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

U.S. Citizenship
and Immigration
Services

B12

DATE: AUG 17 2012 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Director, Vermont Service Center, ("the director") denied the application for T nonimmigrant status and the Administrative Appeals Office (AAO) initially dismissed the applicant's appeal. The AAO subsequently reopened the matter. The appeal will remain dismissed.

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.

Procedural History

The applicant filed this Form I-914 on January 19, 2010. The director subsequently issued a request for evidence (RFE) of the applicant's victimization and resultant physical presence in the United States. The director found former counsel's response to the RFE insufficient to establish the applicant's eligibility and denied the application on November 9, 2010 for failure to establish that the applicant was a victim of a severe form of trafficking in persons and was present in the United States on account of such trafficking.

The AAO issued a RFE on October 4, 2011 regarding the applicant's physical presence in the United States on account of his trafficking. After receiving no response to the RFE, the AAO dismissed the appeal on April 20, 2012, determining that the applicant had established that he was a victim of trafficking, but failed to demonstrate that he is physically present in the United States on account of such trafficking. On June 27, 2012, the AAO reopened the matter upon receipt of a letter from counsel explaining that her office had mistakenly sent the RFE response to the Vermont Service Center instead of the AAO. The AAO reopened the matter to consider counsel's RFE response, consisting of a letter brief, a supplemental statement from the applicant, copies of non-precedent AAO decisions in other T cases and a copy of a December 20, 2011 letter from law professors. Upon reopening, the AAO also granted counsel a third opportunity to submit a brief. On July 30, 2012, counsel submitted a two-page letter. The AAO reviews these proceedings *de novo*. 8 C.F.R. § 214.11(l)(1). *See also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has still not demonstrated that he is physically present in the United States on account of his trafficking and the appeal will remain dismissed.

Applicable Law

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 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, including physical presence on account of the alien having been allowed entry into the United States

> for participation in investigative or judicial processes associated with an act or a perpetrator of 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) and incorporated into the regulation at 8 C.F.R. § 214.11(a), defines the term "severe forms of trafficking in persons" as, in pertinent part:

> 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(g) prescribes the evidentiary burden to establish the physical presence requirement at section 101(a)(15)(T)(i)(II) of the Act and states, in pertinent part:

> [T]he 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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> * * *
>
> (2) *Opportunity to depart.* If the alien has escaped the traffickers before law enforcement became involved in the matter, he or she must show that he or she did not have a clear chance to leave the United States in the interim. The Service will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. Information relevant to this determination may include, but is not limited to, circumstances attributable to the trafficking in persons situation, such as trauma, injury, lack of resources, or travel documents that have been seized by the traffickers. This determination may reach both those who entered the United States lawfully and those who entered without being admitted or paroled. The Service will consider all evidence presented to determine the physical presence requirement, including asking the alien to answer questions on Form I-914, about when he or she escaped from the trafficker, what activities he or she has undertaken since that time, including the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States.

The regulation at 8 C.F.R. § 214.11(l) prescribes, in pertinent part, the standard of review and the applicant's burden of proof in these proceedings:

> (1) *De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T

nonimmigrant status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

Pertinent Facts

The applicant is a citizen of India who entered the United States on March 29, 2007 as the beneficiary of a temporary worker's visa (H2B) filed by Signal International (Signal). In his December 16, 2009 statement submitted below, the applicant provided the following account of his journey to the United States. In February 2007 when he was working in his native [redacted] as a pipe fitter, the petitioner first contacted an associate of [redacted] in response to an advertisement for pipe fitters to obtain employment and "green cards" in the United States. The [redacted] associate told the applicant that he would be hired by Signal and would go to the United States on an H2B visa and that Signal would process his "green card" after his arrival. To start the process, the associate told the applicant he would have to pay approximately [redacted] after which he would attend a visa interview. To pay the initial fee, the applicant borrowed approximately [redacted] from a private money lender at a six percent monthly interest rate, got a loan of approximately [redacted] from his boss and sold his mother's jewelry for approximately [redacted]

After the applicant paid the initial fee, he took and passed a practical test and attended a visa interview on February 22, 2007. Prior to the interview, the [redacted] associate told the applicant not to tell the consular officer that he had paid money to obtain the opportunity to go to the United States. The day after the applicant's visa was granted, the [redacted] associate told the applicant that he would have to pay an additional sum of approximately [redacted] To obtain these funds, the applicant's parents sold their land for approximately [redacted] the applicant pawned his sister-in-law's jewelry for approximately [redacted] he borrowed an additional [redacted] from the original money lender at a six percent monthly interest rate and borrowed approximately [redacted] from another money lender at a nine percent monthly interest rate, and obtained a loan of approximately [redacted] from one of his customers. On or about March 25, 2007, the applicant flew to [redacted] paid his last installment to [redacted] and was given his airline ticket, passport and other documents. The night before his departure, the [redacted] associate told the applicant that there was a labor problem in the United States, but that the owner of [redacted] would resolve it.

Upon his arrival in Chicago on March 29, 2007, the applicant called the [redacted] who told him that he could not work for Signal because the labor problems at the company had not been resolved. The applicant realized he had been cheated and recounted his ensuing disappointment and confusion. The applicant stayed in [redacted] for about three months and then went to [redacted] in June 2007 to join a friend. Several months later, the applicant and his friend attended a meeting in Texas organized by a charitable organization that was helping workers recruited by Signal. After the meeting, the applicant relocated to [redacted] where he stayed with some acquaintances. The applicant stated that he reported himself as a trafficking victim to a law enforcement agency on or about March 6, 2008, nearly a year after his arrival in the United States.

Physical Presence in the United States on Account of Trafficking

The record indicates that after he left India, the applicant had no contact with Signal and no further contact with [redacted] apart from one telephone call shortly after his arrival in the United States. To meet the physical presence requirement, individuals such as the applicant who escaped their traffickers before law enforcement became involved must show that they did not have a clear chance to leave the United States in the interim. 8 C.F.R. § 214.11(g)(2).

In his initial statement submitted below and his additional declaration submitted on appeal, the applicant expressed his fear and anger upon arriving in the United States and learning that [redacted] and Signal had cheated him. He recounted that he was unable to return to India during the relevant period because he did not have enough money to purchase an airline ticket, he and his family would face danger if he returned without repaying his debts, he had difficulty conversing in English, and he was unaware of his legal rights in the United States. The applicant explained that his income as a pipe fitter in India would not suffice to repay his loans and the money lenders would harm him and kick his family out of their home. The applicant reported that from August 2007 to approximately September 2011, the money lenders "approached" his family in India every month to see when he would pay back his loans. The applicant further recounted that during the relevant period, he had trouble sleeping at night and concentrating during the day. The applicant also explained that before he met his current lawyers, he was afraid the police would not help him and he was unaware of how to declare himself to government authorities.

The record does not fully support the applicant's claims. In his first affidavit, the applicant stated that after his arrival in the United States, he stayed in [redacted] for three months, then stayed with a friend in [redacted] for a few months and then "relocated to Ingleside, Texas . . . and started living with some guys in Ingleside." In his supplemental declaration, the applicant stated that he had paid off some of his loans, but that during the applicable period, he could not make any loan payments because he was barely surviving. Despite two opportunities to supplement his testimony on appeal, the applicant has failed to fully discuss his activities during the year he spent in the United States before reporting his trafficking to DOJ. The applicant has provided no probative explanation of how he supported himself during the applicable period. While the applicant's physical and mental health was undoubtedly affected by his inability to work for Signal upon his arrival in the United States and his realization that he had been cheated by [redacted] the record indicates that during the relevant period, he supported himself and retained possession of his passport and Form I-94 entry and departure document.

The applicant expressed fear of returning to India without having repaid his debt, but he failed to describe any particular incident of harassment or other harm that the money lenders caused or threatened to inflict upon him or his family during the relevant period. In his first affidavit, the applicant stated, "My lenders have already harassed and threatened my family back home," but the applicant described no particular incident of such harassment or threats. In his second affidavit submitted on appeal, the applicant reported that his family was "approached on a bi-weekly to monthly basis by the private lenders to see when I will pay back all my loans." Again, the applicant did not describe any such visit in detail and did not indicate that any actual or threatened harm was inflicted upon the petitioner's family during any such visit. In her July 27, 2012 letter, counsel also asserts that the applicant's "father has been threatened by money lenders," although the applicant

himself does not discuss any threats specifically made against his father in either of his affidavits.[1] Counsel also submitted an expert affidavit by [redacted] regarding the social and psychological costs of debts incurred by international laborers from India. However, the applicant has not shown that he or his family was subjected to or faced physical harm or the specific types of social humiliation described by [redacted] during the period in question. In addition, while [redacted] discusses the particularly dire impact of debt burdens and unemployment in [redacted], he does not specifically address the circumstances of skilled workers from the applicant's home state of [redacted]

On appeal, counsel claims that the applicant did not have a clear chance to leave the United States before law enforcement became involved in the matter because it "reasonably took the Applicant eleven months to overcome his fear, to locate and consult with pro bono counsel, and to assert his rights." In their joint letter, the law professors claim that lack of a reasonable opportunity to report to law enforcement should be sufficient to show that an applicant did not have a clear chance to depart the United States. However, the issue is not how long it took the applicant to report his trafficking to law enforcement authorities or if the delay was reasonable, but whether he had a clear chance to leave the United States after he escaped his traffickers and before law enforcement became involved. There are many reasons why trafficking victims do not initially report their circumstances to law enforcement agencies. As both counsel and the law professors note, there is no filing deadline for T nonimmigrant status for victims who have escaped their traffickers. In addition to cultural and linguistic barriers and fears of reprisal or other serious harm, many victims are unaware of the laws in the United States that could protect them.[2] In this case, the applicant credibly explained his reasons for not reporting himself as a trafficking victim until 11 months after his arrival in the United States. Those reasons are not at issue in this proceeding.

The law professors also claim that USCIS should find that applicants who meet the extreme hardship requirement of subsection 101(a)(15)(T)(i)(IV) of the Act also meet the physical presence requirement of subsection 101(a)(15)(T)(i)(II) of the Act. Their letter states:

> If the T visa applicant demonstrates that he or she is present in the United States due to a reasonable fear of extreme hardship upon departure, USCIS should conclude that the victim is physically present on account of trafficking and did not have a clear chance to leave the United States after escaping the trafficking situation.

In her July 27, 2012 letter, counsel also asserts that the opportunity to depart determination should consider an applicant's "reasonable avoidance of future harms." Counsel states that the "AAO should recognize that interpreting 'clear chance to depart' as requiring [the applicant] to depart into

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[1] The unsupported assertions of counsel on appeal are not evidence and are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

[2] *See* 22 U.S.C. § 7101(b)(20) ("victims of trafficking are frequently unfamiliar with the laws . . . of the countries into which they have been trafficked . . . ."). *See also* T Nonimmigrant Status Interim Rule, 67 Fed. Reg. 4784 (Jan. 31, 2002) (noting the reluctance of victims without legal status in the United States to cooperate with law enforcement).

this extreme hardship would contradict Congressional concern about victim[s'] safety in reintegrating into society in their home countries." The physical presence and extreme hardship elements are distinct statutory requirements for T nonimmigrant classification that must be demonstrated independently. While some evidence may be relevant to both determinations, the applicant bears the burden to "submit evidence that fully establishes eligibility for each element of the T nonimmigrant status." 8 C.F.R. § 214.11(f). *See also* 8 C.F.R. § 214.11(l)(2) ("the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility"). Moreover, the situation of extreme hardship in this case arose *after* the period in question. As explained in his RFE, the director determined that the applicant established the requisite extreme hardship because of his participation as a potential class member in the civil litigation against Signal and [redacted] and the applicant's resultant fear of retaliation from [redacted] and his associates if he was subsequently removed to [redacted] These circumstances arose after the applicant reported his trafficking to law enforcement and are not relevant to whether he had a clear chance to depart the United States before that time.

The preponderance of the evidence shows that the applicant had a clear chance to depart the United States before he reported himself as a trafficking victim to the U.S. Department of Justice. The record shows that at the time of his arrival, the applicant was 28 years old and unmarried. Although he recounted feeling "terrified, sad and angry" upon realizing that he would not be working for Signal and had been cheated by [redacted] the record lacks sufficient evidence that the applicant suffered physical or psychological trauma or injury during this time. The evidence also shows that the applicant retained his travel documents upon his departure from India and lived with acquaintances and friends in [redacted] during the applicable period. While the applicant recounted his fear of returning to [redacted] without having repaid his debts, the record lacks sufficient evidence that the applicant's personal circumstances prevented his return during this time.

In sum, the record shows that the applicant escaped his traffickers before law enforcement became involved and the applicant has failed to demonstrate that he did not have a clear chance to leave the United States in the interim under the standard and factors explicated in the regulation at 8 C.F.R. § 214.11(g)(2). Consequently, the applicant has not established that he is physically present in the United States on account of trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

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[3] The civil litigation against [redacted] and other defendants was filed in 2008 and sought certification of a class of all Indian workers who were recruited by one or more of the defendants and who entered the United States at any time through September 30, 2007, pursuant to an H2B visa obtained by Signal. The court subsequently denied the plaintiffs' motions for class certification. *David v. Signal International*, No. 08-1220 (E.D. La. Jan. 4, 2012).

Conclusion

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). On appeal, the applicant has shown that he was a victim of a severe form of trafficking in persons in the past, but he has not demonstrated that he is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act. Consequently, the appeal will remain dismissed and the application will remain denied.

ORDER: The appeal remains dismissed.