
United States District Court
District of New Jersey

UNITED STATES OF AMERICA : **Hon. Steven C. Mannion**
v. : **Magistrate No.: 16-6047 (SCM)**
GOVARDHAN G. DYAVARASHETTY, : **Criminal Complaint**
a/k/a "Vardhan Shetty"

I, David A. Ferrante, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief.

SEE ATTACHMENT A

I further state that I am a Special Agent with the United States Department of Homeland Security, Homeland Security Investigations ("HSI"), and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.


David A. Ferrante, Special Agent
U.S. Department of Homeland Security
Homeland Security Investigations

Sworn to before me and subscribed in my presence,

March 30, 2016
Date

Honorable Steven C. Mannion
United States Magistrate Judge
Name & Title of Judicial Officer

at Newark, New Jersey
City and State


Signature of Judicial Officer

ATTACHMENT A

Count One
(H1-B Visa Fraud)

In or about January 2014 through in or about April 2015, in Union and Middlesex Counties, in the District of New Jersey, and elsewhere, defendant

GOVARDHAN G. DYAVARASHETTY,
a/k/a "Vardhan Shetty"

knowingly falsely made non-immigrant visas, namely H1-B visas, including an H1-B visa for himself, and uttered, used, attempted to use, possessed, obtained, accepted, and received said non-immigrant visas and other documents prescribed by statute and regulation for entry into and as evidence of authorized stay and employment in the United States, knowing such visas and documents had been falsely made and procured by means of false claims and statements and otherwise procured by fraud and unlawfully obtained, as described in Attachment B.

In violation of Title 18, United States Code, Section 1546(a) and Section 2.

Count Two
(False Statements)

From in or about January 2014 through in or about April 2015, in Union and Middlesex Counties, in the District of New Jersey, and elsewhere, defendant

GOVARDHAN G. DYAVARASHETTY,
a/k/a "Vardhan Shetty"

in a matter within the jurisdiction of the executive branch of the United States, namely, the United States Department of Homeland Security, United States Citizenship and Immigration Services and the United States Department of Labor, knowingly and willfully (a) made materially false, fictitious, and fraudulent statements and representations, (b) made and used false writings and documents knowing them to contain materially false, fictitious, and fraudulent statements and entries, and (c) falsified, concealed, and covered up by trick, scheme, and device, certain material facts; namely, Petitions for Non-immigrant Workers, Forms I-129, and Labor Condition Applications submitted to United States Department of Homeland Security, United States Citizenship and Immigration Services and the United States Department of Labor that contained materially false and fraudulently representations and used materially false writings and documents knowing them to contain materially false, fictitious, and fraudulent statements and entries, as described in Attachment B.

In violation of Title 18, United States Code, Sections 1001 and 2.

Count Three
(Conspiracy to Harbor Aliens for Profit)

From in or about January 2014 through in or about the date of this Criminal Complaint, in Union and Middlesex Counties, in the District of New Jersey, and elsewhere, defendant

GOVARDHAN G. DYAVARASHETTY,
a/k/a "Vardhan Shetty"

knowingly and intentionally conspired and agreed with others, for the purpose of commercial advantage and private financial gain, to encourage and induce aliens to reside in the United States, knowing and in reckless disregard of the fact that such residence was and would be a violation of law, as described in Attachment B, contrary to Title 8, United States Code, Section 1324(a)(1)(A)(iv).

In violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I).

ATTACHMENT B

I, David A. Ferrante, am a Special Agent with the United States Department of Homeland Security, Homeland Security Investigations ("HSI"). I have personally participated in this investigation and am aware of the facts and circumstances contained herein based on my own investigation, as well as my review of documents, records, information and evidence provided to me by other law enforcement officers and relevant personnel. Since this Affidavit is submitted for the sole purpose of establishing probable cause to support the issuance of a complaint and arrest warrant, I have not necessarily included each and every fact known by the government concerning this investigation. Where statements of others are related herein, they are related in substance and in part. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the day alleged.

The Defendant and Other Parties

1. At all times relevant to this Criminal Complaint:

a. Defendant GOVARDHAN G. DYAVARASHETTY, a/k/a "Vardhan Shetty," (hereinafter "DYAVARASHETTY") was resident of Avenel, New Jersey. DYAVARASHETTY was employed by and associated with HCL Infoserv Inc., d/b/a HBL Infoserv Inc., an information technology staffing and consulting company located in New Brunswick, New Jersey (hereinafter "HCL Infoserv").¹ According to publically available records, DYAVARASHETTY's name does not appear on the New Jersey Secretary of State's business registration file. DYAVARASHETTY was an H1-B (foreign worker) non-immigrant and a citizen of India.

b. A federal agent was acting in an undercover capacity (hereinafter "UC-1") and posing as the owner and operator of the University of Northern New Jersey (hereinafter the "School"). The School was physically located in Cranford, New Jersey. The School was part of a federal law enforcement undercover operation designed to identify individuals and entities engaged in immigration fraud. The School was not staffed with instructors /educators, had no curriculum, and no actual classes or educational activities were conducted at the School.

1. DYAVARASHETTY has reported to UC-1 (see Paragraph 1b) that DYAVARASHETTY is a part owner of the company; however, because DYAVARASHETTY is currently residing in the United States under a foreign worker visa (see Paragraph 6 et seq.), DYAVARASHETTY does not list himself as an owner on "paper." Furthermore, as described herein, DYAVARASHETTY fraudulently obtained his foreign worker visa.

Overview

2. Beginning in or about early 2013, federal agents from HSI, using the School, commenced an undercover operation to investigate fraud and the criminal exploitation of United States immigration laws. As part of this undercover operation, beginning in or about January 2014, DYAVARASHETTY engaged in immigrations schemes designed to fraudulently obtain status for non-immigrants, to harbor illegal aliens in the United States, and to maximize his profits. In particular, DYAVARASHETTY engaged in the following fraudulent immigration schemes: (a) fraudulently obtained and attempted to obtain H1-B Visas (hereinafter the "H1-B Visa Program") for non-immigrants by falsely claiming that these aliens would be employed at the School (hereinafter the "Foreign Worker Visa Scheme"); and (b) fraudulently obtained and attempted to obtain status for non-immigrants by falsely claiming that these aliens would be attending the School as students (hereinafter the "Student Status Scheme").²

3. In furtherance of the Foreign Worker Visa Scheme, DYAVARASHETTY (a) created false and fraudulent documents, such as contracts, falsely representing that the foreign workers would be employed at the School in various Information Technology (hereinafter "IT") positions; (b) paid UC-1 thousands of dollars for false documents from the School, falsely representing that foreign workers would be employed at the School; and (c) signed and submitted to the United States Government immigration petitions and other supporting documents on behalf of foreign workers, falsely representing that these foreign workers would be employed at the School. In total, DYAVARASHETTY fraudulently petitioned the United States and attempted to obtain approximately twenty-three H1-B visas.

4. In furtherance of the Student Visa Scheme, DYAVARASHETTY fraudulently obtained Forms I-20 and fake School acceptance letters from the School on behalf of his clients/employees of his company.

2. As described herein, DYAVARASHETTY fraudulently obtained Forms I-20 (see Paragraph 7 below) from the School. The Form I-20 is an essential component needed by a non-immigrant to obtain an F-1 Student Visa or to continue his or her student status.

Summary of Relevant Immigration Policies and Procedures

5. Based on my education, training, and experience, together with my discussions with other individuals, I am generally familiar with the H1-B Visa Program and the Student Visa Program. These programs are summarized as follows:

6. The H1-B Visa Program:

a. The United States requires individuals from most foreign countries to obtain a visa before entry into the United States. As they apply to this investigation, non-immigrant visas are required for foreign citizens who intend to enter the United States on a temporary basis, such as for tourism, medical treatment, business, temporary work, or study.

b. An H-1B visa permits an alien to work in the United States subject to certain requirements. The H1-B Visa Program allows businesses in the United States to employ foreign workers with specialized or technical expertise in a particular field such as accounting, engineering, or computer science.

c. Before hiring a foreign worker under the H1-B Visa Program, the employer must first obtain approval from the United States Department of Labor ("DOL") by filing a Labor Condition Application ("LCA"). In the LCA, the employer represents that it intends to employ a specified number of foreign workers for specific positions for a particular period of time. The employer also is required to make truthful representations regarding the foreign worker's rate of pay, work location, and whether the position is full-time. In addition, the employer agrees to pay the foreign worker for non-productive time—that is, an employer who sponsors a foreign worker is required to pay wages and other benefits to the foreign worker, even if he or she is not actively working for certain periods of time. The employer must further attest that the representations are true and accurate, and the LCA provides a warning that false representations may lead to criminal prosecution. Except in limited circumstances, the LCA must be filed electronically. Upon filing, the employer is required by regulation to print and sign a copy. The employer is further required to maintain the signed copies in its files.

d. After the DOL approves the LCA, which approvals are primarily based on the employer's representations in the LCA, the employer must then obtain permission from the United States Department of Homeland Security, United States Citizenship and Immigration Services ("USCIS"), to hire a specific individual. This approval is obtained by filing a Petition for a Non-immigrant Worker, Form I-129, and paying certain fees. In this petition,

the employer is required to truthfully provide biographical information regarding the specific foreign worker to be employed. The employer also provides much of the same information that is on the LCA, including job title, the specific type of position for which the worker is hired, work location, pay rate, dates of intended employment, and whether the position is full-time. The petition is signed under penalty of perjury, and the employer must certify that the information submitted is true and correct.

e. The United States Government issues H1-B visas based on a random selection process, sometimes referred to as a lottery. Each year, the United States Government sets a quota for the number of H1-B visas it will issue. As part of the process, the employer/petitioner submits the H1-B petition (Form I-129), together with supporting documents, such as LCAs, contracts, statements of work, and other employment verification documents, among other documents. If the foreign worker is not selected for the lottery, then the employer/petitioner receives a denial letter and the petition and supporting documents are returned. If, however, the foreign worker is selected by the lottery, then USCIS reviews the petition and supporting documents.

f. Once USCIS approves this petition, the foreign worker can apply for a visa at a United States embassy or consulate overseas. If the foreign worker is already lawfully in the United States, then the foreign worker's immigration status can be adjusted without the worker having to leave the country.

g. Once a visa is issued or an adjustment of status occurs, the foreign worker possesses lawful non-immigrant status and may reside in the United States and work for the employer until the visa expires or his or her employment with the company ends, whichever occurs first. The foreign worker may not immigrate, or permanently reside, in the United States under this type of visa. After approximately five years, the employer may petition USCIS for change in status for the foreign worker so he/she may obtain a Legal Permanent Resident status.

h. For a foreign worker entering the United States from abroad, the employer must start paying the foreign worker once he or she enters into employment or within 30 days of admission to the United States, whichever is sooner. For a foreign worker already in the United States, the employer must begin paying the foreign worker at the start of employment or within 60 days of approval of the H-1B Visa petition, whichever is sooner. If the foreign worker is dismissed before the H-1B Visa expires, the employer must send notice to USCIS and pay for the foreign worker to return to his or her native country.

7. The Student Visa Program:

a. A foreign citizen who wishes to enter and remain in the United States on a temporary basis to pursue a course of study at a college, university, seminary, conservatory, academic high school, or other academic institution, or for English language training must first obtain an F-1 non-immigrant visa, also known as a student visa ("F-1 visa").

b. An F-1 visa is only valid for a temporary period, called the "duration of status," which status lasts as long as the foreign citizen is enrolled as a full-time student in an approved educational program and making normal progress toward completion of the course of study. Under 8 C.F.R. § 214.2(f)(6), a full course of study for a foreign citizen studying a language or other non-vocational training program under an F-1 visa (an "F-1 student") requires eighteen (18) clock hours of attendance per week, assuming the dominant portion of the course consists of classroom instruction. Significantly, when a foreign citizen stops pursuing a full course of study, the duration of status on his or her F-1 visa ends and the temporary period for which the individual was admitted to the United States expires.

c. To obtain an F-1 visa, a foreign citizen must first apply to study at a school within the United States that has been certified by the SEVP to enroll and train foreign students. If accepted, the school will provide the foreign citizen with a "Certificate of Eligibility for Non-immigrant (F-1) Student Status - For Academic and Language Students," also known as a Form I-20A ("Form I-20"). The Form I-20 is required for the foreign citizen to obtain an F-1 visa. By issuing a Form I-20 to a foreign citizen, an SEVP-approved school certifies that the individual: (1) meets all standards of admission for the school based on a review of the student's application, transcripts, proof of financial responsibility, and other records; and (2) has been accepted for, and would be required to pursue, a full course of study.

d. Once a foreign citizen receives a Form I-20, that individual may apply for an F-1 visa. The foreign citizen can then use the F-1 visa and Form I-20 to enter and remain in the United States for the period of time he or she is granted. After a foreign citizen completes his or her course of study, that individual is typically required to depart the United States within 60 days. Conversely, if the foreign student fails to maintain status (e.g., stops attending school, drops below the full course of study without authorization, or works without authorization, etc.), the foreign student must depart the United States immediately.

e. The Student and Exchange Visitor Information System ("SEVIS") is an internet based data system that provides users with access to

current information on nonimmigrant foreign citizens, exchange aliens, and their dependents. Each Form I-20 that is issued by a school to a foreign citizen will contain a system-generated identification number. This number is referred to as the "SEVIS ID number." Generally, the SEVIS ID number remains the same as long as the foreign citizen maintains his or her valid, original nonimmigrant status. This number will typically remain the same regardless of any changes or updates made by the school to the foreign citizen's record.

f. Once in the United States, a foreign citizen is generally permitted to transfer from one SEVP-certified school to another, as long as that individual maintains valid F-1 student status and is pursuing a full course of study. To effect such a transfer while maintaining valid status, a foreign citizen must first obtain a school acceptance letter and a SEVIS transfer form from the SEVP-certified school to which the student intends to transfer. The foreign citizen may then transfer to that school, obtain a Form I-20, and remain in the United States as long as he or she pursues a full course of study at the new SEVP-certified school.

g. In addition to taking a full course of study at an accredited institution, an F-1 student may also seek practical training—which training could include paid employment—that is directly related to the student's major and is considered part of the student's program of study. The two types of practical training available to F-1 students include curricular practical training ("CPT") and optional practical training ("OPT"). If approved by the PDSO (or DSO), an F-1 student may obtain a new Form I-20 indicating that he or she has been approved for either CPT or OPT. Generally, therefore, as long as an F-1 student has been properly enrolled at an SEVP certified school, has taken classes and earned credits, and has made academic progress toward graduation, that F-1 student may have the opportunity to work full or part-time CPT or OPT, in addition to taking classes.

Overview of the Schemes

8. At various times during this investigation, advertisements appeared on the Internet indicating that HCL Infoserv was seeking to hire workers, especially foreign workers, in the IT field.

9. On or about January 23, 2014, DYAVARASHETTY and UC-1 spoke over the telephone. During this consensually recorded call, they discussed, among other things, obtaining student visas for non-immigrants. The following conversation ensued, in substance and in part [GD = DYAVARASHETTY; UC-1 = UC-1]:

GD: I was just looking to, wanted to see if I can, you know. If I can be of, is there any way that we can work together and, and do something?

UC-1: I'm, I'm always, I'm always looking to work together and I am always looking for new business

* * * *

UC-1: [W]ith your clients, as long as they are under the impression and you are providing them this information that they are not gonna actually be attending school. That this is just for employment. . . .

GD: Yeah.

UC-1: H4 [family members of H1-B visa holders] can't works, so they are basically, would become F1 student [student visas], so they can work for one of your, you know, clients or some or your company. . . . Is that's what you are looking to do?

GD: Yes, that is, that is also one of my criteria. Yeah, that would help me too. . . . This way even I, it will motivate myself to get more students or more people who were looking for a change [of status].

10. On or about February 11, 2014, DYAVARASHETTY met UC-1 at the School. During this consensually recorded meeting, they discussed, among other things, obtaining H1-B visas for others. The following conversation ensued, in substance and in part [GD = DYAVARASHETTY; UC-1 = UC-1]:

UC-1: What, what is, what status are these people now? That are, are in.

GD: They are like H, H4 H4 here. Few are in India so it depends

UC-1: How many are in India?

GD: How many are in India? Like, I don't know like four, four to five people.

UC-1: And then, so you're using how many of these letters to bring people over?

GD: I'm thinking around ten people, I'll be. . . .

UC-1: So, it's so everything you're doing is to bring people over?

GD: Yeah.

During this conversation and previous conversation, DYAVARASHETTY agreed to pay UC-1 for each fraudulent letter needed to petition USCIS for an H1-B visa. Later during this February 11, 2014 conversation, DYAVARASHETTY questioned whether he would receive his money back if the prospective foreign worker was not selected during the H1-B lottery. The following conversation ensued, in substance and in part:

UC-1: The three or four people that in the US, what happens if they don't get an H1B. That's what you're asking me?

GD: Yeah because I be paying you for that so. . . .

UC-1: Well you're, you're paying me for a letter which I'm providing. I'm not giving you a letter on consignment or commission. . . . You pay for the letter.

GD: Yeah

UC-1: I'm providing you a letter whether your client gets the visa or not is not my fault. I'm still doing, providing you . . . the letter. I'm still putting myself out there. . . . There's no refund.

GD: There's no refund.

As part of the scheme, DYAVARASHETTY purchased fraudulent documents from UC-1, falsely representing that DYAVARASHETTY and other foreign workers that he petitioned for H1-B visas would be working at the School. In truth and in fact, neither DYAVARASHETTY nor any of the foreign workers he petitioned for H1-B visas worked at the School. During this February 11, 2014 conversation, the following conversation ensued, in substance and in part:

GD: But you need to help me and you can support me I mean.

UC-1: What do you mean by help you and support you? I, I don't understand what?

GD: You'll be my client I mean right?

UC-1: I'll be, I'll be your client on paper.

GD: Yeah.

UC-1: But I'm not, I don't have a project for you to do.

GD: No, but I'm not charging you . . . pay anything for that. I mean, I'm just . . . be able to show that you, I have these people who will be working for this project and. . .

* * * *

UC-1: So, so I still don't understand other than this letter what you need from me? So you need a letter stating that there's a project. . . that your company is going to be doing for me right? Whether it be . . .

GD: Yeah you, you need, you need a, you have a project. . . I mean let's say building a website that is also a project building a website of your company. You know? Like you have a project. . . .

* * * *

UC-1: You need me to send you a contract?

GD: Yeah.

UC-1: For a fake . . . project that we're not do[ing]? . . . You need, you need a contract to, this is, when I've done this before. They send me everything, I just sign it.

GD: Yeah I'll, I'll send it to you.

* * * *

GD: You don't have to do anything. I'll just make it, everything. You just need to put your signature. You read it.

UC-1: No, no the letters obviously, I'll put it on letter head, I'll make it look real nice. We stamp the same way we do an admission letters. So I can take care of the letter. Just I want to know what's it about, what should be in the body of the letter. Like what kind of verbiage to use.

GD: Yeah. . . . You will say that, you will say that you know, X, Y, Z person. We need this X, Y, Z person for this kind of a project and we will be working for my company

11. On or about February 11, 2014, UC-1 sent an e-mail to DYAVARASHETTY, stating "It was good meeting with you again today." In the e-mail, UC-1 requested DYAVARASHETTY to send the client letter, contract, and work order. On or about February 13, 2014, DYAVARASHETTY responded by e-mail, stating the following, in substance and in part: "Please find the attached document which combines all three . . . Its [sic] a standard template what [sic] we use it for other clients." DYAVARASHETTY's e-mail contained an attachment purporting to be a contract between the School and HCL Infoserv. The attachment also contained a document captioned, "Exhibit A (Statement of work/Scope of Work)" that indicated that an individual with the initials V.S. would be employed at a project for the School as a "Programmer Analyst" and the work would commence on January 1, 2014. On or about February 25, 2014, DYAVARASHETTY e-mailed UC-1 a revised contract pertaining to V.S., falsely representing that V.S. would be employed at the School as a "Programmer Analyst" and the work would commence on October 1, 2014. These documents were wholly fictitious because, among other reasons, the School had neither had a legitimate agreement with HCL Infoserv nor any projects for V.S.

12. On or about March 12, 2014, DYAVARASHETTY sent UC-1 an e-mail, stating, in substance and in part: "Need signed copies of the attached documents to process it." The attachments included an Exhibit A (Statement of work/Scope of Work)" indicating that DYAVARASHETTY would be employed for a project at the School as a "Programmer Analyst" and the work would commence on March 14, 2014. DYAVARASHETTY's e-mail also contained a letter written by DYAVARASHETTY or someone at his direction. This letter falsely stated the following, in substance and in part:

This letter serves to confirm that [the School, located in New Jersey] has selected Govardhan [G.] Dyavarashetty to provide consulting services for us on the project of Student Information Migration System with an anticipated start date from 03/14/2014. He will perform consulting services from his employer work location [in New Brunswick, New Jersey]

DYAVARASHETTY e-mailed these false documents to UC-1, and UC-1 signed them and returned them to DYAVARASHETTY. These documents were wholly fictitious because, among other reasons, the School neither had a legitimate agreement with HCL Infoserv nor any projects for DYAVARASHETTY. Nonetheless, DYAVARASHETTY caused these false documents and others to be submitted to USCIS as part of DYAVARASHETTY's H1-B visa petition, as described in Paragraph 13 below.

13. On or about May 17, 2014, DYAVARASHETTY submitted and caused to be submitted to USCIS a Form I-129 on behalf of HCL Infoserv for himself. The form was signed by a person purporting to be HCL Infoserv's manager and representing that DYAVARASHETTY would be employed by HCL Infoserv as a "Programmer Analyst." Furthermore, in support of this petition, DYAVARASHETTY included a copy of the fraudulent client letter from the School (and signed by UC-1, as referred to above), a fraudulent contract between the School and HCL Infoserv, and the fraudulent Exhibit A (Statement of work/Scope of Work). On or about May 30, 2014, USCIS issued this H1-B visa to DYAVARASHETTY, and this status started on May 30, 2014 and is scheduled to end on February 28, 2017. During this period, DYAVARASHETTY neither provided any services nor performed any work on any projects for or on behalf of the School.

14. In total, DYAVARASHETTY fraudulently petitioned the United States and attempted to obtain approximately twenty-three H1-B visas. In total, DYAVARASHETTY paid UC-1 approximately \$6,300 for the false and fraudulent documents needed to fraudulently apply for and obtain these the H1-B visas. Because the undercover investigation exposed DYAVARASHETTY's fraudulent scheme, the United States Government did not issue any of these H1-B visas submitted by DYAVARASHETTY.

15. In addition to engaging in H1-B visa fraud, as described above, DYAVARASHETTY also committed, and attempted to commit Form I-20/student visa fraud. During the investigation, DYAVARASHETTY's clients/employees paid UC-1/School approximately \$15,000 in exchange for approximately three fraudulently Forms I-20 and related fraudulent documents. In each case, DYAVARASHETTY and his clients/employees falsely claimed that these three aliens would be attending classes at the School.