

Friday, 21 June 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)

Save the Children Australia v Minister for Home Affairs (FCAFC) - writ of habeas corpus refused in respect of Australian citizen women and children in Syrian refugee camps, as the Commonwealth did not have control over the detention of these persons

Tatla by his litigation guardian Grewal v Minister for Immigration, Citizenship and Multicultural Affairs (FCAFC) - infant had not been shown to be an Australian citizen

Kumar v Minister for Immigration, Citizenship and Multicultural Affairs (FCAFC) - Federal Court had not erred in failing to find bias on the part of a judge of the then Federal Circuit Court

HDTY v Minister for Immigration, Citizenship and Multicultural Affairs (FCA) - Tribunal's finding that the applicant was a citizen of South Sudan was illogical or irrational

BGE19 v Minister for Home Affairs (FedCFamC2G) - delegate had failed to consider all elements of the applicant's argument and had made an irrational and illogical finding that a reference to Jeddah rather than Chittagong on a passport was a transliteration error

HABEAS CANEM

Small dog, big surf



Summaries With Link (Five Minute Read)

Save the Children Australia v Minister for Home Affairs [2024] FCAFC 81

Full Court of the Federal Court of Australia

Mortimer CJ, Kennett, & Horan JJ

Habeas corpus - Australian citizen women and citizen-eligible children, mostly wives and children of ISIS fighters, held in Syrian refugee camps - Federal Court dismissed application for writ of habeas corpus directed to the Commonwealth - primary judge had not erred in finding no agreement between the Commonwealth and the de facto governing authority over the region that includes the camps, and the Commonwealth therefore had no control over the custody of these persons - appeal dismissed.

[Save the Children Australia](#)

[From Benchmark Friday, 21 June 2024]

Tatla by his litigation guardian Grewal v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCAFC 78

Full Court of the Federal Court of Australia

Markovic, Derrington, & Neskovic JJ

Citizenship - Minister declined to issue a Notice of Certificate of Evidence of Australian Citizenship to an infant - Federal Court refused to make declaration that the infant had been an Australian citizen since his tenth birthday - primary judge had not erred in finding that it had not been established that the infant's permanent abode was in Australia and that he was therefore not shown to be within subparagraph (b) of the definition of "ordinarily resident" - appeal dismissed.

[Tatla by his litigation guardian Grewal](#)

[From Benchmark Friday, 21 June 2024]

Kumar v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCAFC 79

Full Court of the Federal Court of Australia

Collier ACJ, Goodman, & Meagher JJ

Migration - Partner (Temporary) (Class UK) visa - delegate refused visa - the then Migration Review Tribunal affirmed - the then Federal Circuit Court dismissed application for judicial review - Federal Court refused to issue constitutional writs referable to the judgment of the Federal Circuit Court - primary judge had not erred in failing to find that the Federal Circuit Court judge had been biased - leave refused to rely on fresh evidence of depression after alleged family violence - appeal dismissed.

[Kumar](#)

[From Benchmark Friday, 21 June 2024]

HDTY v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 633

Federal Court of Australia

Meagher J

Migration - Global Special Humanitarian visa - visa cancelled after criminal convictions - delegate refused to revoke cancellation - Administrative Appeals Tribunal affirmed - Tribunal's finding that the applicant was a citizen of South Sudan was illogical or irrational, as it was based on the premise that the Azande people are an "indigenous ethnic community of South Sudan", where there was no evidence to support such a finding - application allowed.

[HDTY](#)

[From Benchmark Friday, 21 June 2024]

BGE19 v Minister for Home Affairs [2024] FedCFamC2G 549

Federal Circuit and Family Court of Australia (Division 2)

Judge Obradovic

Migration - Resident Return visa - visa cancelled for giving incorrect answers on an earlier protection visa application, by claiming to be stateless and claiming her Bangladesh passport was not genuine - delegate refused to revoke cancellation - delegate had failed to consider part of the applicant's primary argument: that her father's Bangladesh passport was not genuine and this was proof he was not a Bangladesh citizen - further, the delegate had made an irrational and illogical finding by accepting the applicant had been born in Jeddah, Saudi Arabia, and then finding that the indication of Chittagong as the applicant's place of birth on her passport, rather than Jeddah, was a transliteration error rather than proof the passport was not genuine - application allowed.

[BGE19](#)

[From Benchmark Friday, 21 June 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Food and Drug Administration v Alliance for Hippocratic Medicine (SCOTUS) - Plaintiff pro-life doctors and medical associations challenged Food and Drug Administration (FDA) decision to relax prescribing restrictions on a drug used to terminate pregnancies. The Court held the plaintiffs lacked standing to challenge the FDA decision

Summaries With Link (Five Minute Read)

Food and Drug Administration v Alliance for Hippocratic Medicine [2024] 602 US ____
Supreme Court of the United States

In 2021, the Food and Drug Administration (FDA) relaxed regulations for prescribing mifepristone, an abortion drug, to make the drug more accessible to women. The plaintiffs, consisting of pro-life doctors and medical associations, brought suit, alleging that the FDA regulations violated the *Administrative Procedure Act*. The District Court granted plaintiffs an injunction. The Court of Appeals found that plaintiffs had standing to sue and were likely to win on the merits. Reversing the lower courts, a unanimous Supreme Court held that the doctors and medical societies lacked standing to bring suit. Article III of the US Constitution limits the jurisdiction of federal courts to actual cases and controversies. The Court said that this is a matter of separation of powers. General complaints about how the government conducts its business are matters for the legislative and executive branches, not the judiciary. To establish standing, a plaintiff must demonstrate that (1) the plaintiff will likely suffer an injury in fact; (2) that the injury would likely be caused by the defendant; and (3) that the injury can be redressed by judicial relief. The plaintiffs are pro-life and do not prescribe the abortion drug. Nothing contained in the FDA regulations requires doctors to prescribe this drug. In short, the plaintiffs are acting to restrict the availability of the drug to others. While plaintiffs argued that they have suffered injury because doctors may suffer conscience objections when forced to perform abortions or perform abortion related treatment, the argument failed because federal conscience laws explicitly protect doctors from being required to perform abortions or other treatment that violates their consciences. The Court also rejected arguments that, if plaintiffs were not allowed to sue, then no one would have standing to challenge the FDA's actions. The Court said that even if this were true, it could not create standing and that some issues must be dealt with through the political and democratic processes and not the courts.

[Food and Drug Administration](#)



Poem for Friday

"Hope" is the thing with feathers (314)

By Emily Dickinson (10 December, 1830-15 May, 1886)

Hope is the thing with feathers -
That perches in the soul -
And sings the tune without the words -
And never stops - at all -

And sweetest - in the Gale - is heard -
And sore must be the storm -
That could abash the little Bird
That kept so many warm -

I've heard it in the chilliest land -
And on the strangest Sea -
Yet - never - in Extremity,
It asked a crumb - of me.

Emily Dickinson https://en.wikipedia.org/wiki/Emily_Dickinson

Emily Dickinson Museum https://en.wikipedia.org/wiki/Emily_Dickinson_Museum

Hope is the thing with feathers, sung by Nazareth College Treble Choir, Linehan Chapel,
Nazareth College

<https://www.youtube.com/watch?v=gDlSo4hEzmE>

Recitation 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 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



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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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