

Faint streaky wisps of roaming cloud

Are swiftly from the mountains swirl'd;

The wind is like a floating shroud

Wound light about the shivering world.

I think I see a little star

Entangled in a knotty tree,

As trembling fishes captured are

In nets from the eternal sea.

There seems a bevy in the air

Of spirits from the sparkling skies:

There seems a maiden with her hair

All tumbled in my blinded eyes.

O, how they whisper, how conspire,

And shrill to one another call!



I fear that, if they cannot tire,

The moon, her shining self, will fall.

Blow! Scatter even if you will

Like spray the stars about mine eyes!

Wind, overturn the goblet, spill

On me the everlasting skies!

[https://en.wikipedia.org/wiki/Harold\\_Monro](https://en.wikipedia.org/wiki/Harold_Monro)

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