

Friday, 22 May 2020

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)

BYN18 v Minister for Home Affairs (FCAFC) - migration law - cancellation of Class XA Subclass 866 Protection visa - Federal Circuit Court erred in finding lack of jurisdiction to deal with application for extension of time to seek review - appeal allowed

DVE18 v Minister for Home Affairs (FCAFC) - migration law - refusal of Refugee and Humanitarian (Class XB) visa - primary judge erred in concluding claim of risk of harm to appellant's wife and child was 'not seriously advanced' - appeal allowed

BEG17 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (FCA) - migration law - refusal to grant protection visas - failure by Tribunal to provide 'real and meaningful invitation to the hearing' - decision unreasonable - appeal allowed

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Summaries With Link (Five Minute Read)

BYN18 v Minister for Home Affairs [2020] FCAFC 80

Full Court of the Federal Court of Australia

Nicholas, Markovic & Lee JJ

Migration law - appellant's Class XA Subclass 866 Protection visa cancelled under s501(3A) *Migration Act 1958* (Cth) (Migration Act) after Minister's delegate formed view appellant had 'substantial criminal record' under s501(6)(a) Migration Act and failed 'character test' - appellant given notice of decision by letter from Department which 'unnamed person' signed - appellant sought extension of time to contend that person who signed letter 'did not hold a delegation from the Minister authorising him or her to do what was required of the Minister by s501CA(3)' Migration Act - Judge Street of Federal Circuit Court dismissed application for extension of time on basis of lack of jurisdiction to deal with appellant's application - Judge Flick of Federal Court of Australia found notification given to appellant of decision to cancel appellant's visa was not a "decision" which was 'susceptible of judicial review' - whether giving of notice under s501CA(3) Migration Act was a "migration decision" 'as defined by' s5 Migration Act - 'privative clause decision' - ss474(a), 474(g) & 474(h) Migration Act - whether to decline to set aside Flick J's judgment 'on discretionary grounds' - whether decision in *EFX17 v Minister for Immigration and Border Protection* [2019] FCAFC 230 'plainly wrong' - whether unsatisfactory explanation for delay - held: Flick J erred in finding Street J lacked jurisdiction to deal with application for extension of time - appeal allowed.

[BYN18](#)

[From Benchmark Friday, 22 May 2020]

DVE18 v Minister for Home Affairs [2020] FCAFC 83

Full Court of the Federal Court of Australia

Perram, Charlesworth & Stewart JJ

Migration law - appellant applied for Refugee and Humanitarian (Class XB) visa under s46 *Migration Act 1958* (Cth) - 'nearly five years passed' before application's determination, by which time appellant was married with son - wife and son join as 'secondary applicants' - Minister refused to grant visa - appellant sought judicial review - Markovic J of Federal Court of Australia accepted that 'Minister had not had regard to the risk of harm faced by the appellant's wife and child' but concluded appellant had not advanced claim concerning risk which gave rise to an obligation to consider the claim - review application was dismissed - whether denial of procedural fairness, failure to undertake statutory task and/or constructive failure to exercise jurisdiction - whether Minister's decision 'legally unreasonable' - held: Markovic J erred in concluding that risk of harm was 'only faintly raised' in statutory declarations and that claim of risk of harm was 'not seriously advanced' - appeal allowed.

[DVE18](#)

[From Benchmark Friday, 22 May 2020]

BEG17 v Minister for Immigration, Citizenship, Migrant Services and Multicultural



Affairs [2020] FCA 660

Federal Court of Australia

Perry J

Migration law - first and second appellants were husband and wife - third appellant was son of first and second appellants - Refugee Review Tribunal affirmed decision of Minister's delegate to refused to grant protection visas to appellants - Tribunal accepted first and second appellants' contention that if they were returned to India as an 'inter-caste couple' there was 'real chance' they would be victims of 'honour killings' - however Tribunal found first and second appellants had 'right to enter and reside in Nepal', a right which they 'had not taken all possible steps to avail themselves of' - Tribunal found Australia did not owe appellants protection obligations under s36(3) *Migration Act 1958* (Cth) (Migration Act) - held: Tribunal, contrary to s425 Migration Act, failed to extend 'real and meaningful invitation to the hearing' - appellant were not provided with 'real chance to present their case' - Tribunal's decision unreasonable due its 'failure to advise' appellants they could seek adjournment and 'to put further material before Tribunal concerning 'Nepal issue' - appeal allowed.

[BEG17](#)

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The Bee

By: Emily Dickinson

Like trains of cars on tracks of plush
I hear the level bee:
A jar across the flowers goes,
Their velvet masonry
Withstands until the sweet assault
Their chivalry consumes,
While he, victorious, tilts away
To vanquish other blooms.
His feet are shod with gauze,
His helmet is of gold;
His breast, a single onyx
With chrysoprase, inlaid.
His labor is a chant,
His idleness a tune;
Oh, for a bee's experience
Of clovers and of noon!

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

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