

Friday, 8 February 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)

**TTY167 v Republic of Nauru** (HCA) - migration law - Refugee Status Review Tribunal 'legally unreasonable' in failing to adjourn hearing - appeal allowed

**Minister for Immigration and Border Protection v Haq** (FCAFC) - migration law - Administrative Appeals Tribunal not 'legally unreasonable' to refuse respondents' application for a deferral of its decision in review application - appeal allowed

**BIL17 v Minister for Immigration and Border Protection** (FCAFC) - migration law - refusal of protection visas - constructive failure to exercise jurisdiction - extension of time to appeal granted - appeal allowed

**Singh v Minister for Home Affairs** (FCAFC) - migration law - refusal of Partner (Temporary) (Class UK) (Subclass 820) visa - appeal dismissed

**Guo v Minister for Home Affairs** (FCA) - migration law - refusal of Medical Treatment (Visitor) (Class UB) visa - extension of time to appeal refused

### Summaries With Link (Five Minute Read)

**TTY167 v Republic of Nauru [2018] HCA 61**

High Court of Australia

Gageler, Nettle & Edelman JJ

# Benchmark

Migration law - Refugee Status Review Tribunal found appellant was not a refugee and was not 'owed complementary protection' - Supreme Court of Nauru upheld Tribunal's decision - whether appellant was given an invitation to appear before Tribunal and, if invitation was not given, Tribunal did not have jurisdiction - whether Tribunal was 'legally unreasonable' not to adjourn hearing when appellant and lawyers did not attend - held: Tribunal was required to give invitation to appellant to attend the hearing - appeal ground concerning invitation not raised in Supreme Court - 'too late' to raise appeal point - Tribunal, in 'exceptional circumstances' of the case, was legally unreasonable in failure to adjourn hearing - appeal allowed.

[TTY167](#)

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## **Minister for Immigration and Border Protection v Haq [2019] FCAFC 7**

Full Court of the Federal Court of Australia

Griffiths, Gleeson & Colvin JJ

Migration law - respondents sought Temporary Business Entry (Class UC), Temporary Work (Skilled) (subclass 457) visas - Minister's delegate refused application - respondents sought that Administrative Appeals Tribunal defer making its decision on a review application so that they could 'submit material in support of their application' - Tribunal refused to defer decision - appeal's 'central issue' was whether primary judge erroneously found Tribunal 'legally unreasonable' in refusing respondents' request - whether Tribunal's reasons disclosed 'an intelligible and rational justification' for refusal to defer decision - held: appeal allowed.

[Minister](#)

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## **BIL17 v Minister for Immigration and Border Protection [2019] FCAFC 6**

Full Court of the Federal Court of Australia

Griffiths, Gleeson & Colvin JJ

Migration law - applicants' application for protection visas was refused - Administrative Appeals Tribunal affirmed refusal of applications - application for review in Federal Circuit Court not successful - applicants sought extension of time to appeal against primary judge's decision - held: extension of time to appeal granted on ground that Tribunal had 'constructively failed to exercise its jurisdiction' by acting on 'outdated country information' and failing 'to consider current country information' - other grounds of appeal lacked merit - appeal allowed.

[BIL17](#)

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## **Singh v Minister for Home Affairs [2019] FCAFC 3**

Full Court of the Federal Court of Australia

Reeves, O'Callaghan & Thawley JJ

Migration law - Minister's delegate refused to grant appellant Partner (Temporary) (Class UK) (Subclass 820) visa - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court of Australia dismissed application for judicial review - whether failure by Tribunal

actively to engage with claim - whether failure by Tribunal to take evidence into account - 'active intellectual engagement' - whether Tribunal's decision 'legally unreasonable' - held: appeal dismissed.

[Singh](#)

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**Guo v Minister for Home Affairs [2019] FCA 61**

Federal Court of Australia

Banks-Smith J

Migration law - Minister's delegate refused to grant applicant a Medical Treatment (Visitor) (Class UB) visa - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - applicant sought extension of time to appeal - hearing had been adjourned pending Full Court's decision in *Ahmad v Minister for Immigration and Border Protection (No 2)* [2018] FCAFC 200 concerning construction of Migration Regulations 1994 (Cth) as to 'medical treatment visas' - held: no error in primary judge's dismissal of application for review - extension of time refused.

[Guo](#)

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# Benchmark

## **Fishmonger**

**By:** Marsden Hartley

I have taken scales from off

The cheeks of the moon.

I have made fins from bluejays' wings,

I have made eyes from damsons in the shadow.

I have taken flushes from the peachlips in the sun.

From all these I have made a fish of heaven for you,

Set it swimming on a young October sky.

I sit on the bank of the stream and watch

The grasses in amazement

As they turn to ashy gold.

Are the fishes from the rainbow

Still beautiful to you,

For whom they are made,

For whom I have set them,

Swimming?

[https://en.wikipedia.org/wiki/Marsden\\_Hartley](https://en.wikipedia.org/wiki/Marsden_Hartley)

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