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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



D12

DATE: OCT 14 2011

Office: VERMONT SERVICE CENTER

FILE: 

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:

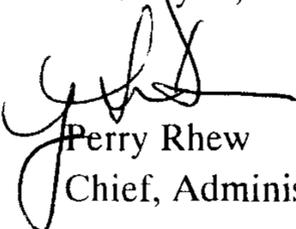


INSTRUCTIONS:

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 the \$630 fee. 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 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 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 establish that the applicant was a victim of a severe form of trafficking in persons and was physically present in the United States on account of such trafficking.

On appeal, counsel submits a two-paragraph brief and additional evidence. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has failed to overcome the grounds for denial and the appeal will be dismissed for the following reasons.

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 . . . 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) and incorporated into the regulation at 8 C.F.R. § 214.11(a), 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.

To establish physical presence in the United States on account of trafficking, the regulation at 8 C.F.R. § 214.11(g) specifies:

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 . . . 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 evidentiary standard to establish the statutory requirement of "extreme hardship involving unusual and severe harm upon removal" is prescribed by the regulation at 8 C.F.R. § 214.11(i)(1), which states, in pertinent part:

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.

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.

Pertinent Facts

The applicant is a native and citizen of India who entered the United States on April 8, 2008 pursuant to a nonimmigrant temporary worker's visa (H-2B) filed by Signal International (Signal). In his May 15, 2010 statement, the applicant asserted that Signal and its associates, including [REDACTED], tricked him "into debt bondage and into slave labor" by making him go into debt to pay large fees in order to work in the United States. The applicant recounted experiences of his friends and other individuals who worked for Signal, but he did not provide a detailed and probative account of his own recruitment in India, the circumstances leading to his departure to the United States, and his activities in this country after his arrival.

In his handwritten, undated letter submitted in response to the director's request for evidence (RFE), the applicant added that he was recruited while working as a ship fitter in the United Arab Emirates (UAE) and that after passing tests administered by a Signal representative in India, he obtained his visa at the U.S. consulate. When the applicant arrived in the United States, he did not work for Signal because the company's management was in dispute with the workers. The applicant explained that he could not return to India because unspecified agents were harassing and threatening his family and because his family's land and ornaments were pledged to a bank. The applicant stated that he was unemployed and relying on the help of a charity.

In his affidavit, counsel attested that on November 23, 2010, he contacted the national human trafficking "hotline" and left a message with the applicant's information and requested a response. The record, as supplemented on appeal, contains no further evidence of the applicant's contact or cooperation with any law enforcement agency.

Victim of a Severe Form of Trafficking in Persons

The applicant's general statements fail to demonstrate that he was a victim of a severe form of trafficking in persons. Although counsel submits several news articles regarding the fraudulent recruitment and mistreatment of other Indian workers by Signal, [REDACTED] and their associates, counsel fails to articulate how the particular facts of the applicant's case demonstrate that he himself was trafficked by Signal, [REDACTED] or any of their associates. The applicant has not stated the particular dates or circumstances of his recruitment nor has he described in probative detail his own interactions with Signal, [REDACTED] or any of their associates in the UAE, India or the United States. Without such information, the record is insufficient to establish 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.

Physical Presence in the United States on Account of Trafficking

The applicant has also failed to overcome the director's determination that he is not physically present in the United States on account of the trafficking. The applicant's brief and general statements are insufficient to establish that his recruitment abroad constituted a severe form of trafficking in persons by Signal or its agents. In addition, the applicant indicated that he never worked for Signal after his arrival in the United States and he does not describe any other contact that he had with the company or its associates. Accordingly, the record does not show that in the United States, Signal ever harbored or obtained the applicant for his labor through the use of force, fraud or coercion for the purpose of subjecting him to involuntary servitude, peonage, debt bondage or slavery. Consequently, the applicant has not demonstrated that he is physically present in the United States on account of a severe form of human trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Clear Chance to Depart

Even if the applicant had been trafficked into the United States, he would still fail to meet the physical presence requirement because the relevant evidence indicates that he had a clear chance to depart the United States before any law enforcement agency became involved in the matter. The

record shows that any alleged trafficking ceased either before or shortly after the applicant's arrival in the United States on April 8, 2008 and that no law enforcement agency was contacted about the claimed trafficking until over a year and a half later on November 23, 2010. The applicant provided no probative account of his activities in the United States during this time and the record indicates that he was in possession of his passport. The record shows that the applicant escaped his claimed traffickers before law enforcement became involved and the applicant has failed to demonstrate that he did not have a clear chance to leave the United States in the interim under the standard and factors explicated in the regulation at 8 C.F.R. § 214.11(g)(2). For this additional reason, the applicant has not established that he is physically present in the United States on account of trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Beyond the decision of the director, the record also fails to demonstrate that the petitioner would suffer extreme hardship involving unusual and severe harm upon removal.¹ In his initial statement, the applicant asserted that the agents in India who exploited him and other workers "are Mafia." In his supplemental letter, the applicant stated that he could not return to India because his family's land and ornaments were pledged to a bank and because unidentified agents were attacking him, harassing and threatening his family and that they are connected to mafia supported by the Indian government and police. The applicant failed to provide any detailed, probative account of his and his family's situation in India or the identity and motivation of the agents harming him and his family. Although counsel submitted one news article and an abstract of one journal article regarding governmental corruption in India, he failed to articulate how this information establishes any specific harm that the applicant himself would face upon removal to India. Counsel also submitted a copy of the amended complaint in the civil litigation against Signal and its associates and related news articles, but he again failed to demonstrate the applicant's involvement in that litigation or any other legal action against his claimed traffickers. In sum, the relevant evidence is insufficient to establish that the applicant would suffer extreme hardship involving unusual and severe harm upon removal under the standard and factors prescribed at 8 C.F.R. § 214.11(i)(1) and as required by section 101(a)(15)(T)(i)(IV) of the Act.

Conclusion

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(I)(2). On appeal, the applicant has not established his eligibility under subsections 101(a)(15)(T)(i)(I), (II) and (IV) of the Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).