



U.S. Citizenship
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MAY 31 2005

FILE: [Redacted]
EAC 02 291 52251

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a 17-year old native and citizen of China who is seeking classification as a T nonimmigrant status 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 she is a victim of a severe form of trafficking in persons, that she is physically present in the United States on account of a severe form of trafficking in persons, has complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, and that she would suffer extreme hardship involving unusual and severe harm if she were removed from the United States.

On appeal, counsel for the petitioner submits a brief.

Under section 101(a)(15)(T) of the Act, Citizenship and Immigration Services (CIS) may classify an alien, if otherwise admissible, as a T-1 nonimmigrant if the alien meets the following:

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

The record reflects that the petitioner last entered the United States with a K-2 visa on January 8, 2002. The petitioner was initially included as a derivative child on her mother's application for T nonimmigrant status. The petitioner's mother died, so the petitioner filed the instant application as a principal applicant.

Because the petitioner furnished insufficient evidence to establish that she is a victim of a severe form of trafficking in persons, the director asked her to submit additional evidence. The director listed evidence the petitioner could submit to establish that she was a victim of a severe form of trafficking in persons.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

Counsel for the petitioner asserts on appeal that the petitioner's mother's fiancé did not intend to marry her mother, but instead, intended to subject her mother to involuntary servitude.

The regulation at 8 C.F.R. § 214.11(a) defines the term *victim of a severe form of trafficking in persons* as "an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the [Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386]. The same regulation defines the term:

Severe forms of trafficking in persons means 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 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.

In review, the petitioner does not allege that she was induced to perform a commercial sex act, nor that she was subjected to involuntary servitude, peonage, debt bondage, or slavery. The petitioner has not established that she is a victim of a severe form of trafficking in persons.

The director further determined that the petitioner had failed to establish that she is physically present in the United States on account of a severe form of trafficking in persons.

Because the petitioner furnished insufficient evidence to establish that she is physically present in the United States on account of a severe form of trafficking in persons, the director asked her to submit additional evidence. The director listed evidence the petitioner could submit to establish that she is physically present in the United States on account of a severe form of trafficking in persons.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

According to the evidence on the record, the petitioner accompanied her mother when she entered the United States with a K-2 visa. Counsel for the petitioner asserts on appeal that the petitioner is in the United States only

because her mother was fraudulently induced to come to the United States so that she could be subjected to involuntary servitude.

The director determined and the AAO concurs that since the petitioner has not established that she is a victim of a severe form of trafficking in persons, she cannot establish that she is physically present in the United States on account of her victimization.

The director further denied the petition, finding that she failed to establish that she was under the age of 15 or alternatively, that she had complied with a request for assistance in the investigation or prosecution of acts of trafficking in persons as required by the statute and regulations. This portion of the director's decision shall be withdrawn. The law makes an exception for children under the age of 18. The petitioner is under the age of 18, therefore, she is exempt from the requirement that she comply with a reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons.¹

Finally, the director determined that the petitioner failed to establish that she would suffer extreme hardship involving unusual and severe harm if she were removed from the United States. On appeal, the petitioner submits additional evidence. The AAO will not address this issue. The petitioner is not eligible for the relief sought as she failed to establish that she is the victim of a severe form of trafficking in persons and that she is physically present in the United States on account of such trafficking. No purpose would be served in analyzing whether the petitioner would suffer extreme hardship if she were removed from the United States.

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.

¹ The law was amended from 15 years of age to 18 years of age. Pub. L. 1008-193, December 19, 2003, 117 Stat. 2875.