



HUMAN TRAFFICKING WORKING GROUP
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CASE REPORT

Current as on: October 28, 2009

Case Name	VXAJ
Reported in	<i>VXAJ v MIMIA</i> (2006) 198 FLR 455; 2234 ALR 381; [2006] FMCA 234
Date(s)	Application lodged: August 25 2003 Primary decision: May 13, 2004 RRT decision: March 21, 2005 FMCA decision: April 20, 2006
Court	Federal Magistrates Court
Immigration Matter	Application for Protection Visa
Appeal	<i>VXAJ v MIMIA</i> [2006] FMCA 234

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Case Summary

The woman referred to as VXAJ was a 33 year old Thai female seeking a protection visa after being found working in Australia in conditions of sexual slavery. It is probable that she was one of the sex workers in the Wei Tang case.¹ VXAJ arrived in Australia on May 15, 2003. On May 30, 2003 the brothel in which she worked was raided by officials from the Immigration Department and the Australian Federal Police.² VXAJ claimed that she had been brought to Australia by an international trafficking ring to work in the sex industry. She was aware of the sexual nature of her employment but was led to believe that she would be working legally. Additionally, she was unaware of her working conditions, which included a complete restriction on movement, and which were later been held to be tantamount to slavery.

During the course of her employment VXAJ was locked in an apartment with a number of other young women — presumably also sex workers — and controlled as to her hours of work. After her brothel was searched, she was taken to an immigration detention centre. On June 6, 2003 VXAJ was transferred to police custody and was granted a Criminal Justice Stay Visa to assist in the prosecution of Wei Tang and her accomplices.

Immigration Matters

VXAJ applied for a protection visa on August 25, 2003. She feared returning to Thailand on a number of grounds, which go some way toward showing the capabilities of the criminal organisation with which she was involved. For example, she believed that police in Thailand would be unwilling or unable to prevent harm against her family or herself in retaliation for her assisting Australian authorities in the prosecution of Wei Tang.

The protection visa was refused on May 13, 2004 and this decision was upheld by the Refugee Review Tribunal (RRT) on March 21, 2005. On May 13, 2005, VXAJ applied for the judicial review of the RRT's decision to the Federal Court. In his decision, Chief Federal Magistrate Pascoe found that the RRT failed to correctly apply the relevant principles in *Applicant S*³ and thus fell into jurisdictional error. Federal Magistrate Pascoe further found that Thai 'sex workers' were a social group to which Australia may owe protection obligations under Art 1A(2) of the *Convention Relating to the Status of Refugees*.⁴ In determining whether trafficked women who testified against their traffickers were a particular social group,⁵ His Honour gave consideration to the socio-political state of Thailand, noting that:

The country information before the [RRT] supported the claim that Thai authorities were unwilling or unable to protect the applicant from being harmed by persons within the trafficking network, who were rich and powerful and had the means to pay off police and government officials. [...] Further the report clearly noted that there was credible evidence of some corrupt military government officials involved directly in trafficking and taking bribes to ignore it.⁶

¹ See separate case report *Wei Tang* available at <www.law.uq.edu.au/humantrafficking>.

² *VXAJ v MIMIA* (2006) 198 FLR 455 states that the brothel where VXAJ was found was raided on 31 May 2003, while *R v Wei Tang* (2007) 16 VR 454 states at 458 that the brothel was raided on 30 May 2003. From the closeness of these dates and the lack of other incidents at the time, it can be assumed that VXAJ was one of the 'contract girls' uncovered in the raid on Wei Tang's brothel 'Club 417', and that there is an error in one of the reports.

³ *Applicant S v MIMA* (2004) 217 CLR 387.

⁴ *VXAJ v MIMIA* (2006) 198 FLR 455, 465.

⁵ *VXAJ v MIMIA* (2006) 198 FLR 455, 460. See also, Anna Dorevitch and Michelle Foster, 'Obstacles on the road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law', *Melbourne Journal of International Law*, 9 (2008) 31.

⁶ *VXAJ v MIMIA* [2006] 198 FLR 455, 467. See also: Anna Dorevitch and Michelle Foster, 'Obstacles on the road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law', *Melbourne Journal of International Law*, 9 (2008) 25.

These facts, along with the existence of a Draft Witness Protection Bill which was being developed by Thai authorities,⁷ were seen to be relevant to 'both the question of whether the harm feared by the applicant had an official quality and whether the authorities were willing and able to provide adequate protection to trafficking victims'.⁸ On the basis of this lack of protection, Federal Magistrate Pascoe concluded that victims such as VXAJ were therefore socially distinct and not 'individual victims of the same crime', as the Refugee Review Tribunal had decided.⁹ The issue was remitted to the Refugee Review Tribunal for further consideration.

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⁷ VXAJ (2006) 198 FLR 455, 464; Anna Dorevitch and Michelle Foster, 'Obstacles on the road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law', *Melbourne Journal of International Law*, 9 (2008) 31.

⁸ VXAJ v MIMIA [2006] 198 FLR 455, 468, Anna Dorevitch and Michelle Foster, 'Obstacles on the road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law', *Melbourne Journal of International Law*, 9 (2008) 25.

⁹ VXAJ v MIMIA (2006) 198 FLR 455, 460, 463–4.