

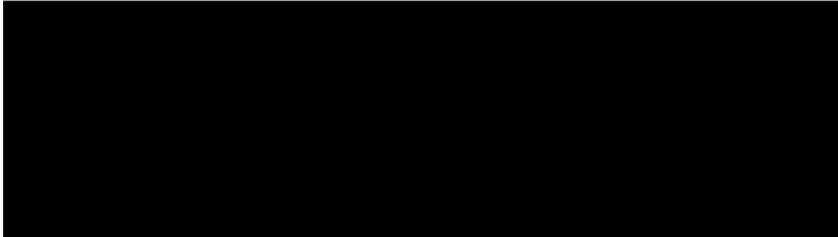
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D12

DATE: **APR 20 2012**

Office: VERMONT SERVICE CENTER

FILE:



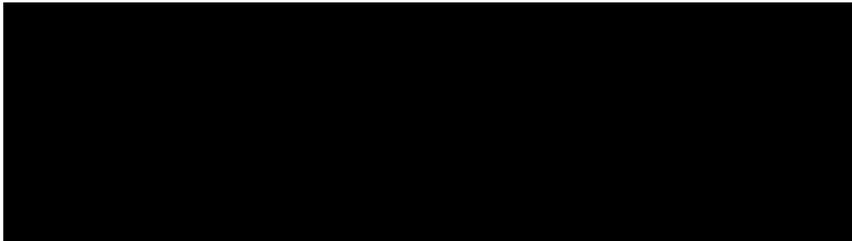
IN RE:

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.

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his statutory eligibility for T nonimmigrant classification, but remains inadmissible, the director’s decision will be withdrawn and the matter remanded to the director for further action.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.¹

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:

¹ 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 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(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 *Preamble to 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 40 year-old citizen of India. In his January 22, 2009 and May 5, 2009 statements submitted below, the applicant provided the following account of his journey to the United States. The applicant explained that he was a structural fitter who was financially responsible for his wife and their young son, as well as his sister, brother-in-law and their three children. In August 2006, the applicant responded to a newspaper advertisement for structural fitters to work in the United States for Signal International (Signal). The applicant passed a test and attended a meeting at a labor broker's office where [REDACTED], an agent for Signal, and two attorneys working for Signal explained that the workers would first get a visa for about nine months, which would be extended until their "green cards" were processed and that it would cost \$15,462 (U.S. dollars) in visa and service fees. At the end of the meeting, [REDACTED] took the applicant's passport and told him to return within a few days to make an initial deposit. The applicant used his savings to pay his initial fee of \$448 and was told to make more payments to the Signal attorneys. Unable to raise that money, the applicant returned in September 2006 and asked the broker to return his deposit. The broker encouraged him to go to the United States and said that although the price had risen to \$17,928 for all of the fees, the applicant would be able to pay off the sum within a year of working in the United States.

The applicant recounted that his mother-in-law sold her house and lent him \$13,446 with the agreement that he would financially support her son. The applicant borrowed an additional \$4,482 at a 36% annual interest rate. In December 2006, the applicant went to Chennai for his visa interview. Prior to the interview he met with an employee of [REDACTED] whom he paid \$4,482 for visa fees. The [REDACTED] employee told him to tell the U.S. consular officer that if he got an extension of his

visa, he would remain in the United States, but that if he did not, he would return to India when his visa expired. Although the applicant protested that [REDACTED] told him he would be able to stay permanently in the United States, the [REDACTED] employee insisted that the applicant would be able to do so, but had to answer in that manner. After the applicant passed his visa interview, the [REDACTED] employee told him that he would not get his passport back until he paid the rest of his fees by February 1, 2007. However, at the end of January 2007, the broker told the applicant that there had been an argument between [REDACTED] and the Indian workers and the applicant's departure would be delayed until March 2007. The applicant and some other workers preparing to work for Signal called [REDACTED] who told them that there had been problems with the workers' accommodations, but that the problems were being resolved. [REDACTED] assured the applicant that he would still be going to the United States. In April 2007, the applicant paid the \$13,446 service fee to the broker and then went to [REDACTED] office in Mumbai, where he was given his plane ticket and was told to sign some documents in English that he did not understand.

The applicant arrived in the United States on April 21, 2007. The next evening he and his travel companions went to Signal's Mississippi worksite where other Indian workers told them that Signal did not want any more Indian workers, had sent two workers back to India the previous day, and had used security guards to detain and try to deport other Indian laborers in March. After the workers warned the applicant and his traveling companions that Signal might call the police or immigration authorities to report them, the applicant and his companions left the labor camp.

In his December 19, 2011 statement submitted on appeal, the applicant recounted that after he left Signal's Mississippi worksite, he stayed with a friend from India for a few days in Houma, Louisiana and then found lodging for a week with the help of a charity, after which he returned to Houma and stayed with his friend until approximately August 2007. The applicant then stayed with another acquaintance in California until March 2008 when he returned to his friend's home in Houma.

The applicant explained that when he realized he had been cheated by [REDACTED] he was shocked, but could not fathom returning to India. Because the applicant had not been able to make any payments on his debts, moneylenders began harassing his wife and when she contacted the police, they did nothing to protect her. The applicant described his ensuing psychological distress, which led to his brief hospitalization for depression.

The applicant stated that he never contacted the police about his experience with [REDACTED] because a friend had told him that if he called the police in the United States, they would deport him. While the applicant was in California, he borrowed \$1,200 to pay a man who was helping other Indian workers in his situation because he feared he would be deported otherwise, but the man never told the applicant how he would use the money to help him. The applicant stated that it was not until early 2008 that he heard of a charity that was helping other Indians who had come to the U.S. to work for Signal. The applicant explained that he overcame his fear of U.S. law enforcement agencies through the charity's help because people with the charity spoke his native language, explained the laws and legal options available to him in the United States and connected him with lawyers who helped him communicate with governmental agencies, report himself as a trafficking victim and participate in a lawsuit filed against Signal in March 2008.

On October 28, 2008, the applicant was detained by U.S. Immigration and Customs Enforcement (ICE) during a workplace enforcement investigation at [REDACTED] Incorporated in North Dakota where the applicant was employed without authorization. On December 23, 2008, the applicant was convicted of possession of a counterfeit social security card in violation of 18 U.S.C. § 1546(a) and was sentenced to time he had already served in imprisonment.

The applicant filed the instant Form I-914 on November 24, 2008. 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 [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] 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, [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 Signal formally granted power of attorney to [REDACTED] to act as its agent in India. A June 19, 2006 letter from [REDACTED] Senior Vice President and General Manager to [REDACTED] also confirmed that [REDACTED] 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 [REDACTED] 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 record thus clearly shows that [REDACTED] was acting as Signal's agent at the time of its fraudulent recruitment of the applicant beginning in August 2006.

The evidence also demonstrates 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 a deposition given in connection with civil litigation against [REDACTED] the same official stated that even after learning of the exorbitant recruitment fees, [REDACTED] continued to work with [REDACTED] to bring in more Indian workers.

While the director acknowledged that [REDACTED] later harbored other Indian workers and subjected them 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. Photographs, excerpts from depositions of Signal officials and media reports show that [REDACTED] 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 [REDACTED] 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, [REDACTED] 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. [REDACTED] directed its staff and security personnel to terminate those 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 [REDACTED] officials and Indian workers in which [REDACTED] 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 [REDACTED] official also reminded the workers that they had agreed to work under the company's conditions rather than having [REDACTED] "report [them] to immigration and give [them] a plane ticket for India." The relevant evidence establishes that [REDACTED] 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. [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 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 [REDACTED] 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 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 indicates that after his arrival in the United States, the applicant had no further contact with [REDACTED]. Although the applicant went to [REDACTED] Mississippi worksite, he left before meeting any [REDACTED] officials 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.²

In his statements, the applicant credibly described his initial fear of contacting any law enforcement agency in the United States. The applicant also explained his fear of returning to India without having paid his debts. Because he was unable to make payments, the applicant described how his debts kept increasing and he had to borrow an additional \$2,193 at a 24% annual interest rate simply to pay the interest on his other loans. The applicant stated that his father was ill and eventually died because the applicant was unable to send money home to pay for the oxygen machine that was sustaining him. The applicant also described how moneylenders harassed his wife and how he and his family would be forced into servitude and exiled from their community if he were to return to India without paying his debts because one of his lenders is a powerful figure in his home village. Due to the resultant anxiety over his debt and his family, the applicant suffered from insomnia, stress, anxiety and an inability to concentrate.

Other evidence supports the applicant's statements. The record contains a psychological assessment of the applicant by [REDACTED], a licensed clinical social worker with the Interprofessional Center for Counseling and Legal Services at the University of Saint Thomas. [REDACTED] diagnosed the applicant with severe major depression and generalized anxiety disorder. [REDACTED] attributed the applicant's mental health conditions to his trafficking, his resultant debt and worries about his family in India, as well as his experiences while detained by immigration enforcement authorities. [REDACTED] explained that his observations of the applicant's distress were consistent with the applicant's reported symptoms of insomnia, constant worrying, frequent crying, hopelessness,

² 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 [REDACTED] 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. T 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.

inability to concentrate, and overwhelming feelings of shame and failure, which all corresponded to his depression and anxiety.

Counsel also submitted an affidavit from Professor [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. [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. An article from the Financial Times reported on the rising indebtedness of rural households in India, which was highest in Andhra Pradesh, the applicant's home state, and which caused wide-spread suicides in that state and other rural areas in India. The record also contains numerous media articles regarding the prevalence of unregulated money lenders in India, their exorbitant interest rates and often 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 [REDACTED], 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 overwhelmed in 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 intentions to the consular officer at his visa interview by indicating that he would return to India when his visa expired unless he got an extension. Although the applicant also recounted how a Dewan employee instructed him 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(1)(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.