

13 MAG 2870

Approved: AMANDA KRAMER/KRISTY GREENBERG
Assistant United States Attorneys

Before: HONORABLE DEBRA FREEMAN
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
- v. -	:	Violations of
DEVYANI KHOBRADE,	:	18 U.S.C. §§ 1001, 1546(a) and
	:	2.
Defendant.	:	COUNTY OF OFFENSE:
	:	NEW YORK

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COUNTY OF NEW YORK)
STATE OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

MARK J. SMITH, being duly sworn, deposes and says that he is a Special Agent with the United States Department of State, Diplomatic Security Service ("DSS"), and charges as follows:

COUNT ONE
(Visa Fraud)

1. In or about November 2012, in the Southern District of New York and elsewhere, DEVYANI KHOBRADE, the defendant, willfully and knowingly did make under oath, and under penalty of perjury under Title 28, United States Code, Section 1746, and did subscribe as true, a false statement with respect to a material fact in an application, affidavit, and other document required by the immigration laws and regulations prescribed thereunder, and did present such application, affidavit, and other document which contained such false statement and which failed to contain any reasonable basis in law or fact, and did to wit, KHOBRADE caused to be submitted to the U.S. Department of State an employment contract that KHOBRADE knew to contain

materially false and fraudulent statements, which contract was submitted in support of a visa application filed by KHOBRAGADE for another individual.

(Title 18, United States Code, Sections 1546(a) and 2.)

COUNT TWO
(False Statement)

2. In or about November 2012, DEVYANI KHOBRAGADE, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly, did falsify, conceal, and cover up by trick, scheme, and device material facts, and made materially false, fictitious, and fraudulent statements and representations, to wit, KHOBRAGADE caused to be submitted to the U.S. Department of State an employment contract that KHOBRAGADE knew to contain materially false and fraudulent statements, which contract was submitted in support of a visa application filed by KHOBRAGADE for another individual, and KHOBRAGADE caused another individual to make statements KHOBRAGADE knew to be materially false, fictitious, and fraudulent, to an employee of the United States Embassy in New Delhi, India, in support of the same visa application.

(Title 18, United States Code, Sections 1001 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

3. I am a Special Agent with DSS, and am the lead investigator of the above-captioned case. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including my review of pertinent documents and interviews of witnesses. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include details of every aspect of my investigation. Where I relate statements, conversations, and actions of others, those statements, conversations, and actions are related in substance and in part, except where otherwise indicated.

4. Since in or about November 2012, DEVYANI KHOBRAGADE, the defendant, has been employed as the Deputy Consul General for Political, Economic, Commercial and Women's Affairs at the Consulate General of India in New York, New York. Based on my review of an

official database of the U.S. Department of State, and my conversations with an employee of the Protocol section of the U.S. Department of State, which is the entity that accredits foreign diplomats and determines immunity levels, I know that KHOBRAGADE enjoys limited diplomatic immunity with respect to only those acts undertaken in her official capacity.

5. Based on my review of the publicly-available website entitled "Visas for Diplomats and Foreign Government Officials,"¹ published by the U.S. Department of State, Bureau of Consular Affairs (the "Website"), I know the following (the quoted paragraphs below have been copied verbatim from the Website):

a. Diplomats and consulate officers may obtain A-3 visas for their personal employees, domestic workers, and servants if they meet the requirements set out in in 9 Foreign Affairs Manual ("FAM") 41.22.

b. "As part of the application process, an interview at the embassy or consulate is required. Proof that the applicant will receive a fair wage, sufficient to financially support himself, comparable to that being offered in the area of employment in the U.S. is required."

c. To apply for an A-3 visa, the visa applicant must submit the following, among other items:

i. An "Employment Contract signed by both the employer and the employee which must include each of the following items:"

1. "Description of Duties. The contract must describe the work to be performed, e.g., housekeeping, gardening, child care, and also must include a statement that the domestic employee shall work only for the employer who signed the contract."

2. "Hours of Work. The contract must state the time of the normal working hours and the number of hours per week. It is generally expected that domestic workers will be required to work 35-40 hours per week. It also must state that the domestic employee will be provided a minimum of one full day off each week. The contract must indicate the number of paid holidays, sick days,

1 Available at http://travel.state.gov/visa/temp/types/types_2637.html#personal.

and vacation days the domestic employee will be provided."

3. "Minimum Wage. The contract must state the hourly wage to be paid to the domestic employee. The rate must be the greater of the minimum wage under U.S. Federal and state law, or the prevailing wage for all working hours. Information on the prevailing wage statistics by occupation and metropolitan area is available on the Department of Labor's Online Wage Library & Data Center website."

4. "The contract must state that wages will be paid to the domestic employee either weekly or biweekly. As of March 2011, the Department determined that no deductions are allowed for lodging, medical care, medical insurance, or travel. As of April 2012, deductions taken for meals are also no longer allowed."

5. "Overtime Work. The contract must state that any hours worked in excess of the normal number of hours worked per week are considered overtime hours, and that hours in which the employee is "on call" count as work hours. It also must state that such work must be paid as required by U.S. local laws."

6. "Payment. The contract must state that after the first 90 days of employment, all wage payments must be made by check or by electronic transfer to the domestic worker's bank account. Neither Mission members nor their family members should have access to domestic workers' bank accounts. In addition, the Department requires that the employer retain records of employment and payment for three years after the termination of the employment in order to address any complaints that may subsequently arise. Further, the bank account must be in the United States so that domestic workers may readily access and utilize their wages."

7. "Other Required Terms of Employment. The contract must state that the employer agrees to abide by all Federal, State, and local laws in the United States. The contract also must include a statement that the domestic worker's passport and visa will be in the sole possession of the domestic worker. In addition, the contract must state that a copy of the contract and other personal property of the domestic employee will not be withheld by the employer for any reason. The contract must include a statement that the domestic worker's presence in the employer's residence will not be required except during working hours. The contract must also include a statement by the employee, promising not to accept any other employment while working for the employer."

6. Based on my interviews of an individual who, in or about the fall of 2012, was residing in India ("Witness-1"), I know the following, in substance and in part:

a. In or about the fall of 2012, Witness-1 met at least twice with DEVYANI KHOBRAGADE, the defendant, at KHOBRAGADE's residence in India (the "Residence") in reference to Witness-1's potential employment as a domestic worker for KHOBRAGADE in New York, New York.

b. KHOBRAGADE told Witness-1 that KHOBRAGADE was seeking to hire a babysitter who also could handle additional household work at her home in New York. After some discussion, KHOBRAGADE agreed to pay Witness-1 30,000 rupees per month. KHOBRAGADE stated that she would need to observe Witness-1's work.

c. At KHOBRAGADE's request, Witness-1 stayed at the Residence for a trial employment period of several days. At the conclusion of the trial employment period, KHOBRAGADE told Witness-1 to expect a call from the United States Embassy in India (the "U.S. Embassy").

7. Based on my interviews of the spouse of Witness-1 ("Witness-2"), I know the following, in substance and in part:

a. Witness-2 and Witness-1 met with DEVYANI KHOBRAGADE, the defendant, at the Residence in reference to WITNESS-1's potential employment for KHOBRAGADE in New York, New York as a domestic helper. KHOBRAGADE offered to pay Witness-1 a starting salary of 25,000 rupees per month, plus an additional 5,000 rupees for overtime.

b. At KHOBRAGADE's request, Witness-1 stayed at the Residence for a trial employment period of several days.

c. KHOBRAGADE stated that she would apply for a passport for Witness-1 through the Indian Ministry of External Affairs. Witness-1 provided KHOBRAGADE with her Indian passport.

8. Based on my review of a publicly available report of the U.S. Department of Treasury, which sets forth the rate of exchange in effect as of September 1, 2012, I know that at that time, 52.35 rupees was equivalent to \$1 U.S. dollar. At that rate of exchange, 30,000 rupees is equivalent to \$573.07 U.S. dollars. At 40 hours

per week, with approximately 4.3 weeks in a month, \$573.07 dollars equates to a rate of \$3.31 per hour.

9. Based on my review of a U.S. Department of State database, I know the following:

a. On or about September 27, 2012, an electronic form DS-160, which is a visa application, was submitted through the website for the U.S. Department of State's Consular Electronic Application Center, for an A-1 visa for DEVYANI KHOBRAGADE, the defendant. The visa application for KHOBRAGADE stated that nobody assisted KHOBRAGADE in the preparation of the application, which was electronically signed by the applicant, KHOBRAGADE, and filed from a computer or digital device with an identified IP address (the "Khobragade IP Address").

b. On or about October 15, 2012, an electronic form DS-160 was submitted through the website for the U.S. Department of State's Consular Electronic Application Center, for an A-3 visa for Witness-1. The A-3 application for Witness-1 (the "Visa Application") indicated that the preparer was KHOBRAGADE, and that the Visa Application was submitted from a computer or digital device assigned the Khobragade IP Address.

c. The Visa Application stated that an A-3 visa was sought for Witness-1, who was to be the personal employee of KHOBRAGADE beginning in November 2012 at an address in New York, New York.

d. The Visa Application stated that Witness-1 was to be paid \$4,500 per month in U.S. dollars.

e. On or about November 1, 2012, Witness-1 appeared at the U.S. Embassy to be interviewed in connection with the Visa Application.

10. Based on my interviews of Witness-1, I know the following, in substance and in part:

a. When Witness-1 first appeared at the U.S. Embassy to be interviewed in connection with the Visa Application, an employee at the U.S. Embassy told Witness-1 she could not be interviewed until she returned with the necessary paperwork.

b. Witness-1 contacted KHOBRAGADE, who then executed

an employment contract with Witness-1 (the "First Employment Contract"). KHOBRADE provided Witness-1 with the First Employment Contract to bring to Witness-1's interview at the U.S. Embassy in connection with the Visa Application. KHOBRADE told Witness-1 that the First Employment Contract was a formality to get the visa.

b. KHOBRADE told Witness-1 that Witness-1 would be questioned about the terms of the First Employment Contract at her interview, and that Witness-1 should say that Witness-1 would be paid \$9.75 per hour and would work 40 hours per week. KHOBRADE also instructed Witness-1 to say that Witness-1's duty hours would be 7 a.m. to 12:30 p.m., and 6:30 p.m. to 8:30 p.m. KHOBRADE instructed Witness-1 not to say anything about being paid 30,000 rupees per month.

c. Witness-1 then provided the First Employment Contract to the U.S. Embassy during her interview in connection with the Visa Application.

11. Based on my interviews of Witness-2, I have learned, in substance and in part, that on or about November 11, 2012, Witness-1 and Witness-2 went to the Residence to obtain an employment contract for Witness-1 to bring to her interview at the U.S. Embassy. DEVYANI KHOBRADE, the defendant, provided Witness-1 with the First Employment Contract to bring to her interview. Witness-2 signed the First Employment Contract as a witness.

12. I have reviewed the First Employment Contract, which is entitled "Employment Contract for Personal (Domestic) Employees of An Alien of a Foreign Mission in the United States (Visa A3)," which is dated November 11, 2012, and which provides, in part:

a. The parties to the First Employment Contract are "Dr. Devyani Khobragade (Deputy Consul General - CGI-NY) (hereinafter referred to as the Employer)" and Witness-1 "(hereinafter referred to as the Employee)."

b. "The Employee will go to the U.S. with the Employer as a domestic employee. The Employer agrees to employ the Employee at or in connection with the Employer's residence in the position(s) of housekeeper and babysitter."

c. "The Employee will be paid wages at the prevailing or minimum wage rate as required by law, whichever is greater. The

expected hourly salary in the U.S. would be \$9.75."

d. "The normal number of hours per week shall be 40 hours, including the following normal work hours:" off on Sundays, Monday through Friday from 7am to 12pm and 6:30pm-8:30pm, Saturday from 8am to 1pm.

e. "Wages shall be paid biweekly by electronic fund transfer to the Employee's bank account. Copies of pay records will be made available without charge to the Employee."

f. "The Employee shall be provided a minimum of at least one full day off each week, which day(s) will normally be Sunday."

g. "In addition, the Employee will be provided time-off from work, as follows . . . Holidays (With Pay): 7; Sick Days (With Pay): 7; Vacation Days (With Pay): 7."

h. "The Employer agrees to abide by all Federal, state, and local laws in the U.S."

i. "Other benefits normally required for U.S. domestic workers in the area of employment: full medical care, full board and lodging shall be provided at Employer's expense with no unpermitted deductions made."

13. The First Employment Contract is initialed on the first page with the handwritten initials "DK" and the handwritten date 11/11, and is also initialed on the first page by Witness-1. The second and final page of the First Employment Contract bears the signatures of DEVYANI KHOBRAGADE, the defendant, Witness-1, and two witnesses, including Witness-2.

14. Based on my review of a U.S. Department of State database, I know that on or about November 14, 2012, Witness-1 appeared at the U.S. Embassy in connection with the Visa Application, provided an employment contract to the U.S. Embassy employee (the "Embassy Employee"), and represented that Witness-1 understood that she would make \$9.75 per hour working as a domestic helper in the U.S. The Embassy Employee processed the Visa Application.

15. Based on my interview of the Embassy Employee, I know, in substance and in part, that the Embassy Employee would not have been authorized to process the Visa Application absent an employment

contract that complied with the requirements of 9 FAM 41.22, including the commitment to pay the A-3 visa applicant at least the minimum or prevailing wage and the provision that normal working hours would be limited to 40 hours per week.

16. Based on my review of a U.S. Department of State database, I know that on or about November 15, 2012, Witness-1 received an A-3 visa.

17. Based on my interviews of Witness-1, I know, in substance and in part, that shortly before departing to the airport in India, DEVYANI KHOBRAGADE, the defendant, called Witness-1 to tell Witness-1 to come to the Residence. Upon arriving at the Residence, KHOBRAGADE told Witness-1 that Witness-1 needed to sign another employment contract (the "Second Employment Contract"). Witness-1 signed the Second Employment Contract.

18. I have reviewed the Second Employment Contract, which is an untitled document dated November 23, 2012 that appears to be an enlarged and electronically edited version of the First Employment Contract, which provides, in part:

a. The parties to the Second Employment Contract are identical as to those in the First Employment Contract: "Dr. Devyani Khobragade (Deputy Consul General - CGI-NY) (hereinafter referred to as the Employer)" and Witness-1 "(hereinafter referred to as the Employee)."

b. The scope of the Employee's duties is identical as to that set forth in the First Employment Contract: "The Employee will go to the U.S. with the Employer as a domestic employee. The Employer agrees to employ the Employee at or in connection with the Employer's residence in the position(s) of housekeeper and babysitter."

c. With respect to wages, the Second Employment Contract provides: "The Employee will be paid an expected monthly salary of Rs. 25,000 per month with an additional Rs. 5,000 for overtime, i.e. work on Sunday, after hours and for parties, etc. The maximum salary per month including the overtime allowance will not exceed Rs. 30,000 per month."

19. The Second Employment Contract does not contain any provision about the normal number of working hours per week or month. The only statement concerning working hours in Second Employment

Contract is "The Employee shall be provided a minimum of at least one full day off each week, which day(s) will normally be Sunday."

20. The Second Employment Contract does not contain any provision about time off from work, and is silent as to holidays, sick days, and vacation days.

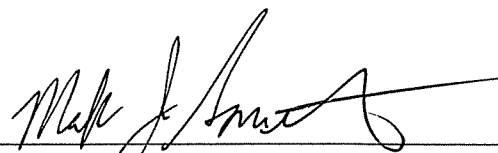
21. The Second Employment Contract does not contain the representation present in the First Employment Contract that "The Employer agrees to abide by all Federal, state, and local laws in the U.S."

22. The second and final page of the Second Employment Contract bears the signatures of DEVYANI KHOBRAGADE, the defendant, Witness-1, two witnesses, including Witness-2, and a notary public.

23. Based on my review of records maintained by the U.S. Department of Homeland Security, I know that on or about November 24, 2012, DEVYANI KHOBRAGADE, the defendant, and Witness-1, passed through customs at a New York airport within two minutes of each other.

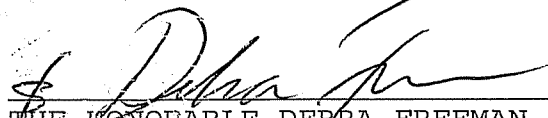
24. Based on my interviews of Witness-1, I know, in substance and in part, that Witness-1 worked for DEVYANI KHOBRAGADE, the defendant, as a household employee in New York, New York from approximately November 2012 through approximately June 2013. Notwithstanding the terms of the First Employment Contract, Witness-1 worked far more than 40 hours per week, and Witness-1 was paid less than \$9.75 per hour by KHOBRAGADE. In fact, notwithstanding the terms of the oral agreement between KHOBRAGADE and Witness-1 and the terms of the Second Employment Contract, Witness-1 was paid less than 30,000 rupees, or \$3.31 per hour.

WHEREFORE, the deponent prays that a warrant issue for the arrest of DEVYANI KHOBRAGADE, the defendant, and that the defendant be arrested and imprisoned, or bailed, as the case may be.



MARK J. SMITH
Special Agent
United States Department of State
Bureau of Diplomatic Security

Sworn to before me this
__th day of December, 2013



THE HONORABLE DEBRA FREEMAN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

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