

Friday, 10 August 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)

**Viane v Minister for Immigration and Border Protection** (FCAFC) - migration law - procedural fairness - refusal to revoke cancellation decision - appeal allowed

**AAM15 v Minister for Immigration and Border Protection** (FCA) - migration law - refusal to grant Protection (Class XA) visas - appeal dismissed

**ASF17 v Minister for Immigration and Border Protection** (FCA) - migration law - refusal to grant Safe Haven Enterprise Visa (SHEV) - 'bogus document' - appeal dismissed

**CHM16 v Minister for Immigration and Border Protection** (FCA) - migration law - refusal to grant Safe Haven Enterprise (Class XE) Subclass 790 visa - appeal dismissed

**AHQ16 v Minister for Immigration and Border Protection** (FCA) - migration law - refusal to grant Protection (Class XA) visa - appeal dismissed

### Summaries With Link (Five Minute Read)

#### **Viane v Minister for Immigration and Border Protection [2018] FCAFC 116**

Full Court of the Federal Court of Australia

Reeves, Rangiah & Colvin JJ

Migration law - appellant born in American Samoa and had lived over 25 years in Australia - .appellant was New Zealand citizen but had never lived in New Zealand - appellant's Australian

visa cancelled - appellant sought revocation of cancellation - Minister refused to revoke cancellation - application for judicial review unsuccessful - appellant appealed - whether primary judge erroneously failed to find Minister denied appellant procedural fairness by failing to consider argument concerning the 'significant impediments' appellant and family would be subject to if removed to Samoa - whether failure to consider 'substantial' 'argument, claim or submission' - whether Minister required to have regard to where appellant would be sent if cancellation decision not revoked - s75(v) Constitution - ss476A, 501CA, 501(3A) *Migration Act 1958* (Cth) - held: appeal allowed - matter remitted.

[Viane](#)

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## **AAM15 v Minister for Immigration and Border Protection [2018] FCA 1143**

Federal Court of Australia

Collier J

Migration law - Minister's delegate refused to grant appellants Protection (Class XA) visas under s65 *Migration Act 1958* (Cth) (Act) - Refugee Review Tribunal affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - whether failure to properly consider claims under ss36(2)(a) & (aa) of the Act - whether natural justice afforded - whether failure to inquire into matter in s425 of the Act - whether third appellant had 'separate claims in her own right' - whether failure to have regard to first appellant's political activities - whether failure to comply with ss424A & 424AA of the Act - held: appeal dismissed.

[AAM15](#)

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## **ASF17 v Minister for Immigration and Border Protection [2018] FCA 1149**

Federal Court of Australia

Banks-Smith J

Migration law - appellant sought protection visa - Safe Haven Enterprise Visa (SHEV) - Ministers delegate found appellant had submitted 'bogus document' and refused application pursuant to s91WA *Migration Act 1958* (Cth) - delegate also rejected protection claims by appellant - Federal Circuit Court found delegate erred in aspect of determination concerning claims for protection but that the delegate, in light of bogus document, was obliged to refuse to grant visa pursuant to s91WA - grounds of appeal not raised in Federal Circuit Court - held: leave to rely on grounds in notice of appeal refused - appeal otherwise dismissed.

[ASF17](#)

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## **CHM16 v Minister for Immigration and Border Protection [2018] FCA 1132**

Federal Court of Australia

Perry J

Migration law - Minister's delegate refused to grant Safe Haven Enterprise (Class XE) Subclass 790 visa to appellant - Immigration Assessment Authority affirmed delegate's decision - Federal



Circuit Court dismissed appellant's application for judicial review - 'fast track reviewable decision' - whether application of correct test in respect of complementary protection - procedural fairness - 'quality of interpreting' - whether erroneous failure to consider 'new information' - whether Tribunal afforded hearing to appellant - ss35A, 35A6, 36(2)(a), 36(2)(aa) & s473DD *Migration Act 1958* (Cth) - held: appeal dismissed.

[CHM16](#)

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## **AHQ16 v Minister for Immigration and Border Protection [2018] FCA 1128**

Federal Court of Australia

Flick J

Migration law - Minister's delegate rejected appellant's application for a Protection (Class XA) visa - Refugee Review Tribunal affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - Federal Court set decision aside - matter remitted - Tribunal again affirmed refusal to grant visa - Federal Circuit Court dismissed application for judicial review - whether 'failure to consider an integer/claim' - whether 'failure to deal with accepted facts' - grounds of appeal abandoned in Federal Circuit Court - whether grounds could be revived on appeal - held: appeal dismissed.

[AHQ16](#)

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# Benchmark

## **Sonnet 76**

**By:** William Shakespeare

Why is my verse so barren of new pride,  
So far from variation or quick change?  
Why with the time do I not glance aside  
To new-found methods and to compounds strange?  
Why write I still all one, ever the same,  
And keep invention in a noted weed,  
That every word doth almost tell my name,  
Showing their birth and where they did proceed?  
O, know, sweet love, I always write of you,  
And you and love are still my argument;  
So all my best is dressing old words new,  
Spending again what is already spent:  
For as the sun is daily new and old,  
So is my love still telling what is told.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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