

Friday, 8 June 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)

SZSZW v Minister for Immigration and Border Protection (FCAFC) - migration - refusal of protection visa - refusal of extension of time to seek judicial review - appeal dismissed

CCD15 v Minister for Immigration and Border Protection (FCA) - migration - refusal of Protection (Class XA) - no failure to make 'obvious inquiry' into 'critical fact' - no breach of s425 *Migration Act 1958* (Cth) - appeal dismissed

CBN17 v Minister for Immigration and Border Protection (FCA) - migration - refusal of Safe Haven Enterprise Visa, subclass 790 - no failure to consider claims for complementary protection 'cumulatively' - appeal dismissed

SZUYU v Minister for Immigration and Border Protection (FCA) - migration - refusal of protection visa - sufficiency of translation - appellant was given a 'real and meaningful hearing' - appeal dismissed

BPB17 v Minister for Immigration and Border Protection (FCA) - migration - refusal of protection visas - application for extension of time to appeal refused

Summaries With Link (Five Minute Read)

SZSZW v Minister for Immigration and Border Protection [2018] FCAFC 82

Full Court of the Federal Court of Australia

Collier, Wigney & Gleeson JJ

Migration law - Administrative Appeals Tribunal affirmed refused to grant appellant protection visa - Federal Circuit Court of Australia refused to grant appellant extension of time pursuant to s477(2) *Migration Act 1958* (Cth) to seek review of Tribunal's decision - single judge of Federal Court dismissed application for judicial review - whether Federal Circuit Court judge erroneously conducted a "fulsome examination of the Tribunal's reasons", coming to a decision on an "in-depth" examination of them - ss36, 46A & 477 *Migration Act 1958* (Cth) - held: Federal Circuit Court judge's reasons went no further than to conclude point sought to be raised by appellant was unarguable - appeal dismissed.

[SZSZW](#)

[From Benchmark Friday, 8 June 2018]

CCD15 v Minister for Immigration and Border Protection [2018] FCA 813

Federal Court of Australia

O'Callaghan J

Migration - Minister's delegate refused to grant appellant Protection (Class XA) visa - Administrative Appeals Tribunal affirmed delegate's decision, concluding there was 'not a real chance' appellant would be persecuted for 'Convention reason' and that 'complementary protection' was not owed to appellant - Federal Circuit Court dismissed appellant's application for judicial review - whether Tribunal failed to make "obvious inquiry" into 'critical fact' by refusing to call Sri Lankan MP (MP) - whether Tribunal's refusal to call MP constituted a breach of s425 *Migration Act 1958* (Cth) - whether open to Tribunal to make findings about appellant's credibility without contacting MP first - held: Tribunal genuinely considered appellant's request that it call MP - no failure to make obvious inquiry into critical fact - open to Tribunal to reject evidence on which appellant was seeking to rely on basis it was satisfied appellant was 'fabricating his story' - no breach of s425 of the Act - appeal dismissed.

[CCD15](#)

[From Benchmark Friday, 8 June 2018]

CBN17 v Minister for Immigration and Border Protection [2018] FCA 788

Federal Court of Australia

Murphy J

Migration - Minister's delegate refused to grant appellant a Safe Haven Enterprise Visa, subclass 790 - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - appellant challenged Authority's refusal of claim for complementary protection under s36(2)(aa) *Migration Act 1958* (Cth) - whether proper consideration of complementary protection claim - whether 'real risk' of 'significant harm' if appellant returned to Sri Lanka - whether Tribunal erroneously failed to consider appellant's claims 'cumulatively' - held: Court did not accept appellant's contentions - appeal dismissed.

[CBN17](#)

[From Benchmark Friday, 8 June 2018]

SZUYU v Minister for Immigration and Border Protection [2018] FCA 786

Federal Court of Australia

Wigney J

Migration - Minister's delegate refused to grant protection visa - Refugee Review Tribunal confirmed delegate's decision - Tribunal found appellant's evidence inconsistent and lacking credibility and that appellant had fabricated claims - appeal concerned whether appellant was given 'real and meaningful opportunity to give evidence and present arguments', under s425 *Migration Act 1958* (Cth), in Refugee Review Tribunal hearing - sufficiency of standard of translation - whether issues with translation could have affected outcome - whether primary judge erroneously rejected appellant's contention he was denied a 'real and meaningful hearing' held: translation not 'substandard' - no 'material errors or irregularities' in translation - no error in primary judge's decision - appeal dismissed.

[SZUYU](#)

[From Benchmark Friday, 8 June 2018]

BPB17 v Minister for Immigration and Border Protection [2018] FCA 814

Federal Court of Australia

O'Callaghan J

Migration - applicants sought protection visas - first applicant claimed fear of harm on basis of debts owed to loan sharks in Malaysia which he was unable to pay - second applicant relied on first applicant's claims - Minister refused to grant protection visas to applicants on basis they did not meet criteria in ss36(2)(a) & 36(2)(aa) *Migration Act 1958* (Cth) - Tribunal affirmed Minister's decision - Federal Circuit Court upheld Tribunal's decision - application for extension of time to appeal against primary judge's decision - whether 'erroneous and inadequate' consideration of evidence - whether denial of procedural fairness - whether erroneous failure to consider 'degree of hardship' which applicant and family members might suffer - prejudice - delay - held: application for extension of time refused.

[BPB17](#)

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The Word

By: Ella Wheeler Wilcox

Oh, a word is a gem, or a stone, or a song,
Or a flame, or a two-edged sword;
Or a rose in bloom, or a sweet perfume,
Or a drop of gall is a word.

You may choose your word like a connoisseur,
And polish it up with art,
But the word that sways, and stirs, and stays,
Is the word that comes from the heart.

You may work on your word a thousand weeks,
But it will not glow like one
That all unsought, leaps forth white hot,
When the fountains of feeling run.

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

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