

Friday, 7 December 2018

## 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)

**Minister for Home Affairs v HSKJ** (FCAFC) - migration law - refusal to revoke mandatory cancellation of visa under s501(3A) *Migration Act 1958* (Cth) - application of 'Direction 65' - appeal allowed

**Applicant in WAD531/2016 v Minister for Immigration and Border Protection** (FCAFC) - migration law - cancellation of visa under s501(2) *Migration Act 1958* (Cth) - appeal dismissed

**Murphy v Minister for Home Affairs** (FCA) - migration law - refusal to revoke cancellation of applicant's Class BF Transitional (Permanent) visa - application for review dismissed

**DFP16 v Minister for Immigration and Border Protection** (FCA) - migration law - appellants refused protection visas - jurisdictional error established - appeal allowed

**BDC17 v Minister for Immigration and Border Protection** (FCA) - migration law - refusal of Safe Haven Enterprise visa (SHEV) (XE-790) - extension of time to appeal refused

### Summaries With Link (Five Minute Read)

**Minister for Home Affairs v HSKJ [2018] FCAFC 217**

Full Court of the Federal Court of Australia

Greenwood, McKerracher & Burley JJ

Migration law - Minister cancelled respondent's visa under s501(3A) *Migration Act 1958* (Cth)

# Benchmark

due to respondent's failure to pass character test ('mandatory cancellation decision') - respondent sought revocation of mandatory cancellation decision - Minister's delegate declined to revoke mandatory cancellation decision - Administrative Appeals Tribunal affirmed delegate's decision - primary judge found Tribunal erred in application of 'Direction 65 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA' - primary judge remitted matter to Tribunal - whether primary judge's reasoning had proceeded on the erroneous premise that Tribunal viewed "other" considerations in Direction 65' as considerations which 'should always be given lesser weight' - held: Court not satisfied Tribunal's reasons reflected understanding that "other" considerations 'must always be given lesser weight' - Tribunal did not consider that a 'secondary consideration' could not outweigh a 'primary consideration' - appeal allowed.

[Minister for Home Affairs](#)

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## **Applicant in WAD531/2016 v Minister for Immigration and Border Protection [2018] FCAFC 213**

Full Court of the Federal Court of Australia

White, Moshinsky & Colvin JJ

Migration law - appellant's visa cancelled under s501(2) *Migration Act 1958* (Cth) 'on character grounds' - Administrative Appeals Tribunal affirmed cancellation decision - primary judge dismissed application for judicial review - whether Tribunal failed 'to give primary weight to interests of appellant's son' - whether appellant denied procedural fairness - whether bias - whether 'factual errors' - whether 'failure to consider mitigating factors' and/or 'significant evidence' - whether failure to take 'Direction 65' matters into account - whether failure to take 'employment links' into account - whether 'failure to consider character references' - held: leave refused to raise certain grounds of appeal - grounds of appeal without merit - appeal dismissed.

[Applicant](#)

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## **Murphy v Minister for Home Affairs [2018] FCA 1924**

Federal Court of Australia

Mortimer J

Migration law - first respondent's delegate refused to revoke cancellation of applicant's Class BF Transitional (Permanent) visa - Administrative Appeals Tribunal affirmed delegate's decision - whether Tribunal's decision was made 'in accordance with law' - whether Tribunal erred in characterisation of offending by applicant - whether failure to carry out task required by s500(1)(ba) *Migration Act 1958* (Cth) - whether Tribunal drew inferences which were not open to it - held: application for review dismissed.

[Murphy](#)

[From Benchmark Friday, 7 December 2018]

**DFP16 v Minister for Immigration and Border Protection [2018] FCA 1901**

Federal Court of Australia

Colvin J

Migration law - Minister's delegate refused appellants' application for protection visas - Immigration Assessment Authority affirmed delegate's refusal - appellants' application for judicial review in Federal Circuit Court was unsuccessful - appellants contended primary judge had erroneously failed to find Authority erred in 'not considering certain new information' - whether Authority misunderstood 'statutory prohibition' in s473DD *Migration Act 1958* (Cth) - held: error established - appeal allowed - matter remitted.

[DFP16](#)

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**BDC17 v Minister for Immigration and Border Protection [2018] FCA 1899**

Federal Court of Australia

Burley J

Migration law - Minister's delegate refused applicant's application for a Safe Haven Enterprise visa (SHEV) (XE-790) - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - applicant sought extension of time to appeal - applicant did not appear at hearing - Court dismissed proceeding - applicant brought interlocutory application seeking to set aside orders and extension of time to appeal - whether in interests of justice to grant extension of time to appeal - held: application dismissed.

[BDC17](#)

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# Benchmark

## Dream On

**By:** David Conolly

A child in a gallery sits,  
takes paper and pencil,  
and starts to draw.  
The paintings around her  
disappear.  
They have served  
their purpose.

womb of  
They have sparked in her  
the spirit to create –  
the spirit formed in her  
along with bone and blood  
in the mystic dark of  
her mother's womb –  
humanity's sacred site.

Thus is passed  
from age to age  
imagination,  
Dream  
wonder,  
passes  
dreams.  
unborn.

From another womb  
in a faraway age  
another child emerged  
with a dream –  
the Great Dream  
of a world renewed by  
peace and justice,  
formed in the

love.

He said that children  
show us  
what God is like.

No wonder  
we celebrate  
his birth.

No wonder that  
still lives, and  
to children yet

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