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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

FEB 22 2005

EAC 03 093 50523

IN RE:

Petitioner:

[Redacted]

Beneficiary:

APPLICATION: Application for T Nonimmigrant Status Pursuant to Section 101(a)(15)(T)(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maip Jensen

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 33-year old native and citizen of Zambia who is seeking classification as a T-1 nonimmigrant pursuant to section 101(a)(15)(T)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(T)(i), as the victim of a severe form of trafficking in persons.

The director denied the petition, finding that the petitioner failed to establish that he is physically present in the United States on account of a severe form of trafficking in persons.

On appeal, counsel for the petitioner submits a brief.

Under section 101(a)(15)(T)(i) of the Act, and subject to section 214(n) of the Act [amended to section 214(o)], Citizenship and Immigration Services (CIS) may classify an alien, if otherwise admissible, as a T-1 nonimmigrant if the alien meets the following definition:

(i) Subject to section 214(o), an alien who the Attorney General determines --

- (I) is a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,
- (II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking
- (III) (aa) complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or
(bb) has not attained 18 years of age, and
- (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if the Attorney General considers it necessary to avoid extreme hardship --

- (I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; and
- (II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien, if accompanying, or following to join, the alien described in clause (i).

The regulation at 8 C.F.R. § 214.11(g) states, in pertinent part, that:

Physical presence on account of trafficking in persons. The applicant must establish that he or she is physically present in the United States . . . on account of such trafficking and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application.

Specifically, the physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.

* * *

* * *

(3) *Departure from the United States.* An alien who has voluntarily left (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien's reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of tracking in persons

The record reflects that the petitioner last entered the United States as a F-1 nonimmigrant student August 26, 1999. According to the evidence on the record, the petitioner is a victim of a severe form of trafficking in persons as defined in the statute and regulations. The petitioner has complied with a reasonable request for assistance in the investigation and prosecution of acts of severe forms of trafficking in persons.

The director denied the petition, finding that the applicant had not established that he is physically present in the United States on account of a severe form of trafficking in persons.

According to the evidence on the record, the applicant initially entered the United States on May 14, 1993 as a B-2 nonimmigrant visitor. The applicant left the country and returned to the United States on August 27, 1994 as a P-1 nonimmigrant. He departed the U.S. on December 12, 1995 and returned again on January 12, 1996 in P-3 status. He departed the U.S. on June 26, 1997 and last entered in F-1 student status on August 26, 1999.

The petitioner credibly stated that he was recruited to come to the United States to perform as a member of the [REDACTED]. The choir organizer exploited the boys in the choir, withholding payment for their services and their travel documents. The choir organizer arranged for the applicant to return to Zambia to apply for a new visa in 1993, 1996 and 1997. In June of 1999, the Department of Labor (DOL) initiated litigation against the choir organizer for past due wages. On December 4, 2000, a judgment by default was entered. As part of the judgment, the DOL obtained \$966,422.00 in backwages and civil money penalties for 67 employees and an injunction against prospective minimum wage, overtime and recordkeeping violations. With the assistance of a host family, the applicant applied for a student visa. He received the student visa in Lusaka, Zambia on August 23, 1999.

Because the applicant furnished insufficient evidence to establish that he was physically present in the United States on account of being a victim of a severe form of trafficking in persons, he was requested to submit additional evidence (RFE). The director determined that the applicant's response to the RFE was insufficient.

On appeal, counsel for the petitioner submits a brief and asserts that it is unfair to penalize the applicant when his cohorts received T-1 visas.

In review, the evidence is insufficient to establish that the applicant was is physically present in the United States on account of a severe form of trafficking in persons as of the date of filing the instant application. The director determined, and the AAO concurs, that the evidence shows that the petitioner last entered the United States to pursue an academic program of study, and thus does not qualify for the requested classification.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.