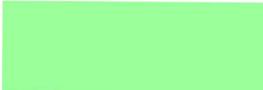


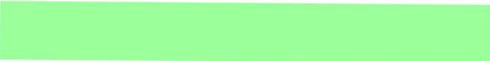


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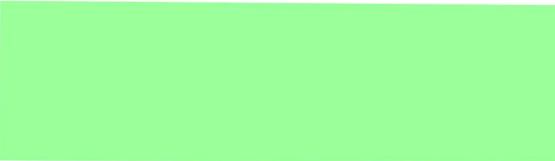


DATE: **JAN 29 2015** Office: VERMONT SERVICE CENTER FILE: 

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:

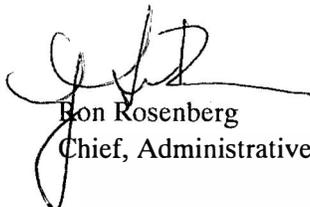


INSTRUCTIONS:

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,


Hon 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 is a victim of a severe form of trafficking in persons and that she is present in the United States on account of such trafficking. Specifically, the director determined that the applicant was voluntarily smuggled into the United States and was not, after her arrival, subjected to involuntary servitude, peonage, debt bondage, slavery; or commercial sex through force, fraud or coercion. On appeal, the applicant submits a brief and additional evidence.

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:

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

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.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

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 VTVPA¹ 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

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

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.

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The applicant is a 31-year-old native and citizen of Mexico who claims that she last entered the United States in September 2004 without inspection. The applicant filed the Form I-914 (Application for T Nonimmigrant Status) on June 26, 2012 when she was 38 years old. In her initial declaration, dated April 23, 2012, the applicant provided the following account.

The applicant began her journey from Mexico to the United States with approximately 30 other individuals with the assistance of a "coyote" or smuggler. Once the group arrived at a cross point, the coyote separated five women and one girl from the remaining individuals who were men. He isolated the applicant and told her to remove her clothing. When the applicant refused to comply with his demand, the coyote threatened to kill her and he cut her on her left breast with a razor. He then hit her on her left eye and held a gun to her temple, threatening to kill her. The coyote raped her that night and told her that she would have to travel with him to [REDACTED] Mexico. He then brought the other four women to the cross point and the applicant was forced to remain with him. He raped her three to four times daily for one week. The coyote released the applicant and helped her go through the cross point after he received a telephone call that he must release her. The applicant crossed under a wire fence and then she entered a car that took her to a residence where several other individuals were staying. The applicant then was transported to California where she met her brother. The applicant subsequently learned that she was pregnant as a result of the sexual assaults and she gave birth to her daughter on June [REDACTED]. Her daughter is currently receiving medical treatment for acute myeloid leukemia.

In the declaration the applicant submitted on appeal, dated February 10, 2014, the applicant amended her prior statement by providing more information about the location of the sexual assaults. The applicant stated that she and the other individuals walked for a couple of hours and crossed several wire fences, and she believed that she was then in the United States because the coyote told the group that if they touched the fence, the U.S. border patrol would see movement on the fence and find them. At night, the coyote informed the group that they were in [REDACTED] Arizona and separated the men from the women. The applicant's appellate statement is otherwise consistent with her prior declaration.

The director in the denial notice identified inconsistencies between the applicant's statement and her supporting evidence regarding the location of the sexual assaults. In addressing this finding, the applicant on appeal asserts that her statements have consistently identified the United States as where she was sexually assaulted. While the applicant's first declaration was vague regarding the location of the assaults her second declaration clarified any apparent inconsistencies. In addition, the applicant submitted below a police report from the [REDACTED] County, Oregon, Sheriff's Office, dated April 3, 2012, in which she identified the location of the sexual assaults as Arizona. On appeal, the applicant submits letters from her family members, [REDACTED] and [REDACTED] who all attest to learning from the applicant that she was sexually assaulted in Arizona. Finally, the record contains contemporaneous evidence that supports this account of events. The applicant submitted below medical intake notes from the [REDACTED] County Public Health Division, dated October 25, 2004 and November 30, 2004, which reflect that the applicant disclosed that she was pregnant as a result of being raped during her entry into the United States. The report dated November 30, 2004 specifies that the applicant was raped in Arizona. The totality of the evidence therefore establishes that the applicant was the victim of sexual assault in the United States.

Victim of a Severe Form of Trafficking in Persons

The director determined that the record failed to demonstrate that it was the smuggler's intent to recruit, harbor, transport, provide or obtain the applicant through force, fraud or coercion for the purpose of involuntary servitude or commercial sex upon her entry into the United States. On appeal, the applicant asserts that the sexual assaults she suffered were for commercial purposes because she was given basic necessities, such as food and shelter, and the promise of continued survival in exchange for sex acts induced by force and coercion. Individuals who are voluntarily smuggled into the United States may become victims of a severe form of trafficking in persons after their arrival if, for example, the smuggler uses threats of serious harm or physical restraint to force the individual into a commercial sex act or indentured servitude. See T Nonimmigrant Status Interim Rule, 67 Fed. Reg. 21 4784, 4787. The term "commercial sex act" means any sex act on account of which anything of value is given to or received by any person. 8 C.F.R. § 214.11(a).

The applicant reported to the [REDACTED] County Sheriff's Office that she voluntarily entered into an agreement with a smuggler or smugglers that stipulated she would pay a defined amount of money in order to be smuggled into the United States. [REDACTED] *County Sheriff's Office Police Report Narrative*, dated April 3, 2012 at p. 1. The applicant stated that after she was smuggled into Arizona, however, she was detained and forced to engage in sex acts with the individual who smuggled her in exchange for her survival in the Arizona desert. She recounted in probative detail

that the smuggler induced sex acts by physically assaulting her and threatening to kill her. *Applicant's Statement*, dated February 10, 2014 at pp. 3-4. The applicant's medical records reflect that she learned that she was pregnant after her arrival in the United States. She disclosed to health care workers that the pregnancy was a result of being raped during her journey to the United States. [REDACTED] *County Public Health Division Intake Notes*, dated October 25, 2004 and November 30, 2004. The record demonstrates that the applicant was harbored in the Arizona desert for the purpose of a commercial sex act induced by force and coercion. Accordingly, the applicant was subjected to sex trafficking and is the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.² The appeal may not be sustained, however, because the applicant has failed to overcome the remaining ground for denial.

Physical Presence in the United States on Account of Trafficking

The director determined that because the applicant failed to establish that she is a victim of a severe form of trafficking in persons, it cannot be determined that she 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 applicant 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). The applicant has demonstrated that she was subjected to trafficking in the past. However, she has not shown that her continuing presence in the United States is directly related to the original trafficking.

Individuals who escaped their trafficker(s) 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). Here, the applicant was liberated from her trafficker more than ten years ago, but she didn't report her trafficking to law enforcement authorities until eight years after the trafficking incident occurred. The applicant recounted that after she entered the United States she was driven from Arizona to California where her brother picked her up and she immediately told him that she was sexually assaulted. She stated that when she and her brother initially attempted to report the incidents to the police in Oregon, she was informed that only law enforcement in Arizona would have jurisdiction to investigate the crimes. The applicant stated that she did not return to Arizona because she was traumatized and she did not have the means to travel. *Applicant's Statement*, dated February 10, 2014 at p. 5. The applicant eventually reported the incident to the [REDACTED] County Sheriff's Office in Oregon on April 3, 2012, over eight years after she escaped from her trafficker. [REDACTED] *County Sheriff's Office Police Report Narrative*, dated April 3, 2012.

On the appeal, the applicant asserts that after arriving in the United States, she received medical treatment and learned that she had become pregnant as a result of being sexually assaulted. She states that she remained in the United States for her prenatal care and she continues to reside in the United States because her daughter was diagnosed with acute myeloid leukemia. The applicant has shown that after escaping her trafficker she immediately sought medical treatment and learned she

² The applicant also asserts that she was transported to and harbored in the United States for her labor through the use of force and coercion for the purpose of subjecting her to involuntary servitude and slavery by providing the smuggler with "sexual services." Since we have determined that the applicant is a victim of sex trafficking, we need not further address this issue on appeal.

was pregnant. See [REDACTED] *County Public Health Division Intake Notes*, dated October 25, 2004 and November 30, 2004. She has also shown that several years later, on August 24, 2011, her daughter from that pregnancy was diagnosed with leukemia. See *Letter from Dr. [REDACTED] Pediatric Oncologist at [REDACTED] Oregon*, dated January 12, 2012. However, in the interim, the applicant married and started a family. The record shows that the applicant was liberated by her trafficker in September 2004; she married on April [REDACTED] had two children with her husband, who are now eight and six years old; and she was employed prior to her daughter's diagnosis with leukemia in 2011. *Applicant's Statement*, dated February 10, 2014 at p. 5. The applicant has not shown that circumstances such as trauma, injury, or a lack of resources or travel documents, prevented her from returning to Mexico and that her continued presence in the United States is on account of the original act of trafficking.

On appeal, the applicant also contends that she was diagnosed with depression as a result of trauma from the sex trafficking, and in her initial declaration the applicant briefly recounted that she had nightmares about the sexual assaults. Neither below nor on appeal, however, has the applicant discussed her psychological state, other than in general terms, or provided information about any treatment or diagnosis that she received. *Applicant's Statement*, dated April 23, 2012 at p. 2. The applicant's medical records for her prenatal care only briefly state that she exhibited a "depressed mood" and was seeing a therapist. [REDACTED] *County Public Health Division Intake Notes*, dated October 25, 2004 and November 30, 2004. The police report narrative provides that the applicant attended counseling sessions, but the applicant has not discussed in any of her statements where and when she received the mental health treatment. [REDACTED] *County Sheriff's Office Police Report Narrative*, dated April 3, 2012 at p. 3. The applicant has not probatively described for the record the actions or steps she has taken, if any, in the intervening years to deal with the consequences of her trafficking.

Accordingly, the record does not support a determination that the applicant's continued presence in the United States is on account of the original trafficking. The regulation at 8 C.F.R. §214.11(g) provides, in part, that the physical presence requirement of section 101(a)(15)(T)(i)(II) of the Act "reaches an alien . . . whose continuing presence in the United States is *directly related to the original trafficking in persons.*" (Emphasis added). We cannot conclude based on the evidence of record that the applicant has met this requirement.

Conclusion

As in all visa classification proceedings, the applicant bears the burden of proof to establish her eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). On appeal, the applicant has not established her eligibility under subsection 101(a)(15)(T)(i)(II) of the Act. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed. The application remains denied.