



Friday, 14 December 2018

Weekly Immigration Law Review A Weekly Bulletin listing Decisions of Superior Courts of Australia covering immigration

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

DYK16 v Minister for Immigration and Border Protection (FCAFC) - migration law - refusal of safe haven enterprise visa - leave to appeal granted - appeal dismissed

Minister for Immigration and Border Protection v Maioha (FCAFC) - migration law - Assistant Minister decided not to revoke cancellation of visa - primary judge upheld judicial review application - error established - appeal allowed

DHS17 v Assistant Minister for Immigration and Border Protection (FCAFC) - migration law - Assistant Minister refused to revoke cancellation of protection visa - Minister based decision on redacted 'International Treaties Obligations Assessment' - appeal allowed

Sach v Minister for Home Affairs (FCA) - migration law - refusal to revoke cancellation of Class BF transitional (permanent) visa on character grounds - Minister's decision was 'legally unreasonable' - application for review allowed

Sami v Commonwealth of Australia (FCA) - migration law - summary dismissal granted to Commonwealth in respect of application for judicial review - extension of time to appeal refused

Summaries With Link (Five Minute Read)

[DYK16 v Minister for Immigration and Border Protection](#) [2018] FCAFC 222

Full Court of the Federal Court of Australia

Collier, Middleton & Rangiah

Migration law - Minister's delegate refused to grant applicant a safe haven enterprise visa - Immigration Assessment Authority (Authority) affirmed delegate's decision - Federal Circuit Court of Australia refused application for judicial review - whether to permit applicant to raise grounds not before primary judge - whether erroneous failure to find jurisdictional error by Authority - whether Authority unreasonable in exercise of discretion under s473DC *Migration Act 1958* (Cth) (Migration Act) - whether Authority met requirements of s473DE Migration Act - held: leave granted to rely on grounds of appeal - appeal dismissed.

[DYK16](#)

[From Benchmark Friday, 14 December 2018]

Minister for Immigration and Border Protection v Maioha [2018] FCAFC 216

Full Court of the Federal Court of Australia

Rares, Flick & Robertson JJ

Migration law - primary judge allowed judicial review application in respect of decision of Assistant Minister not to revoke cancellation of visa - decision to cancel visa had been made on 'character grounds' - whether erroneous failure by primary judge to be satisfied "that there is another reason why the original decision should be revoked." - whether erroneous finding that 'applicant's subjective fears' concerning financial matters and lack of place to live if returned to New Zealand was 'mandatory relevant consideration' - whether erroneous finding Minister failed to give 'proper, genuine and realistic consideration to the applicant's subjective fears' - s501CA(4) *Migration Act 1958* (Cth) - held: appeal allowed.

[Minister for Immigration and Border Protection](#)

[From Benchmark Friday, 14 December 2018]

DHS17 v Assistant Minister for Immigration and Border Protection [2018] FCAFC 209

Full Court of the Federal Court of Australia

Kenny, Moshinsky & Bromwich JJ

Migration law - Minister's delegate cancelled appellant's Protection (Class XA) Subclass 866 visa under s501(3A) *Migration Act 1958* (Cth) - Assistant Minister refused to revoke cancellation of visa - no dispute Assistant Minister had made decision on basis of redacted 'International Treaties Obligations Assessment' - whether to permit appellant to raise new ground of appeal - whether to permit appellant to adduce new evidence - whether redacted International Treaties Obligations Assessment was 'fundamentally misleading document' which was 'apt to mislead' Assistant Minister - whether Court satisfied Assistant Minister 'would not inevitably reach the same conclusion' on reconsideration of complete International Treaties Obligations Assessment - held: appeal allowed.

[DHS17](#)

[From Benchmark Friday, 14 December 2018]

Sach v Minister for Home Affairs [2018] FCA 1658

Federal Court of Australia

Barker J

Migration law - Minister's delegate mandatorily cancelled applicant's Class BF transitional (permanent) visa on character grounds under s501(3A) *Migration Act 1958* (Cth) - Minister refused to revoke delegate's decision to cancel the visa, finding applicant did not pass 'character test' and that there was 'no other reason' to revoke the cancellation - applicant sought extension of time to seek review of Assistant Minister's decision - whether Assistant Minister's decision 'legally unreasonable' - whether Minister ignored 'important consideration' that applicant's 'health circumstances' could prevent him travelling to the United Kingdom and result in his 'indefinite detention in Australia' - held: ground of appeal contending 'legal unreasonableness' upheld - Minister's decision quashed.

[Sach](#)

[From Benchmark Friday, 14 December 2018]

Sami v Commonwealth of Australia [2018] FCA 1991

Federal Court of Australia

White J

Migration law - summary dismissal - applicant sought judicial review seeking 'various kinds' of relief including order that he be released from detention, order to restrain his deportation and order to correct 'perceived error in the Departmental file' - respondent was granted summary dismissal - applicant sought to appeal - whether leave to appeal required - whether to grant extension of time - whether applications' summary dismissal affected liberty of applicant - r36.03 *Federal Court Rules 2011* (Cth) - held: applicant did not need leave to appeal - extension of time to appeal refused.

[Sami](#)

[From Benchmark Friday, 14 December 2018]



Benchmark

Summer Wind

By: William Cullen Bryant

It is a sultry day; the sun has drunk
The dew that lay upon the morning grass;
There is no rustling in the lofty elm
That canopies my dwelling, and its shade
Scarce cools me. All is silent, save the faint
And interrupted murmur of the bee,
Settling on the sick flowers, and then again
Instantly on the wing. The plants around
Feel the too potent fervors: the tall maize
Rolls up its long green leaves; the clover droops
Its tender foliage, and declines its blooms.
But far in the fierce sunshine tower the hills,
With all their growth of woods, silent and stern,
As if the scorching heat and dazzling light
Were but an element they loved. Bright clouds,
Motionless pillars of the brazen heaven—
Their bases on the mountains—their white tops
Shining in the far ether—fire the air
With a reflected radiance, and make turn
The gazer's eye away. For me, I lie
Languidly in the shade, where the thick turf,
Yet virgin from the kisses of the sun,
Retains some freshness, and I woo the wind
That still delays his coming. Why so slow,
Gentle and voluble spirit of the air?
Oh, come and breathe upon the fainting earth
Coolness and life! Is it that in his caves
He hears me? See, on yonder woody ridge,
The pine is bending his proud top, and now
Among the nearer groves, chestnut and oak
Are tossing their green boughs about. He comes;
Lo, where the grassy meadow runs in waves!
The deep distressful silence of the scene
Breaks up with mingling of unnumbered sounds
And universal motion. He is come,
Shaking a shower of blossoms from the shrubs,
And bearing on their fragrance; and he brings
Music of birds, and rustling of young boughs,
And sound of swaying branches, and the voice
Of distant waterfalls. All the green herbs



Benchmark

Are stirring in his breath; a thousand flowers,
By the road-side and the borders of the brook,
Nod gayly to each other; glossy leaves
Are twinkling in the sun, as if the dew
Were on them yet, and silver waters break
Into small waves and sparkle as he comes.
https://en.wikipedia.org/wiki/William_Cullen_Bryant

[Click Here to access our Benchmark Search Engine](#)