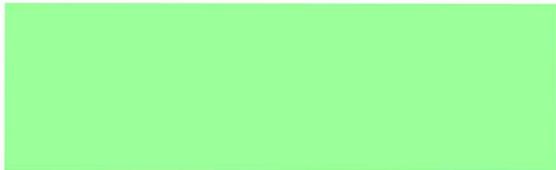




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 06 2014**

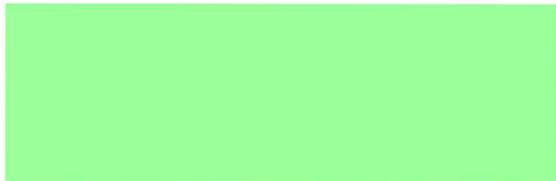
Office: VERMONT SERVICE CENTER

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,

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

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 was 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 his arrival, subjected to involuntary servitude, peonage, debt bondage, slavery; or commercial sex through force, fraud or coercion. On appeal, the petitioner, through counsel, 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:

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

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.

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)).

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

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(l) prescribes, in pertinent part, the standard of review and the applicant’s burden of proof:

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

- (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.

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 19-year-old native and citizen of Ecuador who last entered the United States in 2011 without inspection. The applicant filed the Form I-914 (Application for T Nonimmigrant Status) on October 4, 2012 when he was 17 years old. In his initial affidavit, the applicant provided the following account. The applicant stated that he left Ecuador because his family could not provide for him. His father arranged for him to travel to the United States with the help of a “coyote.” He first flew to Honduras and then drove to Guatemala in a covered pick-up truck with 40 other individuals. In Guatemala, the applicant and the other individuals stayed in the basement of a house for approximately six days. There were around 50 individuals already staying in the basement and every day additional people would arrive. The coyotes did not give them food and water and if they asked for water their lives were threatened. The door to the room was locked and guarded. It had only one toilet and the individuals slept on top of one another. Once the coyotes obtained money from the applicant’s family, he was transported with 40 other individuals in a cargo van to the Mexican border.

At the Mexican border, the applicant was moved to a small car without seats with around 15 to 18 people and then to a bus. The coyotes instructed the applicant and approximately 80 other individuals to enter Mexico by crossing through mountains at night. The applicant then stayed at a guarded compound in the mountains where the coyotes gave him and the approximately 400 other individuals who were staying there food. The coyotes then transported the applicant and 300 other individuals in a truck to Mexico City where they were taken to a hotel. The applicant stayed at the

hotel for five days and was then placed on a bus and transported to another city. He and the other individuals were taken to a house where they stayed for four nights.

The applicant and 25 other individuals were then placed in a truck and transported to a ranch in the desert near the United States border. The applicant and the other individuals walked for three hours through mountains and then crossed into the United States. They slept in the mountains to hide from immigration patrol and then went to a freeway where they were placed in cars which drove them for some of the journey and dropped them off in a desert. The applicant and two other individuals were separated from the coyotes when the immigration patrol approached. They walked to a small town in Arizona where they were introduced to another "coyote" who promised to take them to Chicago. The applicant was placed in a crowded van, which was driving about an hour outside of Phoenix when it was stopped by the police and turned over to immigration enforcement. The applicant was taken to a detention center for minors and questioned by police and immigration officers.

The applicant explained that his mother passed away and his father is very old and has been unable to work. The applicant's father had put up his land as collateral to obtain a loan to pay the coyotes. His father had paid half of the money the coyotes requested before the applicant traveled. The coyotes are now demanding that the applicant's father pay the other half. They have threatened the applicant's father's life and the applicant's life if they do not pay the full amount.

In the affidavit submitted in response to the RFE, the applicant stated that the coyotes in Ecuador solicited him and told him it was easy to travel to the United States. However, once he departed Ecuador the coyotes held him hostage and used him to extort money from his father while he was en route to the United States. He stated that the same situation happened with the coyotes he met in Arizona. The applicant and his brother had an agreement with the coyotes from Arizona to pay them some money in Phoenix and the remainder when the applicant arrived in Chicago. Although the applicant was taken into custody in Arizona, the coyotes continue to harass the applicant's brother for money.

The applicant below submitted the following relevant evidence: Arizona Department of Public Safety incident and vehicle removal reports; a letter from Officer [REDACTED] of the Arizona Department of Public Safety; and a copy of a Record of Deportable/Inadmissible Alien (Form I-213), the original of which is contained in the record.

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 voluntarily smuggled into the United States and was not brought into this country for the purpose of subjection to involuntary servitude or commercial sex.

On appeal, counsel asserts that the applicant was the victim of human trafficking for monetary gain. Counsel contends that the applicant was held for ransom and his family continues to receive threats about payment from the traffickers. Counsel asserts that in the applicant's affidavits he recounted how the traffickers held him hostage and extorted money from his family.

De novo review of the record fails to establish that the petitioner 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 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).

The record lacks any evidence that the applicant was forced to work for the smugglers to pay for the trip or that the situation was otherwise analogous to debt bondage, involuntary servitude, peonage or slavery, as those terms are defined in the regulation at 8 C.F.R. § 214.11(a). As recounted in the applicant’s initial statement, he voluntarily entered into an agreement with the “coyotes” or smugglers that he would pay a defined amount of money in order to be transported to the United States. *See Applicant’s Affidavit*, dated June 28, 2012 at ¶¶ 3, 5, 19. In his subsequent affidavit, the applicant again recounted that he voluntarily entered into an agreement with the smugglers, but stated that “the situation quickly changed from a travel arrangement into extortion.” *Applicant’s Affidavit*, dated April 8, 2013 at ¶ 4. The Arizona Department of Public Safety incident report and the Form I-213 provide that the applicant was encountered when a minivan containing 15 passengers was stopped for a traffic violation. Officer Langley stated in a one-sentence statement that he is unable to certify that the applicant is victim of human trafficking because neither the applicant nor the other passengers attempted, upon his contact with them, to indicate that they were in danger. Counsel asserts that the smugglers held the applicant hostage and transported him to the United States for monetary gain. Even if we find that the applicant was transported to this country through the use of force, fraud, or coercion, the record does not demonstrate that the purpose of the applicant’s transport was for his labor, services or a commercial sex act. 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. On the appeal notice, counsel asserts that the applicant has in fact established that he is victim of a severe form of trafficking in persons and is therefore present in the United States on account of being such a victim.

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 submission 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.