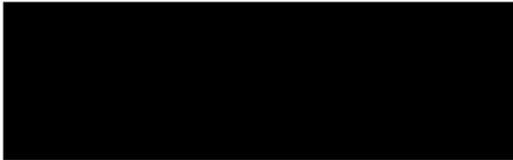




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



DIZ

FILE:

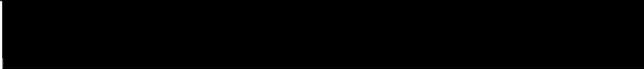


Office: VERMONT SERVICE CENTER

Date: FEB 21 2007

IN RE:

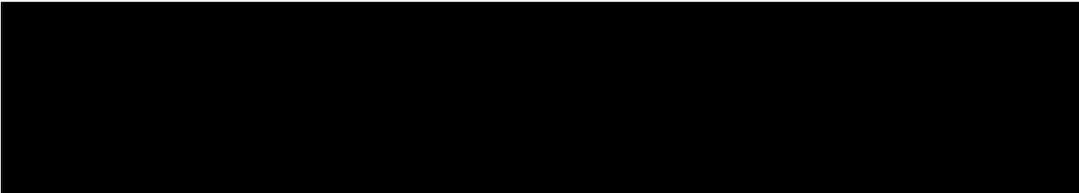
Applicant:



APPLICATION:

Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) and 214(n) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(T)(i) and 1214(n).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for T nonimmigrant status was denied by the Center Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who last entered the United States on August 1, 2003 pursuant to an H-1B visa in order to be placed in a teaching position by Omni Consortium, Inc. ("Omni.") The applicant paid a fee to agents of Omni who agreed to employ her in the United States, yet they failed to secure a position for her. The applicant resided in unfavorable conditions provided by Omni, and she expressed that she felt she had no choice but to remain with them due to the large debt she incurred in order to pay their fees. The applicant seeks T nonimmigrant status pursuant to section 101(a)(15)(T)(i) of the Immigration and Nationality Act (the Act) in order to remain in the United States.

The applicant filed an I-914, Application for T Nonimmigrant Status, on December 5, 2005. On January 24, 2006, the center director issued a Form I-917, Notice of Action, requesting that the applicant provide additional evidence to support her application. The applicant provided additional documentation, yet the center director found that the applicant failed to overcome the issues addressed in the Notice of Action and denied the application accordingly. *Decision of the Center Director*, dated May 5, 2006. Specifically, the director found that the applicant failed to show that: (1) the applicant is a victim of a severe form of trafficking in persons; (2) the applicant's physical presence in the United States is on account of a severe form of human trafficking in persons, and; (3) the applicant would suffer extreme hardship involving unusual and severe harm upon removal.

On appeal, the applicant contends that she was a victim of human trafficking, and she is eligible for a T visa. *Statement from Applicant on Appeal*, dated June 2, 2006. She provides that other teachers who were subjected to the same actions by Omni were found to be eligible for T visas, which suggests that she is also eligible. *Id.*

The record contains statements from the applicant; copies of the applicant's visa, Form I-94, and passport; copies of articles regarding instances of human trafficking and the scheme of conduct by Omni; documentation relating to a loan the applicant secured to pay fees to Omni, including evidence of collection actions; photographs of the applicant and her coworkers; a Form I-914, Supplement B – Declaration of Law Enforcement Officer for Victim of Trafficking in Persons; a letter from the Department of Health and Human Services ("HHS") certifying the applicant as eligible for benefits under the Trafficking Victims Protection Act of 2000, and; a letter from a licensed psychologist providing that the applicant has received counseling, and she wishes to continue due to a fear of returning to the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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 Attorney General [now Secretary of Homeland Security (Secretary)] 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,
- (III) (aa) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, [and] . . .
...
- (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . .

A successful section 101(a)(15)(T) application is dependent first upon a showing that the applicant is a victim of a severe form of trafficking in persons. According to the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8), the term “severe forms of trafficking in persons” means:

- 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.

The regulations at 8 C.F.R. § 214.11(f) provide specific guidelines on evidence that may be provided to support an applicant’s contention that she is a victim of a severe form of trafficking. The regulations state:

(f) *Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons.* The applicant must submit evidence that fully establishes eligibility for each element of the T nonimmigrant status to the satisfaction of the Attorney General. First, an alien must demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement either by submitting an LEA endorsement, by demonstrating that the Service previously has arranged for the alien's continued presence under 28 [C.F.R. §] 1100.35, or by submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim (this showing is not necessary if the person induced to perform a commercial sex act is under the age of 18). An application must contain a statement by the applicant describing the facts of his or her victimization. In determining whether an applicant is a victim of a severe form of trafficking in persons, the Service will consider all credible and relevant evidence.

(1) *Law Enforcement Agency endorsement.* An LEA endorsement is not required. However, if provided, it must be submitted by an appropriate law enforcement official on Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*, of Form I-914. The LEA endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or

database inquiry performed. In order to provide persuasive evidence, the LEA endorsement must contain a description of the victimization upon which the application is based (including the dates the severe forms of trafficking in persons and victimization occurred), and be signed by a supervising official responsible for the investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act. The traffickers must have used force, fraud, or coercion to make the victim engage in the intended labor or services, or (for those 18 or older) the intended commercial sex act. The situations involving labor or services must rise to the level of involuntary servitude, peonage, debt bondage, or slavery. The decision of whether or not to complete an LEA endorsement for an applicant shall be at the discretion of the LEA.

(2) *Primary evidence of victim status.* The Service will consider an LEA endorsement as primary evidence that the applicant has been the victim of a severe form of trafficking in persons provided that the details contained in the endorsement meet the definition of a severe form of trafficking in persons under this section. In the alternative, documentation from the Service [CIS] granting the applicant continued presence in accordance with 28 [C.F.R. §] 1100.35 will be considered as primary evidence that the applicant has been the victim of a severe form of trafficking in persons, unless the Service has revoked the continued presence based on a determination that the applicant is not a victim of a severe form of trafficking in persons.

(3) *Secondary evidence of victim status; Affidavits.* Credible secondary evidence and affidavits may be submitted to explain the nonexistence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant be a victim of a severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons; credible evidence of victimization and cooperation, describing what the alien has done to report the crime to an LEA; and a statement indicating whether similar records for the time and place of the crime are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts. Applicants are encouraged to provide and document all credible evidence, because there is no guarantee that a particular piece of evidence will result in a finding that the applicant was a victim of a severe form of trafficking in persons. If the applicant does not submit an LEA endorsement, the Service will proceed with the adjudication based on the secondary evidence and affidavits submitted. A non-exhaustive list of secondary evidence includes trial transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. In addition, applicants

may also submit their own affidavit and the affidavits of other witnesses. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(4) *Obtaining an LEA endorsement.* A victim of a severe form of trafficking in persons who does not have an LEA endorsement should contact the LEA to which the alien has provided assistance to request an endorsement. If the applicant has not had contact with an LEA regarding the acts of severe forms of trafficking in persons, the applicant should promptly contact the nearest Service or Federal Bureau of Investigation (FBI) field office or U.S. Attorneys' Office to file a complaint, assist in the investigation or prosecution of acts of severe forms of trafficking in persons, and request an LEA endorsement. If the applicant was recently liberated from the trafficking in persons situation, the applicant should ask the LEA for an endorsement. Alternatively, the applicant may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline at 1-888-428-7581 to file a complaint and be referred to an LEA.

Debt bondage is defined at 8 C.F.R. § 214.11(a) as:

[T]he 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 is defined 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.

Peonage is defined at 8 C.F.R. § 214.11(a) as “[a] status or condition of involuntary servitude based upon real or alleged indebtedness.”

The applicant submitted a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 Supplement B, (Law Enforcement Agency [LEA] Endorsement.) This document was approved by _____ on August 30, 2005. The document explains that the applicant was defrauded of \$10,000 to \$12,000 pursuant to an offer to place her in a teaching position in the United States. The document provides that the applicant was transported around the United States in search of “mostly non-

existent jobs,” and that the applicant was placed in a position of dependency on those who arranged her entry to the United States. The document states that the applicant fears retaliation if she returns to the Philippines because she has cooperated with U.S. law enforcement agents in a prosecution effort. The document provides that the applicant’s debt has grown in the Philippines, and she and the co-makers of the loan face legal action. [REDACTED] confirmed that charges have been brought against the alleged traffickers, yet that they have not been charged specifically with trafficking “because the United States Department of Justice, Civil Rights Division did not concur with those charges.”

The applicant further provided documentation from U.S. Immigration and Customs Enforcement (“ICE”) granting her continued presence in accordance with 28 C.F.R. § 1100.35. Thus, the applicant has presented primary evidence that she has been the victim of a severe form of trafficking in persons, and such documentation is given careful consideration.

As secondary evidence, the applicant submitted statements in which she explains the facts of her case. The applicant provided that she was a teacher in the Philippines. In August 2001 she was recruited by an agent of Omni, [REDACTED], to come to the United States to work as a teacher in Texas. She stated that [REDACTED] arranged for her to borrow funds at a high rate of interest to pay approximately \$10,000 as a fee for the placement service. The applicant stated that her mother served as a co-borrower of the loan. [REDACTED] arranged for the applicant to obtain an H-1B visa and travel to the United States, yet once the applicant arrived, Omni failed to employ her as agreed. The applicant stated that she and several other teachers were forced to stay in a small apartment in rural Texas without independent transportation. They were compelled to depend on agents of Omni for their needs. Omni never provided a teaching position for the applicant, yet the applicant stated that she was “forced to do things against [her] will.” *Statement from Applicant*, dated April 17, 2006. The applicant indicated that [REDACTED] threatened her with deportation if she left the group or disobeyed. The applicant indicated that she escaped Omni with assistance from her friends and ICE agents.

The applicant has made herself available to officers of the U.S. Federal Bureau of Investigations (“FBI”) for participation in the investigation and prosecution of agents of Omni for violations in connection with the scheme she described. Agents of Omni have been charged with related crimes, and the record reflects that one has pleaded guilty to “Aiding and Abetting,” and “Entry of alien at improper time or place.” *Letter to Applicant from U.S. Department of Justice*, dated December 15, 2005.

The applicant submitted documentation to show that a collection agency on behalf of the institution that provided her a loan has contacted her mother to collect funds, and has threatened to commence legal action if no payment is made.

The applicant expressed that she fears returning to the Philippines, as agents of Omni may harm her or her family members due to her cooperation with U.S. law enforcement. She further stated that she would suffer stigmatization in the Philippines as a Filipino who returned from the United States. She provided that she has received counseling as a result of this traumatic experience, and that she wishes to continue such treatment.

Upon review, the applicant has not established that she has been the victim of a severe form of trafficking in persons. The record shows that Omni defrauded the applicant by collecting a high fee from her in exchange for a teaching position that did not yet exist. The applicant traveled to the United States pursuant to this fraudulent scheme. However, the applicant has not established that she was brought to the United States “for

the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B)(emphasis added).

The applicant has not shown that Omni subjected her to debt bondage. The applicant submitted documentation to show that she borrowed money from an institution in the Philippines in order to pay a fee to Omni. The applicant has not established that the institution was a division of, or conspirator with, Omni, such that the debt was in fact owed to Omni. It is noted that [REDACTED] is listed on the applicant’s promissory note as a “Co-maker,” or co-borrower, thus the note shows that [REDACTED] shares the burden of repaying the funds that the applicant borrowed, rather than having the funds owed to [REDACTED] or [REDACTED]. With

[REDACTED] listed as a co-borrower, the record suggests that she facilitated the applicant borrowing money, yet she did not loan the money herself. Thus, the applicant’s debt is owed to a institution in the Philippines, not to Omni. Accordingly, the applicant did not pledge her personal services to Omni as security for a debt she owed to them, as contemplated by 8 C.F.R. § 214.11(a).

The condition of involuntary servitude requires that “the victim is forced to work for the defendant.” 8 C.F.R. § 214.11(a). The condition of peonage also requires that the victim is compelled to work for the perpetrator, as it is “[a] status or condition of involuntary servitude.” *Id.*

The applicant has not established that Omni subjected her to involuntary servitude or peonage. In fact, the applicant agreed to accept employment through Omni and was denied the opportunity to perform work. To establish that she was subjected to involuntary servitude or peonage, the applicant does not have to show that she in fact performed work for Omni. Yet, she must show that Omni brought her to the United States *for the purpose of* subjection to involuntary servitude or peonage. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B). While the applicant stated that she was “forced to do things against [her] will,” she has not described any actions she was compelled to perform that constitute labor. The record does not support that Omni intended for the applicant to work involuntarily or by force.

The AAO acknowledges that the placement fees charged by Omni were significant. It is further acknowledged that the applicant borrowed funds at a high rate of interest to pay the fees. Yet, the record suggests that Omni did intend to arrange employment for the applicant. The applicant stated that other Filipino teachers who were brought to the United States by Omni were in fact given teaching positions, which suggests that Omni would have placed the applicant in a position had one been available. Additionally, as Ms. Tolentino shares the burden of repaying the money that the applicant borrowed, it is evident that Ms. Tolentino had an interest in the applicant earning funds to meet the terms of the debt. The applicant has not shown that Omni compelled her, or intended to compel her, to perform work against her will.

The AAO notes that the LEA Endorsement serves as primary evidence of victim status, though it is not, by itself, conclusive evidence that the applicant has been a victim of a severe form of human trafficking. Citizenship and Immigration Services (“CIS”) is not required to accept the endorsement as conclusive evidence of a human trafficking incident. The AAO does not find the LEA to be conclusive evidence of trafficking in light of the other evidence in the record.

The applicant submitted a letter from HHS certifying that she has been a victim of human trafficking. However, as correctly noted by the center director, the determination of victim status by HHS is based on its own rules and process for the purpose of determining the applicant’s eligibility for HHS services. HHS’s determination is not conclusive evidence of victim status for the purpose of establishing eligibility for T status

under section 101(a)(15)(T) of the Act, and it is not binding on CIS. It is further noted that the HHS letter does not provide any analysis of the applicant's situation to support its determination. While CIS gives the HHS letter due consideration as primary evidence of victim status, it is not conclusive evidence that the applicant has met the requirement of section 101(a)(15)(T)(i)(I) of the Act.

The record clearly shows that agents of Omni have engaged in wrongdoing, including immigration-related violations and fraud. The AAO further acknowledges that agents of Omni used coercion against the applicant to discourage her from leaving their control and to limit her independence. Yet, the applicant has not established that they subjected her to, or intended to subject her to, involuntary servitude, peonage, debt bondage, or slavery.

Based on the foregoing, the applicant has failed to submit sufficient evidence to show that she has been the victim of a severe form of trafficking in persons. Section 101(a)(15)(T)(i)(I) of the Act.

As the applicant has failed to establish that she has been the victim of a severe form of trafficking in persons, she has failed to show that she 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. Section 101(a)(15)(T)(i)(II) of the Act. The record shows that the applicant traveled to the United States pursuant to a employment scheme that involved fraud, immigration violations, and high fees, yet she has failed to show that the scheme involved a severe form of trafficking in persons, as discussed above.

Further, the applicant has failed to establish that she would suffer extreme hardship involving unusual and severe harm upon return to the Philippines, as required by section 101(a)(15)(T)(i)(IV) of the Act. The applicant expressed fear that agents of Omni may retaliate against her or her family members for her cooperation with U.S. law enforcement agents. Yet, the applicant has not clearly explained what retaliation she fears. The applicant has not described any incidents in which agents of Omni used or threatened physical force, against her or others.

The applicant stated that other Filipino teachers who were recruited by Omni were angry with those who cooperated with law enforcement, and that one such teacher is the son of a high official in the Department of Education in the Philippines. While she provided that this individual may seek her and eliminate her ability to gain another teaching position in the Philippines, she has not indicated his name or his parent's name such that the AAO can evaluate this threat.

The applicant stated that she fears legal action from the institution that provided a loan to her. Yet, the applicant has not established that the institution was party to Omni's actions, such that the loan is not a legitimate debt. Facing legal action due to a legitimate debt is not deemed "extreme hardship involving unusual and severe harm," as contemplated by section 101(a)(15)(T)(i)(IV) of the Act. Further, the applicant has not shown that she is unable to obtain employment in the Philippines that is sufficient to eventually meet her debt.

The applicant attested that she fears that she will suffer humiliation due to returning to the Philippines without success in her teaching endeavor in the United States. She further indicated that she will be unable to continue counseling in the Philippines, as she lacks funds and available qualified counselors, and she may suffer social stigma due to the perception that those who visit counselors are "crazy." However, the applicant

has not shown that these consequences rise to the level of extreme hardship involving unusual and severe harm.

The applicant has not articulated any other factors that would result in extreme hardship involving unusual and severe harm should she return to the Philippines, thus she has not satisfied the requirements of section 101(a)(15)(T)(i)(IV) of the Act.

Based on the foregoing, the applicant has failed to establish that she satisfies the requirements for T status as provided in 101(a)(15)(T)(i) of the Act. The AAO acknowledges that the applicant has endured hardship due to the events she has described, however, she has not shown that she is eligible for T status.

In proceedings regarding an application for T nonimmigrant status under section 101(a)(15)(T)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.