

Friday, 25 October 2024

## Weekly Immigration Law Review

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

### Search Engine

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### Executive Summary (One Minute Read)

**AAI20 v Minister for Immigration, Citizenship and Multicultural Affairs (No 2)** (FCA) - Authority applied the wrong test as to whether new information was 'credible personal information' under s 473DD of *Migration Act 1958* (Cth)

**BSR18 v Minister for Immigration and Multicultural Affairs** (FedCFamC2G) - Authority erred by relying on late provision of material in finding it was not 'credible personal information' under s 473DD of *Migration Act 1958* (Cth)

**EVI17 v Minister for Immigration and Multicultural Affairs** (FedCFamC2G) - unwarranted assumption by Authority as to conduct of applicant's family

**AKL18 v Minister for Immigration and Multicultural Affairs** (FedCFamC2G) - Authority erred by not considering relevant factual aspects as to future conduct of authorities in home country

**AWG18 v Minister for Immigration, Citizenship and Multicultural Affairs** (FedCFamC2G) - Authority failed to engage with the likelihood of an applicant suffering serious or significant harm by way of sexual harassment on public transport and otherwise made unreasonable findings

**Thapa v Minister for Immigration, Citizenship and Multicultural Affairs** (FedCFamC2G) - Tribunal failed to engage with a sufficiently clearly articulated claim of significant incentives for the applicant to return to Nepal - completion of studies relevant to student visa not a basis for Court to refuse to remit to Tribunal

## HABEAS CANEM

### Habeus Halloween



## Summaries With Link (Five Minute Read)

### **AAI20 v Minister for Immigration, Citizenship and Multicultural Affairs (No 2) [2024] FCA 1223**

Federal Court of Australia

Feutrill J

Migration - safe haven enterprise visa - delegate refused visa - Immigration Assessment Authority affirmed - Federal Circuit and Family Court dismissed application for judicial review - Authority erred by refusing to consider as 'new information' a photograph allegedly of the appellant in Tamil Tigers uniform, as it was not satisfied photograph was of appellant - correct test for whether photograph was 'credible personal information' under s473DD of the *Migration Act 1958* (Cth), was whether photograph was capable of being believed to be of the appellant, not whether Authority actually so satisfied - in the alternative, if Authority had applied correct test, conclusion of incapability legally unreasonable - appeal allowed.

[AAI20](#)

[From Benchmark Friday, 25 October 2024]

### **BSR18 v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 1072**

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

Judge Mansini

Migration - safe haven enterprise visa - delegate refused visa - Immigration Assessment Authority affirmed - Authority erred by relying primarily if not solely on late provision of letter from applicant's friend in finding letter was not 'credible personal information', and therefore 'new information' it could consider under s473DD of *Migration Act 1958* (Cth) - similar circumstances obtained and same conclusion reached by Court in *BLF18 v Minister for Immigration and Multicultural Affairs* [2024] FedCFamC2G 1067 - application allowed.

[BSR18](#)

[From Benchmark Friday, 25 October 2024]

### **EVI17 v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 1052**

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

Judge Symons

Migration - safe haven enterprise visa - delegate refused visa - Immigration Assessment Authority affirmed - Authority's rejection of applicant's claim that he had reported abduction of his brother-in-law to Sri Lankan police on basis of assumption that at least one of the applicant's wife's brothers was ready and willing to report that disappearance - assumption unwarranted - unreasonableness established - application allowed.

[EVI17](#)

[From Benchmark Friday, 25 October 2024]

### **AKL18 v Minister for Immigration and Multicultural Affairs [2024] FedCFamC2G 978**

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

Judge Riley

Migration - safe haven enterprise visa - delegate refused visa - Immigration Assessment Authority affirmed - Authority erred by not taking relevant considerations into account, namely whether Sri Lankan authorities may come to know or suspect applicant's father, cousin, and grandmother were involved with Tamil Tigers, and that authorities would investigate and discover applicant's family connections to Tamil Tigers if he returned to Sri Lanka after having departed illegally - application allowed.

[AKL18](#)

[From Benchmark Friday, 25 October 2024]

## **AWG18 v Minister for Immigration, Citizenship and Multicultural Affairs [2024]**

**FedCFamC2G 1062**

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

Judge Egan

Migration - safe haven enterprise visa - delegate refused visa - Immigration Assessment Authority affirmed - Authority failed to intellectually engage with the likelihood of the daughter applicant suffering serious or significant harm by way of sexual harassment while travelling on public transport in eastern Sri Lanka, or how her being a Tamil woman in the east of Sri Lanka might increase her chances of being sexually harassed - bare finding that daughter could be protected by her father lacked evident and intelligible justification - legally unreasonable and illogical for the Authority to reject the possibility of future sexual harassment on public transport partly on basis that daughter had not claimed past sexual harassment on public transport in Sri Lanka, as the daughter had been three years old when she left Sri Lanka - application allowed.

[AWG18](#)

[From Benchmark Friday, 25 October 2024]

## **Thapa v Minister for Immigration, Citizenship and Multicultural Affairs [2024]**

**FedCFamC2G 1015**

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

Judge McCabe

Migration - student visa - delegate refused visa - Administrative Appeals Tribunal affirmed - Tribunal failed to engage with clearly articulated claim that fact that one of applicant's children remained in Nepal, and relative cost of childcare in Australia, were significant incentives for applicant and her husband to return to Nepal - the Court rejected Minister's submission that it should in its discretion refuse relief on basis that applicant had long since completed her Australian education and no longer sought to be in Australia, as Minister could not establish absence of possible utility in rehearing by Tribunal, and what Tribunal would make of remitted application was a matter for it - application allowed.

[Thapa](#)

[From Benchmark Friday, 25 October 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**In the Matter of McAleenon (UKSC)** - Supreme Court held that an individual had the right to compel judicial review of a government decision relating to landfill contamination even though a private right of action against the alleged polluter may have been available

### Summaries With Link (Five Minute Read)

**In the Matter of McAleenon [2024] UKSC 31**

Supreme Court of the United Kingdom

Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Stephens, & Lady Simler

Noeleen McAleenon resided near a landfill that was operated by a private firm. Ms McAleenon maintained that the Lisburn and Castlereagh Council had regulatory authority concerning nuisances like the landfill. She sought judicial review of how the Council had dealt with complaints about the landfill. The government argued that she could not seek judicial review of the Council's actions because she had available to her a private right of action against the alleged polluter. The Court of Appeal sustained this objection and held that there were suitable alternative remedies available to Ms McAleenon and that judicial review was not available to her. The Supreme Court reversed and found that the existence of a private claim in nuisance against the alleged polluter did not constitute a suitable alternative remedy to judicial review of the Council's conduct. The Court stated that the fact that different proceedings could have been brought against another party did not mean that there existed a suitable alternative so as to preclude judicial review. The Court further stated that it is not the courts' role to say that a claimant should have sued someone other than the branch of government whose actions were being questioned.

[In the Matter of McAleenon](#)

# Benchmark

## Poem for Friday

### Life

By Charlotte Brontë (1816-1855)

LIFE, believe, is not a dream  
So dark as sages say;  
Oft a little morning rain  
Foretells a pleasant day.  
Sometimes there are clouds of gloom,  
But these are transient all;  
If the shower will make the roses bloom,  
O why lament its fall ?

Rapidly, merrily,  
Life's sunny hours flit by,  
Gratefully, cheerily,  
Enjoy them as they fly !

What though Death at times steps in  
And calls our Best away ?  
What though sorrow seems to win,  
O'er hope, a heavy sway ?  
Yet hope again elastic springs,  
Unconquered, though she fell;  
Still buoyant are her golden wings,  
Still strong to bear us well.  
Manfully, fearlessly,  
The day of trial bear,  
For gloriously, victoriously,  
Can courage quell despair !

**Charlotte Brontë** was born on 21 April 1816, in West Yorkshire, UK. She was an English poet and novelist. She was the eldest of the three Brontë sisters. Her siblings were Emily Brontë, Anne Brontë, Branwell Brontë, Elizabeth Brontë, and Maria Brontë. She had a year of formal education at Clergy Daughters' School at Cowan Bridge. Thereafter she and her siblings learned at home, from each other and their parents, and aunt Elizabeth Branwell who lived with the family. She is famous for her novel *Jane Eyre*, which she first published under the pseudonym Currer Bell in 1847. She was married to Arthur Bell Nicholls from 1854 to 1855, for the last 9 months of her life. Nicholls had been the curate



to Charlotte's father, Patrick Brontë, an Anglican clergyman. Charlotte Brontë died on 31 March 1855 in Haworth, England.

Reading 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 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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