

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



D12

DATE: Office: VERMONT SERVICE CENTER

FILE: EAC 09 213 50601

APR 18 2011

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for T nonimmigrant status was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons.

The director denied the application because the applicant failed to demonstrate that she complied with any reasonable requests for assistance from law enforcement authorities in the investigation or prosecution of acts of severe forms of trafficking in persons. On appeal, the applicant submits a brief statement.

Applicable Law

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 Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, 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, 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;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal [.]

Section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), codified at 22 U.S.C. § 7102(8), defines the term "severe forms of trafficking in persons" as:

- 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.

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

Involuntary servitude means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes "a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion." (United States v. Kozminski, 487 U.S. 931, 952 (1988)).

Reasonable request for assistance means a reasonable request made by a law enforcement officer or prosecutor to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The "reasonableness" of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.

Severe forms of trafficking in persons means 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 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.

Victim of a severe form of trafficking in persons means an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the VTPA¹ and in this section.

¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. Law No. 106-386 (Oct. 28, 2000).

The regulation at 8 C.F.R. § 214.11 also provides specific evidentiary guidelines and states, in pertinent part:

(b) *Eligibility.* Under section 101(a)(15)(T)(i) of the Act, and subject to section 214(n) of the Act, the Service may classify an alien, if otherwise admissible, as a T-1 nonimmigrant if the alien demonstrates that he or she:

- (1) Is or has been a victim of a severe form of trafficking in persons;
- (2) Is physically present in the United States . . . on account of such trafficking in persons;
- (3) Either:
 - (i) Has complied with any reasonable request for assistance in the investigation or prosecution of acts of such trafficking in persons, or
 - (ii) Is less than 15 years of age; and
- (4) Would suffer extreme hardship involving unusual and severe harm upon removal, as described in paragraph (i) of this section.

(f) *Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons.* [A]n alien must demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement . . . by . . . submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. Specifically, the physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.

(2) *Opportunity to depart.* If the alien has escaped the traffickers before law enforcement became involved in the matter, he or she must show that he or she did not have a clear chance to leave the United States in the interim. The Service will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. Information relevant to this determination may include, but is not limited to, circumstances attributable to the trafficking in persons situation, such as trauma, injury, lack of resources, or travel documents that have been seized by the traffickers. This determination may reach both those who entered the United

States lawfully and those who entered without being admitted or paroled. The Service will consider all evidence presented to determine the physical presence requirement, including asking the alien to answer questions on Form I-914, about when he or she escaped from the trafficker, what activities he or she has undertaken since that time, including the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States.

(i) *Evidence of extreme hardship involving unusual and severe harm upon removal.* To be eligible for T-1 nonimmigrant status . . . an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(1) *Standard.* [A] finding of extreme hardship involving unusual and severe harm may not be based upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities. Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should take into account both traditional extreme hardship factors and those factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to, the following:

- (i) The age and personal circumstances of the applicant;
- (ii) Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
- (iii) The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
- (iv) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
- (v) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
- (vi) The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;
- (vii) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and

(viii) The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.

(2) *Evidence.* An applicant is encouraged to describe and document all factors that may be relevant to his or her case, since there is no guarantee that a particular reason or reasons will result in a finding that removal would cause extreme hardship involving unusual and severe harm to the applicant. Hardship to persons other than the alien victim of a severe form of trafficking in persons cannot be considered in determining whether an applicant would suffer extreme hardship involving unusual and severe harm.

The burden of proof is on the petitioner to demonstrate eligibility for T nonimmigrant classification. 8 C.F.R. § 214.11(l)(2). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *see also* 8 C.F.R. § 214.11(l)(1).

Factual and Procedural Background

The applicant is a native and citizen of the Philippines, who filed her Form I-914 on July 28, 2009. The applicant's claim to eligibility for T nonimmigrant status is based upon the following account of her journey to the United States and the relevant events which occurred after her arrival.

In her undated but signed statement that she filed with the Form I-914, the applicant recounted that after college she worked as a waitress on three different cruise ships and was looking for something different in her life. She stated that in February 2007, she signed a contract with San Villa Ship Management Company (San Villa) to work as a waitress at the Palm Beach Country Club in Palm Beach, Florida, and that she entered the United States that same month. The applicant stated that her contract with San Villa was abruptly terminated in September 2007 after she had decided to not extend her contract past the original November 2007 expiration date because she was not happy with the company.

The applicant recounted that in September 2007 she sought help from ██████████ who owned a company called Quality Staffing, and who agreed to employ her at various country clubs performing waitressing and catering duties. The applicant described her living conditions, which included living in a private home owned by ██████████ with approximately 28 other Filipino nationals. She stated that while she lived in the house, she was forced to work when ill, did not have reliable transportation, had to wake up early for meetings and to clean the house, and was not given adequate food. She stated that she worked at various country clubs on behalf of Quality Staffing until sometime in February 2008, when she appeared at the country club for work and saw her employers on the news, at which time the supervisor told her that she and other Quality Staffing employees could not work there until the situation with their employer was resolved.² The

² Evidence in the record indicates that ██████████ were indicted in April 2010 and later convicted on charges arising from a human trafficking scheme to hold Filipino nationals in forced labor in country clubs and hotels in Southeast Florida. *United States v. Manuel*, Judgment, No. 9:10-80057-

applicant also stated that in December 2007, ██████████ asked the applicant's boyfriend whether the applicant could live with him. Information in the applicant's statement indicates that she started living with her boyfriend in either December 2007 or January 2008, and that she moved to Naples, Florida in March 2008 when the Florida Coalition Against Human Trafficking (FLCAHT) started providing her with assistance, as she was pregnant.

In response to a Request for Evidence (RFE) issued by the director, the applicant provided a second, but undated statement. In this statement, the applicant claimed that she was subjected to involuntary servitude by both San Villa and Quality Staffing. The applicant stated that San Villa did not provide its promised high salary or extra jobs. She claimed that she was forced to work when she was ill, to spend her own money on food, and she was not allowed to go out, even on her days off. The applicant stated that promises made by Qualify Staffing were not fulfilled in that she was forced to work when ill, did not have reliable transportation, had to wake up early for meetings and to clean the house, and was not given adequate food. The applicant stated that although she left the house of ██████████ before law enforcement authorities became involved in the matter, it did not cross her mind to leave the United States because she did not have any money. The applicant also stated that ██████████ had taken her passport.

The director denied the application because the applicant failed to submit evidence that she had complied with reasonable requests for assistance from law enforcement authorities. On appeal, the applicant states that he was interviewed by and cooperated with two agents from U.S. Immigration and Customs Enforcement (USICE) but she has not heard back from one of the agents regarding her request for a law enforcement agency endorsement. She expresses her fear that, if she is removed to the Philippines, she will be threatened and harassed by her two previous employers. The applicant also expresses a fear of not having a job and experiencing hardships upon her return to the Philippines.

The Applicant Complied with Reasonable Requests for Assistance in the Investigation or Prosecution of Acts of Severe Forms of Trafficking in Persons

The director denied the application solely on the ground that the applicant failed to present evidence that she complied with reasonable requests for assistance from law enforcement authorities regarding the investigation or prosecution of the owners of Quality Staffing. While primary evidence of an applicant's compliance with a request for assistance is a law enforcement authority's endorsement, an applicant may submit credible secondary evidence to establish that she complied with any reasonable requests for assistance from a law enforcement authority. 8 C.F.R. § 214.11(h)(1),(2). According to the applicant's statement on appeal, in February 2008 and May 2008, she was

CR-MARRA-1, (S.D. Fl. Dec. 10, 2010); *United States v. Baldonado*, Judgment, No. 9:10-80051-CR-MARRA-2 (S.D. Fl. Feb. 18, 2010). Ms. ██████████ was also charged with visa fraud and making false statements to the government to procure foreign labor certifications and visas under the H-2B guestworker program. Ms. ██████████ received a prison sentence of 78 months and Mr. ██████████ received a prison sentence of 51 months. The record contains no evidence that the applicant was one of the identified victims in the criminal proceedings against Ms. ██████████ and Mr. ██████████. The record also does not indicate that the circumstances of the applicant's employment with Ms. ██████████ and Mr. ██████████ were similar to those of the identified victims in the criminal proceedings.

interviewed by two USICE agents, who were investigating the owners of Quality Staffing. Service records confirm the applicant's assertions regarding these interviews and, therefore, we withdraw the director's finding that applicant did not comply with reasonable requests for assistance in the investigation or prosecution of the owners of Quality Staffing. Although the applicant has overcome the director's reason for denying the application, the applicant is not eligible for T nonimmigrant status for the reasons discussed below. We, therefore, are remanding the matter for the director to issue a new decision.

The Applicant Failed to Establish that she was the Victim of a Severe Form of Trafficking in Persons

The evidence fails to establish that the applicant was a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act. The applicant claimed in her second personal statement that she was the victim of involuntary servitude, in part, because she was forced to work when ill, had to spend her own money on food, was not provided with the high paying jobs and extra money that she was promised, and was not allowed to leave the house even on her days off.

As provided at 8 C.F.R. § 214.11(a), the term *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. We do not find that the applicant was subjected to involuntary servitude because there is no evidence that her employment was induced, threatened or coerced by the owners of Quality Staffing.

According to the applicant's statements, she sought assistance and employment from the owners of Quality Staffing and agreed to pay them \$1,000 for a work permit. In addition, the applicant continued to work for Quality Staffing even after leaving the home of [REDACTED] and moving in with her boyfriend. Although the applicant asserted that [REDACTED] mentioned that she and her husband had friends within the Department of Homeland Security, there is no evidence that the applicant initially began and continued her employment with Quality Staffing due to any threats, either real or implied, that she would be seriously harmed, physically restrained, or that the U.S. legal system would be used against her if she terminated her employment with the company. Accordingly, the evidence does not establish that she was subjected to involuntary servitude or any other severe form of trafficking in persons, as those terms are defined in the regulation at 8 C.F.R. § 214.11(a).

The Applicant Failed to Establish that she is Present in the United States on Account of Such Trafficking

As the applicant has not shown that she was the victim of a severe form of trafficking in persons, she cannot establish that her continued presence in the U.S. is directly related to the original trafficking, as required by section 101(a)(15)(i)(II) of the Act and explicated in the regulation at 8 C.F.R. § 214.11(g). We note that even if the applicant had met her burden of establishing that she was trafficked, she has not established that her continued presence in the United States would have been directly related to the original trafficking.

Information in the applicant's two statements indicates that she ceased living in the house of ██████████ approximately two months prior to law enforcement authorities becoming involved sometime in February 2008. The relevant evidence shows that she did not have a clear chance to leave the United States in the interim, as the applicant was newly pregnant with her son, ██████████ had confiscated her passport, and she did not have any money or the resources to leave. However, the applicant has not met the third prong of the regulation at 8 C.F.R. § 214.11(g), which requires her to establish that her continuing presence in the United States is directly related to the original trafficking.

The record indicates that the applicant was interviewed by agents of USICE for the last time in May 2008, but does not support a conclusion that her presence in the United States beyond this date was required to assist in any investigation or prosecution of the owners of Quality Staffing. The applicant states that she was assisted by FCAHT from March 2008 until April or May 2009 during her pregnancy and after the birth of her son; however, the record does not include any evidence that her son suffered any medical maladies that would have required the applicant to remain in the United States with him, or that she took any steps to deal with the consequences of the trafficking, including pursuing redress or restitution from Quality Staffing. Although the applicant indicated that ██████████ had confiscated her passport, the applicant submitted a copy of a new passport, which shows that it was issued in March 2009, or four months prior to filing her application for T nonimmigrant status. Consequently, even if the applicant had established that she was trafficked, she has not demonstrated that her continued presence in the United States is directly related to such trafficking, as required by section 101(a)(15)(i)(II) of the Act.

The Applicant Failed to Establish that she would be Subjected to Extreme Hardship Involving Unusual and Severe Harm Upon Removal

As the applicant has not shown that she was the victim of a severe form of trafficking in persons, we need not address whether she would suffer extreme hardship involving unusual and severe harm upon her removal. Even if the applicant had established that she was a trafficking victim, the relevant evidence would not establish that she would suffer extreme hardship involving unusual and severe harm upon removal as explicated at 8 C.F.R. § 214.11(i).

In the statement that she submitted in response to the director's RFE, the applicant asserted that she feared for her life and safety because the owner of ██████████ has good connections with U.S. Citizenship and Immigration Services (USCIS) and the police in the United States and the Philippines, and that he "can do anything he wants to put me down." The applicant claimed that after the termination of her contract with ██████████ that company's owner threatened and harassed her family through weekly phone calls, and he continues to call her mother from time to time. The applicant stated further that a ██████████ management official threatened to put her on a "block list" at the Philippines Overseas Employment Agency so that she cannot travel or work abroad.

The applicant asserted that it was difficult for her to live in a state of fear and that her employment experiences were traumatic. She stated that she lost her self-confidence and trust in people, is always worried and nervous, and has bad dreams. She stated and she has "done counselings before" but she has no where to go and no one to turn to. The applicant also expressed a fear for her son's

well-being and future if she were forced to go back to the Philippines, and of being victimized again by unscrupulous agents or employers.

We do not minimize the psychological impact of the applicant's experiences in the United States; however, the evidence fails to establish that she would experience extreme hardship involving unusual or severe harm if she were to return to the Philippines. The applicant's claims regarding the threats made by a ██████████ management official are vague; she does not indicate when these alleged threats began, what the threats consisted of, and how long they continued. She states only that her mother continues to receive calls from time to time but does not offer any other details or a statement from her mother describing the alleged threats. Furthermore, these alleged threats did not come from the owners of Quality Staffing, the applicant's traffickers, and there is no evidence to support a conclusion that the applicant was also trafficked by the owners of San Villa.

The applicant alludes to having received psychological counseling, but she does not elaborate on this brief statement, and the record does not contain any indication that the applicant suffered from serious physical or mental illness that necessitated medical or psychological attention. Although the applicant expresses a fear for her son's future should they be required to return to the Philippines, hardship to an individual other than applicant may not be considered. 8 C.F.R. 214.11(i)(3). As stated earlier, the applicant has not presented any testimony that she has taken any steps to deal with the consequences of the alleged trafficking, including pursuing redress or restitution from Quality Staffing through the U.S. justice system or that she would be unable to pursue any claims while in the Philippines. Similarly, the applicant has presented no testimony to establish that she would be penalized by the government of the Philippines for having been trafficked or that it would be unable to protect her from any future trafficking situations or civil unrest. Accordingly, the evidence does not establish that the applicant would face extreme hardship involving unusual or severe harm upon return to the Philippines, as required by section 101(a)(15)(T)(i)(IV) of the Act.

Conclusion

As in all visa classification proceedings, 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). The applicant has overcome the director's ground for denial on appeal. However, the applicant is ineligible under other grounds not addressed in the director's July 22, 2010 decision. Accordingly, the application will be remanded for the director to issue a new decision addressing the applicant's eligibility under subsections 101(a)(15)(T)(i)(I), (II), and (IV) of the Act.

ORDER: The application is remanded to the Vermont Service Center for entry of a new decision.