
United States District Court
District of New Jersey

UNITED STATES OF AMERICA : **Hon. Steven C. Mannion**
v. : **Magistrate No.: 16-6046 (SCM)**
KARTHIK NIMMALA : **Criminal Complaint**

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 at
Date

Newark, New Jersey
City and State

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


Signature of Judicial Officer

ATTACHMENT A

COUNT ONE
(Conspiracy to Commit Visa Fraud)

From in or about May 2015 through in or about March 2016, in Union County, in the District of New Jersey, and elsewhere, defendant

KARTHIK NIMMALA

did knowingly and intentionally conspire and agree with others to commit an offense against the United States, that is, to utter, use, attempt to use, possess, obtain, accept, and receive non-immigrant visas, namely student visas and other documents proscribed by statute and regulation for entry into and as evidence of authorized stay in the United States, knowing that the documents had been procured by means of false claims and statements and otherwise procured by fraud and unlawfully obtained, contrary to Title 18, United States Code, Section 1546(a).

In furtherance of the conspiracy and to effect its unlawful objects, the defendant committed and caused to be committed the following overt acts, among others, in the District of New Jersey and elsewhere, as set forth in Attachment B below.

In violation of Title 18, United States Code, Section 371.

COUNT TWO
(Conspiracy to Harbor Aliens for Profit)

From in or about May 2015 through in or about March 2016, in Union County, in the District of New Jersey, and elsewhere, defendant

KARTHIK NIMMALA

did knowingly and intentionally conspire and agree with others, for the purpose of commercial advantage and private financial gain, to encourage and induce an alien 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, 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 KARTHIK NIMMALA ("NIMMALA"), was an Indian national and legal permanent resident of the United States, residing in Smyrna, Georgia.

b. A federal agent was acting in an undercover capacity (hereinafter "UC-1").

c. Federal agents were acting in an undercover capacity and posing as the owners and/or operators 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.

d. A co-conspirator not named as a defendant herein was a foreign citizen, who, along with NIMMALA, recruited purported students to the School (hereinafter "CC-1").

e. A co-conspirator not named as a defendant herein was a foreign citizen who fraudulently maintained student visa status through NIMMALA and CC-1 (hereinafter "CC-2").

f. A co-conspirator not named as a defendant herein was a foreign citizen who fraudulently maintained student visa status through NIMMALA and CC-1 (hereinafter "CC-3").

g. A co-conspirator not named as a defendant herein was a foreign citizen who fraudulently maintained student visa status through NIMMALA and CC-1 (hereinafter "CC-4").

Summary of Investigation

2. Beginning in or about September 2013, federal agents from HSI, using the School, commenced an undercover operation to investigate criminal activities associated with the Student and Exchange Visitor Program ("SEVP"), including, but not limited to, student visa fraud and the harboring of aliens for profit. A brief summary of the SEVP is described in Paragraph 4, below.

3. During the course of the investigation, HSI agents identified numerous individuals and organizations that used the SEVP as an instrument to engage in criminal conduct. Specifically, as described more fully below, the investigation has revealed that NIMMALA enabled numerous foreign individuals to fraudulently maintain non-immigrant status and obtain employment authorization to remain in the United States on the false pretense that these aliens were participating in full courses of study at an academic institution.¹ In truth and in fact, NIMMALA, with full knowledge that the aliens would not attend any actual courses, earn actual credits, or make academic progress toward an actual degree in a particular field of study, fraudulently maintained student visa status in exchange for kickbacks, or "commissions" from individuals she believed were co-schemers. Additionally, NIMMALA facilitated the creation of false student records, including transcripts, for some of the foreign students for the purpose of deceiving immigration authorities.

Summary of Relevant Immigration Policies and Procedures

4. From my training and experience as a Special Agent with HSI, and from speaking with individuals and officials with knowledge of the SEVP with the Department of Homeland Security, I have learned about the requirements that foreign citizens must comply with under United States immigration law, including the following:

1. Your Affiant is aware that this type of SEVP-related fraud is commonly referred to as a "pay to stay" scheme.

a. The United States requires individuals from most foreign countries to obtain a visa prior to entry into the United States. As they apply to this investigation, nonimmigrant 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.²

b. 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 (commonly referred to as "ESL"³), must first obtain an F-1 non-immigrant visa, also known as a student visa ("F-1 visa").

c. 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.⁴ Pursuant to 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,

2. Under 8 U.S.C. § 1101 (a)(15)(F)(i), an F-1 student (*i.e.*, a non-immigrant alien admitted to the United States on a temporary basis to pursue a course of study) is defined as follows: "an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184(l) of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education. . . ."

3. One area of study available to F-1 students includes English language training, or ESL, courses. In order to pursue ESL studies, an F-1 student must enroll in an SEVP-certified English language training program. ESL students are not eligible for online or distance education, as all training must take place in a classroom (or computer lab) setting for a minimum of eighteen (18) hour per week. A foreign citizen who is granted an F-1 visa to participate in an ESL program may not obtain work authorization.

4. Certain F-1 students (identified as "Border Crossing" students from Mexico or Canada who attend a school within 75 miles of a land border) may be admitted to the United States until a date certain, rather than for duration of status. See, 8 C.F.R. § 214.2(f)(18). None of the foreign individuals associated with this investigation were the recipient of a "Border Crossing" F-1 visa.

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.

d. 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 Nonimmigrant (F-1) Student Status - For Academic and Language Students," also known as a Form I-20 A ("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.

e. 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, etc.), the foreign student must immediately depart the United States.

f. 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.

g. 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.⁵

h. In addition to taking a full course of study at an accredited institution, a non-ESL, F-1 student may also seek practical training – which 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 non-ESL, F-1 students include curricular

5. Every SEVP-approved school must have one Primary Designated School Official (“PDSO”) who, among other things, certifies under penalty of perjury on the Form I-20 that the foreign student’s application, transcripts, or other records of courses taken, and proof of financial responsibility – including proof that the student has the funds necessary to live and study in the United States without working illegally or suffering from poverty – were received by the school and the student met the qualifications for admission. The PDSO also certifies that the foreign student will be required to pursue a full course of study as defined by the regulations in 8 C.F.R. § 214.2(f)(6). The forgoing certification responsibilities of the PDSO may also be handled by a Designated School Official (“DSO”).

SEVP certified schools also are required to maintain up to date and accurate records in SEVIS regarding the foreign students attending the school and are required to input accurately when students have completed their studies so that their immigration status can be terminated. The PDSO (or DSO) is also required to maintain up to date and accurate records in the SEVIS database for status events of foreign students attending their school including, but not limited to: entry/exit data, changes of current United States address (residence), program extensions, employment notifications, changes in program of study, and completion of studies so the student’s immigration status can be timely terminated.

Additionally, if a foreign citizen admitted on an F-1 visa to attend an SEVP-certified school has not pursued a full course of study at the school, a PDSO (or DSO) is prohibited from transferring that foreign citizen to another school. Pursuant to 8 C.F.R. § 214.2(8)(i), an F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement, or, in the alternative, may depart the U.S. and return as an initial entry in a new F-1 nonimmigrant status. Once an SEVP-certified school terminates an F-1 student’s active status in SEVIS for “Unauthorized Drop Below Full Course of Study,” thereby flagging the F-1 student’s termination for review by the Department of Homeland Security, SEVP guidance allows the school to then transfer the F-1 student’s SEVIS records *in terminated status* to another school. The terminated F-1 student must then file an application for reinstatement of active status with the support of the school the student is transferring to, or depart the United States. Further, an F-1 student who has not been pursuing a full course of study at an SEVP-certified school cannot be transferred to another school unless and until his or her active status has been terminated in SEVIS.

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.⁶

The Defendant's Criminal Activities

5. In or about May 2015, NIMMALA was introduced to UC-1 through a third party ("CC-1"), who, since May 2014, had been facilitating the enrollment of foreign students at the School for the purpose of illicitly maintaining his recruits' immigration status. Thereafter, NIMMALA met with UC-1 in person and engaged in e-mail communications with UC-1. Despite not being formally introduced to UC-1 until May 14, 2015, NIMMALA was involved in CC-1's student visa fraud scheme prior to being formally introduced to UC-1 by CC-1. For example, on September 25, 2014, CC-1 sent UC-1 a new student's application package using an e-mail message that included NIMMALA's e-mail signature. Furthermore, in response to UC-1's February 6, 2015 e-mail requesting a mailing address so UC-1 could send fraudulent Form I-20s for CC-1's clients, CC-1 e-mailed UC-1 on February 9, 2014 instructing UC-1 to mail the documents to NIMMALA's home address in Georgia.

6. NIMMALA facilitated the enrollment of purported foreign students at the School, knowing that the individuals he referred were not bona fide students and had no intention of attending classes or earning credits at the School. In exchange for receiving a Form I-20 from the School and being

6. Practical training may be authorized to an F-1 student who has been lawfully enrolled on a full time basis, in a SEVP-certified institution, for one full academic year. CPT is more specifically defined as an alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with a given SEVP-certified institution. An F-1 student may be authorized by the PDSO (or DSO) to participate in a CPT program that is an integral part of an established curriculum. A student may begin CPT only after receiving his or her Form I-20 with the PDSO (or DSO) endorsement. A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he or she changes to a higher educational level. Exceptions to the one academic year requirement prior to obtaining CPT approval are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. See 8 C.F.R. § 214.2 (10).

reported in SEVIS as a legitimate foreign student, NIMMALA's recruits made "tuition" payments to the School that corresponded to the length of time that the purported foreign students were enrolled. For each foreign student referred by NIMMALA and subsequently "enrolled" at the School, NIMMALA took a percentage of each foreign student's tuition payments as commission for his recruiting services. Once an alien was referred to the School, NIMMALA routinely followed up with School personnel via telephone and e-mail to track the status of the issuance of relevant immigration documents, including Forms I-20 and CPT documentation, for his recruits. The Forms I-20 that NIMMALA caused the School to issue to NIMMALA's recruits were falsely made and procured by fraud. NIMMALA knew the Forms I-20 were fraudulent because his recruits would not be attending any classes at the School and would not be making any academic progress toward a legitimate degree in an established curriculum; indeed, the Forms I-20 were procured by NIMMALA to fraudulently maintain the foreign recruits' immigration and work status in the United States. Significantly, the majority of individuals referred by NIMMALA enrolled at the School in an effort to falsely obtain and extend CPT eligibility, so that those individuals could continue to reside and work in the United States in contravention of U.S. immigration laws.⁷

7. NIMMALA collected "tuition" payments for his and CC-1's School recruits. For example, on June 30, 2015, UC-1 contacted NIMMALA and CC-1 by e-mail to ask them the total amount of "tuition" fees they had recovered from their School recruits. On June 30, 2015, CC-1 responded to UC-1's e-mail, stating that NIMMALA would inform UC-1 about the number of purported students from whom "tuition" fees had been collected. Thereafter, by e-mail on July 16, 2015, NIMMALA sent UC-1 a list of the purported students from whom UC-1 had collected tuition fees due to the School.

8. NIMMALA used the School to obtain false academic documents on behalf of his recruits. For example, by e-mail sent on July 16, 2015, NIMMALA requested fake student identification cards for his recruits. Similarly, on September 21, 2015, NIMMALA contacted UC-1 by e-mail to request transcript templates so NIMMALA could create fake transcripts for his recruits. NIMMALA explained, "I have MBA transcripts template, but not the Computer Science transcript template. Can you please send me Computer Science transcripts template." UC-1 responded to NIMMALA on the same day by e-mail stating, "just make it up... it doesn't matter because I put the classes into our system for your client."

7. From in or about May 2014 through in or about March 2016, NIMMALA and CC-1 recruited and referred approximately 46 foreign individuals to the School, and collected thousands of dollars in fees as a result of their illicit activities.

9. On or about August 27, 2015 NIMMALA engaged in a consensually recorded meeting with UC-1 at the School to make "tuition" payments on behalf of his School recruits and to pick up fraudulent immigration-related documents. During the meeting, NIMMALA confirmed the fraudulent nature of his recruiting services for the School. In response to UC-1 telling NIMMALA "[the recruits are] not gonna be in a classroom," NIMMALA responded, "yes, yes, yes." In discussing the cash that NIMMALA had brought UC-1 as a "tuition" payment, NIMMALA admitted that he obtained the cash from various banks because he did not want to take all the cash from a single bank. NIMMALA also told UC-1 that he had split the commission payments he received from the School with CC-1. NIMMALA further indicated that he was aware of schools that had faced criminal prosecution for engaging in immigration fraud. NIMMALA specifically told UC-1 that he knew Herguan University "got in trouble" for immigration fraud.⁸

10. On October 21, 2015, three of NIMMALA's School recruits met with UC-1 at the School and engaged in a consensually recorded meeting. During the meeting, the students told UC-1 that they had paid NIMMALA \$3,500 to enroll at the School and confirmed to UC-1 that they had never taken a class at the School. After UC-1 asked the students if NIMMALA had told them "about the situation," one student responded that NIMMALA had told him "don't worry, I mean, don't, ask any, like difficult questions about the college or something, classes or anything. Just pay the fees and you'll get the status and everything. Everything will be fine. Don't be, don't be [u/i] with everyone or schedule some other [u/i] something. Don't discuss with anyone." Furthermore, the following conversation ensued, in substance and in part:

UC-1: You're not gonna get an education.

CC-2: Yes.

UC-1: This is just so you can stay in the United States.

CC-3: Yes, exactly.

UC-1: He explained it to you, right?

CC-2: Yes.

8. On or about July 24, 2012, the chief executive officer of Herguan University was indicted in the Northern District of California, United States v. Jerry Wang, 5:12-cr-00581, for participating in a scheme to commit visa fraud and for submitting false immigration documents to immigration authorities.

11. As previously stated, NIMMALA used the School to obtain a number of false and fraudulent documents for his clients, including fake academic transcripts, diplomas, and other education records, which were intended to deceive U.S. immigration officials. By e-mail dated May 28, 2015, UC-1 sent NIMMALA and CC-1 a number of blank, or "template," documents that NIMMALA and CC-1's recruits' could use to send to the United States Department of Homeland Security, United States Citizenship and Immigration Services ("USCIS"). The documents provided by UC-1 included the following: (i) a blank School transcript; (ii) a receipt evidencing purported fees paid by a purported student for School tuition; and (iii) a letter from the School to USCIS purporting to document a purported student's School enrollment, major course of study, and CPT work authorization. UC-1 further advised NIMMALA and CC-1 that the cost for providing the false documents was \$620. By e-mail dated June 1, 2015, NIMMALA forwarded UC-1 a message from one of NIMMALA's School recruits ("CC-4") informing UC-1 that an H1-B⁹ visa application had been filed on CC-4's behalf, and that U.S. immigration officials had requested additional information for CC-4's file (this request is commonly referred to as a "request for evidence," or "RFE").¹⁰ In particular, CC-4 had requested a fake transcript, along with various other false documents responsive to the RFE. These false documents were requested by NIMMALA to

9. An H-1B visa permits an alien to work in the United States subject to certain requirements. Generally, the 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. Before hiring a foreign worker under the Program, the employer must first obtain approval from the United States Department of Labor ("DOL") and the U.S. Citizenship and Immigration Services ("USCIS") to hire a specific individual. This approval is obtained, in part, by filing a "Petition for a Nonimmigrant Worker, Form I-129," (commonly referred to as an H1-B visa), and paying certain fees. In this petition, the employer is required to truthfully provide biographical information regarding the specific foreign worker to be employed, 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. Ultimately, if USCIS approves this petition (and assuming the foreign worker is already lawfully in the U.S.), then the foreign worker's immigration status can be adjusted without the worker having to leave the country.

10. The USCIS periodically issues a request for evidence ("RFE") in connection with its review of various immigration petitions. As it applies to the instant investigation, documents typically provided by a petitioner in response to a RFE include, among others, proof of enrollment and payment of tuition, student identification cards, student transcripts and attendance records, proof of CPT work authorization and cooperative employer-student agreements, diplomas, and other education-related materials.

trick USCIS into believing that CC-4 was lawfully enrolled in the School and had lawful status in an effort to induce USCIS to convert CC-4's F-1 status into an H1-B status (which H1-B status can later be changed into lawful permanent resident status). Thereafter, by e-mail dated June 3, 2015, NIMMALA sent UC-1 several draft RFE reply documents that CC-4 wanted to be finalized on School letterhead. These false documents included a fake School diploma and a fake transcript. Law enforcement agents' review of official records maintained by USCIS has confirmed that these false School documents obtained by NIMMALA were, in fact, submitted to U.S. immigration authorities in support of CC-4's H1-B application.