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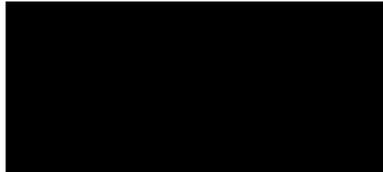
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
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U.S. Citizenship
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FILE:



VERMONT SERVICE CENTER

Date: SEP 19 2007

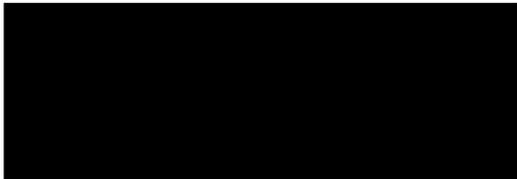
IN RE:

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:



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, Chief
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 China who last entered the United States on or about October 6, 2001 without inspection. The applicant explained that he paid funds to study in the Bahamas, yet when he arrived there he was compelled to work to pay an additional unanticipated fee. The applicant stated that the individual who arranged for him to go to the Bahamas was influential and exercised control over him through threats of physical and legal harm. The applicant traveled to the United States when he was unable to resolve his difficulties in the Bahamas. 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 a Form I-914, Application for T Nonimmigrant Status, on February 27, 2006. On May 5, 2006, the center director issued a letter informing the applicant of his intent to deny the application, requesting that the applicant provide additional evidence to support his claim. The applicant provided additional documentation, yet the center director found that the applicant failed to overcome all of the issues addressed in the notice of intent to deny and denied the application accordingly. *Decision of the Center Director*, dated May 16, 2007. Specifically, the center 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 trafficking in persons, and; (3) the applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. *Id.* The center director observed that the harms the applicant described occurred outside the United States, and found that such harms are not taken into consideration in determining whether an applicant meets the requirements under section 101(a)(15)(T)(i) of the Act and section 103 of the Trafficking Victims Protection Act of 2000. *Id.*

On appeal, counsel for the applicant contends that trafficking events that occur outside the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, may serve as the basis for an applicant's satisfaction of section 101(a)(15)(T)(i)(I) of the Act. *Brief in Support of Appeal*, dated July 5, 2007. Counsel contends that the applicant may show that he is in the United States on account of trafficking that occurred outside the United States, in satisfaction of section 101(a)(15)(T)(i)(II) of the Act. *Id.* at 1-2. Counsel asserts that the applicant has shown his willingness to cooperate with U.S. law enforcement agents, thus he has met the requirements of section 101(a)(15)(T)(i)(III). *Id.* at 2.

The record contains statements from the applicant; a brief from counsel; copies of articles from publications in the Bahamas; email correspondence between the applicant and an agent of the U.S. Federal Bureau of Investigation; email correspondence between the applicant and a representative of the United Nations High Commissioner for Refugees; an affidavit from a representative of the U.S. Committee for Refugees; a copy of the applicant's passport; reports on conditions in China, and; an affidavit from an individual who experienced similar events as the applicant. 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.

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.

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.

Peonage is defined at 8 C.F.R. § 214.11(a) as “[a] status or condition of involuntary servitude based upon real or alleged indebtedness.”

The term "slavery" is not defined under section 101 of the Act or the regulations that control applications for T status. Nor are there any precedent decisions from a court or administrative body with binding authority over the present proceeding that provide a definition of slavery for the purpose of adjudicating an application for T status. However, common notions of slavery involve the performance of labor. For example, The American Heritage Dictionary of the English Language, Fourth Edition, defines "slavery" as:

1. The state of one bound in servitude as the property of a slaveholder or household.
2.
 - a. The practice of owning slaves.
 - b. A mode of production in which slaves constitute the principal workforce.
3. The condition of being subject or addicted to a specified influence.
4. A condition of hard work and subjection: *wage slavery*.

"Slavery," *The American Heritage Dictionary of the English Language*, (4th ed., Houghton Mifflin Company 2004) <<http://dictionary.reference.com/browse/slavery>> (accessed July 18, 2007). Webster's New World College Dictionary defines slavery as:

1 the owning or keeping of slaves as a practice or institution; slaveholding 2 the condition of being a slave; bondage; servitude 3 a condition of submission to or domination by some influence, habit, etc. 4 hard work or toil like that done by slaves; drudgery

Webster's New World College Dictionary 1347 (4th ed., IDG Books Worldwide, Inc. 2001). In the context of the present proceeding, slavery is listed as one of four harms that may serve as a basis for T status, in addition to involuntary servitude, peonage, and debt bondage. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8). In light of the fact that involuntary servitude, peonage, and debt bondage each involve labor to be performed by the victim, and in light of the fact that slavery is commonly understood to denote a condition of forced labor, the AAO finds that to meet the definition of slavery as contemplated by the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8), an applicant must establish that he was held in a condition that involved his involuntary labor.

The applicant has not submitted a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 Supplement B, documentation from U.S. Immigration and Customs Enforcement ("ICE") granting him continued presence in accordance with 28 C.F.R. § 1100.35, or other primary evidence that he is a victim of a severe form of human trafficking.

As secondary evidence, the applicant submitted statements in which he described his experiences. The applicant explained that he paid \$9,000 for tuition to study in the Bahamas, and he departed China on September 22, 2000. *Statement from Applicant*, dated January 20, 2006. The applicant indicated that his alleged trafficker, [REDACTED], demanded that he pay an additional \$3,000 once he arrived in the Bahamas, and when the applicant was unable to pay he was made to work for Pepsi Cola. *Id.* at 1. The applicant stated that [REDACTED] physically abused another individual in front of him as a warning for disobedience. *Id.* at 1-2. The applicant explained that [REDACTED] took his passport and visa as a means to

control him. *Id.* at 2. The applicant stated that he expressed his desire to return to China, and [REDACTED] threatened to have him killed. *Id.* The applicant provided that he moved out of [REDACTED]'s home and recovered his passport with the help of police. *Id.* at 3.

The applicant explained that he was associated with students who were traveling to the United States through the assistance of smugglers. *Id.* at 3-4. The applicant stated that [REDACTED] was involved in arranging for some individuals to go to the United States, and [REDACTED] instructed the applicant to travel with another individual to America. *Id.* at 4. The applicant indicated that he refused, and [REDACTED] threatened his life. *Id.*

The applicant stated that he was expelled from the school and his visa was cancelled. *Id.* The applicant explained that he met with U.S. federal agents because he "wanted to catch the smuggl[ers], clear [his] name, and go back to China." *Id.* The applicant stated that he reported [REDACTED] to the Crime and Corruption branch of the local police. *Id.* at 5. The applicant indicated that [REDACTED] had contacts with the Chinese Embassy in the Bahamas, and that he reported to the Embassy that the applicant was a smuggler and practitioner of [REDACTED]. *Id.*

The applicant explained that, due to his inability to resolve his problems in the Bahamas, he and his friend traveled to the United States with the assistance of a smuggler. *Id.* at 7. The applicant did not indicate, and the record does not reflect, that the smuggler who transported him to the United States was connected to Dr. [REDACTED].

The applicant submitted a statement from an individual, [REDACTED], who supported that [REDACTED] engaged in fraud under the guise of operating a school. *Statement from* [REDACTED] dated October 14, 2005. [REDACTED] experiences with [REDACTED] were similar to those of the applicant, and her statement supports the assertions made by the applicant. *Id.* [REDACTED] left the Bahamas with the applicant, and she confirmed that they used the services of a smuggler without the involvement of [REDACTED]. *Id.* at 14.

Upon review, the primary issue in the present proceeding is whether instances of human trafficking that occurred outside the United States may serve as a basis for satisfying section 101(a)(15)(T)(i)(I) of the Act.

The center director quoted an interim rule from the Federal Register that implemented section 107(e) of the Trafficking Victims Protection Act of 2000 to stand for the proposition that trafficking events as contemplated by section 101(a)(15)(T)(i)(I) of the Act must have occurred in the United States. *Decision of the Center Director* at 2 (citing 67 Fed. Reg. 21 (January 31, 2002)). Counsel asserts that this section in the Federal Register addresses individuals who traveled to the United States and then became victims of human trafficking after their arrival. Thus, counsel suggests that Volume 67, Section 21 of the Federal Register does not dictate that trafficking events must have occurred within the United States to satisfy section 101(a)(15)(T)(i)(I) of the Act.

The AAO acknowledges that Volume 67, Section 21 of the Federal Register serves to confirm that an individual may qualify under section 101(a)(15)(T)(i) of the Act even if his original entry was not pursuant to the trafficking scheme. Yet, Volume 67, Section 21 of the Federal Register makes a broad statement regarding the intent of Congress to be applied to all trafficking cases, regardless of whether the applicant entered the United States pursuant to a trafficking incident. Specifically, Volume 67, Section 21 of the Federal Register states:

A victim of a severe form of trafficking in persons must be “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.” TVPA, section 107(e)(1)(T)(i)(II).

Some traffickers arrange for the entry of their victims into these jurisdictions as part of the trafficking scheme, while other traffickers prey upon aliens who are already in the United States

The Service is interpreting the statute in light of Congressional intent to reach those aliens who are physically present under each of these circumstances if they are or were victims of *severe forms of trafficking in persons occurring within those jurisdictions*.

67 Fed. Reg. 21 (emphasis added). It is evident that the phrase “severe forms of trafficking in persons occurring within those jurisdictions” refers to trafficking that occurred within the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto. *Id.* Thus, Volume 67, Section 21 of the Federal Register reflects the agency’s position that, in order for a trafficking incident to serve as the basis for satisfaction of section 101(a)(15)(T)(i)(I) of the Act, it must have occurred within the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto. *Id.* The applicant has not established that trafficking events that occurred in the Bahamas may render him eligible for T status. *Id.*

All of the alleged trafficking events that the applicant described occurred in the Bahamas. The applicant has not established that he was subjected to a severe form of human trafficking in the United States, as contemplated by section 101(a)(15)(T)(i)(I) of the Act. *See* 67 Fed. Reg. 21. For this reason, the application may not be approved.

The applicant indicated that he relocated to the United States to avoid difficulty he was experiencing in the Bahamas with his alleged trafficker. However, the applicant explained that he used the services of a smuggler who was not party to the harmful incidents he described. Thus, the applicant has not established that he was transported to, or remains in, the United States on account of the alleged trafficking scheme. Accordingly, the applicant has not shown that he 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 the alleged trafficking incident. Section 101(a)(15)(T)(i)(II) of the Act. For this additional reason, the application may not be approved.

The center director found that the applicant failed to show that he has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, as required by section 101(a)(15)(T)(i)(III) of the Act. However, the record reflects that the applicant reported the misconduct of his alleged trafficker to U.S. law enforcement agents, and he made himself available for investigative efforts. The fact that the record does not show that the harms to the applicant were prosecuted as a human trafficking scheme does not undermine the fact that the applicant was willing to participate in such efforts if asked. The evidence of record does not show that the applicant failed to comply with requests from law enforcement agents. Accordingly, the AAO finds sufficient evidence that the applicant meets the requirement of section 101(a)(15)(T)(i)(III) of the Act, and the center director’s comments to the contrary will be withdrawn.

Based on the foregoing, the applicant has failed to establish that he satisfies the requirements for T status as provided in section 101(a)(15)(T)(i) of the Act.

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.