

Friday, 14 September 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)

CIT17 v Minister for Immigration and Border Protection (FCAFC) - migration law - refusal to grant Safe Haven Enterprise Visa - failure to give adequate reasons - grounds of appeal re-agitating review grounds not substantiated - futile to remit matter - appeal dismissed

Hay v Minister for Home Affairs (FCAFC) - migration law - cancellation of visa under s501(3A) *Migration Act 1958* (Cth) - no error in Minister's refusal to revoke cancellation - appeal dismissed

Nguyen v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant Permanent Partner (Subclass 801) - failure to consider two statutory declarations - failure to refer to or make findings about material - appeal allowed

Candemir v Minister for Home Affairs (FCA) - migration law - cancellation of Class BB Subclass 155, Five Year Resident Return visa - application for judicial review dismissed

DHK16 v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant appellant a Temporary Protection (subclass 785) visa - internal relocation - no basis for finding that appellant had 'recourse to financial assistance' - appeal allowed

BWC16 v Minister for Home Affairs (FCA) - migration law - refusal to grant Safe Haven Enterprise (class XE) (subclass 790) visa (SHEV) - errors by Authority established - appeal allowed

Summaries With Link (Five Minute Read)

CIT17 v Minister for Immigration and Border Protection [2018] FCAFC 150

Full Court of the Federal Court of Australia

Collier, Markovic & Lee JJ

Migration law - Minister's delegate refused to grant appellant Safe Haven Enterprise visa - Immigration Assessment Authority, pursuant to Pt 7AA *Migration Act 1958* (Cth), affirmed delegate's decision - Federal Circuit Court of Australia dismissed application for review - whether Federal Circuit Court constructively failed to exercise jurisdiction or gave inadequate reasons - whether Federal Circuit Court erroneously failed to find Authority made error akin to error which *MZACX v Minister for Immigration and Border Protection* [2016] FCA 1212 identified - whether Federal Court erroneously found Authority considered appellant's claim, or integer of claim of fear of harm due to completion of international troops' withdrawal from Afghanistan - 'reasonableness of relocation' - held: appeal substantially successful on ground of appeal contending inadequacy of reasons - grounds of appeal re-agitating review grounds not substantiated - futile to remit matter - appeal dismissed.

[CIT17](#)

[From Benchmark Friday, 14 September 2018]

Hay v Minister for Home Affairs [2018] FCAFC 149

Full Court of the Federal Court of Australia

White, Moshinsky & Colvin JJ

Migration law - appellant's visa was cancelled under s501(3A) *Migration Act 1958* (Cth) (cancellation decision) - Minister refused to revoke cancellation decision - judicial review refused - appellant contended there was failure by Minister to consider 'particular matters' - whether primary judge erred in finding no jurisdictional error by Minister in refusal to revoke cancellation decision - whether denial of procedural fairness - held: appeal grounds lacked merit - appeal dismissed.

[Hay](#)

[From Benchmark Friday, 14 September 2018]

Nguyen v Minister for Immigration and Border Protection [2018] FCA 1374

Federal Court of Australia

White J

Migration law - Minister's delegate refused to grant appellant a Permanent Partner (Subclass 801) - Migration Review Tribunal affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - appellant appealed - held: Tribunal's failure to consider two statutory declarations indicated failure to exercise jurisdiction - Tribunal had failed to refer to or make findings about material, such that it could not be concluded Tribunal brought "an active intellectual process" to considering matters in reg 1.15A(3) *Migration Regulations 1994* (Cth) - appeal allowed.

[Nguyen](#)

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Candemir v Minister for Home Affairs [2018] FCA 1360

Federal Court of Australia

Gleeson J

Migration law - Minister, under s501BA *Migration Act 1958* (Cth), cancelled applicant's Class BB Subclass 155, Five Year Resident Return visa - applicant sought extension of time to seek judicial review - applicant contended Minister erroneously failed to consider 'relevant issues', failed to treat certain children's best interests as 'primary criterion' and used power in s501BA for improper purpose - held: grounds of review failed - application for review dismissed.

[Candemir](#)

[From Benchmark Friday, 14 September 2018]

DHK16 v Minister for Immigration and Border Protection [2018] FCA 1353

Federal Court of Australia

Gleeson J

Migration law - Minister's delegate refused to grant appellant a Temporary Protection (subclass 785) visa - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - appellant appealed - appellant contended Federal Circuit Court committed jurisdictional error in dismissing proceedings and had not considered 'all of the grounds raised in a proper manner' - 'no evidence' review ground - *Rawson Finances Pty Ltd v Federal Commission of Taxation [2013] FCAFC 26* - whether basis for Authority's inference that appellant had 'recourse to financial assistance' from mother for relocation purposes - whether 'unfounded factual assumption' - held: there was no evidence for Authority's finding that appellant had recourse to financial assistance from mother - appeal allowed.

[DHK16](#)

[From Benchmark Friday, 14 September 2018]

BWC16 v Minister for Home Affairs [2018] FCA 1375

Federal Court of Australia

Thawley J

Migration law - Minister's delegate refused to grant appellant Safe Haven Enterprise (class XE) (subclass 790) visa (SHEV) - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - appellant had claimed to fear harm due to membership of Tamil United Liberation Front (TULF) party - whether erroneous factual finding that appellant made statement he was not aware of TULF's history - whether erroneous finding of insufficient knowledge concerning history of TULF party - whether 'illogical reasoning' - whether erroneous adverse credibility finding - held: errors by Authority established - errors were critical to rejection of appellant's protection claim - appeal allowed.

[BWC16](#)

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The Crocuses

By: Frances Ellen Watkins Harper
They heard the South wind sighing
 A murmur of the rain;
And they knew that Earth was longing
 To see them all again.

While the snow-drops still were sleeping
 Beneath the silent sod;
They felt their new life pulsing
 Within the dark, cold clod.

Not a daffodil nor daisy
 Had dared to raise its head;
Not a fairhaired dandelion
 Peeped timid from its bed;

Though a tremor of the winter
 Did shivering through them run;
Yet they lifted up their foreheads
 To greet the vernal sun.

And the sunbeams gave them welcome,
 As did the morning air—
And scattered o'er their simple robes
 Rich tints of beauty rare.

Soon a host of lovely flowers
 From vales and woodland burst;
But in all that fair procession
 The crocuses were first.

First to weave for Earth a chaplet
 To crown her dear old head;
And to beauty the pathway
 Where winter still did tread.

And their loved and white haired mother
 Smiled sweetly 'neath the touch,
When she knew her faithful children
 Were loving her so much.



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

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