



Friday, 15 November 2024

## Weekly Immigration Law Review

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

### Search Engine

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### Executive Summary (One Minute Read)

**Imad v Director-General of Security** (FCAFC) - Director-General's public interest immunity claim upheld, and judicial review of his decision to issue adverse security assessment dismissed

**Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (FCA) - Tribunal erred in giving no weight to legal consequences of decision not to revoke visa cancellation

**CXG17 v Minister for Immigration, Citizenship and Multicultural Affairs (No 2)** (FedCFamC2G) - Tribunal's conclusion Pakistani Taliban lacked capacity to identify pseudonymous social media critics lacked evidentiary basis and was illogical or irrational

**Campos v Minister for Immigration and Multicultural Affairs** (FedCFamC2G) - Tribunal erred by giving applicant for student visa impression it would finalise review before his enrolment concluded and that determinative issue was genuine temporary entrant criterion

**Singh v Minister for Immigration, Citizenship and Multicultural Affairs (No 2)** (FedCFamC2G) - Minister's public interest immunity claim over information that might identify a confidential source upheld, as was the exclusion of irrelevant third party information

## HABEAS CANEM

Cattle collie & collie



## Summaries With Link (Five Minute Read)

### **Imad v Director-General of Security [2024] FCAFC 138**

Full Court of the Federal Court of Australia

Bromwich, Thawley, & Shariff JJ

Migration - Australian Temporary Visitor Tourist Stream visa - Minister mandatorily cancelled visa after ASIO adverse security assessment (ASA) - Minister refused to revoke cancellation - applicant sought judicial review of Director-General's decision to issue ASA - Director-General claimed public interest immunity over some discovered documents - judge upheld claim (see Weekly Immigration Benchmark, 27 September 2024) - application for leave to appeal referred to Full Court - Chief Justice then directed judicial review proceeding also be heard by Full Court - leave application and judicial review heard concurrently - Court inspected documents and concluded public interest immunity was made out - leave to appeal public interest immunity decision granted but appeal dismissed, although primary judge erred by not inspecting documents - irrationality and legal unreasonableness grounds in judicial review application abandoned as hopeless without documents subject to public interest immunity - procedural fairness did not require ASIO notify applicant of ASA, invite him to interview before revocation decision, seek information from his relatives, or notify him or his relatives so migration agent or lawyer could address ASIO's concerns - judicial review application dismissed.

[Imad](#)

[From Benchmark Friday, 15 November 2024]

### **Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2024] FCA 1273**

Federal Court of Australia

Rangiah J

Migration - visa mandatorily cancelled after criminal convictions - delegate refused to revoke cancellation - Administrative Appeals Tribunal affirmed - Tribunal erred in giving no weight to Direction 99 mandatory consideration of legal consequences of decision not to revoke cancellation - legal consequences were continued immigration detention, then removal and permanent exclusion from Australia - giving no weight on basis Parliament intended such legal consequences misconstrued s501CA(4), *Migration Act 1958* (Cth) - giving no weight on basis applicant had made non-refoulement claim, and consideration of non-refoulement issues should be deferred until applicant applied for protection visa, lacked evident and intelligible justification - Tribunal also could not logically or reasonably have concluded continuing detention did not weigh at least to some extent in favour of revocation - application allowed.

[Singh](#)

[From Benchmark Friday, 15 November 2024]

### **CXG17 v Minister for Immigration, Citizenship and Multicultural Affairs (No 2) [2024] FedCFamC2G 1170**

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

Judge D Humphreys

Migration - protection visa - delegate refused visa - Administrative Appeals Tribunal affirmed - Federal Circuit and Family Court allowed application for judicial review - on remittal, Tribunal affirmed delegate's decision - Tribunal's complete rejection of applicant's claim he feared harm due to his pseudonymous criticisms of Taliban on social media was based on conclusion Pakistani Taliban lacked capacity to identify him - conclusion must have been based on Tribunal's personal assumption, speculation, or some other unarticulated basis - conclusion lacked evidentiary basis and was illogical or irrational - application allowed.

[CXG17](#)

[From Benchmark Friday, 15 November 2024]

## **Campos v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 1143**

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

Judge Skaros

Migration - student visa - delegate refused student visa, which would have been applicant's sixth student visa and eighth visa overall since coming to Australia in 2009, on ground applicant did not satisfy genuine temporary entrant criterion - Administrative Appeals Tribunal affirmed, on ground applicant was not enrolled in a registered course of study at time of Tribunal's decision - Tribunal's interaction with applicant gave him impression Tribunal intended to finalise review before current enrolment ceased, and determinative issue was whether applicant was genuine temporary entrant - Tribunal failed to comply with procedural fairness obligations under s360, *Migration Act 1958* (Cth) - application allowed.

[Campos](#)

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## **Singh v Minister for Immigration, Citizenship and Multicultural Affairs (No 2) [2024] FedCFamC2G 1142**

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

Judge Skaros

Migration - student visa - delegate cancelled visa for failure to comply with condition - Administrative Appeals Tribunal affirmed - applicant sought extension of time to apply for judicial review - Minister filed an affidavit annexing two documents with redacted information, and claimed public interest immunity over the some redactions and exclusion of other redactions as irrelevant third party information - information subject to immunity claim would reveal or tend to reveal identity of confidential source of information - balance of competing rights fell in favour of non-disclosure - public interest immunity claim upheld - irrelevant third-party information also excluded.

[Singh 2](#)

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# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**Robert F Kennedy, Jr v Joseph R Biden, Jr (USCA5CT)** - In an action for equitable relief, plaintiffs' claims failed as a result of lack of standing to sue because it was speculative that the wrong complained of was ongoing and therefore redressable

### Summaries With Link (Five Minute Read)

**Robert F Kennedy, Jr v Joseph R Biden, Jr, No 24-30252**

United States Court of Appeals

Higginbotham, Stewart, & Haynes JJ

Robert F Kennedy Jr and others complained that, due to unlawful pressure exercised by federal officials, Meta and YouTube censored or de-platformed Kennedy regarding COVID-related content in 2021. The plaintiffs sought and were granted a preliminary injunction by the District Court. The government appealed. In an earlier decision, *Murthy v Missouri* 144 S Ct 1972 (2024), the Supreme Court held that, to establish standing to sue, plaintiffs must demonstrate a substantial risk that they will suffer injury that is (1) traceable to a government defendant, and (2) redressable by an injunction. The Court of Appeals found that, while Kennedy had evidence that the initial censorship was traceable to government officials, he was unable to show that the continued censorship could be attributed to government actions. The Court found that there was not any evidence that could attribute continued suppression to government activity as opposed to internal platform moderation procedures. Consequently, standing failed on the redressability issue; namely, that Kennedy was unable to show that an injunction directed against the government would, in fact, redress the injury of which he complained. In accordance with the recent Supreme Court precedent, standing to sue was not established and the orders of the District Court granting a preliminary injunction were reversed.

[Robert F Kennedy, Jr](#)



## Poem for Friday

### How Do I Love Thee? (Sonnet 43, from Sonnets from the Portuguese)

By Elizabeth Barrett Browning (1806-1861)

How do I love thee? Let me count the ways.  
I love thee to the depth and breadth and height  
My soul can reach, when feeling out of sight  
For the ends of being and ideal grace.  
I love thee to the level of every day's  
Most quiet need, by sun and candle-light.  
I love thee freely, as men strive for right.  
I love thee purely, as they turn from praise.  
I love thee with the passion put to use  
In my old griefs, and with my childhood's faith.  
I love thee with a love I seemed to lose  
With my lost saints. I love thee with the breath,  
Smiles, tears, of all my life; and, if God choose,  
I shall but love thee better after death.

**Elizabeth Barrett Browning**, English poet was born on 6 March 1806, in County Durham, the eldest of 12 children, 11 of whom survived into adulthood. She was ill from her mid teens. She was influential in campaigning for the abolition of slavery and the introduction of child labour protection legislation. Her grandfather had been a slave owner in sugar plantations in Jamaica. She was a contemporary of, and met Coleridge, Tennyson, Carlyle, Wordsworth and Mitford. She met Robert Browning in 1845, and after a secret marriage, they moved to Italy in 1846. Whiting, describes her as “the most philosophical poet” living a life as “a Gospel of applied Christianity”. Barrett Browning died on 29 June 1861 at the age of 55, in Florence Italy.

**How Do I Love Thee?** sung by Femmes de Chanson, (2012)

[How Do I Love Thee? \(Nathan Christensen\) - Femmes de Chanson - 2012 \(youtube.com\)](https://www.youtube.com/watch?v=...)

**How Do I Love Thee** read by Dame Judi Dench

[How Do I Love Thee? \(Sonnet 43\) by Elizabeth Barrett Browning \(read by Dame Judi Dench\) \(youtube.com\)](https://www.youtube.com/watch?v=...)

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

# Benchmark

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.

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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