



HUMAN TRAFFICKING WORKING GROUP
Dr Andreas Schloenhardt (Coordinator)

The University of Queensland
TC Beirne School of Law

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CASE REPORT

Current as on: October 17, 2009

Case Name	<i>R v Yogalingham Rasalingam</i>
Reported in	<i>R v Yogalingham Rasalingham</i> (2007) NSWDC, unreported <i>Cf Fryer v Yoga Tandoori House Pty Ltd</i> [2008] FMCA 288
Date(s)	Arrest: July 17, 2006 Trial: 2007 Civil Action: March 13, 2008
Court	New South Wales
Charges	s 271.2(1B) <i>Criminal Code</i> (Cth): facilitating the entry of another person to Australia, being reckless as to the exploitation of that other person s 270.3(1)(d) <i>Criminal Code</i> (Cth): intentionally exercising control over a slave s 135.1(7) <i>Criminal Code</i> (Cth): dishonestly influencing a Commonwealth public official
Appeal	n/a

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Case Summary

The first person to be charged with trafficking offences under Division 271 was Mr Yogalingam Rasalingam of Glenbrook in the Blue Mountains, west of Sydney. Mr Rasalingam, an Australian citizen, is the owner Yoga Tandoori House Pty Ltd, a chain of four Indian restaurants in the Blue Mountains. He was accused of bringing Anbalagan Rajendran — another man from his home town in southern India — to Australia to work in his restaurants in circumstances amounting to human trafficking. In the employment arrangement between the two men, Mr Rajendran agreed to working 365 days a year, without payment for the first year, but that during this time Mr Rasalingam would provide money to the victim's family each time he returned to India.¹

Mr Rasalingam directed his victim to a particular travel agent in India who made all the necessary arrangements, including obtaining a visa to enter Australia. Mr Rajendran, however, allegedly never signed a visa application nor any other documentation in relation to his intended travel. The travel agent did instead ask him to sign his name seven times on a blank piece of paper. This piece of paper was found later during a search of one of Mr Rasalingam's restaurants. The paper had three signatures on it and part of the page had been cut out. Other documents relating to a falsified visa application and work contract were also found. DIAC found that a visa application and work contract had been submitted to them on behalf of the victim.²

Mr Rajendran arrived in Australia on June 1, 2006. During the trial, the victim testified that upon arrival his passport, airline ticket, and other documents were taken away from him, he was forced to sleep on the floor, and was told by Mr Rasalingam that he would be deported if he complained to the authorities. He was forced to work seven days a week, sometimes for more than 15 hours a day. Mr Rajendran never received any payment and there was no evidence to suggest that any money had ever been transferred to his family in India.³

Mr Rasalingam was subsequently charged with trafficking a person under s 271.2(1B) *Criminal Code* (Cth)⁴ and with intentionally exercising control over a slave under s 270.3(1)(d). The jury found him not guilty on both counts. The main point of contention was the question whether the circumstances amounted to exploitation as defined in the *Criminal Code* (Cth). Mr Rasalingam was, however, convicted of one count of dishonestly influencing a Commonwealth public official contrary to s 135.1(7) *Criminal Code* (Cth) for photocopying Mr Rajendran's signature on the employment contract sent to the Immigration

¹ Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 69, available at [www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 15 Oct 2009).

² Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 69, available at [www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 15 Oct 2009).

³ James Madden, 'Chef was "forced labour"', *The Australian*, 10 Oct 2007, 5; David King, 'Cook made deal to work 365 days a year', *The Australian*, 11 Oct 2007, 3; Kim Arlington, 'Chef told: work like a machine', *The Daily Telegraph* (Sydney), 11 Oct 2007, 13; *Fryer v Yoga Tandoori House Pty Ltd* [2008] FMCA 288; Australia, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response January 2004–April 2009* (2009) 69, available at [www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(084A3429FD57AC0744737F8EA134BACB\)-IDC+Annual+Report_WEB.pdf/\\$file/IDC+Annual+Report_WEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(084A3429FD57AC0744737F8EA134BACB)-IDC+Annual+Report_WEB.pdf/$file/IDC+Annual+Report_WEB.pdf) (accessed 15 Oct 2009).

⁴ Facilitating the entry of another person to Australia, being reckless as to the exploitation of that other person: s 271.2(1B) *Criminal Code* (Cth).

Department.⁵ For this, Mr Rasalingam was ordered to be of good behaviour for twelve months on a AUD 5,000 recognisance or be jailed for four months.⁶

Victim Compensation

The victim, Mr Rajendran, received unpaid wages of \$11,560.31 after the commencement of investigation by a workplace inspector. These investigations also resulted in a successful application for civil penalty provisions against the business of Mr Rasalingam of \$18,200.⁷

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⁵ Kim Arlington, 'Chef told: work like a machine', *The Daily Telegraph* (Sydney), 11 Oct 2007, 13; Cf. Fiona David, *Trafficking of Women for Sexual Purposes* (2008) 49.

⁶ Margaret Scheikowski, 'Restaurant fined \$18,200 for exploiting overseas worker', *Australian Associated Press General News* (Sydney), 17 Mar 2008.

⁷ *Fryer v Yoga Tandoori House Pty Ltd* [2008] FMCA 288. Full case report of the civil proceedings available at www.law.uq.edu.au/human-trafficking-case-reports