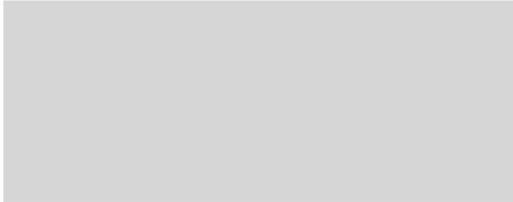




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 01 2015**

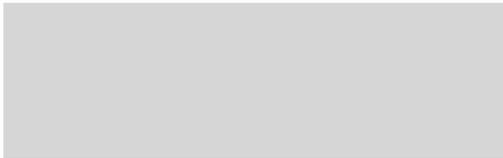
FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (the director) denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

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 physically present in the United States on account of such trafficking. On appeal, the applicant submits a brief and other evidence.

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:

(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

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

This definition is incorporated into the regulation at 8 C.F.R. § 214.11(a), which also defines, in pertinent part, the following terms:

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

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).

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)).

The regulation at 8 C.F.R. § 214.11 also provides specific evidentiary guidelines, including:

(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....

* * *

(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 regulation at 8 C.F.R. § 214.11(1) 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

The applicant is a citizen of Guatemala who was born in that country on [REDACTED]. The applicant was apprehended by U.S. border patrol agents approximately 40 miles from the border with Mexico on November 23, 2011. He filed the instant Form I-914, Application for T Nonimmigrant Status, on [REDACTED], two weeks before his 15th birthday. In his initial affidavit, the applicant provided the following account of his journey to the United States. When he was eight years old, a man named [REDACTED] asked the applicant if he was working and whether he would like to go with him to the United States. The applicant declined. When he was 14 years old, the applicant was approached again by [REDACTED] who offered to arrange for a "coyote" to bring him to the United States where he would work for [REDACTED]'s brother, [REDACTED] in Oregon. He claimed that [REDACTED] would advance the coyote's fee of 34,000 quetzals which the applicant would repay through deductions from the salary he would earn picking fruit. [REDACTED] assured the applicant that many other children were employed legally in Oregon, he would make lots of money, have plenty to eat, and be able to buy clothing, shoes, and even build his own house.

In early November 2011, [REDACTED] transported the applicant to the Guatemala-Mexico border where they were met by a coyote named [REDACTED] who photographed the applicant, took his passport and gave him Mexican identification documents. For the next two weeks, the applicant traveled through Mexico with [REDACTED] and [REDACTED], successfully navigated an immigration checkpoint, and stopped at a large hotel-like house in [REDACTED] where they spent three days with other men, adolescents, and coyotes who were preparing to cross the desert. The applicant described the false biographical script he was forced to memorize in the event he was questioned by immigration agents and how after three day, they set out across the desert and stopped at the ranch of a powerful Mexican "bad man" whose exploits the applicant described witnessing. [REDACTED] and [REDACTED] threatened to leave the applicant with the ranch owner with whom they played a game of poker, wagering the applicant's freedom. The applicant stated that he left with [REDACTED] and [REDACTED] and as they crossed the desert, they were pursued by immigration agents twice before being apprehended during a third pursuit.

In a supplemental affidavit, the applicant recounted the physical, emotional, and educational hardships he would experience if returned to Guatemala. He explained that his mother and school teacher were verbally and physically abusive to him, leaving seven scars on his head, and he believes they would again abuse him were he to return. He stated that he has learning disabilities which were untreated in Guatemala, but for which he has received individual attention in the United States. He has also excelled in soccer in the United States and enjoys residing with his father who protects, cares for and supports him. The applicant further fears retaliation from [REDACTED] and/or his associates in Guatemala.

The applicant also submitted a [REDACTED] County, Florida Sheriff's Office incident report indicating that on April 4, 2012, case manager [REDACTED] of [REDACTED] reported that the applicant may have been trafficked to the United States from Guatemala. Ms. [REDACTED] provided a detailed account to police of the applicant's journey into the United States, as described to her by him, which was substantively consistent with that contained in his own personal affidavit.

Analysis

We conduct appellate review on a *de novo* basis. Based upon the evidence, we withdraw the director's determination that the applicant did not establish that he was a victim of a severe form of trafficking in persons and was present in the United States on account of such trafficking, and find that he has satisfied sections 101(a)(15)(T)(i)(I) and 101(a)(15)(T)(i)(II) of the Act.

Victim of a Severe Form of Trafficking in Persons

The director determined that the applicant was smuggled, not trafficked. The evidence, however, supports a contrary conclusion. The applicant has credibly testified that [REDACTED] recruited him to provide labor in Oregon, labor he represented to be legal in that state. The preponderance of the evidence demonstrates that the applicant was recruited for his labor by [REDACTED] through [REDACTED]'s fraudulent promise of wealth and prosperity in the United States and for the purpose of the applicant's subjection to involuntary servitude. Accordingly, the evidence demonstrates that the applicant was the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act. The director's contrary determination is withdrawn.

Physical Presence in the United States on Account of Trafficking

The applicant has also overcome the director's determination that he is not physically present in the United States on account of the trafficking. To establish physical presence in the United States on account of trafficking, an applicant must demonstrate that his or her continuing presence in the United States is directly related to the original trafficking in persons. 8 C.F.R. § 214.11(g). The regulation provides an example of factors to be considered in making this determination, including but 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. ... 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 record shows that on [REDACTED], when the applicant was 14 years old, he was apprehended approximately 40 miles from the Mexican border, and was processed as an Unaccompanied Alien Child (UAC). A Notice to Appear (NTA) was issued the following day, and the applicant was placed into removal proceedings and assigned to a family shelter. Shelter personnel worked with the applicant to find a potential sponsor, and on [REDACTED] the applicant was released by the U.S. Department of Health and Human Services, Office of Refugee Resettlement, Division of Unaccompanied Children's Services (USHHS), into the custody of his father with whom he began residing in [REDACTED] Florida. While in Florida, the applicant began

counseling with Ms. [REDACTED] who, on [REDACTED] reported to police that the applicant had been a victim of human trafficking.

The evidence in the record shows that the applicant, through his case manager, reported his trafficking to law enforcement within approximately four months of escaping his traffickers. The applicant's credible personal statements, the police report filed by Ms. [REDACTED], Florida school and medical records, as well as electronic communication concerning the reporting of his trafficking to law enforcement, demonstrate that the applicant did not have a clear chance to depart when considering his age, developmental disabilities, medical issues, lack of travel documents, and the trauma he endured based on his victimization. A preponderance of the relevant evidence, submitted below and on appeal, demonstrates that the applicant is physically present in the United States on account of trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act. The director's determination to the contrary is withdrawn.

Admissibility

Although the applicant has established his statutory eligibility for T nonimmigrant classification, the application may not be approved because he remains inadmissible to the United States and his waiver application has not been adjudicated. Section 212(d)(13) of the Act, 8 U.S.C. § 1182(d)(13), requires U.S. Citizenship and Immigration Services (USCIS) to determine whether any grounds of inadmissibility exist when adjudicating a Form I-914 T application, and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides the general requirement that all nonimmigrants must establish their admissibility or show that any grounds of inadmissibility have been waived at the time they apply for admission to, or for an extension of stay within, the United States. For T nonimmigrant status in particular, the regulation at 8 C.F.R § 212.16 requires the filing of a Form I-192 in order to waive a ground of inadmissibility.

In this case, the director indicated that the applicant was inadmissible under section 212(a)(6)(A)(i) of the Act (present without admission or parole), acknowledged that the applicant submitted a Form I-192 waiver application, but determined that it was improperly filed for lack of the proper fee or a fee waiver request. The director stated that because the Form I-914 T application was being denied, the Form I-192 deficiency would not be further discussed.

On appeal, the applicant submits evidence that the Form I-192 and fee waiver request were properly filed. Because the applicant has overcome the basis for denial of his Form I-914 T on appeal, we will remand the matter to the director for reconsideration of the applicant's Form I-192 waiver application and further action consistent with this decision.

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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here that burden has been met as to the applicant's statutory eligibility

for T nonimmigrant classification. The application is not approvable, however, because the applicant remains inadmissible to the United States and his waiver application has not been adjudicated. Because the applicant has been found statutorily eligible for T nonimmigrant classification on appeal and the adjudication of his waiver application is the sole remaining issue, the matter will be remanded to the director for further action and issuance of a new decision.

ORDER: The director's August 5, 2014 decision is withdrawn. The matter is remanded to the Vermont Service Center for reconsideration of the Form I-192 waiver application and issuance of a new decision on the Form I-914 T application, which if adverse to the applicant shall be certified to the Administrative Appeals Office for review.