identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

[redacted]

D12

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 28 2010

IN RE: Applicant: [redacted]

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:

[redacted]

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

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

The director denied the application for failure to demonstrate that the applicant was a victim of a severe form of trafficking in persons and that she was present in the United States on account of such trafficking. Specifically, the director determined that the applicant was voluntarily smuggled into the United States and was not, after her arrival, subjected to involuntary servitude, peonage, debt bondage, slavery; or commercial sex through force, fraud or coercion.

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, 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, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, 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;
> >
> > (bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or
> >
> > (cc) has not attained 18 years of age; 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:

> *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.
>
> ***
>
> *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 or 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)).
>
> ***
>
> *Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
>
> ***
>
> *Victim of a severe form of trafficking in persons* means an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the VTVPA[1] and in this section.

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

(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.

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

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States . . . on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. Specifically, the physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point 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.

II. Factual and Procedural Background

The record in this case provides the following pertinent facts and procedural history. The applicant is a native and citizen of the Ukraine. In her August 19, 2008 affidavit, the applicant stated the following account of her journey to the United States and the relevant events which occurred after her arrival. The applicant recounted that it was difficult for her to find work that would support her family in the Ukraine and she knew she would "need to leave the Ukraine if [she] wanted to have financial security and independence." In 2001, the applicant was denied a visa to enter the United States. She later attempted to go to Italy and Spain, but was unsuccessful. In August of 2003, the

applicant met with , a woman who was known in her village for helping people get to the United States where the applicant had heard people "made good money."

initially refused to transport the applicant unless she agreed to a debt and interest plan to pay the fees. After much negotiation, however, agreed to the applicant's terms. The applicant's family and agreed upon a total fee of $13,500 including $500 for a guaranteed job after arrival in the United States and a down payment between $3,000 and $4,000 with the balance to be paid by upon the applicant's arrival in the United States. directed the applicant to contact a man named who gave the applicant a false Czech passport upon her arrival in Kiev and told her to memorize the name and information in the passport. On January 12, 2004, the applicant, as directed by , showed her Ukrainian passport at the airport in Kiev, but then used the false Czech passport to fly from Kiev to Paris and then to the United States. After her arrival, the applicant stayed at the house of s husband where she called her family and they paid the balance of her debt to .

The applicant reported that she stayed at house for two weeks. Upon her arrival, none of s contacts had found the applicant a job, but told her she could stay there until she found employment. While staying at house, the applicant met some acquaintances from the Ukraine who were living in the neighborhood. She also met s brother, . On January 18, 2004, the applicant reports that she saw at a birthday party and he drove her and some other people back to s home where he stayed to talk and drink. After the other men fell asleep, the applicant recounted that made romantic and sexual advances to her, which she refused, but caught her in a bathroom, threatened to force her into prostitution and raped her.

After two weeks, the applicant stated that s cousin found her a job in New Jersey, where she worked for a short time until the employer passed away after which she returned to s home. During this time, the applicant stated that visited frequently, continued to make sexual advances and told her she should get a driver's license before her Form I-94 arrival card expired. The applicant then found a job as a nanny in New Jersey on her own through an employment agency and moved out of s home.

The applicant recounted that called her frequently at her new home, threatened to tell her family that they had had sex if she did not go on a trip with him to obtain a driver's license. The applicant went to Michigan with , and a third man. After their arrival, the applicant stated that threatened to force her into prostitution and tell her family in the Ukraine that she was a prostitute if she did not have sex with him. The applicant recounted that raped her on the two nights that they stayed in Michigan. The applicant failed the driving test and did not get a license. After her return, she stated that continued to call her because she owed him money for the trip, but after two months, she paid him. The applicant did not answer subsequent calls and eventually he stopped contacting her.

The applicant explained that she did not tell anyone about her experiences with until 2007 when a Ukranian friend told her that the same thing had happened to her. In July 2007, the applicant reported that she met with an attorney for help with her immigration status and eventually disclosed her experiences with . Her attorney contacted U.S. Immigration and Customs

Enforcement (ICE) and the applicant met with an ICE agent on February 14, 2008. The applicant expressed fear of returning to the Ukraine because was deported and her cousin told her that he lives close to her parents' home. The applicant states that her parents told her of neighbors who were attacked and she believes that was involved.

The applicant filed her Form I-914 on December 2, 2008. The director subsequently issued a Notice of Intent to Deny (NOID) the application for failure to establish the requisite victimization and presence in the United States on account of trafficking. Counsel timely responded to the NOID with a brief and an additional affidavit of the applicant. The director found counsel's response insufficient to establish the applicant's eligibility and denied the application on the two grounds cited in the NOID.[2]

On appeal, counsel asserts that the applicant was a victim of a severe form of trafficking in persons because her alleged traffickers recruited, harbored and transported her through the use of fraud "in hopes that she could be subjected to debt bondage" and that after her arrival, subjected the applicant to involuntary servitude, commercial sex and debt bondage. Counsel further claims that the applicant remains in the United States on account of the trafficking because she fears returning to the Ukraine. The evidence submitted below and on appeal fails to support counsel's claims, which do not overcome the grounds for denial of the application for the reasons discussed below.

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 she was voluntarily smuggled into the United States and was not brought here for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. The director further concluded that although the applicant was sexually assaulted after her arrival, she was not a victim of sex trafficking.

On appeal, counsel first asserts that the applicant is a victim of trafficking because and her associates recruited and brought the applicant to the United States "in hopes that she could be subjected to debt bondage." *Counsel's Brief in support of Appeal* (*Appeal Brief*) at 7. Counsel claims that the statute does not require the actual subjection of an applicant to commercial sex, involuntary servitude, peonage, debt bondage or slavery. *Id.* Counsel misreads the statute. The language of the statute clearly requires the obtainment of a victim's labor or services and does not encompass the unrealized intent to gain such labor or services. As defined by the statute and regulations, "severe forms of trafficking in persons" require either "a commercial sex act induced by force, fraud, or coercion;" or a person's other "labor or services." 22 U.S.C. § 7102(8); 8 C.F.R. 214.11(a). The use of the words "for the purpose of" in the second prong of the definition clarifies that the labor or services obtained must constitute involuntary servitude, peonage, debt bondage, or slavery. *See id.* Counsel further asserts that "the legislative intent of the drafters" was to include as victims not only individuals whose labor and services amounted to involuntary servitude, peonage,

[2] The brief statement on page three of the director's decision that the record lacked evidence that the applicant would suffer extreme hardship involving unusual and severe harm upon removal appears to be an inadvertent error as the director previously determined in the NOID that the applicant had met that requirement.

debt bondage or slavery, but also individuals who were recruited, harbored and transported "for that purpose." *Appeal Brief* at 6. Counsel cites no portion of the legislative history of the TVPA to support her claim and the statute and regulations clearly require the actual procurement of the victim's commercial sex or the latter severe forms of labor or services. *See also* Preamble to the Interim Rule, 67 Fed. Reg. 4784, 4786 (explaining that to be considered a victim of a severe form of trafficking in persons, an individual must have engaged in labor, services or a commercial sex act).

Even if the statute encompassed the unrealized intent to obtain an alien's labor or services, the relevant evidence in this case fails to show that the applicant was trafficked into the United States for her labor or services through the use of force, fraud, or coercion; or that she was brought to the United States through sex trafficking. As recounted by the applicant, she voluntarily entered into an agreement with that she would pay a defined amount of money in order to be transported to the United States, that she initially made a down payment and that her family paid the remaining, agreed-upon balance upon her arrival in the United States. *See Applicant's Affidavits*, dated August 19, 2008 and June 11, 2009. The applicant further stated that $500 of her payment to was "for a guaranteed job when [she] arrived." *Applicant's Affidavit*, dated August 19, 2008 at ¶ 8. She recounted that after her arrival, she was told that she could stay at s house in New York until she found a job and that she stayed there for two weeks until cousin found her a job in New Jersey. *Id.* at ¶¶ 14,28. After her first employer passed away, the applicant stated that she found another job on her own through an employment agency. *Id.* at ¶ 31. The applicant does not indicate that she ever paid any amount of her earnings to the

On appeal, counsel claims that the applicant's situation was similar to "the traffickers' established mode of practice . . . to transport Ukrainians into the U.S. for only a small fee, with a large balance to be paid over time after [the] victim arrived in the United States." Counsel cites the criminal indictment of and a letter from of the Federal Bureau of Investigations (FBI). While these documents show that and her associates trafficked other victims into the United States, the evidence fails to establish that the succeeded in victimizing the applicant. The applicant recounted in detail her family's extended negotiations with prior to her departure to ensure that they could pay the balance of the fee upon the applicant's arrival in the United States rather than subjecting the applicant to subsequent payments with interest. *Applicant's 2008 Affidavit* at ¶ 7-8; *Applicant's 2009 Affidavit* at pp. 1-2. In addition, neither the indictment nor Agent Cardona identifies the applicant as a victim in the criminal prosecution against and her co-defendants, and the record lacks any indication that the applicant came to the United States through the ' use of force, fraud or coercion.

The record also fails to support counsel's claim that the applicant is a trafficking victim because after her arrival, she was subjected to involuntary servitude or commercial sex. Counsel first asserts that subjected the applicant to involuntary servitude when he "used force and coercion to make [the applicant] engage in sexual intercourse with him" and that the rapes were a form of forced labor. *Appeal Brief* at 9-13. Counsel further claims that the sexual assaults constituted commercial sex acts because although the applicant was not given money, she was "forced to engage in sex in exchange for her safety and for shelter." While under certain circumstances, forced sexual acts may be a form of involuntary servitude and commercial sex may encompass the exchange of valuable things apart from money, the record in this case does not demonstrate that sexual assaults of the applicant occurred in the context of trafficking.

Counsel has not established a nexus between the applicant's rapes and her alleged trafficking. First, as previously discussed, the applicant was not subjected to a severe form of trafficking in persons because she was not brought to the United States "for labor or services" or "for the purpose of a commercial sex act." Although is brother, the record fails to establish that he was involved in the transport of the applicant to the United States or her two-week stay at home. The record shows that was not a defendant in the criminal case against the and explains that was charged with other crimes and deported to the Ukraine in December 2007. states that sources in the investigation reported that raped other women trafficked into the United States and threatened victims to force them to make payments on their debts to the . The record in this case, however, shows that the applicant was not subjected to debt bondage by the and that sexual assaults of the applicant occurred independently of her smuggling agreement with

Nor does the record establish that himself trafficked the applicant after her arrival in the United States. The applicant's statements indicate that she agreed to travel to Michigan and pay for the trip to obtain a driver's license. While we do not discount the trauma resulting from the ensuing sexual assaults reported by the applicant, her statements do not establish that took her to Michigan through the use of force, fraud or coercion. The applicant does not state that used physical force to make her accompany him to Michigan. Nor do her statements show that he engaged in fraud in order to secure her presence on the trip. The applicant states that after their arrival in Michigan, repeated his threats to force her into prostitution if she did not have sex with him, but her brief description of this threat lacks probative value given her prior statements that she had succeeded in finding her own employment and housing and was living independently by this time. The applicant also explains that threatened to tell her family in the Ukraine that they had had sex and the applicant was afraid of resultant rumors that would make "villagers look down on [her] daughter" and that her parents "might not recover from such embarrassment." *Applicant's 2008 Affidavit* at ¶ 35; *Applicant's 2009 Affidavit* at p. 6. Although the applicant credibly feared these consequences, the potential social ostracism she describes lacks the severity of harm requisite to threats constituting coercion, as defined at 8 C.F.R. § 214.11(a).

The record also does not support counsel's claim that forced the applicant into debt bondage by compelling her to work to pay him for the trip to Michigan. The applicant stated that charged her $1,600 or $1,650 for the trip, which she was able to repay within two months. *Applicant's 2008 Affidavit* at ¶¶ 33, 39; *Applicant's 2009 Affidavit* at p.5. The record lacks any evidence that the applicant was forced to work for to pay for the trip or that the situation was otherwise analogous to debt bondage, involuntary servitude, peonage or slavery, as those terms are defined in the regulation at 8 C.F.R. § 214.11(a).

In sum, the relevant evidence fails to demonstrate that the applicant 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 a Severe Form of Trafficking in Persons

The director determined that because the applicant had not established that she was a victim of a severe form of trafficking in persons, she had also not demonstrated that her presence in the United States was on account of such trafficking. On appeal, counsel reiterates her claim that the applicant was a trafficking victim and that the applicant has not departed the United States since being trafficked because she fears retaliation by [redacted] should she return to the Ukraine. The relevant evidence fails to support counsel's claim.

To satisfy the physical presence requirement, the regulation requires, in pertinent part, that an alien demonstrate both that he or she was subjected to trafficking in the past and that his or her continuing presence in the United States is directly related to the original trafficking. 8 C.F.R. § 214.11(g). As discussed in the preceding section, the applicant has not established that she was subject to a severe form of trafficking in persons. The relevant evidence also does not demonstrate that she has remained in the United States for reasons directly related to the alleged trafficking.

The record shows that the applicant escaped her alleged traffickers over three years before she contacted a law enforcement agency. Consequently, she "must show that . . . she did not have a clear chance to leave the United States in the interim." 8 C.F.R. § 214.11(g)(2). The applicant stated that although she gave [redacted] associate, [redacted], her Ukrainian passport at the Kiev airport, it was later returned to her ex-husband who mailed the passport to her after her arrival in the United States. *Applicant's 2008 Affidavit* at ¶ 10. In response to the NOID, counsel asserted that the applicant only possesses "an internal Ukrainian passport" and not a "Ukrainian travel passport," which can be obtained only by presenting a valid U.S. visa or by returning to the Ukraine. *Counsel's August 5, 2009 Letter* at p.6. The applicant herself, however, provides no such explanation in either of her two affidavits. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 , 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant has not shown that she did not have a clear chance to depart the United States after she left [redacted] house and during the ensuing three years before she contacted a law enforcement agent about the alleged trafficking.

The record also does not show that the applicant meets the physical presence requirement under any of the other factors listed in the regulation at 8 C.F.R. § 214.11(g)(2). The applicant indicated that she independently secured employment soon after her arrival in the United States and continued working for over three years before she met with an attorney "for assistance with [her] immigration status." *Applicant's 2008 Affidavit* at ¶ 43. The record does not show that the applicant took any steps to deal with the consequences of the alleged trafficking in the intervening three years. Although the applicant later reported her experiences to law enforcement, the record lacks any evidence that she has remained in the United States to assist in the prosecution of her alleged traffickers or to pursue redress or restitution for her injuries. As [redacted] explained, by the time the applicant met with ICE, [redacted] and her co-defendants had already been successfully prosecuted and [redacted]. [redacted] had been deported to the Ukraine.

Consequently, the applicant has not established that her continued presence in the United States is on account of a severe form of trafficking in persons, as required by section 101(a)(15)(i)(II) of the Act.

V. Conclusion

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. Counsel's claims and the evidence submitted on appeal fail to establish that the applicant was a victim of a severe form of trafficking in persons and that she is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(I) - (II) of the Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.