



Friday, 30 July 2021

Weekly Immigration Law Review A Weekly Bulletin listing Decisions of Superior Courts of Australia covering immigration

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Tohi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (FCAFC) - migration law - refusal to revoke mandatory cancellation of appellant's visa - no failure by Administrative Appeals Tribunal to consider best interests of appellant's child 'as a primary consideration' - leave to raise new ground of appeal granted - appeal dismissed

PKZM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (FCA) - migration law - refusal to revoke cancellation of applicant's Class XB Subclass 200 Refugee (Permanent) visa - grounds of review upheld - Tribunal's decision quashed

Benchmark

Summaries With Link (Five Minute Read)

Tohi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 125

Full Court of the Federal Court of Australia

Katzmann, Derrington & O'Bryan JJ

Migration law - delegate of Minister cancelled appellant's visa (mandatory cancellation decision) - delegate of Minister declined to revoke mandatory cancellation decision - Administrative Appeals Tribunal affirmed delegate's decision - Flick J, of Federal Court of Australia, dismissed judicial review application - appellant appealed, contending failure by Tribunal to 'properly consider a reason for revoking the cancellation of his visa, being the best interests of Mr Tohi's young son' - whether to grant appellant leave to raised 'new ground' - whether clear articulation of new ground's 'legal basis' - whether 'erroneous submission' concerning 'migration status' of appellant's son was material to decision of Tribunal - interests of justice - s501CA(4) *Migration Act 1958* (Cth) - Direction 79 - held: Tribunal did not fail perform statutory duty to consider best interests of appellant's child 'as a primary consideration' - leave to raise new ground of appeal granted - appeal dismissed.

[Tohi](#)

[From Benchmark Friday, 30 July 2021]

PKZM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCA 845

Federal Court of Australia

Anderson J

Migration law - delegate of Minister cancelled applicant's Class XB Subclass 200 Refugee (Permanent) visa (cancellation decision) - delegate of Minister declined to revoke cancellation (non-revocation decision) - Tribunal affirmed non-revocation decision - applicant sought judicial review - whether 'failure to consider prolonged or indefinite detention as a possible consequence of' its decision - non-refoulement obligations - whether 'failure to consider impact' of refouling applicant on 'Australia's international reputation' - whether misunderstanding of *Migration Act 1958* (Cth) (Migration Act) 'and its operation' - s501CA(4) *Migration Act 1958* (Cth) - held: applicant made out grounds of review - application allowed - Tribunal's decision quashed.

[PKZM](#)

[From Benchmark Friday, 30 July 2021]



Benchmark

The Open Sea

By: Dorothea Mackellar

FROM my window I can see,
Where the sandhills dip,
One far glimpse of open sea.
Just a slender slip
Curving like a crescent moon— 5
Yet a greater prize
Than the harbour garden-fair
Spread beneath my eyes.

Just below me swings the bay,
Sings a sunny tune, 10
But my heart is far away
Out beyond the dune;
Clearer far the sea-gulls' cry
And the breakers' roar,
Than the little waves beneath 15
Lapping on the shore.

For that strip of sapphire sea
Set against the sky
Far horizons means to me—
And the ships go by 20
Framed between the empty sky
And the yellow sands,
While my freed thoughts follow them
Out to other lands.

All its changes who can tell? 25
I have seen it shine
Like a jewel polished well,
Hard and clear and fine;
Then soft lilac—and again
On another day 30
Glimpsed it through a veil of rain,
Shifting, drifting grey.

When the livid waters flee,



Benchmark

Flinching from the storm,
From my window I can see, 35
Standing safe and warm,
How the white foam tosses high
On the naked shore,
And the breakers' thunder grows
To a battle-roar... 40

Far and far I look—Ten miles?
No, for yesterday
Sure I saw the Blessed Isles
Twenty worlds away.
My blue moon of open sea, 45
Is it little worth?
At the least it gives to me
Keys of all the earth!

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

[Click Here to access our Benchmark Search Engine](#)