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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D 12

[redacted]

DATE: JUL 20 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for T Nonimmigrant Status under Section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for T nonimmigrant status (Form I-914) was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons.

The director denied the application because the applicant departed from the United States and failed to establish that his reentry was the result of his continued victimization or a new incident of a severe form of trafficking in persons. On appeal, the applicant, through counsel, submits a Form I-290B, Notice of Appeal or Motion that contains a statement. Counsel indicated on the Form I-290B that a brief or additional evidence would be submitted to the AAO within 30 days, or by February 10, 2011. As of this date, however, no supplemental evidence has been received and we consider the record complete.

Applicable Law

Section 101(a)(15)(T)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she is:

> subject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, 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 . . on account of such trafficking . . .;
>
> (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;
>
> * * *
>
> and
>
> (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal [.]

Section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), codified at 22 U.S.C. § 7102(8), defines the term "severe forms of trafficking in persons" as:

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 regulation at 8 C.F.R. § 214.11 also provides specific evidentiary guidelines and states, in pertinent part:

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. Specifically, the physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.

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(3) *Departure from the United States.* An alien who has voluntarily left (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien's reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

(i) *Evidence of extreme hardship involving unusual and severe harm upon removal.* To be eligible for T-1 nonimmigrant status . . . an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(1) *Standard.* [A] finding of extreme hardship involving unusual and severe harm may not be based upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities. Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should take into account both traditional extreme hardship factors and those factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to, the following:

(i) The age and personal circumstances of the applicant;

(ii) Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;

(iii) The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;

(iv) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;

(v) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;

(vi) The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;

(vii) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and

(viii) The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.

(2) *Evidence.* An applicant is encouraged to describe and document all factors that may be relevant to his or her case, since there is no guarantee that a particular reason or reasons will result in a finding that removal would cause extreme hardship involving unusual and severe harm to the applicant. Hardship to persons other than the alien victim of a severe form of trafficking in persons cannot be considered in determining whether an applicant would suffer extreme hardship involving unusual and severe harm.

The burden of proof is on the petitioner to demonstrate eligibility for T nonimmigrant classification. 8 C.F.R. § 214.11(l)(2). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *see also* 8 C.F.R. § 214.11(l)(1).

Factual and Procedural Background

The applicant is a native and citizen of India, who filed his Form I-914 on October 22, 2009. On October 30, 2009, the director issued a Request for Evidence (RFE) regarding the applicant's claim

to having been a victim of a severe form of trafficking in persons. The applicant responded to the RFE with additional evidence, and on August 30, 2010, the director issued a Notice of Intent to Deny (NOID) the application, which informed the applicant of the deficiencies in the record. The applicant responded to the NOID with additional evidence that the director found insufficient to establish the applicant's eligibility for T nonimmigrant status. The director denied the petition, finding that the applicant had departed from the United States and failed to establish that his reentry was the result of his continued victimization or a new incident of a severe form of trafficking in persons. The applicant, through counsel, has timely appealed the director's decision through the filing of a Form I-290B, Notice of Appeal or Motion. Upon review of the entire record, the applicant has failed to establish his eligibility for T nonimmigrant status under section 101(a)(15)(T)(i) of the Act.

The Applicant is not Present in the United States on Account of Trafficking

The applicant has not shown that his continued presence in the United States is directly related to the original trafficking or is on account of a new incident of a severe form of trafficking in persons, as required by section 101(a)(15)(i)(II) of the Act and explicated in the regulation at 8 C.F.R. § 214.11(g).

According to records of U.S. Citizenship and Immigration Services (USCIS), the applicant initially received an advance parole document (Form I-512) in February 2008. USCIS records also indicate that the applicant utilized his advance parole document for entry into the United States in July 2008. In response to the director's RFE, the applicant stated that individuals whom he identified as [redacted] were threatening his family in India, so he asked his employer, [redacted], for emergency leave so that he could tend to his family's safety. The applicant stated: "I was able to go to India but I would have to return to [redacted]. . . ." According to the applicant, he became in debt due to his traffickers and those individuals associated with them and that "they understand we would have to stay with them and do as they say [because] they knew our families were at risk if we didn't."

In his NOID, the director asked the applicant to clarify the purpose of his visit to India and to demonstrate that his reentry was either a continuation of his original trafficking or a new incident of trafficking. In a statement, the applicant asserted that he traveled to India in March 2008 to renegotiate his loan with a bank, and that [redacted] gave him permission to take leave. The applicant also asserted that [redacted] agreed that he could resume working with the company upon his return from his trip overseas. The applicant stated that when he returned in July 2008, [redacted] told him that it did not have a suitable job placement for him but that he should return whenever [redacted] called him for future work. According to the applicant, he agreed with those terms and left [redacted] employ.

On appeal, counsel states that it is irrelevant that the applicant returned to India because the traffickers arranged the applicant's reentry into the United States and continued his victimization; however, the record does not support such assertions.

The applicant has presented no probative testimony or other evidence that his reentry into the United States in July 2008 was arranged by his original traffickers or constituted a continuing or new incident of a severe form of trafficking in persons. The applicant's statement in response to the RFE that he "would have to return to [redacted] after his trip overseas is contradicted by his declaration in response to the NOID in which he testified that [redacted] would not hire him back after his overseas trip because it did not have a suitable job placement for him. Thus, the applicant's testimony, which indicates that [redacted] was no longer interested in retaining his services after his return to the United States, fails to demonstrate that his reentry in July 2008 was a continuation of his original trafficking or a new incident of a severe form of trafficking in persons. Consequently, the applicant has not demonstrated that his continued presence in the United States is directly related to his original trafficking or a new incident of a severe form of trafficking in persons, as required by section 101(a)(15)(i)(II) of the Act and explicated in the regulation at 8 C.F.R. § 214.11(g).

The Applicant Would Not Be Subjected to Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Beyond the director's decision, the relevant evidence does not demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon removal as required by section 101(a)(15)(Y)(i)(IV) of the Act and as explicated at 8 C.F.R. § 214.11(i).

In his October 3, 2009 declaration, the applicant stated that he feared retaliation by the recruiters in India because he has heard that one of the recruiters has ties to the Indian "Mob." The applicant stated further that he has suffered physical and mental trauma, he is in debt, and he will be unable to find work in India to repay the loans he took out to pay for his trip to the United States. The applicant also claimed that he needed to remain in the United States so that he could participate in a lawsuit that was filed in the District Court for the Eastern District of Louisiana against his traffickers. In response to the NOID, the applicant also claimed that he is participating in an ongoing U.S. Department of Justice (USDOJ) criminal investigation regarding his trafficking.

The evidence fails to establish that the applicant would experience extreme hardship involving unusual or severe harm if he were to return to the India. Although the applicant fears retaliation by the recruiters in India, he does not allege that any contacts with or threats against him were made by the recruiters when he was in India, or otherwise testify regarding threats against his family.

The applicant maintains that he has experienced physical and mental trauma, but fails to describe the trauma in any probative detail, and the record does not contain any indication that the applicant suffered from serious physical or mental illness that necessitated medical or psychological attention. Although the applicant states that he needs to remain in the United States because he is a witness in an ongoing lawsuit against his traffickers and he is required to participate in an ongoing criminal investigation conducted by USDOJ, the applicant has not presented any evidence that he is a cooperating witness in any criminal or civil litigation. The applicant also has presented no testimony to establish that he would be penalized by the government of India for having been trafficked or that he faces a significant risk of revictimization. Accordingly, the evidence does not establish that the

applicant would face extreme hardship involving unusual or severe harm upon return to India, as required by section 101(a)(15)(T)(i)(IV) of the Act.

Conclusion

As in all visa classification proceedings, the applicant bears the burden of proof to establish his eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.