

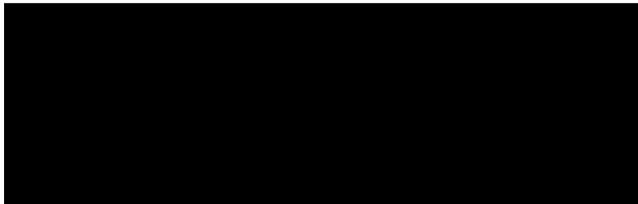
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

PUBLIC COPY



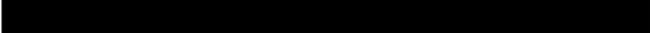
D12

DATE: **MAR 30 2012**

Office: VERMONT SERVICE CENTER

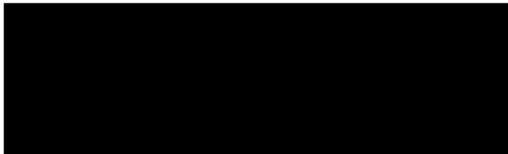
FILE: 

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:

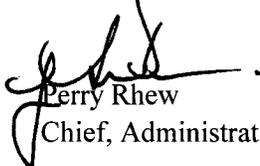


INSTRUCTIONS:

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 traffickers and before any law enforcement agency became involved in the matter. On October 6, 2011, the AAO issued a request for evidence (RFE) on this issue. To date, over five 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 April 3, 2007, as the beneficiary of a temporary worker's visa (H2B) filed by [REDACTED]. In his July 29, 2009 statement, the applicant provided the following account of his journey to the United States. In

September 2006 when the applicant was working as a welding foreman in Dubai, he went to the office of ██████████ in response to a newspaper advertisement for welders to work in the United States and obtain "green cards" for themselves and their families. ██████████ told the applicant that the opportunity would cost \$15,000 (U.S. dollars), payable in installments, and that ██████████ would renew his visa twice and then provide him with a "green card" with which he could bring his family to join him in the United States. The applicant paid the first installment at his initial meeting with ██████████ and paid his second installment of approximately \$3,812 in October 2006, after passing a practical test. When the applicant asked for a receipt of his second payment, ██████████ gave him one reflecting only \$944 and said the rest of the money would go to the attorneys working for ██████████ and they could only issue a receipt for the amount of ██████████ fee.

Shortly before the applicant's visa interview on February 13, 2007 at the U.S. consulate in Chennai, a ██████████ employee told him that to ensure he passed the interview, he had to tell the consular officer that he had not paid any money to anyone else to receive his visa and that he would return to India upon his visa's expiration. After the interview, ██████████ told the applicant that his visa was issued, but that his departure had been delayed because there had been problems at the ██████████ labor camp. During this time, the applicant informed his employer in Dubai of his plans and his employer became angry and told him that he would never be able to return to his old job.

On March 28, 2007, ██████████ told the applicant that the problems at ██████████ had been resolved and the applicant paid his last installment of approximately \$9,334. ██████████ made the applicant sign a blank piece of paper and refused to issue the applicant a receipt. ██████████ told him that if U.S. officials would not stamp his passport and returned him to India, then ██████████ would refund him approximately \$1,168; but that if his passport was stamped and he later encountered a problem, ██████████ would not refund any of his money.

The applicant and four other Indian workers flew together to the United States. Upon their arrival in New Orleans, no one from ██████████ met them at the airport and eventually an acquaintance of one of the workers drove the applicant and his companions to Mississippi where they went to the ██████████ worksite. A ██████████ official told them the company had informed ██████████ that they did not want any more workers and he called ██████████ who said that he had just sent the applicant and the others to the United States to work somewhere, but not at ██████████. The ██████████ official then let the applicant and his companions speak to ██████████ and ██████████ angrily asked why they had said he had sent them. ██████████ told the applicant and his companions that they had come to the United States on their own. The applicant and the others then realized they had been cheated by ██████████ and he had likely printed some kind of disclaimer on the blank documents he had forced them to sign before they left India. The ██████████ official made copies of the workers' passports and told them the company could not employ them.

The applicant then went to South Carolina where other workers told him he might be able to find a job through another individual. For a fee of \$125, that individual helped the applicant and some other workers obtain their social security cards and work at a shipyard in South Carolina which paid approximately \$800 per week. The applicant worked at the South Carolina shipyard for about a month and then went to Illinois where he was able to obtain a driver's license without papers from ██████████. In June 2007, the applicant went to Florida where he worked at a shipyard in Jacksonville

for ten days. The applicant then worked at a shipyard in Louisiana for two months. The applicant was subsequently employed at a refinery in Montana for three months and paid an attorney \$1,500 to renew his work visa until July 2008.

In March 2008, the applicant joined a strike against in Mississippi and afterwards attended a meeting at a charitable organization in New Orleans that was preparing to file a lawsuit against. The applicant agreed to join the lawsuit and on or about March 6, 2008, reported himself to the U.S. Department of Justice as a trafficking victim. The applicant then went to Louisiana where he worked for two months. The applicant returned to New Orleans where he was unemployed for about two to three months. The applicant explained that he later had other periods of unemployment, but "for the most part" he tried to find work so he could send money back home.

The applicant filed this Form I-914 on August 25, 2009. The director denied the application and counsel timely appealed. On appeal, counsel submitted briefs and additional evidence, but failed to respond to the AAO's RFE. The decision of the director will be withdrawn in part and affirmed in part and the appeal will be dismissed for the following reasons.

Victim of a Severe Form of Trafficking in Persons

The director determined that the applicant was not a victim of a severe form of trafficking in persons because although he was subjected to fraudulent visa practices by 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 was involved with the initial visa fraud or that ever intended to recruit workers for the purpose of subjecting them 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, 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 formally granted full power of attorney to Consultants to act as its agent in India. A June 19, 2006 letter from and Consultants 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 invited representatives 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 has approved under the H2B program." The evidence indicates that did not inform that it would cease accepting Indian workers until late February 2007, after the applicant's recruitment, initial payments and the issuance of his visa. The record thus

clearly shows that [REDACTED] was acting as [REDACTED] agent at the time of its fraudulent recruitment of the applicant.

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 \$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. Despite its knowledge of the excessive fees, [REDACTED] continued to retain [REDACTED] as its agent in India at the time of the applicant's recruitment. The record also contains evidence that at the time of the applicant's recruitment, Signal had harbored other Indian workers in labor camps through coercion for the purpose of subjecting them to involuntary servitude and continued to retain [REDACTED] to recruit other workers it intended to treat 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 as defined in the regulation at 8 C.F.R. § 214.11(a). The director's determination to the contrary is hereby withdrawn.

Physical Presence in the United States on Account of Trafficking

The 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.

The record in this case shows that the applicant escaped his traffickers nearly one year before law enforcement became involved. The applicant indicated that he had no further contact with [REDACTED] or [REDACTED] after he departed the Mississippi worksite shortly after his arrival in the United States in April 2007. Under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.11(g)(2), the applicant has failed to show that he did not have a clear chance to depart the United States between his last contact with [REDACTED] and [REDACTED] in April 2007 and his first contact with a law enforcement agency regarding his trafficking in March 2008. Upon his arrival in the United States, the applicant retained possession of his passport, obtained a social security card and a driver's license and paid an attorney to extend his H2B visa. The applicant recounted that after he realized he had been cheated by [REDACTED] and [REDACTED], he could not return to India because he had paid approximately \$14,016 to come to the United States, he knew that [REDACTED] would not refund his money, he had lost his job in

Dubai and he “had to try to make some money here. It was the only way to support [his] family and pay off [his] lenders.” The applicant did not further discuss his debts except to briefly express his fear of shame from his community and harassment from money lenders were he to return to India without having repaid his loans. The applicant did not specifically quantify his total indebtedness or provide probative information explaining his fear of shame and harassment upon return to India.

Apart from his financial difficulties, the applicant does not discuss and the record contains no other evidence that he suffered any trauma or injury caused by [REDACTED] and [REDACTED] or otherwise attributable to the trafficking. When considered in light of the applicant’s individual circumstances, the relevant evidence shows that he had a clear chance to depart the United States before law enforcement became aware of his trafficking. The applicant has consequently 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(1)(2). On appeal, the applicant has demonstrated that he was a victim of a severe form of trafficking in persons in the past, but he has not established 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.