

Friday, 11 October 2024

Weekly Immigration Law Review

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**A Weekly Bulletin listing Decisions
of Superior Courts of Australia covering immigration**

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Executive Summary (One Minute Read)

Gehlert v Minister for Immigration and Multicultural Affairs (FCAFC) - scale costs under r29.13(1) of the Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021 (Cth) are not presumptively the appropriate amount of fixed costs

Boyjonauth v Minister for Immigration and Multicultural Affairs (FCAFC) - an application for Tribunal review of a delegate's migration decision that is not accompanied by the prescribed fee is invalid, and the Tribunal therefore does not have jurisdiction

FEC17 v Minister for Immigration, Citizenship and Multicultural Affairs (FedCFamC2G) - Authority conflated the requirements of s473DC and s473DD of the *Migration Act 1958* (Cth)

AOA19 v Minister for Immigration and Multicultural Affairs (FedCFamC2G) - Authority erred by finding relocation to a specific area was reasonable, without considering the circumstances "on the ground" in that area



HABEAS CANEM

Before the puppy ears finally dropped

Summaries With Link (Five Minute Read)

Gehlert v Minister for Immigration and Multicultural Affairs [2024] FCAFC 129

Full Court of the Federal Court of Australia

Mortimer CJ, Colvin, & Dowling JJ

Migration - Visitor visa - delegate refused to grant visa - the Administrative Appeals Tribunal affirmed - the applicant sought judicial review in the Federal Circuit and Family Court (Division 2) - the Minister eventually conceded jurisdictional error - the Court ordered the Minister pay the appellant's scale costs - the Minister consented to the appellant having leave to appeal against the quantum of costs - the primary judge erred by treating r29.13(1) of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth) as presumptively setting scale costs as the appropriate amount of fixed costs, and imposing an evidentiary or persuasive burden on the appellant to show a "good reason" to depart from the scale costs - re-exercising the discretion, the appellant should receive the amount of the filing fee as well as the scale costs - appeal allowed.

[Gehlert](#)

[From Benchmark Friday, 11 October 2024]

Boyjonauth v Minister for Immigration and Multicultural Affairs [2024] FCAFC 130

Full Court of the Federal Court of Australia

Thawley, Rofe, & Kennett JJ

Migration - Medical Treatment visa - delegate refused to grant visa - Administrative Appeals Tribunal held it did not have jurisdiction to review the delegate's decision because the application for review, which was lodged together with a fee reduction request, was not accompanied by the prescribed fee or any portion of the prescribed fee - the Federal Circuit and Family Court of Australia (Division 2) dismissed an application for judicial review - s347(1) of the *Migration Act 1958* (Cth) provides that an application must be accompanied by the prescribed fee - there was no reason to depart from previous authority that non-compliance with any of the paragraphs of s347 has the result that the application is invalid and the Tribunal therefore does not have jurisdiction - while it was unnecessary to decide, the view was open on the authorities that, where an applicant applies for a 50% fee waiver and pays 50% of the fee within the prescribed period, the Tribunal will have jurisdiction - appeal dismissed.

[Boyjonauth](#)

[From Benchmark Friday, 11 October 2024]

FEC17 v Minister for Immigration, Citizenship and Multicultural Affairs [2024]

FedCFamC2G 977

Federal Circuit and Family Court of Australia (Division 2) General Federal Law

Judge Ladhams

Migration - protection visa - delegate refused to grant visa - the Immigration Assessment Authority affirmed - the Authority had conflated the requirements of s473DC (the discretion to get new information) and s473DD (the power to consider new information) of the *Migration Act*

1958 (Cth) - the Authority erred by importing the requirement of exceptional circumstances under s473DD to become a fetter on its discretion to get new information from the applicant under s473DC - application allowed.

[FEC17](#)

[From Benchmark Friday, 11 October 2024]

AOA19 v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 965

Federal Circuit and Family Court of Australia (Division 2) General Federal Law

Judge Laing

Migration - Safe Haven Enterprise visa - delegate refused to grant visa - the Immigration Assessment Authority affirmed - the Authority erred in finding that it was reasonable for the applicant to relocate to Islamabad, Pakistan, where he would not face a real risk of significant harm as a Hazaras Shia, without considering the real circumstances "on the ground" in that area, including the possibility of social ostracisation or the sense of social ostracisation - had the authority considered these matters, it was possible its decision may have been different - application allowed.

[AOA19](#)

[From Benchmark Friday, 11 October 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Paki Nikora v Tamati Kruger (NZSC) - The Maori Land Court had jurisdiction to review the election of trustees to the Tuhoe - Te Uru Tamatua Trust inasmuch as the Trust, among other functions, held land as a post-settlement governance entity

Summaries With Link (Five Minute Read)

Paki Nikora v Tamati Kruger [2024] NZSC 130

Supreme Court of New Zealand

Winkelmann, CJ, Glazebrook, Williams, O'Regan, & Collins JJ

Paki Nikora contended that two of the trustees of the Tuhoe - Te Uru Taumatua Trust (TUT) had not been selected in accordance with the terms of the trust. Nikora commenced proceedings in the Maori Land Court and the Court ordered fresh elections. TUT refused to acknowledge the jurisdiction of the Land Court and declined to participate in the proceedings. The matter was appealed to the Maori Appellate Court that upheld the decision of the Land Court. However on subsequent review by the Court of Appeal, the decisions of the Maori Land Court and Appellate Court were overturned. The Court of Appeal found that, inasmuch as TUT had authority over a wide range of matters and was not constituted in respect of land and its primary purpose did not relate to land, the Maori Land Court lacked jurisdiction with respect to trust activities. On further review, the Supreme Court determined that the Court of Appeal was in error and concluded that the Maori Land Court had jurisdiction to hear the matter because, from its outset, TUT was established to hold parcels of land regardless of its holdings at the time of its inception. The Court also noted that the Maori Land Court by long experience was sensitive to the challenges of communal asset management and that Maori Land Court judges had special knowledge and expertise and had proceeded with due care to resolve the issues despite the lack of participation by one of the parties.

[Paki Nikora](#)



Poem for Friday

Risk

By Anaïs Nin (1903-1977)

And then the day came,
when the risk
to remain tight
in a bud
was more painful
than the risk
it took
to blossom.

Anaïs Nin, (Angela Anaïs Juana Antolina Rosa Edelmira Nin y Culmell), was born in 1903, outside Paris, of Cuban parents. Her father was the composer, Joaquin Nin. Nin was a French Cuban American who wrote essays, novels and short stories. *The Diary of Anaïs Nin* was written initially as a letter to her father, who had left the family some years before Anaïs Nin wrote, starting at the age of 11 in 1914. The diary of Anaïs Nin was published over 7 volumes, in expurgated and unexpurgated volumes. She was a close friend of Henry Miller. She died in Los Angeles, USA, of cancer.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

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Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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