



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-N-M-

DATE: JULY 14, 2016

CERTIFICATION OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks "T-1" nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director, Vermont Service Center, denied the application. The Director concluded that the Applicant was not physically present in the United States on account of a severe form of trafficking. The Applicant filed a motion to reopen and reconsider, which the Director denied. The Applicant then filed another motion to reconsider which the Director again denied. The Director certified her initial decision to us for review pursuant to 8 C.F.R. § 103.4.

On certification, the Applicant does not submit any additional evidence. The Applicant claimed on motion that he is physically present in the United States due to continuing victimization and that he is being treated differently than similarly situated applicants.

We will affirm the Director's initial decision and deny the application.

I. APPLICABLE LAW

Section 101(a)(15)(T)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she, subject to section 214(o) of the Act:

- (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) [w]ould suffer extreme hardship involving unusual and severe harm upon removal

The term “severe forms of trafficking in persons” is defined, in pertinent part, as:

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 subsection to involuntary servitude, peonage, debt bondage, or slavery.¹

To establish physical presence in the United States on account of trafficking, the regulation at 8 C.F.R. § 214.11(g) specifies:

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.

....

(3) *Departure from the United States.* An alien who has voluntarily left . . . the United States at any time after the act of a severe form of trafficking in persons shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien’s reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

The burden of proof is on an applicant demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010); 8 C.F.R. § 214.11(l)(2). An applicant may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. 8 C.F.R. § 214.11(l)(1).

¹ This definition comes from section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386 (Oct. 28, 2000), which has been codified at 22 U.S.C. § 7102(8) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

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II. ANALYSIS

The Director concluded that the Applicant did not establish his physical presence in the United States on account of a severe form of trafficking. Specifically, the Director found that the Applicant had departed from the United States five times and that his reentries were not the result of a continuation of the original trafficking scheme or a new incident of a severe form of trafficking in persons. We concur.

As the facts were set out in the Director's two decisions below, we will not repeat them here except as necessary. The Director found that the Applicant, a citizen of India, was a victim of a severe form of trafficking in persons after he was recruited by [REDACTED] for the purpose of subjecting him to involuntary servitude. Although the Applicant never worked for [REDACTED],² the evidence in the record shows that at the time of his recruitment, [REDACTED] had recruited, hired, and harbored other workers in labor camps through coercion for the purpose of subjecting them to involuntary servitude. After the Applicant was turned away from [REDACTED] he was very concerned that he would not be able to pay back the large debt he had incurred in India in order to come to the United States to work for [REDACTED]. He began working in various different jobs and locations. Sometime in approximately 2007, the Applicant went to the immigration attorney who had facilitated his entry into the United States to work for [REDACTED], [REDACTED]³ who told the Applicant he would help him get a work permit and employment-based lawful permanent residence. Mr. [REDACTED] filed a Form I-140, Immigrant Petition for Alien Worker, and Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application) on behalf of the Applicant.

After being turned away from [REDACTED] in March or April of 2007, the Applicant traveled back to India on five occasions:

- In April 2009, the Applicant traveled to India to help with household matters and returned in May or June, 2009;
- Sometime in early 2010 through April 24, 2010, the Applicant traveled to India after his father in law had a stroke;
- December 2010 through January 31, 2011, he traveled to India because his wife was pregnant and had complications with the birth;
- March 2012 through June, 4, 2012, he traveled to India;
- April 2013 through July 6, 2013, he traveled to India to take care of property issues that had arisen because of his debt and because his nephew passed away.

² The Applicant stated that after he arrived in the United States with the intent to be employed by [REDACTED] he took and passed a welding test for the company, but then they informed him that they had no vacancies, refused to hire him, and told him to leave.

³ The Applicant indicated that he went to Mr. [REDACTED] for help because "he was the only person I knew."

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The Applicant last entered the United States through advanced parole granted in conjunction with his pending adjustment application. The Applicant claims that he has continually returned to the United States because he believed Mr. [REDACTED] false promise that he would help the Applicant obtain lawful permanent residence, and because he needs to repay the debt he was forced to take on as a result of his original trafficking situation.

The Applicant has not established that he is physically present in the United States “on account of trafficking.” The record shows that in March or April 2007, the Applicant came to the United States but was never employed by [REDACTED] worked for other employers, and was not subjected to any other trafficking by [REDACTED] after his arrival. Although we acknowledge that the Applicant was initially trafficked, the record reflects that he left the United States on five occasions subsequent to 2007. Accordingly, he has not established that he is present in the United States “on account of trafficking.”

Because the Applicant voluntarily left the United States after the act of trafficking in persons, he must show that his reentry into the United States was the result of his continued victimization or a new incident of a severe form of trafficking in persons. *See* 8 C.F.R. § 214.11(g)(3). The Applicant claims that his reentry was the result of his continued victimization because his belief that he could adjust his status kept him under the control of one of the traffickers, Mr. [REDACTED], and because he needed money to repay the debt he took out in order to come to the United States to work for [REDACTED]. While the relevant evidence shows that the Applicant was trafficked to the United States by [REDACTED] his trafficking ended when [REDACTED] told him they would not hire him and the Applicant escaped from his trafficking situation. The Applicant’s claim that he was then trafficked by Mr. [REDACTED] is not supported by the record. In fact, after he escaped from his traffickers, the Applicant independently returned to Mr. [REDACTED] and employed him to help legalize his status, which indicates that Mr. [REDACTED] did not subject the Applicant to a severe form of trafficking. The Applicant has not demonstrated that Mr. [REDACTED] recruited, harbored, transported, provided or obtained him 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. Similarly, the Applicant has not shown that any other events in his life in the United States constitute a new incident of a severe form of trafficking in persons.

On motion to the Director, the Applicant further contended that his departures to India were not “voluntary.” In *Matter of Zmijewska*, 24 I&N Dec. 87 (BIA 2007), the Board of Immigration Appeals discussed “voluntariness” in the context of failing to depart after a grant of voluntary departure in removal proceedings. The Board noted the limited situations in which actions are not considered “voluntary:”

The term “voluntarily” ordinarily refers to conduct that is “brought about of one’s own accord or by free choice” We emphasize that the “voluntariness” exception is . . . a [narrow] exception limited to situations in which an alien, through no fault of his or her own, is unaware of the voluntary departure order or is physically unable to depart. It would not include situations in which departure within the period granted would involve exceptional

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hardships to the alien or close family members. Nor would lack of funds for departure be considered an involuntary failure to depart.

24 I&N Dec. at 93-94.

Similarly, the Model Penal Code defines involuntariness very narrowly: “The following are not voluntary acts within the meaning of this Section: (a) a reflex or convulsion; (b) a bodily movement during unconsciousness or sleep; (c) conduct during hypnosis or resulting from hypnotic suggestion; (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.” Model Penal Code § 2.01.

The Applicant has not shown that his trips back to India were not voluntary. Although he asserts that cultural norms and family situations required him to return to India, and that he felt compelled to return, the Applicant could have chosen to stay in the United States. Furthermore, even if the trips he took back to India to deal with his sick father in law and wife, or with his nephew’s death, were not deemed voluntary, the Applicant has not sufficiently described at least two other departures or provided evidence that those two visits to India were not “voluntary.”⁴

The Applicant further claims that several similarly situated applicants that left the country were granted T nonimmigrant visas, and that to deny his T application would counter Congressional intent and show that the statute is unconstitutionally vague, which violates due process. However, each case is treated on an individual basis as determined by the individual facts of the case. Further, there are no due process rights implicated in the adjudication of a benefits application. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) (“We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment.”)⁵

Accordingly, because the Applicant voluntarily departed the United States after he escaped his trafficking situation and has not shown that his reentries were the result of a continuation or a new incident of a severe form of trafficking in person, he has not demonstrated that he is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

⁴ In his brief on motion, the Applicant also contends that we should consider his return in 2013 as directly connected to participation in the Department of Justice (DOJ) investigation into [REDACTED] and the Equal Employment Opportunity Commission (EEOC) case against [REDACTED]. However, the EEOC case ended with a determination on September 14, 2009, and the case focused on the working conditions and discrimination against people of Indian origin who actually worked and lived in [REDACTED] work camp. The Applicant never worked for or lived in the work camps provided by [REDACTED]. Further, although the Applicant volunteered his services for the EEOC and the DOJ investigations, he did not provide evidence to show that he was ever contacted by either organization or that they required or requested his help.

⁵ The Applicant further asserts that new evidence shows that India remains unable to support and protect victims of trafficking and has taken retaliatory measures against T visa holders. However, these issues do not show that the Applicant’s reentries were the result of his continued victimization or a new incident of a severe form of trafficking in persons.

III. CONCLUSION

In visa petition proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The initial decision of the Director, Vermont Service Center, dated November 21, 2014, is affirmed, and the application is denied.

Cite as *Matter of S-N-M-*, ID# 17142 (AAO July 14, 2016)