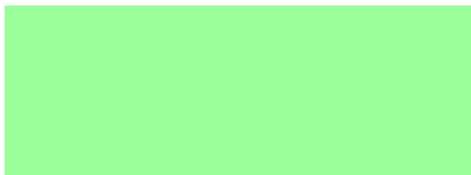


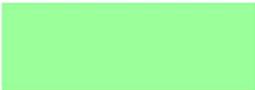
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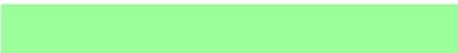


U.S. Citizenship  
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Services



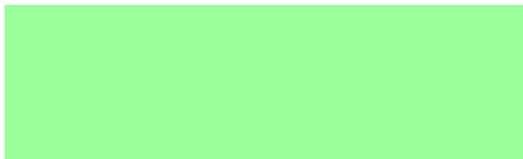
DATE: **JUL 05 2013** Office: VERMONT SERVICE CENTER

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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 brief, an article from the [REDACTED] on the H-2 temporary worker program, and the applicant’s previously filed affidavit.

*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) 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 . . . 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, 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 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)).

This definition reflects the federal crime of forced labor enacted by section 103(5) of the TVPA and codified at 18 U.S.C. § 1589. See *Preamble to T Nonimmigrant Interim Rule*, 67 Fed. Reg. 4784, 4786 (Jan. 31, 2002). The forced labor statute at 18 U.S.C. § 1589(c) provides the following, pertinent definitions:

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or continue performing labor or services in order to avoid incurring that harm.

The regulation at 8 C.F.R. § 214.11(a) also defines the following term:

*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.

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 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 in these proceedings:

- (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 43-year-old citizen of India who entered the United States on July 30, 2002 with an H2B visa to work for [REDACTED]. In his September 11, 2010 declaration submitted below, the applicant provided the following account of his journey to the United States. The applicant explained that he was working in Singapore when he learned of employment opportunities for pipe fitters and welders in the United States through an advertisement posted by [REDACTED]. The applicant spoke with [REDACTED] and learned that for a fee of \$16,000 (U.S. dollars), he could be employed with [REDACTED], which would offer a three-year position for \$14 per hour with room and board and he would receive a "green card" after the three years. The applicant borrowed the money at a 15 percent interest rate and put down a deposit. After four months, the applicant went to the U.S. Consulate to receive his visa. [REDACTED] and another [REDACTED] agent, [REDACTED] told the applicant and other Indian workers that they would receive their passports when they paid the remainder of the fee. After a few days, [REDACTED] told the applicant to come to his office to pick up his passport, airline ticket and to pay him \$10,000. The applicant gave [REDACTED] the money and was instructed to sign several blank notarized pages. The applicant signed the documents because [REDACTED] refused to return his money or passport if he did not sign them.

When the applicant arrived in the United States, he and other Indian men were taken to a motel in Houma, Louisiana and were informed that there was no work available at that time. The person in charge of their group, [REDACTED], had control over their passports. The Indian workers were moved to an apartment, but the men were not earning an income to pay for rent and food. [REDACTED] had bodyguards, carried a knife and called the Indian men names. At one meeting, [REDACTED] took out his knife and [REDACTED] told the men that if anyone made trouble, [REDACTED] would take care of them. The applicant was then moved with the other Indian workers to a motel in Baton Rouge near the [REDACTED] office that had rats and roaches while they were waiting for work.

[REDACTED] a Pentecostal minister and social worker, heard about their problems and tried to help them find work, but [REDACTED] did not want anyone involved. The applicant heard that when two individuals went to [REDACTED] to ask for work, [REDACTED] took out his gun, demanded their

wallets and threatened to send them back to India. When some of the Indian men tried to work for other companies, [REDACTED] told those companies that the men could only work for [REDACTED]. Some of the men who left [REDACTED] were apprehended by the Immigration Service, and many of these men were deported to India. Members of a church became involved and contacted the local media to report the living conditions. [REDACTED] became angry about this and told [REDACTED] that he was planning to send the workers back to India. [REDACTED] then sent the men a warning that if they continued to speak with the media, their families would have trouble in India.

The applicant heard that [REDACTED] had set up guards at the motel to make sure no one would escape. [REDACTED] arranged for some of the Indian workers to stay at another motel and while he was driving several of the men to the motel, [REDACTED] followed him. [REDACTED] went to the Sheriff's department to report the situation, but the Sheriff was unresponsive and instead called an immigration officer. When [REDACTED] and his bodyguard arrived at the Sheriff's department, [REDACTED] was arrested.

[REDACTED] took some of the Indian workers to [REDACTED] and [REDACTED] where they sought help with their situation. The applicant was not personally interviewed by law enforcement but he heard that the other men provided information to the Federal Bureau of Investigation (FBI), the U.S. Department of Labor (DOL) and the U.S. Department of Homeland Security (DHS). The applicant also reported himself to the U.S. Department of Justice (DOJ) as a trafficking victim.

This is the applicant's third Form I-914 and it was filed on September 27, 2010. The applicant's two prior Forms I-914 were denied.<sup>1</sup> The director denied this application on May 6, 2011 and counsel timely appealed. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

#### *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, which includes the harboring of a person for labor through the use of coercion for the purpose of subjection to involuntary servitude. 8 C.F.R. § 214.11(a). Although the record establishes that the applicant was harbored in the United States through the use of coercion, it does not show that he was harbored for the purpose of subjection to involuntary servitude, which is defined as a condition of servitude 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. *Id.*

In his declaration, the applicant recounted that [REDACTED] housed him in a motel while waiting to employ him with another company, [REDACTED]. See Applicant's declaration, dated September 11, 2010 at ¶ 7. The record contains a previously submitted complaint from the class action lawsuit the Indian works filed against [REDACTED], [REDACTED] and [REDACTED], which asserts that [REDACTED] was not capable of employing the Indian workers and instead planned to place them with third parties with the intention of "skimming money" from each worker. See [REDACTED]

<sup>1</sup> [REDACTED]

[REDACTED]. A deposition in the record from [REDACTED] former wife, [REDACTED] also reflects that [REDACTED] brought the Indian workers to the United States for the purpose of selling their labor to other companies. See Sworn Statement of [REDACTED]. The record therefore reflects that [REDACTED] harbored the applicant and the other Indian workers for the purpose of contracting their labor to other companies and then deducting a portion of the workers' salaries for [REDACTED] own profit. However, the record does not demonstrate that [REDACTED] intended to subject the applicant and the other Indian workers to involuntary servitude.

On appeal, counsel addresses the denial of the applicant's second Form I-914, which determined that the applicant was not subjected to debt bondage. Counsel asserts that the applicant and his fellow Indian workers borrowed large sums of money in India to take advantage of a claimed employment offer in the United States with [REDACTED]. Counsel contends that once they arrived in the United States, they were taken to hotel where they resided without pay for one month and then had to rely on day-jobs with random employers. Debt bondage is the status or condition of a debtor arising from a pledge by the debtor of his or her personal services . . . 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. 8 C.F.R. § 214.11(a). The applicant, however, has not indicated that he was indebted to [REDACTED] or that he pledged his labor to [REDACTED] as security for his debt to a lender in India. The applicant stated that he borrowed money from a lender in India unrelated to [REDACTED] and used the money to pay a fee to [REDACTED] agent, [REDACTED]. Accordingly, the applicant did not pledge his personal services to [REDACTED] as security for a debt.

Counsel also submits an article from the [REDACTED] entitled '[REDACTED]' and quotes sections of the article throughout his brief. Counsel contends that the article captures the abuses suffered by the applicant and "details the interrelationship between all actors in this ongoing scheme to exploit and traffic them for profit." Counsel, however, fails to articulate exactly how the record establishes that the applicant himself was subjected to a severe form of trafficking in persons, as defined in the regulation at 8 C.F.R. § 214.11(a). Accordingly, the applicant has failed to establish 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 as defined in the regulation at 8 C.F.R. § 214.11(a).

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

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. In his appeal brief, counsel only quotes to sections of the [REDACTED] journal article and does not specifically address this determination.

Even if the applicant had established that he was a victim of a severe form of trafficking in persons, he would not meet the physical presence requirement. To meet this requirement, individuals 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). In his September 11, 2011 declaration, the applicant stated that [REDACTED] along with other individuals from a

church helped him and the other Indian workers financially. He also recounted that [REDACTED] took some of the Indian workers to [REDACTED] and [REDACTED] for help and the FBI and DOL later became involved in an investigation. *See Applicant's declaration*, dated September 11, 2011 at ¶¶ 11, 14, 20-23. Media reports in the record indicate that these events occurred around May 2003. The applicant briefly stated that he reported himself as a victim of trafficking, but he did not indicate when and where he made the report. The applicant also did not discuss when in the timeline of events he left the motel where he was being harbored by [REDACTED]. However, in the personal declaration the applicant submitted with his first Form I-914, he stated that he after waiting for three months for employment with [REDACTED] in Houma, Louisiana, he eventually found employment with [REDACTED] for one month in September 2002 and then with a company in Baltimore in November 2002 for one month. *See Applicant's initial statement*, undated at 2. The applicant's record therefore reflects that he left the motel where he was being harbored by [REDACTED] before he had any contact with law enforcement regarding his claimed trafficking.

Since the applicant has not provided the date that he left the motel and the amount of time between his departure from the motel and his first contact with law enforcement, he has not established the length of the interim period. The applicant has also failed to provide a credible, detailed and probative account of his activities during the interim period and his ability to leave the United States during that time. Although the applicant stated in his most recent declaration that [REDACTED] had control over his passport, he indicated in the affidavit that he filed with his second Form I-914 that his passport was returned to him. *See Applicant's affidavit*, dated January 20, 2004 at 3. The record therefore does not show that the applicant lacked travel documents for his departure from the United States during the interim period. The applicant also does not discuss in probative detail how his personal circumstances, including any trauma, injury or a lack of resources, prevented him from returning to India during this time period. Although the applicant stated in his most recent declaration that because of his unemployment his family members were being harassed by debt collectors in India, he failed to provide specific details of the alleged harassment to his family, or any harm that was inflicted upon them. *See Applicant's declaration*, dated September 11, 2011 at ¶ 19.

The applicant stated that he believes that companies and recruiters in India will retaliate against him for being a whistleblower. He stated that [REDACTED] has connections with the Mafia and he could cause him harm. He also asserted that he fears that if he returns to India, [REDACTED] and his father, [REDACTED] could bring false charges against him or prevent him from working in India or other countries. *See Applicant's declaration*, dated September 11, 2011 at ¶¶ 25-26. The applicant, however, does not explain if actual threats have been made against him, if he has knowledge of other similarly situated individuals who have been targeted, or otherwise articulate the basis for these concerns. The applicant also briefly claimed in a one-sentence statement that he has "suffered mental and physical trauma." *Id.* However, he again does not provide any details on the trauma that he alleges he suffered. Consequently, the applicant has not satisfied the physical presence requirement of section 101(a)(15)(i)(II) of the Act, as defined in the regulation at 8 C.F.R. § 214.11(g).

*Extreme Hardship Involving Unusual and Severe Harm Upon Removal*

We also withdraw the director's determination that the applicant established that he would suffer extreme hardship involving unusual and severe harm upon removal. The record contains a declaration the applicant filed in response to the notice of intent to deny the second Form I-914, which addressed the applicant's claims of extreme hardship. In the declaration, dated January 26, 2005, the applicant briefly asserted that he would be severely harmed if he returned to India because the civil lawsuit he was involved in had been widely reported and the Indian government could not protect him from the recruiters in India. The applicant stated that prospective employers will view him as a troublemaker and a failure. *See Applicant's affidavit*, dated January 26, 2005 at 2-3. The applicant, however, did not discuss any actual threats against him or his family members in India, or provide any further, specific information to support this claim. Although the applicant expressed his concern for obtaining future employment in India, 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).

As discussed, in his most recent declaration, the applicant asserted that he fears if he returns to India companies and recruiters will retaliate against him, and [REDACTED] will bring false charges against him or prevent him from working in India or other countries. He also stated that his family members were being harassed by debt collectors in India. *See Applicant's declaration*, dated at September 11, 2011 at ¶¶ 19, 25-26. Again, the applicant's claims consist of a few brief sentences about his general fears of harm upon returning to India. He fails to provide specific, probative and detail information of threats against him or his family members in India, or harm inflicted upon his family members, to support these claims.

The applicant also asserted in his most recent declaration that if he returned to India he would find it difficult to continue to participate in lawsuits and ongoing investigations against [REDACTED] and its associates. *See Applicant's declaration*, dated at September 11, 2011 at ¶ 28. Although the impact of the loss of access to the United States courts and the criminal justice system for purposes of civil redress for acts of trafficking in persons is a factor to be considered in an extreme hardship analysis, the applicant has not demonstrated that he is currently involved in any civil or criminal action against [REDACTED]. *See* 8 C.F.R. § 214.11(i)(1)(iv). Court records show that the class action lawsuit in which the applicant was named as a class member, [REDACTED], was dismissed pursuant to the parties' settlement agreement on May 2, 2007. The applicant has failed to provide evidence of his involvement in any continuing investigations of individuals related to [REDACTED] and/or their associates.

In sum, 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.

*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.

(b)(6)

Page 10

§ 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.