



U.S. Citizenship
and Immigration
Services

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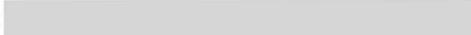


APPLICATION RECEIPT #:



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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 and 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 establish that: the applicant was a victim of a severe form of trafficking in persons; was physically present in the United States on account of such trafficking; and had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking. On appeal, the applicant submits a brief and additional 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

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 in these proceedings:

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).

- (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 and the Applicant's Claims

The applicant is a citizen of the Philippines who last entered the United States on January 24, 2007 as an H-2B temporary worker petitioned for by the [REDACTED]. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on December 24, 2013. The director issued a Request for Evidence (RFE) of the applicant's claim to being a victim of trafficking, to which the applicant responded with additional evidence. The director ultimately denied the applicant's Form I-914 and the applicant subsequently appealed. In her December 14, 2013 and May 19, 2014 affidavits, the applicant provided the following account of her journey to the United States and claimed trafficking by [REDACTED], [REDACTED] and [REDACTED].

The applicant recalled that in 2006 her cousin informed her that [REDACTED] an overseas recruitment agency in the Philippines, had job openings in the United States for housekeepers. The applicant stated that she submitted her resume to apply for the position and was screened by the president of [REDACTED], [REDACTED]. The applicant recounted that she was told that she was qualified for the position and the placement fee was \$2,500. She stated that the other fees included: \$500 for the offer letter and notice of action; \$100 for her visa interview at the U.S. Embassy; 135 Philippine pesos (PhP) for the visa delivery; \$40 for insurance; \$1500 as the agency fee; and PhP 1,650 for the medical fee. The applicant borrowed PhP 130,000 from her sister to pay for the fees.

The applicant recounted that during her orientation with [REDACTED] she was told that she would be working at a hotel in Florida as a housekeeper at an hourly salary of \$7.50 for 40 hours per week plus overtime. She stated that she was promised discounted housing, free transportation to work and free groceries. The applicant stated that she was told that [REDACTED] of [REDACTED] was her U.S. employer and she would be working at [REDACTED]. The applicant added that [REDACTED] verbally guaranteed employment for three years with automatic visa renewals. She stated that she never signed a contract with [REDACTED] and she only signed the contract with [REDACTED] which was not explained to her in her native language.

The applicant stated that she received her visa on December 24, 2006 and she traveled to the United States on January 24, 2007. She recounted that she flew to [REDACTED], Florida and was met by [REDACTED] employees who showed her work site and her apartment. The applicant stated that she shared a furnished three-bedroom, two-bathroom apartment with five other Filipino workers. She recalled that because the apartment did not come equipped with a landline telephone, she and her roommates would walk 20-25 minutes to a telephone booth to call their families in the Philippines. The

applicant initially recounted that her employer deducted \$150 from her weekly paychecks for the apartment rental, but modified this amount to \$106/week in her second statement. She stated that she was not provided with transportation to her work site and instead had to walk to a bus terminal.

She recalled that she was assigned to clean three villas each day and help other housekeepers clean when she finished her assignment. The applicant stated that her supervisors told her that if she did not help other housekeepers she would have to clean the entire resort. She recounted that she was tired from walking to and from work and carrying heavy loads of laundry. The applicant noted that she was not always given 40 hours of work per week.

The applicant recounted that she was unable to pay [REDACTED] \$750 for the renewal of her work visa and was granted permission to leave [REDACTED] before her contract expired. She stated that she and her friends left [REDACTED] on July 15, 2007 and were introduced to a person named [REDACTED] who promised that he could renew their work visas. She stated that although Mr. [REDACTED] took payments from her, he was unable to renew her work visa. The applicant recounted that she left [REDACTED] and now resides in [REDACTED] New York where she is employed as a housekeeper.

The applicant recounted financial and emotional hardships since her arrival in the United States. She stated that because of her meager income, she could not afford to take the bus to work or seek medical attention when she was ill. The applicant stated that she sent all of her income to the Philippines to support her parents and to repay her loan. She recounted that [REDACTED] informed her that she could not seek a second job while working for [REDACTED]. The applicant also stated that she struggled with being separated from her elderly parents and she recently learned that her mother has cancer. She stated that Mr. [REDACTED] defrauded her when he charged her \$750 for a renewal of her work visa. The applicant stated that she is scared that she will be “discovered as an illegal alien.”

The applicant also recounted the following fears if returned to the Philippines: she will be unable to secure employment due to age discrimination; the typhoon of 2013 has made it even more difficult to find work and has taken a toll on the economy; even though [REDACTED] license with the [REDACTED] was canceled, it still has influence and may retaliate against her; and potential employers in the Philippines would think unfavorably of her for not succeeding in the United States.

Victim of a Severe Form of Trafficking in Persons

The applicant asserted below that she was a victim of labor trafficking by [REDACTED] which she claimed subjected her to involuntary servitude and peonage. After reviewing the applicant’s initial submission and response to a request for further evidence, the director acknowledged that aspects relating to the guaranteed number of weekly hours, transportation and food expenses, and visa renewals may have been misrepresented to the applicant. The director determined, however, that the applicant was not a victim of a severe form of trafficking in persons because the record does not show that she was subject to a scheme involving force, fraud or coercion intended to create an atmosphere of fear, as required to establish involuntary servitude and peonage.

On appeal, the applicant asserts that [REDACTED] was her Philippine recruiter and [REDACTED] was her U.S. employer. She contends that she “experienced Coercion, Peonage and Threatened Abuse of Law or Legal Process during her recruitment and employment with [REDACTED],” which “fraudulently induced [her] to take on substantial debt . . . with promises of a better life and the prospect of at least three years of steady, full-time employment.” Although the applicant now claims that she was employed by [REDACTED] the record shows otherwise. The applicant did not provide an employment contract, earnings statements, a Wage and Tax Statement (Form W-2), or any other evidence that [REDACTED] was her employer. The record instead shows that the Department of Labor (DOL) certified an Application for Alien Employment Certification (Form ETA 750) from [REDACTED] for cleaners/housekeepers for the period of October 1, 2006 until July 31, 2007. USCIS issued an H-2B approval notice (Form I-797) dated September 5, 2006, indicating that “[REDACTED]” was authorized to employ 55 unnamed workers from October 1, 2006 until July 31, 2007. The applicant’s H-2B visa and Form I-94 (departure record) show that she entered the United States on January 24, 2007 for employment with [REDACTED]. Her earnings statements and 2007 Form W-2 were issued by “[REDACTED]” which has the same address as [REDACTED]. An employment verification letter from [REDACTED] dated June 12, 2007, confirms that the applicant began employment with the company on January 26, 2007.

The relevant evidence therefore shows that [REDACTED] recruited the applicant in the Philippines and [REDACTED] a placement agency in the United States, secured the applicant’s employment with [REDACTED]. To establish that she was a victim of a severe form of trafficking by [REDACTED] and its agents or recruiters, the applicant must show that they recruited, harbored, transported, provided or obtained her for her labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term “severe forms of trafficking in persons”). While it is clear that [REDACTED] and its agents or recruiters obtained the applicant’s services for employment as a housekeeper, to establish a severe form of human trafficking, the applicant must also demonstrate two essential elements: a means (force, fraud or coercion) and an end (involuntary servitude, peonage, debt bondage or slavery). The record in this case fails to establish either of these elements.

No End: No Peonage or Involuntary Servitude

As used in section 101(a)(15)(T)(i) of the Act, the term peonage is defined as “a status or condition of involuntary servitude based upon real or alleged indebtedness.” 8 C.F.R. § 214.11(a). Involuntary servitude is defined, in pertinent part, as “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 . . . would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process.” *Id.* Servitude is not defined in the Act or the regulations, but is commonly understood as the condition of being a servant or slave, or a prisoner sentenced to forced labor. *See* BLACK’S LAW DICTIONARY (B.A. Garner, ed.) (9th ed. 1999). In this case, the relevant evidence shows that the applicant was employed and compensated by [REDACTED] pursuant to her employment agreement. The record lacks evidence that [REDACTED] or its agents or recruiters ever subjected the applicant to any “condition of servitude,” the underlying requisite to involuntary servitude and peonage.

The record shows that the applicant was admitted to the United States on January 24, 2007 as an H-2B temporary worker for [REDACTED]. The applicant asserted that she was promised a salary of \$7.50 per hour, but she did not submit her employment contract or offer of employment. The Application for Alien Employment Certification filed by [REDACTED] for housekeepers is an illegible copy, and therefore the proffered salary is not apparent. However, other evidence in the record shows that the applicant was paid for the hours she worked and given additional compensation for overtime hours. The selected earning statements the applicant submitted show that she was paid for the regular hours she worked at a salary of \$7.50 per hour, \$11.25 per hour for overtime, and in mid-July 2007 her base salary rate was raised to \$7.60 per hour. The applicant's Form W-2 from [REDACTED] shows that during her five months of employment with [REDACTED] she earned \$7,421.19. Although the applicant did not submit a copy of her employment contract, in her statements she indicated that she willingly entered into an employment agreement with [REDACTED] was placed in an agreed upon position, and was paid for the hours she worked. She recounted that upon her request, [REDACTED] allowed her to leave her position before her employment contract expired.² The record thus lacks any evidence that [REDACTED] or its agents or recruiters actually or intended to subject the applicant to a condition of servitude.

The record also does not show that [REDACTED] or its agents or recruiters actually or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. The applicant recounted that she paid over \$4,000 in recruitment fees to [REDACTED]. The applicant stated, and [REDACTED] receipts show, that she paid [REDACTED] required fees before leaving the Philippines for the United States. The applicant stated that she borrowed money from her sister, [REDACTED] to cover the costs of these fees. She executed an affidavit she entitled, "certification of loan and/or incurred debt," in which she attested to borrowing \$3,000 from her sister on November 22, 2006 to pay for her placement fees and travel expenses. Although the applicant recounted financial pressures related to having incurred unanticipated expenses and to sometimes working less than 40 hours weekly, the applicant has not submitted any documentary evidence showing that she took out any additional loans, or that she was or is in arrearages on any debt or otherwise could not meet her financial obligations. An attestation in the record from the applicant's sister provides that in February 2008, the applicant fully repaid the \$3,000 she lent her. The applicant also explained that [REDACTED] requested her to pay the filing fees relating to her second petition seeking extension of H-2B status, but she chose not to do so, instead providing the fee to Mr. [REDACTED] an unrelated individual who allegedly defrauded her. The relevant evidence shows that the applicant incurred a private loan shortly before her employment with [REDACTED] but the record does not indicate that the applicant was ever indebted to [REDACTED].

No Means: No Force, Fraud or Coercion

The record also does not evidence the means requisite to the applicant's trafficking claim. Coercion is defined as: "threats of serious harm to or physical restraint against any person; any scheme, plan,

² Although the applicant indicated in her second statement that [REDACTED] advised her that she was precluded from obtaining a second job, this was also a condition of her H-2B nonimmigrant status. See 8 C.F.R. § 214.1(e) (a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized).

or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.” 8 C.F.R. § 214.11(a). The applicant claims that her recruiters engaged in a “psychologically coercive and financially ruinous trafficking scheme that subjected her to exorbitant debt and forced labor.” She adds that her employers and recruiters used a variety of coercive tactics, “including abuse of the legal process, isolation, and segregation to attempt to control her actions and to force her to provide service to them.”

The applicant has not provided any examples showing that she was isolated and segregated by [REDACTED] or its agents or recruiters in an attempt to force her to provide service. Rather, the applicant stated that she was given a three-bedroom, two bathroom apartment with other Filipino workers and a bus terminal was within walking distance. The record shows that the applicant had access to her identity documents and she stated that she “held [her] own passport and Notice of Action.” There is no indication that she was not free to socialize or come and go as she liked outside of work. The applicant stated that she was given permission to leave her position with [REDACTED] before her initial contract expired and she then moved to [REDACTED] Florida. The record reflects that she was permitted to leave [REDACTED] even after she signed a conditional offer from [REDACTED] to extend her employment with the company. The evidence presented by the applicant reflects that she voluntarily accepted an offer of employment from [REDACTED] she was placed in the agreed upon position, and she was paid for the hours she worked. The record therefore does not support the applicant’s assertions of isolation, segregation or forced service.

The applicant asserts that [REDACTED] and its agents or recruiters coerced her by violating the DOL regulations regarding the H-2B program by requiring her to pay the costs for her H-2B visa petition. However, as explained above, these possible violations did not compel the applicant to work by inducing her indebtedness. Rather, the applicant stated that she paid for her H-2B visa and petition through a private loan from her sister, which she successfully repaid. Before the applicant’s initial employment contract with [REDACTED] expired and after she signed a conditional offer from [REDACTED] to extend her employment with the company, she decided to pursue other employment opportunities and she did so without any interference or threats of legal action by any of her alleged traffickers. The relevant evidence therefore does not show that [REDACTED] or its agents or recruiters’ actions amounted to coercion through the abuse or threatened abuse of the legal process against the applicant.

The record also does not support the applicant’s claim that [REDACTED] or its agents or recruiters secured her services through fraudulent promises of long-term, full-time employment. The applicant claimed that [REDACTED] promised she would have three years of employment, automatic renewals of her visa, free transportation to work and free groceries. The record contains a payroll deduction authorization, dated February 5, 2007, which authorizes [REDACTED] to deduct from the applicant’s paychecks \$106.07 for 25 weeks for the “International Program – Housing.” A housing information sheet in the record from [REDACTED] references the estimated costs of housing, lease term, living arrangements and included furniture, housewares, linens and utilities. None of the documents submitted reference free groceries or meals, free transportation, continued employment beyond the term agreed upon, or “automatic” visa renewals. As discussed, the record shows that the applicant received a conditional offer of employment from [REDACTED] to extend her employment with the

company. The applicant, however, indicated in her statement that she left [REDACTED] before her initial contract expired with the intent to seek employment elsewhere. There is no evidence that the applicant was ever promised or relied upon promises of long-term, full-time employment.

Finally, the record does not support the applicant's claim that [REDACTED] or its agents or recruiters trafficked her through force or coercion by restricting her freedom of movement. The applicant did not indicate any restrictions on her travel and she stated that she could walk to a bus terminal. The applicant submitted copies of her birth certificate, the biographical page of her passport, her H-2B visa, Social Security Card, Form I-94, and the H-2B approval notice issued to [REDACTED] demonstrating that she had access to her immigration and identity documents. The applicant stated that she found other employment opportunities in [REDACTED] Florida and New York and there is no indication that [REDACTED] or its agents or recruiters prevented her from seeking this alternative employment. On the contrary, the applicant stated that [REDACTED] released her from her employment contract early so she could seek other employment. The record thus does not show that [REDACTED] or its agents or recruiters secured the applicant's services through fraud, force or coercion.

Summary: No Severe Form of Trafficking in Persons

The record documents the applicant's employment with [REDACTED] but does not establish that this company or its agents or recruiters ever subjected her to a severe form of trafficking in persons. The record indicates that the applicant was under financial pressure to support herself and her family members in the Philippines and she was disappointed that her earnings as an H-2B temporary worker in the United States were less than she had anticipated. The applicant stated that she borrowed money from her sister to pay the recruitment fees, which she eventually repaid. There is no evidence that [REDACTED] or its agents or recruiters forced the applicant into indebtedness to cover those costs. The relevant evidence does not establish that [REDACTED] or its agents or recruiters obtained the applicant's services through force, fraud or coercion for the purpose of subjecting her to involuntary servitude, peonage, debt bondage, or slavery. Consequently, the applicant has not demonstrated that she was the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.

Physical Presence in the United States on Account of Trafficking

The applicant has failed to overcome the director's determination that she is not physically present in the United States on account of the claimed trafficking. As discussed above, the record does not show that the applicant was the victim of a severe form of human trafficking and she consequently cannot show that she 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.

Assistance to Law Enforcement Investigation or Prosecution of Trafficking

The applicant has also not overcome the director's determination that she has not complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or the investigation of associated crime, as required by section 101(a)(15)(T)(i)(III) of the Act. Primary evidence of this compliance is an endorsement from a Law Enforcement Agency (LEA), although

USCIS will consider credible secondary evidence where the applicant demonstrates his or her good-faith, but unsuccessful attempts to obtain an LEA endorsement. 8 C.F.R. § 214.11(h). The applicant submitted an unsigned copy of a letter and a follow-up electronic mail message addressed on the applicant's behalf to the U.S. Department of Justice, Civil Rights Division seeking law enforcement certification as a victim of human trafficking and reporting a claimed violation of the H-2B provisions. These documents evidence the applicant's attempts to notify this agency of her claims, but the record fails to establish that any severe form of human trafficking occurred in connection with the applicant's employment with [REDACTED] or its agents or recruiters. Consequently, the applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

Conclusion

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). On appeal, the applicant has not met the eligibility criteria for T nonimmigrant classification at subsections 101(a)(15)(T)(i)(I)-(III) of the Act.

ORDER: The appeal will be dismissed. The application remains denied.