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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

DATE: APR 30 2013

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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.

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,

  
Ron Rosenberg

Acting 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, was physically present in the United States on account of such trafficking and would suffer extreme hardship involving unusual and severe harm if he were removed from the United States.

On appeal, counsel submits a brief and additional materials. The AAO reviews these proceedings *de novo*. 8 C.F.R. § 214.11(l)(1). *See also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). While the applicant has established that he was subjected to trafficking at one point in his journey to the United States, he has failed to overcome the remaining grounds for denial and the appeal will be dismissed for the following reasons.

#### *Applicable Law*

Section 101(a)(15)(T)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she is:

subject 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;

. . . 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)(B) of the Trafficking Victims Protection Act of 2000 (TVPA), codified at 22 U.S.C. § 7102(8)(B) 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.

This definition is incorporated into the regulation at 8 C.F.R. § 214.11(a), which also defines, in pertinent part, the following term:

*Involuntary servitude* means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” (*United States v. Kozminski*, 487 U.S. 931, 952 (1988)).

The regulation at 8 C.F.R. § 214.11 also provides specific evidentiary guidelines and states, in pertinent part:

(g) *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.

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 citizen of India who was born in that country on [REDACTED]. The applicant was apprehended by U.S. border patrol agents near the border with Mexico on July 7, 2011. He filed the instant Form I-914, Application for T Nonimmigrant Status, on November 23, 2011 when he was 17 years old. In his November 17, 2011 affidavit, the applicant provided the following account of his journey to the United States. In 2005, a fire destroyed the applicant's

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<sup>1</sup> The only evidence of the applicant's birth in the record is a copy of a translation of a birth certificate issued by the Chief Registrar of Births and Deaths in Punjab, India, which identifies the applicant as female, although the applicant identifies himself as male, as does other relevant documentation in the record.

family's farm in Punjab and they borrowed money from a private lender, who harassed and threatened his family when they were unable to repay their debt. In 2008, the applicant's father moved to France to work and in 2010, the applicant left school and began working. Because his and his father's income was insufficient to repay the lender, the applicant decided to come to the United States to work and live with his mother's relative in California. In February 2011, the applicant left his home in Punjab with \$1,000 his parents had borrowed. In March 2011, the applicant went to New Delhi where a man gave him airline tickets to Guatemala and told him that someone would meet him there and bring him to the United States. The man told the applicant to give his money to the person who met him in Guatemala. The applicant did not know the man, but believed that his family had paid for his airline tickets. Upon his arrival in Guatemala, the applicant was taken to a house with other Punjabi boys and he gave some individuals \$900 when they told him they would take him to the United States if he gave them his money. Over the next couple of months, the applicant and the other boys were moved to four or five other houses along their journey to the United States. Each time they were moved by different individuals and no guide accompanied them for the entire trip.

At the final house, the applicant recounted that the people controlling the house beat another boy in front of him and the rest of the group. The controllers then began commanding the applicant and the others to work and the applicant cleaned the house and moved heavy objects. The applicant and the others were not paid for their labor, but the applicant explained that he was afraid he would be beaten if he refused because the man telling him what to do held a metal rod in his hand. The applicant remained at the final house for approximately 12 days. The applicant was then driven to a forest, taken to a riverbank where he and the others crossed the river in a raft, were driven in a truck to another house and then taken to another forest. After walking through the forest for four days, the applicant and his group were apprehended by border patrol agents. The group's guides ran away when the agents came and the applicant was surprised because he did not know that they had arrived in the United States. The applicant explained that he was taken to an office and then placed in the custody of the Office of Refugee Resettlement (ORR). The applicant expressed his desire to remain in the United States to study and work to support his family. He also conveyed his fear of returning to India because the money lenders might harm him.

In response to the director's Request for Additional Evidence (RFE), the petitioner submitted a second affidavit dated August 2, 2012, in which he reiterated that he believed his parents had paid for his travel to the United States and that he paid money upon his arrival in Guatemala, but he was never told that he would have to work en route to the United States. The applicant explained that when he saw the other boy being beaten in the final house, he became very scared and was afraid that if he did not comply with the orders to work or tried to leave, he would also be beaten. The applicant stated that if he is unable to stay in the United States to work and support his family, their lives will only get worse.

#### *Victim of a Severe Form of Trafficking in Persons*

The director determined, in part, that the applicant was not a victim of a severe form of trafficking in persons because he did not establish that his smugglers intended to subject him to involuntary servitude in the United States. Counsel does not address this part of the director's decision on appeal

and *de novo* review of the record fails to reveal any error in this determination. The applicant explained that he did not know the identity of his smugglers and that apart from the man in India who gave him his airline tickets, he could not communicate with the other smugglers and guides throughout his journey because they only spoke Spanish. Apart from the final holding house in Mexico, the applicant indicated that he was provided food and voluntarily transported from place to place without being expected to provide his smugglers and guides with labor, services or anything apart from the money he initially paid upon his arrival in Guatemala. The applicant's statements fail to demonstrate that he was transported to the United States through the use of force, fraud, or coercion for the purpose of his subjection to involuntary servitude, peonage, debt bondage, or slavery.

The director also determined that the petitioner was not trafficked when he was forced to work at the final holding house because "it appears that this labor was a means to pay for [his] smuggling debt." This portion of the director's decision shall be withdrawn. The applicant's statements demonstrate that he was harbored in the final holding house for approximately 12 days and forced to labor without pay through the threat of being beaten. While the director's interpretation of the events that occurred at the final holding house might be reasonable in other circumstances, in this case, the record is insufficient to conclude that the applicant willingly provided labor to repay a debt. The preponderance of the relevant evidence in this case demonstrates that the petitioner was harbored at the final holding house for his labor through the use of coercion and for the purpose of subjecting him to involuntary servitude. Accordingly, during his stay at the final holding house prior to his arrival in the United States, the applicant was the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act. The appeal may not be sustained, however, because the applicant has failed to overcome the remaining grounds for denial.

#### *Physical Presence in the United States on Account of Trafficking*

To establish physical presence in the United States on account of past trafficking, an applicant must demonstrate that his or her continuing presence in the United States is directly related to the original trafficking in persons. 8 C.F.R. § 214.11(g). The record in this case does not demonstrate that the applicant is in the United States on account of the trafficking at the final holding house in Mexico. The applicant stated that the people controlling the final house drove the applicant and the rest of his group to a forest where they left them. The applicant recounted that the next day other individuals brought him and his group food and cots to sleep on. After staying in the forest for 25 days, the applicant recounted that other people brought him and his group to the riverbank where other individuals assisted them in crossing the river. After crossing the river, the applicant and his group were driven to a house where they ate and stayed for one night. The next night, the applicant recounted being driven to another forest where other guides led them and fed them for four days until their apprehension by U.S. border patrol agents. The applicant's affidavits show that after his release from the last house in Mexico, the applicant was voluntarily smuggled into the United States by various, unidentified individuals. His statements fail to establish that his continuing presence in the United States is directly related to his trafficking at the final holding house in Mexico.

On appeal, counsel asserts that the applicant "entered the United States following the orders of the individuals that had held him in forced servitude. Thus, [the applicant] is physically present in the

United States on account of the trafficking situation.” Counsel does not acknowledge, however, that different people brought the applicant into the United States. While the individuals who brought the applicant into the United States may have been part of the same network of smugglers as the individuals who harbored the applicant at the final holding house in Mexico, the record lacks evidence that the applicant was trafficked into the United States or that the other stages of his smuggling were directly related to the events at the final holding house in Mexico. The applicant indicated that he did not know the identity of any of his smugglers and did not provide labor or services at any other point in his journey. The record contains no evidence that the smugglers who transported the applicant from India to Guatemala, Mexico and into the United States intended to subject him to involuntary servitude, peonage, debt bondage or slavery through the use of force, fraud or coercion. 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.

*Extreme Hardship Involving Unusual and Severe Harm Upon Removal*

Counsel’s claims and the articles submitted on appeal also fail to establish that the applicant would suffer extreme hardship involving unusual and severe harm upon removal. In his first affidavit, the applicant briefly stated that the money lenders in India beat him and threatened his mother and brothers when the family was unable to repay their debt. He expressed his fear of returning to India because he believed the lenders would harm him again, but he did not discuss any harm the lenders had inflicted upon his family after his departure or provide any further, specific information to support his claim. In his second affidavit, the applicant did not discuss any harm he feared from the money lenders. Instead, he briefly reiterated that his family is very poor and that their lives will get worse if he cannot remain in the United States to work. The applicant stated that there are few opportunities for him in India and if he had to return he did not know how he and his family would survive. Apart from a few sentences in the applicant’s affidavits, the record contains no other relevant evidence of the hardship he fears upon return to India. The record is insufficient to demonstrate that the economic circumstances of the applicant’s family would cause him extreme hardship involving unusual and severe harm upon removal. 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.” 8 C.F.R. § 214.11(i)(1).

On appeal, counsel submits a letter from the Office of Refugee Resettlement regarding the process for state and voluntary agencies to request assistance for child victims of human trafficking, a law review article regarding the tension between protecting trafficking victims and enforcement of immigration laws, and a 2007 unpublished and non-precedential AAO decision on a T nonimmigrant status appeal. None of these documents address the applicant’s claim of extreme hardship involving unusual and severe harm upon removal to India. In her brief, counsel asserts that the applicant faces a high likelihood of re-victimization given his young age and his family’s economic situation, but she provides no additional evidence to support this claim and does not address any of the other factors listed in the regulation at 8 C.F.R. § 214.11(i)(1). The preponderance of the evidence fails to demonstrate 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.

(b)(6)

Page 8

*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 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.