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## Human Trafficking in the Heartland: Greed, Visa Fraud, and the Saga of 53 Indian Nationals "Enslaved" by a Tulsa Company

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# HUMAN TRAFFICKING IN THE HEARTLAND: GREED, VISA FRAUD, AND THE SAGA OF 53 INDIAN NATIONALS “ENSLAVED” BY A TULSA COMPANY

Michael A. Scaperlanda<sup>†</sup>

## Introduction

“Modern day slavery is one of the great human rights challenges of our time.”<sup>1</sup> Human trafficking is a \$7 to \$10 billion industry according to U.S. State Department estimates, with between eight-hundred thousand and nine-hundred thousand persons trafficked across international borders annually.<sup>2</sup> Of these, approximately eighteen-thousand to twenty-thousand cross the U.S. border.<sup>3</sup> Although most human trafficking involves women and children “sold into sexual slavery,” trafficking also occurs in the agricultural and industrial sectors.<sup>4</sup>

This essay chronicles the exploits of a Tulsa, Oklahoma company<sup>5</sup> that trafficked in fifty-three highly skilled workers from India (referred to herein as “the fifty-three,” “the Group of fifty-three,” “the third group,” or “the Indians”).<sup>6</sup> Its

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<sup>†</sup> © Michael A. Scaperlanda. Michael A. Scaperlanda is the Gene and Elaine Edwards Family Chair in Law and Associate Dean for Research, University of Oklahoma College of Law. He served as an expert witness for the Equal Employment Opportunity Commission in *Chellen v. John Pickle Company*, 344 F. Supp. 2d 1278 (N.D. Okla. Aug. 26, 2004). He would like to thank Lee Hall, Tala Hartough, Kevin Johnson, Johnny Parker, Ted Ruthizer, and Gloria Valencia-Weber for their helpful comments on an earlier draft; Kris Tate and Michael Stone for their excellent research assistance, Gene and Elaine Edwards for their generous support of the College of Law, and Dean Andrew Coats for his support.

<sup>1</sup> John R. Miller, *The United States' Effort to Combat Trafficking in Persons*, 8 GLOBAL ISSUES 2, at 6, at <http://usinfo.state.gov/journals/itgic/0603/ljge/gj02.htm> (last visited Feb. 19, 2005) (Miller is the Director of the U.S. State Department's Office to Monitor and Combat Trafficking in Persons).

<sup>2</sup> Jane Morse, *Trafficking Emerging as Human Rights Issue of 21st Century: John Miller's December 9 Remarks at Foreign Press Center* (Dec. 9, 2003), available at <http://usinfo.state.gov/gi/Archive/2003/Dec/09-542596.html> (last visited Feb. 19, 2005).

<sup>3</sup> *Id.* See Anthony M. DeStefano, *Feds Probe Queens Sex Ring; Say Mexicans Smuggled Prostitutes*, NEWSDAY, Jan. 26, 2004, at A08. See also Edward Hegstrom, *Human Trafficking's misery; Conference Discusses Ways to Combat It*, HOUS. CHRON., Feb. 20, 2004, at 29.

<sup>4</sup> Morse, *supra* note 2.

<sup>5</sup> As the title to this article suggests, transnational immigration is not merely a coastal phenomenon; it also contributes to the fabric of America's heartland. A number of scholars have written about the complex cultural, social, legal, and political nature of immigration for Middle America. See generally Sylvia R. Lazos Vargas, *“Latino/o-ization” of the Midwest: Cambio de Colores (Change of Colors) as Agromaquilas Expand into the Heartland*, 13 BERKELEY LA RAZA L.J. 343 (2002); Bill Ong Hing, *Answering Challenges of the New Immigrant-Driven Diversity: Considering Integration Strategies*, 40 BRANDEIS L.J. 861 (2002); and Kevin Johnson, *The End of “Civil Rights” As We Know It?: Immigration and Civil Rights in the New Millennium*, 49 UCLA L. REV. 1481 (2002).

<sup>6</sup> “India is a source, transit, and destination country for women, children, and men trafficked for the purposes of sexual and labor exploitation.” U.S. STATE DEPT., *TRAFFICKING IN PERSONS REPORT 213* (2004), available at <http://www.state.gov/documents/organization/34158.pdf> (last visited Feb. 19, 2005). The State Department has labeled India as a Tier 2 trafficking country because “[t]he Government of India does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.” *Id.*

modest scope attempts only to recount the plight of the fifty-three Indian citizens and the greed of a company that abused members of a vulnerable group as a means to their own illegitimate ends. Additionally, this essay discusses how that company used good old-fashioned charm, coupled with a soft spot in our immigration laws, the B-1 in lieu of H-3 trainee visa,<sup>7</sup> to successfully engage in the trafficking of these highly skilled welders, fitters, and cooks. Part I reviews the human trafficking phenomenon.<sup>8</sup> Part II details the John Pickle Company's ("JPC") devolution into the world of human trafficking.<sup>9</sup> Through the use of affidavits, Part III gives us a glimpse into trafficking from the trafficked Indians' perspective.<sup>10</sup> Finally, Part IV shows how JPC fraudulently used U.S. immigration laws to successfully traffic the fifty-three.<sup>11</sup>

## Part I: Human Trafficking: An Overview

One hundred and eighty-five years after the international community first condemned the slave trade,<sup>12</sup> the U.S. Congress found that "the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today."<sup>13</sup> The international community is engaged in an ongoing effort to diminish and hopefully eradicate this persistent phenomenon, addressing the problem from crime control, migration, and human rights perspectives.<sup>14</sup> In the year 2000, the United Nations adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*,

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<sup>7</sup> "An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure" is eligible for a "B" visa. 8 U.S.C. § 1101(a)(15)(B) (2004).

<sup>8</sup> See *Infra* Part I.

<sup>9</sup> See *Infra* Part II; The inferences I draw from the primary sources (e.g., affidavits, deposition testimony, e-mails, and other documents) are mine. The John Pickle Company would tell a very different story – a story that just does not add up, in my analysis. See *The John Pickle Company Story*, (on file with author) [hereinafter JPC Story].

<sup>10</sup> See *Infra* Part III.

<sup>11</sup> See *Infra* Part IV.

<sup>12</sup> See Joan Fitzpatrick, *Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking*, 24 MICH. J. INT'L L. 1143 (2003). "The 1815 Declaration Relative to the Universal Abolition of the Slave Trade is perhaps the first formal international instrument to condemn the slave trade," *Id.* at 1144 n.1, and is "the earliest established international human rights norm." *Id.* at 1144.

<sup>13</sup> Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 et seq., §7101(b)(1) (2004) [hereinafter "the Act"]. See generally KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY (1st ed. 1999); GLOBAL HUMAN SMUGGLING: COMPARATIVE PERSPECTIVES (David Kyle & Rey Koslowski eds., 2001); Kevin Bales, *The Social Psychology of Modern Slavery*, SCIENTIFIC AMERICAN, April 2002, at 80.

<sup>14</sup> Fitzpatrick, *supra* note 12, at 1144-45 ("Despite the long-standing recognition that slavery and involuntary servitude violate fundamental human rights, the human rights dimension to the trafficking of women and children is only beginning to be effectively factored into anti-trafficking strategies.").

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*Especially Women and Children*, (“the Protocol”),<sup>15</sup> and the U.S. Congress enacted the *Trafficking Victims Protection Act of 2000*, (“the Act”).<sup>16</sup>

For the limited purposes of this essay, we need not delve into the nuances and intricacies of either the Protocol or the Act. Instead, we need only look at the definitions of trafficking in both documents and the relief offered victims of trafficking by the Act. The Protocol defines trafficking in persons as:

the recruitment, transportation, transfer, harbouring [sic] or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of person having control over another person, for the purpose of exploitation.<sup>17</sup>

The Act defines “severe forms of trafficking in persons” as “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.”<sup>18</sup> Recognizing that trafficked persons ought to be treated as victims and not criminals or immigration violators, Congress created the “T” visa category allowing certain victims to stay and work in the United States.<sup>19</sup>

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<sup>15</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex II, U.N. Doc. A/RES/55/25 (2001) [hereinafter Protocol]. The United States has signed, but not ratified the Protocol. For discussion of the Protocol, see, Fitzpatrick, *supra* note 12, at 1148-1159; Mohamed Mattar, *Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses*, 26 *FORDHAM INT’L L.J.* 721 (2003); Jennifer Enck, Note, *The United Nations Convention Against Transnational Organized Crime: Is it All its Cracked Up to be?: Problems Posed by The Russian Mafia in the Trafficking of Human Beings*, 30 *SYRACUSE J. INT’L L. & COM.* 369 (2003); Vicki Trapalis, Comment, *Extraterritorial Jurisdiction: A Step Towards Eradicating the Trafficking of Women Into Greece for Forced Prostitution*, 32 *GOLDEN GATE U. L. REV.* 207 (2002); Sean Murphy, *International Trafficking in Persons, Especially Women and Children*, 95 *AM. J. INT’L L.* 407 (2001); Kelly Hyland, Note, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 *NO. 2 HUM. RTS. BRIEF* 30 (2001).

<sup>16</sup> See the Act, *supra* note 13. For discussion of the Act, see Fitzpatrick, *supra* note 12; Bo Cooper, *A New Approach to Protection and Law Enforcement Under the Victims of Trafficking and Violence Protection Act*, 51 *EMORY L.J.* 1041 (2002); Kara C. Ryf, Note, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 *CASE W. RES. J. INT’L L.* 45 (2002); Tiffany St. Claire King, Note, *The Modern Slave Trade*, 8 *U.C. DAVIS J. INT’L L. & POL’Y* 293 (2002); Juliet Stumpf & Bruce Freidman, *Advancing Civil Rights Through Immigration Law: One Step Forward, Two Steps Back?*, 6 *N.Y.U. J. LEGIS. & PUB. POL’Y* 131 (2002-2003); Susan Tiefenbrun, *The Saga of Susannah A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 *UTAH L. REV.* 107 (2002); Kelly E. Hyland, Note, *Protecting Human Victims of Trafficking: An American Framework*, 16 *BERKELEY WOMEN’S L.J.* 29 (2001).

<sup>17</sup> Protocol, *supra* note 15, at 32.

<sup>18</sup> The Act, *supra* note 13, at §7102(8)(B). See generally Shelly Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 *BUFF. HUM. RTS. L. REV.* 55, 61-54 (2001) (exploring alternatives for defining trafficking).

<sup>19</sup> 8 U.S.C. § 1101(a)(15)(T) (2004).

[A]n alien who the Attorney General determines –

(I) is or has been a victim of a severe form of trafficking in persons . . . .

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Under most definitions of human trafficking, three key elements are present: 1) recruitment, transportation, or harboring; 2) use of force, fraud, or coercion; and 3) forced labor or involuntary servitude.<sup>20</sup> The recruitment process often includes false advertisements offering good jobs and a better life in a new country.<sup>21</sup> Upon arriving, the victims are often forced to live and work in substandard conditions for substandard wages.<sup>22</sup> Confiscation of passports, physical threats against the victim or the victim's family, physical restraint, indebtedness, and the threat of deportation or imprisonment by government authorities are all used as means of controlling the trafficking victim.<sup>23</sup> Although some trafficked persons are brought into the United States secretly, others are admitted on fraudulently obtained visas or remain as visa overstays.

### Part II: The John Pickle Company's Devolution Into Trafficking

In 1972, John Pickle started a steel fabrication business in his garage.<sup>24</sup> By 1998, he had achieved the "American Dream," JPC employed 120 people in a

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- (II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking,
  - (III) (aa) has complied with any reasonable requests for assistance in the investigation or prosecution of acts of trafficking, or
  - (IV) (bb) has not attained 18 years of age, and
  - (V) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . . [qualifies for a "T" nonimmigrant visa.]

*Id.* Upon meeting certain proof, the victim may be able to bring his family to the United States. *Id.* at 1101(a)(15)(T)(ii). After three years, the "T" visa holder can petition for adjustment of status to that of a permanent resident. 8 U.S.C. § 1255(l) (2004). The "T" visa regulations are found at 8 C.F.R. § 214.11 (2004). See generally, Tala Hartsough, Note, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*, 13 HASTINGS WOMEN'S L.J. 77 (2002).

<sup>20</sup> See DISPOSABLE PEOPLE, *supra* note 13, at 16–30.

<sup>21</sup> *Id.* at 26.

<sup>22</sup> *Id.* at 17.

<sup>23</sup> For example,

[t]he raid of a factory in [L.A.] revealed seventy Thai women who had been trafficked to the United States and were being held in slave-like conditions. The women had been offered lucrative seamstress jobs in the United States, but when they arrived . . . they were confined to a barbed-wire compound, which they were prohibiting [sic] from leaving, and forced to work seventeen-hour days to pay off the cost of their passage.

Becki Young, Note, *Trafficking of Humans Across United States Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73, 78 (1998). "Traffickers utilize various degrees of coercion and fraud to entice trafficking victims to come to the United States. Their tactics range from abduction to fraudulent promises of employment and fraudulent advertisement practices." *Id.* at 79. See also Christopher Smith, Editorial, *Modern Slavery; U.S. Must Battle Countries Participating in Human Trafficking*, WASH. TIMES, June 18, 2002, at A19 ("Many are lured from their homes with promises of a better life by cunning traffickers who force them to work in brothels as sex slaves or as forced laborers in sweatshops, as domestic servants, or as beggars, just to name a few of the scenarios."); and U.S. STATE DEPT., *TRAFFICKING IN PERSONS REPORT 1* (2001), available at <http://www.state.gov/documents/organization/4107.pdf> (last visited Feb. 19, 2005).

[Upon arriving] many victims are subjected to threats against their person and family, violence, horrific living conditions, and dangerous workplaces. Some victims have answered advertisements believing that they will have a good job awaiting them in a new country. . . . Many trafficking victims fall prey to this practice because they seek a better life or enhanced job opportunities. They are, therefore, vulnerable to false promises of good jobs and higher wages.

*Id.*

<sup>24</sup> JPC Story, *supra* note 9, at 3.

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seven-hundred thousand square foot manufacturing facility.<sup>25</sup> By 2001, the dream lay shattered amidst a myriad of private and federal investigations and lawsuits, and the company closed its doors.<sup>26</sup> The beginning of JPC's end came in the form of a \$5.5 million purchase order from the Kuwait Oil Company in late 1998.<sup>27</sup> After successfully filling this order, JPC saw expansion into the Middle East as a realistic possibility and, with the assistance of the Commercial Attaché at the American Embassy in Kuwait,<sup>28</sup> entered into a joint venture with Kuwait Pipe Industries & Oil Services Company ("KPIOS") "to manufacture pressure vessels" in Kuwait at John Pickle Middle East ("JPME"), "using American Technology and Indian labor."<sup>29</sup>

JPC decided that its Indian workers should receive "training" in Tulsa, Okla. in advance of their deployment to Kuwait.<sup>30</sup> Toward this end, JPC sought the assistance of the Commercial Attaché at the American Embassy in Kuwait<sup>31</sup> to bring a group of twenty workers ("the second group") to Tulsa. To build its credibility with the attaché, JPC reminded the attaché that it had already successfully "trained" six Indian workers ("the first group") in Tulsa, sending them to Kuwait in 1999.<sup>32</sup> JPC's representative, Ray Murzello, "was a little apprehensive driving to the US Embassy,"<sup>33</sup> but he had "already laid the groundwork over a considerable period of time" and promised to "use the utmost care and a lot of charm during the meeting" with the attaché; he didn't "want to seem to be pushing the commercial and consular sections, because of the sensitive nature" of the

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 2, 13-15.

<sup>27</sup> See John Pickle Company Trainees Report 1 (Apr. 13, 2002) (on file with the author) [hereinafter Trainees Report].

<sup>28</sup> See Letter from John Pickle, Chairman and CEO, John Pickle Company to Charles Winburn, Commercial Attaché, Second Secretary, American Embassy (Jan. 16, 2001) (on file with the author) [hereinafter January Winburn Letter].

<sup>29</sup> Trainees Report, *supra* note 27, at 1-2.

<sup>30</sup> See *id.* at 3

JPC decided from previous experience, that India afforded the best source to acquire experienced workers that had previous pressure vessel manufacturing experience and met the criteria, acceptable to JPC. However, JPC could not put freshly recruited workers on the job in Kuwait, because they lacked the 'JPC Culture' and therefore, it was agreed with JPC's JV partners KPIOS, that groups of newly recruited workers would first be sent for training at the JPC facility in Tulsa JPC Story, *supra* note 9, at 4 (Training was necessary because "the labor productivity in the most modern sectors of India was about 15 percent of that in the United States.") (internal quotation marks omitted).

<sup>31</sup> See January Winburn Letter, *supra* note 28, ("[W]e seek your assistance, to enable us to train these workers in batches of 20-30 at the JPC plant in Tulsa.") and Letter from John Pickle, Chairman and CEO, John Pickle Company to Charles Winburn, Commercial Attaché, Second Secretary, American Embassy (Feb. 21, 2001) [hereinafter February Winburn Letter] (on file with author) ("[W]e request your valuable assistance with your counterpart in the Bombay Consulate, to grant our workers US visas, and permit JPC to train them for a period of time, after which they would be returned to their jobs in Kuwait.").

<sup>32</sup> See *id.* ("We must also mention in passing, that in 1999 we trained a group of six Indian workers from Kuwait and returned them to their jobs after the training period was complete, which you are aware of and can verify."); and JPC Story, *supra* note 9, at 4 ("The first group of 6 individuals came with a supervisor and stayed for 3 months.").

<sup>33</sup> E-mail from Ray Murzello, John Pickle Company Middle East to Joe Reeble, Executive Vice-President and Chief Operating Officer, John Pickle Company (Mar. 4, 2001, 12:18 PM) [hereinafter March 4 Reeble E-mail] (on file with author).

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request and out of fear that they would “balk and drop the whole matter, like a hot potato!”<sup>34</sup> Murzello had reason to be worried: U.S. consular officials have virtually unreviewable authority to deny visa petitions.<sup>35</sup> Therefore, the success of this whole scheme depended upon getting the commercial interest section of the U.S. Embassy in Kuwait to vouch for JPC with its counterparts in India, who would then recommend the granting of the B-1 training visas to the consular officials in India.

The charm and groundwork paid off.<sup>36</sup> The senior commercial officer at the U.S. Embassy in Kuwait wrote her counterpart in New Delhi “requesting . . . help to facilitate business visa referrals” for the second group of Indian workers, noting that “CS Kuwait has had nothing but good experiences with John Pickel [sic] in the past and we expect no less in the future.”<sup>37</sup> With this referral, Murzello, on behalf of JPC, cultivated a relationship with the U.S. Trade Commissioner in Mumbai, where the visas would be issued.<sup>38</sup> After receiving visas, which “were successfully processed in one day,”<sup>39</sup> this group of twenty arrived in the United States in late March of 2001 and left for Kuwait a few months later.<sup>40</sup>

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<sup>34</sup> E-mail from Ray Murzello, John Pickle Middle East to Joe Reeble, Executive Vice-President and Chief Operating Officer, John Pickle Company (Mar. 2, 2001, 8:48 PM) [hereinafter March 2 Reeble E-mail] (on file with author). “[T]he workers CV’s handed over to [the attaché] may not be the workers we need in Tulsa, but that really doesn’t matter because, once these formalities are agreed upon between the American Embassy Kuwait and the [sic] American Consulate in Bombay, then I will have no problem in changing or substituting names submitted for visas.” *Id.*

<sup>35</sup> See, e.g., Saavedra Bruno v. Albright, 197 F.3d 1153, 1158-64 (D.C. Cir. 1999); Li Hing of Hong Kong, Inc. v. Levin, 800 F.2d 970 (9th Cir. 1976); James Nafziger, *Review of Visa Denials by Consular Officers*, 66 WASH. L. REV. 1 (1991); Leon Wildes, *Review of Visa Denials: The American Consul as 20th Century Monarch*, 26 SAN DIEGO L. REV. 887, 900-02 (1989); and Maria Zas, *Consular Absolutism: The Need for Judicial Review in the Adjudication of Immigrant Visas for Permanent Residence*, 37 J. MARSHALL L. REV. 577 (2004).

<sup>36</sup> March 4 Reeble E-mail, *supra* note 33 (“Chuck [the attaché] said, yesterday he was given the green signal by his boss to proceed with the JPME/JPC application for worker training at Tulsa and the US Embassy Kuwait, was ready to assist us with referrals to the US Embassy, New Delhi and the US Consulate in Bombay.”).

<sup>37</sup> Letter from Patricia Gonzalez, Senior Commercial Officer, Commercial Service to Frank Foster, Deputy Senior Commercial Officer (Mar. 7, 2001) (on file with author) (Referring to the first six “trainees,” the letter says: “All six of the welders received certification to ASME standards and subsequently returned to Kuwait, where they assisted with the installation of the pressure vessels.”). Foster forwarded the referral to Richard Rothman, the “Principal Commercial Officer in Mumbai” where the visas would be issued with the notation that “[t]here has never been any problem with the new employees returning [to Kuwait] to assume their jobs.” E-mail from Frank Foster, Deputy Senior Commercial Officer, Commercial Service to Richard Rothman, Principal Commercial Officer, American Consulate, Mumbai (Mar. 15, 2001, 1:13 PM) (on file with author).

<sup>38</sup> Letter from Ray Murzello, John Pickle Middle East to Richard Rothman, U.S. Trade Commissioner in Mumbai (Mar. 20, 2001) (on file with author) (“Further to our meeting. . . . We thank you for your assistance in processing the attached 20 workers documents.”).

<sup>39</sup> Letter from Ray Murzello to Charles Winburn (Apr. 4, 2001) (letter of appreciation) (on file with the author). See also letter from Ray Murzello to Richard Rothman (Apr. 4, 2001) (letter of appreciation) (on file with author). “Armed with Chuck’s documentation, PCO Rothman walked JPME employees through the visa process and all twenty subsequently received their visas and are in training in Tulsa.” CS Export Success Record, *The Commercial Service, Embassy of the United States* (on file with the author).

<sup>40</sup> Trainees Report, *supra* note 27, at 7-8.

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Although JPC knew that its “trainees” could not engage in productive employment while in the United States,<sup>41</sup> the second group of “trainees” were “assigned to different [production] shifts” and encouraged to work “as much overtime as possible.”<sup>42</sup> Knowing that it could not pay the Indian workers during their training time in the United States,<sup>43</sup> JPC attempted to hide the source of funds by creating the illusion that KPIOS/JPME was the employer paying the trainees’ wages. To accomplish this, JPC provided “timesheets of all workers [sic] hours and submit[ed] these to KPIOS on the 22nd of [each] month.”<sup>44</sup> KPIOS/JPME then “wire transfer[ed] the workers salaries in a lump sum to JPC” for distribution “to the workers according to KPIOS instructions.”<sup>45</sup> KPIOS/JPME then sent “JPC an invoice for the total amount of the salaries . . . to be paid to KPIOS by JPC.”<sup>46</sup> Although immigration fraud occurred in bringing this group of twenty to the United States,<sup>47</sup> this second group was “trained” in the United States and sent on to Kuwait to work for KPIOS/JPME; they are not, therefore, the direct subjects of this essay chronicling human trafficking.

Having established good working relationships with the U.S. Embassies in Kuwait and India, JPC made preparations to bring a third group of “trainees” to Tulsa in the fall of 2001. JPC commissioned a leading Indian employment recruiting company, Al-Samit International, to recruit and test prospective laborers.<sup>48</sup> To assemble a team of “expert welders,”<sup>49</sup> Al-Samit and its subcontractor, Protective Weld Engineers, “tested over 300 individuals, before they settled on the final 54 trainees that would be sent to JPC.”<sup>50</sup> Included in this group were two cooks who would cook for the “trainees” in Tulsa.<sup>51</sup>

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<sup>41</sup> See Deposition of Raymond J. Murzello by Robert Canino, Regional Lawyer, EEOC, in Tulsa, Oklahoma 157 (Jan. 10, 2003) [hereinafter Murzello Deposition] (JPC was told by the United States consulate “that they could not issue work visas for them, and that under no circumstances could these guys work or get paid in the United States.”).

<sup>42</sup> Trainees Report, *supra* note 27, at 8; E-mail from Joe Reeble, Executive Vice-President and Chief Operating Officer, John Pickle Company to Meshal Al-Roumi (Mar. 17, 2001 5:05 PM) (“JPC gets the partial use of the workers during their on-the-job training time.”).

<sup>43</sup> JPC was aware that it could not pay these “trainees.” Memorandum from Joe Reeble, Executive Vice-President and Chief Operating Officer, John Pickle Company to Adel Al-Kharafi and Meshal Al-Roumi (Apr. 17, 2001) (on file with author) (“Due to restrictions of the US Immigration and Naturalization Service (INS), and due to the nature of their training, these workers are neither eligible nor permitted to be considered JPC-Tulsa employees while in the United States.”). See *supra* note 7 for requirements of B-1 visas.

<sup>44</sup> E-mail from Joe Reeble, Executive Vice-President and Chief Operating Officer, John Pickle Company to Meshal Al-Roumi (Mar. 17, 2001, 5:05 PM) (on file with author).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> For “training” visa regulations and restrictions, which will show that JPC wrongfully obtained B-1 in lieu of H-3 visas, see *infra* Part IV.

<sup>48</sup> Trainees Report, *supra* note 27, at 10.

<sup>49</sup> Murzello Deposition, *supra* note 41, at 16.

<sup>50</sup> Trainees Report, *supra* note 27, at 11.

<sup>51</sup> *Id.* at 10.



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JPC knew that under the visa rules,<sup>52</sup> these welders and fitters: 1) could not come to the United States to engage in productive employment; 2) could not be employed by a United States company; and 3) could not be paid by a United States company.<sup>53</sup> Because KPIOS/JPME was not participating as “paper employers” to enable this third group of “trainees,” to get visas, JPC turned to its employment recruiting firm. Al-Samit “employed” this group of fifty-four,<sup>54</sup> although Al-Samit did not employ welders.<sup>55</sup> To accomplish this objective JPC and Al-Samit entered into two separate agreements. The “Manpower Training” agreement stated that “Al Samit International requires their welders and fitters to be trained at the John Pickle Company (JPC), facility in Tulsa, Oklahoma, USA.”<sup>56</sup> Throughout the duration of the “training,” Al-Samit agreed to pay the two accompanying cooks \$400 per month, plus overtime, and the welders \$550 a month, plus overtime, based on a forty-hour work week.<sup>57</sup> Pursuant to this agreement, “[t]he working hours for the [trainees] shall average fifty-three hours per week.”<sup>58</sup> The two companies also signed a “Sales Representative Agreement” in which the employment recruiting company, Al-Samit, purportedly agreed to market JPC’s products and services in India in exchange for a monthly marketing fee, plus any commission earned.<sup>59</sup> Al-Samit would pay the “trainees[’]” salary every month and then be reimbursed through the Sales Representative Agreement.<sup>60</sup>

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<sup>52</sup> See *infra* at Part IV.

<sup>53</sup> See Murzello Deposition, *supra* note 41, at 157 (JPC was told by the U. S. consulate “that they could not issue work visas for them, and that under no circumstances could these guys work or get paid in the United States.”).

<sup>54</sup> See Trainees Report, *supra* note 27, at 10 (“These workers would be Al-Samit’s employees and on Al-Samit’s pay roll for the duration of their training. On completion of their training program at JPC, they would be absorbed into the JPME workforce.”). The substitution of Al-Samit for KPIOS/JPME should have raised red flags with the consular officials who issued the B-1 in lieu of H-3 visas for this group of fifty-three.

<sup>55</sup> In his deposition, Ray Murzello was asked: “Does Al-Samit employ welders and fitters?” He answered: “No. Not at all.” Murzello Deposition, *supra* note 41, at 24.

<sup>56</sup> Proposal on Manpower Training Between Al-Samit International & John Pickle Company, Inc. 1 (Sept. 30, 2001) (on file with author).

<sup>57</sup> *Id.* at 3.

<sup>58</sup> *Id.* at 2.

<sup>59</sup> Sales Representative Agreement between JPC and Al-Samit International (Sept. 27, 2001) (on file with author) (For more information on the Sales Representative Agreement, see *generally* Chellen, *supra* note 1).

<sup>60</sup> JPC Executive Vice-President and Chief Operating Officer Joe Reeble’s deposition establishes this fact:

“Q. So the process by which the – by which the payments would be made would be that the time cards would be sent by JPC to Al-Samit and then Al-Samit would determine how much each individual would be paid and send the money to John Pickle Company, correct? A. Yes. Q. And – and then John Pickle Company would send the amounts of those salaries back to Al-Samit under the sales rep agreement; is that correct? A. Again, we were getting more – we – I thought we were getting more bang for our buck than just the training. . . . Q. So . . . part of the money that was being transferred to them was also to cover the salaries that they had paid to the Indians in Tulsa? A. Yes.”

Deposition of Joe Reeble, Executive Vice-President and Chief Operating Officer, John Pickle Company, Inc. 130-131 (June 30, 2003) (on file with author).

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In early October, 2001, John Pickle arrived in Mumbai, India and paid a courtesy call on Richard Rothman, Trade Commissioner, at the United States Consulate, to explain the reason for the trip and the need to get the 54 trainees to the JPC facility in Tulsa. . . . [Rothman] then issued a referral to Fred Polasky, at the Consular Section to assist JPC in the issuing of 54 visas, [which] were granted on October 8, 2001.<sup>61</sup>

Of the group of fifty-four, thirty entered the United States with John Pickle on October 11,<sup>62</sup> eighteen more came with Murzello on October 31,<sup>63</sup> and six were diverted to Kuwait for two months “to augment the shortfall in the workforce, because of an increased demand at the Kuwait plant.”<sup>64</sup> Five of these six eventually made it to Tulsa,<sup>65</sup> for a total of fifty-three.

Correspondence reveals the mutually beneficial nature of the relationship between JPC and the United States Trade Commissioner. On November 5, 2001, Murzello wrote (on JPC letterhead) a letter of thanks to Richard Rothman, Trade Commissioner in Mumbai:

On behalf of John N. Pickle Jr., and John Pickle Company, Inc. (JPC), we wish to thank Fred Polasky, Ramesh Purohit and yourself, in Mumbai, Frank Foster in New Delhi and Patricia Gonzalez, in Kuwait, for the invaluable help and support received from the US Commercial and Consular Sections, in processing the US Visas for the 54 JPC trainees.<sup>66</sup>

Rothman e-mailed back asking Murzello to “send a letter to me specifying exactly how much these extra workers will mean in terms of additional exports for Pickle, so that I can file a success story with my agency.”<sup>67</sup>

### Part III: The Victim’s Perspective

Since this essay chronicles the saga of the group of fifty-three, it is important to weave their voices into the story before we examine how JPC was able to use U.S. immigration law to effectuate this scheme of trafficking in persons. This section relies heavily on the affidavits used by five of the trafficked Indians to successfully petition the Department of Justice for “T” visas.<sup>68</sup>

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<sup>61</sup> Trainees Report, *supra* note 27, at 12.

<sup>62</sup> *Id.* at 13.

<sup>63</sup> *Id.* at 14. “[T]he other eighteen, will be ready to leave for the States (capped, jacketed and booted), with me on the night of October 31st.” E-mail from Ray Murzello, Sales Manager, John Pickle Middle East to Gulam Mohammed (Oct. 28, 2001, 8:20 AM) (on file with author).

<sup>64</sup> Trainees Report, *supra* note 27, at 14.

<sup>65</sup> *Id.* at 15.

<sup>66</sup> Letter from Ray Murzello to Richard Rothman, U.S. Trade Commissioner in Mumbai (Nov. 5, 2001) (on file with author).

<sup>67</sup> E-mail from Richard Rothman, U.S. Trade Commissioner in Mumbai, to Ray Murzello, Sales Manager, John Pickle Middle East (Nov. 6, 2001, 7:24 AM) (on file with author).

<sup>68</sup> The Indians received “T” visas on May 1, 2003. E-mail from Margie Solis, Director, Immigration Outreach, Catholic Charities of Oklahoma City to Michael Scaperlanda (Sept. 27, 2005; 3:33 PM) (on file with author). As stated, *supra* note 19, “T” visas are only available upon a determination by the Attorney General that the petitioner “is or has been a victim of a severe form of trafficking in persons” and has

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Bharathakumaran Ramachandran Nair, born in India in 1968, had worked as a welder in India and the Middle East since 1987.<sup>69</sup> He and his partners shut down their own firm “to take advantage of the opportunity being offered in the United States” at JPC.<sup>70</sup> Uday Dttatray Ludbe, born in India in 1962, had worked as a fitter since completing his training in 1983.<sup>71</sup> After working for several companies, he “realized [in 2001] that in order to find a good job with a good salary, [he] would have to look for work outside of India.”<sup>72</sup> Umeshkumar Chandubhai Patel, born in India in 1969, had worked as a fitter for the same company from 1987 until leaving for the United States with JPC in 2001.<sup>73</sup> Although he “felt very bad” about leaving his permanent job in India “because [he] was losing money and seniority benefits,” he believed, after a discussion with an Al-Samit agent, that he would have a “better life” with JPC in the United States.<sup>74</sup> Marshal Joseph Soares, born in India in 1955, had over 23 years of welding experience in India and the Middle East when he came to JPC in 2001.<sup>75</sup> Toofan Mondal, born in India in 1961, had worked as a professional cook since 1980.<sup>76</sup>

These men all secured their positions with JPC through Al-Samit. Al-Samit sent the prospective welders and fitters to “Protective Welding Engineers” for testing,<sup>77</sup> and Mondal to an institute of hotel management and catering to test his abilities.<sup>78</sup> Al-Samit required the recruits to pay for their tests and for the cost of a medical exam.<sup>79</sup> Some of them also incurred the expense of staying in Mumbai and traveling to and from Mumbai during the month they waited to leave for the United States.<sup>80</sup> In addition to these expenses, the recruits paid the agents of Al-Samit a stiff fee for securing the opportunity to work for JPC.<sup>81</sup> To pay the fee, Nair said he “pawned my and my wife’s jewelry to raise 20,000 rupees at a high

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shown that he “would suffer extreme hardship involving unusual and severe harm upon removal.” 8 U.S.C. § 1101(a)(15)(T) (2004).

<sup>69</sup> Affidavit of Bharathakumaran Ramachandran Nair 1 (May 24, 2002) [hereinafter Nair] (on file with author).

<sup>70</sup> *Id.* “Several of the men had worked in the United States before and knew that the benefits provided by American companies were simply the best.” *Id.* at 1-2.

<sup>71</sup> Affidavit of Uday Dattatray Ludbe 1 (June 28, 2002) [hereinafter Ludbe] (on file with the author).

<sup>72</sup> *Id.* at 2.

<sup>73</sup> Affidavit of Umeshkumar Patel 1 (June 28, 2002) [hereinafter Patel] (on file with author).

<sup>74</sup> *Id.* at 2.

<sup>75</sup> Affidavit of Marshal Joseph Soares 1 (June 28, 2002) [hereinafter Soares] (on file with author).

<sup>76</sup> Affidavit of Toofan Mondal 1 (May 24, 2002) [hereinafter Mondal] (on file with author).

<sup>77</sup> Nair, *supra* note 69, at 2.

<sup>78</sup> Mondal, *supra* note 76, at 2.

<sup>79</sup> See *id.* (2000 rupees for the test and 1500 rupees for the medical exam); Soares, *supra* note 75, at 2 (1500 for the medical exam).

<sup>80</sup> See Nair, *supra* note 69, at 2 (traveled 2,000 km within India for this job opportunity); Mondal, *supra* note 76, at 1 (two day train trip).

<sup>81</sup> Nair, *supra* note 27, at 2 (100,000 rupee fee); Ludbe, *supra* note 71, at 4 (100,000 rupee fee); Patel, *supra* note 73, at 1 (90,000 rupee fee); Soares, *supra* note 75, at 2 (80,000 rupee fee); and Mondal, *supra* note 76, at 2 (25,000 rupee fee).

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interest rate. I borrowed another 60,000 from a private person to be paid with interest.”<sup>82</sup> Soares took out a loan “at 13% interest.”<sup>83</sup>

The fifty-three were willing to bear these expenses because of the attractiveness of the job opportunity that had been presented to each of them throughout the recruitment process. According to Mondal, Gulam Mohammed, the owner of Al-Samit, said:

[i]f I passed the test, I would have a good future in America and I would make a good salary. He told me that food, travel, medical insurance and accommodations would be provided free. Mr. Gulam said that this would be a long-term contract and that after two years I would be allowed to bring my family to America also.<sup>84</sup>

Al-Samit agents told Ludbe that this would be a “long-term job and that the salary was approximately 40,000 rupees [a month] for the first six months,” increasing “every six months about 5,000 rupees.”<sup>85</sup> As they continued through the recruiting process, the terms were confirmed in person by John Pickle during individual interviews and in a group meeting of the then fifty-four. Mr. Nair described his fifteen-minute interview with John Pickle in Mumbai on September 30, 2001:

I waited in the Al-Samit office until it came time for my interview. When I entered the office for the interview, I saw John Pickle, Luke Pimenta (a welding instructor and tester), and K.S. John. John Pickle shook my hand and reviewed my certificates. He told me that I was a qualified welder. John Pickle told me that one group of men from India were now working in Kuwait but that I would be working only for JPC in America. He told me that JPC was a good company and that I would have a lot of work to do. John Pickle told me that I would be given an apartment shared with at most four people. He told me there would be a swimming pool, health club, and other amenities common to apartments in the United States. Others who had worked in the United States had told me that they had similar arrangements while working here. I had been given very good living arrangements while I worked in the Middle East. I assumed that what was given in the United States would be even better because of the reputation of the United States. John Pickle told me that he would be

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<sup>82</sup> Nair, *supra* note 69, at 3. On January 22, 2004, \$900 was the equivalent of 40,793 Indian Rupees. See Currency Converter, <http://www.xe.net/cgi-bin/ucc/convert> (last visited Feb. 19, 2005).

<sup>83</sup> Soares, *supra* note 75, at 2. The others also borrowed some of the money needed for the fee. See Mondal, *supra* note 76, at 2; Ludbe, *supra* note 71, at 6 (borrowed from mother-in-law who borrowed from a merchant); and Patel *supra* note 73, at 3.

<sup>84</sup> Mondal, *supra* note 76, at 1-2. See, e.g., Soares, *supra* note 75, at 1 (Agent Hamid Tole “told me that JPC was a good company. He told me that JPC would provide food, accommodation, medical coverage and insurance free. He told me that the position would be for 2 years and that it could become permanent if my performance were good. He told me that my family would be able to join me in the United States. He told me that the salary would be good.”).

<sup>85</sup> Ludbe, *supra* note 71, at 4. See also Nair, *supra* note 69, at 2 (K.S. John of Protective Engineering “spoke very highly of JPC. He told me that he had spoken to some people who had worked for JPC before and they told him that JPC was a very good company”).

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providing a car for every four men and that those who had an Indian driver's license would be given an American driver's license. He told me that my basic [sic] salary would be \$800/month and that I would receive food, accommodations, medical treatment, insurance, and transportation free. In addition, he told me that there would be a three-month probationary period and the contract was for a minimum of two years. He told me that my salary would increase at the end of the probationary period and every six months thereafter. In addition to my basic [sic] pay, John Pickle told me that I would receive a minimum of 13 hours a week of overtime. He told me that if my performance were [sic] good, I would have the opportunity to bring my family to the United States. I was very happy. I had no doubt that my performance would be satisfactory. . . . After my interview, I went to see Mr. Aslam . . . I gave Mr. Aslam the 100,000 rupees in cash.<sup>86</sup>

During the general meeting of the fifty-four, John Pickle reiterated the terms of these job opportunities.<sup>87</sup>

The first warning sign that something was awry occurred a few hours prior to departure for the United States. On October 8, thirty of the fifty-three were told that they would be traveling to the United States the next day and that they should report to the offices of Al-Samit. According to Mondal, on the evening of the October 9,

[w]e all formed a line to sign agreements, when it was my turn I went into the office and I was shown an offer letter from Al-Samit. Mr. Hamid placed the first page of the offer letter on his table with his hand covering the provisions and told me to sign at the bottom. I was upset when he told me that the offer letter said that I would only receive a salary of \$400.00 a month. I had been promised \$900.00 a month.<sup>88</sup> . . . I told Mr. Hamid that I did not like these things. Mr. Hamid told me not to worry. . . . I would be signing a new contract with JPC when I arrived in the United States. He told me that this offer letter was just to be used for travel purposes. I did not know what to do. I had already given up my job and spent a lot of money. Mr. Hamid kept rushing me to sign because the flight was soon to leave. I felt I had no choice but to sign. In addition, if I did not sign, Al-Samit would hold on to my passport for the period of the validity of whatever visa I had been given. I signed the offer letter.<sup>89</sup>

The others had similar stories. Nair, for example, said:

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<sup>86</sup> Nair, *supra* note 69, at 3-4; see Suares, *supra* note 75, at 2-3; Mondal, *supra* note 76 at 3; Ludbe, *supra* note 71, at 9; and Patel, *supra* note 73, at 3.

<sup>87</sup> Nair, *supra* note 69, at 5; Suares *supra* note 75, at 3; Mondal, *supra* note 76, at 3-4; Ludbe, *supra* note 71, at 9; and Patel, *supra* note 73, at 3-4.

<sup>88</sup> Mondal, *supra* note 76, at 2.

<sup>89</sup> *Id.* at 4-5.

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Mr. Hamid Tole then called us one by one into his office. He showed me the offer letter and told me to sign it. Mr. Hamid became angry with me when I began to read the offer letter instead of simply signing it. When I saw the offer letter I became discouraged and unhappy. I was very concerned about the indications that I was a trainee, the very low salary, and having to pay for food. I tried to ask Mr. Hamid about these issues. He told me that if I wanted to go to America I would have to sign. I had already paid a lot of money to Al-Samit as well as expenses in traveling. I had also already closed my business, told my wife good bye, and packed my bags for the United States. It [sic] was thinking that it was too late for me to protest about this now but I was very concerned. I decided to speak to Mr. Gulam instead of Mr. Hamid. I asked Mr. Gulam why the offer letter said that I would be a trainee. Mr. Gulam told me that I should not worry about that. He told me that the offer letter was just a formality to get into the United States and that it was the only way to do so after the tragedy of September 11. He told me that I was not going to be a trainee. I asked him about the salary also. Mr. Gulam told me that my salary would increase after the three months probation period and every six months thereafter. . . . I still felt that I had been tricked into coming this far. I decided to go forward and hoped that my salary would increase as promised. I had risked to [sic] much by closing my business and giving so much money to Al Samit not [to] go forward.<sup>90</sup>

Upon arriving at the airport, these men received their visas, which indicated that they were coming to the United States for “training.” Patel said that,

[a]t about 9 o'clock that evening Mr. Hamid passed out our airline tickets, passports, and visas. At that time, I saw my visa said B1/B2 for training. I had no knowledge about visas and I didn't think I could do anything at that time. I was afraid that if I made too much trouble I would not be allowed to go. I had no choice but to believe what Mr. Hamid had told me about the training statements, that they were only a formality.<sup>91</sup>

Mondal, a cook, had also received a training visa to come to the United States to “train” at JPC.<sup>92</sup> He said that at the airport, they were instructed,

that if we were asked by anyone that we should say that we were going for training. They told us that the visa stated that we were going for training and we must always say the same thing. They told us that the only reason they had a training visa was because it was the only way to get permission for us to enter the United States. I was no longer worried about the training statement; I knew that I was going to the United States to work.<sup>93</sup>

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<sup>90</sup> Nair, *supra* note 69, at 6-7.

<sup>91</sup> Patel, *supra* note 73, at 5.

<sup>92</sup> See Visa Application for Toofan Mondal (on file with author).

<sup>93</sup> Mondal, *supra* note 76, at 5-6. See also Nair, *supra* note 69, at 8.

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John Pickle shepherded them through immigration in Atlanta, and when they arrived in Tulsa, his wife, Christina Pickle, collected their passports.<sup>94</sup> The accommodations were not what the men expected. Nair remembered:

When I first saw the dormitory, I felt bad. It was not at all what I had expected. In India I had lived in a 1200 square feet, [sic] 3-bedroom home with my wife and 2 children. In the dormitory I saw bunk beds tightly packed together. . . . the only available washbasin for the first week was next to the finished toilet. That meant that we had one place to wash our hands between thirty men.<sup>95</sup>

Ludbe observed:

The dormitory was crowded. It was not big enough for 30 people. It had only two toilets and two urinals. They were in an open area with no privacy. There were four showers. We slept on bunk beds. . . . We were told not to go anywhere or leave the dormitory. We did not get anything to eat that [first] night.<sup>96</sup> The dorm had a common room with one television and four sofas. Initially, there were no tables to sit at to eat. After one week, a small table for about 8 people was provided. Most of us had to stand or sit on the floor while we ate.<sup>97</sup> Our clothes were hung in [the] room where we ate.<sup>98</sup>

They moved to a new dorm in late October or early November. Patel said,

[t]his new dorm was a little better than our old dorm. It was larger, but we were adding 18 men to our number. . . . No peace or privacy was afforded in the dorms. . . . The dorm/warehouse was directly adjacent to the workshop. There were no protections against the hazardous materials used in the workshop. X-ray machines for the plant were often operated along the workshop wall directly adjacent to our dorm.<sup>99</sup>

The cooks fared no better. Mondal described the situation:

The kitchen was very small, too small for so many people. The kitchen was really the size of a family kitchen. The kitchen was nothing like

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I noticed that the visa was for training. I was stunned. I asked Mr. Aslam why the visa was for training. John Pickle told us all that in order for us to get into the United States after the tragedy of September 11, he had to get this kind of visa. He told us that we were not really trainees. He told us that this was just a formality. John Pickle told us that life in the United States was good and that we should not worry about this. He told us that the visa would be extended. I did not understand the rules or regulations of the United States so I did not realize the significance of this visa. He was so friendly that I believed and trusted him.

<sup>94</sup> See e.g., Mondal, *supra* note 76, at 7. See also Deposition of Christina Pickle 51 (July 1, 2003) (on file with author). Some of these men had to go to court to get their passports returned. See Deposition of Joe Reeble 166 (June 30, 2003) (on file with author).

<sup>95</sup> Nair, *supra* note 69, at 10-11.

<sup>96</sup> Ludbe, *supra* note 71, at 11.

<sup>97</sup> Nair, *supra* note 69, at 11.

<sup>98</sup> Patel, *supra* note 73, at 6.

<sup>99</sup> *Id.* at 7.

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what John Pickle had described. . . . the utensils were not appropriate to prepare a big quantity of food. It took very long to prepare the meals. The first week Mr. Pickle allowed us to purchase spices to cook with our food. After the first week he would no longer buy spices and the quality of the food he bought was very bad. Mr. Pickle said that the spices were too costly. . . . We had to work very long hours. Our duties started at 3am to have breakfast ready before 6am. As soon as breakfast was over we had to begin preparing lunch. . . . we worked at least 16 hours a day and sometimes more, seven days a week. . . . I received \$500 per month regardless of the amount of time I worked. I worked so many hours that I had to sleep in the kitchen.<sup>100</sup>

The food situation deteriorated:

Mr. Pickle began to ration the food. Only one small glass of milk was given every 3 days. Mr. Pickle told me I would be fired and sent back to India if I gave a big glass of milk . . . . We served eggs only on days without milk but only two days a week. I was made to use one egg for omelets and split the omelet into 2 pieces to serve 2 people. Apples were rotten. I had to cut out the bad parts and cut the apple into pieces to share between the men. Many of the men began to complain of stomach problems. We all began to lose weight.<sup>101</sup>

JPC put the supposed “trainees” to work without instruction or training. As Nair recounted: “I was simply told to begin welding. I was not given any training or instruction. There was nothing unusual or special about the JPC products on which I was welding.”<sup>102</sup> Initially, at least some of the men were happy with the work. Ludbe said, “[t]he work was good and the supervisors and co-workers were very good to us. The problem was in the dormitory.”<sup>103</sup> As the work dried up, overtime was eliminated,<sup>104</sup> custodians were let go, and JPC shifted some of the men to other duties, including cleaning toilets.<sup>105</sup> John Holcomb, a supervisor at JPC, testified:

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<sup>100</sup> Mondal, *supra* note 76, at 8.

<sup>101</sup> *Id.* at 10. In his deposition, John Pickle was asked whether he rationed milk drinking: “I don’t have milk every meal. It’s very expensive and I’m not going to buy it every meal.” Deposition of John Pickle, 24 (July 2, 2003) (on file with author). When asked whether the men were limited to “one small glass every three days,” he responded “[a]bout two glasses every – twice a week.” *Id.* at 138.

<sup>102</sup> Nair, *supra* note 69, at 14; *see also* Soares, *supra* note 75, at 6 (“I began working as a welder in the structural department. I did not receive training”); Patel, *supra* note 73, at 9

I worked independently. I did not receive any training. On the night shift, only one American fitter worked, Mr. A.W. He only worked on the night shift for a few days, after which no American fitters worked on the night shift. There was no one to train me even if I needed training with 14 years experience as a fitter.

Ludbe *supra* note 71, at 12 (“From the first day of work I worked independently. There was no person training me or teaching me anything”).

<sup>103</sup> Ludbe, *supra* note 71, at 12-13.

<sup>104</sup> *Id.* at 17 (“After the first three months, the company stopped all overtime. It was difficult to make it without the overtime.”).

<sup>105</sup> *Id.* at 18 (“Because the company said they did not have any work, they made us work outside the factory. My co-workers had to clean toilets. Mr. Bharathakumaran who was a skilled worker had to



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The work load was – was winding down a little bit. Our backlog had gone down. We were doing jobs a month in advance, that type of thing, so we –our—we were cut [sic] back on people and I think we laid off 30-some people probably halfway through. And I don't recall the exact numbers, but I think it was around 30 people got laid off about halfway through this training program because of the amount of work load that we had. And in order to keep everyone busy and to still keep this training program in effect, we asked them and ourselves to do different assignments such as . . . clean the bathrooms . . . those type of things.<sup>106</sup>

Throughout the duration of the “training program,” JPC deployed various tactics to control the movement and behavior of the fifty-three. Soares recounted that early on “John Pickle told us that we could not go outside of the dorm. He told us that it was dangerous for us after September 11th.”<sup>107</sup> Later, Murzello threatened to send anyone back to India who complained about the food.<sup>108</sup> Although one might feel that a worker living under these conditions would want to be sent back to India, this wasn't the case—at least not at first. Nair explained,

[m]y salary was very disappointing. I earned more than this amount with my business that I had left in India. I felt cheated. I could not leave despite the bad salary, bad food, bad accommodations, and cheating because I had spent so much to come to America and I needed the opportunities offered by the United States. I thought that if I were with JPC for two years I would get my permanent visa and family as I was promised. I also knew that if I completed my job to the satisfaction of JPC I would receive a favorable certificate from JPC which would help me obtain employment anywhere in the world.<sup>109</sup>

In December, to make the threat of deportation concrete, JPC decided to send two of the men back to India, one for complaining about the food and one for accidentally puncturing a tire while driving a company vehicle on company grounds.<sup>110</sup> Both of these men fled, one escaping from the plant in Tulsa, the other failing to board his flight in Atlanta.

JPC was worried about these escapes. Murzello wrote,

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clean toilets and do sandblasting”); Nair, *supra* note 69, at 29 (“Two janitors had been laid off and Indian workers were assigned their cleaning duties”).

<sup>106</sup> Deposition of John Holcomb 67-68 (on file with author).

<sup>107</sup> Soares, *supra* note 75, at 6.

<sup>108</sup> Nair, *supra* note 69, at 17-18

In the second week of November, Ray Murzello held a meeting in the new dorm at which John Pickle, Dale Chasteen, John Holcomb and Sharon were present. Ray Murzello started by asking us why we were making so much trouble about food. He told us that he had a lot of influence with both the American and Indian embassies and that he would have no problem replacing us. He told us that he would send us back to India if we continued making this trouble.

<sup>109</sup> *Id.* at 15.

<sup>110</sup> See e.g., Patel, *supra* note 73, at 13 (“I felt that [these two men] did not do anything to deserve being sent to India. I felt that JPC did this to send a message to us that if we did anything against management, even as simple as complaining, we would be sent back to India”).

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every attempt needs to be made to have this problem resolved and put behind us, so we are in good standing with the INS and can go back to our friends in the U.S. Embassies in Kuwait and New Delhi and the U.S. Consulate in Mumbai, with an unblemished record.<sup>111</sup>

He said that,

Gulam [head of Al-Samit] is going to put pressure on the families of the two individuals, to convince them, to persuade their relatives to return to India. I think if this fails and I don't think it will, knowing Gulam as well as I do, then Gulam has further recourse and can file a case against these individuals with the Mumbai police, which could lead to a quick resolution of the problem!<sup>112</sup>

After commenting that “[i]f these two individuals are to be put on a plane, they will need to be escorted all the way to India,” Murzello concluded: “Two tickets to exotic India, anyone! John [Pickle] to supply the cuffs free of charge! It’s a pity we cannot send them airfreight or FedEx, which would assure a quick, guaranteed delivery!”<sup>113</sup>

JPC used Gulam to intimidate the fifty-three. In January 2001, JPC called Gulam to intervene with respect to two of the Indian workers who were complaining about the conditions at JPC. One of them, Hassan, a cook,

refused to come to the office to speak to Gulam. Gulam [said] to get . . . Mr. Hassan into a closed room and to beat him and break one of his legs. Gulam then said that he will have someone meet Hassan at the airport in Mumbai to break Hassan’s other leg. Gulam then repeated all of this to Joe Reeble and Dale Chasteen in English. They said that this was not a bad idea.<sup>114</sup>

Various other measures were taken to control the men throughout the duration of their time at JPC.

There were meetings at JPC very frequently. We were always told at these meetings that people should not leave JPC. A common theme was that people who left JPC would be put in jail. Another common threat

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<sup>111</sup> E-mail from Ray Murzello, Sales Manager, John Pickle Middle East to Shari Rumsey, a secretary at John Pickle Company (December 14, 2001, 3:14 AM) (on file with author).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* A number of scholars have explored the problems associated with individuals or communities de-humanizing groups of noncitizens. See e.g., Kevin Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 BYU L. REV. 1139 (1993); Linda Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, 1988 WIS. L. REV. 955 (1988); Victor Romero, *Proxies for Loyalty in Constitutional Immigration Law: Citizenship and Race after September 11*, 52 DEPAUL L. REV. 871 (2003); Gabriel Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998); Michael Scaperlanda, *Who is My Neighbor?: An Essay on Immigrants, Welfare Reform, and the Constitution*, 29 CONN. L. REV. 1587 (1997); and Michael Scaperlanda, *Immigration Justice: A Catholic Christian Perspective*, 1 J. CATH. SOC. THOUGHT 535 (2004).

<sup>114</sup> Soares, *supra* note 75, at 14; see also Patel, *supra* note 73, at 15-16; Nair, *supra* note 69, at 28-29.

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was that we would be sent back to India if we assisted others to leave. We were always ordered to inform JPC of any plans or attempts to escape because, if we did not prevent people from running away, JPC would pack us all up to India and bring another batch.<sup>115</sup>

Over the Thanksgiving holiday, while the plant was idle, the gates were locked:

Initially we tried to go through a secondary gate. We discovered that it was locked. Instead we tried the main gate but it was also locked. . . . The gate was purposefully locked. I felt I was being kept like a slave. We found another way under the fence along a drainage ditch. We had to crawl under the fence to get out. We returned to the dormitory by the same route.<sup>116</sup>

JPC repeatedly told the men that runaways would be reported to the FBI and INS, and that when caught, they would spend two years in jail.<sup>117</sup> In a January 16 memorandum to the Indians, Joe Reeble, Executive Vice President and Chief Operating Officer of JPC, stated:

JPC must fulfill its contract to ASI [Al-Samit International] to return its employees to them, and we can no longer trust that you intend to stay at JPC and participate in the balance of your work training. Therefore, ASI and JPC are discussing the best way to handle this problem, including the options of additional restrictions, monetary reprimands, return to India and other disciplinary actions. . . . For those of you contemplating leaving, we cannot stop you but will never condone your leaving. You will be violating the conditions of your visa and therefore will be illegal in the United States and will be subject for prosecution.<sup>118</sup>

A week later, JPC required the Indians to sign a “Personal Conduct Agreement,” which said, in part:

Trainee will not leave JPC for the purpose of finding other employment or for any other unauthorized reason, nor will Trainee place any phone

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<sup>115</sup> Patel, *supra* note 73, at 10. See also *Id.* at 11 (“We were restricted to the company premises while we were at JPC. Many times we were told that we could not leave the premises without permission. A notice was placed in new [sic] dorm stating this. In addition, I saw from time to time, an armed guard in front of the dormitory”); Nair, *supra* note 69, at 23 (“That same evening a security guard began to be placed outside of our dorm. The guard watched outside of our dorm all night long. On the second night I saw him with his gun and I asked him why he had it. He told me that it was for his own protection”).

<sup>116</sup> Nair, *supra* note 69, at 19.

<sup>117</sup> *Id.* at 22; See also Ludbe, *supra* note 71, at 17 (referring to the first group of runaways, John Pickle said “they would be caught and put in jail. John Pickle told us that this applied to all of us. He told us that we could not leave JPC or we would be placed in jail. They also threatened that if anyone knew and did not tell they would be sent back to India”); Mondal *supra* note 76, at 17 (“Joe Reeble . . . told us that it was up to us to decide whether we wanted to run away and be caught by the police or to work in JPC. I was very scared. I believed that JPC had the power to do these things”); Patel, *supra* note 73, at 16 (“John Pickle came to the dorm and told us a group of 6 people that we can run away and he didn’t care if we left. He also said that if we left and were caught by the FBI that we would be put in jail”).

<sup>118</sup> Memorandum from Joe Reeble to “All ASI Employees” (Jan. 16, 2002) (on file with author).

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calls, emails, or have any other communication to set-up, plan or execute his unauthorized leave from JPC. This is strict violation of your US entry Visa and makes you subject to criminal prosecution.<sup>119</sup>

The situation unraveled at the end of January and beginning of February 2002. Patel recalled that,

[o]n the morning of January 28th, 2002, I was woken up by a lot of noise in the TV room. One of the guys told me that all of the staff was standing in the TV room around all the guys that they wanted to send back to India. I went to see what was going on. The foremen were watching seven guys preparing their stuff to go to India. The foreman even escorted them to the restroom. I saw two sheriffs, one standing at the door by John Pickle and the other standing outside near the gate. John Pickle was talking to the sheriff but I could not hear them. All of the company personnel surrounded the seven guys and escorted them out of the dorms to a company bus. Two security guards accompanied the men on the bus and the sheriff cars escorted the bus out of the gate, one in front, one behind.<sup>120</sup>

These seven men managed to escape from the Atlanta airport.<sup>121</sup>

Around this time, the escaped Indians began working with Catholic Charities and Tulsa resident, Mark Massey. Also, newspaper articles about JPC began to appear and the health department inspected JPC's dormitory kitchen.<sup>122</sup> Soares recounted that,

[a]t 8:00 pm [on February 5th] I called Mr. Mark Massey and told him that all of us still at the company (28) were ready to leave and needed his help. Mr. Massey said that he was ready to help us. At 9:00 pm Mr. Massey and his friend came to Pickle's dorm and we left with them. When we left the dorm, Joe Reeble was there. He could not do anything to stop us from leaving.<sup>123</sup>

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<sup>119</sup> John Pickle Company, *Personal Conduct Agreement* (signed by Joe Reeble, January 24, 2002)(on file with author). "No Trainee will assist or encourage any other Trainee to take any unauthorized leave from JPC. Any Trainee that comes to know the whereabouts of any other Trainee who has left the Company . . . shall inform the President or Executive Vice-President immediately").

<sup>120</sup> Patel, *supra* note 73, at 17.

<sup>121</sup> Ludbe, *supra* note 71, at 18.

<sup>122</sup> Soares, *supra* note 75, at 15-16; Patel, *supra* note 73, at 18; Mondal, *supra* note 76, at 20-21. The Tulsa World ran several prominent stories on the plight of the Indians during this time period. See e.g., Michael Overall, Workers Allege Abuses, Tulsa World, p. A1 (Feb. 1, 2002); Michael Overall, Feds Probe Tulsa Factory, Tulsa World, p. A1 (Feb. 2, 2002); and Michael Overall, India Workers Found Godsend, Tulsa World, p. A1 (Feb. 4, 2002).

<sup>123</sup> Soares, *supra* note 75, at 16; See also JPC Story 10 ("A few nights later at about 9:00 p.m., several vans, pick-ups, well-known TV news personalities, cameramen, reporters and individuals from a local church raced through the secluded back gates of the company, circled their vehicles around the dormitory area and took the rest of the Indians off the premises. The raid took less than 4 minutes. All the Indians were packed and waiting.").

#### Part IV: JPC's Misuse of the B-1 in Lieu of H-3 "Trainee" Visa to Effectuate the Trafficking in Fifty-three Skilled Indian Workers

Immigration law and policy are designed, in part, to protect the domestic labor market.<sup>124</sup> An alien seeking entry into the United States as a worker must satisfy the criteria for one of the employment-related immigrant or nonimmigrant categories.<sup>125</sup> Furthermore, an employer wanting to import skilled labor on a permanent or temporary basis must demonstrate, before a visa will be issued, that "there are not sufficient workers [already authorized to work in the United States] who are able, willing, and qualified" to do the job and that "the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed."<sup>126</sup>

Despite JPC's insistence that the group of fifty-three were trainees,<sup>127</sup> they were actually and actively engaged in skilled labor working under supervision like any other employee, and they received no classroom or on-the-job training.<sup>128</sup> Because JPC desired to bring in skilled workers to engage in productive

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<sup>124</sup> See e.g., Alexander Aleinikoff, et al, *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 332 (5th ed. 2003)

The formal employment-based immigration system is structured with the domestic labor market very much in mind. Employers seeking the services of most immigrants who enter under the employment-based categories must demonstrate that there are no domestic workers available to perform such work and that the entry of the noncitizen will not adversely affect the wages and working conditions of similarly employed U.S. workers.

<sup>125</sup> In descending order, our employment based immigration law gives preference to: 1) "aliens with extraordinary ability," "outstanding professors and researchers," and "certain multinational executives and managers;" 2) "aliens who are members of the professions holding advanced degrees or aliens of exceptional [but not extraordinary] ability," and 3) "skilled workers, professionals, and other workers." 8 U.S.C. §1153(b)(1)-(3) (2005). Nonimmigrant work categories include treaty traders/investors, members of "specialty occupations," agricultural laborers, other laborers and service providers, certain intracompany transferees, and artists, entertainers, and aliens of extraordinary ability. 8 U.S.C. §1101(a)(15)(H), (L), (O), and (P) (2005).

<sup>126</sup> 8 U.S.C. §1182(a)(5)(A)(i) (2005) (this provision sets out the labor certification requirements for some, including skilled workers, seeking an employment based immigrant visa). A corresponding (but not completely parallel provision) for nonimmigrants is 8 U.S.C. §1101(a)(15)(H)(ii)(b) (2005) as fleshed out in 20 C.F.R. §655 (2005). See generally Lenni Benson, *Breaking Bureaucratic Borders: A Necessary Step Toward Immigration Reform*, 54 ADMIN. L. REV. 203, 220-249 (2002)(exploring strategies for navigating the labor certification process); Enid Trucios-Haynes, *Temporary Workers and Future Immigration Policy Conflicts: Protecting U.S. Workers and Satisfying the Demand for Global Human Capital*, 40 BRANDEIS L. J. 967 (2002).

<sup>127</sup> See e.g., Trainees Report, *supra* note 27, at 13 ("They were issued all the safety and work gear needed to take care of their training program in the classroom and on the job and assigned in groups to various instructors"); letter from Ray Murzello, John Pickle Middle East to Richard Rothman, Trade Commissioner, American Consulate – Mumbai (Nov. 5, 2001) ("We can report, that [the trainees] arrived safely. They have all commenced their training courses.").

<sup>128</sup> See e.g., Deposition of Brent Goodfellow (JPC leadman for vessel welders) 41 (July 9, 2003), (on file with author)

Q. And then – so you were able to just trust him to work on some pressure vessel welding? A. Yes, . . . ; *Id.* at 43.

Q. . . . of those who were welding, were they welding almost exclusively on products that were being fabricated for customers? A. I would say – I'll have to say yes. *Id.* at 46-47.

Q. Right. And at some point, you recommended that some Indians be moved to the night shift? A. Yes. Q. . . . How do you decide who can go work the night shift? A. I took five of the best welders that came, put those on night shift and freed me up. Q. Okay. Now, why would you –

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employment,<sup>129</sup> it could have sought H-2B nonimmigrant visas for members of this group. The H-2B category allows an employer to petition to bring in workers temporarily “to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in the country.”<sup>130</sup> To qualify its prospective Indian workers for this visa, JPC would have had to show “that qualified workers in the United States are not available and that the alien’s employment will not adversely affect the wages and working conditions of similarly employed United States workers.”<sup>131</sup> Even if JPC could have demonstrated that a shortage of welders, fitters, and Indian cooks existed in Tulsa,<sup>132</sup> it would have been impossible to demonstrate that bringing these Indians to Tulsa would not adversely affect the wages and working conditions of domestic laborers. Not only were the wages below market, they were below the U.S. minimum wage.<sup>133</sup> Additionally, the working conditions—being confined to substandard quarters on the grounds of the company and being fed substandard food—would have adversely affected working conditions in the United States.<sup>134</sup>

Unable to pursue its objectives with respect to the fifty-three by seeking worker visas for them, JPC sought an alternative, albeit fraudulent, mode of securing their entry. The H-3 nonimmigrant visa allows a non-citizen to come “to the United States as a trainee . . . in a training program that is not designed primarily to provide productive employment.”<sup>135</sup> Because employers can misuse

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why – why do you put the best welders on night shift? A. They need less supervision. Q. Okay. That can – that are both skilled and can work independently? A. Yes.

Deposition of Marty Eubanks (Director of Quality Control, JPC) 158-59 (July 7, 2003), (on file with author)

Q. Okay. Would most of the training that you envisioned have taken place on the job or in a classroom? A. The majority would be in the class and then – to get the basics and then hands-on out in the shop. As the guys would work, they would have further training on the things that they learned in the classroom. Q. Okay. Now, none of these 52 ever sat in the classroom for training, did they? A. I don’t think any of them did, no.

<sup>129</sup> Other indications that these men were intended for productive employment come from three JPC sources: JPC Story, Trainees Report, and the Proposal on Manpower Training Between Al-Samit International & John Pickle Company, Inc. “Another advantage of the large group was that if Kuwait’s acceleration fell slightly, we would be able to slow down the training process using Tulsa as a buffer against fluctuations in demand overseas.” JPC Story 5. “Six of the trainees had in the interim been assigned to JPME in Kuwait to augment the shortfall in the work force, because of an increased demand at the Kuwait plant. They were scheduled to be sent to JPC to join the other trainees in late December.” Trainees Report 14. “The working hours for the team [of trainees] shall be an average of 53 hours per week, which includes 13 hours of overtime.” Proposal on Manpower Training Between Al-Samit International & John Pickle Company, Inc. 2.

<sup>130</sup> 8 U.S.C. §1101(a)(15)(H)(ii)(b) (2005).

<sup>131</sup> 8 C.F.R. §214.2(h)(6)(iv)(A)(1) (2005).

<sup>132</sup> Although not dispositive, the fact that 30 Pickle Company employees were laid off while the Indians were working in Tulsa gives some indication that United States workers were available to do these jobs.

<sup>133</sup> See *Chellen v. John Pickle*, 344 F. Supp. 2d 1278, 1282) (The Indian workers “pay per hour ranged from \$2.89 to \$3.17”).

<sup>134</sup> See generally Michael Holley, *Disadvantaged by Design: How the Law Inhibits Agricultural Guest Workers From Enforcing Their Rights*, 18 HOFSTRA LAB. & EMP. L.J. 575 (2001); Note, Kimi Jackson, *Farmworkers, Nonimmigration Policy, Involuntary Servitude, and a Look at the Sheepherding Industry*, 76 CHI.-KENT L. REV. 1271 (2000).

<sup>135</sup> 8 U.S.C. §1101(a)(15)(H)(iii) (2005).

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this visa to bring in workers to engage in productive employment, the INS<sup>136</sup> regarded “H-3 classification with suspicion.”<sup>137</sup> Before an H-3 visa can issue from an embassy or consulate, a petition must be submitted to and approved by INS/USCIS. As part of its petition, the employer is required to submit: “information about the employer, the training program, and the foreign national.”<sup>138</sup> Specifically, the petitioning employer must show that:

- (1) The proposed training is not available in the alien’s own country;
- (2) The beneficiary will not be placed in a position which is in the normal operations of the business and in which citizens and resident workers are regularly employed;
- (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and
- (4) The training will benefit the beneficiary in pursuing a career outside the United States.<sup>139</sup>

As for the training program, “[a] typical petition would include a binder containing the training plan and a training schedule, written materials, and trainee evaluation form.”<sup>140</sup> The regulations require the petitioner to include a statement which:

- (1) Describes the type of training and supervision to be given, and the structure of the training program;
- (2) Sets forth the proportion of time that will be devoted to productive employment;
- (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training; . . .
- (6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.<sup>141</sup>

The H-3 visa category presented several insurmountable problems for JPC. The regulations require the petitioner to extensively document its program, which will then be adjudicated by an anonymous INS/USCIS employee. Because JPC’s

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<sup>136</sup> In the aftermath of September 11, Congress reorganized the regulation of immigration with the creation of the Department of Homeland Security. The duties of the INS, which had been located in the Department of Justice, was split between two new entities in DHS. Much of immigration enforcement duties were assigned to Immigration Customs Enforcement (ICE) and immigration services were assigned to the United States Citizenship and Immigration Services (USCIS). See Steve Legomsky, IMMIGRATION AND REFUGEE LAW AND POLICY SUPPLEMENT 3-7 (3d ed. 2003). In this article, I’ll refer to the government immigration service provider as INS/USCIS.

<sup>137</sup> Enid Trucios-Haynes & Ethan Kuafman, *Training Visa Categories in the United States*, 93-05 IMMIGR. BRIEFINGS 1 (1993).

<sup>138</sup> *Id.* at 3.

<sup>139</sup> 8 C.F.R. §214.2(h)(7)(ii)(A) (2005).

<sup>140</sup> Dawn Lurie & Catherine Haight, *Foreign Trainee or Business Visitor – What Visa is Appropriate? Guidance on the Underused Trainee Visa*, 1340 PRACT. LAW INST./CORP. LAW AND PRACT. COURSE HANDBOOK 47, 51 (2002).

<sup>141</sup> § 214.2(h)(7)(ii)(B) (2005).

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alleged training program dealt in generalities without a “fixed schedule, objectives, or means of evaluation,” because the beneficiaries already possessed “substantial training and expertise in the proposed field of training,” and because the training program would “result in productive employment beyond that which is incidental and necessary to the training,” the adjudicator would likely have denied the petition.<sup>142</sup> Additionally, the two cooks could not be included in the training program because “training” cooks “[i]s incompatible with the nature of the petitioner’s business.”<sup>143</sup>

Given the extensive documentation requirements for an H-3 visa, the impersonal nature of the adjudication,<sup>144</sup> and the INS’s suspicious demeanor toward H-3 petitions,<sup>145</sup> JPC looked to other provisions of the immigration laws in its attempt to bring in each group of “trainees.” The B-1 Visa remained open to JPC, an avenue that allowed JPC to trade on charm, personal relationships, maximum bureaucratic discretion, and minimal documentary proof. By far, the most utilized visa category is the B category for temporary visitors for business and pleasure.<sup>146</sup> “[A]n alien (other than one coming for the purpose of . . . performing skilled or unskilled labor. . .) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure” is eligible for a B visa.<sup>147</sup> Activities permissible under a B-1, visitor for business visa, include: taking orders for a foreign manufacturer, negotiating contracts, litigating, attending seminars, and conducting research.<sup>148</sup> Although “there is no direct statutory authority for the admission of B-1 business visitor trainings,”<sup>149</sup> visa consulate officials can also issue a B-1 in lieu of an H-3 trainee visa if all of the substantive requirements of

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<sup>142</sup> § 214.2(h)(7)(iii) (2005) (“A training program may not be approved” under these conditions.).

<sup>143</sup> § 214.2(h)(7)(ii)(B) (2005).

<sup>144</sup> In this setting, Murzello’s “charm” and personal touch would be ineffective. *See supra* note 140.

<sup>145</sup> Austin Fragomen, Jr. & Steven Bell, *IMMIGRATION FUNDAMENTALS: A GUIDE TO LAW AND PRACTICE* 5-157 (4th ed. 1996).

The INS has determined that more cases of fraud arise with regard to H-3 petitions than with any other nonimmigrant categories. INS examiners have been alerted to watch out for certain warning signs that the training program may be fraudulent. Among those signs are a description of the program that is too general, with no fixed schedule, or . . . is incompatible with the nature of the business. Other warning signs are a trainee who appears to be overqualified for the training program. . . The examiner is encouraged to seek evidence regarding the duties to be performed by the alien compared to the duties of a regular employee.

<sup>146</sup> U.S. DEP’T OF JUST. IMMIGR. & NATIONALITY SERV., 2001 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 146 (2003) (29.4 million of the 32.8 million (89.6%) nonimmigrant admissions to the United States in 2001 were B visa holders).

<sup>147</sup> 8 U.S.C. §1101(a)(15)(B) (2005). *See generally* Ira Kurzban, *KURZBAN’S IMMIGRATION LAW SOURCEBOOK: A COMPREHENSIVE OUTLINE AND REFERENCE TOOL* 333 (7th ed. 2000) (detailing the requirements for obtaining B-1 and B-2 visas).

<sup>148</sup> 9 Foreign Affairs Manual, note 5 (22 C.F.R. § 41); *see also* Trucios-Haynes & Kaufman, *supra* note 137, at 8 (“The State Department’s B-1 regulations define the term ‘business’ to include conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. Specifically precluded from admission into the U.S. are business visitors who will engage in local employment or labor for hire.”).

<sup>149</sup> Trucios-Haynes & Kaufman, *supra* note 137, at 8.



H-3 are met and the trainee is employed by and paid by a foreign employer who customarily employs the trainee.<sup>150</sup>

JPC's "trainees" did not qualify for the B-1 visa in lieu of H-3 visa. As mentioned above, they were ineligible for the H-3 visa, which makes them unqualified for the B-1 in lieu of H-3. Additionally, Al-Samit, the purported employer, did not customarily employ welders, fitters, and cooks.<sup>151</sup> Moreover, the ultimate source of the Indian's salary was JPC and not Al-Samit.<sup>152</sup>

JPC was able to perpetrate its immigration fraud by capitalizing on the advantages of the B-1 in lieu of H-3 while avoiding its drawbacks. The B-1 visa does not require a petition to, and approval from the INS/USCIS, thus avoiding an anonymous adjudicator and a delay in processing.<sup>153</sup> JPC benefited from the less stringent documentation required for the B-1 in lieu of H-3 visa, whereby "a B-1 trainee need not demonstrate the laundry list of trainee program requirements as laid out for the H-3 visa."<sup>154</sup> Instead, the B-1 visa application:

[S]hould be accompanied by a letter from the trainee's foreign employer or U.S. training program sponsor explaining the nature of the training to be received in the U.S., . . . thoroughly describ[ing] the nature of the proposed training and it [sic] duration, as well as the circumstances of the trainee's continued employment abroad, including the fact that the foreign national will not receive any impermissible funding while in the U.S.<sup>155</sup>

The B-1 visa in lieu of H-3 presents its own set of difficulties or challenges. A "B-1 business visitor trainee may encounter a problem entering the U.S. because of the difficulty in predicting the reaction of consular and immigration officers to those foreign nationals seeking entry into the U.S. or submitting a nonimmigrant visa application."<sup>156</sup> A consular officer may mistake the B-1 application for an H-3 application resulting in a processing delay, or the consular officer may reject the information submitted, or seek further documentation.<sup>157</sup> Even if the visa is issued by the consular official abroad, the non-citizen may have a problem enter-

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<sup>150</sup> U.S. DEP'T OF STATE, *supra* note 146, at note 11.

There are cases in which aliens who qualify for H-1 or H-3 visas may more appropriately be classified as B-1 visa applicants in certain circumstances . . . In such a case the applicant will receive no salary or other remuneration from a U.S. source . . . To qualify for a B-1 visa, the employee must customarily be employed by the foreign firm, the employing entity must pay the employee's salary, and the source of the employee's salary must be abroad.

<sup>151</sup> *See supra* note 24.

<sup>152</sup> *See supra* note 24.

<sup>153</sup> Lurie & Haight, *supra* note 140, at 50 ("An I-129H petition for H-3 classification is filed by a sponsoring U.S. employer at the INS Service Center having jurisdiction over the place of employment . . . The H-3 petitions are typically adjudicated in two months or less"); *Id.* at 54. ("A B-1 visa application is made directly at the U.S. Embassy or Consulate and does not require prior approval from the INS").

<sup>154</sup> Lurie & Haight, *supra* note 140, at 55.

<sup>155</sup> Trucios-Haynes & Kaufman, *supra* note 137, at 10.

<sup>156</sup> *Id.* at 11; *See also* James Nafziger, *Review of Visa Denials by Consular Officials*, 66 WASH. L. REV. 1 (1991).

<sup>157</sup> *See* Trucios-Haynes & Kaufman, *supra* note 137, at 11.

ing the country at the border because “immigration officers often are unfamiliar with, or mistaken about, the requirements for admission as a B-1 business visitor trainee.”<sup>158</sup> This unfamiliarity “can result in lengthy discussions at the border, secondary inspection, or deferred inspection, which would require the foreign national to appear at the local INS district office to seek admission.”<sup>159</sup>

In taking advantage of the relaxed documentation requirements of the B-1, JPC avoided the potential pitfalls of the B-1 by first developing personal relationships and credibility with the commercial sections of the embassies in Kuwait and India, and later with the visa consular officials in India.<sup>160</sup> Because John Pickle personally appeared at the consulate, none of the fifty-three ever appeared before the visa consulate officials.<sup>161</sup> To facilitate entry into the United States, John Pickle traveled with part of this group and Murzello traveled with another part. As several of the affidavits indicate, John Pickle “led the way,”<sup>162</sup> so that the Indians were not asked any questions and did not have to say a word.<sup>163</sup>

## Conclusion

This essay does not offer any ground breaking solutions to the problem of human trafficking generally, or the fraudulent use of the B-1 visa to effectuate human trafficking in particular. Its modest aims were to elevate the awareness of this international problem through multiple personal narratives in one major trafficking incident and to point out one way in which the U.S. visa system can be manipulated to serve the goals of potential traffickers.

I will leave you with a question that still troubles me: “Were warning signs present that should have alerted visa consulate officials to potential problems and should have led them to be more diligent in ascertaining the truth about JPC’s intentions in bringing the group of fifty-three to Tulsa?” I do not have a full account of what documentation was presented to the visa consulate officials and how those officials reacted to that documentation, but from my limited vantage point, it does appear that the visa consulate officials in Mumbai, India, should have been more guarded in their issuance of visas for this group of fifty-three. A red flag should have been raised on two accounts simply by the fact that Al-Samit was listed as the employer. First, the consulate officials should have asked why the employer for this group of fifty-three was not JPME/KPIOS (the “em-

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<sup>158</sup> *Id.*; See generally Janet A. Gilboay, *Deciding Who Get In: Decisionmaking by Immigration Inspectors*, 25 LAW & SOC’Y REV. 571 (1991).

<sup>159</sup> See Trucios-Haynes & Kaufman, *supra* note 137, at 11.

<sup>160</sup> See *supra* notes 31-39.

<sup>161</sup> See *supra* note 61.

<sup>162</sup> Mondal, *supra* note 76, at 6.

<sup>163</sup> Patel, *supra* note 73, at 6.

When we arrived in Atlanta, John Pickle led us to the immigration counter. One official, a woman, came and shouted for the John Pickle group. Mr. Pickle ordered us all to follow him. We were divided into three lines. Mr. Pickle went to speak privately with another immigration officer. On my turn in line, there were already three Indians that had been waited on at the counter. The immigration official did not ask me any questions . . . The official stamped my passport and returned my documents. I did not say a word.

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ployer” of the previous group), especially if the purported training was to prepare these men for work for JPME/KPIOS in Kuwait. Second, the consulate officials should have known that Al-Samit, a nationally recognized employment recruitment agency in India, did not customarily employ welders and fitters as part of its operations. Finally, how did the consulate officials miss the fact that two of the fifty-three trainees were cooks and not engaged in the steel fabrication industry at all? More diligent visa processing could have thwarted this instance of human trafficking.