

Friday, 21 December 2018

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)

Beni v Minister for Immigration and Border Protection (FCAFC) - migration law - cancellation of Temporary Business Entry (Class UC) (Subclass 457) visa - appeal dismissed

ESD17 v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant appellant protection visa - applicant had been sexually abused - Authority erroneously failed to ask why applicant 'remained silent' about his sexual abuse - appeal allowed

CUV18 v Minister for Home Affairs (FCA) - migration law - Tribunal erred in affirming delegate's refusal to revoke cancellation of Class BS Subclass 801 Spouse (Residence) visa - decision quashed - application allowed

EDV17 v Minister for Immigration and Border Protection (FCA) - migration law - refusal of protection visa - application for extension of time to appeal refused

DQU16 v Minister for Home Affairs (FCA) - migration law - refusal to grant temporary protection visas - extension of time to appeal granted in respect of one ground of appeal

Summaries With Link (Five Minute Read)

[Beni v Minister for Immigration and Border Protection \[2018\] FCAFC 228](#)

Full Court of the Federal Court of Australia

McKerracher, Reeves & Thawley JJ

Migration law - Minister's delegate cancelled appellant's Temporary Business Entry (Class UC) (Subclass 457) visa (cancellation decision) - Tribunal found, due to review application being brought out of time in s347(1)(b) *Migration Act 1958* (Cth) (Migration Act) and reg 4.10 *Migration Regulations 1994* (Cth), that it lacked jurisdiction to review delegate's decision - Federal Circuit Court dismissed application for judicial review - an email which gave notice of cancellation decision had been sent on 'same day' of cancellation decision - Tribunal was "prepared to accept" appellant did not receive the email on that day but concluded it had been "transmitted" and notification 'deemed to have occurred' under s494C(5) Migration Act - whether notice given to appellant "by transmitting the document by ... email" under reg 2.55(3)(d)(ii) Regulations - whether Tribunal empowered to extend time for bringing of application due to ss29(7) & 29(8) *Administrative Appeals Tribunal Act 1975* (Cth) - *Brown v Minister for Home Affairs* [2018] FCA 1643 - *Brown v Minister for Home Affairs (No 2)* [2018] FCA 1787 - held: appeal dismissed.

[Beni](#)

[From Benchmark Friday, 21 December 2018]

ESD17 v Minister for Immigration and Border Protection [2018] FCA 1716

Federal Court of Australia

Rangiah J

Migration law - first respondent's delegate refused to grant protection visa to appellant - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - whether Authority erroneously failed to consider whether appellant had 'well-founded fear of persecution' - whether Authority erroneously failed to ask question whether 'appellant's silence about his sexual abuse' was due to fear of persecution - whether s5J(1)(b) *Migration Act 1958* (Cth) satisfied - principles in *S395/2002 v Minister for Immigration and Multicultural Affairs* [2003] HCA 71 - whether error by primary judge in finding 'no modification of conduct' requiring Authority to ask why 'applicant remained silent' - held: Authority erroneously failed to ask why applicant 'remained silent' about his sexual abuse - appeal allowed.

[ESD17](#)

[From Benchmark Friday, 21 December 2018]

CUV18 v Minister for Home Affairs [2018] FCA 2009

Federal Court of Australia

Jagot J

Migration law - Minister's delegate declined to revoke 'mandatory cancellation' of 'applicant's Class BS Subclass 801 Spouse (Residence) visa' due to failure of "character test" - Administrative Appeals Tribunal affirmed delegate's decision - Tribunal was not satisfied there was "another reason why the original decision [to cancel the visa] should be revoked" - whether Tribunal applied 'incorrect provisions' of Ministerial Direction - whether failure to consider possibility of applicant's exposure to indefinite detention - whether miscarriage of approach to 'non-refoulement obligations' - whether application of 'wrong law' - whether 'irrelevant

consideration' taken into account - s501(3A) *Migration Act 1958* (Cth) - held: error established in respect of application of Ministerial Direction and approach to non-refoulement obligation - Tribunal's decision quashed - application allowed.

[CUV18](#)

[From Benchmark Friday, 21 December 2018]

EDV17 v Minister for Immigration and Border Protection [2018] FCA 1980

Federal Court of Australia

McKerracher J

Migration law - Minister's delegate refused to grant applicant protection visa - Administrative Appeals Tribunal found applicant did not establish 'well-founded fear of persecution' or that he met 'complementary protection criterion' - Federal Circuit Court dismissed judicial review proceedings - applicant sought extension of time to appeal - explanation for delay - merits of proposed appeal - r36.05 *Federal Court Rules 2011* (Cth) - held: proposed grounds had 'insufficient merit' to warrant extension of time to appeal - application refused.

[EDV17](#)

[From Benchmark Friday, 21 December 2018]

DQU16 v Minister for Home Affairs [2018] FCA 1695

Federal Court of Australia

Rangiah J

Migration law - Minister's delegate refused to grant applicants temporary protection visas - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - applicants, under r36.05(1) *Federal Court Rules 2011* (Cth), sought extension of time to appeal - delay's length - explanation for delay - prejudice - prospects of success - *SZTRY v Minister for Immigration and Border Protection [2015] FCAFC 86* - held: Court satisfied to grant extension of time to appeal on ground that Authority had erred by failure to apply principles from *S395/2002 v Minister for Immigration and Multicultural Affairs [2003] HCA 71* to its consideration of 'complementary protection criterion' under s36(2)(aa) *Migration Act 1958* (Cth).

[DQU16](#)

[From Benchmark Friday, 21 December 2018]



Benchmark

**To Mrs K____, On Her Sending Me an English
Christmas Plum-Cake at Paris**

By: Helen Maria Williams

What crowding thoughts around me wake,
What marvels in a Christmas-cake!
Ah say, what strange enchantment dwells
Enclosed within its odorous cells?
Is there no small magician bound
Encrusted in its snowy round?
For magic surely lurks in this,
A cake that tells of vanished bliss;
A cake that conjures up to view
The early scenes, when life was new;
When memory knew no sorrows past,
And hope believed in joys that last! —
Mysterious cake, whose folds contain
Life's calendar of bliss and pain;
That speaks of friends for ever fled,
And wakes the tears I love to shed.
Oft shall I breathe her cherished name
From whose fair hand the offering came:
For she recalls the artless smile
Of nymphs that deck my native isle;
Of beauty that we love to trace,
Allied with tender, modest grace;
Of those who, while abroad they roam,
Retain each charm that gladdens home,
And whose dear friendships can impart
A Christmas banquet for the heart!

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

Helen Maria Williams (17 June 1759 – 15 December 1827) was a British novelist, poet, and translator of French-language works. A religious dissenter, she was a supporter of abolitionism and of the ideals of the French Revolution; she was imprisoned in Paris during the Reign of Terror, but nonetheless spent much of the rest of her life in France.. A controversial figure in her own time, the ..

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