

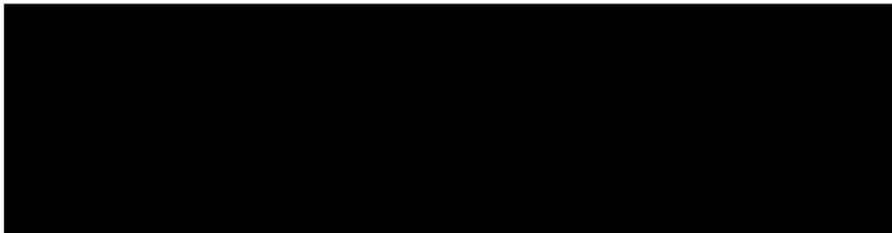
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: **APR 23 2012** Office: VERMONT SERVICE CENTER

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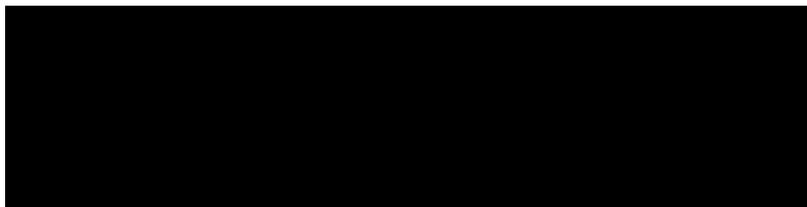


IN RE: Applicant:



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:



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.

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 the denial upon granting a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. Because the applicant has established his statutory eligibility for T nonimmigrant classification, but remains inadmissible, the director’s decision will be withdrawn and the matter remanded to the director for further action.

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 briefs and additional evidence.<sup>1</sup>

### *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, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of 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.

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<sup>1</sup> On appeal, counsel requests the opportunity for oral argument to “assist the Administrative Appeals Office in its review of the complex facts and supplemental evidence.” The record contains numerous supporting documents and multiple legal memoranda from counsel and other legal experts. Because the evidence and legal issues are fully represented in the record, we find no need for oral argument on appeal and counsel’s request is denied pursuant to the regulation at 8 C.F.R. § 103.3(b)(2).

The regulation at 8 C.F.R. § 214.11(a) also defines the term “involuntary servitude” as:

a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” (*United States v. Kozminski*, 487 U.S. 931, 952 (1988)).

This definition reflects the federal crime of forced labor enacted by section 103(5) of the TVPA and codified at 18 U.S.C. § 1589. See *T Nonimmigrant Interim Rule*, 67 Fed. Reg. 4784, 4786 (Jan. 31, 2002). The forced labor statute at 18 U.S.C. § 1589(c) provides the following, pertinent definitions:

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or continue performing labor or services in order to avoid incurring that harm.

The regulation at 8 C.F.R. § 214.11(g) prescribes the evidentiary burden to establish the physical presence requirement for T nonimmigrant classification 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 and Procedural History*

The applicant is a 50 year-old citizen of India. In his October 6, 2009 statement submitted below and his December 18, 2011 statement submitted on appeal, the applicant provided the following account of his journey to the United States. The applicant was trained as a fitter and supported 15 relatives in India with his earnings. In January 2006, the applicant attended a meeting in Chennai in response to a newspaper advertisement for pipe fitters to work and obtain a "green card" in the United States. At the meeting, the head of [REDACTED] and a U.S. labor broker explained that the applicant would be working as a pipe fitter for Signal International (Signal) and assured him that he would get a "green card" within a year and a half at which time his family could join him in the United States. [REDACTED] told the applicant that the total cost would be approximately \$17,712 (U.S. dollars) and his staff pressured the applicant to pay his first installment of approximately \$3,321 as soon as possible. The applicant sold his wife's jewelry in order to pay the first installment in October 2006.

In early 2007, [REDACTED] told the applicant to report for his visa interview and bring his second installment payment of approximately \$4,428. To make his second payment, the applicant used money he had been saving for the surgery and education of his handicapped daughter. The applicant also borrowed money from a friend who sold his land to help the applicant and he borrowed funds from moneylenders at a 120% annual interest rate. At the end of January 2007, the applicant paid his second installment to a [REDACTED] employee who refused to give him receipts for his payments and made him sign documents regarding an H2B visa. The applicant did not understand why the papers referred to an H2B visa because he had been told that he would be receiving a U.S. "green card." The [REDACTED] employee would not explain, but assured the applicant that Signal would process a "green card" application for him. The [REDACTED] employee also told the applicant that he must not tell the consular officer at his interview that he had paid any money to get the visa. After the applicant passed the interview, the [REDACTED] employee told him he could go to the United States shortly after he made his last payment of approximately \$9,963. To obtain these funds, the applicant borrowed approximately \$7,195 from moneylenders at a 120% annual interest rate and approximately \$2,767 from relatives.

As the applicant was preparing to pay his final installment, he learned that Signal workers in Mississippi had been striking and his departure would be delayed. In March 2007, the applicant asked Dewan to return his passport and refund his prior payments, but Dewan assured him that everything would be alright and that he would get a "green card" and a social security card after arriving in the United States and that his family could eventually join him there. On March 28, 2007, after making his final payment, the applicant went to Dewan's office to get his passport and plane ticket. A Dewan employee pressured him to sign papers absolving Dewan and attorneys working for Signal from any responsibility for the money he had paid. The applicant initially refused to sign the documents, but the Dewan employee threatened him by saying that he would only get his plane ticket if he signed the papers and gave the applicant five minutes to decide. The applicant spoke to other workers waiting in the hallway who told him to sign the documents because he would not be able to get his money back either way and that if he refused to sign, the Dewan employee would "do him in." Feeling as though he had no choice, the applicant signed the papers and received his passport and airline ticket and was told someone from Signal would meet him and six other workers that he was travelling with at the airport in the United States.

The applicant and his travel companions arrived in the United States on March 28, 2007, but no one from Signal met them at the airport. The applicant and three other workers stayed at a hotel for several days where they ate food from the vending machines and bread and water they purchased from a store. The workers tried to reach Dewan by telephone for days and when he finally answered, he told them to go to New Orleans where someone would help them, but when the applicant and the others arrived in New Orleans no one met them. They went to a church which let them stay for one night and then stayed with other people Dewan referred them to for three or four days. After about a week, the applicant and the other workers received help from a charity in New Orleans, which was assisting other Indian nationals who had come to the United States to work for Signal. After a few days, the workers called Signal, which agreed to employ them if they passed a test. The applicant and other workers went to the Signal worksite in Texas where they all passed the test, but Signal accused them of cheating and told them to stay at the labor camp and security guards would take them to the police. Other workers at the camp told them that the police would take them to immigration authorities and told them about how Signal had forcibly deported another worker from the Texas camp and had mistreated workers at the Mississippi camp in March 2007. The applicant and his companions left the Signal camp that night and went back to the charity in New Orleans.

Upon realizing that he had been defrauded by Dewan and Signal, the applicant became depressed and felt he had lost all dignity as he was forced to beg for food and lodging. The applicant stayed with the charity for about four months during which time he assisted with volunteer projects in New Orleans to assist the city recover from the damage of Hurricane Katrina. The applicant then stayed with Indian friends in Morgan City, Louisiana until January 2008 and then in Houma, Louisiana until June 2008. The applicant explained that during this time, he felt very unstable because he had to use all his money for basic survival, had no money to send back to India to begin repaying his debts and because it was very difficult for him to speak and understand English.

The applicant recounted that because of his inability to repay his debts, moneylenders had harassed his family by coming in the middle of the night, breaking everything in their home, threatening and beating his wife and their older son in public, forcing his wife and children into hiding to stay with

relatives far from their home. The applicant reported that the moneylenders had destroyed his and his family's reputation and would kill him if he returned to India without repaying his debts. The applicant explained that he had read articles in Indian newspapers and heard about such deaths from other Indian workers and that a family in his neighborhood in India endured a death and a rape by moneylenders.

The applicant recounted that when he left the Signal worksite in Texas, he feared the police would help Signal and put him in jail because in India the police never protected people without money and influence. The applicant stated that the charity in New Orleans helped him understand the laws and his legal options in the United States and that he felt safe joining other workers in a lawsuit against Signal because people at the charity spoke his native language and understood the hardships he and his family faced. Through the charity's help, the applicant reported himself as a trafficking victim to the U.S. Department of Justice in March 2008.

The applicant filed the instant Form I-914 on October 14, 2009. The director denied the application based on his determination that the applicant was not a victim of a severe form of trafficking in persons and was not in the United States on account of such trafficking. The director affirmed his decision upon granting the applicant's motion to reopen and counsel timely appealed. The AAO subsequently issued a Request for Evidence (RFE) that the applicant did not have a clear chance to leave the United States after he escaped his traffickers and before law enforcement became involved in the matter. Counsel timely responded to the RFE with a brief and additional evidence.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has overcome the director's grounds for denial on appeal and the director's decision will be withdrawn for the following reasons.

#### *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 Dewan 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 Signal ever intended to recruit workers for the purpose of subjecting them to involuntary servitude or forced labor.

The director's determination shall be withdrawn. The evidence submitted below and on appeal establishes that at the time of the applicant's recruitment, Dewan 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 Signal formally granted power of attorney to [REDACTED] to act as its agent in India. A June 19, 2006 letter from [REDACTED] also confirmed that Signal had formally appointed Dewan 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 Dewan

representatives to visit the company in the United States and also stated that it was in the process of drafting an agreement for Dewan's "continued services in processing etc. the balance of the 590 personnel that Signal has approved under the H2B program." The record thus clearly shows that Dewan was acting as Signal's agent at the time of its fraudulent recruitment of the applicant.

The evidence also demonstrates that Signal was aware of the exorbitant recruitment fees the Indian workers had paid. In an electronic mail message dated November 17, 2006, a Signal official stated that he had spoken to workers at the labor camp who paid \$12,000 and that another worker called him from India asking if he could go to Signal directly without paying the \$15,000 recruitment fee, but the Signal official told him he could not. In a deposition given in connection with civil litigation against Signal, the same official stated that even after learning of the exorbitant recruitment fees, Signal continued to work with Dewan to bring in more Indian workers.

While the director acknowledged that Signal later harbored other Indian workers and subjected them to forced labor, he concluded that Signal did not intend to do so when they began the recruitment process with Dewan in India. The director failed to acknowledge, however, that at the time of this applicant's recruitment, Signal had already harbored other workers and subjected them to involuntary servitude. Photographs, excerpts from depositions of Signal officials and media reports show that Signal began employing Indian workers in H2B status in October 2006 and housing them in labor camps, surrounded by locked gates controlled by security guards.

Electronic mail correspondence among Signal officials and between a Signal official and U.S. Customs and Border Protection (CBP) also demonstrates that Signal discussed and planned the deportation of certain Indian workers beginning in November 2006 and continuing through September 2007. Media reports, excerpts from depositions of Signal officials and a report from the Pascagoula, Mississippi Police Department demonstrate that, in the case of at least one Indian worker in November 2006, Signal's "goal [was] to deport this worker as quickly as possible." This evidence also documents that on March 9, 2007, Signal terminated other Indian H2B employees despite the good quality of their work after these employees had talked to attorneys and encouraged other workers to do so also. Signal directed its staff and security personnel to terminate the employees on their way to work and "get them to the airport," actions which caused one of the workers to attempt suicide. A Signal official acknowledged that these terminations took place in the presence of hundreds of other Indian laborers reporting to work at Signal that day.

The record also contains the transcript of a March 12, 2007 meeting between Signal officials and Indian workers in which Signal discouraged the workers from suing the company or applying for T visas because the company would terminate the H2B program and would not file any visa extensions for the workers. A Signal official also reminded the workers that they had agreed to work under the company's conditions rather than having Signal "report [them] to immigration and give [them] a plane ticket for India." The relevant evidence establishes that Signal subjected Indian workers to involuntary servitude by forcing them to continue working for the company through physical restraint and the threatened abuse of the administrative legal process of removal from the United States under the Act. Signal's 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 had the company not denied him employment upon his arrival.

In sum, the preponderance of the evidence demonstrates that the applicant was recruited for his labor by Signal, through its agent Dewan's 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 as defined in the regulation at 8 C.F.R. § 214.11(a). The director's determination to the contrary is hereby withdrawn.

*Physical Presence in the United States on Account of Trafficking*

The record shows that shortly after his arrival in the United States, the applicant had no further contact with Dewan. Although the applicant went to Signal's Texas worksite, he left after the company refused to employ him and the applicant indicated that he had no further contact with the company. 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). On appeal, the applicant has established that he did not have a clear chance to depart the United States before he reported himself as a trafficking victim.<sup>2</sup>

In his statements submitted below and on appeal, the applicant credibly described his initial struggle to survive in the United States and find lodging and food after Signal refused to employ him. Despite his lack of resources in the United States, the applicant knew that if he returned to India, he would be killed by the moneylenders, as he had read newspaper articles about such deaths, and knew of one in his own neighborhood in India. The applicant recounted how his wife and older son had been beaten by moneylenders and forced into hiding because of his inability to make payments on his loans. The applicant described his ensuing depression, loss of self-esteem and thoughts of suicide. Although the applicant wanted to hold Signal responsible for its actions, he explained that he never thought to call the police because he believed they would help Signal, not a poor person like him without power or influence. The applicant explained that it was only through the charity's help that he was able to understand the laws and his legal options in the United States and feel safe enough to join the lawsuit against Signal and report himself as a trafficking victim.

Other evidence supports the applicant's statements. On appeal, the applicant submits a psychological assessment by [REDACTED] a licensed clinical social worker with the Interprofessional Center for Counseling and Legal Services at the University of Saint Thomas. Mr. [REDACTED] diagnosed the applicant with major depressive disorder, recurrent and post-traumatic stress

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<sup>2</sup> On appeal, counsel claims that the term when "law enforcement became involved in the matter," as used in the regulation at 8 C.F.R. § 214.11(g)(2), should be interpreted in this case as the time when other federal and local law enforcement agencies became aware of Signal's conflicts with its Indian workers, which occurred prior to the applicant's arrival in the United States. Neither the statute nor the regulations support such an interpretation. Nonimmigrants are granted such classification pursuant to their own, individual victimization. Section 101(a)(15)(T)(i)(I) of the Act; 8 U.S.C. § 1101(a)(15)(T)(i)(I). To demonstrate the requisite physical presence on account of trafficking, an applicant must establish that "he or she is a victim of a severe form of trafficking in persons that *forms the basis for the application.*" 8 C.F.R. § 214.11(g) (emphasis added). Accordingly, those applicants who escaped their traffickers before contacting law enforcement must show that the law enforcement agency's involvement concerned their own trafficking, not merely the trafficking of other, similarly situated individuals.

disorder (PTSD). Mr. [REDACTED] attributed the applicant's mental health conditions to his trafficking, his resultant debt and worries about his family's safety in India. Mr. [REDACTED] observed the applicant's tearfulness during the interview as he recounted his sadness and worry for his family; his insomnia, nightmares, diminished appetite, and inability to concentrate; his feelings of shame, hopelessness and regret; and how his heart races when he thinks of his trafficking, debt and his family's suffering. According to Mr. [REDACTED] the applicant had never experienced any mental health issues prior to arriving in the United States and his physical and psychological difficulties after his victimization are symptoms of his resultant depression and PTSD.

The record also lends credence to the applicant's lack of resources upon his arrival in the United States and his fear of returning to India due to the significant debts he incurred to pay his recruitment fees. The applicant submitted a bank account statement showing his deposits and withdrawals between January and February 2007 that correspond to his narrative of when he compiled the money for his final payments to Dewan in India. Counsel also submitted an affidavit from Professor A.R. [REDACTED] of the National Institute of Advanced Studies in Bangalore, India whose academic specializations include the study of debt-related suicides in rural areas of India and the impact of rapid economic change in India and the corresponding burdens borne by those peripheral to the new economy. Professor [REDACTED] discussed the specific economic and cultural context of the international migration of skilled workers from India and the often severe social and psychological consequences of indebtedness that they bear in order to finance their emigration. The record also contains numerous media articles regarding the prevalence of unregulated money lenders in India, their exorbitant interest rates and violent collection tactics.

In sum, the relevant evidence demonstrates that after the applicant's arrival in the United States and his realization that he had been defrauded by Dewan and Signal, the consequences of his trafficking impaired his mental health and significantly impacted his ability to leave the United States. The applicant's initial fear of law enforcement and deportation to India are credible given his personal experiences and evidence of specific country conditions. The record indicates that during the first few months after his arrival in the United States, the applicant was preoccupied with mere survival and dealing with the consequences of his trafficking and was unable to inform a law enforcement agency of his trafficking until assisted by a charitable organization. The preponderance of the relevant evidence shows that the applicant did not have a clear chance to depart the United States in the interim under the standard and factors explicated in the regulation at 8 C.F.R. § 214.11(g)(2). Accordingly, the applicant has established that he is physically present in the United States on account of having been the victim of a severe form of trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act. The director's determination to the contrary is hereby withdrawn.

### *Inadmissibility*

Although the applicant has established his statutory eligibility for T nonimmigrant classification, the application is not approvable because he is inadmissible to the United States and his request for a waiver of inadmissibility was denied. In addition to meeting the statutory eligibility requirements, an alien must be "otherwise admissible" to qualify for T nonimmigrant status. 8 C.F.R. § 214.11(b). USCIS must determine if a T applicant is inadmissible and may waive certain grounds of inadmissibility "if the activities rendering the alien inadmissible . . . were caused by, or were incident to, the victimization" and USCIS determines, as a matter of discretion, that a waiver is in the national interest. Section 212(d)(13) of the Act, 8 U.S.C. § 1182(d)(13); 8 C.F.R. § 212.16(b)(1).

An applicant who is inadmissible must file a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, with his or her Form I-914, Application for T Nonimmigrant Status. 8 C.F.R. §§ 212.16(a), 214.11(j). No appeal lies from the denial of a Form I-192 submitted in connection with a T application, but an applicant may refile a waiver request and USCIS may *sua sponte* reopen and reconsider the waiver application. 8 C.F.R. §§ 103.5(a)(5), 212.16(a).

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who procured a visa and admission to the United States by willful misrepresentation of a material fact. The applicant was granted a visa under section 101(a)(15)(H)(ii)(b) of the Act, as an alien with a foreign residence he had no intention of abandoning who was coming to the United States temporarily to perform labor. Despite his clear plan to immigrate to the United States, the applicant misrepresented his intent to the consular officer at his visa interview by indicating that he would return to India upon the expiration of his visa. Although the applicant also recounted how he was coached by Dewan to misrepresent his intentions at the interview, the director did not consider whether or not his misrepresentation and resultant inadmissibility were incident to his victimization. Rather, the director denied the applicant's Form I-192 only because his Form I-914 was denied. As the sole ground for denial of the applicant's waiver request has been overcome on appeal, the matter will be returned to the director for reconsideration of the applicant's Form I-192.

#### *Conclusion*

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). On appeal, the applicant has met his burden and established his statutory eligibility for T nonimmigrant classification. The director's contrary decision shall be withdrawn. The matter will be remanded to the director for reconsideration of the applicant's request for a waiver of inadmissibility.

**ORDER:** The December 7, 2010 decision of the Vermont Service Center is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 and issuance of a new decision on the Form I-914, which if adverse, shall be certified to the Administrative Appeals Office for review.