

Friday, 26 April 2019

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)

CQR17 v Minister for Immigration and Border Protection (FCAFC) - migration law - refusal to grant appellant a Safe Haven Visa - Secretary omitted to provide certain documents to Authority - jurisdictional error not established - appeal dismissed

Minister for Home Affairs v Hunt (FCAFC) - migration law - primary judge quashed Minister's decision to cancel appellant's visa 'on character grounds' - Minister's appeal allowed

DFQ17 v Minister for Immigration and Border Protection (FCAFC) - migration law - refusal to grant protection visa - Tribunal found appellant's review application out of time - letter from delegate did not 'state' time within which appellant could bring judicial review application - appeal allowed

APF16 v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant appellant a protection visa - appeal allowed

Pallas v Minister for Home Affairs (FCA) - migration law - refusal to revoke cancellation of visa under s501(3A) *Migration Act 1958* (Cth) - application for judicial review dismissed

Akbar v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant appellant Temporary Graduate (Class VC) Temporary Graduate (Graduate Work) (Subclass 485) visa - appeal dismissed

DVP16 v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant Protection (Class XA) visa - appeal dismissed

BTU18 v Minister for Home Affairs (FCA) - migration law - refusal to grant Protection (Class XA) (subclass 866) visa - appeal dismissed

DOL16 v Minister for Immigration and Border Protection (FCA) - migration law - refusal to grant protection visa - appeal dismissed

Benrabah v Minister for Home Affairs (FCA) - migration law - cancellation of Class AZ Subclass 866 Protection visa - refusal to revoke cancellation - extension of time to apply for judicial review granted - application dismissed

Summaries With Link (Five Minute Read)

CQR17 v Minister for Immigration and Border Protection [2019] FCAFC 61

Full Court of the Federal Court of Australia

Reeves, Jagot & Derrington JJ

Migration law - Minister's delegate refused to grant appellant Safe Haven Enterprise Visa - Immigration Assessment Authority affirmed delegate's decision - Federal Circuit Court refused to issue Constitutional writ directed to Authority as sought by appellant - appeal concerned whether Secretary's omission to provide certain documents to Authority breached s473CB(1)(c) *Migration Act 1958* (Cth) and, if it did breach s473B(1)(c), whether Authority's 'subsequent decision' vitiated due to jurisdictional error - held: jurisdictional error not established - appeal dismissed.

[CQR17](#)

[From Benchmark Tuesday, 23 April 2019]

Minister for Home Affairs v Hunt [2019] FCAFC 58

Full Court of the Federal Court of Australia

McKerracher, Perry & Banks-Smith JJ

Migration law - Minister for Home Affairs cancelled appellant's visa on 'character grounds' - primary judge, on application for judicial review, quashed Minister's decision - Minister appealed - whether Minister failed to take suspended nature of sentence in respect of certain convictions into account - s501(2) *Migration Act 1958* (Cth) - held: 'no proper basis' for inference that Minister failed to take suspended nature of sentence into account - Minister's appeal allowed.

[Minister for Home Affairs](#)

[From Benchmark Tuesday, 23 April 2019]

DFQ17 v Minister for Immigration and Border Protection [2019] FCAFC 64

Full Court of the Federal Court of Australia

Rares, Perram & Farrell JJ

Migration law - delegate refused to grant appellant a protection visa - Administrative Appeals Tribunal found appellant's application for judicial review was out of time - whether 'post office box' which appellant provided on application for protection visa was 'address for service' under 494B(4)(c)(i) *Migration Act 1958* (Cth) - whether appellant had been 'duly notified' by delegate of visa's refusal by letter dated 3/2/17 - meaning of 'state' in s66(2)(d)(ii) *Migration Act* - whether letter 'stated' time within which review application could be lodged with Tribunal - held: post office box address was address for service - letter did not 'state' time within which appellant could lodge review application - appeal allowed.

[DFQ17](#)

[From Benchmark Friday, 26 April 2019]

APF16 v Minister for Immigration and Border Protection [2019] FCA 524

Federal Court of Australia

McKerracher J

Migration law - Minister's delegate refused to grant appellant a protection visa under s65 *Migration Act 1958* (Cth) - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court of Australia dismissed application for review - appellant contended Federal Circuit Court erroneously found Tribunal 'lawfully considered evidence essential to' review's resolution and erroneously found Tribunal 'considered all integers' of appellant's claims - whether adequate consideration of 'corroborative evidence' - held: appeal allowed.

[APF16](#)

[From Benchmark Tuesday, 23 April 2019]

Pallas v Minister for Home Affairs [2019] FCA 523

Federal Court of Australia

Collier J

Migration law - Assistant Minister for Home Affairs declined to revoke decision to cancel applicant's visa under s501(3A) *Migration Act 1958* (Cth) - applicant sought judicial review - whether legal unreasonableness - whether failure to comply with 'rules of natural justice and procedural fairness' - whether 'due regard' to interests of applicant's 'minor children' and 'family members' - whether to grant interlocutory adjournment application - whether to grant 'referral certificate for pro bono assistance' - held: adjournment refused - application dismissed.

[Pallas](#)

[From Benchmark Tuesday, 23 April 2019]

Akbar v Minister for Immigration and Border Protection [2019] FCA 515

Federal Court of Australia

Collier J

Migration law - Minister's delegate refused to grant appellant Temporary Graduate (Class VC) Temporary Graduate (Graduate Work) (Subclass 485) visa - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court dismissed judicial review application -

whether, in finding appellant 'not permitted to change the nominated occupation during' visa application's processing, Tribunal's decision contrary to s104 *Migration Act 1958* (Cth) - whether "change of circumstances" under s104 Migration Act - whether decisions in *Patel v Minister for Immigration and Citizenship* [2011] FCA 1220; (2011) and *Pavuluri v Minister for Immigration and Border Protection* [2014] FCA 502 'wrongly decided' - whether 'Form 1022' was misleading - appeal dismissed.

[Akbar](#)

[From Benchmark Tuesday, 23 April 2019]

DVP16 v Minister for Immigration and Border Protection [2019] FCA 539

Federal Court of Australia

Wigney J

Migration law - Minister's delegate refused to grant appellant a Protection (Class XA) visa - Refugee Review Tribunal affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - appellant appealed - whether "crucial legal issues" not "explained" in primary judge's judgment - whether denial of procedural fairness - whether erroneous exercise of jurisdiction by Tribunal - whether appellant received 'fair hearing' - held: appeal dismissed.

[DVP16](#)

[From Benchmark Friday, 26 April 2019]

BTU18 v Minister for Home Affairs [2019] FCA 540

Federal Court of Australia

Wigney J

Migration law - appellant sought Protection (Class XA) (subclass 866) visa - Minister's delegate refused to grant application - appellant unsuccessfully sought review in Administrative Appeals Tribunal - appellant, pursuant to s476 *Migration Act 1958* (Cth), challenged Tribunal's decision in Federal Circuit Court of Australia, contending Tribunal failed to take appellant's 'medical condition' into account in assessment of appellant's credibility - appellant also contended Tribunal failed to take 'two letters' which appellant provided in support of application into account and unreasonably failed to contact author of one letter - primary judge dismissed application - appellant appealed - procedural fairness - 'delay in delivering written reasons' - ss424AA or 424A Migration Act - 'complementary protection criterion' - held: no error established - appeal dismissed.

[BTU18](#)

[From Benchmark Friday, 26 April 2019]

DOL16 v Minister for Immigration and Border Protection [2019] FCA 541

Federal Court of Australia

Wigney J

Migration law - Minister's delegate refused appellant's applicant for protection visa - Refugee Review Tribunal affirmed delegate's decision - Federal Circuit Court dismissed application for



judicial review - appellant appealed - whether failure to consider appellant's persecution evidence - whether denial of procedural fairness - whether failure to consider appellant's claims - whether to grant appellant leave to raise ground contending failure to give 'adverse country information' to appellant - held: no error established - appeal dismissed.

[DOL16](#)

[From Benchmark Friday, 26 April 2019]

Benrabah v Minister for Home Affairs [2019] FCA 521

Federal Court of Australia

Steward J

Migration law - applicant's Class AZ Subclass 866 Protection visa cancelled on basis applicant did not pass character test under s501(6) *Migration Act 1958* (Cth) (Migration Act) - Minister's delegate declined to revoke cancellation under s501CA(4) Migration Act - Administrative Appeals Tribunal affirmed delegate's decision - applicant sought extension of time to apply for judicial review - whether failure to consider relevant considerations - s499 Migration Act - "Direction 65" - held: extension of time granted - error not established - application dismissed.

[Benrabah](#)

[From Benchmark Friday, 26 April 2019]



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From: The Tempest

By: William Shakespeare, 1564 - 1616

Come unto these yellow sands,
And then take hands:
Court'sied when you have, and kiss'd,--
The wild waves whist--
Foot it featly here and there;
And, sweet sprites, the burthen bear.
Hark, hark!
Bow, wow,
The watch-dogs bark:
Bow, wow.
Hark, hark! I hear
The strain of strutting chanticleer
Cry, Cock-a-diddle-dow!

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