

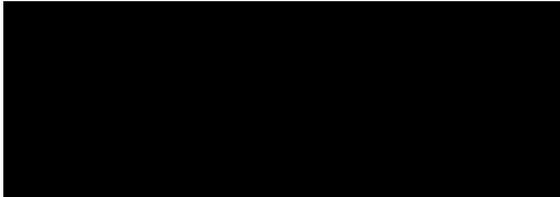
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:  EAC 05 256 50947

Office: VERMONT SERVICE CENTER

Date:

OCT 20 2009

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).

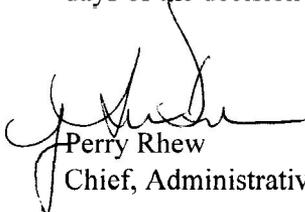
ON BEHALF OF APPLICANT:



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).


Perry Rhew
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)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she:

(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 . . . 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)¹, 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.

¹ Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000), codified at 22 U.S.C. § 7102(8).

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

Coercion means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

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

Debt bondage means the 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.

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 [Law Enforcement Agency] 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. . . . The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. . . .

(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. . . .

* * *

(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.

* * *

(l) *Review and decision on applications – (1) De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant application. Evidence previously submitted for this and other immigration benefits or relief may be used by the Service in evaluating the eligibility of an applicant for T nonimmigrant status. However, the Service will not be bound by its previous factual determinations as to any essential elements of the T classification. The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

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 Thailand. On her Form I-914, Application for T Nonimmigrant Status, the applicant stated that she entered the United States in November 1995 at Los Angeles. In 1997, the applicant gave birth to her son and married his father, her first husband, a U.S. citizen, on July 16, 1998 in Houston, Texas.

On September 9, 1999, the applicant was arrested on a charge of prostitution in Dallas, Texas. On September 13, 1999, the applicant was served with a Notice to Appear for removal proceedings charging her as an alien in the United States without having been admitted or paroled and for lacking valid immigration documents. The applicant was released on bond and ordered removed *in absentia* on December 14, 1999. On December 29, 1999, the applicant and her first husband divorced.

On February 9, 2001, the former Immigration and Naturalization Service (INS) took a sworn statement from the applicant pursuant to an investigation of a brothel in San Jose, California. The applicant stated that she had worked as a prostitute in North Carolina and San Jose. The applicant's removal proceedings were reopened on March 23, 2001. On April 12, 2001, the applicant married her second husband, also a U.S. citizen. He filed a Form I-130, Petition for Alien Relative, on the applicant's behalf, which was approved in 2003. On February 4, 2004, the immigration judge denied the applicant's corresponding Form I-485, Application to Adjust Status, and her request for a waiver of inadmissibility due to her prostitution under section 212(h) of the Act. The Board of Immigration Appeals summarily affirmed the immigration judge's removal order on June 9, 2005 and the U.S. Fifth Circuit Court of Appeals dismissed the applicant's petition for review on July 27, 2006.

On August 10, 2009, the applicant was apprehended at the Sarita, Texas border patrol checkpoint. The applicant is currently being held in the custody of U.S. Immigration and Customs Enforcement subject to the reinstatement of her prior removal order.

The applicant filed the instant Form I-914 on September 23, 2005. The director subsequently issued a Request for Evidence (RFE) including an affidavit from the applicant discussing the alleged trafficking in detail and a specific account of her activities in the United States after her escape from her alleged traffickers. The applicant, through counsel, submitted an additional affidavit and other evidence in response. On January 11, 2006, the director issued a Notice of Intent to Deny (NOID) the application because the record contained inconsistent statements from the applicant, which detracted from the credibility of her claims regarding the alleged trafficking. In response, the applicant submitted an additional affidavit. The director found the applicant's explanations insufficient to establish her eligibility and denied the application for failure to demonstrate that the applicant was the victim of a severe form of trafficking, that she was present in the United States on account of such trafficking and that she would suffer extreme hardship upon removal.

On appeal, counsel asserts that the director relied on minor inconsistencies that are readily explainable and do not warrant the denial of her application. Upon de novo review of the entire record, we find that counsel's claims and the evidence submitted below and on appeal do not

overcome the grounds for denial. Beyond the director's decision, the applicant has also failed to establish exceptional circumstances that would excuse the untimely filing of her application.

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. The record shows that the applicant, through counsel, attempted to obtain an LEA endorsement, but received no response. The applicant's trafficking claims primarily rest on her own statements, which are inconsistent and contradicted by other evidence of record.

In her first affidavit submitted with the instant application and dated September 14, 2005, the applicant asserted that when she was 19 years old and working as a waitress in Bangkok, a friend introduced her to a woman named [REDACTED] who told the applicant she could get a job as a waitress in the United States and make a lot of money. [REDACTED] told the applicant it would cost \$35,000, but that [REDACTED] would loan the applicant the money and she could pay it back while she was working in the United States. The applicant stated that [REDACTED] took her parents' address, gave her a passport and flew with her to the United States, where they arrived in Los Angeles in November 1995.

After her arrival, the applicant states that the passport was taken from her and a woman named [REDACTED] drove her to a brothel in North Carolina and told her she would have to work as a prostitute until her debt was paid. When the applicant protested, she recounts that [REDACTED] called [REDACTED] who told the applicant that if she did not work, [REDACTED] would get the money from the applicant's parents and that if they refused to pay, [REDACTED] would kill them. The applicant stated that she agreed to work at the brothel because she was afraid for herself and her family. She reports that she worked as a prostitute in North Carolina for two years. The applicant states that the doors were locked and it was impossible for her to leave until one day in 1997 when the back door was left open and she ran away. The applicant stated that a man named [REDACTED] drove her to Houston where she stayed at his friend's house until she met her first husband.

This account is directly contradicted by other evidence and statements of the applicant in the record. At her May 29, 2003 hearing before the immigration judge, the applicant testified that a male friend named [REDACTED] gave her someone else's passport to come to the United States in 1994 so that she could get a job at a restaurant in California. The applicant stated that she did not pay for the passport, but that [REDACTED] gave it to her to help her. In her February 27, 2001 affidavit submitted with her motion to reopen her removal proceedings, the applicant stated that she entered the United States in 1994 and met her first husband in 1995 when they began dating and living together. She reported that she gave birth to their son in 1997 and married her first husband in 1998, facts corroborated by copies of the applicant's son's birth certificate and her first marriage certificate in the record. Contrary to the applicant's present claims that she was forced to engage in prostitution from 1995 to 1997 in North Carolina, the evidence discussed above indicates that she was living with her first husband and raising their son from 1995 to 1997.

The record also fails to support the applicant's claim that she was the victim of a severe form of trafficking because she was forced to engage in commercial sex acts through fraud and coercion. In

her September 14, 2005 affidavit, the applicant stated that she agreed to work in the brothel because threatened to kill her parents. However, at her February 4, 2004 hearing before the immigration judge, the applicant testified that both of her parents were deceased. On August 10, 2009, the applicant also told a Department of Homeland Security (DHS) officer that both of her parents had died in Thailand.

In her December 16, 2005 affidavit, the applicant stated that she was “never allowed to leave the brothel. The doors were always kept lo[c]ked” and that she was forced to work every day of the week from 6:00 in the morning until 2:00 the following morning. The applicant reported that she escaped from the brothel “in approximately November of 1997” when she went to Houston for the first time and met her first husband in late November 1997. The record clearly contradicts this testimony. The birth certificate of the applicant’s son shows that she gave birth to him on August 3, 1997 in Houston. The applicant herself (in her 2001 affidavit) previously stated that she met her first husband in 1995 and began living with him at that time.

As noted by the director, the record contains conflicting statements from the applicant regarding the date of her entry into the United States and her residences and activities in this country since her arrival. On appeal, counsel asserts that the inconsistencies cited by the director are minor discrepancies in dates that are not material and cannot support an adverse credibility determination. In support of his claim, counsel cites five circuit court cases concerning asylum proceedings, none of which were decided by the Fifth Circuit Court of Appeals, within whose jurisdiction this case arose.

Moreover, the numerous contradictions in the record are significant and material to the applicant’s claims. The discrepancies regarding the date of the applicant’s first entry into the United States are material to her claim that she was coerced into prostitution for two years after her arrival. Rather than resolving these discrepancies on appeal, counsel and the applicant exacerbate the inconsistencies and further detract from the applicant’s credibility. In her November 30, 2007 affidavit submitted on appeal, the applicant claims that she has been confused about the date she entered the United States because of the different calendars used here and in Thailand. She states: “After reconstructing the events in my life, I believe that the correct time of entry was November 2005.” In his appellate brief, counsel asserts that the applicant’s March 18, 2003 Form G-325A “correctly states that she resided [in Houston] from December 1997 to December 2000. . . . This is completely consistent with her original affidavit which was submitted with her Form I-914 wherein she states that she entered the United States in November of 2005 and then she was forced to work as a sex slave in North Carolina for two years before she was taken to Houston.” Numerous documents of record place the applicant in the United States before 2005 (her son’s birth certificate, her marriage certificates, divorce certificate, her second husband’s Form I-130, their bank statements, tax returns and residential lease, and her 2001 sworn statement during the INS investigation of the brothel in San Jose). In addition, the applicant’s own prior testimony attests to her presence in the United States as early as 1994.

The applicant’s claims in these proceedings are inconsistent with her prior testimony and are contradicted by other relevant evidence in the record. Counsel’s assertions and the applicant’s additional affidavit on appeal only further exacerbate the discrepancies. We concur with the director’s determination that the applicant’s testimony regarding the alleged trafficking is not

credible. The record fails to demonstrate that she was a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.

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

The applicant has also not 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 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 United States is directly related to the original trafficking. 8 C.F.R. § 214.11(g). In most cases, aliens who are voluntarily smuggled into the United States will not be considered victims of a severe form of trafficking in persons. *New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, Interim Rule*, 67 Fed. Reg. 4784, 4787 (Jan. 31, 2002). However, aliens who are voluntarily smuggled into the United States may become victims of a severe form of trafficking in persons if, for example, the smuggler induces the alien to commit commercial sex acts after arrival in the United States through force, fraud or coercion. *See id.* (noting that “[f]ederal law prohibits forced labor regardless of the victim’s initial consent to work.”).

In this case, the record indicates that the applicant came to the United States voluntarily. Her testimony regarding her claim that she was induced to engage in commercial sex acts through fraud and coercion after her arrival is not credible for the reasons discussed in the previous section.

The regulation at 8 C.F.R. § 214.11(g)(2) further prescribes that aliens who escaped their traffickers before law enforcement became involved must show that they did not have a clear chance to leave the United States in the interim. In this case, the applicant asserts that she escaped from her alleged traffickers in 1997, four years before she was interviewed by INS officers during the investigation of the brothel in San Jose, California in 2001 and eight years before counsel contacted federal authorities in 2005 regarding the alleged trafficking in 1995 through 1997.

The regulation at 8 C.F.R. § 214.11(g)(3) also states that an alien who has voluntarily left or been removed from the United States after the act of trafficking shall be deemed not to be present in the United States on account of such trafficking unless the alien’s reentry resulted from continued victimization or a new incident of trafficking. As previously noted, the record shows that the applicant was apprehended at the United States and Mexico border on August 10, 2009. USDHS records state that the applicant “was accompanied by her husband and her son and two friends. They were heading back home to Houston, Texas where they reside.” The records indicate that the applicant’s present husband is her third, whom she married in Thailand. Nothing in the record indicates that the applicant’s reentry was connected to prior alleged trafficking or constituted a new incident of trafficking. The record also contains copies of two prior Thai passports issued to the applicant on March 5, 1997 and August 1, 2002 by the “Passport Division Bangkok,” which further indicates that the applicant was in Thailand after the alleged trafficking from 1995 to 1997. The applicant does not acknowledge or explain any of her departures from the United States after her initial entry.

The applicant has failed to establish that she is physically present in the United States on account of a severe form of trafficking in persons, as required by section 101(a)(15)(i)(II) of the Act.

V. Failure to Timely File Application

For aliens whose alleged victimization occurred prior to October 28, 2000, the regulation at 8 C.F.R. § 214.11(d)(4), requires that their application be filed within one year of January 31, 2002 unless the aliens show that they were prevented from timely filing due to exceptional circumstances such as severe psychological or physical trauma. Here, the applicant has shown no such exceptional circumstances.

In her August 19, 2005 psychological evaluation of applicant submitted below, [REDACTED] diagnosed the applicant with posttraumatic stress disorder (PTSD) based on two interviews with the applicant of unspecified length. [REDACTED] further noted that “the effects of the trauma interfered with [the applicant’s] ability to apply for a T-Visa. Both her fear that filing for permission to immigrate would expose her to her captors, and her diminished sense of efficacy to solve her immigration problems contributed to her inability to file for a T-Visa sooner.” Contrary to Dr. [REDACTED] assertion, the record shows that the applicant has continually sought relief from removal through various immigration applications (withholding of removal, adjustment of status and the instant application).

Although [REDACTED] diagnosed the applicant with PTSD, the record does not indicate that the applicant’s condition prevented her from timely filing. Rather, the record shows that the applicant sought adjustment of status based on the approval of her second husband’s Form I-130 petition, which was filed in 2001. The applicant did not file the instant application until September 23, 2005, after the immigration judge denied her adjustment application and the Board of Immigration Appeals summarily affirmed the immigration judge’s removal order. Consequently, the application must also be denied as untimely.²

VI. 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 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). In her September 14, 2005 affidavit, the applicant stated that after she escaped her alleged traffickers, she was too scared to return to Thailand because she was afraid that she would be harmed for running away before her debt was paid off. The applicant

² Although the director did not deny the application on this basis, the record demonstrates that the application was untimely filed. 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).

further stated the four following reasons why she would suffer severe hardship if she returned to Thailand: (1) because she would not be able to assist in the prosecution of her alleged traffickers; (2) she is afraid her alleged traffickers would harm her for informing the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ) about their actions; (3) that her alleged traffickers would force her back into prostitution and the corrupt Thai police force would not protect her; and (4) that she is being treated by a doctor for emotional trauma resulting from her victimization and that such treatment would not be reasonably available in Thailand.

The record does not support the applicant's claims. First, the record contains no evidence that the FBI, DOJ or any other law enforcement agency has initiated any prosecution or investigation of the applicant's alleged traffickers. The only evidence of the applicant's contact with law enforcement officials is her 1999 arrest for prostitution in Dallas and her 2001 sworn statement to an INS officer investigating the brothel in San Jose, both of which were unrelated to the alleged trafficking. In her March 9, 2006 affidavit, the applicant stated that she worked as a prostitute in Dallas, but that she "was not forced to work in Dallas by the slave traders." In these proceedings, the applicant does not acknowledge the 2001 incident in San Jose and asserts that she was a housewife to her second husband in Houston since early 2000 both before and after their marriage. However, in her April 9, 2001 sworn statement, the applicant admitted that she worked as a prostitute in North Carolina and San Jose, where she received 64 percent of the money charged per transaction. Accordingly, the record does not indicate that the applicant's two contacts with law enforcement officials were related to any investigation or prosecution of her alleged traffickers. The record also lacks any evidence that the FBI or the DOJ has responded to counsel's correspondence regarding the alleged trafficking. Consequently, the factor at 8 C.F.R. § 214.11(i)(1)(iv) does not weigh in the applicant's favor.

There is also no evidence to support the applicant's claim that her alleged traffickers would force her back into prostitution in Thailand. The record shows that the applicant has returned to Thailand on at least one occasion. The record of her August 10, 2009 apprehension at the border states that the applicant "expressed no fear of being persecuted or tortured should she be returned to her home country of Thailand." On appeal, the applicant asserts that if returned to Thailand, she would have to live with her parents and that her alleged traffickers know her parents' address. However, the applicant previously asserted that both of her parents were deceased. Hence, the factor at 8 C.F.R. § 214.11(i)(1)(vii) also does not weigh in the applicant's favor.

Counsel submitted the 2002 U.S. Department of State Country Report on Human Practices for Thailand, which notes serious problems of trafficking in women and coerced prostitution. The report also states that some corrupt police officers were involved in trafficking or took bribes to ignore it. While the credibility of the 2002 report is not in question, counsel has failed to demonstrate its relevance to the applicant's particular case. The record shows that the applicant has returned to Thailand and her attempt to reenter the United States does not appear to be related to any prior or new incident of trafficking. Moreover, although the instant petition was filed in 2005 and counsel last corresponded with the AAO regarding the appeal in August 2009, counsel has submitted no current or more recent evidence regarding the treatment of trafficking victims in Thailand. Consequently, the factors at 8 C.F.R. § 214.11(i)(1)(v) and (vi) do not support the applicant's claims.

Finally, the record contradicts that applicant's claim that she is being treated for psychological trauma related to her alleged trafficking and that such treatment would be inaccessible to her in

Thailand. In her September 14, 2005 affidavit, the applicant asserted that she was being treated by a doctor for her emotional trauma. The record lacks any evidence of such treatment. In her 2005 psychological evaluation, ██████████ stated that the applicant “would benefit from treatment” and that she had given the applicant “information about treatment and referral sources,” but the record lacks any evidence that the applicant received any treatment from ██████████ or any other mental health professional. Counsel submitted a 2003 article from *The Village Integrated Service Agency*, which is based on one doctor’s visits to mental health programs in other countries in 1999 and 2000. The article reports that Thailand has a shortage of psychiatrists and the government does not provide disability income to people with serious mental illnesses. This article does not address the applicant’s situation. The record indicates that the applicant was diagnosed with PTSD, but has not been treated for her condition and has not suffered any significant disability as a result. The applicant’s age, now 35, and personal circumstances also do not indicate that her removal to Thailand would cause her extreme hardship involving unusual and severe harm. Moreover, the record of the applicant’s August 10, 2009 apprehension states that she “indicated that she is in good health, has no past medical history, and is currently not taking any medication.” Consequently, the factors at 8 C.F.R. § 214.11(i)(1)(i) and (ii) 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.

VII. Conclusion

The applicant has not demonstrated that she was a victim of a severe form of trafficking in persons, that she is physically present in the United States 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) of the Act. The applicant also failed to establish exceptional circumstances that prevented her from timely filing her Form I-914. Consequently, her application must be denied.

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.