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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: AUG 17 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, ("the director") denied the application for T nonimmigrant status and affirmed his decision upon granting a subsequent motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application for failure to establish that the applicant was a victim of a severe form of trafficking in persons and was present in the United States on account of such trafficking.

On appeal, counsel submits a brief and additional evidence. The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); 8 C.F.R. § 214.11(l)(1). Although the applicant has established that he was a victim of trafficking, he has not demonstrated that he is physically present in the United States on account of such trafficking.

Applicable Law

Section 101(a)(15)(T) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she is:

> (i) subject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines –
>
> > (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,
> >
> > (II) is physically present in the United States . . . on account of such trafficking . . . ;
> >
> > (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime . . . and
> >
> > (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal [.]

Section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), codified at 22 U.S.C. § 7102(8) and incorporated into the regulation at 8 C.F.R. § 214.11(a), defines the term "severe forms of trafficking in persons" as, in pertinent part:

> the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The regulation at 8 C.F.R. § 214.11(g) prescribes the evidentiary burden to establish the physical presence requirement at section 101(a)(15)(T)(i)(II) of the Act and states, in pertinent part:

[T]he physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.

* * *

(2) *Opportunity to depart.* If the alien has escaped the traffickers before law enforcement became involved in the matter, he or she must show that he or she did not have a clear chance to leave the United States in the interim. The Service will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. Information relevant to this determination may include, but is not limited to, circumstances attributable to the trafficking in persons situation, such as trauma, injury, lack of resources, or travel documents that have been seized by the traffickers. This determination may reach both those who entered the United States lawfully and those who entered without being admitted or paroled. The Service will consider all evidence presented to determine the physical presence requirement, including asking the alien to answer questions on Form I-914, about when he or she escaped from the trafficker, what activities he or she has undertaken since that time, including the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States.

The regulation at 8 C.F.R. § 214.11(l) prescribes, in pertinent part, the standard of review and the applicant's burden of proof in these proceedings:

(1) *De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

Pertinent Facts

The applicant is a citizen of India who entered the United States on March 28, 2007 as the beneficiary of a temporary worker's visa (H2B) filed by [redacted] In his July 29, 2009 statement, the applicant provided the following account of his journey to the United States. On or about December 28, 2006, the applicant met with a representative of [redacted] in India in response to an advertisement for fitters and welders to work in the United States and receive "green cards." The [redacted] representative told the applicant that the total cost would be approximately [redacted] (U.S. dollars), that he would get an H2B visa that would be renewed three times, and that he would then receive a work permit and eventually a "green card" within three years. In January 2007, the [redacted] representative told the applicant he could work for [redacted] as a structural fitter in Texas and the applicant paid approximately [redacted] obtain a visa interview. The [redacted] representative told the applicant to only request the H2B visa at his consular interview. After the applicant received his H2B visa on January 22, 2007, the [redacted]

representative took the applicant's passport and informed him that he would have to pay approximately [redacted] to finish the process. The applicant withdrew his retirement savings and borrowed money from relatives of his parents to pay the fee. In March 2007, the applicant went to the [redacted] paid the fee and was given his airline ticket and passport.

The applicant travelled to the United States with six other workers and when they arrived in New Orleans on March 28, 2007, no one from [redacted] met them at the airport. When they called [redacted] they were told the company did not need any more workers and it was not responsible for them. When the applicant and the other workers called [redacted], he told them not to return to India because they would not receive a refund. In April 2007, the applicant and other Indian workers went to [redacted] where they took a test, but were told to leave after two workers cheated on the test. The applicant returned to [redacted] where a charitable organization helped him obtain his social security card. Between June and July 2007, the applicant went to [redacted]. The applicant stated that he worked at a shipyard in [redacted] for 15 days in July 2007 and then worked for another company from August to September 2007. The applicant received two extensions of his visa to work for [redacted] from April 2008 through September 2009, although the applicant stated that he worked for that company from October 2007 to May 2009, when he was laid off. The applicant recounted that he was injured while working in October 2008 and was hospitalized for two months. The applicant stated that he reported himself as a trafficking victim to the U.S. Department of Justice (DOJ) on or about March 6, 2008, nearly a year after his arrival in the United States.

Victim of a Severe Form of Trafficking in Persons

The director determined that the applicant was not a victim of a severe form of trafficking in persons because although he was subjected to fraudulent visa practices by [redacted] and its associates, the purpose of their recruitment was not to subject the applicant to involuntary servitude, peonage, debt bondage or slavery, but only for their own personal, monetary gain. The director determined the applicant had not established that [redacted] International engaged the services of [redacted] Consultants with the purpose of subjecting workers to involuntary servitude or forced labor.

This portion of the director's decision shall be withdrawn. The evidence submitted below and on appeal establishes that at the time of the applicant's recruitment, [redacted] was acting as Signal's agent. Under basic principles of agency law, an employer may be held accountable for the actions of its agent. *See generally,* 27 Am. Jur. 2d *Employment Relationship* § 373 (2011) (discussing an employer's vicarious liability for its agent's torts under the doctrine of respondeat superior). The record contains a copy of a notarized document dated August 3, 2006, in which [redacted] formally granted full power of attorney to [redacted] to act as its agent in India. A June 19, 2006 letter from [redacted] also confirmed that [redacted] as its "representative in India to facilitate the recruitment of skilled workers to the United States of America for employment under the temporary and permanent resident program." Although the power of attorney expired on November 6, 2006, the record also contains electronic mail messages dated December 1, 2006 in which Signal invited [redacted] representatives to visit the company in the United States and also stated that it was in the process of drafting an agreement for [redacted] "continued services in processing etc. the balance of the 590 personnel that [redacted] has approved under the H2B program."

The evidence further shows that [redacted] misleading promise of "green cards" and the exorbitant recruitment fees the Indian workers had paid. In an electronic mail message dated November 17, 2006, a [redacted] official stated that he had spoken to workers at the labor camp who paid [redacted] and that another worker called him from India asking if he could go to [redacted] directly without paying the [redacted] recruitment fee, but the [redacted] official told him he could not. In a December 16, 2009 deposition of another [redacted] official taken in connection with pending federal civil litigation against the company, the [redacted] official confirmed that [redacted] continued to work with [redacted] and bring in more workers from India despite [redacted] deception regarding the "green card" process. Electronic mail messages also indicate that Signal did not inform [redacted] that it would not accept any more workers from India until February 23, 2007, after the applicant's recruitment, initial payment and the issuance of his visa. The record thus clearly shows that [redacted] was acting as [redacted] agent at the time of its fraudulent recruitment of the applicant.

While the director acknowledged that [redacted] subjected other Indian workers to forced labor, he concluded that [redacted] did not intend to do so when they began the recruitment process with [redacted] in India. The director failed to acknowledge, however, that at the time of this applicant's recruitment, [redacted] had already harbored other workers and subjected them to involuntary servitude. The relevant evidence establishes that [redacted] subjected Indian workers to involuntary servitude by forcing them to continue working for the company through the threat of physical restraint and abuse of the administrative legal process of removal from the United States under the Act. [redacted] treatment of other Indian workers during the applicant's recruitment and prior to his arrival in the United States reflects the company's intent at the time of the applicant's recruitment to treat him in the same manner.

In sum, the preponderance of the evidence demonstrates that the applicant was recruited for his labor by Signal, through its agent [redacted] fraudulent promise of permanent residency in the United States and for the purpose of the applicant's subjection to involuntary servitude. Accordingly, the applicant has established on appeal that he was a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act and defined in the regulation at 8 C.F.R. § 214.11(a). Accordingly, the director's determination to the contrary will be withdrawn.

Physical Presence in the United States on Account of Trafficking

The applicant has not, however, established that he is physically present in the United States on account of the trafficking. To meet the physical presence requirement, individuals such as the applicant who escaped their traffickers before law enforcement became involved must show that they did not have a clear chance to leave the United States in the interim. 8 C.F.R. § 214.11(g)(2). Because this issue was not addressed by the director, the AAO issued a request for additional evidence (RFE), to which counsel responded with a letter brief, a supplemental statement from the applicant, copies of non-precedent AAO decisions in other T cases and a copy of a December 20, 2011 letter from law professors.

The record in this case shows that the applicant escaped his traffickers approximately one year before law enforcement became involved. Apart from one telephone call shortly after his arrival, the

applicant indicated that he had no further contact with [redacted]. The applicant also stated that in April 2007, [redacted] representatives in Texas told him and other workers to leave the [redacted] worksite after two men cheated on a trade-related test and the applicant discussed no further contact with [redacted] after that time. The record contains no evidence that [redacted] harbored the applicant or otherwise subjected him to a severe form of trafficking in persons during the two days he spent at the company's Texas worksite in April 2007. Accordingly, the record demonstrates that the applicant escaped his traffickers shortly after his arrival in the United States on March 28, 2007, nearly one year before a law enforcement agency became involved in the matter through the applicant's report in March 2008.

In his December 17, 2011 statement submitted on appeal, the applicant recounted that he felt helpless after he left the [redacted] camp in April 2007 because he did not speak English fluently. The applicant stated that for months after he last spoke to [redacted] he lost weight, suffered from insomnia, headaches and fevers, and lived in fear that he would be sent back to India. While the applicant's physical and mental health was undoubtedly affected by his inability to work for [redacted] upon his arrival in the United States and his realization that he had been cheated by [redacted] the record indicates that he retained possession of his passport and Form I-94 entry document and obtained a social security card and an [redacted] In addition, for over half of the applicable period, the applicant worked for three employers in [redacted].

On appeal, counsel asserts that the applicant was unable to return to India "due to the severe harm facing him and his family" and that he "reasonably feared that if he returned to India, he would be unable to pay his debts and faced violent retaliation from loan sharks." The record does not support counsel's claims. In his first statement submitted below, the applicant stated that he paid his recruiting fees with his savings, retirement fund and by borrowing an unspecified amount of money from relations of his parents at an interest rate of 10 percent. He did not indicate that he borrowed any money from private money lenders. However, on appeal, the applicant states that he feared that "loan sharks" would hurt or even kill him and his family if he could not repay his loans. Counsel submitted an expert affidavit by [redacted] regarding the social and psychological costs of debts incurred by international laborers from India. However, the applicant's brief statements are insufficient to show that he or his family was subjected to or faced physical harm or the specific types of social humiliation described by [redacted] during the period in question. In addition, while [redacted] discusses the particularly dire impact of debt burdens and unemployment in [redacted] does not specifically address the circumstances of skilled workers from the applicant's home state of [redacted].

On appeal, counsel claims that the applicant did not have a clear chance to leave the United States before law enforcement became involved in the matter because it "reasonably took the Applicant a year to overcome his fear, to locate and consult with pro bono counsel, and to assert his rights." In their joint letter, the law professors claim that lack of a reasonable opportunity to report to law enforcement should be sufficient to show that an applicant did not have a clear chance to depart the United States. However, the issue is not how long it took the applicant to report his trafficking to law enforcement authorities or if the delay was reasonable, but whether he had a clear chance to leave the United States after he escaped his traffickers and before law enforcement became involved. There are many reasons why trafficking victims do not initially report their circumstances to law

enforcement agencies. As both counsel and the law professors note, there is no filing deadline for T nonimmigrant status for victims who have escaped their traffickers. In addition to cultural and linguistic barriers and fears of reprisal or other serious harm, many victims are unaware of the laws in the United States that could protect them.[1] In this case, the applicant credibly explained his reasons for not reporting himself earlier as a trafficking victim to U.S. law enforcement authorities. Those reasons are not at issue in this proceeding.

The preponderance of the evidence shows that the applicant had a clear chance to depart the United States before he reported himself as a trafficking victim to the U.S. Department of Justice. The record shows that at the time of his arrival, the applicant was 38 years old. Although he recounted experiencing some physical and emotional difficulties upon realizing that he would not be working for [redacted] and had been cheated by [redacted], the record lacks sufficient evidence that the applicant suffered physical or psychological trauma or injury during this time.[2] The evidence also shows that the applicant retained his travel documents upon his departure from India and that he obtained a social security card, state identification card and a driver's license and worked for three employers for over half of the applicable period. While the applicant recounted his fear of returning to India without having repaid his debt, the record lacks sufficient evidence that the applicant's personal circumstances prevented his return during this time.

In sum, the record shows that the applicant escaped his traffickers before law enforcement became involved and the applicant has failed to demonstrate that he did not have a clear chance to leave the United States in the interim under the standard and factors explicated in the regulation at 8 C.F.R. § 214.11(g)(2). Consequently, the applicant has not established that he is physically present in the United States on account of trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Conclusion

The applicant bears the burden of proof to establish his eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). On appeal, the applicant has demonstrated that he was a victim of a severe form of trafficking in persons in the past, but he has not established that he is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act. Consequently, the appeal will be dismissed and the application will remain denied.

ORDER: The appeal is dismissed.

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[1] *See* 22 U.S.C. § 7101(b)(20) ("victims of trafficking are frequently unfamiliar with the laws . . . of the countries into which they have been trafficked . . . ."). *See also* T Nonimmigrant Status Interim Rule, 67 Fed. Reg. 4784 (Jan. 31, 2002) (noting the reluctance of victims without legal status in the United States to cooperate with law enforcement).

[2] The applicant stated that he was seriously injured and hospitalized in October 2008 while working for [redacted] However, this injury occurred seven months after the applicant reported himself as a trafficking victim and is not pertinent to his ability to depart the United States prior to that time.

trafficking to law enforcement authorities or if the delay was reasonable, but whether he had a clear chance to leave the United States after he escaped his traffickers and before law enforcement became involved. There are many reasons why trafficking victims do not initially report their circumstances to law enforcement agencies. As both counsel and the law professors note, there is no filing deadline for T nonimmigrant status for victims who have escaped their traffickers. In addition to cultural and linguistic barriers and fears of reprisal or other serious harm, many victims are unaware of the laws in the United States that could protect them.[2] In this case, the applicant credibly explained his reasons for not reporting himself as a trafficking victim until 11 months after his arrival in the United States. Those reasons are not at issue in this proceeding.

The law professors also claim that USCIS should find that applicants who meet the extreme hardship requirement of subsection 101(a)(15)(T)(i)(IV) of the Act also meet the physical presence requirement of subsection 101(a)(15)(T)(i)(II) of the Act. Their letter states:

> If the T visa applicant demonstrates that he or she is present in the United States due to a reasonable fear of extreme hardship upon departure, USCIS should conclude that the victim is physically present on account of trafficking and did not have a clear chance to leave the United States after escaping the trafficking situation.

The physical presence and extreme hardship elements are distinct statutory requirements for T nonimmigrant classification that must be demonstrated independently. While some evidence may be relevant to both determinations, the applicant bears the burden to "submit evidence that fully establishes eligibility for each element of the T nonimmigrant status." 8 C.F.R. § 214.11(f). *See also* 8 C.F.R. § 214.11(l)(2) ("the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility"). Moreover, the situation of extreme hardship in this case arose *after* the period in question. As explained in his RFE, the director determined that the applicant established the requisite extreme hardship because of his participation as a potential class member in the civil litigation against [redacted][3] and the applicant's resultant fear of retaliation from [redacted] and his associates if he was subsequently removed to India. These circumstances arose after the applicant reported his trafficking to law enforcement and are not relevant to whether he had a clear chance to depart the United States before that time.

The preponderance of the evidence shows that the applicant had a clear chance to depart the United States before he reported himself as a trafficking victim to the U.S. Department of Justice. The record shows that at the time of his arrival, the applicant was 35 years old. Although he recounted experiencing some physical and psychological difficulties upon realizing that he would not be

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[2] *See* 22 U.S.C. § 7101(b)(20) ("victims of trafficking are frequently unfamiliar with the laws . . . of the countries into which they have been trafficked . . . ."). *See also* T Nonimmigrant Status Interim Rule, 67 Fed. Reg. 4784 (Jan. 31, 2002) (noting the reluctance of victims without legal status in the United States to cooperate with law enforcement).

[3] The civil litigation against [redacted] and other defendants was filed in 2008 and requested certification of a class of all Indian workers who were recruited by one or more of the defendants and who entered the United States at any time through September 30, 2007, pursuant to an H2B visa obtained by Signal. The court subsequently denied the plaintiffs' motions for class certification. *David v. Signal International*, No. 08-1220 (E.D. La. Jan. 4, 2012).

working for [redacted] and had been cheated by [redacted], the record lacks sufficient evidence that the applicant suffered physical or psychological trauma or injury during this time. The evidence also shows that the applicant retained his travel documents upon his departure from India and that he secured intermittent employment during the applicable period. While the applicant recounted his fear of returning to India without having repaid his debt, the record lacks sufficient evidence that the applicant's personal circumstances prevented his return during this time.

In sum, the record shows that the applicant escaped his traffickers before law enforcement became involved and the applicant has failed to demonstrate that he did not have a clear chance to leave the United States in the interim under the standard and factors explicated in the regulation at 8 C.F.R. § 214.11(g)(2). Consequently, the applicant has not established that he is physically present in the United States on account of his trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Conclusion

As in all visa classification proceedings, the applicant bears the burden of proof to establish his eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). On appeal, the applicant has established that he was a victim of a severe form of trafficking in persons in the past, but he has failed to demonstrate that he is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.