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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: AUG 17 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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> * * *
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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 July 16, 2010 statement, the applicant provided the following account of his journey to the United States. In September 2006 when he was working as a fitter in his hometown of [redacted], the applicant met with an associate of [redacted] in response to a newspaper advertisement for welders and fitters to work in the United States. The [redacted] told the applicant that [redacted] was hiring workers to come to the United States on temporary, nine-month visas, which the company would renew and then apply for a "green card" for the workers. The [redacted] associate informed the applicant that the total cost for the opportunity would be approximately [redacted] (U.S. dollars), payable in an initial fee of approximately [redacted] to the associate and the balance of approximately [redacted] payable to [redacted] The applicant paid the initial fee to the [redacted] associate in November 2006, but the associate refused to give him a receipt for the payment. Over the next two months, the associate would call in the applicant every two weeks to ask if he had gathered the remaining balance. The applicant borrowed approximately [redacted] from three of his wife's relatives at an interest rate of five percent.

In early January 2007, the [redacted] associate told the applicant to go to the U.S. consulate in Chennai for his visa interview. Before his interview, the applicant met with a [redacted] employee who instructed him to tell the consular officer that he would only stay in the United States temporarily to work for [redacted] and that he had not paid any money to obtain the job. The [redacted] employee explained that [redacted] would renew the temporary visa and then apply for the applicant's "green card," after which the applicant could bring his family to the United States. The applicant attended his consular interview and then returned home where the [redacted] associate told him to prepare the balance of his fees in cash to pay [redacted] During the last week in February 2007, the applicant went to [redacted] and paid his balance in cash to [redacted] who refused to give him a receipt and told him to return home to prepare for his journey. On or about April 5, 2007, the applicant returned to [redacted] and met the other worker that he was traveling with. [redacted] told them that [redacted] employees would meet them at the airport in Houston.

When the applicant and his travel companion arrived in Houston on April 6, 2007, no one from [redacted] met them at the airport. They stayed in a motel near the airport for approximately one week during which time they repeatedly called a telephone number for the [redacted], [redacted] had given them, but there was no answer. Through a local Indian temple, the applicant and his companion met other Indian workers who told them that [redacted] was no longer accepting new workers at its [redacted] Those workers called the [redacted] but the calls were unanswered. The applicant and his companion then went to [redacted] stayed with an Indian friend of the motel manager for two months. The applicant stated that in June or July 2008, he reported himself as a trafficking victim to the U.S. Department of Justice. The applicant did not discuss his activities in the United States during the year between the time he ceased living with the motel manager's friend in Rhode Island in approximately June 2007 and when he reported himself as a trafficking victim.

U.S. Citizenship and Immigration Services (USCIS) records show that on April 1, 2008, [redacted] filed a Form I-140, Immigrant Petition for Alien Worker, on the applicant's behalf, although the company withdrew the petition on September 3, 2009. The instant Form I-914 application was filed on July 27, 2010. The director subsequently issued a Request for Evidence (RFE) that the applicant was the victim of a severe form of trafficking in persons and that he was physically present in the United States on account of such trafficking. Prior counsel timely responded with additional evidence that the director found insufficient to establish the applicant's eligibility. On appeal, counsel submits additional evidence and legal briefs reasserting the applicant's eligibility.

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 that the applicant had not established that [redacted] was "involved with the initial visa fraud or that it was ever the intention of [redacted] 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 Signal formally granted full power of attorney to [redacted] A June 19, 2006 letter from [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] 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 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 [redacted] and that another worker called him from India asking if he could go to [redacted] directly without paying the [redacted] recruitment fee, but the [redacted] official told him he could not. In a December 16, 2009 deposition of another [redacted] official taken in connection with pending federal civil litigation against the company, the [redacted] official confirmed that [redacted] continued to work with [redacted] and bring in more workers from India even after learning of the high recruitment fees. Electronic mail messages also indicate that [redacted] did not inform [redacted] that it would not accept any more workers from India until February 23, 2007.

The record thus clearly shows that [redacted] was acting as [redacted]s agent at the time of its fraudulent recruitment of the applicant beginning in September 2006 and through the issuance of the applicant's H2B visa on February 15, 2007.

While the director acknowledged that [redacted] subjected other Indian workers 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. The relevant evidence establishes that [redacted] 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. [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.

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). 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 although the applicant called [redacted] at the airport upon his arrival in the United States and attempted to contact [redacted]s worksites in [redacted] shortly after his arrival, he never spoke to any [redacted] in the United States, was never employed by the company and had no further contact with [redacted] shortly after his arrival in the United States. 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 supplemental statement dated December 16, 2011, the applicant recounted that after his arrival, he could not return to India because he had spent all his money on a taxi and his stay at the motel and had no funds to buy a return airline ticket. He explained that his original debt had increased due to the accrual of monthly interest and he "was under a lot of pressure from the lenders to make payments" on his loans. According to the applicant, he could only earn about [redacted] a month in India, which would be insufficient to meet even the interest payments on his loans. The applicant

asserted that if he had returned to India without repaying his debts, his family would face homelessness, hunger and shame. After his arrival in the United States, the applicant reported that the money lenders had repeatedly gone to his family's home and threatened them forcing his family to beg for more time to make payments. The applicant recounted that he knew of other people in his community who were beaten when they were unable to repay their debts and he feared the same harm for his family, although he did not describe any such incident in probative detail.

The applicant explained that at the time of his arrival it was a struggle for him to communicate in English, he did not know where he could find help and he constantly worried about repaying his debts and feared for his family's safety. The applicant recounted that he suffered from constant headaches, insomnia, depression and a lack of appetite and energy. The applicant explained that he never went to the police because he did not think they could help him and he did not know about human trafficking until he met with worker advocates in late 2007 and that he did not fully understand his rights as a trafficking victim until he met his pro bono lawyers in the Spring of 2008.

The record does not fully support the applicant's claims. The record shows that the applicant was the beneficiary of a Form I-140, Immigrant Petition for Alien Worker, the underlying labor certification for which was filed on April 1, 2008 by a [redacted] The applicant did not discuss this petition in either of his statements. Although the construction company withdrew the Form I-140 petition in August 2009, the applicant did not disclose his association with the company or any employment opportunity he had been offered during the relevant time period before he reported himself as a trafficking victim.

While employment during the relevant period is not necessarily disqualifying, in this case, the record contradicts the applicant's claim that his financial circumstances prevented his departure. In his first statement, the applicant claimed that he had no job in the United States. However, in his second statement, the applicant reported that he still owed four *lakh* to the money lenders, which indicates that he was able to repay approximately half of his original debt of seven to eight *lakh*.[1] The applicant failed to discuss his employment, how he supported himself or any of his other activities in the United States during the year between when he left his acquaintance's home in [redacted] in approximately June 2007 and when he reported himself as a trafficking victim in June or July 2008.

In addition, although the applicant expressed fear of returning to India without having repaid his debt, he did not provide a detailed, probative account of the specific harms he and his family had or would suffer apart from brief, general assertions that they would face homelessness, hunger and shame. 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

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[1] The exact amount of the applicant's debt is unclear. On page four of his July 16, 2010 statement, the applicant reported that he borrowed 6 *lakh* (approximately $13,058) from three of his wife's relatives at a five-percent interest rate. On page two of his December 16, 2011 statement, the applicant recounted that he borrowed 6 *lakh* from three "caste-kin" of his wife at a monthly interest rate of five percent and that he borrowed an additional *lakh* from two private money lenders at a four-percent monthly interest rate. However, on pages four to five of his December 16, 2011 statement, the applicant refers to his "original debt of approximately 7 to 8 lakh."

debts incurred by international laborers from India. However, the applicant's brief statements are insufficient to show that he or his family was subjected to or faced physical harm or the specific social humiliation described by [redacted] during the period in question. 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 activities and 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 stated that if he returned to India, his earnings would be insufficient to repay his debts, but he did not elaborate further. The applicant also stated that he previously worked in Singapore from 1993 to 2000 and in Saudi Arabia in 1991 and again from 2003 to 2005, but he did not discuss his ability to regain employment in those countries during the period in question.

While the applicant's physical and mental health was undoubtedly affected by his inability to work for [redacted] upon his arrival in the United States and his realization that he had been cheated by [redacted], the record indicates that he was nonetheless able to work, obtain a social security card and that he retained possession of his passport and Form I-94 entry and departure document.

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 approximately fourteen to fifteen 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 earlier as a trafficking victim to U.S. law enforcement authorities. 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:

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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).

> 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 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 39 years old. Although he recounted experiencing some physical and emotional difficulties upon realizing that he would not be 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 obtained a social security card. 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. Most importantly, the applicant has failed to provide any account of his activities in the United States during the year preceding the date he reported himself as a trafficking victim. The applicant's failure to discuss his activities during this time detracts from the credibility of his claims.

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 trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

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[3] The civil litigation against [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. *David v. Signal International*, No. 08-1220 (E.D. La. Jan. 4, 2012).

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.