

Friday, 16 August 2019

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)

Nguyen v Minister for Home Affairs (FCAFC) - migration - appeal against Minister's decision to set aside delegate's 'revocation decision' and cancel visa under s501BA(2) *Migration Act 1958* (Cth) - appeal allowed

Tran v Minister for Immigration and Border Protection (FCAFC) - migration - appeal against Assistant Minister's refusal to revoke cancellation of appellant's visa - appeal dismissed

Pennie v Minister for Home Affairs (FCAFC) - migration - appeal against Minister for Home Affairs' refusal to revoke cancellation of appellant's visa - appeal dismissed

CHZ16 v Minister for Home Affairs (FCA) - migration - refusal to grant Protection (class XA) Visas - appeal dismissed

FQM18 v Minister for Home Affairs (FCA) - migration - cancellation of Global Special Humanitarian visa - appeal allowed

Summaries With Link (Five Minute Read)

Nguyen v Minister for Home Affairs [2019] FCAFC 128

Full Court of the Federal Court of Australia

Jagot, Robertson & Farrell JJ

Migration - appellant held Spouse (subclass 100) visa - Minister set aside delegate's 'revocation

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decision' and cancelled visa under s501BA(2) *Migration Act 1958* (Cth) (Migration Act) - primary judge dismissed judicial review application - appellant appealed - whether Minister's 'critical finding' of "ongoing likelihood" appellant would reoffend was 'legally unreasonable' - whether Minister 'misunderstood' operation of s501BA(2) *Migration Act 1958* (Cth) - materiality - whether Minister erroneously assumed, 'having decided to use s501BA(2) Migration Act, that he could not provide natural justice' to appellant - *Ibrahim v Minister for Home Affairs* [2019] FCAFC 89 - held: appeal allowed.

[Nguyen](#)

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Tran v Minister for Immigration and Border Protection [2019] FCAFC 126

Full Court of the Federal Court of Australia

Greenwood, Charlesworth & O'Callaghan JJ

Migration - delegate cancelled appellant's visa 'on character grounds' under s501(3A) *Migration Act 1958* (Cth) - Assistant Minister declined to revoke cancellation - primary judge dismissed application for judicial review - appellant appealed - whether Assistant Minister "failed to give proper consideration" appellant's claims - whether assessment of Assistant Minister concerning "potential" for further offending' was "without any rational foundation" - held: appeal dismissed.

[Tran](#)

[From Benchmark Friday, 16 August 2019]

Pennie v Minister for Home Affairs [2019] FCAFC 129

Full Court of Federal Court Australia

Davies, Derrington & Colvin JJ

Migration - Minister for Home Affairs declined to revoke a 'visa cancellation decision' in respect of appellant's visa - appellant's judicial review application dismissed - whether Minister failed to give "proper, genuine and realistic" consideration to appellant's representations - whether Minister had duty to make certain inquiries - whether Minister's decision 'legally unreasonable' - s501CA(4) *Migration Act 1958* (Cth) - held: appeal dismissed.

[Pennie](#)

[From Benchmark Friday, 16 August 2019]

CHZ16 v Minister for Home Affairs [2019] FCA 1242

Federal Court of Australia

Bromberg J

Migration law - delegate of first respondent rejected appellants' application for Protection (class XA) Visas - Tribunal affirmed delegate's decision - primary judge dismissed judicial review application - appellants appealed - whether denial of procedural fairness due to 'absence of an interpreter' - whether Tribunal erred concerning finding that brother of first appellant 'was not abducted' - whether Tribunal erred in 'use of the records of various interviews' - whether Tribunal failed to afford 'fairing hearing' to appellants - whether Tribunal erred in failing to consider whether risk was 'real risk of significant harm' - whether primary judge erroneously

failed 'to identify irrationality or illogicality in the Tribunal's reasoning' - whether primary judge erroneously failed to find error in manner in which Tribunal 'dealt with evidence' - whether Tribunal erred in relation to letter from Australian High Commission - held: appeal dismissed.

[CHZ16](#)

[From Benchmark Friday, 16 August 2019]

FQM18 v Minister for Home Affairs [2019] FCA 1263

Federal Court of Australia

Davies J

Migration - applicant's Global Special Humanitarian visa cancelled on basis of failure to satisfy 'character test' (cancellation decision) - Minister declined to revoke cancellation decision - applicant sought judicial review - whether Minister erroneously conflated criteria considered in application for protection visa with 'international non-refoulement obligations' - whether apprehended bias - Minister was without power to make decision because, at time decision made, Minister had 'pecuniary interest in an agreement with' Commonwealth public service - ss501(3A), 501(6)(a) & 501(7)(c) *Migration Act 1958* (Cth) - held: appeal allowed.

[FQM18](#)

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Down By the Carib Sea (VI: Sunset in the Tropics)

By: James Weldon Johnson

A silver flash from the sinking sun,
Then a shot of crimson across the sky
That, bursting, lets a thousand colors fly
And riot among the clouds; they run,
Deepening in purple, flaming in gold,
Changing, and opening fold after fold,
Then fading through all of the tints of the rose into gray.
Till, taking quick fright at the coming night,
They rush out down the west,
In hurried quest
Of the fleeing day.

Now above where the tardiest color flares a moment yet,
One point of light, now two, now three are set
To form the starry stairs,—
And, in her firefly crown,
Queen Night, on velvet slippered feet, comes softly down.

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

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