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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



D12

FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 15 2006

IN RE:

Applicant:



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:



PUBLIC COPY

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, Director
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 Korea who last entered the United States on or about April 25, 2003 without inspection. The applicant provides that she traveled to the United States pursuant to an agreement that she would be given a position as a waitress or bartender in a restaurant. However, she states that she became a victim of human trafficking, as she was forced to serve as a prostitute under debt bondage and threat of physical harm. 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 July 2, 2004. On August 3, 2004, the center director issued a Form I-917, Notice of Action, requesting that the applicant provide additional evidence to support her application. The applicant provided additional documentation, yet the center director found that the applicant failed to overcome the issues addressed in the Notice of Action. On December 6, 2004, the center director issued a letter notifying the applicant of Citizenship and Immigration Services' (CIS) intent to deny the application, and affording the applicant 60 days to provide additional evidence. The applicant again 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 March 21, 2005. Specifically, the director found that the applicant failed to show that: (1) the applicant is a victim of a severe form of trafficking in persons; (2) the applicant's physical presence in the United States is on account of a severe form of human trafficking in persons; (3) the applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, and; (4) the applicant would suffer extreme hardship involving unusual and severe harm upon removal.

On appeal, counsel for the applicant contends that the applicant meets the requirements for T classification. *Brief in Support of Appeal*, dated April 19, 2005. Counsel asserts that the center director failed to properly review the applicant's evidence, and that the denial was an abuse of discretion. *Counsel's Statement on Form I-290B*, received April 22, 2005.

The record contains statements from the applicant and counsel in support of the Form I-914 application, in response to the center director's request for evidence, in response to the center director's notice of intent to deny, and in support of the appeal; a statement from counsel attesting that he notified an agent of the Federal Bureau of Investigation (FBI) of the applicant's situation and willingness to cooperate with investigators; a foreign language document without an English translation; a copy of the applicant's Korean passport; documentation of the applicant's arrest in Los Angeles County for acting as a Masseuse without a permit; a letter from [REDACTED] M.D., attesting that he provided psychiatric treatment for the applicant, and; reports and studies regarding prostitution, human trafficking, and related conditions in Korea. 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 form 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.

The applicant 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 she explain why one was not submitted as required by Form I-914. The applicant further did not provide documentation from CIS granting her continued presence in accordance with 28 C.F.R. § 1100.35. Thus, the applicant has presented no primary evidence that she has been the victim of a severe form of trafficking in persons.

As secondary evidence, the applicant submitted three affidavits in which she explains that she was coerced into acting as a prostitute. She provides that she entered into a contract with an employment agency in Korea in which she agreed to incur a debt of \$10,000 in exchange for passage to the United States and a position as a waitress or bartender in a restaurant. She arrived in the United States on or about April 25, 2003. She states that upon her entry she was taken to a boarding house in Los Angeles, California, where she was informed that she would be working as a prostitute in order to repay her debt. She explains that she tried to leave, but she was forcibly stopped and threatened with death if she attempted to flee. The applicant provides that she worked in massage parlors in the Los Angeles area, where she was regularly sexually and verbally abused. She states that her captors caused her to believe that law enforcement officers supported their operation, and that she could not obtain help from police. The applicant explains that law enforcement officers raided an establishment where she was working on June 25, 2003, and she was arrested. She subsequently escaped her captors with the help of her boyfriend. She has resided with her boyfriend in Georgia since July 2003, and he is her sole source of support. The applicant states that she constantly fears someone is watching her and that she will be killed, and she can't leave her home by herself.

Upon review, the applicant has not established that she has been the victim of a severe form of trafficking in persons. The applicant's statements, by themselves, are not sufficient evidence to show that she has been the victim of trafficking in persons. Although the center director requested additional detail in his notice of action and notice of intent to deny the application, the applicant has failed to adequately supplement the

record. For example, the applicant has declined to provide the names or number of her alleged captors, the specific locations where she was forced to engage in prostitution, where she resided during the described ordeal, how she escaped to Georgia, or whether she has had contact with her captors since she fled. In his notice of intent to deny the application, the center director requested that the applicant specify who possessed her travel documents while she was held captive, yet she failed to respond. The applicant stated that she contacted the Trafficking in Persons and Worker Exploitation Task Force Complaint Line, yet she did not state when this occurred, or whether she received assistance or follow-up contact.

Further, the applicant's three statements contain ambiguity. For example, in the applicant's initial statement submitted with her Form I-914 application, she described events when she first learned that her captors intended for her to become a prostitute. *Applicant's Statement Submitted in Support of Form I-914*, dated June 25, 2004. She stated that, once a man informed her that she had no choice but to work at a massage parlor performing sexual acts, she "figured [she] had no other choice because [she] had nowhere to go, no one to turn to for help, and [she] needed money to send to [her] father." *Id.* at 2. The applicant made no reference to violence committed against her or other women in her situation. In her statement submitted in response to the director's notice of action, the applicant explained that, once she arrived at a "safehouse" in the United States and learned she was to be a prostitute, a large man beat and raped one of her roommates because she didn't want to work, yet he did not rape or beat the applicant. *Applicant's Statement Submitted in Response to Notice of Action*, dated October 28, 2004. In her statement submitted on appeal, the applicant asserts that, once she was told she would be a prostitute, she tried to leave but "was threatened," "physically stopped," and "told that if she tried to escape [she] would be killed." *Applicant's Statement Submitted in Response to Notice of Action*, dated October 28, 2004." *Applicant's Statement Submitted in Support of Appeal*, dated May 12, 2005.

Thus, the applicant's initial statement implies that she complied with her captors without incident, while her final statement provides that she resisted and was physically subdued. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The ambiguity in the applicant's statements weakens their evidentiary weight.

The applicant has submitted statements from counsel, with her initial application and in response to the center director's notice of action and notice of intent to deny. However, as correctly noted by the center director, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While counsel's statements have been given careful consideration, they do not establish that the applicant has been the victim of a severe form of trafficking in persons.

The applicant provides a letter from [REDACTED] M.D. to support that she is undergoing psychiatric treatment due to emotional suffering as a result of being a victim of trafficking in persons. [REDACTED] states that the applicant was seen at his clinic in 2005 on January 20, February 3, February 17, March 3, March 15, March 29, April 12, April 28, and May 9. *Letter from [REDACTED] M.D.*, dated May 9, 2005. However, the applicant has provided no information or documentation regarding [REDACTED] qualifications or certifications, thus his competence to evaluate her condition has not been shown. More importantly [REDACTED] provides that he is located in Los Angeles, California. The applicant states that she has resided in Georgia

since July 2003, and she can't leave her home by herself. While the record shows that the applicant attended hearings in Immigration Court in Los Angeles in 2003 and 2004, the applicant has not provided sufficient evidence that she traveled to Los Angeles for treatment in 2005. Given the applicant's alleged fear of her captors in Los Angeles, the availability of qualified psychiatrists in Georgia, and the applicant's lack of financial resources, it is not plausible that she frequently traveled to Los Angeles for psychiatric treatment. Thus, the letter from [REDACTED] is given no evidentiary weight. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The applicant referenced a promissory note that she signed in Korea as evidence of her debt with her captors. *Applicant's Statement Submitted in Response to Notice of Action*, dated October 28, 2004. In his notice of intent to deny, the center director requested that the applicant indicate whether she has the promissory note. The applicant failed to respond to the center director's request, and she declined to provide a copy of the promissory note.

In his notice of action and notice of intent to deny, the director provided that the applicant may submit "[w]ritten statements sworn to or affirmed by individuals, other than [her]self, who were living at the time the event(s) occurred, and who have personal knowledge of the event [she is] trying to prove." The applicant declined to submit statements from any other individuals. It is noted that the applicant resides with her boyfriend who allegedly assisted her in escaping to Georgia. Thus, this individual would have first-hand knowledge of the events described by the applicant. However, the applicant did not provide a statement from her boyfriend, or any other individuals, after sufficient opportunity to do so.

The applicant provided documentation of her arrest on June 27, 2003 in Los Angeles County for acting as a Masseuse without a permit. *Court Record for Superior Court of Los Angeles County*, dated January 14, 2005. However, this document provides no indication of the conditions surrounding the applicant's arrest, or whether she was in fact engaging in prostitution. Thus, it does not establish that she was forced into prostitution.

While the applicant has provided numerous studies on prostitution, human trafficking, and related conditions in Korea, the applicant and counsel have not adequately discussed these studies or explained how they support that the applicant has been a victim of human trafficking.

It is further noted that the applicant submitted a foreign language document without an English translation. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Going on record without adequate supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Based on

the foregoing, the applicant has failed to submit sufficient documentary evidence to show that she has been the victim of a severe form of trafficking in persons. Section 101(a)(15)(T)(i)(I) of the Act.

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.

Further, the applicant has failed to establish that she would suffer extreme hardship involving unusual and severe harm upon removal to Korea, as required by Section 101(a)(15)(T)(i)(IV) of the Act. The applicant states that she has fear of those who participated in coercing her into prostitution. However, she has failed to show that such coercion occurred, or to identify specific individuals in Korea who she fears. While the applicant has provided reports that reflect that prostitutes are treated poorly in Korean society, she has not established how anyone in Korea would become aware that she had been a prostitute in the United States. The applicant has not articulated any other factors that would result in extreme hardship involving unusual and severe harm should she return to Korea, thus she has not satisfied the requirements of Section 101(a)(15)(T)(i)(IV) of the Act.

The applicant has submitted evidence that she has notified law enforcement agents of the trafficking perpetrated against her. The applicant submitted a statement from counsel in which counsel asserted that he reported to Agent ██████████ of the FBI that the applicant is a victim of human trafficking who is willing to assist in a related investigation or prosecution. Counsel stated that Agent ██████████ showed little interest in pursuing the applicant's case, but that he noted he would contact counsel if needed. Counsel provided that he has received no further communication or correspondence from Agent ██████████. The applicant submitted a copy of Agent ██████████ business card as evidence of this communication. Thus, the applicant has shown that she "has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking." 101(a)(15)(T)(i)(III)(aa) of the Act.

Based on the foregoing, the applicant has failed to establish that she satisfies three of the four requirements for T status as provided in 101(a)(15)(T)(i) of the Act. Therefore, the AAO concludes that the applicant has not shown that she is eligible for T status.

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.