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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:

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 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”) revoked approval of 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 revoked approval of 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.

\* \* \*

(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(i) 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 November 8, 2009 statement submitted below, the applicant provided the following account of his journey to the United States. In September 2006 while working as a structural fitter and welder in Punjab, the applicant telephoned the office of an

██████████ in response to a newspaper advertisement for employment and permanent residency in the United States with ██████████. The ██████████, told the applicant to attend a seminar with ██████████ in October where he would take a skills test. On or about October 4, 2006, the applicant attended the seminar in Chennai and took the test. ██████████ told the applicant and the other attendees that they would first have to pay 5,000 rupees (approximately \$109 U.S. dollars) for visa fees. ██████████ an American lawyer, told the workers that they would receive a nine-month visa, which ██████████ would extend and during which time their "green cards" would be processed. The applicant borrowed the money for the visa fees from his mother and in early December 2006, ██████████ told him his visa interview was scheduled for December 13, 2006 in New Delhi and that he should meet with her associate, ██████████ the day before his interview. On December 12, 2006, the applicant met with ██████████ in New Delhi who told him to say "no" if the consular officer asked him if he had paid any money to any company to obtain the visa interview. At the interview, the consular officer informed the applicant that he had passed, but kept his passport. After the interview, the applicant again met with ██████████ who told him to sign a document giving ██████████ permission to retrieve his passport from the U.S. consulate. ██████████ then told the applicant to pay 2 lakh rupees (approximately \$4,459) to process the "green card" paperwork and obtain his flight to the United States.

The applicant again borrowed the money from his mother and on January 18, 2007, he paid the fee to ██████████ who told him that he would leave with a group of other workers going to the United States on about January 26, 2007. However, a few days later, ██████████ called the applicant and told him that he would have to pay an additional 5 lakh rupees (approximately \$11,305) to get his airline ticket. The applicant recounted feeling surprised and uncertain of how to proceed because he did not have the funds. The applicant called ██████████ who both told him to speak to ██████████ but informed him that he would not get a refund of the money he had already paid if he decided not to go to the United States. The applicant tried unsuccessfully to contact ██████████ but spoke to other workers who had been recruited by ██████████ and were also asked to pay the large additional fee. At the end of January 2006, the applicant called two of those workers who confirmed that they had reached the United States safely and that ██████████ representatives had met them at the airport. After speaking with those workers, the applicant regained confidence in the process. The applicant asked his mother for more money. She could only give him 5,000 rupees, but she borrowed money under her name from friends and relatives and pawned some of her jewelry. The applicant also contacted his father who was living in the United States and lent the applicant some money. The applicant paid half of the 5 lakh rupees by check to ██████████ and the other half in cash to ██████████

On or about January 30, 2007, the applicant met with ██████████ in New Delhi and ██████████ told him he would have to pay an additional 3 lakh rupees (approximately \$6,780) to get his passport and ticket. The applicant was furious because his flight was scheduled for that evening. The applicant called his mother who agreed to take out more loans under her name and the applicant finally received his airline ticket and passport. The applicant flew from New Delhi to Mumbai where he went to ██████████ office and was made to sign documents in English that he did not understand. The applicant then boarded his flight with thirty to forty other workers. The applicant was detained for questioning by British officers during the layover in London and did not arrive in the United States until February 2, 2007.

No one from ██████ met the applicant at the airport in Houston. The applicant met an Indian man named ██████ who let him stay at his home in Mississippi. After unsuccessfully trying to contact ██████, the applicant went to Michigan in early April 2007 to work at the gas station of a friend of ██████. The applicant recounted working long hours at the gas station every day of the week and doing additional chores for his employers after work. Although his employers had agreed to pay him \$1,000 a month, the applicant was given only a single payment of \$800 in August when he told his employers he needed a few days off. ██████ gave the applicant the contact information for another couple who owned a gas station in Houston and at the end of August 2007, the applicant flew to Houston to work at their gas station. The applicant recounted working long hours, six days a week at this gas station for eight dollars an hour. In October 2007, the applicant met some other Indian people who agreed to hire him to work at their gas station for nine dollars an hour. The applicant worked at that gas station until about December 20, 2007.

Around this time, the applicant learned of other Indian workers who had left ██████ and were filing a lawsuit against the company. In January 2008, the applicant went to New Orleans and met with a man who was helping the workers with the lawsuit so that he could become involved as well. On or about March 6, 2008, the applicant reported himself as a trafficking victim to the U.S. Department of Justice (DOJ) and stated that he was a plaintiff in the civil suit filed against ██████ on March 7, 2008.

The applicant filed the instant Form I-914 on November 24, 2009. The director initially approved the application, but then revoked his approval because the applicant never worked for ██████ and the director determined the applicant therefore had not been trafficked by ██████ and was not physically present in the United States on account of such trafficking.<sup>1</sup> On appeal, counsel submits additional evidence and legal briefs reasserting the applicant's eligibility.<sup>2</sup>

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<sup>1</sup> The director properly revoked approval of the Form I-914 on notice in compliance with the regulation at 8 C.F.R. § 214.11(s). Although a portion of the director's decision shall be withdrawn, the appeal will be dismissed, as the applicant has failed to overcome the other ground for revocation, physical presence in the United States on account of a severe form of trafficking in persons. While the director did not reach the underlying issue of whether or not the applicant had a clear chance to depart the United States before law enforcement became involved in his trafficking matter, the applicant was notified of this deficiency and counsel responded to a request for additional evidence issued by the AAO on October 6, 2011. Accordingly, at all stages of the adjudication of this application and appeal, USCIS has provided the applicant with a detailed statement of the grounds of ineligibility and revocation pursuant to the regulation at 8 C.F.R. § 214.11(s)(2)-(3).

<sup>2</sup> On appeal, counsel requested the opportunity for oral argument "[d]ue to the multiple complicated legal issues involved in the Applicant's nearly two year 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).

*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 also concluded that the applicant had not established that [REDACTED] recruited him with the intent to subject him to forced labor, or that he was "recruited by [REDACTED], as an agent of [REDACTED] for the purpose of subjection to forced labor."

This portion of the director's decision shall be withdrawn. The evidence submitted below and on appeal establishes that at the time of the applicant's recruitment, [REDACTED] was acting as [REDACTED] agent. Under basic principles of agency law, an employer may be held accountable for the actions of its agent. *See generally*, 27 Am. Jur. 2d *Employment Relationship* § 373 (2011) (discussing an employer's vicarious liability for its agent's torts under the doctrine of respondeat superior). The record contains a copy of a notarized document dated August 3, 2006, in which [REDACTED] formally granted full power of attorney to [REDACTED] to act as its agent. A June 19, 2006 letter from [REDACTED] 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] 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 Signal 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] 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] without paying the \$15,000 recruitment fee, but the [REDACTED] told him he could not. In a December 16, 2009 deposition of another [REDACTED] taken in connection with the pending federal civil litigation, the [REDACTED] confirmed that the company continued to work with [REDACTED] to bring in more workers from India even after learning of the high recruitment fees. The record thus clearly shows that [REDACTED] was acting as [REDACTED] at the time of its fraudulent recruitment of the applicant beginning in September 2006, at the time the applicant's H2B visa was issued on December 13, 2006 and when he entered the United States on February 1, 2007.

While the director acknowledged that [REDACTED] 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 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 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 after his arrival in the United States, the applicant had no further contact with [REDACTED]. 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 first statement submitted below, the applicant recounted that he felt nervous, scared and anxious after he arrived in the United States and was unable to contact [REDACTED]. The applicant explained that he searched for other employment because he needed to work to begin repaying the money he and his mother had borrowed. When he told his mother of his situation, the applicant stated that her heart condition worsened. The applicant also reported feeling stressed, exhausted, having difficulty sleeping, being unable to buy enough food to eat properly and having heart pains and an increased heart beat during this time. In his supplemental statement submitted on appeal, the applicant explained that he feared his mother would be physically harmed and evicted from their home if he did not timely repay the loans because she had used the house as collateral to obtain the loans. The applicant briefly stated that some members of his extended family had threatened to evict his mother, but that other relatives had intervened to prevent her eviction. The applicant asserted that in India, the police and the legal system do not protect debtors and that if he returned to India, his wages would be too low to timely repay the loans and he and his family would be evicted from their home. The applicant also conveyed that he would face shame upon returning to India unable to repay his loans and support his mother and sisters. The applicant further recounted that he was unaware of his rights and was repeatedly told by his various employers in the United States that because his visa had expired, he could be deported and the police would not help him.

The record does not fully support the applicant's claim that he had no clear chance to depart the United States before he reported himself to DOJ as a trafficking victim. 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 applicant was

nonetheless able to obtain a social security card and employment for the majority of the relevant period. The record also shows that he retained possession of his passport and Form I-94 entry 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 extended family members had threatened to evict his mother on one occasion, but that other family members had intervened to protect her and that he feared his family would lose their home if he did not repay the loans timely. Counsel submitted an expert affidavit by [REDACTED] 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 in probative detail any particular incident of harassment or other harm that the 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, [REDACTED] does not specifically address the circumstances of skilled workers from the applicant's home state of Punjab.

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. The applicant asserted that if he had returned to India, his wages would have been insufficient to repay the loans, but he did not elaborate further and the record lacks any specific evidence regarding the employment rates and wages of skilled workers in the applicant's field in India.<sup>3</sup> Furthermore, the applicant stated that his father resided in the United States and lent him an unspecified amount of money to pay his recruitment fees in India, but the applicant did not discuss his relationship with his father and any support he did or did not receive from his father during the relevant period.

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 thirteen 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,

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<sup>3</sup> In paragraph 18 of his affidavit, [REDACTED] generally states that unemployment among skilled, male workers remains high in India.

many victims are unaware of the laws in the United States that could protect them.<sup>4</sup> In this case, the applicant credibly explained his reasons for not reporting himself as a trafficking victim until 13 months after his arrival in the United States. Those reasons are not at issue in this proceeding.

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 DOJ. The record shows that at the time of his arrival, the applicant was 23 years old and unmarried. Although he recounted experiencing some physical and psychological 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.<sup>5</sup> The evidence also shows that the applicant retained his travel documents upon his departure from India and that he secured other 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). Upon *de novo* review 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.

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<sup>4</sup> 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).

<sup>5</sup> On appeal, the applicant stated that in late 2008, after the applicable period, he was diagnosed with depression and has had to take medication to treat his condition. The applicant did not submit any relevant medical records or any other evidence that his illness arose during the applicable period and impacted his ability to leave United States during that time.