



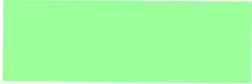
U.S. Citizenship  
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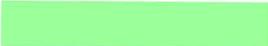


DATE: **JUN 05 2013**

Office: VERMONT SERVICE CENTER

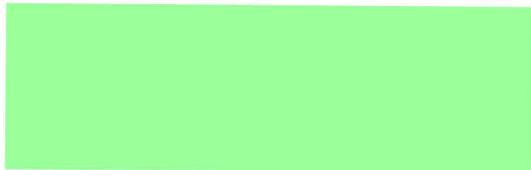
FILE: 

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:

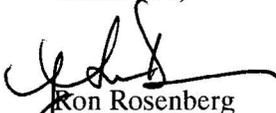


INSTRUCTIONS:

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,

  
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 and an article from the [REDACTED] on the H-2 temporary worker program.

*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 42 year-old citizen of India who entered the United States on December 3, 2002 with an H2B visa to work for [REDACTED]. In his September 10, 2011 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 \$13,000 (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. [REDACTED] told the applicant that he would have to pay a \$3,000 deposit to begin the process. The applicant borrowed money at a 15 percent interest rate and paid the \$3,000 deposit. After two months, the applicant met [REDACTED] an agent for [REDACTED], at the U.S. Consulate in Chennai for his visa interview. The applicant's visa was granted and [REDACTED] informed him that he would get his passport back when he paid the remainder of the fee. [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 fourteen blank sheets of notarized paper. 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 learned that [REDACTED] would not employ him directly, but would sell his services to other companies in Houma, Louisiana for \$8 per hour. The applicant and other Indian men in his situation received no money while they were waiting for work and they were required to pay for their own food. The person in charge of his group, [REDACTED] had bodyguards and he carried a gun and a knife. The applicant was placed with other Indian men in a motel in Houma that had rats and roaches while he was waiting for work. Some of the Indian men tried to work for other companies, but [REDACTED] told the companies that they could only work for [REDACTED]. When the applicant and other individuals approached [REDACTED] about work, they were called names and told to stop bothering him. The applicant heard that when several individuals went back to [REDACTED] to again ask for work, [REDACTED] took out his gun, demanded their wallets and threatened to send them back to India.

Thereafter, the applicant and the other individuals were told to leave the motel because [REDACTED] no longer wanted to pay for the motel rooms. They were threatened with deportation to India if they did not leave the motel. The applicant and the other individuals were scared because they owed too much money to return to India. [REDACTED] a Pentecostal Minister who knew about their situation, intervened and was able to extend their stay at the motel. Members of a church became involved and contacted the media to report the living conditions. [REDACTED] called one of the Indian men to send a warning that if the men continued to speak with the media, their families would have trouble in India. [REDACTED] also placed guards at the motel to make sure no one would escape. [REDACTED] arranged for the men 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] continued to help the applicant and the other Indian men with the assistance of Catholic Charities and an attorney, [REDACTED] who filed a lawsuit against [REDACTED]. The applicant and 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, Application for T Nonimmigrant Status, 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 April 11, 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.* The record 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. See *Applicant's declaration*, dated September 10, 2011 at ¶ 7. However, the record does not demonstrate that there was an intent by [REDACTED] to subject the applicant and the other Indian workers to involuntary servitude.

On appeal, counsel discusses the director's notice of intent to deny the applicant's second Form I-914 application, which states that the applicant has not established that he was subjected to debt bondage as he had claimed on his application. 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

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<sup>1</sup> [REDACTED] and [REDACTED]

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 10, 2011 declaration, the applicant stated that [REDACTED] along with other individuals helped him and the other Indian workers financially after they left the motel. He recounted that [REDACTED] Catholic Charities and an attorney, [REDACTED] helped them file a class action lawsuit against [REDACTED] and then the FBI and DOL became involved in an investigation. The applicant also stated that he reported himself to the DOJ as a victim of trafficking. *See Applicant’s declaration*, dated September 10, 2011 at ¶¶ 22-24. The applicant’s declaration 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.

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 therefore 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. In his September 10, 2011 declaration the applicant does not indicate that he 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 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 10, 2011 at ¶ 21.

The applicant stated that he believes that [REDACTED] has connections with the Mafia and he will retaliate against him for being a whistleblower. He indicated that he fears that if he returns to India, [REDACTED] could bring false charges against him or prevent him from working in India or other countries. *See Applicant's declaration*, dated September 10, 2011 at ¶¶ 26-27. 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 14, 2004, 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 revenge of the recruiters in India. The applicant stated that it would be impossible for him to find employment because he will be seen as a trouble maker and a failure based on his experiences in the United States. *See Applicant's affidavit*, dated January 14, 2004 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. The applicant also indicated that "there are too many people in India and not enough jobs even for skilled workers." *Id.* at 3. However, 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 [REDACTED] will retaliate against him, bring false charges against him and prevent him from working in India. He also stated that his family members were being harassed by debt collectors in India. *See Applicant's declaration*, dated at September 10, 2011 at ¶¶ 21, 26-27. Again, the applicant's claims consist of a few brief sentences indicating his general fears of harm upon returning to India. He fails to provide specific, probative and detailed 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. He stated that he is a potential witness in an open investigation pending before the U.S.

Equal Employment Opportunity Commission (EEOC). *See Applicant's declaration*, dated at September 10, 2011 at ¶ 24. 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, *Abraham v. Singh*, No. 04-0044, (E.D. La. January 8, 2004), was dismissed pursuant to the parties' settlement agreement on May 2, 2007. The applicant has failed to provide any evidence of his involvement in an EEOC investigation against [REDACTED].

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. § 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.