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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

D12

[redacted]

DATE: JUL 21 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:

SELF-REPRESENTED

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.[1] On appeal, the applicant submits a statement and additional evidence.

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:

---

[1] The director also noted in the denial letter that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act and had not applied for an inadmissibility waiver. The director, however, failed to notify the applicant of his inadmissibility and the necessity to file a waiver application under 8 C.F.R. § 214.11(j) when issuing the Notice of Intent to Deny the application in March 2010.

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.
>
> ***
>
> (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.
>
> (h) *Compliance with reasonable requests from a law enforcement agency for assistance in the investigation or prosecution.* Except as provided in paragraph (h)(3) of this section, the applicant must submit evidence that fully establishes that he or she has complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. . . .
>
> ***
>
> (2) *Secondary evidence of compliance with law enforcement requests; Affidavits.* Credible secondary evidence and affidavits may be submitted to show the nonexistence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant comply with any reasonable request for assistance in the investigation or prosecution of that severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant that indicates the reason the LEA endorsement does not exist or is unavailable, and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence must show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons

has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime at the time, why the crime was not previously reported. 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. 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. Applicants are encouraged to describe and document all applicable factors, since there is no guarantee that a particular reason will result in a finding that the applicant has complied with reasonable requests. An applicant who never has had contact with an LEA regarding the acts of severe forms of trafficking in persons will not be eligible for T-1 nonimmigrant status.

(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 26, 2009. On March 24, 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 has timely appealed the director's decision through the filing of a Form I-290B, Notice of Appeal or Motion and additional evidence. 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 a new incident of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act and explicated in the regulation at 8 C.F.R. § 214.11(g).

The record contains the applicant's advance parole document (Form I-512) that he utilized to return to the United States in July 2008 after his trip to India for medical reasons. The regulation at 8 C.F.R.

§ 214.11(g)(3) specifies that an alien who has voluntarily left the United States shall be deemed not to be present in the United States as a result of 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.

In his initial declaration, dated October 3, 2009, the applicant claimed that he worked for [redacted] upon his arrival in the United States in H-2B status in December 2006, while [redacted] was sponsoring him for his lawful permanent residence status, a process that began while the applicant was still in India. According to the applicant, in approximately September 2007, he "snuck" away from Signal to work for [redacted] told him that he must work for the company if he wanted [redacted] to continue sponsoring him for status as a lawful permanent resident.

In the applicant's April 17, 2010 declaration, he reiterated his employment with [redacted] and added further that in April 2008, [redacted] assigned him to work at a different site. The applicant stated that shortly thereafter, he asked [redacted] for medical leave so that he could return to India for surgery; however, [redacted] told him that it would stop sponsoring his permanent residency status if he failed to appear for work. The applicant stated that he left for India in May 2008 and returned to the United States in July 2008.[2] He further provided that [redacted] withdrew its sponsorship of his lawful permanent residence status.

The applicant's declaration that he submits on appeal, as well as the supporting evidence he provides, introduces inconsistencies into the record regarding the work history that he claimed in his October 2009 and April 2010 declarations. According to the applicant's appellate declaration, when he left for India in May 2008, he had received two months of medical leave from [redacted], which contradicts his April 2010 declaration wherein he stated that he left [redacted] in September 2007 and had asked for [redacted] permission to travel to India in May 2008. Further introducing inconsistencies into the record are two letters from [redacted]. In a May 16, 2008 letter, [redacted] verifies that the applicant "is currently employed with Signal [redacted]." In a May 21, 2008 letter to the applicant, [redacted] notifies the applicant that he has not appeared for work due to an illness and requests medical certification of his illness. These two letters from [redacted] also contradict the applicant's claim of sneaking away from [redacted] in September 2007 to work for [redacted]. The applicant has not explained why [redacted] would state that the applicant was a current employee in May 16, 2008 when he claimed to have snuck away from the [redacted] work site to join [redacted] in 2007. Given these contradictions, the record is inconsistent regarding who the petitioner worked for at the time he left the United States to return to India in 2008 and whether or not he was granted permission to leave by his employer.

Even disregarding the inconsistencies in the record concerning the applicant's employment, it is clear that the applicant voluntarily traveled to India for surgery and voluntarily returned to the United States when he had recuperated. The applicant stated in his April 2010 declaration that he borrowed money from friends to buy his plane ticket and the evidence shows that he utilized his advance parole document for his reentry into the United States. The applicant has presented no

[2] The applicant was issued an advance parole document (Form I-512) on December 31, 2007 that he utilized for his return to the United States on July 5, 2008.

evidence that his return to the United States in July 2008 was arranged by Signal, its associates, or a new trafficker. Consequently, the applicant has not demonstrated that his continued presence in the United States is directly related to his original trafficking or is a new incident of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act and explicated in the regulation at 8 C.F.R. § 214.11(g).

The Applicant has Not Complied with Reasonable Requests for Assistance in the Investigation or Prosecution of Acts of Severe Forms of Trafficking in Persons

Beyond the director's decision[3], the applicant has failed to demonstrate that he contacted a law enforcement agency (LEA) to report his status as a trafficking victim. In his October 3, 2009 declaration, the applicant stated that he reported himself to the U.S. Department of Justice (USDOJ) as a victim of trafficking and that he is a potential witness in a U.S. Equal Employment Opportunity Commission (EEOC) investigation. In response to the director's NOID, the applicant submitted a copy of a letter from a USDOJ prosecutor to establish his helpfulness to law enforcement personnel in pursuing traffickers; however, this letter, dated April 10, 2009, does not reference the applicant by name or contain any indication that it was written on the applicant's behalf.

The regulation at 8 C.F.R. § 214.11(h) requires the submission of evidence from an LEA or credible secondary evidence to establish that an applicant has complied with reasonable requests for law enforcement assistance, and states further that an applicant who never has had contact with a law enforcement entity regarding the acts of severe forms of trafficking in persons will not be eligible for T nonimmigrant status. 8 C.F.R. § 214.11(h)(2). Here, although he claims to have contacted both USDOJ and the EEOC, the applicant has not provided any information about how and when he contacted these two entities, whether he requested an LEA endorsement from either entity, and why an LEA endorsement was not provided. Without probative details regarding how and when the applicant reported himself as a trafficking victim to USDOJ, the EEOC, or any other LEA, he cannot establish his eligibility for T nonimmigrant status under section 101(a)(15)(T)(i)(III) of the Act.

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

Also 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)(T)(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

---

[3] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

stated further that he has suffered physical and mental trauma, he is in debt, and that he has brought shame upon his family. 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. On appeal, the applicant reiterates that he will face severe hardship if he is deported to India and he may become suicidal.

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 expresses fear of 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 for two months, 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. We note the applicant's trip to India for surgery; however, from the scant documentation provided, we are unable to ascertain the underlying bases for the surgery and there is no evidence to suggest that it was related to the applicant having been trafficked.

Although the applicant states that he needs to remain in the United States to pursue redress or restitution through the U.S. justice system, he has not provided any evidence that he is a party to a lawsuit against [redacted] or that he would be unable to pursue any claims while in the India. 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.