

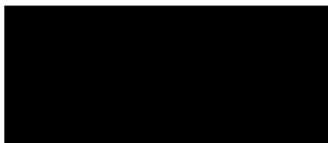
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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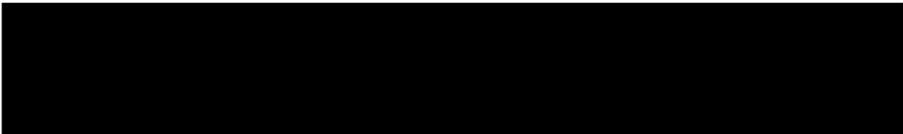


D12

DATE: **MAY 23 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:

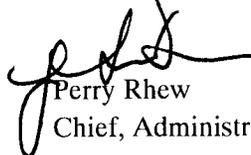
SELF-REPRESENTED

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 or a request for a fee waiver. 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 physically present in the United States on account of such trafficking. Specifically, the director determined that the applicant had voluntarily departed the United States after the trafficking and did not demonstrate that his subsequent reentry into the United States was the result of continued victimization by his original traffickers or a new incident of trafficking. The director also determined that the applicant was inadmissible to the United States and had not obtained a waiver of his inadmissibility.

On appeal, the applicant submits a statement, additional evidence and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant. The applicant claims that he is admissible to, and reentered the United States due to his continued trafficking and victimization. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record and the additional claims and evidence submitted on appeal fail to establish the applicant’s eligibility 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, in pertinent part:

- 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.

* * *

(3) *Departure from the United States.* An alien who has voluntarily left (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien’s reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

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. In his statements submitted below, the applicant provided the following account of his journey to the United States. In June 2004, while working in

Dubai, the applicant went to a seminar given by [REDACTED] in response to an advertisement for "permanent residency visas" for fitters and welders to work for a company in the United States. At the seminar, [REDACTED] and two attorneys representing [REDACTED] explained that the process to receive a green card would take nine to 12 months and the cost would be payable in three installments. They told the attendees they would receive high salaries and would be able to bring their families to the United States. After the seminar, the applicant paid the first installment in the form of \$1,250 (U.S. dollars) to [REDACTED] and both attorneys. In February 2006, [REDACTED] told the applicant that his labor certification had been approved and that his Form I-140, immigrant petition for alien worker, would be filed with U.S. Citizenship and Immigration Services (USCIS) after he paid the second installment. The applicant obtained a high interest loan using his home as collateral to pay the second installment.

In September 2006, [REDACTED] told the applicant that for an additional fee of \$800 he could go to the United States on an H2B visa to work for Signal International (Signal) as his "green card" case was processing and then work for [REDACTED] after he received his "green card." After paying another fee to a [REDACTED] agent in December 2007, the applicant attended an interview at the U.S. consulate in Madras to obtain his H2B visa. When the applicant later asked [REDACTED] for his passport, [REDACTED] told him he would have to pay the last installment before his passport would be returned. The applicant and his wife sold all their gold, jewelry, and property to obtain the funds for the last installment. On January 23, 2007, the applicant went to [REDACTED] where he paid the last installment of [REDACTED] to each of the [REDACTED]. Before he could receive his passport and airline ticket, [REDACTED] made the applicant sign some papers which he was not given the chance to read.

The applicant arrived in the United States on January 24, 2007 and began working at the Signal labor camp in Orange, Texas. The applicant recounted the crowded living quarters, poor food and lack of freedom at the camp, which was surrounded by wire fencing and watched by security guards. The applicant stated that he was not paid for overtime work and that the company deducted \$245 per week from his pay for food and lodging. The applicant described how one man who spoke out against the workers' living conditions was sequestered until arrangements were made to deport him.

In August 2007, shortly after his H2B status expired, the applicant attended a meeting with another attorney, [REDACTED] whom he paid \$[REDACTED] to complete his "green card" paperwork. In October 2007, the applicant was told that he had to go work for [REDACTED] or he would not obtain his "green card." The applicant recounted that he felt compelled to work for [REDACTED] because his H2B visa to work for Signal had not been renewed and he feared for his family's well-being. The applicant recounted that the living and working conditions at [REDACTED] were even worse than at Signal and that [REDACTED] threatened to cancel the workers' "green card" cases if they complained. Several months later, [REDACTED] notified the applicant that his immigrant worker petition had been denied and charged him more money to file appeals, which were dismissed. The applicant then realized that he had been cheated by the attorneys and [REDACTED] and reported himself as a trafficking victim to the U.S. Department of Justice in approximately March 2008.

In his statement submitted on appeal, the applicant explains that he worked at [REDACTED] from January 23, 2008 until October 20, 2008. USCIS records show that on June 8, 2007, [REDACTED] filed a Form I-140, immigrant petition for alien worker, on the applicant's behalf, but withdrew the petition a year later.

On February 3, 2009, USCIS terminated all action on the Form I-140 petition. [REDACTED] subsequently filed a motion to reopen and reconsider the termination, which was dismissed on May 28, 2009. [REDACTED] then filed an appeal from the May 28, 2009 dismissal, which remains pending. The applicant's corresponding Form I-485, application to adjust status, was denied on May 28, 2009 and a subsequent motion to reopen and reconsider the denial filed by [REDACTED] was dismissed on November 23, 2009. While his Form I-485 was pending, the applicant obtained advance parole and twice departed and returned to the United States on October 8, 2008 and January 17, 2010.

Applicant is not Physically Present in the United States on Account of the Trafficking

The applicant filed the instant Form I-914 on December 4, 2009. The director determined that the applicant was not physically present in the United States on account of trafficking because he voluntarily left the country and his reentry was not the result of continued victimization by Signal or a new incident of trafficking by [REDACTED]. On appeal, the applicant asserts that his two reentries into the United States were due to his continued trafficking by [REDACTED]. The applicant submits additional evidence of his reasons for returning to India and [REDACTED]'s involvement in the same trafficking scheme as Signal. The applicant's statements and the additional evidence fail to fully support his claims.

On appeal, the applicant states that he first departed the United States on July 25, 2008 while employed by [REDACTED]. The applicant explains that he had to return to India because his father-in-law had died. He recounts his family's belief that his father-in-law's death was precipitated by the harassment and demands of money lenders seeking repayment of the applicant's debt incurred to come to the United States initially. The applicant reports that during his stay, agents of the money lenders threatened him daily and drove him to return to the United States to continue his involuntary servitude for [REDACTED] because the company controlled his "green card" case. However, the applicant returned to the United States on October 8, 2008 and ceased working for [REDACTED] just 12 days later. The applicant does not explain the circumstances leading to the end of his employment with [REDACTED] and he does not discuss his activities in the United States after he left [REDACTED].

The applicant recounts that he returned to India a second time on December 11, 2009 to grant power of attorney to his wife over his family's land to use as collateral for another loan, which the family used to appease the money lenders. At the time he returned to the United States on January 17, 2010, the applicant states:

I believed the traffickers still held the key to the green card process they originally promised me, and that by coming back I would eventually be able to get the green card. [REDACTED] caused me to believe that the legal processes they were instructing me to pay for would finally prevail as they had originally promised me in 2004 and continued to promise me throughout my working for them, and even after they had taken me off the work schedule.

The record shows that the applicant incurred large debts to pay the recruitment fees of his traffickers in order to come to the United States initially. The relevant evidence also indicates that the applicant was defrauded by Signal, [REDACTED] and their agent [REDACTED]. However, the record does not establish that the petitioner's second reentry into the United States was the result of his continued victimization by

██████████. The applicant stated that he left the ██████████ work camp on January 18, 2008 and he indicated that he had no further contact with the company. The applicant ceased working for ██████████ in October 2008, over a year before his second departure in December 2009 and reentry to the United States in January 2010. The record contains no evidence that the applicant had any contact with ██████████ after he stopped working for the company.

Although the applicant claims on appeal that he reentered the United States in 2010 due to ██████████ fraudulent promise of a “green card,” the record shows that prior to his second reentry, the applicant’s Form I-140 had been withdrawn and terminated and his Form I-485 had been denied. In his first statement submitted below, the applicant explained that after “the appeals” were dismissed and ██████████ told him that he would have to reapply with the help of ██████████, the applicant “understood that they would just keep taking [his] money, and never give [him] the green card they promised.” On appeal, the applicant states that he paid ██████████ to appeal the I-140 one time and the I-485 twice, but he submits a copy of just one check made payable to ██████████ and dated June 23, 2009, nearly six months prior to his second departure in December 2009 and second reentry into the United States in January 2010. In addition, the record does not establish that ██████████ was acting as ██████████ agent at the time. Accordingly, the relevant evidence does not demonstrate that the applicant’s second reentry to the United States was the result of continued victimization by ██████████ through the Form I-140 motion and appeal; and the Form I-485 application and subsequent motions filed by ██████████

The record also fails to show that at the time of the applicant’s second reentry into the United States, ██████████ Signal or any of their agents had subjected him to a new incident of trafficking by again recruiting, harboring, transporting, providing, or obtaining 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.

The record shows that the applicant voluntarily left the United States after he was trafficked and that his subsequent reentry into the United States on January 17, 2010 was not the result of his continued victimization or a new incident of trafficking. Accordingly, the applicant has not demonstrated that he is physically present in the United States on account of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act.

Inadmissibility

In addition to meeting the statutory eligibility requirements, an alien must be “otherwise admissible” to qualify for T nonimmigrant status. 8 C.F.R. § 214.11(b). USCIS must determine if a T applicant is inadmissible and may waive certain grounds of inadmissibility “if the activities rendering the alien inadmissible . . . were caused by, or were incident to, the victimization” and USCIS determines, as a matter of discretion, that a waiver is in the national interest. Section 212(d)(13) of the Act, 8 U.S.C. § 1182(d)(13); 8 C.F.R. § 212.16(b)(1). An applicant who is inadmissible must file a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, with his or her Form I-914, Application for T Nonimmigrant Status. 8 C.F.R. §§ 212.16(a), 214.11(j).

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who procured a visa and admission to the United States by willful misrepresentation of a material fact. The applicant was granted a visa under section 101(a)(15)(H)(ii)(b) of the Act, as an alien with a foreign residence he had no intention of abandoning who was coming to the United States temporarily to perform labor. The record indicates that the applicant obtained the nonimmigrant H2B visa by misrepresenting his intent to immigrate to the United States. The applicant did not submit a Form I-192 waiver application with his Form I-914, but submits a Form I-192 for the first time on appeal. The AAO has no jurisdiction to adjudicate the Form I-192, which remains pending before the Vermont Service Center. Consequently, the applicant remains inadmissible to the United States and ineligible for T classification for this additional reason.

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). On appeal, the applicant has failed to overcome the director's grounds for denial and had not established his eligibility for T nonimmigrant classification for the reasons discussed above. Consequently, the appeal will be dismissed and the application will remain denied.

ORDER: The appeal is dismissed.