

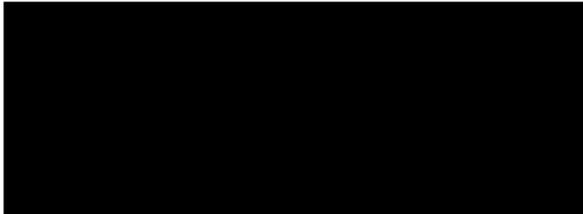
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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:

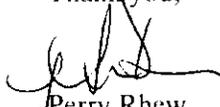


INSTRUCTIONS:

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 The decision of the director will be withdrawn in part and affirmed in part.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(l) 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 August 18, 2009 statement, the applicant provided the following account of his journey to the United States. In approximately December 2003 while working as a pipe fitter in Dubai, the applicant went to the office of [REDACTED] in response to an advertisement for pipe fitters to work in the United States and obtain a "green card" and was told the cost would be approximately \$12,250 (U.S. dollars), payable in three installments. In January 2004, the applicant went back to [REDACTED], paid his first installment and signed an agreement to work with [REDACTED], but was later told that there would be a delay. In January and February 2006, the applicant paid his second installment and additional fees for his family members to receive visas. In November 2006, [REDACTED] called the applicant and told him he could work for another company, [REDACTED], on an H2-B visa while his "green card" case with [REDACTED] was proceeding, but that he would have to pay an extra \$720 and attend an interview with [REDACTED]. In December 2006, the applicant went to a meeting with representatives from [REDACTED], passed a test and was given a document stating that he had been selected for a permanent residence visa, but that he would have to pay additional fees to two individuals working with [REDACTED]. In January 2007, the applicant quit his job in Dubai so he could attend a visa interview at a U.S. consulate in India. Before the interview, a [REDACTED] associate told him that he would not pass the interview if he said that he had paid money to get the visa.

After the visa interview, a [REDACTED] associate told the applicant that [REDACTED] did not want any more workers because of problems they were having. The applicant recounted that he had heard of problems from his friends who had gone to work for [REDACTED] but he did not clearly understand what was happening. The [REDACTED] associate told the applicant that he could go the United States with the visa by himself, but that [REDACTED] did not want him and he would have to pay the last installment to [REDACTED] in [REDACTED] before he left. The applicant was worried because [REDACTED] had told him he could not get his money back and he decided to go to the United States. The applicant met five other workers in the same situation and they travelled together to Mumbai. The applicant took out a loan of approximately \$12,370 at 14% interest to pay the final installment, fees and his airfare. After he received the money, [REDACTED] gave the applicant his passport and airline ticket. [REDACTED] told the applicant and the other workers that if they tried to call [REDACTED] the police would arrest them. [REDACTED] told them that they could work wherever they wanted, but that they were going to the United States at their own risk.

The applicant arrived in New Orleans on April 2, 2007 where he and the other workers stayed at the home of a friend for about a week. The applicant recounted meeting two other workers from [REDACTED] one of whom had tried to commit suicide when [REDACTED] attempted to deport him, but who nonetheless told the applicant he should try to work for [REDACTED]. About two weeks after his arrival, the applicant went to [REDACTED] camp in Orange, Texas where he stayed for a few days. The applicant took a test, but [REDACTED] officials told him he could not work there. The [REDACTED] officials told them a bus would take them back to New Orleans the next day. Frightened he might be taken to the police, the

applicant and some other workers called a friend who picked them up in the middle of the night. About six weeks after his arrival, the applicant received his social security card and realized that it was illegal for him to work for another company besides [REDACTED]

Thereafter, the applicant recounted that he went to Louisiana, Mississippi, and Florida attempting to get an identification card. In May 2007, the applicant obtained a temporary identification card in Oklahoma. The applicant then went to South Carolina where he worked as a pipe fitter at a shipyard. Between June and July 2007, the applicant obtained an identification card and driver's license in Chicago, Illinois and returned to work in the shipyard in South Carolina. In December 2007, the applicant discovered that the money he had paid for his original "green card" application with Indo-Amerisoft was lost because the company had closed. In January 2008, the applicant paid another company to file a new immigrant petition for him.¹

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 [REDACTED] by the U.S. Equal Employment Opportunity Commission (EEOC); and that he is a class member in a civil suit against [REDACTED] and its associates filed on March 7, 2008. The applicant explained that if he returned to India, he would face reprisal from [REDACTED] and his associates for his involvement in the lawsuit; the police would not protect him; he would be unable to find employment in India or Dubai to repay his loans; he could not afford medical care related to hernia surgery he had performed in March 2008; and he would face ridicule and embarrassment for returning from the United States empty-handed.

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 determined the applicant had not established that [REDACTED] was "involved with the initial visa fraud or that it was ever the intention of Signal International to recruit workers for the purpose of subjecting them to 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 [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. A June 19, 2006 letter from [REDACTED] also confirmed that Signal had formally appointed [REDACTED] as its "representative in India to facilitate the recruitment of

¹ A Form I-140, Immigrant Petition for Alien Worker (receipt number [REDACTED]) filed by [REDACTED] Inc. doing business as [REDACTED] on the applicant's behalf, remains pending.

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 [REDACTED] 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 [REDACTED] has approved under the H2B program.” The record thus clearly shows that [REDACTED] was acting as [REDACTED] agent at the time of its fraudulent recruitment of the applicant between November and December 2006.

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 [REDACTED] 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). 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. The record shows that between February and March 2007, [REDACTED] agents informed the applicant that he would not be able to work for the company. The applicant stated that [REDACTED] associate told him that he could go to the United States with his visa, but that [REDACTED] did not want him. The applicant also recounted that just prior to his departure, [REDACTED] warned him not to contact [REDACTED] and that he was going to the United States at his own risk. 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 at [REDACTED] camp in Texas for a few days 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 February and March 2007 when he was clearly and repeatedly 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 and support his family. Accordingly, the record indicates

that the applicant came to the United States voluntarily, worked for another employer 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 February and 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. During that year, the applicant travelled to several states and obtained employment in South Carolina. The record indicates that during this time, the applicant possessed his passport, was not suffering from trauma or injury and had taken no steps to deal with the consequences of having been trafficked. 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.