

Friday, 6 September 2019

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)

Somba v Minister for Home Affairs (FCAFC) - migration - cancellation of visa under s501(3A) *Migration Act 1958* (Cth) - refusal to reinstate application - appeal allowed

Burgess v Assistant Minister for Home Affairs (FCAFC) - migration - cancellation of visa under s501(3)(b) *Migration Act 1958* (Cth) - review application dismissed - appeal dismissed

DNA17 v Minister for Immigration and Border Protection (FCAFC) - migration - refusal to grant appellant a temporary protection visa - appeal dismissed

Khalil v Minister for Home Affairs (FCAFC) - migration - refusal of appellant's visa application for failure to pass 'character test' in s501 *Migration Act 1958* (Cth) - appeal allowed

DPJ16 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (FCA) - migration - refusal to grant Safe Haven Enterprise visa - appeal dismissed

Summaries With Link (Five Minute Read)

Somba v Minister for Home Affairs [2019] FCAFC 150

Full Court of the Federal Court of Australia

Logan, Steward & Jackson JJ

Migration - appellant's visa cancelled under s501(3A) *Migration Act 1958* (Cth) (Migration Act) due to failure to pass 'character test' - first respondent's delegate declined to revoke 'mandatory

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cancellation' - Tribunal dismissed review application due to failure by appellant to appear - appellant sought reinstatement of application - Tribunal declined to reinstate application on basis of expiry of 'time limit' in s500(6L) Migration Act - appellant sought judicial review - whether misconstruction and misapplication of s500(6L) Migration Act - whether failure 'to have regard to the beneficial and remedial purpose' of s42A(8A) *Administrative Appeals Tribunal Act 1975* (Cth) - held: appeal allowed.

[Somba](#)

[From Benchmark Friday, 6 September 2019]

Burgess v Assistant Minister for Home Affairs [2019] FCAFC 152

Full Court of the Federal Court of Australia

Kerr, White & Charlesworth JJ

Migration - appellant's visa cancelled under s501(3)(b) *Migration Act 1958* (Cth) - primary judge dismissed application for judicial review - appellant appealed - whether power in s501(3) Migration Act 'subject to an inviolable condition' that 'intelligible basis' for declining to exercise 'alternative power' in s501(2) Migration Act must first be identified by Minister - whether erroneous rejection of contention that misunderstanding of s501(3)'s effect 'could not constitute jurisdictional error' - whether 'erroneous understanding' that s501(5)'s effect was that 'Minister bound not to accord natural justice' - whether erroneous understanding of 'national interest' - whether erroneous interpretation of Statement of Reasons - held: appeal dismissed.

[Burgess](#)

[From Benchmark Friday, 6 September 2019]

DNA17 v Minister for Immigration and Border Protection [2019] FCAFC 146

Full Court of the Federal Court of Australia

Kerr, Davies & O'Bryan JJ

Migration - first respondent's delegate refused to grant appellant a temporary protection visa under s36 *Migration Act 1958* (Cth) - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed review application - whether Authority had erroneously failed to consider a 'submission of substance' - "new information" - s473DD *Migration Act 1958* (Cth) - held: appeal dismissed.

[DNA17](#)

[From Benchmark Friday, 6 September 2019]

Khalil v Minister for Home Affairs [2019] FCAFC 151

Full Court of the Federal Court of Australia

Logan, Steward & Jackson JJ

Migration - first respondent's delegate refused appellant's visa application for failure to pass 'character test' in s501 *Migration Act 1958* (Cth) - Administrative Appeals Tribunal dismissed review application - Federal Court of Australia dismissed review application - appellant appealed - whether denial of procedural fairness by Tribunal - whether Tribunal 'acted unreasonably' - whether erroneous failure by Tribunal to determine whether '84 day period had started to run' -

held: appeal allowed.

[Khalil](#)

[From Benchmark Friday, 6 September 2019]

DPJ16 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2019] FCA 1429

Federal Court of Australia

Wheelahan J

Migration - first respondent's delegate refused to grant appellant a Safe Haven Enterprise visa - delegate found appellant did not satisfy the conditions in ss36(2) *Migration Act 1958* (Cth) - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed review application - whether erroneous finding that risks did not warrant protection of appellant - whether erroneous failure to consider whether appellant might suffer mistreatment when he returned to Sri Lanka - held: appeal dismissed.

[DPJ16](#)

[From Benchmark Friday, 6 September 2019]



From: The Hunting of the Snark

By: Lewis Carroll

Fit the Sixth

The Barrister's Dream

They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway-share;
They charmed it with smiles and soap.

But the Barrister, weary of proving in vain
That the Beaver's lace-making was wrong,
Fell asleep, and in dreams saw the creature quite plain
That his fancy had dwelt on so long.

He dreamed that he stood in a shadowy Court,
Where the Snark, with a glass in its eye,
Dressed in gown, bands, and wig, was defending a pig
On the charge of deserting its sty.

The Witnesses proved, without error or flaw,
That the sty was deserted when found:
And the Judge kept explaining the state of the law
In a soft under-current of sound.

The indictment had never been clearly expressed,
And it seemed that the Snark had begun,
And had spoken three hours, before any one guessed
What the pig was supposed to have done.

The Jury had each formed a different view
(Long before the indictment was read),
And they all spoke at once, so that none of them knew
One word that the others had said.

"You must know—" said the Judge: but the Snark exclaimed
"Fudge!"

That statute is obsolete quite!
Let me tell you, my friends, the whole question depends
On an ancient manorial right.



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"In the matter of Treason the pig would appear
To have aided, but scarcely abetted:
While the charge of Insolvency fails, it is clear,
If you grant the plea 'never indebted.'

"The fact of Desertion I will not dispute;
But its guilt, as I trust, is removed
(So far as relates to the costs of this suit)
By the Alibi which has been proved.

"My poor client's fate now depends on your votes."
Here the speaker sat down in his place,
And directed the Judge to refer to his notes
And briefly to sum up the case.

But the Judge said he never had summed up before;
So the Snark undertook it instead,
And summed it so well that it came to far more
Than the Witnesses ever had said!

When the verdict was called for, the Jury declined,
As the word was so puzzling to spell;
But they ventured to hope that the Snark wouldn't mind
Undertaking that duty as well.

So the Snark found the verdict, although, as it owned,
It was spent with the toils of the day:
When it said the word "GUILTY!" the Jury all groaned,
And some of them fainted away.

Then the Snark pronounced sentence, the Judge being
quite
Too nervous to utter a word:
When it rose to its feet, there was silence like night,
And the fall of a pin might be heard.

"Transportation for life" was the sentence it gave,
"And then to be fined forty pound."
The Jury all cheered, though the Judge said he feared
That the phrase was not legally sound.



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But their wild exultation was suddenly checked
When the jailer informed them, with tears,
Such a sentence would have not the slightest effect,
As the pig had been dead for some years.

The Judge left the Court, looking deeply disgusted:
But the Snark, though a little aghast,
As the lawyer to whom the defence was intrusted,
Went bellowing on to the last.

Thus the Barrister dreamed, while the bellowing seemed
To grow every moment more clear:
Till he woke to the knell of a furious bell,
Which the Bellman rang close at his ear.

https://en.wikipedia.org/wiki/Lewis_Carroll

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