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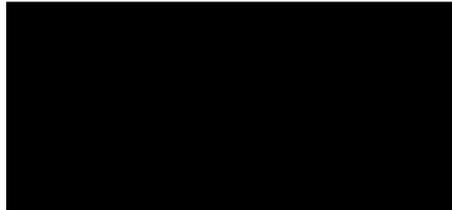
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **SEP 13 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director (the director) denied the application for T nonimmigrant status and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn in part and affirmed in part. The appeal will be dismissed.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons.

The director denied the application for failure to demonstrate that the applicant was a victim of a severe form of trafficking in persons. Specifically, the director found that the circumstances of the applicant’s farm work in the United States did not constitute involuntary servitude, peonage, debt bondage or slavery and there was no evidence that the applicant had contacted a law enforcement agency regarding the alleged trafficking. The director also found the applicant’s statements insufficient to establish that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States to Thailand.

On appeal, counsel claims the director failed to address all relevant, credible evidence and that the applicant was subjected to involuntary servitude and forced labor in a situation similar to that of many other Thai laborers trafficked into the United States. In support of the appeal, counsel submits articles regarding labor trafficking, Department of State reports on trafficking and human rights in Thailand, the applicant’s supplemental declaration and evidence that U.S. Immigration and Customs Enforcement (ICE) granted the applicant continued presence based on his cooperation with a federal investigation and prosecution against his alleged traffickers.

The evidence submitted on appeal demonstrates that the applicant was a victim of a severe form of trafficking in the past, that he assisted in the federal investigation and prosecution of acts of trafficking, and that he is present in the United States on account of such trafficking. The relevant evidence does not, however, establish that the applicant would suffer extreme hardship involving unusual and severe harm upon removal. As the applicant has failed to overcome all the grounds for denial of the application, the appeal will be dismissed.

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 (in pertinent part):

(i) subject 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, in consultation with the Attorney General, 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 . . . on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United

States for participation in investigative or judicial processes associated with an act or a perpetrator of 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(8) 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:

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.

Involuntary servitude means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse of threatened abuse of legal process. Accordingly, involuntary servitude includes “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” (*United States v. Kozminski*, 487 U.S. 931, 952 (1988)).

The regulation at 8 C.F.R. § 214.11(l) prescribes, in pertinent part, the standard of review and the applicant’s burden of proof:

- (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 status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.
- (2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

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 who entered the United States on September 4, 2004 as an H2A temporary agricultural worker for Aloun Farm, Incorporated in Hawaii. The applicant was initially granted authorization to remain in the United States until December 10, 2004. The approval of a subsequent petition filed by A. M. Enterprises extended the applicant's H2A status from December 11, 2004 to February 8, 2005. On February 16, 2007, the applicant was served with a Notice to Appear for removal proceedings charging him as an alien who had remained in the United States beyond his period of authorized stay. The applicant's next hearing before the Los Angeles Immigration Court is scheduled for September 17, 2010. The applicant filed the instant Form I-914 on July 17, 2008.

In his July 9, 2008 declaration, the applicant provided the following account of his journey to, and pertinent experiences in the United States. The applicant recounted that he lived with his wife and two sons in a small village in Udon Thani province in Thailand where he worked on his family's small farm. In early 2004, a recruiter from a company called ██████ told the applicant that if he paid 700,000 Thai Bhat (bhat) in fees, ██████ could guarantee work for him on a farm in the United States for up to three years and that he would be paid an hourly wage of \$9.42. The applicant explained that he entered into the employment agreement because it was common in his province "to travel overseas for higher paying jobs." He further stated, "[t]o pay the recruitment fee, my family borrowed 400,000 baht from the bank in exchange for the deed to my Father's rice field." After paying the fees, the applicant obtained a passport, which he gave to ██████, which secured a visa and airline ticket.

The applicant arrived in Honolulu on September 4, 2004 and took a bus along with 43 other workers to ██████. Upon arrival, the applicant reported that an ██████ employee took the workers' passports, told them not to go outside the farm and informed them that they would not be earning an hourly wage of \$9.42. The men initially refused to work, but were told that if they did not work for a reduced wage, none of their money would be refunded and their families "would have a problem" if they left. The applicant states that he was paid approximately \$6.60 per hour and worked six days a week for eight hours a day. The applicant reported that all 44 workers initially stayed in one house with five rooms, but that later half the workers were moved to other housing on the farm.

In February 2005, Aloun Farms management told the applicant and some other workers that their visas would soon expire and Aloun Farms could not extend them. The managers told the workers

that they could remain working at [REDACTED] after their visas expired or they could fly on their own to Los Angeles to find work. The applicant chose to go to Los Angeles where he found a job in a restaurant. The applicant stated, "I believe that my wage at this restaurant is fair. I still work at this job and earn approximately \$80 per day."

The applicant reported that after leaving [REDACTED] he had no further contact with [REDACTED] but that his wife continued to receive telephone calls from people associated with Udon NT inquiring about the applicant's whereabouts and if he would return to Thailand. The applicant stated that he recounted his experiences to the Thai Community Development Center, which was coordinating with law enforcement agencies, and that he filed a complaint with the "California Department of Fair Employment and Housing" against Aloun Farms.

In his supplemental declaration submitted on appeal, the applicant states that in addition to the 400,000 baht he borrowed from the bank, he also owed 300,000 baht, which his father-in-law borrowed from a money lender. The applicant reports that he still owes approximately 300,000 baht to the money lender whom he is certain would harm him or his family if he does not pay back the loan.

III. Victim of a Severe Form of Trafficking in Persons

The director determined that the applicant was not a victim of a severe form of trafficking in persons because the record indicated that although the applicant was not paid according to his original agreement, he was not subjected to involuntary servitude, peonage, debt bondage or slavery. We agree that the relevant evidence before the director indicated that the applicant voluntarily entered an agreement to work at Aloun Farms and was not subjected to a severe form of trafficking.

On appeal, however, the applicant submits evidence which overcomes this portion of the director's decision. On August 20, 2009, after the director's decision was issued, ICE granted the applicant continued presence. The record on appeal also includes correspondence from the U.S. Department of Justice (DOJ), Civil Rights Division's Human Trafficking Prosecution Unit stating that they sought continued presence parole for the applicant and 20 other individuals whom they interviewed and determined were victims of a severe form of trafficking in persons. Based on the interviews with the applicant and other workers, DOJ filed an indictment against [REDACTED] and its parent labor recruitment company. The record contains a copy of the indictment and publicly available records document the ongoing prosecution in the case, *United States v. Alec Souphone Sou, et. al.*, CR 09-00345 (Dist. HI filed Aug. 27, 2009).

The regulation at 8 C.F.R. § 214.11(f)(2) specifies that documentation that the applicant was granted continued presence will be considered primary evidence that the applicant has been the victim of a severe form of trafficking in persons, unless the parole has been revoked based on a determination that the applicant is not such a victim. In this case, the evidence submitted on appeal shows that ICE granted the applicant continued presence as a trafficking victim pursuant to DOJ's request given the applicant's assistance in the investigation and prosecution of the applicant's former employer, Aloun Farms. The indictment and a related newspaper article, also submitted on appeal, provide additional details regarding the circumstances under which the applicant and his coworkers were held at Aloun Farms. For example, the evidence confirms that the workers' passports were taken away from them

upon arrival at the farm, that they were threatened with harm if they left, and that the house in which the workers stayed was surrounded by a cement wall, chain link fence and a locked gate controlled by other Aloun Farms employees. In sum, the evidence submitted on appeal demonstrates that the applicant was subjected to 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 a Severe Form of Trafficking in Persons

The director determined that the applicant was not present in the United States on account of the alleged trafficking because he left his alleged traffickers before law enforcement became involved in the matter. The director noted that the applicant received his passport back before he went to Los Angeles, where he independently obtained employment and worked for over three years before filing the instant application. We agree that the record, as it existed at the time of the director's decision, did not demonstrate that the applicant's continuing presence in the United States was directly related to the original trafficking.

Evidence submitted on appeal, however, overcomes this ground for denial. The regulation at 8 C.F.R. § 214.11(g)(2) states:

(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.

The relevant evidence before the director indicated that the applicant's passport was returned to him when he left [REDACTED] and that he had a chance to depart the United States during the two years between his departure from [REDACTED] and his first contact with the [REDACTED] in 2007. A letter from [REDACTED] stated that the organization helped the applicant file a complaint with the Equal Employment Opportunity Commission (EEOC) against [REDACTED] but the record contains no documentation of that complaint. The [REDACTED] letter also recounted the organization's work with ICE in the investigation of another labor recruitment company, [REDACTED]. However, as noted by the director, the record contained no evidence that the applicant was recruited by [REDACTED] or was involved in [REDACTED] work with ICE's investigation of that company.

The record as supplemented on appeal, however, shows that the applicant was granted continued presence for his assistance in the investigation and prosecution of [REDACTED]. The applicant was

interviewed by DOJ prosecutors on May 20, 2009 and publicly available court documents show that the criminal case remains pending. Accordingly, the present record demonstrates that the applicant remained in the United States on account of the trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

V. Compliance with Law Enforcement Requests

The director concluded that the applicant had not complied with law enforcement requests for assistance in the investigation or prosecution of trafficking because the record indicated that the applicant himself had never directly contacted any law enforcement agency. Again, we agree that the record as it existed at the time of the director's decision did not demonstrate the applicant's assistance in any law enforcement agency's investigation or prosecution of acts of trafficking or related crimes.

As previously discussed, however, the evidence submitted on appeal demonstrates that the applicant assisted in the ICE and DOJ investigation and prosecution of acts of trafficking and related crimes, as required by section 101(a)(15)(T)(i)(III) of the Act.

VI. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

The evidence submitted on appeal does not overcome the remaining ground for denial and we concur with the director's determination that the applicant has not demonstrated that he would suffer extreme hardship involving unusual and severe harm upon removal.

The evidentiary standards for this requirement are explicated in the regulation at 8 C.F.R. § 214.11(i), which states, in pertinent part:

(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 [regarding suspension of deportation]. 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.

In this case, the applicant is 37 years old and the record contains no evidence that he suffers from any physical or mental illness. In his 2008 declaration, the applicant stated that he had worked at a restaurant in Los Angeles since he left [REDACTED] in 2005 and that he believed his wage at the restaurant was fair. He further reported that he had no further contact with [REDACTED] but that his wife continued "to be harassed by telephone calls from people connected to [REDACTED] who are looking for information on where [he is] and if [he] will return." The applicant did not describe the number, frequency or content of the telephone calls in any detail.

In his supplementary declaration submitted on appeal, the applicant states that he still owes approximately 300,000 baht to a money lender. He explains, "The loan must be paid off or the lender will hold both me and my family responsible for the balance. I am certain that he would harm me or my family if I do not pay back the loan." The applicant does not discuss the basis for his fear or why he is certain that his family would be harmed if he did not repay the loan. The applicant also does not indicate that his wife has received any further calls from [REDACTED] associates.

The applicant's brief assertion of unspecified harm he or his family would face if he returned to Thailand indebted is insufficient to establish that he would face extreme hardship involving unusual and severe harm upon removal from the United States. On appeal, counsel claims that the applicant is "highly vulnerable to revictimization" in Thailand, where the government "is unlikely to be willing to protect" the applicant. In support of his claim, counsel submits articles and reports which indicate that Thailand is a source country for labor trafficking and does not effectively regulate labor recruiting companies. The articles and reports do not, however, establish that the applicant would likely face re-victimization upon his return.

The applicant himself provides no detailed, probative discussion of the harm he would face if he returned to Thailand without repaying the money lender and his statements on appeal do not indicate that anyone associated with [REDACTED] has contacted his family since 2008. The applicant's brief statements also fail to demonstrate that the financial circumstances of him and his family would render him vulnerable to other labor traffickers upon his return. According the applicant, he owes the money lender 300,000 Thai Bhat, which is approximately \$9,745.¹ The applicant stated that he

¹ Based on an exchange rate of 30.8 Thai Bhat to one U.S. dollar according to the currency converter available at <http://www.xe.com/ucc/convert.cgi?Amount=1&From=USD&To=THB>.

has earned approximately \$80 per day since early 2005, earnings which, if the applicant works five days a week, would amount to approximately \$19,200 a year or approximately \$96,000 in the five years that have elapsed since he left [REDACTED] and began working in Los Angeles. The applicant has not explained his inability to repay his remaining debt despite his continued employment in the United States for over five years since he left Aloun Farms and he identifies no other source of potential harm to him or his family apart from his remaining debt.

On appeal, counsel also asserts that the applicant has suffered “extended trauma” from the trafficking and that laws, social practices, and customs in Thailand would penalize him for being a victim of trafficking. Specifically, counsel states that the applicant “has suffered constant worry” regarding his fear of being unable to repay his debt and that he has “suffered in being separated from his family and without a familial or social support system in the United States.” Counsel’s assertions are not supported by the applicant’s own statements. The applicant does not indicate that he constantly worries about his debt or suffers from a lack of familial or social ties in the United States. To the contrary, the applicant stated that he has been employed at a restaurant where he earns what he believes to be a fair wage and that he received assistance from [REDACTED]. In addition, the record contains no evidence that the applicant has suffered any significant physical or psychological injury related to his time at [REDACTED].

Counsel further claims that “people in [the applicant’s] village would think poorly of him for returning to Thailand while still in debt.” The applicant makes no such assertion in either of his declarations and the study cited by counsel notes only that many Thai workers who returned while still indebted “reported less communication with old friends.”² Even if the record established that the applicant would return to Thailand indebted, the regulation prescribes that a finding of extreme hardship involving unusual and severe harm may not be based upon mere disruption to social opportunities. 8 C.F.R. § 214.11(i)(1).

Finally, counsel claims that if removed to Thailand, the applicant would lose access to U.S. courts and the criminal justice system to seek redress for his victimization. Again, the record does not support counsel’s assertion. Although the applicant was granted continued presence based on his assistance with the criminal prosecution of [REDACTED] publicly available court records show that the president and vice-president of [REDACTED] entered plea agreements and were ordered to pay restitution to 24 victims.³ The applicant’s continued presence parole expired on August 19, 2010 and the record contains no evidence that his parole has been extended or that he is awaiting further redress through the criminal case against [REDACTED]. In his 2008 declaration, the applicant stated that he had filed a complaint against [REDACTED] with the California Department of Fair Employment & Housing and Thai CDC’s letter indicated that the applicant had filed an EEOC complaint against [REDACTED], but the record contains no documentation or further evidence of those complaints or any other action filed by the applicant against [REDACTED].

² [REDACTED], Temporary Overseas Migration of Rural Thai Men: Perception of Changes in Health and Social Interactions after Returning to Their Communities, 12 Asia-PAC. J. Pub. Health 1, 4-11 (2000).

³ *United States v. Sou*, CR 09-00345, Stipulation and Order Regarding Distribution of Restitution (Dist. HI July 1, 2010).

In sum, the relevant evidence submitted below and on appeal fails to establish that the applicant would suffer extreme hardship involving unusual and severe harm upon removal, as required by section 101(a)(15)(i)(IV) of the Act and under the standard and factors prescribed by the regulation at 8 C.F.R. § 214.11(i).

VII. Conclusion

On appeal, the applicant has established that he was a victim of a severe form of trafficking in persons in the past, that he is present in the United States on account of such trafficking and that he assisted in the federal investigation and prosecution of acts of trafficking and related crimes.

Counsel's claims and the evidence submitted on appeal fail to demonstrate, however, that the applicant would suffer extreme hardship involving unusual and severe harm upon removal and the applicant is consequently ineligible for T nonimmigrant classification under section 101(a)(15)(i) of the Act. Accordingly, the appeal will be dismissed and the application will remain denied.

As in all visa classification proceedings, the applicant bears the burden of proof to establish his 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.