

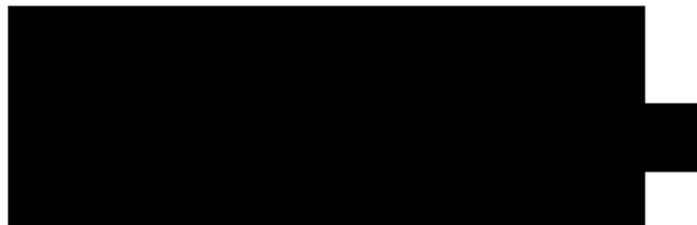
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D12

DATE: **AUG 17 2012**

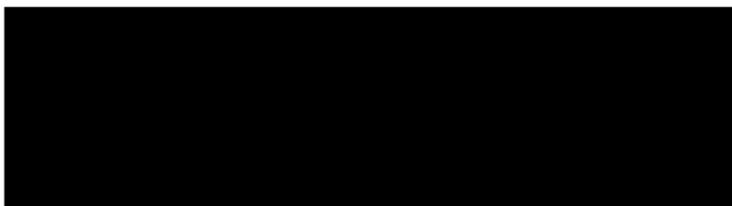
Office: VERMONT SERVICE CENTER

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 brief and additional evidence. The AAO reviews these proceedings *de novo*. 8 C.F.R. § 214.11(I)(1). *See also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Although the applicant has established that he was a victim of trafficking, he has not demonstrated that he is physically present in the United States on account of such trafficking.

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, in pertinent part:

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 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 and Procedural History

The applicant is a citizen of India. In his December 4, 2009 statement submitted below and his January 5, 2012 declaration submitted on appeal, the applicant provided the following account of his journey to the United States. In February 2007 while on leave from his job as a ship fitter in Qatar, the applicant attended a seminar after seeing an advertisement for welders and fitters to work and obtain permanent residency in the United States through a recruiting agency called ██████████ Consultants ██████████. At the seminar, ██████████ told the applicant and other workers that they could go to the United States to work for Signal International (Signal) on an H-2B visa that could be extended and would lead to a "green card." The cost for the opportunity would be 700,000 rupees, approximately \$15,820 (U.S. dollars). A week later, the applicant took a skills test administered by a Signal representative and was made to relinquish his passport to ██████████. After passing the test, the applicant asked ██████████ to return his passport, but ██████████ told him that if he wanted to go to the United States, he would have to pay approximately \$652 before he got his passport back. To pay that sum, the applicant used his wife's gold jewelry to obtain one loan and borrowed additional money from a cooperative bank at an annual interest rate of 12 percent. ██████████ returned the applicant's passport after receiving the money and told the applicant that he could obtain an H-2B visa within five months for a discounted rate of approximately \$11,978.

In February 2007, the applicant and other workers met with ██████████ prior to their visa interviews at the U.S. consulate in Chennai. ██████████ told them not to tell the consular officers that they had paid money to ██████████ or that they planned to stay in the United States on a "green card." After the applicant passed his visa interview on February 28, 2007, ██████████ told him that his passport with the visa would be sent to ██████████ office. About a month later, ██████████ told the applicant that his airline ticket to the United States had been confirmed for April 11, 2007 and that he should obtain the money for his final installment to be paid in cash at the ██████████ office in Mumbai prior to his flight. The applicant obtained a loan of approximately \$15,000 by mortgaging his family's house and property and by using his wife's and children's gold jewelry as collateral. The loans were borrowed at 15 and 11 percent annual interest rates respectively. At ██████████ office in Mumbai, the applicant and other workers were told to hand over their money and sign some papers in English that the applicant did not understand, after which he was given his passport and airline ticket and told that someone from Signal would meet him at the airport in the United States.

No one from Signal met the applicant upon his arrival in New Orleans on April 12, 2007 and he took a taxi to the Signal worksite in Pascagoula, Mississippi. The applicant explained his situation to a guard at the Signal worksite who told him that the company was no longer hiring workers. In his 2009 statement, the applicant recounted that his sister-in-law, Doris Web, picked him up. In his 2012 declaration, the applicant stated that he called his former neighbor in India, ██████████ who had immigrated to the United States, and that Mr. ██████████ wife picked him up and he has resided with them since that time. The applicant then met with the immigration attorney retained by Signal to process H-2B visas for Indian workers, ██████████ who transferred his visa to Thom Sea Boat Builders, where the applicant worked from October 2007 until May 2009. U.S. Citizenship and Immigration Services (USCIS) records show that the applicant was authorized to work for Louisiana

Shrimp and Packing Company pursuant to its Form I-129, petition for nonimmigrant worker,¹ until March 30, 2008. On appeal, the applicant states that he “was unaware of the details of the visa on which [he] was working” and was told that both Louisiana Shrimp and Packing and Thom Sea Boat Builders were owned by the same company. On appeal, the applicant recounts that in 2009, he decided to apply for a T-visa and reported his experiences to the Trafficking in Persons and Worker Exploitation Task Force Complaint Line.

The applicant filed the instant Form I-914 on December 18, 2009. The director subsequently issued a Request for Evidence (RFE) 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. The applicant, through prior counsel, responded to the RFE with additional evidence which the director found insufficient to establish the applicant’s eligibility and the director denied the application. On appeal, present counsel submits additional evidence and a legal brief reasserting the applicant’s eligibility.

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 although he was subjected to fraudulent visa practices by [REDACTED] and his associates, the purpose of their recruitment was not to subject the applicant to involuntary servitude, peonage, debt bondage or slavery, but only for their own personal, monetary gain. The director also concluded that the applicant had not established that Signal was “involved with the initial visa fraud or that it was ever the intention of Signal International to recruit workers for the purpose of subjecting them to forced labor.”

This portion of the director’s decision shall be withdrawn. The evidence submitted below and on appeal establishes that at the time of the applicant’s recruitment, Dewan was acting as Signal’s agent. Under basic principles of agency law, an employer may be held accountable for the actions of its agent. *See generally, 27 Am. Jur. 2d Employment Relationship § 373 (2011)* (discussing an employer’s vicarious liability for its agent’s torts under the doctrine of respondeat superior). The record contains a copy of a January 15, 2007 electronic mail message from a Signal official regarding a meeting with Dewan. In the message, the Signal official noted that Dewan had “done a very good job operationally,” while acknowledging the high recruitment fees Dewan charged the workers. Numerous media reports and a district court order further demonstrate that Dewan was acting as Signal’s agent at the time of the applicant’s initial recruitment. *See David v. Signal International*, No. 08-1220 (E.D. La. Dec. 5, 2008) (dismissing Dewan’s motion to dismiss).

While the director acknowledged that Signal subjected other Indian workers to forced labor, he concluded that Signal did not intend to do so when they began the recruitment process with Dewan in India. The director failed to acknowledge, however, that at the time of this applicant’s recruitment, Signal had already harbored other workers and subjected them to involuntary servitude. The relevant evidence establishes that Signal subjected Indian workers to involuntary servitude by

¹ Receipt Number EAC 08 093 51560.

forcing them to continue working for the company through the threat of physical restraint and abuse of the administrative legal process of removal from the United States under the Act. Signal's treatment of other Indian workers during the applicant's recruitment and prior to his arrival in the United States reflects the company's intent at the time of the applicant's recruitment to treat him in the same manner.

In sum, the preponderance of the evidence demonstrates that the applicant was recruited for his labor by Signal, through its agent [REDACTED] fraudulent promise of employment and permanent residency in the United States and for the purpose of the applicant's subjection to involuntary servitude. Accordingly, the applicant has established on appeal that he was a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act and defined in the regulation at 8 C.F.R. § 214.11(a). The director's determination to the contrary will be withdrawn.

Physical Presence in the United States on Account of Trafficking

The applicant has not, however, established that he is physically present in the United States on account of the trafficking. The record shows that apart from briefly speaking to a security guard at the Signal worksite in Mississippi shortly after his arrival, the applicant had no further contact with Signal or [REDACTED]. On appeal, counsel asserts that [REDACTED] the immigration attorney retained by Signal to secure the Indian workers' H-2B visas, continued to victimize the applicant after his arrival in the United States. The record does not support this claim. While USCIS records show that [REDACTED] represented Louisiana Shrimp and Packing Company in the H-2B petition it obtained on behalf of 60 beneficiaries, including the applicant, the record lacks any evidence that Signal was associated with Louisiana Shrimp and Packing Company or that Mr. [REDACTED] was acting as Signal's agent at that time. Accordingly, the preponderance of the evidence shows that the applicant had no further contact with his traffickers shortly after his arrival in the United States.

To meet the physical presence requirement, individuals such as the applicant who escaped their traffickers before law enforcement became involved must show that they did not have a clear chance to leave the United States in the interim. 8 C.F.R. § 214.11(g)(2). Because this issue was not addressed by the director, the AAO issued a request for additional evidence (RFE), to which counsel responded with a brief, the applicant's January 5, 2012 declaration, a copy of a December 20, 2011 letter from law professors and a copy of the affidavit of Professor [REDACTED] which was previously submitted below.

In his brief submitted in response to the AAO's RFE, counsel asserts that the applicant is not subject to the "clear chance to depart" provision because before the applicant escaped his traffickers, law enforcement was "already aware of the situation as various other workers had already contacted the trafficking hotline and begun the T visa application process." Counsel is again mistaken. The phrase "before law enforcement became involved in the matter," as used in the regulation at 8 C.F.R. § 214.11(g)(2), refers to each applicant's own trafficking experiences. T nonimmigrants are granted such classification pursuant to their own, individual victimization. Section 101(a)(15)(T)(i)(I) of the Act; 8 U.S.C. § 1101(a)(15)(T)(i)(I). To demonstrate the requisite physical presence on account of

trafficking, an applicant must establish that “he or she is a victim of a severe form of trafficking in persons that *forms the basis for the application.*” 8 C.F.R. § 214.11(g) (emphasis added). Accordingly, those applicants who escaped their traffickers before law enforcement was aware of their situation must show that a law enforcement agency’s involvement concerned their own trafficking, not merely the trafficking of other, similarly situated individuals. In this case, the applicant escaped his traffickers shortly after his departure from India and must show that he did not have a clear chance to depart the United States after his arrival on April 12, 2007 and until he reported himself to law enforcement agencies as a trafficking victim over two and a half years later in approximately December 2009.

The applicant has not met this requirement, in part, because he has submitted three statements in these proceedings which present an inconsistent account of his activities in the United States during this period. These inconsistencies detract from the credibility of his claim that he is present in the United States on account of the trafficking. In his initial, December 4, 2009 statement, the applicant reported that his sister-in-law, [REDACTED] picked him up after Signal turned him away from its worksite in Mississippi and that she took him to see [REDACTED] who arranged for him to work at Thom Sea Boat Building instead. However, in the next paragraph of this statement, the applicant recounts, “The promises of our immigration status, and my worry over my family’s debt kept me working at Signal.” In his 2009 statement, the applicant also asserts that he remains in the United States because [REDACTED] and others “coerced [him] to take out an enormous amount of debt and to continue to work for Signal.” In his undated statement submitted below in response to the director’s RFE and in his January 5, 2012 declaration submitted on appeal, the applicant stated that he was turned away from the Signal worksite in Mississippi shortly after his arrival and never worked for the company, but instead worked for Thom Sea Boat Building from October 2007 until May 2009.

In his second, undated statement, the applicant further asserted that he:

had no choice but to go where [REDACTED] said. . . . Deportation became a common threat or they would not finish the green card process. They continued to require me to pay more money to continue my green card process. . . . When [REDACTED] and [REDACTED] found out we were communicating with lawyers at [REDACTED], they forced us to the street.

However, in his first statement, the applicant did not report having any contact with [REDACTED] in the United States; he did not mention any association with [REDACTED] or the [REDACTED]; and he did not indicate that Mr. [REDACTED] charged him additional money to obtain a “green card” or that Mr. [REDACTED] ever threatened him with deportation. In his declaration submitted on appeal, the applicant also does not mention any contact with [REDACTED] or the [REDACTED], but briefly asserts that Mr. [REDACTED] told him he would be deported if he did not pay additional fees to obtain a “green card” and that other Indian workers who had applied for the T-visa had been placed in removal proceedings. The applicant submitted a USCIS case status printout stating that a Form I-140, immigrant petition for alien worker, had been withdrawn by the petitioner on November 13, 2008.

USCIS records show that the referenced immigrant petition² was filed by █████ Associates on behalf of another individual, not the applicant in this case. Similarly, the applicant submitted the first page of a USCIS decision dismissing the motion to reopen the denial of a Form I-485, application to adjust status, of that other individual. Combined with the applicant's inconsistent statements, these documents detract from the credibility of counsel's claim that the applicant is not subject to the opportunity to depart requirement because of his "continued victimization."

In the alternative, counsel asserts that the applicant had no clear chance to leave the United States during the applicable period because he suffered from physical and psychological trauma; he lacked the resources to return to India; and because returning to India would have caused him extreme hardship. The preponderance of the relevant evidence does not support these claims. In his second statement, the applicant briefly conveyed that he "suffered much fear and mental stress because of this situation." On appeal, the applicant recounts that he has "experienced a mental breakdown," that his "mental and physical health are both gone," and that his "blood pressure is very high," but he submitted no medical records, other pertinent evidence or any detailed testimony regarding his physical and mental health during the relevant period.

Counsel claims the applicant lacked the resources to return to India because he has little education, a limited understanding of English and had no knowledge of the U.S. legal system. The record contradicts these claims. First, although the applicant asserted that he did not speak or understand English well in his first statement and on appeal, he has submitted three, lengthy declarations in these proceedings which are written entirely in English and contain no indication that they were translated from the applicant's native language. Second, the applicant stated that he was employed by Thom Sea Boat Builders for a year and a half during the applicable period and the record shows that he retained his passport and Form I-94 entry documents. The applicant also states on appeal that since he was turned away by Signal shortly after his arrival in the United States, he has resided with his good friend, Mr. █████ who has supported him and assisted him in filing the instant application.

Finally, the record does not support counsel's claim that the applicant had no clear chance to depart the United States during the applicable period because his return to India would have caused him and his family extreme hardship. Counsel first asserts that the applicant has shown he is physically present in the United States on account of the trafficking and did not have a clear chance to depart the United States because he established that he would suffer extreme hardship upon removal, as required by subsection 101(a)(15)(T)(i)(IV) of the Act. Counsel claims it "would be internally inconsistent to consider extreme hardship as a qualifying factor for T visa status but simultaneously mandate that the victim must return to the situation of extreme hardship if he is given the slightest opportunity to do so." Counsel fails to acknowledge that the situation of extreme hardship in this case arose *after* the period in question. The director determined that the applicant established the requisite extreme hardship because of his participation as a potential class member in the civil litigation against Signal and █████ and the applicant's resultant fear of retaliation from █████ and

² Receipt number LIN 07 178 52685.

³ The civil litigation against Signal, █████ and other defendants was filed in 2008 and requested certification of a class of all Indian workers who were recruited by one or more of the defendants and who entered the United States at any time through September 30, 2007, pursuant to an H-2B visa obtained by Signal. The

his associates if he was subsequently removed to India. These circumstances arose after the applicant reported himself to law enforcement and are not relevant to whether he had a clear chance to depart the United States before that time.

Counsel further asserts that the applicant could not depart the United States because he faced extreme hardship due to the “the financial, social and psychological burdens of the severe debt that he and his family face in India.” While the applicant consistently stated the amount of the debt he incurred to pay [REDACTED] recruiting fees, he has not provided a detailed, probative account of the status of his debts and any resultant harm to his family during the applicable period. In his first statement and his declaration submitted on appeal, the applicant reported that he obtained a loan from a bank for 600,000 rupees (approximately \$15,000) in his wife’s name. On his Form I-914, the applicant identified his wife as [REDACTED] who was born on November 9, 1971. However, the applicant submitted an affidavit executed on August 11, 2010 in India by Rosy Devassy, who attested that she was 72 years old and lent the applicant 600,000 rupees on April 10, 2007 “which he agreed to pay on demand with bank interest for the purpose of getting employment in [the] United States.” The applicant also submitted a letter from the State Bank of Travancore certifying that [REDACTED] withdrew 650,000 rupees from her account on April 10, 2007. These documents contradict the applicant’s assertion that he obtained the loan in his wife’s name.

In his first statement, the applicant briefly recounted that after he was turned away by Signal, he was desperate to pay off his debts and “couldn’t imagine losing [his] family property and disappointing [his] family[] so greatly,” but he did not provide any information regarding any harm his family faced during the applicable period because of his debt. In his second, undated declaration, the applicant stated, “the loan agency was also making trouble for my family,” but he did not further discuss any difficulties his family faced and the record shows that he obtained his loan from an individual, not a loan agency. On appeal, the applicant briefly states that returning to India during the applicable period was not “a viable option” because he knew that his family “would face harm at the hands of debt collectors” and because “the social stigma associated with taking out such significant amounts of debt and the shame that one’s family may experience is a thought that has led [him] to contemplate suicide.” Again, the applicant fails to discuss any particular harm that his family faced due to his debts during the applicable period and he does not explain why his family would be harmed by debt collectors when his loan was obtained from an individual. The applicant has not indicated that [REDACTED] is a money lender who retained debt collectors to threaten or otherwise harm the applicant’s family during the applicable period.

The record contains a an expert affidavit by [REDACTED] a sociology professor at the National Institute of Advanced Studies in Bangalore, India, regarding the social and psychological costs of debts incurred by international laborers from India, particularly those from the applicant’s home state of Kerala. While we do not question Professor [REDACTED] expertise, the applicant in this case has not shown that he or his family was subjected to or faced the specific types of physical danger and social humiliation described by Professor [REDACTED] during the period in question. As previously

discussed, the applicant has failed to provide a consistent, probative and detailed account of the origin and status of his debt and any resultant harm to his family during the applicable period.

In sum, the preponderance of the relevant evidence shows that the applicant had a clear chance to depart the United States during the more than two and a half years between his escape from his traffickers and the time he reported himself as a trafficking victim to a law enforcement agency. While the applicant's physical and mental health was undoubtedly affected by his inability to work for Signal upon his arrival in the United States and his realization that he had been cheated by [REDACTED], the record lacks sufficient evidence that the applicant suffered physical or psychological trauma or injury during the relevant time period. The record shows that the applicant obtained employment with another company and received social support through a friend after his arrival. The record also shows that he retained possession of his passport and Form I-94 entry documents. While the applicant expressed fear of returning to India without having repaid his debt, he did not provide a detailed, probative account of the specific harms he and his family had or would have faced during the applicable period and the submitted documentation of his loan is inconsistent with his description of the origin of his debt. The applicant also failed to provide a detailed, probative account of his earnings in the United States and his employment prospects in India or other countries during this period. The applicant stated that he had previously worked in India and as well as Qatar and Saudi Arabia for seven years, but he did not discuss his ability to regain employment in India or other countries during the period in question. Accordingly, the record does not show that the applicant's individual circumstances clearly prevented his departure from the United States during this time.

In their joint letter submitted on appeal, the law professors claim that lack of a reasonable opportunity to report to law enforcement should be sufficient to show that an applicant did not have a clear chance to depart the United States. However, the issue is not how long it took the applicant to report his trafficking to law enforcement authorities or if the delay was reasonable, but whether he had a clear chance to leave the United States after he escaped his traffickers and before law enforcement became involved. There are many reasons why trafficking victims do not initially report their circumstances to law enforcement agencies. As the law professors note, there is no filing deadline for T nonimmigrant status for victims who have escaped their traffickers. In addition to cultural and linguistic barriers and fears of reprisal or other serious harm, many victims are unaware of the laws in the United States that could protect them.⁴ In this case, the applicant credibly explained his reasons for not reporting himself as a trafficking victim earlier. Those reasons are not at issue in this proceeding.

The record shows that the applicant escaped his traffickers before law enforcement became involved in the matter 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

⁴ See 22 U.S.C. § 7101(b)(20) ("victims of trafficking are frequently unfamiliar with the laws . . . of the countries into which they have been trafficked . . ."). See also T Nonimmigrant Status Interim Rule, 67 Fed. Reg. 4784 (Jan. 31, 2002) (noting the reluctance of victims without legal status in the United States to cooperate with law enforcement).

C.F.R. § 214.11(g)(2). Consequently, the applicant has not established his physical presence in the United States on account of the trafficking, as required by section 101(a)(15)(T)(i)(II) 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(l)(2). Upon *de novo* review on appeal, the applicant has established that he was a victim of a severe form of trafficking in persons in the past, but he has failed to demonstrate that he is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.