

Friday, 13 July 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)

BQL15 v Minister for Immigration and Border Protection (FCAFC) - migration law - refusal of Protection (Class XA) visa - no failure to comply with Minister's direction - appeal dismissed

Maioha v Minister for Immigration and Border Protection (FCA) - migration law - refusal to revoke cancellation decision in respect of applicant's Class TY Subclass 444 Special Category (Temporary) visa - application for judicial review allowed

HSKJ v Minister for Immigration and Border Protection (FCA) - migration law - refusal to revoke mandatory visa cancellation - jurisdictional error established with respect to Tribunal's approach to the weighing of considerations - appeal allowed

Ali v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant Student (Class TU subclass 572) - jurisdictional error not established - appeal dismissed

Brar v Minister for Home Affairs (FCA) - migration law - refusal of bridging visa - Court did not have jurisdiction to entertain application for extension of time to seek review - application dismissed

Summaries With Link (Five Minute Read)

[BQL15 v Minister for Immigration and Border Protection \[2018\] FCAFC 104](#)

Full Court of the Federal Court of Australia

Collier, Flick & Perry JJ

Migration law - appellant sought Protection (Class XA) visa - Minister's delegate refused application - appellant sought review of delegate's decision - Administrative Appeals Tribunal (AAT) affirmed delegate's decision - Federal Circuit Court dismissed application for review - appellant appealed - whether AAT failed to "comply with a direction" which Minister gave under s499 of the Migration Act 1958 (Cth) and, if so whether such failure vitiated AAT's decision - *Direction No 56 – Consideration of Protection Visa applications - PAM3: Refugee and humanitarian – Complementary Protection Guidelines* - s499 Migration Act 1958 (Cth) - held: no failure to comply with Minister's direction - appeal dismissed.

[BQL15](#)

[From Benchmark Friday, 13 July 2018]

Maioha v Minister for Immigration and Border Protection [2018] FCA 1016

Federal Court of Australia

Perry J

Migration law - Assistant Minister declined to revoke cancellation decision in respect of applicant's Class TY Subclass 444 Special Category (Temporary) visa (non-revocation decision) - applicant's visa had been cancelled on 'character grounds' under s501(3A) *Migration Act 1958* (Cth) - applicant sought judicial review of non-revocation decision - 'basic living standards representations' - 'proper, genuine and realistic consideration' - held: applicant succeeded on ground that Minister had failed to properly deal with her representation that, if visa cancellation not revoked 'she would have nowhere to live and no money' on return to New Zealand - jurisdictional error established - application allowed.

[Maioha](#)

[From Benchmark Friday, 13 July 2018]

HSKJ v Minister for Immigration and Border Protection [2018] FCA 1013

Federal Court of Australia

Banks-Smith J

Migration law - Minister's delegate cancelled applicant's visa under s501(3A) *Migration Act 1958* (Cth) on basis delegate did not pass character test due to 'substantial criminal record' and imprisonment for criminal offence - applicant sought revocation of mandatory visa cancellation - Minister's delegate declined to revoke decision - Tribunal affirmed delegate's decision - applicant sought review of Tribunal's decision - *Direction 65 – Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under s 501CA* (Direction 65) - 'assessment of harm' - *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594 - use of term 'secondary' in weighing of considerations - 'from the starting point that they were secondary considerations' - held: Tribunal erred in approach to weighing of considerations in relation to Direction 65 - jurisdictional error established - appeal allowed.

[HSKJ](#)

[From Benchmark Friday, 13 July 2018]

Ali v Minister for Immigration and Border Protection [2018] FCA 998

Federal Court of Australia

Burley J

Migration law - Minister's delegate refused to grant appellant sought a Student (Class TU subclass 572) visa on basis he was not a 'genuine applicant' - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court of Australia dismissed application for review - applicant appealed - 'criterion' in cl.572.223(1)(a) of Schedule 1 to the Migration Regulations - 'genuine temporary entrant' - whether correct identification and application of test by Tribunal - whether Tribunal asked itself wrong question in addressing criterion - whether failure by Tribunal to 'engage in the balancing exercise' in *Minister for Immigration v Awan* [2003] FCAFC 140 - held: jurisdictional error not established - appeal dismissed.

[Ali](#)

[From Benchmark Friday, 13 July 2018]

Brar v Minister for Home Affairs [2018] FCA 1006

Federal Court of Australia

O'Callaghan J

Migration law - judgments and orders - extension of time - Minister's delegate cancelled applicant's Class TU Subclass 572 Student visa under s116 *Migration Act 1958* (Cth) on basis applicant's presence could be a 'risk to the health or safety of an individual or individuals' - delegate refused to grant applicant a bridging visa under s501(1) of the Act (s501 decision) - applicant detained in immigration detention - applicant sought extension of time to seek review of refusal to grant him a visa - s476A(1) of the Act - whether Court had jurisdiction in respect of application - held: Court had no jurisdiction to entertain application because s501 decision was not made personally by Minister - application for extension of time dismissed.

[Brar](#) (WML)

[From Benchmark Friday, 13 July 2018]



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Heaven

By: Rupert Brooke

Fish (fly-replete, in depth of June,
Dawdling away their wat'ry noon)
Ponder deep wisdom, dark or clear,
Each secret fishy hope or fear.
Fish say, they have their Stream and Pond;
But is there anything Beyond?
This life cannot be All, they swear,
For how unpleasant if it were!
One may not doubt that, somehow, Good
Shall come of Water and of Mud;
And, sure, the reverent eye must see
A Purpose in Liquidity.
We darkly know, by Faith we cry,
The future is not Wholly Dry.
Mud unto mud! – Death eddies near –
Not here the appointed End, not here!
But somewhere, beyond Space and Time,
Is wetter water, slimier slime!
And there (they trust) there swimmeth One
Who swam ere rivers were begun,
Immense, of fishy form and mind,
Squamous, omnipotent and kind;
And under that Almighty Fin,
The littlest fish may enter in.
Oh! Never fly conceals a hook,
Fish say, in the Eternal Brook,
But more than mundane weeds are there,
And mud, celestially fair;
Fat caterpillars drift around,
And Paradisal grubs are found;
Unfading moths, immortal flies,
And the worm that never dies.
And in that Heaven of all their wish,
There shall be no more land, say fish.

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

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