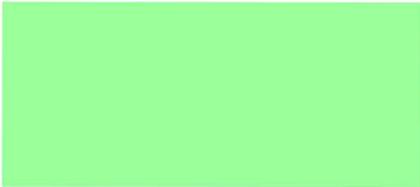




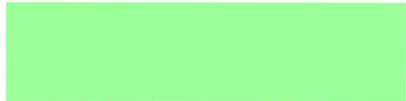
U.S. Citizenship  
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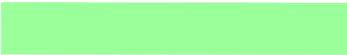


DATE: AUG 28 2013

Office: VERMONT SERVICE CENTER



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:

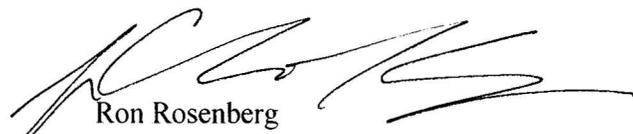


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the application for T nonimmigrant status. 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 had complied with any reasonable request for assistance from a law enforcement agency in the investigation or prosecution of the trafficking or related crime. On appeal, counsel submits a statement from the applicant.

*Applicable Law*

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

- (i) [S]ubject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines –
  - (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,
  - (II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
  - (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;
  - (bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or
  - (cc) has not attained 18 years of age; and
  - (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal [.]

Section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), codified at 22 U.S.C. § 7102(8), defines the term “severe forms of trafficking in persons” as:

- A. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

- B. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

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

*Reasonable request for assistance* means a reasonable request made by a law enforcement officer or prosecutor to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The “reasonableness” of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.

The regulation at 8 C.F.R. § 214.11(l) prescribes, in pertinent part, the standard of review and the applicant’s burden of proof:

- (1) *De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.
- (2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

#### *Pertinent Facts*

The record in this case provides the following pertinent facts. The applicant is a 28-year-old native and citizen of India. In her July 25, 2011 declaration submitted below, the applicant provided the following account. The applicant stated that her uncle arranged for her entry into the United States from India when she was 16 years old. After being smuggled into Canada, the applicant entered the United States without inspection in February 2002. The applicant stayed at her uncle’s home in San Jose where he resided with his girlfriend and their infant daughter. Her uncle obtained false documents of her age and identity so she could enroll in high school.

While the applicant was enrolled in school she was forced to work at her uncle’s Mexican restaurant and take care of her uncle’s infant daughter. She was also forced to cook and clean for her uncle’s household. The applicant’s uncle and girlfriend threatened the applicant with deportation if she left their home. One year later, the applicant’s aunt and cousins were also brought to the United States from India and forced to work for the applicant’s uncle.

In 2004, the applicant was sexually assaulted by her uncle's friend, [REDACTED] at his residence. The applicant contacted her uncle and his girlfriend for help and they took her to a hospital. The police investigated the assault and arrested [REDACTED]. The applicant's uncle and his girlfriend threatened that if the applicant informed the police about forced labor in their household, her aunt and cousins would be detained and placed in jail. Because of the threats, the applicant told the detectives that there were no problems in the household and she remained at her uncle's home. Two years later [REDACTED] was convicted and placed on probation.

After the conviction the applicant's uncle and girlfriend called the applicant derogatory names and blamed her for the sexual assault. The applicant then tried to commit suicide. The applicant thereafter finished school and when her uncle went on a trip to India in April 2007 she permanently left his home to reside with her boyfriend. The applicant is now married and residing with her husband and her aunt and cousin.

#### *Compliance with Law Enforcement Requests*

The statute requires that a T nonimmigrant demonstrate that he or she has complied with any reasonable request for assistance in the federal, state or local investigation or prosecution of acts of trafficking or the investigation of related crime. Section 101(a)(15)(T)(i)(III) of the Act, 8 U.S.C. § 1101(a)(15)(T)(i)(III). A law enforcement agency (LEA) endorsement is not mandatory, but, when submitted, the endorsement will be considered primary evidence that an applicant has met this requirement. 8 C.F.R. § 214.11(h)(1). In the absence of an LEA endorsement, an applicant may submit credible secondary evidence and affidavits to show the nonexistence or unavailability of the LEA endorsement and to otherwise establish the alien's compliance with law enforcement requests. *Id.* at § 214.11(h)(2).

The applicant filed the instant Form I-914 on October 12, 2011. On the Form I-914, she answered "no" to the question of whether she had complied with requests from Federal, State, or local law enforcement authorities for assistance in the investigation or prosecution of acts of trafficking. On April 17, 2012, the director issued a Request For Evidence (RFE) that the applicant had contact with a Law Enforcement Agency (LEA) regarding the severe forms of trafficking in persons and a statement or other evidence to demonstrate that good faith attempts were made to obtain an LEA endorsement.

In her June 27, 2012 declaration submitted in response to the RFE, the applicant recounted that in April 2007 she was working at her uncle's restaurant when her uncle's girlfriend threatened to beat her for using her uncle's cellular phone. The applicant stated that her uncle was in India at the time and she was afraid to return to her uncle's home. The applicant recounted that she then moved in with her boyfriend. She asserted that she was afraid to go to the police because she did not have identity documents or outside support, and her uncle and his girlfriend threatened to have her deported.

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<sup>1</sup> Name withheld to protect the individual's identity.

On November 21, 2012, the director denied the petition because the applicant failed to demonstrate that she complied with reasonable requests for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. On appeal, counsel asserts that the applicant has reported the trafficking to a law enforcement hotline. The telephone number provided by counsel is that of the Homeland Security Investigations Tip Line, which was listed in the director's April 17, 2012 RFE. In the applicant's December 19, 2012 declaration submitted with the appeal, she recounted that on October 4, 2012 she realized that she had become stronger emotionally and was safe from her uncle. She stated that she decided to report her uncle to the law enforcement hotline and gave the officer on the hotline her immigration file number. She recounted that she was referred to a website to assist victims of trafficking. The applicant stated that thereafter her uncle called her, but she did not answer his telephone call. She recalled that on December 19, 2012, she contacted the hotline again to obtain a confirmation number, but was told that all information is confidential.

Although the applicant asserts that she contacted the Homeland Security Investigations Tip Line, her attempt to notify an LEA was over five years after she escaped her traffickers and one year after she filed her Form I-914. She indicated that she was afraid to go to the police because she did not have identity documents or outside support, and her uncle and his girlfriend threatened to have her deported. However, the applicant, who was 22 years old at the time she escaped her traffickers, stated in her declarations that after she left her uncle's home she moved in with her boyfriend and they are now married, indicating that she had outside support. She also recounted in her initial declaration that she had prior contact with law enforcement when she was sexually assaulted. She did not indicate that she had a negative experience with the police officers who investigated the assault, or that they questioned her immigration status and demanded identity documents. Although the applicant stated in her initial declaration that her uncle and his girlfriend threatened to deport her when she resided with them and she felt depressed, she also recounted that after she moved in with her boyfriend she met with her uncle to obtain her belongings and he told her that he no longer wanted to have contact with her. The applicant reported no other threats by her uncle or his girlfriend after she moved out of their residence. Nor has she provided a psychological evaluation or any other evidence to establish that she was suffering from depression or other psychological trauma that hindered her contact with law enforcement. The applicant therefore did not describe in credible, probative detail the personal circumstances that resulted in her five-year delay to contact an LEA regarding her trafficking.

An applicant must establish that she is eligible for the requested benefit at the time of filing the application. *See* 8 C.F.R. § 103.2(b)(1). As the applicant has not established that at the time of filing the Form I-914, she had complied with reasonable requests for assistance in the federal, state or local investigation of acts of trafficking or a related crime, she has not satisfied the requirement of section 101(a)(15)(T)(i)(III)(aa) of the Act.

### *Inadmissibility*

Beyond the decision of the director, the application is also not approvable because the applicant is inadmissible to the United States. 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). In this case, the record shows that the applicant entered the United States from Canada without

inspection in February 2002. She is consequently inadmissible to the United States under section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), as an alien present without admission or parole.

U.S. Citizenship and Immigration Services (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). Although the applicant alleges that her entry without inspection and resultant inadmissibility under section 212(a)(6)(A) of the Act were incident to her victimization, she did not initially file a Form I-192 to request a waiver of her inadmissibility. In the April 17, 2012 RFE, the director requested the applicant to submit a Form I-192. The applicant complied with this request, but her Form I-192 remains pending before the Vermont Service Center and has not been approved.

#### *Conclusion*

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In T nonimmigrant status application proceedings, it is the applicant’s burden to establish eligibility. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.