

Friday, 10 May 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)

MZAOL v Minister for Immigration and Border Protection (FCAFC) - migration law - refusal to grant protection visas - erroneous failure to consider claim of fear of harm - appeal allowed

BGV18 v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant protection visa - legal unreasonableness not established - appeal dismissed

DZG17 v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant protections visas - appellant sought to adduce documents and 'oral evidence' - interlocutory application dismissed

DFW18 v Minister for Home Affairs (FCA) - migration law - refusal to revoke cancellation of applicant's Class BB Subclass 155 Five Year Resident Return Visa - review application allowed

CAQ18 v Minister for Home Affairs (FCA) - migration law - refusal to grant Protection (Class XA) visa - appeal dismissed

Summaries With Link (Five Minute Read)

[MZAOL v Minister for Immigration and Border Protection \[2019\] FCAFC 68](#)

Full Court of the Federal Court of Australia

Bromberg, Farrell & Davies JJ

Migration law - appellants were mother and child - Minister's delegate refused appellants'

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applications for protection visas - Tribunal affirmed delegate's decision - primary judge dismissed application for judicial review - whether erroneous rejection of contention that mother had made claim of risk of harm of 'forced sterilisation' before Tribunal - whether appellants deprived of successful outcome's possibility by Tribunal's failure to disclose 'existence of' a 's438 certificate' - whether bias - held: Tribunal did not deal with mother's claim of fear of harm of forced sterilisation - primary judge erred in failure to identify Tribunal's jurisdictional error - appeal allowed.

[MZAOL](#)

[From Benchmark Friday, 10 May 2019]

BGV18 v Minister for Immigration and Border Protection [2019] FCA 602

Federal Court of Australia

Moshinsky J

Migration law - Minister's delegate refused appellant's application for a protection visa - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - whether Authority 'legally unreasonable' in not 'considering whether to exercise' power in 473DC *Migration Act 1958* (Cth) - held: legal unreasonableness not established - appeal dismissed.

[BGV18](#)

[From Benchmark Friday, 10 May 2019]

DZG17 v Minister for Immigration and Border Protection [2019] FCA 8

Federal Court of Australia

Greenwood J

Migration law - interlocutory application - Minister's delegate refused to grant appellants protection visas - Tribunal affirmed delegate's decision - Federal Circuit Court dismissed judicial review application - appellants sought to adduce documents and 'oral evidence' on appeal's hearing - appellants also sought order that certain 'Freedom of Information' files be produced - relevance of documents to appeal grounds - held: interlocutory application dismissed.

[DZG17](#)

[From Benchmark Friday, 10 May 2019]

DFW18 v Minister for Home Affairs [2019] FCA 599

Federal Court of Australia

Steward J

Migration law - Minister's delegate cancelled applicant's Class BB Subclass 155 Five Year Resident Return Visa due to applicant's failure to pass 'character test' under s501(6) *Migration Act 1958* (Cth) - another of Minister's delegate's declined to revoke 'cancellation decision' - Administrative Appeals Tribunal affirmed delegate's decision - applicant sought judicial review - whether Tribunal considered claims of applicant concerning risk issue - whether Tribunal considered remorse issue - challenge to findings concerning 'non-refoulement obligations' and impediments which could be faced by applicant 'if returned to Turkey' - held: review application



allowed.

[DFW18](#)

[From Benchmark Friday, 10 May 2019]

CAQ18 v Minister for Home Affairs [2019] FCA 603

Federal Court of Australia

Banks-Smith J

Migration law - Minister's delegate refused to grant appellant a Protection (Class XA) visa - Administrative Appeals Tribunal affirmed delegate's decision - Tribunal rejected claims of appellant on basis appellant was an 'unreliable witness' - primary judge found Tribunal's findings were open - appellant contended primary judge did not 'adequately consider' review grounds, as demonstrated by reasons' brevity and ex tempore delivery - appellant also contended Tribunal did not disclose existence of invalid s438 certificate - credibility - 'significant harm' - held: appeal dismissed.

[CAQ18](#)

[From Benchmark Friday, 10 May 2019]



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Dream-Time

By: Ella Higginson

It is the time when crimson stars
 Weary of heaven's cold delight,
And take, like petals from a rose,
 Their soft and hesitating flight
Upon the cool wings of the air
 Across the purple night.

It is the time when silver sails
 Go drifting down the violet sea,
And every poppy's crimson mouth
 Kisses to sleep a lovesick bee;
The fireweed waves her rosy plumes
 On pasture, hill and lea.

It is the time to dream—and feel
 The languid rocking of a boat,
The pushing ripple round the keel
 Where cool, deep-hearted lilies float,
And hear thro' wild syringas steal
 Some songster's drowsy note.

It is the time, at eve, to lie
 And in a hammock faintly sway,
To watch the golds and crimsons die
 Across the blue stretch of the bay;
To hear the sweet dusk tiptoe by
 In the footsteps of the day.

[Ella Higginson](#)

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