U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

D12

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 31 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:

[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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The application for T nonimmigrant status was denied by the 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 November 26, 2002 pursuant to an H-2B visa. The applicant paid a fee to Falcon Steel Structures (Falcon), an American company that agreed to employ him in the United States. Falcon 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 an I-914, Application for T Nonimmigrant Status, on August 7, 2003. In a notice of intent to deny the application, dated December 12, 2003, the acting center director requested that the applicant submit additional evidence. No additional documentation was submitted, and the acting center director denied the application accordingly. *Decision of the Acting Center Director*, Vermont Service Center, dated March 15, 2004. The applicant did not appeal this decision.

The applicant filed a second I-914 application on October 6, 2004. On November 2, 2004, the acting center director issued a notice of intent to deny the application, requesting that the applicant provide additional evidence. The applicant 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 February 16, 2005.

On appeal, counsel contends that:

1) The applicant was brought to the United States by Falcon pursuant to an H-2B petition to work, yet Falcon had no capacity to employ the applicant and reduced him to a state of total dependency by subcontracting him out for temporary work at reduced wages;
2) Falcon controlled and coerced the applicant by threatening to have him imprisoned in the United States and/or India if he contested the company's actions;
3) The applicant borrowed a large sum of money and paid it to Falcon as compensation for arranging his employment in the United States. Fear of inability to repay this debt caused the applicant to comply with Falcon's instructions, and caused the applicant significant fear when threatened with return to India;
4) There is an active criminal investigation, and a pending civil lawsuit, which will not be pursued if the applicant is not protected and not permitted to work;
5) Falcon and its agents continue to threaten and interfere with the applicant and other men in the same situation through threats, and in at least one instance an attempted murder, and;
6) If the applicant is returned to India, he will be at risk of harm or death due to the inability to repay his creditors and the fact that he exposed his sponsors.

In support of the appeal, counsel submitted a letter. The AAO notes that counsel's letter refers to the appeal of 167 T visa denials and does not specifically discuss the applicant or his particular circumstances. On the Form I-290B appeal filed on March 21, 2005, counsel requested 60 days in which to submit a brief and/or additional evidence. As of the date of this decision, over nine months after the appeal was filed, the AAO has received no further documentation. Therefore, the record is considered complete.

On appeal, counsel requests oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. Counsel set forth no specific reasons why oral argument should be held. Consequently, the request for oral argument is denied.

In support of the most recently filed I-914 application, counsel submitted an affidavit from the applicant; a complaint filed in connection with a civil lawsuit; a transcript of a telephone conversation between the owner of Falcon and Falcon's attorney, and; newspaper articles that generally report on the applicant's situation. The entire record was reviewed and considered in rendering this decision.

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 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 he 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 CFR 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 granting the applicant continued presence in accordance with 28 CFR 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.

Counsel 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 counsel explain why one was not submitted. The applicant's Form I-914 indicates that his case has been referred to [redacted] of the Federal Bureau of Investigation in New Orleans, Louisiana. However, the record contains no evidence to document this claim. Accordingly, counsel has presented no primary evidence that the applicant was the victim of a severe form of trafficking in persons.

Counsel's letter submitted with the appeal consists of factual allegations without any legal analysis indicating which form of trafficking the applicant was subjected to. Because the applicant incurred a debt to pay Falcon to employ him, counsel is presumably asserting that Falcon subjected the applicant to debt bondage or involuntary servitude, the two types of trafficking that could potentially apply to the facts of this case.

The applicant submitted an affidavit dated April 12, 2004, in which he described his association with Falcon. In India, the applicant learned from a friend that Falcon was recruiting fitters and welders to work in the United States. He met with a representative of Falcon, and ultimately paid $12,000 to a man in India in exchange for a position. He obtained the necessary funds by pledging his property to a bank to secure a loan. The applicant stated that he arrived in New Orleans on November 26, 2002. The applicant came to realize that Falcon was not a manufacturer and lacked the ability to employ him. Falcon failed to employ him as agreed, and failed to assist him in obtaining other work. The applicant fears that he may be harmed if he returns to India, as he still owes a significant sum of money. The applicant further fears that he may be harmed due to the fact that he and other workers exposed a wealthy Indian businessman who participated in the fraud perpetrated upon him.

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 Falcon subjected him to debt bondage. The applicant borrowed money from a bank in India unrelated to Falcon and used the money to pay a fee to Falcon. The applicant's debt is owed to the bank in India, not to Falcon. Accordingly, the applicant did not pledge his personal services to Falcon 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 Falcon to pay back his debt. 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 Falcon subjected him to involuntary servitude. The applicant was not forced to work for Falcon by the use or threat of physical restraint or physical restraint or physical injury, or

by the use or threat of coercion through law or legal process. In fact, the applicant agreed to work for Falcon and was refused employment.

Counsel submitted a copy of a complaint from a civil lawsuit that was filed on June 14, 2004 against Falcon and other defendants. The complaint's factual allegations were prepared by counsel and do not constitute evidence, nor do they establish that the applicant was a victim of a severe form of trafficking in persons. Count I of the complaint addresses the cause of action for human trafficking. However, counsel merely quotes the definition of human trafficking without analyzing how the facts of the case meet the definition.

The record does not establish that Falcon subjected the applicant to debt bondage or involuntary servitude. Accordingly, the AAO concludes that the applicant was not a victim of a severe form of trafficking in persons. Because the applicant failed to meet the first of the four trafficking requirements cited above, the AAO finds no cause in assessing whether he meets the remaining requirements.

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.