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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:

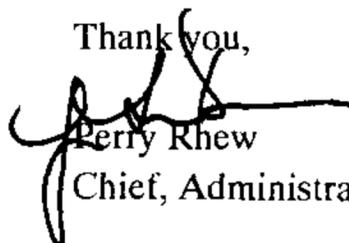


INSTRUCTIONS:

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(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 October 14, 2009 statement, the applicant provided the following account of his journey to the United States. In September or October 2006 while on leave from his job in Saudi Arabia, the applicant attended a meeting in Chennai presented by [REDACTED]

Consultants ██████ in response to a newspaper advertisement for an opportunity to work in the United States and obtain a "green card." ██████ stated that the total cost would be approximately ██████ (U.S. dollars) and that the workers would be able to return to India for visits and could eventually bring their family members to join them in the United States. After passing a skills test, the applicant received forms stating that he would work for ██████ in either Mississippi or Texas. The applicant borrowed approximately ██████ from a man in his hometown to pay the initial fees. In October and December 2006, the applicant was scheduled for visa interviews at the U.S. Consulate in Chennai. Prior to his interviews, ██████ told the applicant that if asked, he should say he had not paid anything to go to the United States, otherwise his visa would not be issued. During the first interview, the applicant said he told the officer that he had not paid any money for the opportunity to go to the United States and had been recruited for free. At the end of December 2006, the applicant received his passport with his visa, which he sent to ██████.

The applicant then borrowed approximately \$16,672 against the value of his home to pay the remainder of ██████ fee. In January 2007, the applicant transferred approximately ██████ to Dewan's bank account with the understanding that he would pay the remainder after his flight was booked. After waiting several months for his flight reservation, the applicant went to ██████ office in Mumbai in May 2007 and asked for his money back because his visa would expire in July 2007. ██████ refused to refund the applicant's money and told him he could leave in June. The applicant decided to go to the United States because he knew that he would otherwise be unable to repay his loans. ██████ forewent the remainder of the applicant's fee and gave him approximately ██████ to travel with. Before he was given his passport and airline ticket, ██████ made the applicant sign papers stating that after he left for the United States, ██████ had no more responsibility towards him.

The applicant travelled to the United States with two other Indian workers and they arrived on June 1, 2007. The day after their arrival a friend drove them to the ██████ work camp in Orange, Texas where other Indian workers told them that ██████ had treated them poorly and the company was not taking any new workers. After hearing about one worker that had tried to commit suicide, the applicant and his travel companions left the ██████ camp and returned to ██████. The applicant then went to ██████ and eventually received an extension of his visa through another company. The applicant received a social security card and a ██████ state identification card. From December 2007 to April 2008, the applicant worked as a ██████.

In approximately February 2008, the applicant heard about workers taking action against ██████ and in March 2008, he reported himself to the U.S. Department of Justice (DOJ) as a trafficking victim. The applicant asserted that he is a witness in a federal criminal investigation and that he is a class member and witness in a pending civil suit against ██████. The applicant explained that he could not return to India without money to repay his loans because he would lose his family's home and everyone in his life would suffer. According to the applicant, he would not be able to make enough money in India to pay off his loans or care for his elderly parents and the rest of his family.

The applicant filed the instant Form I-914 on October 16, 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 Signal and was not physically present in the United States on account of such trafficking.¹ On appeal, counsel submits additional evidence and legal briefs reasserting the applicant's eligibility.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 Dewan 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] intended to subject him to forced labor at the time of his recruitment; or that he was "recruited by [REDACTED] Consultants, as an agent of Signal International, 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 Signal formally granted full power of attorney to [REDACTED] to act as its agent. 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."

¹ 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 4, 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).

² On appeal, counsel requests the opportunity for oral argument "due 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).

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 Signal 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 the pending federal civil litigation, the [REDACTED] official confirmed that the company continued to work with [REDACTED] and 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] agent at the time of its fraudulent recruitment of the applicant beginning in September or October 2006 and when the applicant's H2B visa was issued on December 18, 2006.

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]'s 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 went to [REDACTED] worksite in Texas shortly after his arrival, he never spoke to any [REDACTED] officials, was never employed by the company and 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 supplemental statement dated November 22, 2011, the applicant recounted that within the first year of his arrival in the United States, he cried constantly, had difficulty sleeping, lost weight, started losing his hair, was easily angered and had difficulty concentrating and thinking clearly. The applicant recounted that he could not return to India because he had no money for a plane ticket and he feared that his family “would suffer great social stigma from our community and would more than likely become homeless.” The applicant explained that he did not initially contact any law enforcement agency because he did not speak English and did not know he could tell the police about his experiences until he met his current lawyers and found out that he was a victim of trafficking.

The record does not fully support the applicant’s claims. The record shows that the applicant received an extension of his H2B status to work for [REDACTED]. The applicant confirmed that he worked as a welder from December 2007 to April 2008 in Texas. 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 shows that he was nonetheless able to obtain employment, a social security card, identity documents, and an extension of his temporary worker status. The record also indicates that he retained possession of his passport and Form I-94 entry and departure document.

The applicant expressed fear of returning to India without having repaid his debt, but he did not provide a detailed, probative account of the specific harms he and his family had or would face apart from brief, general assertions that he would be considered a failure and that his family would lose their home and suffer because of him. Counsel submitted an expert affidavit by [REDACTED], a sociology professor at the [REDACTED] 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 physical harm or faced the specific types of 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 [REDACTED] he does not specifically address the circumstances of skilled workers from the applicant’s home state of [REDACTED].

The applicant also failed to provide a detailed, probative account of his earnings in the United States during this period, the terms and balance of his debts at the time and his employment prospects in India or other countries. The record shows that the applicant received an extension of his H2B status to work for [REDACTED] from August 1, 2007 to February 28, 2008. In his first statement, the applicant reported that he worked in Texas from December 2007 to April 2008. The applicant generally asserted that if he returned to India, it would be difficult to find work in his field and he would never make enough money to pay off his 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.³ The applicant also stated that he had worked in Saudi Arabia for approximately eight years, but did not discuss his ability to regain employment in that country during the period in question.

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

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 nine 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.⁴ In this case, the applicant credibly explained his reasons for not reporting himself as a trafficking victim until nine or 10 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 the U.S. Department of Justice. The record shows that at the time of his arrival, the applicant was 30 years old. 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. The evidence also shows that the applicant retained his travel documents upon his departure from India and that he secured employment for at least four months 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 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

⁴ 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).

Page 9

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.