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



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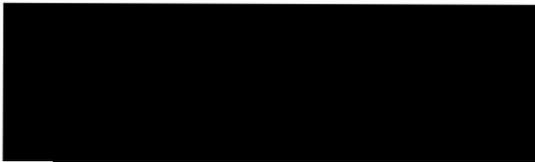
Applicant:



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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

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

The director denied the application for failure to demonstrate that the applicant was physically present in the United States (U.S.) on account of a severe form of trafficking in persons.

On appeal, counsel submits a brief and copies of documents previously filed.

I. 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 and the Attorney General jointly; 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 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 of the Trafficking Victims Protection Act of 2000 (TVPA), codified at 22 U.S.C. § 7102(8), defines the term “severe forms of trafficking in persons” as:

- A. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- B. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

This definition is incorporated into the regulation at 8 C.F.R. § 214.11(a), which also defines, in pertinent part, the following terms:

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Victim of a severe form of trafficking in persons means an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the VTVPA¹ and in this section.

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 . . . 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 in the past and whose continuing presence in the United States is directly related to the original trafficking in persons. . . .

(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.

(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

¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. Law No. 106-386 (Oct. 28, 2000).

in persons unless the alien's reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

* * *

(i) *Evidence of extreme hardship involving unusual and severe harm upon removal*

(1) *Standard.* Extreme hardship involving unusual and severe harm is a higher standard than that of extreme hardship as described in § 240.58 of this chapter. 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.

II. Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The applicant is a native and citizen of Mexico. In these proceedings, the applicant states that she first entered the U.S. in December 1997, returned to Mexico in late 2004 and came back to the U.S. in March 2005. The applicant filed the instant Form I-914 on May 4, 2007. On November 21, 2007, the director issued a Request for Evidence (RFE) of the applicant's presence in the U.S. on account of a severe

form of trafficking in persons and evidence that she would suffer extreme hardship involving unusual and severe harm upon removal. The applicant responded with additional evidence, which the director found insufficient to establish her eligibility. The director determined that the applicant had not established that she was present in the U.S. on account of trafficking and denied the application (and the applicant's concurrently filed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant) on April 22, 2008. The applicant, through counsel, timely appealed.

On appeal, counsel asserts that although the applicant left the U.S. voluntarily, her subsequent return was the result of continued victimization. We concur with the director's determination. Counsel's claims on appeal fail to overcome the ground for denial. In addition, beyond the director's decision, the applicant has failed to demonstrate that she would suffer extreme hardship involving unusual and severe harm upon removal. The applicant is also inadmissible under section 212(a) of the Act, 8 U.S.C. § 1182(a), and has not demonstrated that she merits a favorable exercise of discretion to waive the relevant bar.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

III. Presence in the U.S. on Account of a Severe Form of Trafficking in Persons

The applicant demonstrated that she was a victim of a severe form of trafficking in persons in the past. Specifically, the applicant was induced to commit commercial sex acts when she was under 18 years of age, as defined at 8 C.F.R. § 214.11(a). The applicant has not, however, established that her continued presence in the U.S. is directly related to the original trafficking, as required by section 101(a)(15)(i)(II) of the Act and explicated in the regulation at 8 C.F.R. § 214.11(g).

To establish that an alien is physically present in the U.S. on account of a severe form of trafficking in persons, the alien must demonstrate that he or she is presently being subjected to such trafficking, was recently liberated from such trafficking or was subject to such trafficking in the past and his or her continuing presence in the U.S. is directly related to the original trafficking. 8 C.F.R. § 214.11(g). If an alien escaped the traffickers before law enforcement became involved in the matter, the alien must show that he or she did not have a clear chance to leave the U.S. in the interim. *Id.* at § 214.11(g)(2).

In this case, the applicant escaped her trafficker before law enforcement became involved and she left the U.S. in the interim. In her affidavits submitted below, the applicant states that she escaped from her trafficker in the winter of 2003 and went to Mexico in late 2004 to visit her ill mother. The applicant further attests that she did not meet with any law enforcement officers regarding her trafficking until May 2006. Accordingly, the applicant has not shown that she is in the U.S. on account of her trafficking because she escaped the trafficker before law enforcement became involved and she departed the U.S. in the interim.

The applicant has also not shown that her continued presence in the U.S. is on account of her trafficking because she left the U.S. after she was trafficked. If an alien voluntarily left the U.S. after the act of trafficking, he or she shall be deemed not to be present in the U.S. as a result of the trafficking “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).” *Id.* at § 214.11(g)(3).

The term “continued victimization” is not defined in the Act or regulations. However, the word “victimization” is commonly understood as the noun of the verb, “victimize,” which means “to make a victim of.” *Merriam-Webster Online Dictionary*, <http://www.merriam-webster.com/dictionary/victimize> (last accessed March 2, 2009). The term “victim of a severe form of trafficking in persons” is defined in the regulation as “an alien who is or has been subject to a severe form of trafficking in persons as defined in section 103 of the VTVPA and in this section.” 8 C.F.R. § 214.11(a). Accordingly, the term “continued victimization,” in the context of the regulation at 8 C.F.R. § 214.11(g)(3), refers to the state of an alien who is still subject to a severe form of trafficking in persons.

In this case, the applicant has not demonstrated that she returned to the U.S. in 2005 as a result of her continued victimization or a new incident of trafficking. In her first affidavit, the applicant stated that after she escaped her trafficker in the winter of 2003, he and his brothers looked for her. She explains that her trafficker asked her for money, but she does not indicate that she gave him money and she states that he “did not force [her] to come back.” The applicant reports that she saw her trafficker once in the summer of 2006, but “he did not say anything” to her. The applicant further states that her last contact with her trafficker was in September 2006 when he called her, asked, “you do not remember me anymore?” and she hung up. The applicant does not indicate that her trafficker threatened her during the short telephone call or ever contacted her again.

In her second affidavit, the applicant explained that she returned to Mexico in late 2004, a year after she had escaped from her trafficker, because her mother was gravely ill. The applicant indicates that she spent approximately three months in Mexico. The applicant states that she was very nervous while she was in Mexico and that her trafficker did not know that she had returned, otherwise she is “sure he would have harassed [her].” The applicant does not explain the basis of her fear, given her testimony that her trafficker did not harass, threaten or otherwise seek to exert control over her after her escape from him in the U.S. The applicant further explains that she was afraid that her trafficker would tell her family that she had worked as a prostitute in the U.S. Again, the applicant does not explain the basis of this fear, given her testimony that her trafficker kept her away from her family, let her call her mother only once every six weeks and once spoke to her mother and said that he and the applicant would visit her. The applicant does not indicate that her trafficker ever threatened to inform her family of her prostitution.

The applicant also states that she feels safe in the U.S. because she “can tell that [her trafficker’s] family is scared of U.S. police” and she can call law enforcement authorities for protection if she is ever threatened by her trafficker or his family. According to the applicant, her trafficker’s family “can easily pay off the police in Mexico to not punish them.” The petitioner does not provide any probative information regarding her reasons for believing that her trafficker is afraid of U.S. police or that his family is capable of bribing Mexican police to escape arrest.

While the applicant's statements, the letter of [REDACTED] and [REDACTED] affidavit all show that the applicant continues to suffer significant psychological harm related to her trafficking, the record does not show that the applicant is still subject to the trafficking or any new incident of trafficking. According to the petitioner, her trafficker contacted her after her escape but did not force her to return. The applicant states that after her escape, she once saw her trafficker in public, but he did not speak to her or otherwise intimidate or threaten her. The last contact that the applicant reports having with her trafficker is a single telephone call in September 2006, when she explains that she hung up the telephone after her trafficker identified himself. The applicant does not indicate that she had any subsequent contact with her trafficker, his family or associates since that time, over a year and a half before she filed this application.

In her first affidavit, the applicant did not indicate that her trafficker ever harassed, threatened or otherwise sought to exert control over her after her escape from him in 2003, a year before she left the U.S. to visit her mother in Mexico. In her second affidavit, the applicant states that she will always live in fear of her trafficker and explains, "They threatened me all the time that I will never get away from them and if I did that they would hurt me or my family." Yet the petitioner does not explain why she did not mention any such threats in her first affidavit and does not reconcile this statement with her testimony that her trafficker and his family did not actually threaten or otherwise intimidate her after her escape in 2003. In sum, the record does not demonstrate that the applicant's return to the U.S. in 2004 was a result of her continued victimization or a new incident of trafficking.

On appeal, counsel asserts that the term "continued victimization" should be interpreted broadly to include the psychological and emotional effects of trafficking because to do otherwise "flouts the intended goal[l]" of the TVPA to protect trafficking victims. We recognize that the physical, psychological and emotional effects of trafficking may endure for years or even a lifetime after a victim has escaped his or her traffickers. However, continued victimization cannot encompass all the enduring effects of trafficking without some evidence that the victim continues to be subject to a severe form of trafficking after the original act, be it through, for example, other forms of trafficking by the same traffickers or new incidents of trafficking. For applicants over the age of 18, continued victimization must encompass a commercial sex act, involuntary servitude, peonage, debt bondage or slavery induced by some element of force, fraud or coercion, pursuant to the regulation's definition of the terms "victim of a severe form of trafficking in persons" and "severe forms of trafficking in persons" at 8 C.F.R. § 214.11(a). While victims who have escaped may endure lasting effects of trafficking and may need long-term treatment to recover, they do not necessarily require the protection afforded by T nonimmigrant status as they are no longer subject to a severe form of trafficking.

The applicant has not established that her continued presence in the U.S. is on account of a severe form of trafficking in persons, as required by section 101(a)(15)(i)(II) of the Act and under the standards explicated in the regulation at 8 C.F.R. § 214.11(g).

IV. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

The applicant has also not demonstrated that she would suffer extreme hardship involving unusual and severe harm upon removal. The record contains the following evidence relevant to this issue:

- The applicant's April 30, 2007 and February 6, 2008 affidavits;
- The affidavit of [REDACTED], a psychological evaluation of the petitioner;
- Letter of [REDACTED] the applicant's case manager at the Human Trafficking Program of the Center for Women and Families at the New York Association for New Americans, Inc. (NYANA);
- Excerpt from the U.S. Department of State (DOS) 2006 Trafficking in Persons Report regarding Mexico;
- Printout of the 2005 DOS Country Report on Human Rights Practices in Mexico; and
- Printout of a *Dallas Morning News* article regarding Mexican survivors of violent sexual crimes in the U.S.

In her affidavits, the applicant expressed fear of returning to Mexico because she believed that her trafficker would contact her, harass her and take her again and that the Mexican police would not protect her from her trafficker and his family. However, the applicant also attested that a year after she escaped from her trafficker, she returned to Mexico for three months without incident. In her first affidavit, the applicant indicated that she had contact with her trafficker after her escape, but he never threatened or attempted to exert control over her again. In her second affidavit, the applicant briefly stated that her trafficker and his family "always threatened" her, but she did not describe their threats in probative detail or explain why she failed to mention such threats in her first affidavit.

The applicant has not shown that she would suffer extreme hardship involving unusual and severe harm under the factors related to severe forms of trafficking in persons as listed in the regulation at 8 C.F.R. § 214.11(i)(1). While she was under 18 when she was trafficked, the applicant was 23 years old when she returned to Mexico and 26 years old when this application was filed. The applicant did not describe her familial situation or personal circumstances in Mexico in probative detail. Yet, the applicant stated that when she returned to Mexico in 2004, she only left her mother's home when accompanied by her brother or extended family, which indicates that her relatives were able to provide her with some level of personal safety. The applicant also attested that she remained in Mexico for three months without incident. Hence, the applicant's age and personal circumstances do not indicate that she would be subject to extreme hardship upon removal per the regulation at 8 C.F.R. § 214.11(i)(1)(i).

[REDACTED] diagnoses the applicant with posttraumatic stress disorder, major depressive disorder and certain sexual dysfunctions, but [REDACTED] states that she evaluated the applicant at the request of counsel and does not indicate that she treated the applicant. [REDACTED] opines that returning to Mexico would risk exacerbating the applicant's psychological conditions, but she does not discuss this issue in probative detail. [REDACTED] states that the applicant began receiving unspecified services from NYANA in December 2005. [REDACTED] indicates that she counseled the applicant for an unspecified period of time and that the applicant is engaged in an unspecified vocational rehabilitation program. Neither [REDACTED] nor [REDACTED] discuss any specific needs of the applicant for mental health treatment that would not be available to her in Mexico. While the applicant has clearly suffered enduring harm, the relevant evidence does not show that the applicant requires mental health treatment not reasonably available in Mexico or that the nature and extent of the psychological consequences of her trafficking indicate that she would suffer the requisite extreme hardship upon removal. *See id.* at § 214.11(i)(1)(ii) and (iii).

Both counsel and the applicant attest to the attempts that they have made to work with U.S. Immigration and Customs Enforcement and certain Assistant U.S. Attorneys to bring her trafficker to justice. However, the record indicates that no investigation or prosecution has been forthcoming. The applicant has also not indicated that she seeks civil redress, restitution or protection through the U.S. legal and criminal justice systems (apart from the instant application). Accordingly, the corresponding factor at 8 C.F.R. § 214.11(i)(1)(iv) also does not weigh in the applicant's favor.

The record indicates that the applicant would face cultural censure as a victim of forced prostitution, but the DOS 2006 Trafficking Report states that while still inadequate, "[v]ictim protection provided by the Mexican government over the last year improved" and the Mexican government "has increased efforts to work with NGOs [non-governmental organizations] and international organizations for the protection of trafficking victims." The applicant attests to her fear that the police would not protect her from her trafficker and his family in Mexico, but she does not provide a probative, detailed explanation of the basis for her fear. The applicant briefly states that she fears she could be recaptured by her trafficker if he found her in Mexico, but again, she does not discuss this fear in probative detail. The applicant also attested that she returned to Mexico for three months without incident and she indicated that after her escape in the U.S., her trafficker had contacted her, but had not attempted to coerce or otherwise control her. Finally, the record does not evidence any civil unrest or armed conflict in Mexico that would seriously threaten the applicant's safety. Accordingly, the relevant evidence indicates that the corresponding factors at 8 C.F.R. § 214.11(i)(1)(v)-(viii) also do not weigh in the applicant's favor.

The applicant has failed to establish that she 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 under the standard explicated in the regulation at 8 C.F.R. § 214.11(i).

V. Inadmissibility

In addition to meeting the statutory eligibility requirements, an alien must be "otherwise admissible" to qualify for T nonimmigrant status. 8 C.F.R. § 214.11(b). In this case, the record indicates that the applicant is inadmissible to the U.S. and has not demonstrated that she merits a favorable exercise of discretion to waive the relevant inadmissibility ground.

Section 212(d)(13)(A) of the Act, 8 U.S.C. § 1182(d)(13)(A), prescribes that the Secretary of Homeland Security shall determine whether an applicant for T nonimmigrant classification is subject to any ground of inadmissibility. If the Secretary considers it to be in the national interest, the Secretary may waive the application of subsection (a)(1) and: "(ii) any other provision of subsection (a) (excluding paragraphs (3), (4), (10)(C), and (10)(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I)." Section 212(d)(13)(B)(ii) of the Act, 8 U.S.C. § 1182(d)(13)(B)(ii); 8 C.F.R. § 212.16. This provision supplements the Secretary's general waiver authority at section 212(d)(3) of the Act, 8 U.S.C. § 1182(d)(3).

The applicant is inadmissible under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled; under section 212(a)(6)(C)(i) of the

Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who sought to procure a benefit under the Act by fraud; and under section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), as an alien who engaged in prostitution within 10 years.

While the record shows that the applicant's misrepresentation of her identity upon her first attempted entry to the U.S. and her forced prostitution were incident to her victimization, the record does not indicate that her subsequent departure from and re-entry to the U.S. were related to her victimization to such a degree that would warrant a favorable exercise of discretion under section 212(d)(3) or 212(d)(13) of the Act. The applicant has consequently failed to establish her eligibility for T nonimmigrant classification pursuant to the regulation at 8 C.F.R. § 214.11(b).

VI. Conclusion

The applicant has established that she was a victim of a severe form of trafficking in persons, but she has not demonstrated that she is present in the U.S. on account of such trafficking and that she would suffer extreme hardship involving unusual and severe harm upon removal, as required by section 101(a)(15)(T)(i)(II) and (IV) of the Act. The applicant has also not demonstrated that she is otherwise admissible to the U.S. or warrants a waiver of the relevant inadmissibility ground. Consequently, her application must be denied.

The application will be denied for the reasons stated above, with each considered an independent and alternative basis for denial. As in all visa classification proceedings, the applicant bears the burden of proof to establish her eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). The applicant has not met this burden.

ORDER: The appeal is dismissed.