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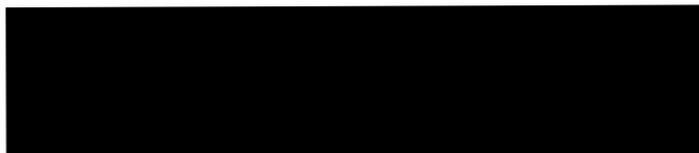
FILE: [REDACTED] Office: VERMONT SERVICE CENTER

MAR 27 2006

IN RE: Applicant: [REDACTED]

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.

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 Belarus who last entered the United States on April 16, 2005 pursuant to a K-1 visa. The applicant provides that she traveled to the United States to marry her fiancé, however, she found that he was residing with another woman. The applicant states that she became a victim of human trafficking, as her fiancé expressed his intention to use her as a mistress and source of income by coercing her to work as a dancer in a night club. 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 August 3, 2005. On August 18, 2005, the center director issued a Notice of Intent to Deny the application, affording the applicant 90 days to provide additional evidence to support her application. The applicant provided additional documentation, yet the center director found that the applicant failed to overcome the issues addressed his notice and denied the application accordingly. *Decision of the Center Director*, dated November 10, 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 December 7, 2005, the applicant filed a Form I-290B appeal. On appeal, counsel for the applicant contends that the center director erred in failing to assess whether the applicant is eligible for U status. Counsel asserts that the applicant qualifies for U status, and thus the application should be approved. *Brief in Support of Appeal*, dated December 4, 2005.

The record contains statements from the applicant in support of the Form I-914 application and in response to the center director's notice of intent to deny; statements from individuals with whom the applicant has resided in the United States; a copy of the applicant's birth certificate with translation; copies of the applicant's Form I-94, passport, and visas; copies of documentation relating to a restraining order that the applicant obtained against her alleged trafficker; copies of documents that show that the applicant's alleged trafficker exported an automobile to her in Belarus prior to her arrival in the United States; copies of documentation of wire transfers from the alleged trafficker to the applicant in Belarus; a letter from the alleged trafficker to the applicant with translation; reports on country conditions in Belarus, particularly relating to human trafficking, and; a statement from counsel regarding a meeting with agents of the Federal Bureau of Investigation (FBI) regarding the alleged trafficking incident. 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.). The applicant further did not provide documentation from CIS granting her continued presence in accordance with 28 C.F.R. § 1100.35. Thus, the applicant has presented no primary evidence that she has been the victim of a severe form of trafficking in persons.

As secondary evidence, the applicant submitted statements in which she explains the alleged trafficking incident. The applicant provides that she met [REDACTED] when she was in Belarus and they embarked on a lengthy courtship. [REDACTED] provided gifts to the applicant including an automobile and funds. The applicant came to the United States on April 16, 2005 pursuant to a K-1 visa in order to marry [REDACTED]. However, she found that he was residing with another woman. [REDACTED] expressed his intention to use her as a mistress and source of income by coercing her to work as a dancer in a night club. The applicant refused, and resided with her friend. [REDACTED] continued to contact the applicant in order to persuade her to comply with his wishes. The applicant became fearful that [REDACTED] would harm her, and she obtained a restraining order against him on July 12, 2005. The order indicates that [REDACTED] threatened to kill the applicant, he used derogatory language, and he attempted to sexually assault and strangle her. The applicant states that [REDACTED] is a former member of the Russian Olympic Judo team, and that his associates are violent athletes who possess the capacity to harm her. The applicant fears that if she returns to Belarus, [REDACTED] associates may harm her on his behalf.

Upon review, the applicant has not submitted sufficient evidence to establish that she has been the victim of a severe form of trafficking in persons. The affidavits from the applicant and others at her residence explain that [REDACTED] misrepresented his intentions in sponsoring the applicant for a K-1 visa as his fiancée. However, the record is not clear as to what [REDACTED] wanted the applicant to do. While the applicant and other affiants state that [REDACTED] wished for the applicant to serve as his mistress, the record does not

support that he attempted to coerce her into performing a commercial sex act as contemplated by 22 U.S.C. § 7102(8)(A). The applicant claims that [REDACTED] expressed his desire for her to work as a dancer at a night club, yet she has provided little detail or documentation to explain his efforts to coerce her into working for him. The provided affidavits include only general statements regarding [REDACTED] wish for the applicant to work to make money for him. Such brief statements are not sufficient to show that the applicant has been subjected to efforts to place her into a position of involuntary servitude. It is noted that the documentation of the restraining order that the applicant obtained against [REDACTED] makes no mention that [REDACTED] attempted to force the applicant to work for him. Thus, the AAO lacks sufficient evidence to distinguish whether the applicant has in fact been the victim of a severe form of trafficking in persons involving involuntary servitude. *See* 22 U.S.C. § 7102(8)(B). 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 applicant stated that she and counsel met with officers of the FBI on August 25, 2005 to report the alleged trafficking incident, yet the FBI declined to open an investigation. While this meeting reflects the applicant and counsel's belief that the applicant may be a victim of human trafficking, it does not serve as independent evidence that an incident of human trafficking did occur. It is further noted that the application was filed on August 3, 2005. The applicant must establish eligibility at the time of filing the nonimmigrant application. An application may not be approved at a future date after the applicant becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, the fact that the applicant contacted the FBI after her application was filed is not probative of her eligibility as of the filing date.

The applicant provides copies of reports that discuss conditions in Belarus, particularly relating to human trafficking. However, the applicant has not sufficiently explained how such reports support that she has been the victim of human trafficking.

Based on the foregoing, the applicant has failed to submit sufficient documentary evidence to show that she 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 she has been the victim of a severe form of trafficking in persons, she has failed to show that she 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.

As noted above, the applicant stated that she and counsel met with officers of the FBI on August 25, 2005 to report the alleged trafficking incident. However, the applicant contacted the FBI after her application was filed, and thus this communication is not probative of her eligibility as of the filing date. The applicant provided on Form I-914 that she reported the alleged trafficking incident to the New Jersey Police Department in Freehold, New Jersey. However, she has not indicated when she made such report, who she spoke with, whether an investigation was opened, or what is the current status of her cooperation with the New Jersey Police Department in Freehold. Thus, the applicant has not provided sufficient detail or documentation to establish that such communication in fact occurred. Again, 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. at 165. Accordingly, the applicant has not satisfied the

requirement that she comply with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. 8 C.F.R. § 214.11(f)(3)-(4); Section 101(a)(15)(T)(i)(III)(aa) of the Act.

Further, the applicant has failed to establish that she would suffer extreme hardship involving unusual and severe harm upon removal to Belarus, as required by Section 101(a)(15)(T)(i)(IV) of the Act. The applicant states that she has fear of associates of [REDACTED]. She provided that [REDACTED] is a former member of the Russian Olympic Judo team, and that his associates are violent athletes who possess the capacity to harm her. However, the applicant has not identified any individuals in Belarus who she fears. It is further noted that the applicant has submitted no documentation that [REDACTED] or his associates are or have been professional athletes in sports that express a propensity for violence. While the applicant's friend, [REDACTED] provides that the applicant would not have employment opportunities in Belarus, limited employment options are not deemed extreme hardship. The applicant has not articulated any other factors that would result in extreme hardship involving unusual and severe harm should she return to Belarus, thus she 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 she satisfies the requirements for T status as provided in 101(a)(15)(T)(i) of the Act.

On appeal, counsel contends that the center director erred in failing to assess whether the applicant is eligible for U status. Counsel asserts that the applicant qualifies for U status, and thus the application should be approved. *Brief in Support of Appeal*, dated December 4, 2005. However, the applicant has not filed an application for U status. In the initial application, the applicant included Form I-914, Application for T Nonimmigrant Status. Counsel presented a cover letter addressed to the "Vermont Service Center 'T' Visa Unit." Nothing in the applicant's initial filing indicated that the application included a request for U status. Counsel did not raise the possibility of U status until responding to the center director's notice of intent to deny the application for T status. The requirements for U status are separate and distinct from those for T status. If the applicant wishes to be considered for U status, she may file a separate application with such a request. As the present application is limited to a request for T status, the center director did not err in declining to discuss whether the applicant meets the requirements for U status.

On February 16, 2006, counsel further submitted a brief letter to highlight recent changes in law pertaining to applications under the Violence Against Women Act (VAWA) and related applications for K-1 fiancé(e) visas. As discussed above, the present matter concerns an application for T status. The applicant has not requested protection under VAWA, and thus changes in law specific to VAWA applications are not relevant in this proceeding.

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.