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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

[redacted]

DATE: AUG 1 7 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 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*. 8 C.F.R. § 214.11(l)(1). *See also 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, 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.

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.
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> * * *
>
> (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 and Procedural History

The applicant is a citizen of India. In his June 1, 2010 statement submitted below and his December 13, 2011 statement submitted on appeal, the applicant provided the following account of his journey to the United States. In May 2006 while on leave from his job as a fitter in Uganda, the applicant

heard through friends of upcoming opportunities to work and obtain a "green card" in the United States through an agent named In October 2006, the applicant met with who informed him that was sending fitters to work for in the United States for a cost of approximately $15,428 (U.S. dollars). told the applicant that he would go to the United States on an H2B visa, which could be extended two or three times while Signal processed his "green card." To pay the fees, the applicant borrowed approximately $9,056 from four wealthy caste-kin with a monthly interest charge of $45.28 and signed notes as surety. The applicant also borrowed approximately $9,056 from a local money lender for a monthly interest charge of $45.28 and a pledge of his family's land as surety.

In early February 2007, the applicant paid approximately $2,264 to for his visa and later that month he went to Chennai and met with associate, , who told him to tell the consular officer that he had not paid anything for the job opportunity. also had the applicant sign documents in English that he was unable to read completely. The applicant was nervous and did not recall the specific questions the consular officer asked him. After his visa interview, the applicant was told that his passport would be sent to In March 2007, the applicant went to office in Mumbai and paid him approximately $13,584 in cash and then returned to his home to wait for his airline tickets to be confirmed. On April 5, 2007, the applicant returned to office in Mumbai to get his passport and airline ticket and he met another worker named with whom he would be traveling. assured them that it was a good job opportunity and that someone would meet them in Houston upon their arrival.

When the applicant and arrived in Houston on April 6, 2007, no one from Signal met them at the airport. The applicant called Dewan who told him he would call and that the applicant should call again shortly, but when the applicant called back repeatedly, no one answered. A police officer called a taxi for the applicant and and sent them to a nearby motel. The applicant called who told him that they had to contact because there was nothing he could do for them, but the applicant's subsequent calls to were again unanswered. A few days later, the applicant and went to a local Hindu temple where the priest told them that other Indian workers from had said that the situation was bad, that there was a dispute between the workers and the company, and that the applicant and would not find work at although the workers left the contact information of someone in Rhode Island who could help them. The applicant stated that he worked as a fitter in Rhode Island for about two and a half months in 2007; worked for 10 days repairing ships in 2008; and worked for four months in 2009 in Kentucky as a pipe fitter.

The applicant recounted that in the summer of 2007, he learned of people helping Indian workers recruited by and at the end of 2007, he attended a meeting with worker advocates in the District of Columbia. Although the applicant heard about human trafficking at that meeting, he explained that it was not until he met with his pro bono lawyers that he understood he should contact law enforcement. The applicant reported himself as a trafficking victim to the U.S. Department of Justice (DOJ) on or about March 6, 2008. The applicant asserted that he is also a plaintiff in a civil lawsuit filed against The applicant explained that if he returned to India, he feared retaliation from and his associates and that he would be unable to continue his participation in the lawsuit and other U.S. government investigations related to his trafficking experiences.

The applicant filed the instant Form I-914 on June 25, 2010. The director subsequently issued a Request for Evidence (RFE) 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. The applicant, through prior counsel, responded to the RFE with additional evidence which the director found insufficient to establish the applicant's eligibility and the director denied the application. On appeal, counsel submits additional evidence and legal briefs reasserting the applicant's eligibility.[1]

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 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 also concluded that the applicant had not established that was "involved with the initial visa fraud or that it was ever the intention of 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, was acting as 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 full power of attorney to to act as its agent. A June 19, 2006 letter from Senior Vice President and General Manager to also confirmed that had formally appointed 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 to visit the company in the United States and also stated that it was in the process of drafting an agreement for "continued services in processing etc. the balance of the 590 personnel that Signal has approved under the H2B program."

The evidence further shows that was aware of the exorbitant recruitment fees the Indian workers had paid. In an electronic mail message dated November 17, 2006, a 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 directly without paying the $15,000 recruitment fee, but the official told him he could not. In a December 16, 2009 deposition of another

[1] On appeal, counsel requests the opportunity for oral argument "[d]ue to the multiple complicated legal issues involved in the Applicant's year and a half effort to prove his eligibility for T nonimmigrant status." The record contains numerous supporting documents and multiple legal memoranda. Because the facts and legal issues are fully represented in the record, we find no need for oral argument and counsel's request is denied pursuant to the regulation at 8 C.F.R. § 103.3(b)(2).

official taken in connection with the pending federal civil litigation, the official confirmed that the company continued to work with to bring in more workers from India even after learning of the high recruitment fees. The record thus clearly shows that was acting as agent at the time of its fraudulent recruitment of the applicant beginning in October 2006 and until the applicant's H2B visa was issued on February 22, 2007.

While the director acknowledged that subjected other Indian workers to forced labor, he concluded that did not intend to do so when they began the recruitment process with in India. The director failed to acknowledge, however, that at the time of this applicant's recruitment, had already harbored other workers and subjected them to involuntary servitude. The relevant evidence establishes that subjected Indian workers to involuntary servitude by forcing them to continue working for the company through the threat of physical restraint and abuse of the administrative legal process of removal from the United States under the Act. 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.

In sum, the preponderance of the evidence demonstrates that the applicant was recruited for his labor by , through its agent by fraudulent promise of guaranteed employment and 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 apart from one telephone call to a associate shortly after his arrival in the United States, the applicant had no further contact with and never had any contact with 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). Because this issue was not addressed by the director, the AAO issued a request for additional evidence (RFE), to which counsel responded with a letter brief, a supplemental statement from the applicant, copies of non-precedent AAO decisions in other T cases and a copy of a December 20, 2011 letter from law professors.

In his statements, the applicant recounted that he was shocked when he realized that would not employ him and he was unable to pay the monthly interest on his loans. He stated that he could not return to India because he would not be able to repay his debts. The applicant explained that the few jobs that exist in India "pay very little money" and he would not have been able to regain his former job in Uganda. The applicant also feared that the money lenders would harm him and his family if he returned because in his town it is common for money lenders to beat up people who do not repay even small loans. The applicant reported that the money lenders harassed his family when

his interest payments were delayed by saying that the applicant was not repaying his debts in front of their village elders. The applicant feared that his family would lose their land and their livelihood if he returned and was unable to repay his debts. The uncertainty of his situation also caused the applicant to have problems sleeping and concentrating and he suffered from headaches and unspecified sickness. The applicant explained that he did not initially contact any law enforcement agency because "the idea never occurred to" him, he was unaware of any legal protections for workers like him in the United States, his English was limited and he had difficulty understanding people and expressing himself.

The record does not fully support the applicant's claims. In his first statement, the applicant recounted that he was employed intermittently in the United States after his arrival and was able to send some money home to his family. While the applicant's physical and mental health was undoubtedly affected by his inability to work for Signal upon his arrival in the United States and his realization that he had been cheated by Dewan, the applicant was nonetheless able to obtain some employment and a social security card. The record also indicates that he retained possession of his passport and Form I-94 entry and departure document.

The applicant expressed fear of returning to India without having repaid his debt, but he did not provide a detailed, probative account of the specific harms he and his family had or would face apart from briefly stating that money lenders had harassed his family when his interest payments were delayed and that he feared his family would lose their land or be physically harmed. Counsel submitted an expert affidavit by [redacted] a sociology professor at the National Institute of Advanced Studies in Bangalore, India, regarding the social and psychological costs of debts incurred by international laborers from India. However, the applicant has not shown that he or his family was subjected to or faced physical harm or the specific types of social humiliation described by [redacted] during the period in question. The applicant failed to describe any particular incident of harassment or other harm that the money lenders caused or threatened to inflict upon him or his family during the relevant period. In addition, while [redacted] discusses the particularly dire impact of debt burdens and unemployment in Kerala, he does not specifically address the circumstances of skilled workers from the applicant's home state of [redacted].

The applicant also failed to provide a detailed, probative account of his earnings in the United States during this period, the terms and balance of his debts at the time and his employment prospects in India or other countries. The applicant generally asserted that if he returned to India, it would be difficult to find work and he would never make enough money to pay off his loans, but he did not elaborate further. The applicant also stated that he had previously worked in other parts of India and in Uganda for nearly three years, but he did not discuss in probative detail his ability to regain employment in India or other countries during the period in question.

On appeal, counsel claims that the applicant did not have a clear chance to leave the United States before law enforcement became involved in the matter because it "reasonably took the Applicant eleven months to overcome his fear, to locate and consult with pro bono counsel, and to assert his rights." In their joint letter, the law professors claim that lack of a reasonable opportunity to report to law enforcement should be sufficient to show that an applicant did not have a clear chance to depart the United States. However, the issue is not how long it took the applicant to report his

trafficking to law enforcement authorities or if the delay was reasonable, but whether he had a clear chance to leave the United States after he escaped his traffickers and before law enforcement became involved. There are many reasons why trafficking victims do not initially report their circumstances to law enforcement agencies. As both counsel and the law professors note, there is no filing deadline for T nonimmigrant status for victims who have escaped their traffickers. In addition to cultural and linguistic barriers and fears of reprisal or other serious harm, many victims are unaware of the laws in the United States that could protect them.[2] In this case, the applicant credibly explained his reasons for not reporting himself as a trafficking victim until 11 months after his arrival in the United States. Those reasons are not at issue in this proceeding.

The law professors also claim that USCIS should find that applicants who meet the extreme hardship requirement of subsection 101(a)(15)(T)(i)(IV) of the Act also meet the physical presence requirement of subsection 101(a)(15)(T)(i)(II) of the Act. Their letter states:

> If the T visa applicant demonstrates that he or she is present in the United States due to a reasonable fear of extreme hardship upon departure, USCIS should conclude that the victim is physically present on account of trafficking and did not have a clear chance to leave the United States after escaping the trafficking situation.

The physical presence and extreme hardship elements are distinct statutory requirements for T nonimmigrant classification that must be demonstrated independently. While some evidence may be relevant to both determinations, the applicant bears the burden to "submit evidence that fully establishes eligibility for each element of the T nonimmigrant status." 8 C.F.R. § 214.11(f). *See also* 8 C.F.R. § 214.11(l)(2) ("the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility"). Moreover, the situation of extreme hardship in this case arose *after* the period in question. As explained in his RFE, the director determined that the applicant established the requisite extreme hardship because of his participation as a potential class member in the civil litigation against [redacted] and [redacted] and the applicant's resultant fear of retaliation from [redacted] and his associates if he was subsequently removed to India. These circumstances arose after the applicant reported his trafficking to law enforcement and are not relevant to whether he had a clear chance to depart the United States before that time.

The preponderance of the evidence shows that the applicant had a clear chance to depart the United States before he reported himself as a trafficking victim to the U.S. Department of Justice. The record shows that at the time of his arrival, the applicant was 35 years old. Although he recounted experiencing some physical and psychological difficulties upon realizing that he would not be

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[2] *See* 22 U.S.C. § 7101(b)(20) ("victims of trafficking are frequently unfamiliar with the laws . . . of the countries into which they have been trafficked . . . ."). *See also* T Nonimmigrant Status Interim Rule, 67 Fed. Reg. 4784 (Jan. 31, 2002) (noting the reluctance of victims without legal status in the United States to cooperate with law enforcement).

[3] The civil litigation against [redacted], [redacted] and other defendants was filed in 2008 and requested certification of a class of all Indian workers who were recruited by one or more of the defendants and who entered the United States at any time through September 30, 2007, pursuant to an H2B visa obtained by [redacted] The court subsequently denied the plaintiffs' motions for class certification. [redacted], No. 08-1220 (E.D. La. Jan. 4, 2012).

working for [redacted] and had been cheated by [redacted], the record lacks sufficient evidence that the applicant suffered physical or psychological trauma or injury during this time. The evidence also shows that the applicant retained his travel documents upon his departure from India and that he secured intermittent employment during the applicable period. While the applicant recounted his fear of returning to India without having repaid his debt, the record lacks sufficient evidence that the applicant's personal circumstances prevented his return during this time.

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). Consequently, the applicant has not established that he is physically present in the United States on account of his 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.