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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 16 2006

IN RE:

Applicant:



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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 India who last entered the United States on January 7, 1999 pursuant to an H-2b visa in order to work for North American Shipbuilding. The applicant paid a fee to agents of North American Shipbuilding, an American company that agreed to employ him in the United States. North American Shipbuilding failed to employ the applicant in accordance with the agreed upon terms. 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 September 9, 2003. On September 24, 2003, 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. On January 27, 2004, the center director issued a letter notifying the applicant of Citizenship and Immigration Services' (CIS) intent to deny the application, and affording the applicant 60 days to provide additional evidence. The applicant again provided additional documentation, yet the center director found that the applicant failed to overcome the issues addressed in the notice of intent to deny and denied the application accordingly. *Decision of the Center Director*, dated March 21, 2005. Specifically, the director found that the applicant failed to show that: (1) the applicant is a victim of a severe form of trafficking in persons; (2) the applicant's physical presence in the United States is on account of a severe form of human trafficking in persons; (3) the applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, and; (4) the applicant would suffer extreme hardship involving unusual and severe harm upon removal.

On appeal, the applicant contends that he was subjected to debt bondage by North American Shipbuilding, and he requests approval of his application for T classification. *Applicant's Statement in Support of Appeal*, received April 15, 2005. The applicant references an instance in which Citizenship and Immigration Services (CIS) granted T status, and he asserts that the facts of his claim are sufficiently similar to warrant approval. *Id.*

The record contains statements from the applicant in support of the Form I-914 application, in response to the center director's request for evidence, in response to the center director's notice of intent to deny, and in support of the appeal; copies of the applicant's visa, Form I-94, and social security card; copies of articles and case studies regarding instances of human trafficking and labor issues in Louisiana; a copy of an employment verification letter for an unidentified individual; a copy of notes regarding the North American Shipbuilding labor scheme that the applicant describes; a copy of a job announcement soliciting fitters and welders to work in the United States; a copy of a job offer letter from an unrelated company for an individual who the applicant has not discussed; copies of records of faxes from an individual named [REDACTED] to individuals identified as agents of the Federal Bureau of Investigation (FBI); a copy of an employment contract between the applicant and North American Shipbuilding; statements from two former employees of North American Shipbuilding who describe events similar to those alleged by the applicant, and; a photograph and hand-drawn map of a North American Shipbuilding facility. 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 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.

The applicant did not submit a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 Supplement B, (Law Enforcement Agency [LEA] Endorsement), nor did he explain why one was not submitted as required by Form I-914. The applicant further did not provide documentation from CIS granting him continued presence in accordance with 28 C.F.R. § 1100.35. Thus, the applicant has presented no primary evidence that he has been the victim of a severe form of trafficking in persons.

As secondary evidence, the applicant submitted four statements in which he explains the facts of his case. The applicant submits factual allegations without any legal analysis indicating which form of trafficking he was subjected to. Because the applicant incurred a debt to pay agents of North American Shipbuilders to employ him, the applicant is presumably asserting that North American Shipbuilders subjected him to debt bondage. The applicant further asserts that his movements in the United States were restricted and that he was kept under armed guard at a factory of North American Shipbuilders, thus the AAO will consider whether he was subjected to involuntary servitude.

The applicant provides that he paid a large sum of money to agents of North American Shipbuilders in exchange for a position in the United States. He obtained the necessary funds by borrowing money from a financier at a high rate of interest. He arrived in the United States on January 7, 1999. North American Shipbuilders offered him employment, yet he was not paid at the agreed rate. The applicant stated that he was

only permitted to leave the grounds of North American Shipbuilders on Fridays under escort. He provided that armed guards patrolled the factory property, and his living conditions were spartan. The applicant stated that fellow Indian workers who complained were sent back to India. Approximately one month after the applicant began work, North American Shipbuilders informed him that they no longer intended to employ him, and that they were sending him back to India. The applicant feared returning to India prior to satisfying his debt there, as he suspected his creditors would harm him. He stated that agents of North American Shipbuilders, in conjunction with government authorities, attempted to transport him to an airport for deportation, but he fled their custody. The applicant subsequently contacted the agent of North American Shipbuilders who initially recruited him and requested further employment. The agent arranged for the applicant to work on a chicken farm. The applicant later worked for another company, yet he was terminated due to the fact that he had no legal immigration status.

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.

The applicant has not established that North American Shipbuilders subjected him to debt bondage. The applicant borrowed money from financier in India unrelated to North American Shipbuilders and used the money to pay a fee to North American Shipbuilders. The applicant's debt is owed to a financier in India, not to North American Shipbuilders. Accordingly, the applicant did not pledge his personal services to North American Shipbuilders as security for a debt he owed to them.

The AAO notes that, as a skilled worker, the applicant could have presumably worked for a company other than North American Shipbuilders to pay back his debt. In fact, the record shows that the applicant was able to work for other companies in the United States. Further, the applicant has not established that he could not return to India and work there to pay off the debt.

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.

The applicant has not established that North American Shipbuilders subjected him to involuntary servitude. In fact, the applicant agreed to work for North American Shipbuilders and was refused employment under terms that the applicant found acceptable. The applicant stated that, during the month that he was employed by North American Shipbuilders, the conditions of his employment were difficult, including substandard

housing and food provided by North American Shipbuilders. He explained that his movements were restricted and that the grounds were patrolled by armed guards. The applicant was under constant fear that he would be returned to India. However, the applicant has not established that he was compelled to work under such conditions against his will. The record suggests that the applicant could have informed North American Shipbuilders that he no longer wished to work for them, and they would have terminated him and arranged his return to India at any time. It is further noted that the applicant has not alleged that North American Shipbuilders harmed him physically, threatened to harm him, or informed him that he had no choice but to work for them. In fact, an agent of North American Shipbuilders assisted the applicant in securing alternate employment after the applicant departed North American Shipbuilders. Thus, the applicant has not established that he was forced to work for North American Shipbuilders by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or legal process.

The applicant provided a statement from another employee of North American Shipbuilders, who describes similar circumstances as those claimed by the applicant. However, the worker did not indicate that he was under armed guard on North American Shipbuilders grounds as claimed by the applicant. It is further noted that the applicant's statements contain inconsistency. In the applicant's statement submitted with his initial Form I-914 application, he provided that he paid a fee of \$5,000 in exchange for a position with North American Shipbuilders. In the applicant's subsequent statements, he provided that he paid a fee of \$7,000. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The inconsistency in the applicant's statements weakens their evidentiary weight.

As correctly noted by the center director, the applicant has provided documentation that does not relate to the present matter without further explanation, including an employment verification letter and employment advertisement. Thus, such evidence is given no weight.

Based on the foregoing, the applicant has failed to submit sufficient evidence to show that he has been the victim of a severe form of trafficking in persons. Section 101(a)(15)(T)(i)(I) of the Act.

As the applicant has failed to establish that he has been the victim of a severe form of trafficking in persons, he has failed to show that he 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. Section 101(a)(15)(T)(i)(II) of the Act.

The applicant has submitted evidence that purportedly shows that law enforcement agents have been notified of the alleged trafficking perpetrated against him. However, the faxes do not mention the applicant by name or clearly reflect that the law enforcement agents have been provided a manner in which to contact him should they desire his assistance in an investigation or prosecution. On appeal the applicant states that he has shared information with the FBI, yet he does not identify who he spoke with, or what information he provided. Nor does he submit any independent documentation of the alleged correspondence, despite the center director's request. Going on record without adequate supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The applicant has not shown that he "has complied with any reasonable request for

assistance in the investigation or prosecution of acts of trafficking.” Section 101(a)(15)(T)(i)(III)(aa) of the Act.

Further, the applicant has failed to establish that he would suffer extreme hardship involving unusual and severe harm upon return to India, as required by Section 101(a)(15)(T)(i)(IV) of the Act. The applicant states that he fears that his creditors would harm him if he returns to India without satisfying his debt. However, he has provided no evidence of his debt. As noted above, the applicant has provided inconsistent statements regarding the amount that he borrowed and paid to North American Shipbuilders. While the applicant has referenced harms that befell several workers who were returned to India, he has not identified these men or submitted documentation such as articles or statements from other individuals. The applicant has not articulated any other factors that would result in extreme hardship involving unusual and severe harm should he return to India, thus he has not satisfied the requirements of Section 101(a)(15)(T)(i)(IV) of the Act.

Based on the foregoing, the applicant has failed to establish that he satisfies the requirements for T status as provided in 101(a)(15)(T)(i) of the Act. The AAO acknowledges that the applicant has endured hardship due to the events he has described, however, he has not shown that he is eligible for T status.

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.