

Friday, 28 June 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)

TPTN v Minister for Immigration, Citizenship and Multicultural Affairs (FCAFC) - Tribunal erred in taking juvenile offending into account, and this error was material

Belmont v Minister for Immigration, Citizenship and Multicultural Affairs (FCA) - Tribunal failed to deal with a claim the applicant was suffering from a health-related issue involving severe substance addiction which required ongoing medical treatment

BTK19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (FCA) - Authority erred in rejecting new evidence proffered by the applicant

Smith v Minister for Immigration, Citizenship and Multicultural Affairs (FCA) - Tribunal did not err by asking whether the applicant failed the character test on grounds other than those on which the delegate had relied - previous Federal Court authority held to be wrong

HABEAS CANEM

First beach holiday



Summaries With Link (Five Minute Read)

TPTN v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCAFC 82

Full Court of the Federal Court of Australia

Collier ACJ, Meagher, & Horan JJ

Migration - special category visa - visa cancelled after criminal convictions - delegated refused to revoke cancellation - Administrative Appeals Tribunal affirmed - Federal Court dismissed the appellant's application for judicial review - Minister now accepted, after *Lesianawai v Minister* [2024] HCA 6 (See Weekly Immigration Law Benchmark 7 March 2024), that the Tribunal erred in taking juvenile offending into account, but said the error was not material - the error was material as it is sufficient for materiality that there was a possibility, not fanciful or improbable, that the decision that was made in fact could have been different if the error had not occurred - appeal allowed.

[TPTN](#)

[From Benchmark Friday, 28 June 2024]

Belmont v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 667

Federal Court of Australia

Horan J

Migration - special category visa - visa cancelled after criminal convictions - delegated refused to revoke cancellation - Administrative Appeals Tribunal affirmed - a claim clearly arose on the material before the Tribunal that the applicant was suffering from a health-related issue involving severe substance addiction which required ongoing medical treatment and supervision in order to address a risk of relapse into drug or alcohol abuse - the Tribunal failed to deal with this claim, contrary to para 9.2(1)(a) of Direction No. 99 - this error was material - application allowed.

[Belmont](#)

[From Benchmark Friday, 28 June 2024]

BTK19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2024] FCA 658

Federal Court of Australia

Perry J

Migration - Safe Haven Enterprise Visa - delegate refused visa - Immigration Assessment Authority affirmed - the Authority erred by failing to assess proposed new evidence proffered by the applicant (a summons issued to the appellant's mother in Sri Lanka) against each of the criteria in s473DD(b)(i) and (ii) of the *Migration Act 1958* (Cth) and then take the that assessment into account in its assessment of whether there were exceptional circumstances to justify considering this new information under s473DD(a) - application allowed.

[BTK19](#)

[From Benchmark Friday, 28 June 2024]



Smith v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 652

Federal Court of Australia

Shariff J

Migration - special category visa - visa cancelled after criminal convictions - delegated refused to revoke cancellation - Administrative Appeals Tribunal affirmed - applicant sought to rely on *Minister v CPJ16* [2019] FCA 2033, but this decision should not be followed - the Tribunal must answer the same question as was before the delegate, but does not have to answer it in the same way the delegate did - application dismissed.

[Smith](#)

[From Benchmark Friday, 28 June 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

United States v Rahimi (SCOTUS) - Federal statute that prohibits individuals who are subject to a domestic violence restraining order from firearm possession does not violate the Second Amendment right to keep and bear arms

Summaries With Link (Five Minute Read)

United States v Rahimi 602 US __ (2024)

United States Supreme Court

In an 8-1 decision (Thomas, J dissenting), the Supreme Court upheld the validity of what are known as 'red flag' laws that prohibit firearm possession by domestic abusers. During a dispute with his girlfriend, Rahimi fired a gun that he kept in his car. She obtained a restraining order from a court in Texas. The Texas Court further suspended Rahimi's gun license for two years on the grounds that the violence was likely to occur again. During this period, Rahimi threatened additional women with a gun and was a suspect in an additional five shootings. When police searched his home, they found firearms, ammunition, and a copy of the restraining order. Rahimi was indicted for violating a federal statute that prohibits firearm possession while subject to a domestic violence restraining order. Rahimi claimed that the statute was unconstitutional because it established a restriction on the right to keep and bear arms that was not part of firearm regulation at the time the Second Amendment was adopted in the 18th Century. The District Court rejected this argument, but the US Court of Appeals agreed that the statute was unconstitutional. In the opinion by Roberts CJ, the Court pulled back from a purely historical approach to gun rights. The Chief Justice stated that recent court decisions expanding firearm rights 'were not meant to suggest a law trapped in amber'. By this the Court moved away from the history and tradition test and recognised that the Second Amendment permits regulations that may not have existed in 1791. The Court held that, while the right to keep and bear arms was a fundamental right, prohibitions on going armed were accepted as part of the common law at the time the Second Amendment was adopted. The Court said that the statute only prohibited possession while the restraining order was in effect and where a court had found that the individual represented a credible threat to the physical safety of others in a domestic situation.

[United States v Rahimi](#)

Poem for Friday

Adlestrop

By Edward Thomas (1878-1917)

Yes. I remember Adlestrop
The name, because one afternoon
Of heat the express-train drew up there
Unwontedly. It was late June.

The steam hissed. Someone cleared his throat.
No one left and no one came
On the bare platform. What I saw
Was Adlestrop only the name

And willows, willow-herb, and grass,
And meadowsweet, and haycocks dry,
No whit less still and lonely fair
Than the high cloudlets in the sky.

And for that minute a blackbird sang
Close by, and round him, mistier,
Farther and farther, all the birds
Of Oxfordshire and Gloucestershire.

Edward Thomas, an English poet biographer, author, essayist, and critic was born on 3 March 1878, the son of Welsh parents, a railway clerk, politician and preacher Phillip Thomas, and Mary Townsend. His connection to Wales was important throughout his life. He was described by Aldous Huxley as "*one of England's most important poets*". Thomas wrote poetry from 1914, when he was 36, encouraged by his new neighbour, the then relatively unknown Robert Frost. During his life, his only published poetry was *Six Poems* (1916) under the pseudonym Edward Eastaway. Thomas struggled with the burden of constant production of what some critics described as "hack work" to support his family, and the work he wished to produce. At times he was reviewing up to 15 books each week. He made many attempts at suicide, suffering marital disharmony and depression. Adlestrop is considered one of Thomas' finest poems. The poem describes the ordinary circumstances of Thomas' train from Paddington to Malvern, stopping at Adlestrop station at 12:15pm with images of the surrounding English countryside. However the poem elicits profound feelings in the reader through those descriptions. Thomas was killed in the Battle of Arras, in France on 9 April 1917, having enlisted for service in the British infantry in 1915. Ted Hughes described Thomas as "*the father of us*"

all’.

Adestrop by Edward Thomas, composed by Susanna Self- the third of six “Songs of Immortality”

<https://www.youtube.com/watch?v=2NYUdo12yfg>

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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