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

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FILE:

VERMONT SERVICE CENTER

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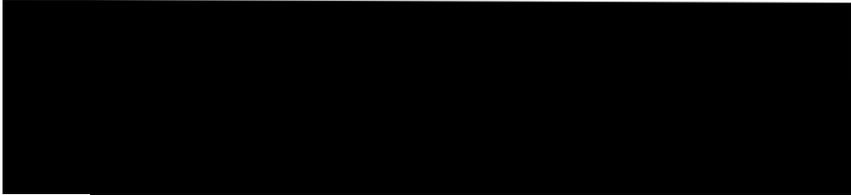
Applicant:



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:



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. Wisniewski, 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 India who last entered the United States on or about September 19, 2005 pursuant to a K-1 visa. The applicant stated that her family arranged for her to travel to the United States to marry a man, yet upon her arrival her fiancé's family attempted to make her marry her fiancé's uncle instead. The applicant explained that she refused, and she was held against her will, physically mistreated, and ultimately taken to an airport to force her to return to India. 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 25, 2006. On November 8, 2006, the center director issued a letter requesting that the applicant provide additional evidence to support her claim. The applicant provided additional documentation, yet the center director found that the applicant failed to overcome all of the issues addressed in the request for evidence and denied the application accordingly. *Decision of the Center Director*, dated May 22, 2007. Specifically, the center director found that the applicant failed to show that: (1) she is a victim of a severe form of trafficking in persons; (2) her physical presence in the United States is on account of a severe form of trafficking in persons; (3) she has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, and; (4) she would suffer extreme hardship involving unusual and severe harm if she were removed from the United States. *Id.*

On appeal, counsel for the applicant contends that the applicant was a victim of a severe form of trafficking in persons, and that she is in the United States on account of such trafficking. *Attachment to Form I-290B*, submitted June 18, 2007. Counsel states that the applicant has reported the alleged trafficking incident to law enforcement agents, and that an investigation has been conducted. *Id.* Counsel asserts that the applicant would experience extreme hardship if the present application is denied. *Id.*

The record contains statements from the applicant; correspondence from counsel; a copy of the applicant's birth certificate; a copy of the applicant's passport; police reports regarding the incidents the applicant described; documentation in connection with the applicant's prior application for asylum in the United States, and; documentation in connection with the applicant's proceedings in immigration court. The entire record was reviewed and considered in rendering a decision on the appeal.

It is noted that counsel indicated on Form I-290B that the applicant would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on June 18, 2007. However, as of November 13, 2007, the AAO had received no further documentation or correspondence from the applicant or counsel. On November 13, 2007, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. Counsel notified the AAO by facsimile on November 15, 2007 that the applicant did not file a brief or additional evidence as indicated on Form I-290B, thus the record is deemed complete.

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.

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 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 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 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.

The applicant has not submitted a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 Supplement B, documentation from U.S. Immigration and Customs Enforcement (“ICE”) granting her continued presence in accordance with 28 C.F.R. § 1100.35, or other primary evidence that she is a victim of a severe form of human trafficking.

As secondary evidence, the applicant submitted statements in which she described her experiences. The applicant stated that her family arranged for her to travel to the United States to marry a man, yet upon her arrival her fiancé's family attempted to make her marry her fiancé's uncle instead. *Statement from the Applicant*, at 1, dated September 6, 2006. The applicant explained that she refused, and she was held against her will, physically mistreated, and ultimately taken to an airport to force her to return to India. *Id.* The applicant stated that she reported her circumstances to the San Francisco Airport Bureau and the Sutter

County Sheriff's Office in Yuba City, California. *Id.* The applicant explained that she and her lawyer unsuccessfully attempted to obtain an LEA endorsement from the Sutter County Sheriff's Office. *Id.*

The applicant stated that she would be harmed by persons connected to her former fiancé's parents, as she reported them to police. *Id.*

The applicant further stated that her family arranged a new marriage to a permanent resident of the United States. *Statement from the Applicant on Appeal*, submitted June 18, 2007. The applicant expressed that she would experience hardship if her application is denied, as she depends on her husband for companionship and support. *Id.* at 1. The applicant provided that she hopes to appear as a witness in criminal proceedings against her former fiancé's family, and that she is aware that an investigation is pending. *Id.* The applicant stated that members of her fiancé's family have threatened her as a result of the investigation. *Id.*

The applicant explained that she would be subjected to social stigma if she returns to India, as she did not marry her former fiancé. *Id.* The applicant stated that she is a Sikh, and that she could be persecuted in India as a result. *Id.* at 2.

The applicant previously filed a Form I-589 application for asylum on January 23, 2006, based on the claim that she was active with a political party in India for which she was arrested on three occasions. In connection with her asylum application, the applicant submitted evidence to support that she is a member of the Sikh political party [REDACTED]. In an interview in connection with her asylum application, the applicant stated that she feared returning to India due to the fact that police might again arrest and torture her. When asked if she was afraid of being harmed for refusing to marry her former fiancé, the applicant replied "No." *Asylum Interview Notes*, at 3, dated February 27, 2006. The applicant indicated that she was not afraid of anyone in India but police. *Id.* The applicant's asylum application was referred to Immigration Court on March 24, 2006 based on a finding that her claim was not credible.

The issues in the present proceeding are whether: (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.

Upon review, the applicant has not established that she has been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act. As noted above, the applicant has not provided primary evidence that she is a victim of a severe form of trafficking in persons, thus the AAO must rely on secondary evidence, including brief statements from the applicant and two police reports. However, the submitted evidence is not sufficient to show by a preponderance of the evidence that the applicant was a victim of human trafficking.

The applicant stated that she was induced to enter the United States pursuant to an arranged marriage, but that her former fiancé's family attempted to make her marry another man against her will. However, the applicant has not established that her former fiancé's family subjected her to, or intended to subject her to, involuntary servitude, peonage, debt bondage, or slavery.

Involuntary servitude, peonage, debt bondage, and slavery each involve a condition in which the victim is compelled to perform labor against her will. *See* 8 C.F.R. § 214.11(a). While the applicant indicated that her former fiancé's family held her against her will and attempted to control her movements, the applicant has not shown that they caused her to perform tasks that may serve as the basis for involuntary servitude, peonage, debt bondage, or slavery. The applicant has not described any labor that she performed in the United States. The record lacks sufficient evidence or explanation for the AAO to properly infer that the applicant's forced marriage to man other than her fiancé would have involved compulsory labor. Thus, the applicant has not shown that she has been the victim of involuntary servitude, peonage, debt bondage, or slavery, as contemplated by the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B).

The applicant has not asserted or shown that her former fiancé's family sought to cause her to engage in a commercial sex act. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(A). The applicant contends that her former fiancé's family attempted to make her marry another man against her will, yet she has not indicated that this arrangement involved a commercial transaction. Thus, the applicant has not established that she has been subjected to sex trafficking, as contemplated by the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(A).

Accordingly, the applicant has not shown that she has been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I).

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.

The applicant has not submitted sufficient evidence to establish that she would suffer extreme hardship involving unusual and severe harm should she be removed from the United States. Section 101(a)(15)(T)(i)(IV) of the Act. In the present proceeding, the applicant claims that she would be harmed by individuals connected to her former fiancé's family due to the fact that she reported them to police. However, in the applicant's asylum interview on February 27, 2006, she stated that she did not fear harm from anyone in India but police, and that she did not fear being harmed for anything in connection with not marrying her former fiancé. The applicant's statements made in the present proceeding are not consistent with statements she made in her asylum interview. The applicant has not provided that any events occurred between her asylum interview and her application for T status that would affect her fear of return to India. Further, in her application for asylum, the applicant asserted a strong fear of return to India due to her alleged prior arrests for political activity. However, the applicant has not stated in the present proceeding that she fears harm in India due to her prior activities there. These inconsistencies are material, as they call into question whether the applicant is at risk of harm in India by any individual, group, or government agent.

On appeal, the applicant expressed that she would experience hardship if her application is denied, as she depends on her husband for companionship and support. However, the applicant has not established that denial of the present application requires separation from her husband, as she has not shown that her husband can not relocate to India with her. Other than a marriage certificate, the record contains no documentation or information about the applicant's husband.

The applicant provided that she hopes to appear as a witness in criminal proceedings against her former fiancé's family, and that she is aware that an investigation is pending. However, the record does not contain evidence that an investigation is ongoing, or that the applicant has been or may be called to testify against her former fiancé's family.

The applicant explained that she would be subjected to social stigma if she returns to India, as she did not marry her former fiancé. Yet, the applicant did marry a man shortly after her arrival in the United States. The applicant has not established that she would be identified in India as someone who failed to marry her fiancé in the United States.

Based on the evidence of record, the applicant has not provided sufficient documentation to establish by a preponderance of the evidence that she would experience extreme hardship involving unusual and severe harm should she be removed from the United States. Section 101(a)(15)(T)(i)(IV) of the Act.

The center director found that the applicant failed to show that she has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. However, the applicant has provided reports from law enforcement to support that she made them aware of the events she described. The record does not reflect that law enforcement agents have requested the applicant's participation in an investigation effort, or that the applicant has refused such a request. Thus, the applicant has met the requirement of section 101(a)(15)(T)(i)(I) of the Act, and the center director's finding to the contrary will be withdrawn.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that: (1) she is a victim of a severe form of trafficking in persons; (2) her physical presence in the United States is on account of a severe form of human trafficking in persons, or; (3) she would suffer extreme hardship involving unusual and severe harm should she be removed. Section 101(a)(15)(T)(i) of the Act. Accordingly, the applicant has not shown that she 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.