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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

[redacted]

D12

DATE: APR 0 5 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]
EAC 09 126 50866

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, ("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 The decision of the director will be withdrawn and the matter will be remanded to the director for further action.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application for failure to establish that the applicant had complied with any reasonable request from a law enforcement agency in the investigation or prosecution of the trafficking or related crime.

On appeal, counsel submits a brief and additional evidence. The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Although the applicant has overcome the ground for denial on appeal, the application is not approvable because the applicant is inadmissible to the United States and her request to waive her inadmissibility was denied. Accordingly, the matter will be remanded to the director for further consideration and action.

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:

> *Reasonable request for assistance* means a reasonable request made by a law enforcement officer or prosecutor to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The "reasonableness" of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.

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.

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 Mexico. In these proceedings, the applicant states that she entered the United States without inspection in May 1997 and again in June 2001. In May 2006, U.S. Immigration and Customs Enforcement (USICE) took the applicant into custody during the investigation of a trafficking ring. On May 11, 2006, the applicant was granted continued presence at the request of USICE and her continued presence was extended on June 27, 2007 and again on May 11, 2008 until May 10, 2009. The applicant filed the instant Form I-914 on March 23, 2009. The director subsequently issued a Notice of Intent to Deny (NOID) the application because the record contained an USICE memorandum stating that the applicant never made any statements

against her trafficker or any of his associates. Counsel responded to the NOID with additional evidence, which the director found insufficient to establish the applicant's eligibility. The director denied the application and counsel timely appealed.

Compliance with Law Enforcement Requests

The statute requires that a T nonimmigrant demonstrate that he or she 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 related crime. Section 101(a)(15)(T)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(T)(i)(III). A law enforcement agency (LEA) endorsement is not mandatory, but, when submitted, the endorsement will be considered primary evidence that an applicant has met this requirement. 8 C.F.R. § 214.11(h)(1). In the absence of an LEA endorsement, an applicant may submit credible secondary evidence and affidavits to show the nonexistence or unavailability of the LEA endorsement and to otherwise establish the alien's compliance with law enforcement requests. *Id.* at § 214.11(h)(2). While the record in this case shows that USICE declined to provide an LEA endorsement for the applicant, the relevant evidence demonstrates that the applicant complied with multiple requests for assistance in the investigation of her trafficker and his associates. Accordingly, the director's determination to the contrary will be withdrawn.

In her September 23, 2008 affidavit, the applicant stated that she grew up in the same town in Mexico as her husband who went to the United States when he was a teenager. When her husband returned a few years later, the applicant recounted that they began dating and eventually married in March 1989 when she was 17 years old.[1] Shortly after their marriage, the applicant stated that she became pregnant with their son and her husband returned to the United States. The applicant explained that she lived with her mother-in-law, which was difficult due to their frequent arguments and lack of money, but her mother-in-law told her that if she left, she would have to leave her son behind. Over the next five years, the applicant's husband came back to Mexico two times and during his second visit she became pregnant with the couple's daughter.

According to the applicant, her husband paid someone to smuggle her into the United States in 1997. When she arrived, the applicant found out that her husband was living with another woman and he rented another place for her to live. The applicant recounted that her husband forced her to work as a prostitute and told her that was the only way she could earn enough money to repay her smuggling debt, pay her rent and support her children. In January 2001, the applicant stated that she returned to Mexico to see her children and wanted to remain there, but her husband and mother-in-law told her that if she did not return to the United States to earn money, they would tell her children that she had abandoned them. The applicant recounted that upon her return to the United States, she went to live with her sister, but her husband again forced her to work in prostitution houses.

The applicant stated that on May 1, 2006, USICE agents arrested her at her sister's home. The agents told the applicant they were investigating her husband, his uncles and cousins. The agents took the applicant to a hotel where they were interviewing many other people, many of whom the

[1] The record does not contain a marriage certificate or other documentation of the applicant's marriage. The birth certificates of the applicant's two children, however, identify the applicant's husband as the children's father.

applicant recognized from the prostitution houses. The applicant recounted that she was questioned multiple times during the five days she stayed at the hotel and she responded to all the questions, but was confused because she recognized many of the men under investigation but had not known that they all worked together prostituting women. The applicant stated that the USICE agents gave her continued presence and a work permit because she was "cooperating in their investigation as a victim." After she left the hotel, the applicant recalled that she met with the investigators a few more times. Although the applicant was told that she would be called to testify, in the end her testimony was not needed and the USICE agents told her that her husband and his relatives had been found guilty.

In response to the NOID, the applicant submitted another affidavit in which she provided a detailed description of the USICE agents' search of her home on May 1, 2006 and how she was taken into custody. The applicant stated that in her bedroom one of the agents saw a picture of her and her husband and she told the agent that the man in the photograph was the father of her children. The applicant described her subsequent interview with the USICE agent at the hotel as follows: "They asked questions like where I worked and was I married. I didn't hide anything. They took notes about what I was saying and they told me to be careful as to what I was saying because it could harm me. I saw no reason not to be honest, and I was." The applicant stated that she met two or three more times with different investigators who all asked "the same questions about work and family" and that on the third day she was shown photographs of men she did not recognize.

The applicant reiterated that after she left the hotel, she met with investigators a few more times and was told that she would have to go before a jury and she was willing to do so, but the day before she was supposed to testify, she was told that her testimony was not needed. The applicant explained that she was also willing to testify at the sentencing hearing, but her caseworker told her that it was not necessary. On April 11, 2008, the applicant stated that she met with an USICE agent who showed her photographs and asked her of the whereabouts of some of the people involved in the case. The applicant stated that she told the agent what she knew.

In both of her affidavits, the applicant expressed her fear of losing contact with her children who were living with her mother-in-law in Mexico. She explained that she knew her mother-in-law and other people in her home town would blame her for getting her husband and his relatives sent to jail.

In determining that the applicant had not complied with any reasonable law enforcement agency request, the director relied primarily on the USICE memorandum cited in his NOID.[2] That memorandum, however, does not outweigh the other evidence of the applicant's compliance with law enforcement requests for assistance. The USICE memorandum states that the applicant "was available for all requests for assistance" throughout the investigation, but she "*did not* provide any information against her trafficker" (emphasis in original). The memorandum reiterates that the applicant "was interviewed on several occasions by USICE agents and never made any statements

[2] On appeal, counsel asserts that the applicant was not given a copy of the USICE memorandum and was consequently denied a meaningful opportunity to inspect and rebut the adverse evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i). We find no violation of the regulatory requirement. The June 29, 2009 memorandum is only five sentences long and the director adequately informed the applicant of the relevant content of the memorandum.

against [her husband] or any associates for the Notario organization. Therefore, this office did not provide an I-914B [LEA endorsement]."

The memorandum is dated June 29, 2009 and the authors of the memorandum are listed as the requestors on the approval notices for the applicant's continued presence, the last of which was granted until May 10, 2009. The record contains no indication that USICE revoked the applicant's continued presence due to her failure to comply with the investigation. To the contrary, the record shows that USICE identified the applicant as a victim of trafficking; referred her to a social services agency; and requested her continued presence to assist in the investigation against her trafficker and his associates, a request that was renewed two times over the course of three years. The applicant's administrative file contains a copy of her initial sworn statement on May 1, 2006 to an USICE agent. The applicant credibly stated that during the search of her home on that day she identified a photograph of her husband to an USICE agent. The record also shows that in 2007, her husband was convicted of harboring an alien for the purpose of prostitution and was sentenced to 15 to 18 months imprisonment. While the applicant may not have provided information central to the investigation or prosecution of her husband and his associates, the law does not require that a T nonimmigrant's testimony provide the crucial basis for a successful investigation or prosecution. The statute and regulation require only that the alien comply with any reasonable request for assistance in the investigation or prosecution of trafficking or related crimes. Section 101(a)(15)(T)(i)(III)(aa) of the Act, 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa); 8 C.F.R. § 214.11(a).

On appeal, counsel submits evidence of her good-faith attempts to obtain an LEA endorsement from USICE. She also submits a copy of her electronic mail correspondence with an USICE agent in which the agent requested the applicant's assistance in identifying a photograph of an individual under investigation by another USICE office. On March 18, 2009, counsel told the USICE agent that the applicant did not recognize the individual in the photograph, but remained willing to assist in the future. While the record indicates that the applicant was unable to provide USICE with information beneficial to an ongoing or separate investigation two years after her trafficker was convicted, such inability does not negate her prior compliance with the agency's earlier requests.

The preponderance of the relevant evidence of record demonstrates that the applicant complied with reasonable requests for assistance in the federal investigation of acts of trafficking or a related crime, as required by section 101(a)(15)(T)(i)(III)(aa) of the Act. The director's determination to the contrary is hereby withdrawn.

Waiver of Inadmissibility

Although the applicant has established her statutory eligibility for T nonimmigrant status, her application is not approvable because she is inadmissible to the United States. T nonimmigrants must be admissible to the United States or show that any grounds of inadmissibility have been waived through the approval of a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. Section 212(d)(13) of the Act, 8 U.S.C. § 1182(d)(13); 8 C.F.R. §§ 212.16, 214.11(j).

In this case, the record shows that the applicant entered the United States without inspection, was convicted of prostitution in 2000 in Virginia and was convicted of loitering to commit prostitution in

2003 in violation of a city ordinance in Plainfield, New Jersey. The applicant is consequently inadmissible to the United States under section 212(a)(2)(D)(i) of the Act (engaged in prostitution within 10 years of application) and section 212(a)(6)(A) of the Act (alien present without admission or parole).

The director denied the applicant's Form I-192 waiver request because the underlying Form I-914 application for T nonimmigrant status was denied. No appeal lies from the denial of a Form I-192 filed in connection with a T nonimmigrant application and we have no jurisdiction to review the merits of the applicant's waiver request. 8 C.F.R. § 212.16(b)(4). However, as the sole ground for denial of the Form I-192 has been overcome on appeal, the matter will be remanded to the director for reconsideration of the applicant's Form I-192 waiver request.

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). On appeal, the applicant has met this burden in regards to her statutory eligibility for T nonimmigrant status. Accordingly, the decision of the director will be withdrawn and the matter will be returned to the director for reconsideration of the applicant's request for a waiver of inadmissibility.

ORDER: The June 22, 2010 decision of the service center director is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 application.