

Friday, 12 October 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)

Abdel-Hady v Minister for Immigration and Border Protection (FCAFC) - migration law - cancellation of Partner (Temporary) (Class UK) visa on character grounds - no denial of procedural fairness or legal unreasonableness - appeal dismissed

Minister for Immigration and Border Protection v Egan (FCAFC) - migration law - Administrative Appeals Tribunal erroneously set aside Minister's decision to revoke respondent's citizenship - appeal allowed

Romanov v Minister for Home Affairs (FCA) - migration law - refusal to revoke mandatory cancellation of applicant's Class BC Subclass 100 Spouse Visa - no error in decision of Administrative Appeals Tribunal to affirm delegate's decision - application dismissed

EMJ17 v Minister for Immigration and Border Protection (FCA) - migration law - refusal of Safe Haven Enterprise Visa - refusal to order further compliance with subpoena - refusal to exercise discretion to get "new information" - error established - appeal allowed

Turay v Assistant Minister for Home Affairs (FCA) - migration law - cancellation of Class XB (Subclass 202) Global Special Humanitarian visa under s 501(3A) *Migration Act 1958* (Cth) - grounds of application for review failed - application dismissed

Summaries With Link (Five Minute Read)

Abdel-Hady v Minister for Immigration and Border Protection [2018] FCAFC 164

Full Court of the Federal Court of Australia

Greenwood ACJ; Charlesworth & O'Callaghan JJ

Migration law - Minister for Immigration and Border Protection personally cancelled applicant's Partner (Temporary) (Class UK) visa on character grounds under s501(2) *Migration Act 1958* (Cth) - primary judge rejected application for judicial review - whether denial of procedural fairness - whether legal unreasonableness - whether erroneous failure to make 'unequivocal finding' about best interests of appellant's daughter - whether appellant should be permitted to raise grounds not raised before primary judge - held: grounds of appeal were without merit - appeal dismissed.

[Abdel-Hady](#)

[From Benchmark Friday, 12 October 2018]

Minister for Immigration and Border Protection v Egan [2018] FCAFC 169

Full Court of the Federal Court of Australia

Allsop CJ; Perram & Jagot JJ

Migration law - Minister revoked respondent's citizenship under s34(2) *Australian Citizenship Act 2007* (Cth) - Administrative Appeals Tribunal set aside Minister's decision, concluding it was not contrary to public interest for respondent to retain citizenship - held: Tribunal failed to mandatory relevant consideration into account, namely the 'deemed grant' of ex-citizen visa under s35(3) *Migration Act 1958* (Cth) upon cancellation of citizenship - Tribunal's 'reasoning process' would have differed if consideration taken into account - Tribunal had seen case as 'involving a clear cut choice' between respondent staying in Australia or being returned to Ireland - appeal allowed - Tribunal's decision set aside - matter remitted.

[Minister for Immigration](#)

[From Benchmark Friday, 12 October 2018]

Romanov v Minister for Home Affairs [2018] FCA 1494

Federal Court of Australia

Jagot J

Migration law - Minister's delegate declined to revoke mandatory decision to cancel applicant's Class BC Subclass 100 Spouse Visa under s501(3A) *Migration Act 1958* (Cth) due to failure to pass character test - Administrative Appeals Tribunal affirmed delegate's decision - whether Tribunal had 'expressed its conclusion' in terms which s501CA(4)(b)(ii) of the Act used - whether Tribunal considered all 'relevant material' - adequacy of reasons - "another reason why the original decision should be revoked" - held: no jurisdictional error in decision of Tribunal - application dismissed.

[Romanov](#)

[From Benchmark Friday, 12 October 2018]

EMJ17 v Minister for Immigration and Border Protection [2018] FCA 1462

Federal Court of Australia

Thawley J

Migration law - Minister's delegate refused to grant appellant a Safe Haven Enterprise Visa - Immigration Assessment Authority affirmed delegate's decision - appellant sought judicial review - Federal Circuit Court of Australia gave five judgments - in principal judgment judicial review application was dismissed - other judgments concerned Minister's objection to compliance with paragraph of subpoena, appellant's application for 'further compliance' with paragraph, and two adjournment applications - whether erroneous exercise of discretion in refusal to order further compliance with subpoena - whether failure by Secretary to give 'critical material' to Authority in breach of s473CB(1)(c) *Migration Act 1958* (Cth) (Migration Act) - whether Authority, in approaching task of deciding whether to get 'new information', erroneously considered it had to be satisfied of existence of "exceptional circumstances" - ss473DC(1)(b) & 473DD(a) Migration Act - held: appeal allowed.

[EMJ17](#)

[From Benchmark Friday, 12 October 2018]

Turay v Assistant Minister for Home Affairs [2018] FCA 1487

Federal Court of Australia

Farrell J

Migration law - Minister's delegate cancelled applicant's Class XB (Subclass 202) Global Special Humanitarian visa under s501(3A) *Migration Act 1958* (Cth) for failure to pass character test - Assistant Minister declined to revoke delegate's decision - applicant contended that Assistant Minister had 'failed to consider "relevant, material and significant" evidence and representations', failed to consider whether there was "another reason" when assessing his representations - applicant also claimed decision was legally unreasonable - adequacy of Assistant Minister's consideration of non-refoulement obligations - held: grounds of application for review failed - application dismissed.

[Turay](#)

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Evening Song

By: Sherwood Anderson

MY song will rest while I rest. I struggle along. I'll get back to the corn and the open fields. Don't fret, love, I'll come out all right.

Back of Chicago the open fields. Were you ever there—trains coming toward you out of the West—streaks of light on the long gray plains? Many a song—aching to sing.

I've got a gray and ragged brother in my breast—that's a fact. Back of Chicago the open fields—long trains go west too—in the silence. Don't fret, love. I'll come out all right.

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

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