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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] VERMONT SERVICE CENTER Date: FEB 01 2008

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:

[redacted]

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 China who was smuggled to the United States. She last attempted to enter the country on or about August 3, 2004 using a fraudulent passport. She was taken into custody for immigration violations. 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 May 23, 2005. On June 13, 2005, 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 November 7, 2005. 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, and; (2) her physical presence in the United States is on account of a severe form of trafficking in persons. *Id.*

On appeal, counsel for the applicant contends that the applicant was a victim of a severe form of trafficking in persons, and that the center director erred in requiring the applicant to conclusively prove her alleged traffickers intentions. *Form I-290B*, dated December 7, 2005. Counsel asserted that the district director found that the applicant failed to establish that her mother threatened her with physical restraint or abuse, when in fact the applicant did not make such an assertion. *Id.*

The record contains, in pertinent part, statements from the applicant; correspondence from counsel; letters from legal professionals, law students, and a congressional office in support of the applicant's application; documentation in connection with the applicant's prior application for asylum; statements from the applicant's mother, and; documentation associated with the applicant's 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 for 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 explained that her father was physically abusive to her and her mother, and that her mother sought to help her leave the household. *Statement from the Applicant*, at 5, dated May 16, 2005. The applicant stated that her mother and uncle made arrangements for her to be smuggled to the United States. *Id.* at 3. She indicated that she was not informed of the details of the arrangements, but that she believed that the smugglers would give her work in the United States so that she could pay their fees. *Id.* The applicant indicated that her smugglers did not tell her the precise fee for her passage to the United States, but that it was common knowledge in her village that passage by air would cost $50,000 to $60,000, thus she assumes she owes approximately $60,000. *Id.* at 2. The applicant explained that her cousin was smuggled into the United States by the same individuals due to her fear of persecution for activities with Falun Gong, and that her cousin still must makes payments to her smugglers despite the fact that she has been granted asylum. *Id.* at 3.

The applicant attempted to enter on November 8, 2003, yet she was removed through the expedited removal process. *Id.* at 5. The applicant stated that, although she did not successfully enter the United States, her mother and uncle still owed the smugglers payment for the costs of airline tickets and hotel rooms. *Id.*

The applicant provided that, upon her return to China, she was imprisoned for three months for leaving without government permission. *Id.* The applicant stated that two men associated with the smugglers came to their home and demanded money for her travel expenses, and destroyed furniture and searched the premises. *Id.* at 6. The applicant indicated that she had not informed her father that she was going to the United States, and that he beat her severely and threatened her if she tried to leave again. *Id.*

The applicant further explained that she was arrested for religious reasons in China, as she converted from Buddhism to Catholicism and attended Catholic services. *Id.*

The applicant stated that her father sold her to a man with the intention that she would become the man's third wife. *Id.* at 7. She reported this to police and initially received no assistance, then was imprisoned. *Id.* at 8. The applicant stated that the man who purchased her picked her up from the police station, and she ultimately escaped. *Id.*

The applicant explained that her uncle and mother again helped her make arrangements with smugglers to travel to the United States, and her aunt gave her $2,000. *Id.* at 9. The applicant traveled to Hong Kong where she was met by a man to arrange the remainder of her journey. *Id.* at 12. The applicant stated that the man "took [her] passport and travel documents so that [she] could not return to China without getting arrested." *Id.* The applicant stated that she was arrested when she arrived in the airport in Las Vegas, Nevada on August 3, 2004. *Id.* at 13.

The applicant indicated that she has met with agents of the U.S. Federal Bureau of Investigation (FBI) at least three times since her arrival, and that she is willing to work with law enforcement. *Id.* The applicant stated that she believes she will be harmed if she returns to China without repaying the smugglers. *Id.* at 14.

In a separate statement, the applicant described the abuse she suffered by her father. *Supplemental Statement from the Applicant*, dated September 20, 2005. The applicant explained that her mother borrowed a lot of money to help her, and that she does not know what will happen to her mother if the funds are not repaid. *Id.* at 2. The applicant fears that her mother's debtors will sell the applicant or make her do immoral things to make money for them. *Id.* The applicant stated that she fears she will be punished by the man who purchased her from her father should she return to China. *Id.* at 3.

The applicant stated that she feared that if she tried to flee her smugglers during her passage to the United States, they would have tried to sell her into prostitution. *Id.* at 4.

The applicant's mother stated that the applicant's father sold the applicant into marriage due to his gambling debts, which prompted the applicant to leave China. *Statement from Applicant's Mother*, dated September 7, 2005. The applicant's mother suggested that the applicant's father might sell the applicant again if she returns to China. *Id.* at 1.

The applicant's mother stated that representatives of the applicant's smugglers have visited her home "constantly" since the applicant left, and that they call her as well. *Second Statement from the Applicant's Mother*, dated September 2005. She indicated that she owes over $70,000, and that a man told her many times "You'd better give me the money. I'll kill you." *Id.* at 2. She stated that the smugglers will detain the applicant if she returns to China. *Id.*

The applicant provided an affidavit from a law student, [redacted] who participated in her representation. [redacted] recounted a telephone call with [redacted], in which [redacted] described her circumstances in the United States. *Statement from Collin Webster*, dated September 7, 2005. [redacted] worked for a Chinese restaurant in South Carolina for approximately 12 hours per day, six days per week, earning approximately $2,000 per month. *Id.* at 1. [redacted] indicated that she remitted approximately $1,500 of her wages to the individuals who smuggled her, and that she still owed approximately $20,000. *Id.*

at 2. obtained asylum through the help of her attorney, Li Da. *Id.* She indicated that she believed was also the applicant's attorney, and thus the applicant was destined for similar circumstances. *Id.* reported that she had written letters to the applicant while the applicant was in detention. *Id.*

The applicant was interviewed by FBI agents, and reported that is her cousin. The applicant recounted circumstances, and stated that receives room and board from her employers. *Notes from FBI Interview*, dated December 28, 2004. The applicant stated that she believed Ms. received her true passport back when she obtained asylum. *Id.* at 2. The applicant indicated that Ms. began working for a different restaurant that belongs to her relatives, and that she works under her true name. *Id.*

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 statements from the applicant and the applicant's mother. 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 explained that she was smuggled from China to the United States on two occasions. Although the applicant did not participate in organizing her travel to the United States, her statements support that she willingly followed the smuggling plan, as she wanted to leave China to escape her father's abuse and an unwanted marriage arranged by her father for his economic gain. The applicant never successfully entered the United States. The applicant further stated that she did not know what specific circumstances awaited her, or what were her smugglers' precise intentions. She explained that her cousin was smuggled to the United States, ostensibly by the same smugglers. The record reflects that the applicant's cousin works for and resides at a restaurant, and that she remits a substantial portion of her wages to her smugglers each month to repay her debt. The applicant indicated that she believed she would be in a similar arrangement, working at a restaurant to repay her smugglers' fees.

The record contains no evidence or explanation to suggest that the applicant's experience in the United States would have been different from her cousin's had she entered as planned. While the applicant's cousin's working conditions involved long hours, six days per week, she did not describe any instances in which her smugglers used of force, fraud, or coercion to keep her in a position of servitude. Likewise, the applicant has not established that her smugglers induced her to take, or intended to induce her to take, any actions against her will through the use of force, fraud, or coercion.

As quoted above, the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8), defines the term "severe forms of trafficking in persons" as "sex trafficking in which a commercial sex act is *induced by force, fraud, or coercion* . . . ," 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." Trafficking Victims Protection Act, 22 U.S.C. § 7102(8) (emphasis added). In the present matter, the record contains no indication that the applicant was induced to participate in the smuggling scheme against her will. The applicant was aware that she was incurring a large debt that would require labor in the United States to satisfy. The record contains no evidence that her smugglers

concealed their intentions for the applicant, such that she did not in fact consent to the scheme.[1] The applicant explained that she wanted to come to the United States, and that she assumed she would be working to repay her debt. The applicant's cousin's experiences suggest that the applicant's assumption was correct.

The fact that the applicant's cousin indicated that she still owed approximately $20,000 suggests that she was able to pay her debt down, and that her monthly payments were deducted from the total debt. Thus, the record suggests that, had the applicant's cousin found the means to repay her debt in a lump sum, she would have been freed from her obligations to the smugglers. The fact that the applicant's cousin began working at another restaurant owned by one of her relatives, even though she was still in the process of repaying her debt, supports that her smugglers were only interested in obtaining her payments, rather than in securing her labor or services. Accordingly, the applicant has not shown that her cousin's situation constituted debt bondage, or that the applicant's smugglers intended to hold her in debt bondage. 8 C.F.R. § 214.11(a).

The applicant stated that, during her travel to the United States, a smuggler took her passport and gave her a different one. She suggested that this was done to prevent her from returning to China, as she would be imprisoned if she returned without a passport. However, the applicant stated that she believed her cousin's passport was returned in the United States. The record further reflects that the applicant's passport was returned to her mother in China after her first attempt to enter the United States. As the applicant was being assigned a false identity, and she would be passing various inspections, it is reasonable that the applicant's smugglers collected her passport so that she would not be in possession of documentation of two conflicting identities. Considering the applicant's and her cousin's passports were returned, the applicant has not shown by a preponderance of the evidence that her passport was taken as a means to control her.

The applicant stated that she feared that if she tried to flee her smugglers during her passage to the United States, they would have tried to sell her into prostitution. However, the record contains no evidence or explanation that shows by a preponderance of the evidence that her smugglers had subjected others to prostitution, or that they contemplated selling the applicant.

The AAO acknowledges that the applicant has not claimed that her mother induced her to participate in the smuggling scheme, contrary to the center director's suggestion.

The center director found that the applicant failed to establish that her smugglers intended to subject her to involuntary servitude, peonage, debt bondage, slavery, or sex trafficking. The applicant provided statements from professionals who work on trafficking issues to support that the applicant does not bear the burden of providing conclusive evidence of her smugglers intent, and that the **applicant likely would have been** subjected to trafficking upon her arrival in the United States. ***Statement from*** , **dated** December 6, 2005; *Statement from* dated December 1, 2005; *Statement from* dated September 21, 2005; *Statement from Anne Gallagher*, dated September 20, 2005. However, the intentions of the applicant's smugglers are at issue in the present matter, as the applicant was not in fact

[1] It is noted that a willing participant in a smuggling scheme can later become a victim of trafficking in persons, particularly when the participant is placed into a position of servitude in the United States to which she did not agree or anticipate. However, when a individual has consented to a smuggling and employment scheme in all respects, and no elements of the scheme have changed without the individual's consent, the individual does not qualify as a victim of human trafficking, as her actions have not been induced by force, fraud, or coercion. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8).

subjected to involuntary servitude, peonage, debt bondage, slavery, or sex trafficking. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8). The intentions of the applicant's smugglers must be examined to assess whether they recruited, harbored, transported, provided, or obtained her for labor or services "*for the purpose* of subjection to involuntary servitude, peonage, debt bondage, or slavery." *Id.* Thus, the intentions of the applicant's smugglers are integral to determining whether the applicant satisfies section 7102(8) of the Trafficking Victims Protection Act.

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. Facts must be shown by a preponderance of the evidence, not by "conclusive proof." However, as discussed above, the applicant has not established that it was more likely than not that her smugglers intended to subject her to involuntary servitude, peonage, debt bondage, slavery, or sex trafficking. The applicant has not shown by a preponderance of the evidence that she was 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.

As noted above, 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.