



Friday, 20 December 2024

Weekly Immigration Law Review

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

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Executive Summary (One Minute Read)

Titoa v Minister for Immigration, Citizenship and Multicultural Affairs (FCAFC) - primary judge should have dismissed application for review on additional basis Tribunal did make a determination whether non-revocation of visa cancellation was in the best interests of minor children

Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs (FCAFC) - requirement to 'consider' material in para 8.4(4) of Direction 99 is satisfied if decision-maker reads, identifies, understands and evaluates relevant material

BCF19 v Minister for Immigration and Multicultural Affairs (FedCFamC2G) - Authority failed to complete statutory task by accepting an arrest warrant was potentially determinative, but not making any finding whether it was in fact determinative



HABEAS CANEM

Merry Christmas from McGregor

Summaries With Link (Five Minute Read)

Titoa v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCAFC 163

Full Court of the Federal Court of Australia

Burley, McEvoy, & Needham JJ

Migration - special category visa - visa cancelled after criminal convictions - delegate refused to revoke cancellation - Administrative Appeals Tribunal affirmed - Federal Court dismissed application for judicial review - applicant's grounds of appeal did not arise as Minister's notice of contention must succeed - primary judge ought to have dismissed application for review on additional basis Tribunal did make a determination whether non-revocation was in the best interests of minor children - appeal dismissed.

[Titoa](#)

[From Benchmark Friday, 20 December 2024]

Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCAFC 160

Full Court of the Federal Court of Australia

Perram, Colvin, & Abraham JJ

Migration - partner visa - visa cancelled after criminal convictions - delegate refused to revoke cancellation - Administrative Appeals Tribunal affirmed - Federal Court dismissed application for judicial review - requirement to 'consider' material in para 8.4(4) of Direction 99 is satisfied if decision-maker reads, identifies, understands and evaluates relevant material and does not require 'proper, genuine and realistic consideration' - primary judge did not err in not finding Tribunal failed to consider matters in para 8.4(4)(d) and (f) - appeal dismissed.

[Nguyen](#)

[From Benchmark Friday, 20 December 2024]

BCF19 v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 1376

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

Judge Gerrard

Migration - safe haven enterprise visa - delegate refused visa - Immigration Assessment Authority affirmed - Authority failed to complete its statutory task by accepting a Sri Lankan arrest warrant was potentially determinative, but not making any finding whether it was in fact determinative - warrant was critical evidence and warranted more attention than cursory attention it received - application allowed.

[BCF19](#)

[From Benchmark Friday, 20 December 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Khachatryan v Armenia (EUHR5S) - In a matter of first impression, the European Court of Human Rights found that a member state has an obligation to provide a mechanism whereby victims of domestic violence may seek compensation for non-pecuniary damage from the perpetrator of the violence

Summaries With Link (Five Minute Read)

Khachatryan v Armenia, Case 11829/16

European Court of Human Rights

Guyomar P, Elósegui, Harutyunyan, Felici, Zünd, Sârcu, & Šimáková JJ

In Armenia, the victim had been subjected to numerous events of serious physical and emotional abuse by her former spouse. He repeatedly threatened and insulted her. He also repeatedly beat her, breaking bones and causing concussions and other grievous injuries. The perpetrator was charged with aggravated torture of a person who was dependent on the perpetrator. However, he was convicted of non-aggravated torture and sentenced to 18 months imprisonment. He did not serve any time as he was exempted under an Amnesty Act. The victim of the abuse unsuccessfully launched civil legal proceedings seeking compensation for both pecuniary and non-pecuniary damage for emotional and psychological suffering due to ill-treatment. Armenian domestic law did not provide for compensation for non-pecuniary damages in this situation. The judgment was affirmed by the local court of appeal. Armenia is one of the 46 member states comprising the Council of Europe and is subject to the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights. The victim sought review of the decision by the Armenian courts by alleging that Armenia had acted in violation of Article 3 of the *European Convention on Human Rights*, which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The Court found that the Armenian criminal-law mechanisms were so defective in terms of protecting the victim that they amounted to a breach of Armenia's obligations under Article 3. The European Court said that Armenia had repeatedly failed to discharge its procedural obligation to respond adequately to the serious acts of domestic abuse. In a decision of first impression, the Court also found that Article 3 imposed an obligation on the state to allow claims by the victim against the perpetrator for compensation for non-pecuniary damages in matters of serious domestic abuse. The Court stated that Article 3 created a positive obligation on the part of a member state in respect of allowing claims for non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the member state. The European Court awarded the victim €24,000 plus €2000 in costs as against Armenia.

[Khachatryan](#)



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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