

Friday, 7 June 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)

**DCP16 v Minister for Immigration and Border Protection** (FCAFC) - migration law - refusal to grant Safe Haven Enterprise (subclass 790) visa - appeal dismissed

**Prasad v Minister for Home Affairs** (FCAFC) - migration law - cancellation of appellant's visa 'on character grounds' - refusal to revoke cancellation - appeal dismissed

**Minister for Home Affairs v G** (FCAFC) - migration law - appeal against declaration that s5.12.5 'Australian Citizenship Instructions' was inconsistent with *Australian Citizenship Act 2007* (Cth) and 'unlawful' - appeal allowed

**SZRHL v Minister for Home Affairs** (FCA) - migration law - refusal to grant protection visas - appeal dismissed

**DBS18 v Minister for Home Affairs** (FCA) - migration law - refusal to grant Safe Haven Enterprise (Subclass 790) visa - appeal dismissed

### Summaries With Link (Five Minute Read)

#### **DCP16 v Minister for Immigration and Border Protection [2019] FCAFC 91**

Full Court of the Federal Court of Australia

Beach, O'Callaghan & Anastassiou JJ

Migration law - Minister's delegate refused to grant appellant a Safe Haven Enterprise (subclass

790) visa - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - whether Authority failed to consider appellant's claims concerning appellant's wife - whether Authority failed to consider or apply correct test concerning 'extortion claims' - whether 'illogicality or unreasonableness' in Authority's findings - whether 'unreasonable failure' in relation to consideration whether to exercise power under s473DC *Migration Act 1958* (Cth) - held: appeal dismissed.

[DCP16](#)

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## **Prasad v Minister for Home Affairs [2019] FCAFC 87**

Full Court of Federal Court of Australia

Wigney, Bromwich & Burley JJ

Migration law - Minister's delegate, pursuant to s501(3A) *Migration Act 1958* (Cth), cancelled appellant's visa 'on character grounds' - Parliamentary Secretary declined to revoke 'automatic cancellation' - Federal Court dismissed application for judicial review - whether jurisdictional error identified in respect of 'non-revocation decision' - whether 'appellable error' identified in respect of primary judge's decision - held: appeal dismissed.

[Prasad](#)

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## **Minister for Home Affairs v G [2019] FCAFC 79**

Full Court of the Federal Court of Australia

Murphy, Moshinsky & O'Callaghan JJ

Migration law - respondent (G) granted a protection visa - G became permanent resident of Australia - G's mother sought that G be granted 'Australian citizenship by conferral' - Minister's delegate refused application under s24(2) *Australian Citizenship Act 2007* (Cth) (Australian Citizenship Act) on basis G did not satisfying 'policy guidelines' in 'Australian Citizenship Instructions' (Instructions) - Administrative Appeals Tribunal affirmed delegate's decision - primary judge upheld review grounds and set aside Tribunal's decision - primary judge declared part of Instructions invalid - appellant appealed against declaration, contending primary judge had erroneously found s5.12.5 of Instructions inconsistent with Australian Citizenship Act and 'unlawful' - held: appeal allowed.

[Minister](#)

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## **SZRHL v Minister for Home Affairs [2019] FCA 785**

Federal Court of Australia

Rangiah J

Migration law - Minister's delegate refused to grant appellants protection visas - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court dismissed review application - whether Tribunal overlooked 'psychologist's report' - whether primary judge erred in relation to consideration of relevance of psychologist's report - held: error not established -



appeal dismissed.

[SZRHL](#)

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**DBS18 v Minister for Home Affairs [2019] FCA 783**

Federal Court of Australia

Davies J

Migration law - Minister's delegate refused to grant appellant a Safe Haven Enterprise (Subclass 790) visa - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed judicial review application - whether open to Authority to find appellant 'not a genuine convert to Christianity' - whether Tribunal conflated findings concerning appellant's conversion under 'refugee criterion' with appellant's 'claims of apostasy' under 'complementary protection criterion'; - whether misapplication of ss5J(6) and/or 5J(3)(i) *Migration Act 1958* (Cth) - held: appeal dismissed.

[DBS18](#)

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# Benchmark

## **To a Locomotive in Winter**

**By:** Walt Whitman

Thee for my recitative,  
Thee in the driving storm even as now, the snow, the winter-  
day declining,  
Thee in thy panoply, thy measur'd dual throbbing and thy  
beat convulsive,  
Thy black cylindric body, golden brass, and silvery steel,  
Thy ponderous side-bars, parallel and connecting rods,  
gyrating, shuttling at thy sides,  
Thy metrical, now swelling pant and roar, now tapering in  
the distance,  
Thy great protruding head-light fix'd in front,  
Thy long, pale, floating vapor-pennants, tinged with delicate  
purple,  
The dense and murky clouds out-belching from thy smoke-  
stack,  
Thy knitted frame, thy springs and valves, the tremulous  
twinkle of thy wheels,  
Thy train of cars behind, obedient, merrily following,  
Through gale or calm, now swift, now slack, yet steadily  
careering;  
Type of the modern—emblem of motion and power—pulse of  
the continent,  
For once come serve the Muse and merge in verse, even  
as here I see thee,  
With storm and buffeting gusts of wind and falling  
snow,  
By day thy warning ringing bell to sound its notes,  
By night thy silent signal lamps to swing.

Fierce-throated beauty!  
Roll through my chant with all thy lawless music, thy  
swinging lamps at night,  
Thy madly-whistled laughter, echoing, rumbling like an  
earthquake, rousing all,  
Law of thyself complete, thine own track firmly holding,  
(No sweetness debonair of tearful harp or glib piano thine,)  
Thy trills of shrieks by rocks and hills return'd,  
Launch'd o'er the prairies wide, across the lakes,  
To the free skies unpent and glad and strong.



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