

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 33046 of 2014 (E)

PETITIONERS:

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1. MARY REDI KOTTUNKAL JOY, AGED 37 YEARS
W/O.JEEGAN JOSEPH CHERUTHALAKAL MICHAEL
HOUSEWIFE, CHERUTHALAKAL HOUSE
SOUTH CHELLANAM P.O. ERNAKULAM, KERALA, PIN - 682 008.
 2. RISHON MICHAEL CHERUTHALAKAL JEEGAN, AGED 14 YEARS,
S/O.JEEGAN JOSEPH CHERUTHALAKAL MICHAEL, STUDENT,
CHERUTHALAKAL HOUSE, SOUTH CHELLANAM P.O., ERNAKULAM,
KERALA PIN - 682 008, MINOR
REPRESENTEDBY MOTHER AND NATURAL GUARDIAN AS NEXT
FRIEND - MARYREDI KOOTTUNKAL JOY
W/O.JEEGAN JOSEPH CHERUTHALAKALMICHAEL, HOUSEWIFE,
CHERUTHALAKAL HOUSE, SOUTHCHELLANAM P.O., ERNAKULAM
KERALA PIN - 682 008.
 3. SHION JOY CHERUTHALAKAL JEEGAN, AGED 12 YEARS
S/O.JEEGAN JOSEPH, CHERUTHALAKAL MICHAEL, STUDENT
CHERUTHALAKAL HOUSE, SOUTH CHELLANAM P.O., ERNAKULAM
KERALA PIN - 682 008, MINOR
REPRESENTED BY MOTHER AND NATURAL GUARDIAN AS NEXT
FRIEND - MARYREDI KOOTTUNKAL JOY,
W/O.JEEGAN JOSEPH CHERUTHALAKAL MICHAEL, HOUSEWIFE,
CHERUTHALAKAL HOUSE, SOUTH CHELLANAM P.O., ERNAKULAM
KERALA, PIN - 682 008

BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SRI.K.J.SEBASTIAN
SEI.M.VARGHESE VARGHESE
SMT.UMA R.KAMATH
SMT.S.SANDHYA
SRI.BEPIN PAUL
SRI.SHALU VARGHESE

RESPONDENTS:

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1. THE ASSISTANT DIRECTOR/PORT REGISTRATION OFFICER (PRO)
BUREAU OF IMMIGRATION, GOVERNMENT OF INDIA,
COCHIN INTERNATIONAL AIRPORT, NEDUMBASSERY
PIN - 683 585.
 2. FOREIGNERS REGIONAL REGISTRATION OFFICERS (FRRO)
BUREAU OF IMMIGRATION, GOVERNMENT OF INDIA,
COCHIN INTERNATIONAL AIRPORT, NEDUMBASSERY
PIN - 683 585.

WPC No.33046/2014

3. THE REGIONAL PASSPORT OFFICER,
REGIONAL PASSPORT OFFICE - COCHIN,
PANAMPILLY NAGAR, ERNAKULAM,
KOCHI - 682 036.

Addl. R4. MINISTRY OF EXTERNAL AFFAIRS,
GOVERNMENT OF INDIA,
PATTIALA HOUSE, TILAK MARG,
NEW DELHI 110 001,
REP.BY THE SECRETARY.

Addl. R5. MINISTRY OF HOME AFFAIRS, INTELLIGENCE
BUREAU, GOVERNMENT OF INDIA,
SARDAR PATEL MARG,
NEW DELHI 110 001, REP.BY THE SECRETARY

(Addl.R4 & R5 are impleaded as per order dated 9.1.2015
in I.A.No.353/2015)

R1-R3, ADDL R4 & R5 BY ADV. SRI.N.NAGARESH,
ASST. SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20.2.2015, THE COURT ON 04-03-2015 DELIVERED THE FOLLOWING:

WP(C).No. 33046 of 2014 (E)

APPENDIX

PETITIONERS' EXHIBITS

- EXT.P-1: TRUE PHOTO COPY OF THE SCANNED COPY OF THE H2B CLASS VISA STAMPED BY THE UNITED STATES OF AMERICA IN FAVOUR OF JEEGAN JOSEPH CHERUTHALAKAL MICHAEL - THE HUSBAND OF THE 1ST PETITIONER
- EXT.P-2: TRUE PHOTO COPY OF THE SCANNED COPY OF LETTER OF APPROVAL OF T-1 CLASS APPROVAL - VALID FROM 4.1.2012 TO 3.1.2016 - ISSUED BY THE DEPARTMENT OF HOME LAND SECURITY, UNITED STATES OF AMERICA CITIZENSHIP AND IMMIGRATION SERVICES TO JEEGAN JOSEPH - THE HUSBAND OF THE 1ST PETITIONER
- EXT.P-3: TRUE PHOTO COPY OF THE SCANNED COPY OF THE EMPLOYMENT AUTHORISATION CARD ISSUED BY THE UNITED STATES OF AMERICA TO JEEGAN JOSEPH - THE HUSBAND OF THE 1ST PETITIONER
- EXT.P-4: TRUE PHOTO COPY OF THE SCANNED COPY OF THE DRIVER'S LICENCE ISSUED BY THE AUTHORITIES IN TEXAS - UNITED STATES OF AMERICA TO JEEGAN JOSEPH - THE HUSBAND OF THE 1ST PETITIONER
- EXT.P-5: TRUE PHOTO COPY OF THE SCANNED COPY OF NOTICE OF ACTION/APPROVAL OF 1ST PETITIONER'S TRAVEL TO USA, UNDER CLASS T-2 (DERIVATIVE APPLICANT)VALID FROM 24.7.2014 TO 3.1.2016 ISSUED BY THE DEPARTMENT OF HOMELAND SECURITY,US CITIZENSHIP AND IMMIGRANT SERVICES.
- EXT.P-6: TRUE PHOTO COPY OF THE SCANNED COPY OF NOTICE OF ACTION/APPROVAL OF 2ND PETITIONER'S TRAVEL TO USA, UNDER CLASS T-3(DERIVATIVE APPLICANT) VALID FROM 24.7.2014 TO 3.1.2016 ISSUED BY THE DEPARTMENT OF HOMELAND SECURITY, US CITIZENSHIP AND IMMIGRANT SERVICES.
- EXT.P-7: TRUE PHOTO COPY OF THE SCANNED COPY OF NOTICE OF ACTION/APPROVAL OF 3RD PETITIONER'S TRAVEL TO USA, UNDER CLASS T-3 (DERIVATIVE APPLICANT) VALID FROM 24.7.2014 TO 3.1.2016 ISSUED BY THE DEPARTMENT OF HOMELAND SECURITY, US CITIZENSHIP AND IMMIGRANT SERVICES
- EXT.P-8: TRUE PHOTO COPY OF THE RELEVANT PAGES OF 1ST PETITIONER'S PASSPORT ISSUED BY 3RD RESPONDENT BEARING PASSPORT NO.G7170577, WITH THE R T2 VISA STAMPED THEREUPON OF THE UNITED STATES OF AMERICA, FROM ITS CHENNAI(MADRAS) CONSULATE OFFICE.

WPC No.33046/2014

- EXT.P-9: TRUE PHOTO COPY OF THE RELEVANT PAGES OF 2ND PETITIONER'S PASSPORT ISSUED BY 3RD RESPONDENT BEARING PASSPORT NO.L1474268, WITH THE R T3 VISA STAMPED THEREUPON OF THE UNITED STATES OF AMERICA, FROM ITS CHENNAI (MADRAS), CONSULATE OFFICE.
- EXT.P-10: TRUE PHOTO COPY OF THE RELEVANT PAGES OF 3RD PETITIONER'S PASSPORT ISSUED BY 3RD RESPONDENT BEARING PASSPORT NO.M0762920, WITH THE R T3 VISA STAMPED THEREUPON OF THE UNITED STATES OF AMERICA, FROM ITS CHENNAI (MADRAS) CONSULATE OFFICE.
- EXT.P-11: TRUE PHOTO COPY OF THE FLIGHT TICKET PRINT OUT OF THE 1ST PETITIONER WITH BOARDING DATE FROM KOCHI (COK) AS 22.11.2014.
- EXT.P-12: TRUE PHOTO COPY OF THE FLIGHT TICKET PRINT OUT OF THE 2ND PETITIONER WITH BOARDING DATE FROM KOCHI (COK) AS 22.11.2014
- EXT.P-13: TRUE PHOTO COPY OF THE FLIGHT TICKET PRINT OUT OF THE 3RD PETITIONER WITH BOARDING DATE FROM KOCHI (COK) AS 22.11.2014
- EXT.P-14: TRUE PHOTO COPY OF THE TRANSFER CERTIFICATE (TC) BEARING NO.394/2014-15-DATE OF ISSUANCE 19.11.2014 FROM CHINMAYA VIDYALAYA,KANNAMALI IN RESPECT OF 2ND PETITIONER
- EXT.P-15: TRUE PHOTO COPY OF THE TRANSFER CERTIFICATE (TC) BEARING NO.395/2014-15 DATE OF ISSUANCE 19.11.2014 FROM CHINMAYA VIDYALAYA,KANNAMALI IN RESPECT OF 3RD PETITIONER
- EXT.P-16: TRUE PHOTO COPY OF THE SEIZURE LETTER DT.22.11.2014 FOR SEIZURE OF PASSPORT OF 1ST PETITIONER (PASSPORT NO.G 7170577), ISSUED BY THE 1ST RESPONDENT.
- EXT.P-17: TRUE PHOTO COPY OF THE SEIZURE LETTER DT.22.11.2014 FOR SEIZURE OF PASSPORT OF 2ND PETITIONER (PASSPORT NO.L1474268), ISSUED BY THE 1ST RESPONDENT.
- EXT.P-18: TRUE PHOTO COPY OF THE SEIZURE LETTER DT.22.11.2014 FOR SEIZURE OF PASSPORT OF 3RD PETITIONER (PASSPORT NO.M 0762920), ISSUED BY THE 1ST RESPONDENT.
- EXT.P-19: TRUE PHOTO COPY OF THE DETAILED REPRESENTATION DT.1.12.2014 SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT AND RECEIVED BY THE 2ND RESPONDENT'S OFFICE ON 1.12.2014.
- EXT.P-20: TRUE PHOTO COPY OF THE SCANNED COPY OF VISA STAMPED PAGES OF JOSE GEORGE, PETRISHIA AND JOEL CHACKO, AS RECEIVED BY THE PETITIONER.

RESPONDENTS' EXHIBITS

- Ext.R1(a) TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT OF KOOTTUNKAL JOY MAYH REDY WITH INDIAN PASSPORT NO.G 7170577 (ISSUED BY COCHIN), USA T2 VISA STAMPED THEREIN.

WPC No.33046/2014

- EXT.R1 (b) TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT OF CHERUTHALAKAL JEEGAN RISHOR MICHAEL WITH INDIAN PASSPORT NO.L 1474268 (ISSUED FROM COCHIN), USA WITH T3 VISA STAMPED THEREIN.
- EXT.R1 (c) TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT OF CHERUTHALAKAL JEEGAN SHION JOY WITH INDIAN PASSPORT NO.M 0762920 (ISSUED FROM COCHIN), USA T3 VISA, WITH T3 VISA STAMPED THEREIN.
- EXT.R1 (d) TRUE COPY OF THE COMMUNICATION NO.VI/405/2/1/2013-05 DATED 30.6.2014 ISSUED BY UNDER SECRETARY, MINISTRY OF EXTERNAL AFFAIRS.
- EXT.R1 (e) TRUE COPY OF MEMORANDUM DATED 10.7.2014 ISSUED BY THE IB (MINISTRY OF HOME AFFAIRS) GOVT. OF INDIA, NEW DELHI.
- EXT.R1 (f) TRUE COPY OF SEIZURE LETTER NO.A4-LOC/LOP/OTHERS/380/2013 PRO/CHN/AP DATED 22.11.2014, ISSUED TO KOOTTUNKAL JOY MARY REDI (INDIAN PASSPORT NO.G 7170577).
- EXT.R1 (g) TRUE COPY OF LETTER NO.A4/PPS/80/2014/PRO/CAP DATED 22.11.2014 OF REGIONAL PASSPORT OFFICER, COCHIN.
- EXT.R1 (h) TRUE COPY OF SEIZURE LETTER NO.A4 -LOC/LOP/OTHERS/380/2013/PRO/CHN/AP DATED 22.11.2014 ISSUED TO CHERUTHALAKAL JEEGAN RISHON MICHAEL INDIAN PASSPORT NO.L 1474268).
- EXT.R1 (i) TRUE COPY OF LETTER NO.A4/PPS/81/2014/PRO/CAP DATED 22.11.2014 SENT TO REGIONAL PASSPORT OFFICER, COCHIN
- EXT.R1 (j) TRUE COPY OF SEIZURE LETTER NO.A4-LOC/LOP/OTHERS/ 380/2013/PRO/CHN/AP DATED 22.11.2014 ISSUED TO CHERUTHALAKAL JEEGAN SHION JOY INDIAN PASSPORT NO.M. 0762920.
- EXT.R1 (k) TRUE COPY OF LETTER NO.A4/PPS/79/2014/PRO/CAP DATED 22.11.2014 SENT TO REGIONAL PASSPORT OFFICER, COCHIN.
- Ann.R4 (a) TRUE COPY OF APPROVAL ORDER DATED 30.6.2014 ISSUED BY UNDER SECRETARY (PV-1), MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI.

TRUE COPY

p.s.to judge

CSS/

A.V.RAMAKRISHNA PILLAI, J

WPC No.33046 of 2014

Dated this the 4th day of March, 2015

JUDGMENT

The petitioners, who are granted valid visa to travel and join the first petitioner's husband (father of the petitioners 2 and 3) in United States of America where he is employed, has approached this Court seeking the following reliefs:

a) issue a writ in the nature of mandamus or such other writs or orders directing the respondents forthwith to release the passports of the petitioners to them.

b) issue a writ in the nature of mandamus or such other writs or orders directing the respondents to permit and enable the petitioners to travel to the United States of America upon the visas duly stamped and issued by the government authorities of the United States of America to the petitioners as per Exts.P8, P9 and P10.

c) direct the respondents to pay to the petitioners the entire ticket charges for them to travel to USA, as due compensation and damages.

d) award the cost of this writ petition.

2. The petitioners allege that when they went to board the flight on 22.11.2014 at the Cochin International Airport at Nedumbassery, the first respondent restrained them illegally and did not clear them to travel and also illegally seized their passports taking the stand that he would not permit persons who have T2 and T3 visas granted by the American Government to travel to America. The petitioners were issued with the letter of seizure of their passports. It is with this background, the petitioners have come up before this Court.

3. This Court, by interim order dated 19th December 2014 directed the third respondent to release the passport to the petitioners within a period of two weeks. Accordingly, the passports were released. Therefore, the only surviving question is whether the petitioners be permitted to go abroad to join the first petitioner's husband (father of petitioners 2 and 3) who is now in United States of America.

4. In the counter affidavit filed by the 4th respondent, it was contended as follows:

A trafficking visa is a type of visa allowing certain victims of human trafficking and immediate family members to remain and work temporarily in the United States, if they agree to assist law enforcement in testifying against the perpetrators, it is submitted.

The United States Government estimates that each year up to 50,000 people are trafficked into the United States against their will, mostly women and children who are brought as sex slaves. As a response, it enacted the Victims of Trafficking and Violence Protection Act of 2000, which among other things, allows such people to allow for 3 year temporary visas that lead to permanent resident status.

It is contended by the respondents that a proposal to treat the holder of Indian Passport whosoever has been given the Trafficking visa on his/her passport issued by the US Government as a violator of the Passports Act, 1967 was considered during an Inter-ministerial meeting on

trafficking visas held on 10.2.2014. In the meeting it was recommended to examine the feasibility of putting in place a policy-frame work for placing 'T' visa holders in the 'Prior Approval Category for all Indian Consular services. It was further recommended to examine from a legal perspective the possibility of stopping 'T' visa holders with valid passports from travelling US by suspending their passports and handing over the same to CBI for investigations followed by subsequent impounding/ revocation of the passports by Ministry of External Affairs. On the basis of above mentioned recommendations and the concurrence of L&T Division of the Ministry, with the approval of the competent authority the following decisions were taken:

- (i) All the Missions/Posts abroad were instructed to place the Indian Passport holders holding United States T1, T2, T3, T4 and T5 visas in the prior Approval Category for availing all Indian consular services until further notice from the Ministry.
- (ii) the Bureau of Immigration, Ministry of Home Affairs can stop Indian Passport holders from leaving the country, if they hold Trafficking Visa on their passports and the passports seized in this regard may be sent to the Ministry (in case the passport has been issued by the Missions/Posts

abroad) or to the concerned Passport Office (from where the passport has been issued for further course of action.

A true copy of the approval order in this regard is produced as Annexure R4(a).

It is contended by the respondents that after the implementation of this policy by which all the Missions/Posts abroad were instructed to place the Indian Passport holders holding United States T1, T2, T3, T4 and T5 visa holders in the prior approval category for availing of all indian consular services, until further notice from the Ministry. A number of cases for grant of passport facilities to Indians who were residing in the United States and have been granted 'T' visa by that Government were referred by CGI, Houston to the Ministry for consideration. All the above cases were considered in view of the specific guidelines/instructions of the Ministry mentioned above and the Mission was requested to resort to the following course of action:-

- (i) To impound/revoke the passports under Section 10(3) (c) of the Passports Act, 1967 by following the due procedure as stipulates in the Passport Manual, 2010. However, they may be

given an opportunity to appeal before the appellate authority under Section 11 of the Passports Act, 1967.

(ii) They may be given an option to return to India for which Emergency certificate may be issued to them, in case they wish to do so.

(iii) On their return to India, their names will be placed in the Prior Approval Category (PAC) up to a period of three years.

5. Arguments have been heard.

6. The learned counsel for the petitioners would argue that the prevention of the petitioners from boarding the flight in spite of having valid visas, due passports and due tickets and the seizure of their passports are grossly illegal, unreasonable, inequitable, baseless and without authority. The learned counsel would argue that when the petitioners are having due visas granted by the Government of the United States of America and when there is nothing illegal about the petitioners duly travelling to the USA to join their husband/father, it is absolutely baseless and illegal to restrain the petitioners from boarding their flight to USA.

7. The first petitioner's husband Mr.Jeegan Joseph is employed in the United States of America who went for employment to USA under Type R;H2B class Visa. He being a skilled worker, that Mr.Jeegan Joseph like many others were given employment in USA through an agency recruiting skilled labour in India (Devan Consultancy, Mumbai); it is alleged. The job offer was that they would in due course be able to get green card also in USA. However, the conditions under which these contract employees were made to work and confined to work were not only quite inhuman but also against the basic law and policies of USA and its State laws. Thus, the US Government has enacted the Trafficking Victims Protection Act whereby such victims like the first petitioner's husband are protected and they are issued T1 visas and their spouses, children and their parents are entitled to T2, T3 and T4 visas respectively. It is how the petitioners obtained T2 and T3 visas to join Mr.Jeegan Joseph. Admittedly, the petitioner's husband is a valid resident and employee in USA, as evident from Ext.P1

which is the true scanned copy of the H2B class visa stamped by the United States of America in favour of Jeegan Joseph. The petitioners have also produced Ext.P2 which is the true scanned copy of letter of approval of T1 class which is valid from 4.1.2012 to 3.1.2016 issued by the Department of Home Land Security, United States of America Citizenship and Immigration services to Mr.Jeegan Joseph. Ext.P3 is the true scanned copy of the Employment Authorisation Card issued by USA to Mr.Jeegan Joseph. It is evident from the document now placed on board that Mr.Jeegan Joseph is validly stationed in United States of America and the American Government has issued due visas for petitioners' travel. Petitioners 2 and 3 have to join school in USA at the earliest and the petitioners' visa would expire by 15.3.2015.

8. The main contention of the respondent is that a Trafficking visa is a type of visa allowing certain victims of human trafficking and immediate family members to remain and work temporarily in the United States, if they agree to assist law enforcement in testifying against the

perpetrators. It was strenuously argued that if the petitioners are permitted to go abroad and to join Mr. Jeegan, the same would be against the provisions of the Victims of Trafficking and Violence Protection Act, 2000 passed by the 160th Congress of the United States of America at its second session. The learned counsel for the petitioners made available to me a copy of the said statute which he obtained from the website. The said Act is organized into three divisions. viz. Division A, B and C. Division A deals with victims of Trafficking.

9. Section 102 of Division A of the Act deals with the purposes and findings. As per S.102(a), the purposes of A-division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers and to protect their victims.

10. S.103(8) deals with severe forms of trafficking in persons. It reads -

The term '*severe forms of trafficking in persons*' means (A) sex trafficking in which a

commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

11. Sub Sections 19 to 24 of Section 102 reads as follows:

(19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

(20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.

(22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.

(23) The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment; United Nations General Assembly Resolutions 50/167, 51/66 and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the

1991 Moscow Document of the Organization for Security and Cooperation in Europe.

(24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.

12. The statute clearly indicates that the purpose of the enactment is to protect the victims of trafficking. The Government of United States of America where Mr.Jeegan is working, has granted proper visa to the petitioners to join Mr.Jeegan.

13. As far as Indian citizens are concerned, the only legislation which covers the field is the Passport Act, 1957.

14. Section 6 deals with the refusal to transfer documents etc. which reads as under:

6. Refusal of passports, travel documents etc. -

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date

of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government, the issue of a passport or travel document to the applicant will not be in the public interest.

15. Section 10 deals with variation, impounding and revocation of passports and travel documents.

It reads-

(1) The passport authority may, having regard to the provisions of sub section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) If the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel

document has failed to comply with a notice under sub section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub section (1) or an order impounding or revoking a passport or travel document under sub section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel

document;

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

16. The respondents have no case that the petitioners are offenders or persons involved in any act prejudicial to the interest of the nation or violators of the laws and norms or the sovereignty and integrity of our country. No question of any alleged implementation of any valid policy arises as rightly pointed out by the learned counsel for the petitioners.

17. This Court vide order dated 9.1.2015 in I.A.No.354/2015 directed the respondents to produce the records required to be produced as detailed in the said interlocutory application. But in spite of the repeated directions and opportunities granted, the respondents

have not produced those documents. This, according to the learned counsel for the petitioners, is obviously because such records are actually not existing and factiously referred to in Ext.R1(d) or that if produced, it would be patently clear that what the respondents are trying to portray before this Court are absolute falsities and illegalities. I see valid force in the said submission.

18. As rightly pointed out by the learned counsel for the petitioners, it is after detailed procedures, verification, adjudication and evaluation of independent evidence that a victim of severe form of trafficking in persons that the United states Citizenship and Immigration Services (USCIS) which is a division of the homeland security, approves eligibility for grant of T-visa. The United States immigration laws providing for T-visa have clear provisions and detailed procedures for verification of the veracity of the testimony of the victim who applies for T visa. Independent secondary evidence which is also mandatory in the procedure also would be insisted. It is common for the USCIS to reject T visa application for lack

of credible secondary evidence. More over, if the victim applying for T-visa is found to have fraudulently or wilfully provided false information to USCIS as part of visa application, he will face penalties for perjury and also would be completely debarred from obtaining a future visa also in any other category in/or to enter USA.

19. Now, the respondents would give thrust to the argument that by the granting of visa, there would be compulsion to testify. As rightly submitted by the learned counsel for the petitioners, it is the law as well as the process of any modern judicial and investigation system that when a person is a victim of an offence or is a witness to an offence or has necessary information as to proof of planning, preparation and commissioning of any offence, he would be required to testify in any prosecution proceedings, on oath to testify truth and that is the right in law abiding human being and that cannot be prevented. The learned counsel for the petitioners would submit that every year only about 600-800 persons were granted T visa status and many applications are duly

rejected as the scrutiny and evaluation is very strict and stringent in the grant of such visa by the USCIS. T2, T3 and T4 visas are granted to the dependents of the victims. Admittedly, the first petitioner is the wife and she is duly granted T2 visa and petitioners 2 and 3 are the children who are granted T2 and T3 visas respectively. The visa stamping process which was duly completed after the issuance of Exts.P5 to P7 as evidenced by Exts.P8(2), P9(2) and P10(2). It is also crucial to note that on no other grounds except the grounds stated in Section 6 of the Passport Act, 1967, travel documents could be refused. The petitioners will not come under any of the interdicts in Section 6 of the Passport Act, 1967.

20. The right to travel is a fundamental right guaranteed and protected under Article 21 of the Constitution of India. The right to life includes the right of spouse and children to join, to be in the company and to grow with the spouse and parents. The denial of the same is not only violation of the fundamental rights and natural rights of the petitioners but also detrimental to

the very concept of matrimonial living as well as the rights, duties and obligations in matrimonial living of spouses. It is also detrimental to the psychological growth and development of the spouse and children.

21. The learned counsel for the petitioners invited my attention also to the provisions of the Universal Declaration of Human Rights as well as International Covenant on Civil and Political rights which protects the individuals to travel and join the spouse and parents. Admittedly, India is a signatory to both these documents. More over, as per Article 10 of the Convention on the Right of the Children, State must facilitate the reunification in a positive human and expeditious manner of the child and family. It is also specified that no adverse consequences are to be imposed on the child and family members.

22. On a consideration of the entire materials now placed on record, this Court is of the definite view that the respondents cannot in any manner restrain the petitioners from holding derivative visas, T2 and T3 from travelling to

USA to join husband/father who is duly employed therein.

In the result, this writ petition is allowed. The respondents are directed to permit and enable the petitioners to travel to USA upon the visas duly stamped and issued by the government authorities of the United States of America to the petitioners as per Exts.P8, P9 and P10.

SD/-A.V.RAMAKRISHNA PILLAI
JUDGE

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P.S.TO JUDGE