

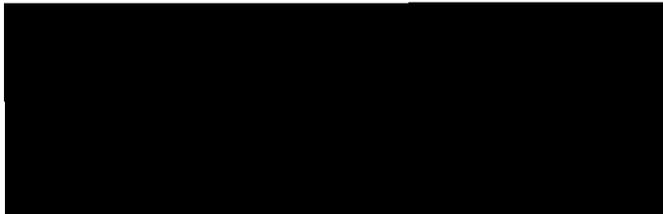
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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D12

DATE: OCT 04 2011

Office: VERMONT SERVICE CENTER

FILE:

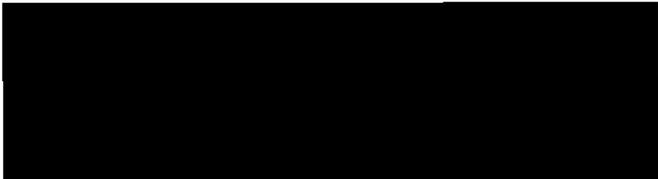


IN RE: Applicant:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn in part and affirmed in part. 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 physically 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). 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) [S]ubject 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:

- A. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- B. 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.

To establish physical presence in the United States on account of trafficking, the regulation at 8 C.F.R. § 214.11(g) specifies:

*Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States . . . on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. Specifically, the 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 . . . 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(i) prescribes, in pertinent part, the standard of review and the applicant's burden of proof:

- (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 native and citizen of India. In his November 29, 2009 statement, the applicant provided the following account of his journey to the United States. In approximately January 2007, the applicant first met with an associate of [REDACTED] in [REDACTED] to pursue an opportunity to work for Signal International (Signal) in the United States and obtain a "green card." The applicant made an advance payment in mid-February 2007 and before his visa interview later that month, the [REDACTED] associate told him that he should tell the consular officer that he had only paid for his visa fees and would return to India by the end of July 2007. The applicant explained that he was confused because he thought he would be getting a "green card" to reside in the United States permanently, but that he trusted the [REDACTED] associate when he told the applicant that he would first get extensions of his visa while his "green card" was processing. After his consular interview, the [REDACTED] associate told the applicant that he would have to pay his remaining balance within three days. The applicant borrowed money from a neighbor and friends at interest rates between 16 and 48 percent to pay the balance, over \$15,720 U.S. dollars. A few weeks later, the applicant was told to go to [REDACTED] office in Mumbai to submit his final payment.

When he arrived at the Mumbai office in March 2007, a [REDACTED] employee told him he would not be able to work at [REDACTED] because they were having problems, but that he could work at any other company in the United States. The applicant told the [REDACTED] employee that he would not make the final payment if there was no guaranteed job for him in the United States, but later changed his mind after the [REDACTED] employee assured him that [REDACTED] would help him find a job in the United States and the company had lawyers there to help with his "green card." The applicant made his final payment and the [REDACTED] employee gave him his passport and airline ticket.

The applicant flew to the United States with five other Indian workers. Upon his arrival on April 2, 2007, a man approached the applicant and his travel companions and asked if they had come to work for Signal. He took them to a place called [REDACTED] and told them that they had been tricked into coming to the United States and that [REDACTED] would not employ them. The man explained that they would need social security cards and an identification card in order to work in the United States and a few days later two people helped the applicant apply for a social security card. A few weeks later, the applicant contacted a Signal official at the company's Mississippi labor camp who told him and the other newly arrived workers to go to [REDACTED] camp in Texas. The applicant stayed at the [REDACTED] for one night and took a test the next day. [REDACTED] employees accused the applicant and the other workers of cheating on the test and told them that they would have to return to India and that Signal would provide them with airline tickets and take them to the airport the next morning. The applicant recounted that he and the other workers took their belongings and left the camp that night. An acquaintance of one of the workers picked them up and took them to [REDACTED] Louisiana.

The applicant stated that he reported himself as a trafficking victim to the U.S. Department of Justice on or about March 6, 2008; that he is a potential witness in an investigation of Signal by the U.S. Equal Employment Opportunity Commission (EEOC); and that he is a class member in a civil lawsuit against Signal and its associates filed on March 7, 2008. The applicant explained that if he returned to India, he would face reprisal from Dewan and his associates for his involvement in the

lawsuit; he would be unable to find employment in India to repay his loans; he could not afford medical care for his ill child in India; and he would face ridicule, shame and harassment from people in his community who would characterize him as a thief, liar or troublemaker.

*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 his 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 noted that Signal had harbored other Indian workers and subjected them to forced labor, but the applicant had not established that "this was the intent of Signal International when they began the recruiting process."

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 [REDACTED] 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 "to assist, advise and process [REDACTED] International's requirements for migrating skilled foreign workers . . . ." A June 19, 2006 letter from [REDACTED] Senior Vice President and General Manager to [REDACTED] also confirmed that Signal had formally appointed [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] 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 Signal has approved under the H2B program." The evidence indicates that Signal did not inform [REDACTED] that it would cease accepting Indian workers until late February 2007, after the applicant's initial recruitment and first payment. The record thus clearly shows that [REDACTED] was acting as Signal's agent at the time of its fraudulent recruitment of the applicant.

The record also contains evidence that at the time of the applicant's recruitment, [REDACTED] had harbored other Indian workers in labor camps through coercion for the purpose of subjecting them to involuntary servitude. The evidence further shows that [REDACTED] was aware of 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 \$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 [REDACTED] official told him he could not.

In sum, the preponderance of the evidence demonstrates that the applicant was recruited for his labor by [REDACTED] through its agent [REDACTED], through [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). 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. The applicant stated that in March 2007, a [REDACTED] employee informed him that he would not be able to work at [REDACTED] because of problems at the company. The record also contains a February 23, 2007 electronic mail message from [REDACTED] personnel manager to [REDACTED] explicitly stating that [REDACTED] "will not accept any more workers." Although the applicant stayed for two days at [REDACTED] camp in Texas a few weeks after his arrival in the United States, he recounted that he left the same evening [REDACTED] officials told him he could not work for the company.

The record does not indicate that in the United States, [REDACTED] ever harbored or obtained the applicant for his labor through the use of force, fraud or coercion for the purpose of subjecting him to involuntary servitude, peonage, debt bondage or slavery. Rather, the relevant evidence shows that the trafficking of the applicant ceased after his recruitment in India between January and March 2007 when he was clearly informed that [REDACTED] would not employ him in the United States. The applicant explained that he nonetheless decided to come to the United States to find other work and earn money to repay his loans. Although [REDACTED] falsely promised to help him find work and obtain lawful permanent residency in the United States in order to secure his last payment, [REDACTED] was no longer acting as Signal's agent at the time. Accordingly, the record indicates that the applicant came to the United States voluntarily and was not subjected to any other trafficking after his arrival. Because the trafficking ended before his arrival in the United States, the applicant has not demonstrated 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.

*Clear Chance to Depart*

Even if the applicant had been trafficked into the United States, he would still fail to meet the physical presence requirement because the relevant evidence indicates that he had a clear chance to depart the United States before any law enforcement agency became involved in the matter. The record shows that the applicant's trafficking ceased between March 2007 after he was told that [REDACTED] would not employ him and he travelled to the United States voluntarily on April 2, 2007. The applicant did not contact any law enforcement agency about the trafficking until a year later in March 2008. The applicant did not discuss his activities in the United States during this time, but the record indicates that he maintained possession of his passport. Although the applicant later became involved in a lawsuit against his traffickers, his participation occurred a year after his trafficking ceased. 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). For this additional reason, 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*

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.