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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



812

DATE: **JUN 21 2011**

Office: VERMONT SERVICE CENTER

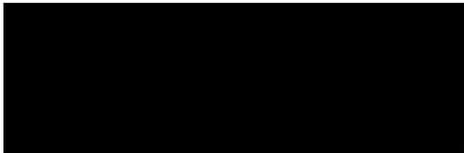
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IN RE: Applicant:



APPLICATION: Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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 The decision of the director will be withdrawn and the matter will be remanded to the director for further action.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 a related crime.

On appeal, counsel submits a brief and copies of documents already included in the record. 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.

#### *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 term:

*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 Ecuador. In these proceedings, the applicant states that her trafficker arranged to have her smuggled into the United States in approximately May 1999, when she was 17 years old. In March 2008, approximately two years after escaping her trafficker, the applicant presented herself to U.S. Immigration and Customs Enforcement (USICE) to provide information about her trafficker. USICE granted continued presence to the applicant that same month but declined to extend it because, according to USICE, the applicant failed to comply with some of the terms stipulated prior to her release on bond. The applicant filed the instant Form I-914 on October 2, 2009. The director subsequently issued a Request for Evidence (RFE) on December 29, 2009 and

a Notice of Intent to Deny (NOID) the application on April 21, 2010 because the record contained information from USICE indicating that the applicant did not comply with reasonable requests for information from USICE in its investigations of the applicant's trafficker. Counsel responded to the RFE and NOID with additional evidence, which the director found insufficient to establish the applicant's eligibility. The director denied the application and counsel timely appealed on the applicant's behalf.

*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 she complied with multiple requests for assistance in the investigation of her trafficker. Accordingly, the director's determination to the contrary will be withdrawn.

In her March 18, 2010 affidavit, the applicant stated that she began working in a brothel in Ecuador at the age of 13 due to her mother's and sisters' insistence, which is where she met her trafficker who asked her if she wanted to go with him to the United States. The applicant stated that in May 1999, when she was 17 years old, her trafficker arranged for her to be smuggled into the United States where she eventually was placed into a brothel in Newark, New Jersey. The applicant recounted that she attempted to escape on two occasions but was caught each time.

The applicant stated that approximately three or four years after she began working at the brothel, a man named [REDACTED] was hired as one of the watchmen. According to the applicant, she and [REDACTED] began a relationship that eventually led to [REDACTED] helping her escape from the brothel sometime in 2006. The applicant stated that she ceased living with Javier in 2007 because he beat her, so she began living with her sister in New York. According to the applicant, it was through a friend of her sister's that she made contact with social workers at [REDACTED] in January 2008, which led to her speaking with officers of USICE about her trafficking experiences. The applicant stated that USICE granted her continued presence through June 29, 2009.

The applicant described her interactions and interviews with USICE agents in May 2008, February 2009 and her final interview with them in July 2009. The applicant stated that she resumed living with [REDACTED] in May 2008 until November 2008 and also encouraged him to contact USICE agents, and it is her understanding that [REDACTED] provided USICE with information.<sup>1</sup> The applicant asserted

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<sup>1</sup> The applicant moved back to her sister's house in November 2008 after leaving [REDACTED]

that she does not understand why USICE is claiming that she has not been helpful, as USICE agents always knew how to contact her either through her social workers at [REDACTED] or her attorney.

In his December 2009 RFE, the director informed the applicant that he had been notified by USICE that she was no longer cooperating with an investigation or prosecution of her trafficker. According to the director, a USICE agent stated that after her release from custody, the applicant had returned to New York and stopped complying with the terms that were stipulated prior to her release. The director noted that the USICE agent had been unable to contact the applicant for further information, which resulted in the closure of the case against the applicant's trafficker.

When responding to the RFE, the applicant submitted her March 18, 2010 affidavit, described above, as well as a February 16, 2010 letter from her social worker at [REDACTED] who provided the dates that she and the applicant had contact with an USICE agent, as well as a brief synopsis of what transpired during the meetings. Counsel, on the applicant's behalf, stated that the applicant had complied with reasonable requests for assistance from USICE. According to counsel, USICE's statement that it had been unable to contact the applicant was untrue, as USICE knew how to reach both the applicant's social worker and her attorney but never reached out to either of them to locate the applicant. While counsel does state that the applicant did not notify USICE when she moved back to her sister's house in November 2008, counsel maintains that the applicant did inform USICE of the move in February 2009 and USICE agents had not made an effort to contact the applicant during that three-month period.

In his April 21, 2010, NOID, the director informed the applicant that after consulting with USICE, he was not of the opinion that the applicant had been compliant in assisting law enforcement with prosecuting her traffickers. According to the director, the USICE agent who had been working with the applicant stated that the applicant's cooperation was never forthcoming and that, although the applicant was instructed to keep in contact with USICE, she apparently had not maintained such contact. The USICE agent further stated, according to the director, that attempts were made to contact the applicant, which included several trips to her residence in Newark, New Jersey; however, USICE agents had learned that the applicant had moved and could not obtain information about her whereabouts. The director stated that USICE's information conflicted with the applicant's statement and, therefore, the applicant was required to provide evidence from USICE to show that the applicant was cooperating in the prosecution of her trafficker. The director notified the applicant that any personal statements from the applicant, her attorney, or her social worker would not suffice in overcoming the intent of USCIS to deny the application. Counsel responded on the applicant's behalf by stating that it was inaccurate for USICE to state that the applicant's cooperation was never forthcoming. According to counsel, the applicant's affidavit contained a detailed account of her meetings with USICE agents and she encouraged [REDACTED] to contact USICE as well. Counsel states that requiring the applicant to obtain evidence from USICE to show that she was cooperative placed an undue and unrealistic burden on her, as it was apparent that USICE would not provide any such evidence.

Preliminarily, we note the director's error when he notified the applicant in the NOID that she would be required to submit evidence from USICE to establish that she complied with any reasonable request for assistance, and that any statements from her, her social worker, or her attorney would be insufficient. The regulation at 8 C.F.R. § 214.11(h)(2) allows the submission of credible secondary

evidence to establish an alien's compliance with law enforcement requests. By not allowing the applicant an opportunity to submit secondary evidence in response to the NOID, the director failed to comply with the applicable regulations.

The information from USICE regarding the applicant's failure to cooperate with its investigation does not outweigh the other evidence of the applicant's compliance with law enforcement requests for assistance. The information that the director received from USICE concerns USICE's inability to contact the applicant after her release from custody, and as well as the applicant's failure to comply with some of the terms stipulated at the time of her release. However, USICE provides no details regarding the terms that the applicant agreed to and subsequently violated upon her release, the dates or general timeframe of when the applicant was unable to be contacted, or how and when the applicant became uncooperative in the investigation after being granted continued presence.

Both the applicant and her social worker have credibly testified that meetings between the applicant and USICE agents took place in a period that spanned more than one year, and that at times USICE initiated the contact while other times it was either the applicant or the social worker who reached out to USICE agents. In her February 2010 letter, the social worker provides specific dates and a general synopsis of the applicant's contact with USICE, which shows three meetings with USICE agents in March 2008 and one meeting in April 2008, which resulted in USICE granting the applicant continued presence through June 29, 2009. According to the letter, the applicant's last meeting with USICE agents occurred in July 2009 after several telephone calls between the USICE agent and the social worker. In her March 2010 affidavit, the applicant also describes in detail her meetings with USICE agents, consistent with the social worker's letter. USICE's continued presence authorization stated that the applicant was "willing to assist in every reasonable way in the investigation and prosecution of a severe form of trafficking in persons." Although USICE did not renew the applicant's continued presence or provide an LEA endorsement for this application, the record lacks any evidence that USICE revoked its authorization of the applicant's continued presence throughout the year of its duration. 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, and engaged in prostitution within 10 years of her entry in 1999. The applicant is consequently inadmissible to the United States under section 212(a)(6)(A) of the Act (alien present without admission or parole) and section 212(a)(2)(D)(i) of the Act (engaged in prostitution within 10 years of application). 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 September 22, 2010 decision of the director is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 application.