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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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JUN 05 2009

FILE:

EAC 06 220 50603

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:

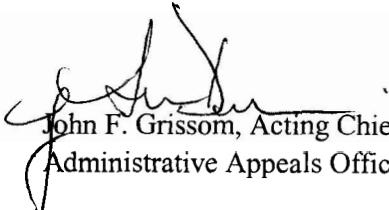
APPLICATION: Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i).

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: (1) was a victim of a severe form of trafficking in persons; (2) was physically present in the United States on account of such trafficking; and (3) would suffer extreme hardship involving unusual and severe harm if she were removed from the United States.

On appeal, counsel submits a brief and additional evidence.

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.

The regulation at 8 C.F.R. § 214.11 also provides specific evidentiary guidelines and states, in pertinent part:

(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 [Secretary of Homeland Security]. 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 CFR 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. . . .

(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.

* * *

(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 Liberia. On April 19, 2003, the applicant arrived in the United States and presented a Botswana passport with the name of [REDACTED]. The applicant was admitted

to the United States for Transit Without a Visa (TWOV), but then refused to board her ensuing flight to Bermuda. On April 20, 2003, the applicant was served with a Notice to Appear (NTA) for removal proceedings and taken into custody. At that time of her admission, the applicant was under 18 years old. On June 2, 2003, the applicant was released from custody on bond posted by her aunt, [REDACTED]. On August 12, 2004, an immigration judge ordered the applicant removed to Liberia and denied her applications for asylum, withholding of removal under the Act and the Convention Against Torture.

The applicant filed the instant Form I-914 on July 25, 2006. On August 11, 2006, the director issued a Notice of Intent to Deny (NOID) the application for failure to demonstrate, *inter alia*, that the applicant was a victim of a severe form of trafficking in persons, that she was in the United States on account of being a victim of such trafficking and that she would suffer extreme hardship involving unusual and severe harm if she were removed from the United States. The applicant responded to the NOID with additional evidence, which the director found insufficient to establish the applicant's eligibility. The director denied the application on the three aforementioned grounds and the applicant, through counsel, timely appealed.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) should hold the application in abeyance until the applicant is allowed to review documents in the record cited by the director in his decision. In the alternative, counsel claims that the director applied incorrect legal standards to the applicant's case. Although we find that the applicant has established that she was a victim of a severe form of trafficking and would suffer extreme hardship upon removal, the applicant has not demonstrated that she is in the United States on account of the trafficking. Beyond the decision of the director, the applicant has also not demonstrated that she is otherwise admissible to the United States or merits a waiver of the applicable inadmissibility provisions.

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. Victim of a Severe Form of Trafficking in Persons

The applicant did not submit primary evidence that she was a victim of a severe form of trafficking in persons, specifically, a Law Enforcement Agency (LEA) endorsement or evidence that she was granted continued presence under the regulation at 28 C.F.R. § 1100.35. However, the record shows that the applicant made good faith attempts to obtain an LEA endorsement pursuant to the regulation at 8 C.F.R. § 214.11(f)(3). The record also contains the following relevant, secondary evidence:

- The applicant's June 29 and November 8, 2006 statements submitted below; Immigration and Naturalization (INS) Juvenile Case Action Worksheet dated April 19, 2003 discussing the applicant's circumstances and arrival in the United States;
- Transcript of the applicant's April 20, 2003 INS sworn statement;

- The applicant's May 15, 2003 written statement submitted in connection with her Juvenile Case Assessment;
- A copy of the applicant's Liberian birth certificate showing that she was born on May 15, 1986;
- April 20, 2003 INS dental examination report of [REDACTED] concluding that the applicant was under 18 years old;
- The applicant's Liberian passport and Emergency Travel Certificate, both of which list her date of birth as May 15, 1985;
- Thai Police receipts for unidentified fees listing [REDACTED] and the applicant as the remitters, which were placed in the applicant's file with her other travel and identity documents;
- April 24, 2007 letter from the Crime Services Department of the Liberia National Police submitted on appeal;
- Letter of [REDACTED] clinical and forensic psychologist; and
- Letter of [REDACTED] of the YMCA of Houston, Texas, International Services, Trafficked Persons Assistance Program.

In her June 29, 2006 statement, the applicant explained that her family was extremely poor and when she was 11 years old, her mother pressured her to sell her body. When she was 14 years old, the applicant states that her mother told her to sleep with [REDACTED]. The applicant reports that she slept with [REDACTED] at a hotel and he gave her family "lots of food and money" and told them that he wanted the applicant to be his wife. The applicant states that she does not know how much money [REDACTED] gave her family, but that they told her to go with him. The applicant reports that [REDACTED] took her to Ghana, then Togo and then Nigeria where she became pregnant for the first time. The applicant states that she begged [REDACTED] to return her to Liberia, but he refused. In Nigeria, the applicant states that [REDACTED] thought she was sleeping with his brother, became angry and frequently beat her. The applicant states that she had her first miscarriage in Nigeria.

After her miscarriage, the applicant states that she went to Thailand with [REDACTED] and they lived with his girlfriend. The applicant reports that [REDACTED] told his girlfriend that the applicant was his sister and treated the applicant like a servant when his girlfriend was present. When his girlfriend was gone, the applicant states that [REDACTED] would force her to have sex. During the two years she was in Thailand, the applicant states that she ate only rice just once a day. The applicant explains that [REDACTED] girlfriend occasionally tried to give her more food, but [REDACTED] prevented her from doing so by calling the applicant disrespectful, beating her and throwing her outside. The applicant states that [REDACTED] impregnated her eight times and each time she had a miscarriage.

Shortly before her seventeenth birthday, the applicant states that [REDACTED] brought her to the United States when she was pregnant for the ninth time. The applicant reports that [REDACTED] obtained their fake travel documents. After they arrived at the airport, the applicant states that [REDACTED] went to the bathroom and never returned. The applicant explains that she did not know what to do and went to the security guards who called immigration authorities who took her into custody. The applicant reports that she was sent to California where her baby died soon after its premature birth. The applicant states that she later attempted suicide.

In her November 8, 2006 statement, the applicant explains that [REDACTED] made all the arrangements for them to travel to the United States. She states that she did not question his actions because she was completely dependent on him. When they arrived at the airport in the United States, the applicant explains that they went to the gate for their connecting flight to Bermuda, but then [REDACTED] went to the bathroom and did not return. The applicant states that she did not get on the plane to Bermuda because she did not know anyone there and was very confused and scared.

In the NOID, the director cited inconsistencies between the applicant's testimony in this case and her April 20, 2003 sworn statement, in which the applicant stated that she was born in 1985, used a Botswana passport that she bought in Thailand to enter the United States, that she did not know anyone in the United States but wanted to remain in the United States because she liked America, and that she did not know the father of her child. However, in her May 15, 2003 statement (submitted to show that she was a juvenile), the applicant explained that her Liberian and Botswana passports were obtained by [REDACTED] whom she had told she was born in 1985 because he was 35 years old and she wanted to appear older. The applicant further stated that after she was taken into custody, an immigration officer called her mother who confirmed that she was born in 1986. The applicant's Liberian birth certificate also states that she was born in 1986. The record documents that the applicant's parents were contacted by an immigration inspector and the applicant's May 15, 2003 statement is consistent with her declarations in these proceedings.

The director nonetheless determined that the applicant was not credible due to three remaining inconsistencies in the record: 1) [REDACTED] stated the applicant did not realize the Botswana passport was not hers until she arrived in the United States, although in her April 20, 2003 statement the applicant asserted that she bought the passport in Thailand; 2) [REDACTED] also stated that the applicant had met with U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ) to identify her trafficker, although the director determined that the record showed that the applicant had attempted, but not actually met with any representative of ICE and DOJ; 3) Ms. [REDACTED] stated that the applicant was kidnapped from her home by a Nigerian soldier, but the applicant stated that she was sold to [REDACTED] who took her to Nigeria.

These discrepancies are resolved by the record. First, [REDACTED] comment regarding the applicant's Botswana passport is not inconsistent with the applicant's present testimony and May 15, 2003 explanation that [REDACTED] obtained the passports for her and bought the Botswana passport in Thailand. Second, the record shows that the applicant spoke with ICE representatives while in custody because juvenile detention is under the jurisdiction of ICE. In addition, legacy INS was within DOJ and was not reorganized under the Department of Homeland Security (DHS) until March 2003. Indeed, many of the documents in the applicant's record bear INS insignia. Hence, it is understandable that both the applicant and [REDACTED] may have believed that the applicant had spoken to DOJ representatives. Finally, [REDACTED] statement is not significantly inconsistent with the record. The applicant indicates that [REDACTED] took her to Nigeria and that she begged him to return her to Liberia but he refused. In addition, the Liberian police report submitted on appeal states that the applicant's mother reported that [REDACTED] a Nigerian national, kidnapped the applicant.

In sum, the record shows that when she was under 18 years old, the applicant was given to [REDACTED] with whom she had sexual relations (and by whom she was impregnated nine times) in

exchange for money and food presented to her family. This transaction was a commercial sex act as defined in the regulation at 8 C.F.R. § 214.11(a). The evidence also demonstrates that [REDACTED] harbored, transported and obtained the applicant for the purpose of a commercial sex act, as defined by the regulation at 8 C.F.R. § 214.11(a). While the applicant may have traveled with [REDACTED] voluntarily, she was under 18 at the time of the trafficking and is not required to demonstrate that the commercial sex act was induced by force, fraud, or coercion. 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a). Accordingly, the applicant has established that she was a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I).

IV. Presence in the United States on Account of Such Trafficking

The applicant has not, however, established that her continued presence in the United States 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 United States 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 United States 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 United States in the interim. *Id.* at § 214.11(g)(2).

The record contains the following evidence relevant to this issue:

- The applicant's June 29 and November 8, 2006 statements submitted below;
- INS Juvenile Case Action Worksheet dated April 19, 2003 discussing the applicant's circumstances and arrival in the United States;
- Transcript of the applicant's April 20, 2003 INS sworn statement;
- The applicant's May 15, 2003 written statement submitted in connection with her Juvenile Case Assessment;
- April 24, 2007 letter from the Crime Services Department of the Liberia National Police submitted on appeal;
- The applicant's Botswana passport and airline ticket to Bermuda;
- INS Client Telephone Log stating that the applicant made four calls to [REDACTED] in Japan and Thailand while she was in detention;
- [REDACTED] letter stating that the applicant sought assistance from the YMCA of Trafficked Persons Assistance Program beginning in May 2005.

The record contains inconsistent evidence regarding the circumstances of the applicant's arrival and continued presence in the United States. In her testimony in this case, the applicant states that Mr. [REDACTED] purchased the Botswana passport for her in Thailand, flew with her to the United States and abandoned her at the airport. However, in her April 20, 2003 sworn statement, the applicant attested that she bought the Botswana passport herself in Thailand. The Juvenile Case Action Worksheet reports that the applicant stated that her boyfriend obtained the fraudulent documents that would allow her to transit through the United States without a visa, but that he remained in Thailand because he had not been able to buy his own passage into the United States. The telephone log also shows that the applicant called [REDACTED] in Japan on April 30, 2003 and in Thailand on May 6, 8

and 13, 2003. In her May 15, 2003 statement, the applicant explained that [REDACTED] took her to Thailand where he obtained the Botswana passport for her because she could not travel with her Liberian passport.

Regardless of how she arrived in the United States and her ensuing contact with [REDACTED], the record shows that the applicant escaped from [REDACTED] before law enforcement became involved in the matter and she had a clear chance to leave the United States in the interim under the standards prescribed by the regulation at 8 C.F.R. § 214.11(g)(2). The record contains the applicant's photograph-substituted Botswana passport and her airline ticket to Bermuda. In these proceedings, the applicant explains that she did not board her flight to Bermuda because she did not know anyone there and was very confused and scared. Yet the applicant also asserts that she did not know anyone in the United States until she contacted her mother after her arrival and her mother told her she had an aunt and half-sister in the United States. After she was released to her aunt, the applicant did not seek assistance in dealing with the consequences of having been trafficked until May 2005, over two years after her arrival in the United States and after she was ordered removed in immigration court.

While the applicant was subject to a severe form of trafficking in persons in the past, she has not demonstrated that her continuing presence in the United States is directly related to the original trafficking. The record shows that the applicant had a clear chance to leave the United States after she had left (or been abandoned by) her trafficker. Accordingly, the applicant has not established that she is present in the United States on account of the trafficking, as required by section 101(a)(15)(i)(II) of the Act.

V. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

The applicant has established 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 June 29 and November 8, 2006 statements submitted below;
- INS Juvenile Case Action Worksheet dated April 19, 2003 discussing the applicant's circumstances and arrival in the United States;
- Transcript of the applicant's April 20, 2003 INS sworn statement;
- The applicant's May 15, 2003 written statement submitted in connection with her Juvenile Case Assessment;
- April 24, 2007 letter from the Crime Services Department of the Liberia National Police submitted on appeal;
- [REDACTED]'s November 7, 2006 letter;
- Letter of [REDACTED], Staff Psychiatrist at Asian American Family Services;
- June 19 and October 4, 2006 letters of [REDACTED], Program Coordinator of Voices for Justice;
- Letter of [REDACTED];
- Declaration of [REDACTED] Clinical Assistant Professor of Communication at the University of Houston;
- Articles regarding trafficking, the situation of women and children, and human rights abuses in Liberia.

In her first statement, the applicant explained that she would be afraid to return to Liberia because of all the wars and that she would feel ashamed because people would call her a prostitute. She states that she is seeking help in the United States and indicates that she would not be able to receive counseling if she returned because in Liberia “when you try to talk you are told to bear it. If you don’t bear it, you are beaten.”

In her second statement, the applicant further explained that if she returned to Liberia, her parents would prostitute her again to someone else because her family is still very poor. She states that Mr. [REDACTED] has been harassing her mother and she is afraid her parents would force her to go back to him so they could get more money.

The remaining, relevant evidence supports the applicant’s testimony. The letter from the Liberian National Police states that the applicant’s mother reported that friends of [REDACTED] were looking for the applicant to harm her. Although the Juvenile Case Worksheet and the applicant’s April 20 and May 15, 2003 statements do not indicate that the applicant feared [REDACTED], in her April 20 statement the applicant expressed fear in returning to Liberia “because of the war.” The articles submitted below report that young women and children in Liberia are frequently trafficked and engage in commercial sex acts as a means of survival and that endemic sexual violence against women and girls is not prosecuted by the Liberian government.

[REDACTED] confirmed that the applicant was hospitalized in 2005 after a suicide attempt and that she suffers from depression related to her forced prostitution and abuse. [REDACTED] stated that she had met weekly with the applicant for therapy. [REDACTED] states that she spoke with the applicant four times for a total of eight hours. [REDACTED] diagnoses the applicant with post-traumatic stress disorder and severe dissociative identity disorder related to her abusive childhood and trafficking. [REDACTED] states that the applicant has been a client of the Trafficked Persons Assistance Program since May 2005 through which she attended a rape aggression defense program, joined a faith group and received mental health services. The letters of [REDACTED] and [REDACTED] explain that the applicant’s reference to [REDACTED] as her boyfriend and her seemingly incongruous statements regarding their relationship are consistent with the psychological effects of her trafficking and sexual abuse.

The record shows that at the time of her arrival in the United States, the applicant was a minor. The applicant has consistently stated that she was impregnated by [REDACTED] nine times, suffered eight miscarriages and lost her premature baby as a result. The documents regarding country conditions in Liberia indicate that young impoverished women, in general, are at risk of trafficking and sexual violence, crimes which are not prosecuted by the Liberian government. The relevant evidence also indicates that in the applicant’s case, her family’s economic situation and past dealings with Mr. [REDACTED] would put her at risk of re-victimization if she were returned to Liberia. We also note that at the time this application was filed, Liberia was under a DHS designated Temporary Protected Status (TPS). Currently, Liberians in the United States are covered by Deferred Enforced Departure (DED) until March 31, 2009.

Under the relevant factors enumerated in the regulation at 8 C.F.R. § 214.11(i)(1), the applicant has established 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.

VI. 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 United States and did not submit a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, as required by the regulations at 8 C.F.R. §§ 212.16(a), 214.11(j).

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)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who procured a benefit under the Act by fraud or willful misrepresentation. As previously discussed, the applicant presented a photograph-substituted Botswana passport in order to transit through the United States without a visa. The applicant was consequently ordered removed to Liberia on August 12, 2004, but has remained in the United States. The applicant is also inadmissible 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 ten years. In both of her 2006 statements, the applicant explained that in Liberia she was forced to sleep with men for money and food beginning when she was 11 or 12 years old.

While the record indicates that the applicant’s forced prostitution was incident to her victimization, the record contains conflicting evidence regarding her fraudulent use of the Botswana passport upon arrival in the United States, as discussed in section II above. The applicant states that [REDACTED] obtained the Botswana passport for her in Thailand, but it is unclear whether or not her use of the fraudulent passport was caused by or incident to her victimization. In these proceedings, the applicant states that she would not be in the United States but for [REDACTED]’s actions. Yet in the Juvenile Case Action Worksheet and her May 15, 2003 statement, the applicant indicates that Mr. [REDACTED] helped her obtain the Botswana passport, that she traveled to the United States alone and wished to remain here. While we recognize that the applicant may have been under [REDACTED] control or undue influence even though unaccompanied by him on her trip to the United States, the applicant has not discussed the circumstances of her arrival in the United States in probative detail sufficient to demonstrate that her use of the fraudulent passport was caused by or incident to her victimization.

The applicant did not submit a Form I-192 application and did not address her inadmissibility or the reasons why she would merit a waiver and favorable exercise of discretion under sections 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).

VII. Documents in the Applicant's File

On appeal, counsel asserts that the applicant was not able to review the following four documents, the first three of which were cited by the director in his decision or the NOID: "1. Letter from [REDACTED] and Facsimile of Birth Certificate from Safety Enofe[,] 2. Botswana Passport # [REDACTED] in the name of [REDACTED] [,] 3. Telephone Log and Other Evidence of Continued and Voluntary Contact with [REDACTED] [,] 4. Bureau A-file and SIR (Incident Report) Referenced in INA [sic] Juvenile Case Action Worksheet[.]"

The regulation at 8 C.F.R. § 103.2(b)(16)(i) only requires notice of derogatory information and an opportunity to rebut the information if the alien was unaware of the information. The record indicates that the applicant had knowledge and/or possession of all the aforementioned documents that exist in her file. [REDACTED] is the applicant's former counsel. The facsimile of the applicant's birth certificate was submitted by the applicant with her Form I-914. The Botswana passport was in the applicant's possession upon her arrival in the United States. The telephone log records calls that the applicant made while in detention. The applicant's alien file contains no "SIR (Incident Report)" as cited in the INS Juvenile Case Action Worksheet. The record also lacks any other evidence of the applicant's contact with [REDACTED] after the last call recorded on the telephone log.

USCIS records also show that USCIS sent counsel a compact disc with the applicant's records on July 27, 2007. Accordingly, we find no merit in counsel's implication that the petitioner's inability to examine certain documents negatively impacted her appeal because the petitioner had possession and/or personal knowledge of all the documents cited by counsel that exist in her administrative file and counsel has now been provided with a copy of the petitioner's records in fulfillment of her Form G-639, Freedom of Information/Privacy Act Request.

VIII. Conclusion

The applicant has established that she was a victim of a severe form of trafficking in persons and that she would suffer extreme hardship involving unusual and severe harm upon removal. However, the applicant has not demonstrated that she is present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act, and that she is admissible to the United States 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.