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

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: [illegible]

IN RE: [redacted]

PETITION: Application for T Nonimmigrant Status under §§ 101(a)(15)(T)(i) and 214(n) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(T)(i) and 1182(n).

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for T nonimmigrant status 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 applicant is a native and citizen of India who attempted to enter the United States at Derby Line, Vermont on or about May 5, 2004. The applicant seeks T nonimmigrant status pursuant to §§ 101(a)(15)(T)(i) and 214(n) of the Immigration and Nationality Act (the Act) in order to remain in the United States. The director concluded that the applicant had voluntarily sought to be smuggled into the United States, and he was not the victim of trafficking. The director determined that the applicant had failed to establish that he qualified for the desired classification.

On appeal, counsel asserts that the applicant established that he was a victim of a severe form of trafficking in persons, and that if he is removed, associates of the smugglers could seek revenge against the applicant. Counsel also maintains that the applicant was born in 1989 and is currently sixteen rather than nineteen years old. Counsel submitted a copy of the applicant's birth certificate in support of this claim, but the AAO notes that both counsel and the applicant had originally stated that the applicant was born in 1985. Nevertheless, as the applicant does not meet all the requirements for classification under the desired status, his age does not affect the decision to deny the visa.

In support of the applicant's claim that he was the victim of human trafficking, the record contains three affidavits, one by the applicant and one each by his father and a relative of unspecified degree. The applicant's father and relative reside in Illinois, and the applicant currently resides with them. The AAO has reviewed the record in its entirety, and concurs with the director's decision in this matter.

Section 101(a)(15)(T) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she is:

> (i) [S]ubject to section 214(n), an alien who the Attorney General [now Secretary of Homeland Security (Secretary)] determines --
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> (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,
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> (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,
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> (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
>
> (III) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . .

Counsel asserts that since the applicant is not yet eighteen years of age, he falls under the provision set forth at § 101(a)(15)(T)(i)(III)(bb), in that he is not required to comply with any requests for assistance in the investigation or prosecution of the acts of trafficking. There are inconsistencies in the evidence regarding the applicant's age, as noted above, but even if it is accepted that the applicant is under eighteen, he is still ineligible for the T visa classification.

Section 214(n) of the Act provides, in pertinent part:

> (1) No alien shall be eligible for admission to the United States under section 101(a)(15)(T) if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons . . . .
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> (2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 101(a)(15)(T) may not exceed 5,000.

A successful § 101(a)(15)(T) application is dependent first upon a showing that the applicant is a victim of a severe form of trafficking in persons. According to the Trafficking Victims' Protection Act, 22 U.S.C. § 7102(8), 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
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> 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.

The regulations at 8 C.F.R. § 214.11(f) provide specific guidelines on evidence that may be provided to support the applicant's contention that he is a victim of a severe form of trafficking. The regulations state:

> (f) *Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons.* The applicant must submit evidence that fully establishes eligibility for each element of the T nonimmigrant status to the satisfaction of the Attorney General. First, an alien must demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement either by submitting an LEA endorsement, by demonstrating that the Service previously has arranged for the alien's continued presence under 28 CFR 1100.35, or by submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim (this showing is not necessary if the person induced to perform a commercial sex act is under the age of 18). An application must contain a statement by the applicant describing the facts of his or her victimization. In determining whether an applicant is a victim of a severe form of trafficking in persons, the Service will consider all credible and relevant evidence.

(1) *Law Enforcement Agency endorsement.* An LEA endorsement is not required. However, if provided, it must be submitted by an appropriate law enforcement official on Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*, of Form I-914. The LEA endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide persuasive evidence, the LEA endorsement must contain a description of the victimization upon which the application is based (including the dates the severe forms of trafficking in persons and victimization occurred), and be signed by a supervising official responsible for the investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act. The traffickers must have used force, fraud, or coercion to make the victim engage in the intended labor or services, or (for those 18 or older) the intended commercial sex act. The situations involving labor or services must rise to the level of involuntary servitude, peonage, debt bondage, or slavery. The decision of whether or not to complete an LEA endorsement for an applicant shall be at the discretion of the LEA.

(2) *Primary evidence of victim status.* The Service will consider an LEA endorsement as primary evidence that the applicant has been the victim of a severe form of trafficking in persons provided that the details contained in the endorsement meet the definition of a severe form of trafficking in persons under this section. In the alternative, documentation from the Service granting the applicant continued presence in accordance with 28 CFR 1100.35 will be considered as primary evidence that the applicant has been the victim of a severe form of trafficking in persons, unless the Service has revoked the continued presence based on a determination that the applicant is not a victim of a severe form of trafficking in persons.

(3) *Secondary evidence of victim status; Affidavits.* Credible secondary evidence and affidavits may be submitted to explain the nonexistence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant be a victim of a severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons; credible evidence of victimization and cooperation, describing what the alien has done to report the crime to an LEA; and a statement indicating whether similar records for the time and place of the crime are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts. Applicants are encouraged to provide and document all credible evidence, because there is no guarantee that a

> particular piece of evidence will result in a finding that the applicant was a victim of a severe form of trafficking in persons. If the applicant does not submit an LEA endorsement, the Service will proceed with the adjudication based on the secondary evidence and affidavits submitted. A non-exhaustive list of secondary evidence includes trial transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. In addition, applicants may also submit their own affidavit and the affidavits of other witnesses. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> (4) *Obtaining an LEA endorsement.* A victim of a severe form of trafficking in persons who does not have an LEA endorsement should contact the LEA to which the alien has provided assistance to request an endorsement. If the applicant has not had contact with an LEA regarding the acts of severe forms of trafficking in persons, the applicant should promptly contact the nearest Service or Federal Bureau of Investigation (FBI) field office or U.S. Attorneys' Office to file a complaint, assist in the investigation or prosecution of acts of severe forms of trafficking in persons, and request an LEA endorsement. If the applicant was recently liberated from the trafficking in persons situation, the applicant should ask the LEA for an endorsement. Alternatively, the applicant may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline at 1-888-428-7581 to file a complaint and be referred to an LEA.

The record does not comport with the evidentiary requirements articulated at 8 C.F.R. § 241.11. The applicant stated that he was tricked into leaving India by promises of training and employment. He stated that he told no one of his plan to leave except for his brother in India. His father's and his relative's affidavits, then, are not based on personal knowledge of the applicant's departure from India and journey to North America, but rather are repeated versions of the applicant's own account. The applicant's affidavit is virtually identical to the other two affidavits on the record. His affidavit fails to provide sufficient detail from which a conclusion may be drawn regarding the methods used by the smugglers to hold him under their control. There is no evidence on the record or statements to the effect that the smugglers mistreated or harmed the applicant, that they have threatened him in the United States or his family in India, or that they have sought him out at all since he was detained while trying to enter the United States.

By consenting to departure from India, the applicant rendered himself a smuggled alien rather than a victim of trafficking as defined by 22 U.S.C. § 7102(8)(A) and (B). The individuals provided the applicant with a service, albeit illegal, for which he, in turn, was to provide payment. Despite the applicant's claim that he was tricked, the record does not establish that the smugglers sought to enslave him for labor or services as described at 22 U.S.C. § 7102(8)(B). There is also no evidence that the applicant was a victim of sex trafficking in which a commercial sex act is induced by force, fraud, or coercion. The record does not establish that the applicant was a victim of 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. The applicant's affidavit states that the promise of training and a job overseas was false, but gives no indication of what type training and job he was promised. Further, though he states, "now I am the subject of debt bondage and servitude," the affidavit gives no indication that in the five months since his arrival in the United States either he or any of his family members has had contact with the individuals who brought him to the United States.[1] It is also noted that the applicant's affidavit varies considerably from the statement he gave upon apprehension in Vermont, namely that with the assistance of a relative in India he obtained a false passport to enter Canada with the intention of entering the United States illegally. At that time he gave his age as eighteen years.

In order to successfully apply for a T-1 visa, the applicant must demonstrate that he (1) is or has been a victim of a severe form of trafficking in persons; (2) 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; (3) complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking if eighteen years old or over; and (4) would suffer extreme hardship involving unusual and severe harm upon removal from the United States. Despite the applicant's possible exemption, due to his age, from the third of the four listed requirements, since he has not established the first two requirements, the AAO deems it unnecessary to analyze the merit of his claim with respect to the fourth requirement.

In proceedings for application for T nonimmigrant status under §§ 101(a)(15)(T)(i) and 214(n) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The applicant's affidavit is undated, but is presumed to have been executed at the same time as the others, October 14, 2004.