

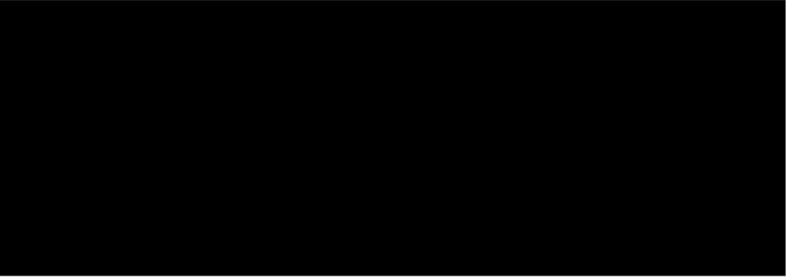
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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.

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 appeal will be dismissed.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application for failure to establish that the applicant was a victim of a severe form of trafficking in persons and was present in the United States on account of such trafficking. In making the latter determination, the director did not address whether or not the applicant had an opportunity to depart the United States after he escaped the alleged traffickers and before any law enforcement agency became involved in the matter. On October 4, 2011, the AAO issued a request for evidence (RFE) on this issue. To date, over four months later, the AAO has received no response to the RFE from the applicant or counsel.

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.

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

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

* * *

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

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

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

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

Pertinent Facts

The applicant is a citizen of India who entered the United States on March 29, 2007 as the beneficiary of a temporary worker's visa (H2B) filed by [REDACTED]. In his December 16, 2009 statement, the applicant provided the following account of his journey to the United States. In February 2007, the petitioner first contacted an associate of [REDACTED] in response to an advertisement for pipe fitters to obtain employment and "green cards" in the United States. The [REDACTED] told the applicant that he would be hired by [REDACTED] and

would go to the United States on an H-2B visa and that [REDACTED] would process his “green card” after his arrival. To start the process, the associate told the applicant he would have to pay approximately \$1,135, after which he would attend a visa interview. After the applicant paid the initial fee, he took and passed a practical test and attended a visa interview on February 22, 2007. Prior to the interview, the [REDACTED] told the applicant not to tell the consular officer that he had paid money to obtain the opportunity to go to the United States. The day after the applicant’s visa was granted, the [REDACTED] told the applicant that he would have to pay an additional sum of approximately \$18,150 to get his passport and visa, the last installment of which he would pay at the [REDACTED] in Mumbai prior to his departure. On or about March 25, 2007, the applicant flew to Mumbai, paid his last installment to [REDACTED] and was given his airline ticket, passport and other documents. The night before his departure, the [REDACTED] associate told the applicant that there was a labor problem in the United States, but that the owner of [REDACTED] would resolve it.

Upon his arrival in Chicago on March 29, 2007, the applicant called the [REDACTED] associate who told him that he could not work for [REDACTED] because the labor problems at the company had not been resolved. The applicant realized he had been cheated and recounted his ensuing disappointment and confusion. The applicant stayed in Chicago for about three months and then went to South Carolina in June 2007 to join a friend. Several months later, the applicant and his friend attended a meeting in Texas organized by a charitable organization that was helping workers recruited by [REDACTED]. After the meeting, the applicant relocated to Ingleside, Texas where he stayed with some acquaintances. The applicant stated that he reported himself as a trafficking victim to a law enforcement agency on or about March 6, 2008, a year after his arrival in the United States.

Victim of a Severe Form of Trafficking in Persons

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

This portion of the director’s decision shall be withdrawn. The evidence submitted below and on appeal establishes that at the time of the applicant’s recruitment, [REDACTED] was acting as [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 in India. A June 19, 2006 letter from [REDACTED] and [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 evidence indicates that [REDACTED] did not inform [REDACTED] that it would cease accepting Indian workers until late February 2007, after the applicant’s recruitment and initial payment. The record thus clearly shows that [REDACTED] was acting as [REDACTED] 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, [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] 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 is hereby withdrawn.

Physical Presence in the United States on Account of Trafficking

The applicant has not, however, established that he is physically present in the United States on account of the trafficking. To meet the physical presence requirement, individuals 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, counsel asserts that the applicant is similarly situated to other T visa recipients who were trafficked by [REDACTED] and that he is “physically present in the United States as a direct result of his victimization.” Counsel does not discuss whether or not the applicant had a clear chance to depart the United States before law enforcement became involved and counsel did not respond to the RFE on this issue.

Under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.11(g)(2), the petitioner has not shown that he did not have a clear chance to depart the United States between his arrival in March 2007 and his first contact with a law enforcement agency regarding his trafficking in March 2008. The applicant stated that he had no contact with his traffickers apart from one brief telephone call shortly after his arrival in the United States. The applicant retained possession of his passport and other documents and after staying in Chicago for approximately three months, he travelled to South Carolina and then Texas. Apart from how he came into contact with a charitable organization helping workers recruited by [REDACTED] in Texas, the applicant did not discuss his activities during the year he spent in the United States before law enforcement became involved in the investigation of his trafficking. The applicant recounted that he went into significant debt to pay his recruiting fees in India and that when he realized [REDACTED] had cheated him, he was greatly saddened. However, the applicant did not indicate, and the record contains no other evidence that he suffered any injury or trauma attributable to the trafficking. Consequently, the applicant has failed to establish that he is

physically present in the United States on account of the trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Conclusion

The applicant bears the burden of proof to establish his eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). On appeal, the applicant has established that he was a victim of a severe form of trafficking in persons in the past, but he 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. Consequently, the appeal will be dismissed and the application will remain denied.

ORDER: The appeal is dismissed.