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U.S. Citizenship
and Immigration
Services

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D10



FILE:



Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:



JUL 24 2007

APPLICATION:

Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) and 214(n) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(T)(i) and 1214(n).

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The application for T nonimmigrant status was denied by the Center 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 Honduras who last entered the United States in April 2005 without inspection. The applicant claims that he was transported to the United States pursuant to a human trafficking scheme. The applicant seeks T nonimmigrant status pursuant to section 101(a)(15)(T)(i) of the Immigration and Nationality Act (the Act) in order to remain in the United States.

The applicant filed a Form I-914, Application for T Nonimmigrant Status, on July 17, 2006. On September 26, 2006, the center director issued a Form I-917, Notice of Action, requesting that the applicant provide additional evidence to support his application. The applicant provided additional documentation, yet the center director found that the applicant failed to overcome the issues addressed in the Notice of Action and denied the application accordingly. *Decision of the Center Director*, dated February 9, 2007. Specifically, the center director found that the applicant failed to show that: (1) the applicant is a victim of a severe form of trafficking in persons, and; (2) the applicant's physical presence in the United States is on account of a severe form of human trafficking in persons.

On appeal, counsel for the applicant contends that the applicant was the victim of human trafficking, and that he is eligible for a T visa. *Brief in Support of Appeal*, dated April 11, 2007. Counsel contends that the center director erred in finding that, because the applicant was voluntarily smuggled into the United States, he cannot be a victim of human trafficking. *Id.* at 5-8. Counsel asserts that the center director erred in concluding that the applicant was not a victim of coercion into involuntary servitude or peonage. *Id.* at 8-12. Counsel states that the applicant is present in the United States on account of trafficking. *Id.* at 12-13.

The record contains a statement from the applicant; briefs from counsel; documentation on human trafficking and conditions in Honduras; a statement from a physician's assistant who examined the applicant after he was allegedly beaten by smugglers; letters from counsel to U.S. law enforcement authorities alleging that the applicant was a victim of human trafficking; a letter from a licensed creative arts therapist who worked with the applicant due to traumatic events he experienced in his migration to the United States, and; documentation in connection with the applicant's detention by U.S. authorities and his proceedings in Immigration Court. The entire record was reviewed and considered in rendering a decision on the appeal.

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(o), an alien who the Attorney General [now Secretary of Homeland Security (Secretary)] determines --
 - (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,
 - (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) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, [and] . . .
...
- (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . .

A successful section 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
- 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 an applicant’s contention that he or she 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 [C.F.R. §] 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 [CIS] granting the applicant continued presence in accordance with 28 [C.F.R. §] 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.

(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.

Debt bondage is defined at 8 C.F.R. § 214.11(a) as:

[T]he status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Involuntary servitude is defined at 8 C.F.R. § 214.11(a):

Involuntary servitude means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

Peonage is defined at 8 C.F.R. § 214.11(a) as “[a] status or condition of involuntary servitude based upon real or alleged indebtedness.”

The term “slavery” is not defined under section 101 of the Act or the regulations that control applications for T non-immigrant status. Nor are there any precedent decisions from a court or administrative body with binding authority over the present proceeding that provide a definition of slavery for the purpose of adjudicating an application for T non-immigrant status. However, common notions of slavery involve the performance of labor. For example, The American Heritage Dictionary of the English Language, Fourth Edition, defines “slavery” as:

1. The state of one bound in servitude as the property of a slaveholder or household.

2. a. The practice of owning slaves.
b. A mode of production in which slaves constitute the principal workforce.
3. The condition of being subject or addicted to a specified influence.
4. A condition of hard work and subjection: *wage slavery*.

"Slavery," *The American Heritage Dictionary of the English Language*, (4th ed., Houghton Mifflin Company 2004) <<http://dictionary.reference.com/browse/slavery>> (accessed July 18, 2007). Webster's New World College Dictionary defines slavery as:

1 the owning or keeping of slaves as a practice or institution; slaveholding **2** the condition of being a slave; bondage; servitude **3** a condition of submission to or domination by some influence, habit, etc. **4** hard work or toil like that done by slaves; drudgery

Webster's New World College Dictionary 1347 (4th ed., IDG Books Worldwide, Inc. 2001). In the context of the present proceeding, slavery is listed as one of four harms that may serve as a basis for T non-immigrant status, in addition to involuntary servitude, peonage, and debt bondage. *Trafficking Victims Protection Act*, 22 U.S.C. § 7102(8). In light of the fact that involuntary servitude, peonage, and debt bondage each involve labor to be performed by the victim, and in light of the fact that slavery is commonly understood to denote a condition of forced labor, the AAO finds that to meet the definition of slavery as contemplated by the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8), an applicant must establish that he was held in a condition that involved his involuntary labor for his captors.

The applicant stated that he lived with his mother and three siblings in poverty in Honduras, and he desired to go to the United States to help his family. *Statement from Applicant* at 1, dated June 26, 2006. The applicant indicated that he made two payments of \$50 to individuals as part of an effort to smuggle him from Honduras to the United States. *Id.* Upon arriving in Mexico, the applicant met with a group of people, some smugglers and some who intended to cross into the United States to work like himself. *Id.* at 2. The smugglers informed the applicant that they would charge \$1,500 to help him cross the border into the United States. *Id.* The applicant told them that his father resided in the United States and that his father would help him pay the fee upon arrival, to which the smugglers agreed. *Id.* However, after the applicant was transported to the United States, his father was unable to pay the \$1,500 within a period that the smugglers found acceptable. *Id.* The applicant was held in a house in Texas while the smugglers awaited payment, and during such time the smugglers took the applicant's jewelry and gave him one meal per day. *Id.* at 2-3.

The applicant stated that he was held with others who were smuggled into the United States. *Id.* at 2. He indicated that, once these individuals paid the required fee to the smugglers, they were released. *Id.* He provided that most of the smuggled individuals departed the house within a week. *Id.* at 3.

After approximately 15 days, the applicant's father informed the smugglers that he needed more time to obtain the \$1,500, yet the smugglers communicated that no additional time would be given. *Id.* at 3. The applicant stated that the smugglers told him that he would have to "work off [his] debt at the ranch, starting right then." *Id.* They proceeded to put him in a car, cover his face, and drive him to the side of a road where

they beat him. *Id.* The applicant stated that one of the smugglers pulled down his pants, and he thought he was going to be raped. *Id.* The smugglers left the applicant after the beating, and the applicant sought help from a police officer. *Id.*

Upon review, the record reflects that the applicant was not subjected to a severe form of trafficking in persons, as required by the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8). The applicant and counsel do not assert, and the record does not support, that the applicant was a victim of sex trafficking as contemplated by 22 U.S.C. § 7102(8)(A) of the Trafficking Victims Protection Act. Counsel contends that the applicant was placed into a position of involuntary servitude and peonage. *Brief in Support of Appeal* at 10-12, dated April 11, 2007. However, the record does not support that the applicant was subjected to involuntary servitude, peonage, debt bondage, or slavery. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B).

The applicant was not compelled to perform labor at any time during his captivity in the United States. Nor does the record support that the applicant's smugglers intended for him to perform labor for them when they brought him to the United States. *Statement from Applicant*. The agreement between the applicant and the smugglers required the applicant to pay a fixed fee of \$1,500 for passage into the United States. *Id.* at 2. The applicant did not pledge his personal services as security for the debt. 8 C.F.R. § 214.11(a). He agreed to pay funds directly with the assistance of his father. *Statement from Applicant* at 2.

The actions of the smugglers with respect to other individuals who were smuggled in a group with the applicant suggest that the smugglers were solely interested in collecting the \$1,500 fees, while minimizing their continued relationship with the smuggled individuals. The applicant stated that, once the smuggled individuals paid their fee, they were released. *Statement from Applicant* at 2-3. The applicant's statement suggests that he would have been immediately released had he paid the \$1,500 fee. *Id.* Thus, the record reflects that the smugglers held the applicant for the purpose of ensuring he paid his debt to them, not to compel the applicant to perform labor.

Counsel contends that the applicant was forced to serve the smugglers by acting as human collateral to secure the debt he owed to them, and such situation constitutes peonage. *Brief in Support of Appeal* at 11-12. However, being held hostage is not deemed an act involving involuntary servitude. *See* 8 C.F.R. § 214.11(a). The applicant did not indicate that he performed any tasks for the smugglers. Counsel's interpretation of peonage is not persuasive.

The only reference the smugglers made to "work" consisted of their statement to the applicant that he would have to "work off" his debt when they discovered the applicant would be unable to pay the \$1,500 fee within a timeframe they found acceptable. *Statement from Applicant* at 3. However, the context of this statement does not reflect that the smugglers in fact intended for the applicant to perform labor. Immediately after making the statement, the smugglers transported the applicant away from the house where he was held, beat him, and abandoned him. *Statement from Applicant* at 3. Though the applicant remained in the area of the beating over night, he did not report that the smugglers returned. *Id.* Thus, it appears that the smugglers did not intend to have further contact with the applicant. In light of these facts, it appears that the smugglers may have used the phrase "work off" to denote being beaten and physically mistreated as punishment for failure to pay a debt. Irrespective of their true intent in using the phrase, the record does not show by a preponderance of the evidence that the smugglers desired to have the applicant perform labor for them that could serve as a basis for a finding of involuntary servitude, peonage, debt bondage, or slavery. 8 C.F.R. § 214.11(a).

It is noted that counsel misrepresents material facts in her appellate brief. For example, counsel states that the applicant's smugglers agreed to transport him to the United States "in exchange for \$50 upfront and an unspecified additional amount once he was in the United States." *Brief in Support of Appeal* at 1, 3. However, the applicant clearly stated that the smugglers informed him in Mexico that they would charge him \$1,500 for their services, prior to his arrival in the United States. *Statement from Applicant* at 2. Further, counsel states that the smugglers informed the applicant in Mexico that "he owed them \$1,500." *Brief in Support of Appeal* at 3-4. However, the applicant stated that "[t]he smugglers told [him] that it would cost [him] \$1500 to cross the border." *Statement from Applicant* at 2. The applicant explained that he offered an agreement to have his father pay the fee once he arrived in the United States in order to persuade the smugglers to transport him. *Id.* He did not report that the smugglers determined that he already owed the fee prior to crossing the border. *Id.* Counsel's misrepresentation of the applicant's statements gives the impression that the applicant was subject to more aggressive coercion. However, counsel's statements do not constitute evidence. The applicant's statement of the facts serves as the only reliable account of the events that transpired.

Counsel contends that the center director erred in finding that, because the applicant was voluntarily smuggled into the United States, he cannot be a victim of human trafficking. *Brief in Support of Appeal* at 5-8. Upon review of the center director's denial, the center director initially stated that the applicant based his application on the fact that he was smuggled into the United States, and that, "[c]onsequently, [the applicant has not] established that [he has] met the required elements of trafficking." *Decision of the Center Director*, dated February 9, 2007. However, in the portion of the decision where the center director analyzed in detail the nature of the agreement between the applicant and his smugglers, the center director considered whether the applicant was brought to the United States for any form of forced labor. *Id.* at 2-3. Thus, the center director did not base his finding that there was no trafficking on the fact that the applicant's entry involved voluntary smuggling. The applicant was not prejudiced by the center director's initial implication that those smuggled into the United States cannot qualify for T non-immigrant status.

It is noted that the center director highlighted that the applicant did not submit evidence demonstrating that a U.S. law enforcement agency confirmed his claim of trafficking. *Decision of the Center Director* at 3. The center director provided that, "[c]onsequently, [the] application fails to contain sufficient documentary evidence, which confirms that [the applicant is] a trafficking victim." *Id.* However, while a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 Supplement B, serves as primary evidence that a trafficking incident occurred, such evidence is not required in order for an applicant to sustain his burden to show that he was a victim of human trafficking. 8 C.F.R. § 214.11(f)(2)-(3). An applicant may submit secondary evidence such as credible affidavits to meet his burden of proof in the absence of documentation from a law enforcement agency. *Id.* The center director's comment in this regard will be withdrawn.

Counsel states that the applicant is present in the United States on account of trafficking. *Brief in Support of Appeal* at 12-13. However, as discussed above, the applicant has not established that his smugglers intended for him to perform labor or services. The record reflects that the applicant is in the United States due to the fact that he sought to come for economic opportunities, and his smugglers sought to transport him to earn a fee. Neither of these purposes constitutes trafficking.

The AAO recognizes that the applicant has endured significant harms at a young age, including being physically assaulted and abandoned in the United States. However, in the present proceeding the applicant must establish that he is eligible for the particular benefit sought. Because he has not shown by a preponderance of the evidence that the harms to him constitute a severe form of trafficking in persons, the applicant has not established that he is eligible for T non-immigrant status. Section 101(a)(15)(T)(i)(I) of the Act; section 291 of the Act, 8 U.S.C. § 1361.

In proceedings regarding an application for T nonimmigrant status under section 101(a)(15)(T)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.