



Friday, 26 April 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)

Adefarakan v Minister for Immigration, Citizenship and Multicultural Affairs (FCA) -
Tribunal overlooked material going to rehabilitation for character test

Manebona v Minister for Immigration, Citizenship and Multicultural Affairs (FCA) -
Tribunal overlooked relevant evidence from ex-partner

HABEAS CANEM

Country smile



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Summaries With Link (Five Minute Read)

Adefarakan v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 409

Federal Court of Australia

Bromwich J

Migration - partner visa - visa cancelled after criminal convictions - sentence later reduced on appeal from 12 months to 9 months, and so applicant no longer had a "substantial criminal record" - delegate decided not to revoke cancellation on alternate basis of risk of recidivism - Administrative Appeals Tribunal affirmed - Tribunal overlooked material applicant had expressly relied on concerning rehabilitation efforts in community as required to be considered by para 8.1.2(2)(b)(ii) of Direction 99 - error material - application allowed.

[Adefarakan](#)

[From Benchmark Friday, 26 April 2024]

Manebona v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 402

Federal Court of Australia

Stewart J

Migration - spouse visa - visa cancelled after criminal convictions - delegate decided not to revoke cancellation - Administrative Appeals Tribunal affirmed - Tribunal erred in concluding there were no further statements from applicant's ex-partner (and victim of his domestic violence offences) after January 2021 when in fact she had sworn affidavit in May 2022 referred to in earlier judicial review judgments regarding applicant - reasons for judgment from earlier proceedings before Tribunal - Tribunal had therefore overlooked relevant evidence - error material - application allowed.

[Manebona](#)

[From Benchmark Friday, 26 April 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Kirkorov v Lithuania (Eur Ct HR) - Decision of Lithuania to deny entry to Russian entertainer on national security grounds did not amount to a violation of Article 10 (freedom of expression) of the *European Convention on Human Rights*

Summaries With Link (Five Minute Read)

Kirkorov v Lithuania, ECHR 096 (2024)

European Court of Human Rights

Bårdsen P, Ilievski, Kuris, Yüksel, Schembri Orland, Krenc, & Derencinovic JJ

Kirkorov was a popular singer from Russia who had been found by the Lithuanian Migration Department to have publicly supported Vladimir Putin and supported Russia's actions in Crimea. The government of Lithuania placed Kirkorov on a list of aliens barred from entering the country. Kirkorov unsuccessfully challenged this decision in the Lithuanian courts. Kirkorov then brought proceedings before the European Court of Human Rights alleging that the actions of Lithuania violated his right to freedom of expression guaranteed by Article 10 of the *European Convention of Human Rights*. Article 10 provides that everyone has the right to freedom of expression without interference by public authority and regardless of frontiers. However, these rights may be subject to such restrictions as are prescribed by law "and are necessary in a democratic society, in the interests of national security' or public safety. The European Court found that, while the right of a foreigner to remain in a country is not a Convention right, 'immigration controls must be exercised consistently with Convention obligations'. The Court ruled that the ban on entry was materially related to the right of expression because, under Article 10, no distinction can be drawn between nationals and foreigners. As entry to Lithuania was denied on the basis of Kirkorov's past statements, the Court found that there had been an interference with his Article 10 rights. The issue came down to whether Lithuania's actions were permissible as being prescribed by law and necessary in the interests of national security. The Court found that Lithuania's actions were prescribed by law that purported to be based on national security. Nevertheless, it was for the courts to determine whether the invocation of national security had a reasonable basis or was contrary to common sense. The Court concluded that there had not been a violation of Article 10 in light of the careful scrutiny by the Lithuanian courts to the claim that Kirkorov represented a threat to national security. Further, the European Court held that the measures taken by Lithuania were not disproportionate and that the national courts had properly weighed the interests of national security against the measures taken against Kirkorov.

[Kirkorov](#)

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L A W Y E R S



Poem for Friday

The Song of a Comet

By: Clark Ashton Smith (1893-1961)

A plummet of the changing universe,
Far-cast, I flare
Through gulfs the sun's uncharted orbits bind,
And spaces bare
That intermediate darks immerse
By road of sun nor world confined.
Upon my star-undominated gyre
I mark the systems vanish one by one;
Among the swarming worlds I lunge,
And sudden plunge
Close to the zones of solar fire;
Or 'mid the mighty wrack of stars undone,
Flash, and with momentary rays
Compel the dark to yield
Their aimless forms, whose once far-potent blaze
In ashes chill is now inurned.



A space revealed,
I see their planets turned,
Where holders of the heritage of breath
Exultant rose, and sank to barren death
Beneath the stars' unheeding eyes.
A down contiguous skies
I pass the thickening brume
Of systems yet unshaped, that hang immense[67]
Along mysterious shores of gloom;
Or see—unimplicated in their doom—
The final and disastrous gyre
Of blinded suns that meet,
And from their mingled heat,
And battle-clouds intense,
O'erspread the deep with fire.

Through stellar labyrinths I thrid
Mine orbit placed amid
The multiple and irised stars, or hid,
Unsolved and intricate,
In many a planet-swinging sun's estate.



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Ofttimes I steal in solitary flight
Along the rim of the exterior night
That grips the universe;
And then return,
Past outer footholds of sidereal light,
To where the systems gather and disperse;
And dip again into the web of things,
To watch it shift and burn,
Hearted with stars. On peaceless wings
I pierce, where deep-outstripping all surmise,
The nether heavens drop unsunned,
By stars and planets shunned.
And then I rise
Through vaulting gloom, to watch the dark
Snatch at the flame of failing suns;
Or mark
The heavy-dusked and silent skies,[68]
Strewn thick with wrecked and broken stars,
Where many a fated orbit runs.
An arrow sped from some eternal bow,
Through change of firmaments and systems sent,



And finding bourn nor bars,

I flee, nor know

For what eternal mark my flight is meant.

Clark Ashton Smith was born on 13 January, 1893, in Long Valley, Placer County, California. Largely self-taught, he began writing at a very young age, acquiring an exceptionally large vocabulary by reading the dictionary from cover to cover. A protégé of the San Francisco poet George Sterling, Smith achieved recognition at the age of 19 for his collection of poems *The Star Treader* (1912), influenced by Baudelaire, Poe and Sterling. Smith always considered himself a poet first and foremost, however, following the Great Depression, he later turned to writing short stories for pulp magazines such as *Weird Tales* as this was a more lucrative source of income to support himself and his aging parents. He wrote more than 100 short stories between 1929 and 1934, and it is this, along with his friendship with fellow *Weird Tales* contributor H. P. Lovecraft, for which he is remembered today. Smith lived most of his life in Auburn, California, and passed away in his sleep on 14 August 1961, at the age of 68. In addition to his literary activities, he created a large number of drawings, paintings and sculptures which reflected the otherworldly atmosphere of his tales.

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