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20 Massachusetts Ave. N.W., Rm. 3000
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U.S. Citizenship
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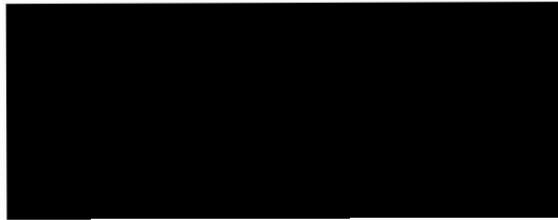
VERMONT SERVICE CENTER

Date: **MAR 04 2009**

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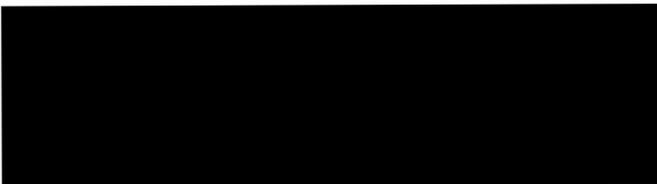
IN RE:

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.

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 The decision of the director will be withdrawn. Because the application is not approvable, it will be remanded for further action.

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 (U.S.) on account of such trafficking; and (3) complied with any reasonable request for assistance in the investigation or prosecution of such trafficking.

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.

(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 Korea. On September 30, 2003, the applicant was apprehended by a Border Patrol agent and served with a Notice to Appear (NTA) for removal proceedings charging her as an alien present in the United States without having been admitted or paroled. On October 17, 2003, the applicant was released from custody on a \$10,000 bond. On January 6, 2004, an immigration judge ordered the applicant removed in absentia. On June 30, 2005, the applicant was arrested during the investigation of the criminal case, *U.S. v. Hee Kweon Eun, et al.*, No. SA CR 05-179-JVS (CD Cal.). On December 5, 2005, the applicant was placed in deferred action because she was designated as a material witness in the criminal case. On April 24, 2007, an immigration judge granted the applicant's motion and ordered her removal proceedings to be reopened. The applicant remains in proceedings before the Los Angeles Immigration Court and her next hearing is scheduled for March 26, 2009.

The applicant filed the instant Form I-914 on March 26, 2007. On April 18, 2007, the director issued a Request for Evidence (RFE) that, *inter alia*, 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 had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking. The director further stated that the applicant was inadmissible to the United States under section 212(a)(6)(A)(i) of the Act and requested that she submit a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The applicant responded to the RFE with additional evidence, but did not submit a Form I-192 application. The director found the evidence insufficient to establish the applicant's eligibility and denied the application on the aforementioned three grounds, but did not discuss the applicant's inadmissibility. The applicant, through counsel, timely appealed.

On appeal, counsel submits court records showing that the applicant was a material witness in the criminal prosecution of [REDACTED], et al. for aiding and abetting in importing and harboring aliens for the purpose of prostitution in violation of 8 U.S.C. § 1328 and other crimes. The evidence submitted on appeal and other evidence in the record show that the applicant was a victim of a severe form of trafficking, that she was present in the U.S. on account of that trafficking and that she complied with a reasonable request for assistance in the investigation of such trafficking.

The application cannot be approved, however, because the applicant has: 1) not demonstrated that she would suffer extreme hardship involving unusual and severe harm upon removal and 2) because she is inadmissible under section 212(a)(6)(A)(i) of the Act and the applicant did not submit a Form I-192 application, as required by the regulation at 8 C.F.R. § 214.11(j). As the director did not address these two issues in his decision, the application will be remanded to afford the applicant an opportunity to submit further evidence and a Form I-192 and for the director to determine whether the applicant warrants a waiver of inadmissibility pursuant to sections 212(d)(3) or 212(d)(13)(B) of the Act, 8 U.S.C. §§ 1182(d)(3), (d)(13)(B).

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, Presence in the U.S. on Account of Such Trafficking and Compliance with Request for Assistance in the Investigation or Prosecution of Such Trafficking

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 contains the following relevant, secondary evidence:

- The applicant's February 14, 2007 declaration and her July 11, 2007 supplemental declaration;
- August 8, 2005 letter from U.S. Immigration and Customs Enforcement (ICE) informing the applicant that ICE had placed her under an order not to depart the U.S. because she was a witness to a criminal case under investigation by ICE;
- December 5, 2005 ICE approval of an intra-agency request to place the applicant in deferred action during the pendency of *U.S. v. Eun, et al.*;
- July 5, 2005 *Government's Motion for Designation and Detention of Material Witnesses*, in the criminal case of *U.S. v. Eun, et al.*, which names the applicant as a material witness;
- Notes of an ICE officer's interview with the applicant on July 1, 2005;
- Partial printout of the criminal docket for *U.S. v. Eun, et al.* submitted on appeal; and
- December 4, 2006 order de-designating the applicant as a material witness in *U.S. v. Eun, et al.* submitted on appeal.

In her first declaration, the applicant stated that in August 2003 she was approached by "brokers" in Korea who offered her employment in the U.S. and told her that she could pay them back through employment, which "would be nothing sexual." The applicant states that she traveled with a group of other Korean women and a man named [REDACTED]. She reports that they flew to Mexico, crossed the border in a van and were arrested by immigration officers and held in detention in Los Angeles. The applicant states that a "[REDACTED]" secured their release on \$10,000 bonds and told them that they would have to work to pay him back for the bond and other expenses. The applicant states that [REDACTED] took all of their immigration documents, kept them in his house, told them they could not leave until they had paid him back and monitored their every move. The applicant reports that [REDACTED] told the women they would give massages to men for money, but then drove them to two massage parlors and forced them to give both massages and "sexual favors" to men for money. The applicant states that she and the other women were forced to work six days a week, over 12 hours a day. According to the applicant, [REDACTED] took all the money they made and they were forced to pay him \$700 a month for rent, \$50 a day for food and \$80 a day for transportation and the amount of their debt increased daily. After [REDACTED] was arrested in March 2004, the applicant states that she and the other women continued to work and "another manager handled all the money and even took [their] tips."

In her supplemental declaration, the applicant explains that she was arrested in June 2005 at a massage parlor where she was forced to provide sexual favors to clients for money. She reports that she was taken into custody and questioned by the police for hours. The applicant states that the police showed her pictures of people, some of whom she identified, and the police told her she would be used as a witness against the leaders of the criminal ring. The applicant attests that she was told she would be notified when she was needed to testify, but that she was never contacted.

The ICE letter, grant of deferred action, Government's Motion and the docket for *U.S. v. Eun, et al.* show that the applicant was designated as material witness in the investigation and prosecution of 16 defendants for aiding and abetting in importing and harboring aliens for the purpose of prostitution,

in violation of 8 U.S.C. § 1328, inducing illegal aliens to enter the United States in violation of 8 U.S.C. § 1324, and other crimes. The notes of the applicant's interview with an ICE officer after her arrest in 2005 is consistent with the applicant's declarations and confirms that the applicant engaged in commercial sex acts. During the interview, the applicant also identified two individuals who are named defendants in the *U.S. v. Eun* case. The applicant has credibly attested that she was induced to come to the U.S. and engage in commercial sex acts through fraud.

The record, as supplemented on appeal, demonstrates that the applicant was a victim of a severe form of trafficking in persons, that she is present in the U.S. on account of such trafficking and that she complied with at least one reasonable request for assistance in a federal investigation of acts of trafficking or crimes in which acts of trafficking were at least one central reason for the commission of the crimes, as prescribed by section 101(a)(15)(T)(i) of the Act.

IV. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

The applicant has not 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 February 14, 2007 declaration and her July 11, 2007 supplemental declaration; and
Notes of an ICE officer's interview with the applicant on July 1, 2005.

In her first declaration, the applicant stated that it took her many months to recover from the sexual and psychological abuse she endured. She further stated that she married a U.S. citizen on April 14, 2006 and explained, "My life has finally come together and I am not living in fear anymore." In her supplemental declaration, the applicant stated that she cannot return to Korea because her family has disowned her. She explained that her family learned of her arrest because "the ring bust was well publicized in the Korean community." The applicant stated that her family is extremely conservative, believes she has dishonored them and that she is afraid of what her family may do to her if she were forced to return to Korea. The notes from the applicant's interview after her arrest in 2005 state that she is "embarrassed to go home."

The applicant's brief statements are insufficient to establish the requisite extreme hardship under the standard described in the regulation at 8 C.F.R. § 214.11(i). The applicant indicates that she fears ostracism by her family in Korea, but she does not specify what they would do to her if she were forced to return. The applicant asserts that the criminal case was publicized in the Korean community, but she submits no evidence such as media reports indicating, for example, the degree of cultural censure or any penalization the applicant would face in Korea as a victim of sex trafficking. In addition, the applicant states that she fears only her family and she does not indicate that she fears harm or re-victimization by her traffickers upon her return to Korea.

While the applicant states that it took her months to recover from the abuse, she does not specify the nature and extent of the physical and psychological effects of the trafficking. The applicant also

indicates that she has recovered and does not require any treatment for serious physical or mental illness that would not be available to her in Korea. Finally, the applicant does not indicate that she has sought redress, restitution or protection from her traffickers through U.S. courts or the criminal justice system.

Apart from the applicant's declarations, the 2005 interview notes are the only other relevant evidence in the record. Those notes simply state that the applicant was "embarrassed to go home" and provide no further probative information.

The record contains no evidence apart from the applicant's assertions that she is embarrassed and afraid of unspecified treatment by her family if she were forced to return to Korea. The applicant's brief statements lack probative detail and her unsupported assertions are insufficient to establish her claim. The applicant has failed to demonstrate 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. As the director did not discuss this issue in his decision, the applicant's ineligibility on this ground should be addressed on remand.

V. Inadmissibility

The record indicates that the applicant is inadmissible to the United States and did not submit a Form I-192 application, as required by the regulations at 8 C.F.R. §§ 212.16(a), 214.11(j). In his decision, the director did not address the applicant's inadmissibility.

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).

Section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), prescribes that: "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." The record shows that the Border Patrol apprehended the applicant near the Mexican border on September 30, 2003. The applicant was taken into custody, served with an NTA and later released on bond. Although the applicant was placed in deferred action during the investigation and prosecution of *U.S. v. Eun, et al.*, the applicant has never been admitted or paroled into the U.S. She is consequently inadmissible under section 212(a)(6)(A)(i) of the Act.

Although the RFE informed the applicant of her inadmissibility and need to submit a Form I-192, the director did not discuss these issues in his decision. Accordingly, the applicant's inadmissibility should be addressed on remand.

VI. Conclusion

The applicant has established that she was a victim of a severe form of trafficking in persons, that she is present in the United States on account of such trafficking and that she assisted a federal law enforcement agency in at least one request for assistance in the investigation of acts of trafficking or crimes in which acts of trafficking were at least one central reason for the commission of the crimes, as prescribed by section 101(a)(15)(T)(i) of the Act.

However, the application will be remanded because: (1) the applicant has not demonstrated 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 (2) the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act. Upon remand, the director shall address these two issues and afford the applicant an opportunity to submit further evidence.

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).

ORDER: The decision of the director is withdrawn. Because the application is not approvable, it is remanded to the director for further action in accordance with the foregoing discussion.