



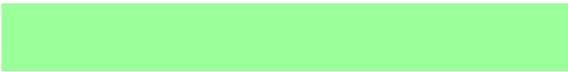
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: FEB 06 2015 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 (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 demonstrate that the applicant was a victim of a severe form of trafficking in persons and that he is present in the United States on account of such trafficking. On appeal, the applicant submits a brief.

*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:

*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.

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*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)).

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

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*Severe forms of trafficking in persons* means 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 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.

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*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 VTPA<sup>1</sup> and in this section.

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

<sup>1</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. Law No. 106-386 (Oct. 28, 2000).

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.

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.

#### *Facts and Procedural History*

The record in this case provides the following pertinent facts and procedural history. The applicant is a citizen of Ecuador who was born in that country on October [REDACTED]. The applicant was apprehended by U.S. border patrol agents near the border with Mexico on April 14, 2012. He filed the instant Form I-914, Application for T Nonimmigrant Status, on March [REDACTED] when he was 15 years old. In his initial statement, dated May 30, 2012, the applicant provided the following account.

The applicant and his aunt traveled from Ecuador through Peru, Honduras and Guatemala to Mexico via airplane and a bus. They remained in Mexico for three days and then began a journey across a river. While they were crossing the river, the applicant and his aunt were kidnapped by members of the [REDACTED] cartel and were taken to a house in Mexico that held other detainees. The cartel contacted the applicant's uncle and asked him to pay a ransom for the applicant and his aunt's release. The cartel eventually smuggled the applicant and his aunt into the United States and detained them at the cartel's ranch in [REDACTED] Texas. The applicant and his aunt hid at the ranch until they met with a smuggler who planned to take them to [REDACTED] Texas. At some point during his travel to [REDACTED] the applicant was apprehended by immigration authorities. The applicant in a statement dated March [REDACTED] added that he was told that if the ransom was not paid he would have to work for the cartel or he would be killed. In another statement dated March [REDACTED] the applicant discussed his fear that the [REDACTED] cartel would target and harm him and his family members if he returns to Ecuador.<sup>2</sup>

<sup>2</sup> In his statements the applicant also expressed his desire to remain in the United States to continue his education. The applicant submitted his school records and supporting letters from his friends and family members regarding his desire to continue his education in the United States.

In his statements issued in response to a Request for Evidence (RFE), dated August 7, 2013 and September 7, 2013, the applicant reiterated that the [REDACTED] cartel told him that if a ransom was not paid for his release he would have to help with smuggling drugs into the United States. He stated that the cartel threatened to kill him if he did not comply and he witnessed the death of his smuggler. The applicant added that he was forced to keep guard over the cartel's narcotics for two days until his uncle's ransom payment arrived.

*Victim of a Severe Form of Trafficking in Persons*

The director determined that the applicant was not a victim of a severe form of trafficking in persons because he was smuggled into the United States and was not brought into this country for the purpose of subjection to involuntary servitude, peonage, debt bondage, slavery or commercial sex. On appeal, the applicant asserts that the [REDACTED] cartel trafficked him by force and coercion for the purpose of peonage and involuntary servitude. The applicant contends that he was forced to watch over the [REDACTED] cartel's drugs and he believed that he would be used as a drug mule for the cartel if his ransom was not paid. *De novo* review of the record fails to establish that the applicant was a victim of a severe form of trafficking in persons.

As defined by the statute and regulations, "severe forms of trafficking in persons" require either "a commercial sex act induced by force, fraud, or coercion"; or a person's other "labor or services." 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a). The use of the words "for the purpose of" in the second prong of the definition clarifies that the labor or services obtained must constitute involuntary servitude, peonage, debt bondage, or slavery. *See id.* The Interim Rule that implemented section 107(e) of the Trafficking Victims Protection Act of 2000 further explains that unlike alien smuggling, severe forms of trafficking in persons must involve both a particular means such as the use of force, fraud, or coercion, and a particular end such as involuntary servitude or a commercial sex act (with regard to a commercial sex act, however, the use of force, fraud, or coercion is not necessary if the person induced to perform a commercial sex act is under the age of 18). 67 Fed. Reg. 21 4784, 4787 (emphasis added).

In the present case, the applicant initially stated that he was detained while being smuggled into the United States by the [REDACTED] cartel who threatened that if ransom payments for his release were not made, he would have to work for them or he would be killed. *Applicant's Statement*, dated March 12, 2013. In response to the RFE, the applicant added that he actually had to work for the cartel by keeping guard over the cartel's narcotics for two days until the ransom was paid. *Applicant's Statement*, dated August 7, 2013. Although the applicant maintains that the [REDACTED] cartel harbored him through the use of force and coercion for the purpose of subjection to involuntary servitude and peonage, he has failed to submit a consistent narrative of these events.

First, the applicant has failed to provide a consistent account of the ransom payments the [REDACTED] cartel allegedly demanded from his uncle. The applicant initially recounted that the cartel members asked his uncle to pay \$3,000 "to take me away." *Applicant's Statement*, dated May [REDACTED]. In his subsequent statements he recounted that his uncle paid a ransom of \$6,000. *Applicant's Statements*, dated May [REDACTED] and August 7, 2013. However, during the applicant's first psychological evaluation, he recounted that the cartel members demanded \$12,000 for his and his aunt's release and his uncle paid an initial deposit of \$9,000. *Psychological Evaluation from [REDACTED] Ph.D.*, dated March 1, 2013, at p. 4. The applicant explained during his second

psychological evaluation that the cartel threatened that he would be forced to sell drugs if they did not receive the total ransom amount of \$12,000 at the time the cartel delivered the applicant to his uncle in the United States. *Psychological Evaluation from [REDACTED] Ph.D.*, dated August 20, 2013, at p. 3. The applicant's uncle, [REDACTED], also stated in his letter that after the applicant and his aunt were kidnapped the [REDACTED] cartel demanded a ransom of \$12,000. He recounted that he initially paid \$6,000 and after fifteen days he paid another \$3,000 in response to the cartel's demands. *Letter from [REDACTED] dated May 23, 2012.* The applicant submitted copies of Mr. [REDACTED] Western Union money transfer receipts as evidence of these payments. The receipts show that Mr. [REDACTED] remitted a total of \$6,000 in \$1,500 allotments to various individuals located in Texas on March [REDACTED]. However, there is no evidence that he subsequently paid another \$3,000 fifteen days later as he had claimed. In addition, Mr. [REDACTED] did not indicate that he planned to meet the cartel in the United States in order to remit the full \$12,000 ransom to secure the applicant's release. Because of the inconsistencies in the amount of ransom demanded and paid, the applicant has failed to provide a probative account of his claim that the [REDACTED] cartel demanded ransom or labor for his release.

Second, the applicant has failed to provide a consistent account of his alleged detention by the [REDACTED] cartel. In his initial statement the applicant recounted that after he was detained for a couple of weeks the cartel helped him cross into the United States and then he spent two and a half weeks at a ranch operated by the cartel in [REDACTED] Texas. *Applicant's Statement*, dated May 30, 2012. In response to the RFE, the applicant stated that he had to work for the cartel by keeping guard over the cartel's narcotics for two days until the ransom was paid. He recounted that after his uncle paid the ransom he was taken to "another room" for three weeks and then the cartel brought him to the U.S. border. He stated that when he tried to cross the U.S. border he was detained by immigration authorities. *Applicant's Statement*, dated August 7, 2013. The applicant did not mention being housed with the [REDACTED] cartel at a ranch in [REDACTED] Texas in this statement. The applicant's psychological evaluations also contain inconsistent accounts of his detention. During his first psychological evaluation, the applicant recounted that after his uncle paid the \$9,000 ransom, he and his aunt were taken across the border into the United States and stayed in a house located in [REDACTED] Texas for "several, additional days." *Psychological Evaluation from [REDACTED] Ph.D.*, dated March 1, 2013 at p. 4. The applicant, however, stated during his second psychological evaluation that after entering [REDACTED] Texas he and his aunt were held captive for an additional two and a half weeks. *Psychological Evaluation from [REDACTED] Ph.D.*, dated August 20, 2013 at p. 3.

Finally, the applicant's timeline is undermined by Mr. [REDACTED] statements. Mr. [REDACTED] stated that after the applicant and his aunt were kidnapped the [REDACTED] cartel demanded a ransom of \$12,000. He recounted that he initially paid \$6,000 and after two weeks the cartel demanded another deposit of \$3,000. Mr. [REDACTED] recounted that he received a phone call eight days later from immigration authorities that the applicant and his aunt were apprehended. Mr. [REDACTED] timeline contradicts the five and a half week house detention period that the applicant recounted to Dr. [REDACTED] during his second psychological evaluation. *See Psychological Evaluation from [REDACTED] Ph.D.*, dated August 20, 2013 at p. 3. In addition, U.S. Department of Homeland Security (DHS) records show that the applicant entered [REDACTED], Texas on April 7, 2012 and he was apprehended in a vehicle one week after his entry on April 14, 2012 in [REDACTED] Texas, over 50 miles from [REDACTED] further contradicting the applicant's claim that he was detained at a ranch in [REDACTED] for two and a half weeks. The applicant's failure to provide a consistent, probative account of his claim detracts

from his statements as credible, reliable evidence that he is a victim of a severe form of trafficking in persons. 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. 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, slavery, or commercial sex. 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.