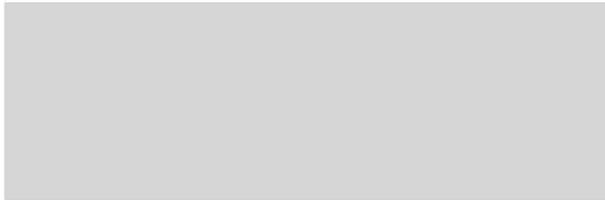




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 23 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.

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

REV 3/2015

www.uscis.gov

DISCUSSION: The Vermont Service Center director (“the director”), denied the application. 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 because the applicant did not establish that she was a victim of a severe form of trafficking in persons, was physically present in the United States on account of such trafficking, had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking, and would face extreme hardship involving unusual and severe harm upon removal.

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 she 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

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).

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 the Philippines who first entered the United States on November 23, 2007 as an H-2B nonimmigrant to be employed as a housekeeper at the [REDACTED] Florida, a position that [REDACTED] secured. The applicant alleged that her employer did not always provide her the agreed upon hours of work and that she believed her housing, water, and electrical expenses were too high. She submitted a conditional offer for temporary employment dated August 9, 2007, from the Human Resources Manager of the [REDACTED] indicating that the applicant would be paid \$7.50 per hour. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services ("USCIS") on May 6, 2014. 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 has subsequently appealed. In her March 25, 2014 and October 9, 2014 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and her recruiters in the Philippines.

The applicant initially recalled that she read about overseas housekeeping positions in the classified section of her newspaper, and ultimately contacted [REDACTED]. The applicant applied for a housekeeping job in the United States through [REDACTED]. In her initial statement, the applicant explained that [REDACTED] advised her that she was qualified for a housekeeping position and promised that she would work at least 40 hours per week for \$8.00 per hour with the possibility of overtime, and have free accommodations and transportation to and from work. In her second statement, the applicant elaborated that she was also promised three years of employment with automatic visa renewals. The applicant paid around \$1,500.00 for her initial nonimmigrant visa application fee, hotel training, airfare, and medical examination. [REDACTED] also notified the applicant that that she would be required to pay an additional placement fee of \$2,500.00. The applicant indicated that she borrowed the money from a friend and from her family members.

When she arrived in the United States, the applicant stated that she was placed in a three-bedroom, apartment with five other females. According to the applicant, the housing was not free and she was charged \$400.00 per month, nearly half of her paycheck. She asserted that although she was paid

\$8.00 per hour, she was not always provided 40 hours of work per week. The applicant claimed that she was only given free transportation if she happened to be assigned an early shift at the hotel. Moreover, the applicant was not given free food, and indicated that she was told she would have to pay a visa extension fee of \$500.00 if she wanted to have her nonimmigrant status extended. When her contract with [REDACTED] ended, the applicant indicated that she was introduced to [REDACTED] who charged her \$650.00 “for the visa renewal.” The applicant explained that her visa extension request was denied, that she was terminated from the [REDACTED] and that Ms. [REDACTED] is now in prison for visa fraud. After this, the applicant asserted that she and her brother were forced to stay with friends in order to have food and housing, and were forced to beg for work, taking on various temporary jobs such as babysitting, and house-cleaning.

The applicant recounted that she has no savings, has had trouble repaying the money she borrowed, and her friends and family could have her sent to debtor’s prison in the Philippines “[i]f they wanted.” As a result, the applicant asserted that she suffers from severe depression, fear, insomnia, and headaches, as well as heart palpitations and trouble breathing. She provided evidence that she has sought professional counseling from a psychologist, who diagnosed her with generalized anxiety disorder. The applicant added that because she never signed a contract with [REDACTED], all their promises were oral. She advised that once she was in the United States she signed a housing contract, but did not understand what she was signing and was never given a copy.

On appeal, the applicant again asserts that she suffered financial, emotional, and physical hardship related to her employment, immigration status, and corresponding worries regarding her and her family’s future and wellbeing, and submits court documents about [REDACTED] and various articles.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed she was a victim of labor trafficking by [REDACTED] and [REDACTED] which forced her into involuntary servitude and peonage. After reviewing the applicant’s initial submission and response to a request for further evidence, the director determined the applicant had not established that she was a victim of a severe form of trafficking in persons.

To establish that she was a victim of a severe form of trafficking by [REDACTED] and [REDACTED] the applicant must show that these entities 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”). On appeal, the applicant asserts that [REDACTED] and [REDACTED] subjected her to forced labor through coercion, peonage, and threatened abuse of the immigration laws. The applicant’s claims and the additional evidence submitted on appeal are insufficient to establish her eligibility. The applicant has not established by a preponderance of the evidence that [REDACTED] or [REDACTED] trafficked her through employment through fraud or coercion for the purpose of subjecting her to peonage.

As used in section 101(a)(15)(T)(i) of the Act, the term “coercion” is defined as: “threats of serious harm to or physical restraint against any person; any scheme, plan, 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). “Peonage” is defined as “a status or condition of involuntary servitude based upon real or alleged indebtedness.” *Id.* “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 . . . the abuse or threatened abuse of legal process.” *Id.* On appeal, the applicant asserts that [REDACTED] and [REDACTED] indirectly coerced her because she “was fraudulently induced to take on substantial debt in order to come to the United States with promises of a better life and the prospect of at least three years of steady, full-time employment.” She claims that her recruiter and employer used a variety of coercive tactics to control her and force her to provide service to them, including forcing her to pay petition extension fees, restriction of movement, and isolation.

Although the applicant stated that she was trafficked by [REDACTED] her evidence does not establish that she was employed by [REDACTED]. According to the applicant, she was employed and compensated by [REDACTED] as a housekeeper. The applicant submitted a copy of her Offer Letter from [REDACTED] in which it proffered an hourly salary of \$7.50 for approximately ten months of employment. The applicant appears to have signed the offer of employment on October 23, 2007, before her entry into the United States in November of 2007, and in her statements she indicated that she willingly entered into an employment agreement with [REDACTED] and agreed to be paid for her work. She attested that although she was not assigned the promised hours of work, she was paid \$8.00 per hour, and provided pay stubs in response to the RFE to show she was paid by [REDACTED]. Consequently, the record shows that the applicant worked for [REDACTED] and that [REDACTED] paid her, and lacks evidence that [REDACTED] actually subjected or intended to subject the applicant to involuntary servitude. The record does not otherwise support the applicant’s claim to have been trafficked by [REDACTED] for four principal reasons.

First, although the applicant stated that she was trafficked by [REDACTED], the applicant explained that she worked for several employers after her authorized period of employment with [REDACTED] ended. Although the applicant indicated that [REDACTED] advised her that she was precluded from obtaining additional part-time work while working for [REDACTED] 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). Consequently, the record shows that the applicant has moved between multiple, unrelated employers after her authorized period of employment with [REDACTED] ended and lacks evidence that [REDACTED] actually subjected or intended to subject her to involuntary servitude.

Second, the record does not show that [REDACTED] intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In her February 21, 2014 affidavit, the applicant explained that she borrowed money from friends and from family to pay the fee that [REDACTED] requested. The applicant provided evidence in the form of her personal sworn statements asserting that she took three loans totaling PHP 255,000 from [REDACTED]. The applicant also explained that she was requested to pay the filing fees relating to her petition seeking extension of H-2B status and did so but did not claim that she was in debt over the fee. Accordingly, the relevant evidence shows that the applicant incurred

private and personal loans shortly before her employment in the United States, but the record does not indicate that the applicant was ever indebted to [REDACTED] or that it forced her into indebtedness.

Third, the record does not support the applicant's claim that [REDACTED] or [REDACTED] engaged in coercion because she was "fraudulently induced to take on substantial debt in order come to the United States with promises of a better life and the prospect of at least three years of steady, full-time employment." The applicant provided a copy of her signed offer of conditional employment, in which she agreed to an hourly salary of \$7.50 week for a ten-month period. She appears to have signed the contract on October 23, 2007, prior to her entry into the United States. The applicant also provided several pay stubs showing that [REDACTED] paid her \$8.00 per hour for work weeks that ranged from approximately 24 hours per week to over 50 hours per week; therefore, it does not appear that [REDACTED] failed to keep the terms of its initial offer of employment as it appears in the signed offer letter. Although the applicant asserted that she would face hardship in the Philippines and possibly debtor's prison if her friends and family chose to have her imprisoned for non-payment of the money she borrowed, she voluntarily agreed to pay the recruiter fees to [REDACTED] before she came to the United States and she obtained private loans to do so prior to her entry. The actions outlined by the applicant do not establish that she was forced to take on a huge amount of debt by [REDACTED] or [REDACTED]

Finally, the record does not support the applicant's claim that [REDACTED] or [REDACTED] trafficked her through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. As discussed, the applicant's evidence shows that she worked for [REDACTED] within the United States after her arrival, and not [REDACTED]. In response to the RFE, she explained that when another agent in the United States failed to secure an extension of the applicant's status, she left for other employment and provided tax returns showing that she is self-employed in Florida. Although her immigration status precluded her from obtaining part-time employment while working for [REDACTED] the applicant has not established that [REDACTED] or her actual employer prevented her from seeking other employment once her period of employment with [REDACTED] terminated, and in fact she has done so. The record thus does not show that [REDACTED] or [REDACTED] obtained her services through fraud, force, or coercion involving physical restraint or other restriction of her movement.

In summary, the applicant has not established that [REDACTED] or [REDACTED] ever subjected her to a severe form of trafficking in persons. Although the record suggests that the applicant was under considerable financial pressure to support her family and experienced stress and anxiety, the relevant evidence does not show that [REDACTED] or [REDACTED] obtained the applicant's labor through force, fraud, or coercion for the purpose of subjecting her to involuntary servitude, peonage, debt bondage, or slavery. Although the applicant submitted evidence relating to loans she claims to have taken out with respect to her initial H-2B petition, the record contains no evidence that the applicant was ever indebted to [REDACTED] or [REDACTED] or that [REDACTED] or [REDACTED] forced or coerced her to go into debt. Finally, the record lacks any evidence that the applicant was ever subjected to involuntary servitude or peonage or that [REDACTED] or [REDACTED] ever intended to subject her to such conditions. To the contrary, the record shows that [REDACTED] petitioned for the applicant as an H-2B nonimmigrant worker, that although they did not always provide her with full-time employment it did frequently employ her more than 40 hours per week and paid her the agreed-upon hourly salary or a higher rate. Moreover, since her employment with [REDACTED] terminated, the applicant has pursued self-employment in

Florida. 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 not 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 copies of electronic mails and a letter sent to Department of Justice ("DOJ") on her behalf requesting law enforcement certification for the applicant as victim of trafficking. These communications evidence the applicant's attempts to notify DOJ of the claimed trafficking, but the record does not reflect a response from DOJ. As the record otherwise does not establish any severe form of human trafficking in connection with the applicant's employment with [REDACTED] the applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

Extreme Hardship Involving Unusual and Severe Harm Upon Removal

The record also does not demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon removal. In her affidavits, the applicant claimed she would suffer extreme hardship if forced to return to the Philippines because she could not pay her debts or support her family and because she believes her alleged traffickers in the Philippines would retaliate against her and her family. She asserted that it would be difficult for her to find work in the Philippines because she would be considered old and a failure for not having been successful in the United States. The applicant expressed fear of debtor's prison upon return to the Philippines because her debts have continued to increase while in the United States. In her July 29, 2014 statement, the applicant suggested that she is hoping a criminal case will be brought against her alleged traffickers and that she wants to remain in the United States to pursue a case.

Extreme hardship involving unusual and severe harm may not be based on current or future economic detriment, or the lack of, or disruption to social or economic opportunities. 8 C.F.R. § 214.11(i)(1). In addition, five of the eight factors considered in the hardship determination relate to an applicant having been a victim of a severe form of human trafficking. *Id.* at § 214.11(i)(1)(iii)-(vii). The applicant in this case has not established that she was the victim of a severe form of

human trafficking and she submitted no evidence to support her claims that difficulty in obtaining employment would cause her extreme hardship involving unusual and severe harm. The applicant has also not shown that she would suffer such hardship under the remaining factors. The record contains a copy of the correspondence that the applicant's attorney sent to DOJ, but there is no evidence that DOJ or any other U.S. government agency initiated an investigation or prosecution of [REDACTED] related to the applicant's employment. The record also lacks evidence that the crime rate or other conditions in the Philippines are equivalent to civil unrest or armed conflict resulting in the designation of Temporary Protected Status or other relevant protections under U.S. immigration law, as described at 8 C.F.R. § 214.11(i)(1)(viii).

The applicant described the financial and emotional difficulties she endured while in the United States. However, the relevant evidence does not establish that she would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at 8 C.F.R. § 214.11(i)(1) and as required by section 101(a)(15)(T)(i)(IV) of the Act.

Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 (AAO 2010). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.