

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **JUL 05 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 with the field office or service center that originally decided your case by filing a 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. 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 present in the United States on account of such trafficking. On appeal, counsel submits a statement from the applicant. Counsel asserts that the director erred in concluding that the applicant has not established that he has been a victim of a severe form of trafficking in persons based on forced labor. Counsel indicated that a brief or additional evidence would be submitted within 30 days, however, to date, over seven months later, the AAO has received no brief or further evidence from counsel or the petitioner.¹

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

¹ The director issued separate decisions denying the applicant’s spouse’s Application for Immediate Family Member of T-1 Recipient (Form I-914A) and his son’s Form I-914A. However, counsel submitted one appeal for the principal applicant’s Form I-914 and the two derivative Form I-914A applications. The AAO will consider the denial of the Form I-914 on appeal since the approval of the two Form I-914As is dependent on the principal applicant’s eligibility for T-1 nonimmigrant classification.

(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:

Coercion means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

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)).

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

Victim of a severe form of trafficking in persons means an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the VTVPA² and in this section.

The regulation at 8 C.F.R. § 214.11(g) prescribes the evidentiary burden to establish the physical presence requirement for T nonimmigrant classification at section 101(a)(15)(T)(i)(II) of the Act and states, in pertinent part:

[T]he 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 to answer questions on Form I-914, 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.

² Victims of Trafficking and Violence Protection Act of 2000, Pub. Law No. 106-386 (Oct. 28, 2000).

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The applicant is a native of India and citizen of Fiji who entered the United States on March 26, 2005 as a nonimmigrant visitor. In his August 24, 2011 declaration submitted below, the applicant provided the following account. The applicant stated that for the last few years, he and his wife have been managers for the [REDACTED] his mother and sister were tenants at the [REDACTED] starting in February 2010. The applicant told [REDACTED] sister about his fear of returning to Fiji because he and his wife were assaulted when they resided there.

The applicant suspected that [REDACTED] was engaged in illicit activities, including dealing drugs. In late February 2010, [REDACTED] noticed that the applicant was watching him engage in suspicious activities. The applicant then became fearful of [REDACTED]. In late February or early March 2010, the applicant contacted [REDACTED] for overdue room payments. When [REDACTED] told the applicant that there was no deficiency in payments, the applicant stated that he would have to contact the police. [REDACTED] then threatened that the police would believe that the applicant is involved with him in the illicit activities and the applicant and his wife would be sent back to Fiji. The applicant became fearful and paid for some of [REDACTED] motel bill to keep attention away from the lack of payments.

On March 2010, the [REDACTED] came to the motel, questioned [REDACTED] and had him move out of the motel room. The applicant was too afraid to tell the police that he believes [REDACTED] is a drug dealer. On April 2, 2010, [REDACTED] called the applicant at the motel three times and demanded that he be allowed to return to the motel because his mother was staying there. The applicant replied that he could not allow him to return without the permission of the police. [REDACTED] then threatened and cursed at the applicant. The applicant reported the threats to [REDACTED] and the officer instructed [REDACTED] to stay away from the motel premises. The applicant then paid [REDACTED] mother to depart the motel.

Over the course of a couple of months, the applicant saw [REDACTED] on several occasions. [REDACTED] threatened and cursed at the applicant during these encounters. The applicant became fearful and suspected that [REDACTED] was part of a drug ring. On March 5, 2011, the applicant was at a gas station when [REDACTED] threatened and pointed at him. The applicant contacted his attorney and he advised that the applicant should obtain a restraining order. The applicant's attorney also told him that he would speak with the [REDACTED]

In the June 27, 2012 declaration the applicant submitted in response to the RFE, the applicant added that since the beginning of the year, [REDACTED] has engaged in drug dealing at night in front of the [REDACTED] motel. [REDACTED] stares at the applicant while he is engaged in these activities and knows that the applicant will be unable to take action against him because the applicant is afraid. In June 2012, [REDACTED] stopped the applicant at a grocery store and threatened him. The applicant fears that if he moves, [REDACTED] will find him because he believes that [REDACTED] is connected to a large drug ring.

Victim of a Severe Form of Trafficking in Persons

De novo review of the record fails to establish that the petitioner was a victim of a severe form of trafficking in persons, as that term is defined by statute and regulation at 22 U.S.C. § 7102(8) and 8 C.F.R. 214.11(a). Specifically, the record does not establish that the applicant's labor or services were procured through force, fraud or coercion for the purpose of his subjection to involuntary servitude, peonage, debt bondage or slavery.

On the appeal notice, counsel briefly asserts the applicant's eligibility in a one-paragraph statement. Counsel contends that the applicant "became an unwilling and uncompensated look-out, protector, shelterer, and payor for [REDACTED]. Counsel further contends that the applicant was "coerced to play such a role by [REDACTED] under the threat of both violent retaliation by either [REDACTED] or his associates." Counsel asserts that the applicant was therefore [REDACTED] unwilling and uncompensated servant, slave, peon, and debtor." Counsel, however, fails to articulate exactly how the facts presented in the applicant's declaration establish that the applicant was subjected to a severe form of trafficking in persons, as defined in the regulation at 8 C.F.R. § 214.11(a). Although the applicant's statement reflects that the applicant was coerced by [REDACTED] to not report to law enforcement authorities the illicit activity that he witnessed, the applicant's statement does not establish that, through force, fraud or coercion, he was recruited, harbored, transported, provided, or obtained for labor or services, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

In the statement filed on appeal, the applicant asserts that he had to pay for [REDACTED] stay at the motel out of fear that [REDACTED] would otherwise harm him. The applicant contends that he had to protect [REDACTED] from law enforcement scrutiny because of [REDACTED] threats. He further contends that [REDACTED] is engaged in a larger drug-trafficking ring that empowered him to have the ability to carry out the threats. However, the record contains no evidence that [REDACTED] intended and actually subjected the applicant to involuntary servitude, peonage, debt bondage or slavery. The applicant was never placed in a condition of servitude, as he was never forced to work for [REDACTED]. The record also lacks any evidence that the applicant provided labor or services to [REDACTED] as a security for any real or alleged indebtedness.

Accordingly, the record does not demonstrate that the applicant became a victim of a severe form of trafficking in persons after his arrival in the United States. The applicant has consequently failed to establish his victim status, as required by section 101(a)(15)(T)(i)(I) of the Act and as defined in the regulation at 8 C.F.R. § 214.11(a).

Physical Presence in the United States on Account of Trafficking

The director determined that because the applicant failed to establish that he is a victim of a severe form of trafficking in persons, it cannot be determined that he is physically present in the United States on account of trafficking. On the appeal notice, counsel asserts that the applicant has in fact established that he is victim of a severe form of trafficking in persons and is therefore present in the United States on account of being such a victim.

To satisfy the physical presence requirement, the regulation requires, in pertinent part, that an alien demonstrate both that he or she was subjected to trafficking in the past and that his or her continuing presence in the United States is directly related to the original trafficking. 8 C.F.R. § 214.11(g). As discussed in the preceding section, the record does not establish that the applicant was recruited, harbored, transported, provided, or obtained for labor or services, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Counsel also fails to discuss on appeal how the relevant evidence demonstrates that the applicant has remained in the United States for reasons directly related to the alleged trafficking. Consequently, the applicant has not established that his continued presence in the United States is on account of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act and as defined in the regulation at 8 C.F.R. § 214.11(g).

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) and (II) of the Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.