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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



JUN 25 2015

DATE:

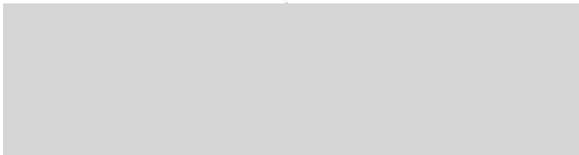


IN RE: Applicant:



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:



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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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 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 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(1) 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

The applicant is a citizen of the Philippines who first entered the United States on April 14, 2009, as an H-2B nonimmigrant to be employed as a food server for [REDACTED] at a restaurant in Colorado. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (“USCIS”) on December 2, 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 has subsequently appealed. In her November 20, 2013 and July 2, 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 learned about a recruiting agency in the Philippines named [REDACTED] from the classified section of her newspaper. During her orientation with [REDACTED] the applicant was interviewed by [REDACTED] for a job that it would provide in the United States. The applicant explained that [REDACTED] representative assured her that she would have at least 40 hours of work per week over a five-day period, really nice free housing, free transportation to and from work, and three years of employment with automatic, free visa renewals for which [REDACTED] would be responsible. The applicant’s mother then arranged for her friend, [REDACTED] to loan the applicant PHP 200,000.00 with an annual interest rate of 14%.

When she arrived in the United States, the applicant stated that she and her roommate were placed in a two-bed room that she described as a tool house holding just two beds, two blankets, and a space heater. The facility lacked a closet or a bathroom and she and her roommate had to walk a quarter mile to the public bathroom that she shared with 40 other people. The applicant confirmed that she was “somewhat” provided free transportation to and from work.

After starting her job, the applicant found out that she would not be given a permanent job, would only be given two to four days of work per week. Instead of working as a food server, she was assigned to work at the [REDACTED] which she was also required to clean. Finally, after [REDACTED] failed to provide her with full-time work, overtime pay, and an extension of her nonimmigrant status, the applicant attested that she left Colorado, stayed briefly in Chicago, and then and moved first to California and then to New York to find employment. She recounted that she still has not paid off her loan and would probably face unemployment in the Philippines at the

age of 31 years because of age discrimination and the possible perception that she was not successful in the United States. As a result of her situation, the applicant asserted that she now suffers from constant stress and worry. She stated that her mother in the Philippines had hip replacement surgery that the applicant paid for, but that she would not be able to pay for her mother's medical care if the applicant were to return to the Philippines. The applicant asserted that because she never signed a contract with [REDACTED] all their promises were oral. She advised that she signed an employment contract with [REDACTED] prior to beginning her employment, but did not understand what she was signing. The applicant provided a copy of her signed "Seasonal Contract – Offer of Employment," in which she agreed to an hourly salary of \$7.28 for 32-40 hours per week for a six-month period, and housing in the form of one bed in a location that was to be 30 to 40 miles from the place of employment. The applicant also provided pay stubs showing that she was employed for a one-time work week of 9 hours, and then subsequent work weeks of 23.80 hours to 40 hours per week. The pay stubs reflect that the applicant was initially paid \$7.78 per hour and then \$10.00 per hour, both higher than the hourly rate [REDACTED] initially offered.

On appeal, the applicant again asserts she suffered financial and emotional hardship related to her employment, immigration status, and corresponding worries regarding her and her family's future and wellbeing. She reasserts that she has substantial debt, and claims that she was forced to pay her visa extension fees. She also describes suffering from anxiety during and after her period of employment, and worrying about how she would support her family members in the Philippines and repay her debts.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed she was a victim of labor trafficking by [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 was not a victim of a severe form of trafficking in persons because the record showed that she appeared to have entered into a voluntary employment agreement to work in the United States and appeared to have been compensated.

To establish that she was a victim of a severe form of trafficking by [REDACTED] the applicant must show that this entity 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] 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] trafficked her 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] or [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 initial and extension petition fees, restriction of movement, and isolation. The record does not support the applicant’s claims to have been trafficked for three principal reasons.

First, although the applicant stated that she was trafficked by [REDACTED] the applicant explained that she ultimately left [REDACTED] even before the end of her employment contract, and moved first to Chicago, then California, and then to New York where she claims she is still seeking steady employment and only works sporadically. Consequently, the record shows that the applicant has moved between multiple, unrelated employers and lacks evidence that her employer actually subjected or intended to subject her to involuntary servitude.

Second, the record does not show that the applicant’s employers intended to subject her to peonage through involuntary servitude based on real or alleged indebtedness. The applicant explained that she took a loan of PHP 200,000 from a family friend, and provided an affidavit to support that assertion. Although the applicant asserted that she still has substantial debt to pay the family friend, there is no evidence of this in the record. Moreover, although the applicant claims on appeal that she was also forced to pay for visa renewals, the record does not show that [REDACTED] required her to pay any visa petition extension fees. In fact, the applicant indicated that she left [REDACTED] employment before the end of her initial authorized employment period. 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] 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.” First, the loan she agreed to was with respect to the fees charged by a foreign recruiter in the Philippines. Although the applicant asserted that she would face hardship in the Philippines and perhaps debtor’s prison, she voluntarily agreed to pay the recruiter fees before she came to the United States and she obtained a private loan 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.

Finally, the record does not support the applicant’s claim that [REDACTED] trafficked her through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. The applicant explained that when [REDACTED] failed to secure an extension of her status and her “working visa was about to expire” she left [REDACTED] for Chicago, California, and New York, in

order to seek new employment. She provided tax returns showing that she has been working in various occupations in New York since 2009. The record thus does not show that [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] 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] 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 a loan 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 that [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] ever intended to subject her to such conditions. To the contrary, the record shows that the applicant's employer petitioned for the applicant as an H-2B nonimmigrant worker; although the employer did not always provide her with full-time employment in the capacity as a food server, the applicant was employed at an hourly salary higher than the one initially proffered. Moreover, she voluntarily left [REDACTED] when her "working visa was about to expire" to pursue other employment in California and New York. 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

Our *de novo* review of the record reveals an additional basis of ineligibility, namely that the applicant 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 a letter and electronic mails 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 beyond acknowledgement of receipt of the information. 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

Our *de novo* review of the record also does not lead to a conclusion 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 at 31 years of age and a failure for not having been successful in the United States. She 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 2, 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; however, she also provided evidence that [REDACTED] of [REDACTED] was convicted of visa fraud in 2012.

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*

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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.

ORDER: The appeal is dismissed.