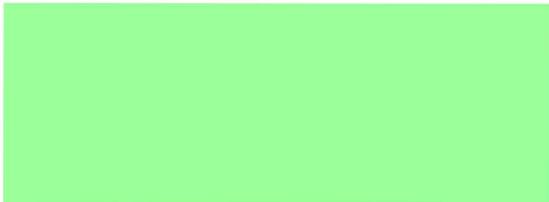


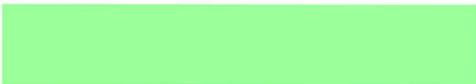
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



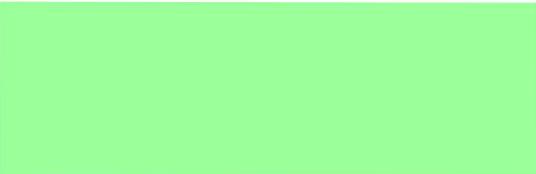
U.S. Citizenship
and Immigration
Services



DATE: **MAY 23 2013** 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the application for T nonimmigrant status and reaffirmed his decision upon granting two subsequent motions to reconsider. 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(i)(1).¹ 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) subject 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:

¹ See also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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(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 May 3, 2009 statement submitted below, the applicant provided the following account of his journey to the United States. In January 2007, the applicant was employed as a pipefitter in Tamil Nadu when he saw a newspaper advertisement for pipefitters to work in the United States. A couple of weeks later, the applicant went to an informational meeting with representatives of [REDACTED] in Chennai. [REDACTED] representative told the attendees that for a service charge of six lakh rupees, approximately \$13,451, they could obtain H-2B visas to work in the United States for [REDACTED] which would pay them \$20 an hour and that if they performed well, their visas could be extended for up to four years. After the applicant passed a skills test, [REDACTED] representatives took his passport and resume. In February 2007, the applicant went to the U.S. consulate in Chennai for an interview on his visa application and paid an application fee of 35,000 rupees. A few days later, [REDACTED] office told the applicant that they had his passport with the U.S. visa in it, but that he would have to pay the remainder of his six lakh service charge in cash in order to retrieve his passport and arrange his travel to the United States. In order to obtain the money, the applicant's father sold the family's condominium and the applicant borrowed the remaining three lakh from three different men at a two-percent monthly interest charge and with a promise to repay the loan within six months.

At the end of March 2007, the applicant went to [REDACTED] office in Mumbai and gave his staff the cash, but was afraid to ask for a receipt. The applicant was told to sign two documents that he did not have time to read. The applicant explained that he felt intimidated by [REDACTED] staff and had heard that [REDACTED] could cancel visas if workers were not cooperative. The applicant flew from Mumbai and arrived in the United States on March 29, 2007 with another Indian worker. The applicant recounted that no one from [REDACTED] met them at the airport upon their arrival in Chicago as they had expected. The applicant and his companion stayed with a friend in Chicago for one week during which time they unsuccessfully attempted to contact [REDACTED] and [REDACTED]. Another acquaintance eventually informed them that [REDACTED] was no longer accepting Indian workers.

The applicant and his companion then stayed in a motel for four months paid for by their friend. In July 2007, the applicant worked as a pipefitter's assistant at a shipyard in [REDACTED] North Carolina for three months until he was laid off. The applicant then worked approximately two months as a pipefitter's assistant at an ethanol plant in Ohio. In approximately April 2008, the applicant worked as a pipe fitter at another ethanol plant in Illinois for one month. From May to September 2008, the applicant worked as a pipefitter in Indiana. In approximately January 2009, the applicant worked in Texas as a pipefitter, but was subsequently laid off.

The applicant expressed feeling anxious and hopeless when he realized that [REDACTED] would not employ him and he recounted working in dangerous conditions in all of the jobs he has held in the United States. The applicant further reported that on an unspecified date in 2008, his wife and family were threatened by a money lender at their home in India and the applicant borrowed money from a friend in the United States to pay off that lender. After several months, the applicant repaid his friend, but he still owed three lakh rupees, approximately \$6,725 to two of his lenders. The applicant stated that his family faced severe financial difficulties and he had only been able to send a small amount of money home to them each month.

The applicant reported himself as a trafficking victim to the U.S. Department of Justice (DOJ) in March 2008 and explained that he remained in the United States to participate in a civil lawsuit and investigations against [REDACTED] and [REDACTED]. The applicant expressed his fear of retaliation from [REDACTED] and his associates if he returned to India.

The applicant filed his Form I-914, Application for T Nonimmigrant Status, on May 10, 2010. The director subsequently issued a Request for Evidence (RFE) that, *inter alia*, the applicant was a victim of a severe form of trafficking in persons. Counsel responded to the RFE with additional evidence, which the director found insufficient to establish the applicant's eligibility. The director denied the application and reaffirmed his decision upon granting two subsequent motions to reconsider. Counsel timely appealed.

On appeal, the applicant has established that he was a victim of a severe form of trafficking in the past. Counsel's claims and the additional evidence submitted on appeal do not, however, demonstrate that the applicant is physically present in the United States on account of such trafficking. Consequently, the appeal will be dismissed.

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 by [REDACTED] or [REDACTED]. Although the applicant was subjected to fraudulent visa practices by [REDACTED] and his associates, the director concluded that 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 found that the applicant had not established that [REDACTED] intended to subject Indian workers to forced labor when they began the recruiting process with [REDACTED]. While the director acknowledged that [REDACTED] later harbored other Indian workers and subjected them to forced labor in the United States, he concluded that the petitioner was not a victim of trafficking because he never worked for [REDACTED] upon his arrival in the United States.

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] Senior Vice President and General Manager 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 [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 \$12,000 and that another worker called him from India asking if he could go to [REDACTED] directly without paying the \$15,000 recruitment fee, but the [REDACTED] official told him he could not. In a December 16, 2009 deposition of another [REDACTED] official taken in connection with 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 Signal 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] agent at the time of its fraudulent recruitment of the applicant in January 2007.

The director failed to acknowledge 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 prior to the applicant's recruitment and 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] by [REDACTED]; fraudulent promise of employment 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 applicant stated that he was unable to contact either [REDACTED] upon 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) regarding the petitioner's ability to leave the United States during the year between his arrival on March 29, 2007 and March 2008 when he first contacted a law enforcement agency regarding the trafficking. Neither the applicant nor counsel responded to the AAO's RFE.

In his May 3, 2009 statement submitted below, the applicant recounted his difficulties upon arriving in the United States after he realized [REDACTED] would not employ him. Nonetheless, the applicant stated that he found work in his field for approximately five months before he reported himself as a trafficking victim to DOJ. The applicant recounted one incident when lenders threatened his wife in India, but he did not indicate whether the threat occurred during this period. The applicant also

stated that he was able to repay the lenders with a loan from a friend in the United States. Counsel submitted an expert affidavit by [REDACTED] a sociology professor at the [REDACTED] India, regarding the social and psychological costs of debts incurred by international laborers from India. While the AAO does not question [REDACTED] expertise, the applicant's brief references to his family's tarnished reputation and financial struggles 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 Tamil Nadu.

In her appellate brief, counsel asserts that the applicant is similarly situated to other T visa recipients and that because he was the victim of a severe form of trafficking in the past, the applicant is physically present in the United States as a direct result of his victimization. Counsel does not acknowledge that the applicant escaped his traffickers before his arrival in the United States and she does not discuss whether or not the applicant had a clear chance to depart before law enforcement was informed of his trafficking. Counsel did not respond to the AAO's RFE on this issue.

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 DOJ. The record shows that at the time of his arrival, the applicant was 38 years old. Although he recounted experiencing anxiety and dread 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 work in his field with other employers in the United States. While the applicant recounted his fear of returning to India without having fully 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 and the application will remain denied.

ORDER: The appeal is dismissed.