



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 30 2013** Office: VERMONT SERVICE CENTER FILE: [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:

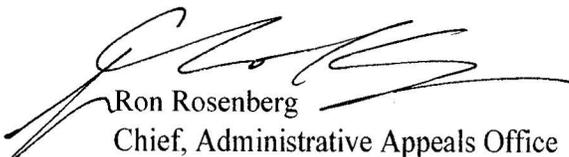
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the application for T nonimmigrant status. 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 is physically present in the United States on account of a severe form of trafficking in persons. On appeal, the petitioner submits a statement and her previously filed evidence.

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, in pertinent part:

- 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 regulation at 8 C.F.R. § 214.11(g) prescribes the evidentiary burden to establish the physical presence requirement for T nonimmigrant classification at section 101(a)(15)(T)(i)(II) of the Act and states, in pertinent part:

[T]he 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.

* * *

(3) *Departure from the United States.* An alien who has voluntarily left (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien's reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

The regulation at 8 C.F.R. § 214.11(i) prescribes, in pertinent part, the standard of review and the applicant's burden of proof:

- (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.

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The applicant is a 43-year-old native and citizen of the Philippines who last entered the United States on July 2, 1992 with a student visa. In her undated declaration submitted below, the applicant provided the following account. The applicant stated that in June 1987, when she was 16 years old, she was recruited by [REDACTED] for employment in Saudi Arabia. She arrived in Saudi Arabia in October 1987 for employment as a domestic worker. The applicant was forced to perform domestic labor for extremely long hours with little salary and food.

The applicant traveled to the United States with her employers in August 1989. Her employers had informed her that they were planning to study in the United States for only three to six months, but they stayed longer. After arriving in the United States, the applicant was isolated from her neighbors and again forced to perform domestic labor with little salary. She did not have access to her passport because it was under the control of her employers. The applicant returned with her employers to Saudi Arabia in December 1990. The applicant learned that her father, who was residing in Saudi Arabia, was ill, but her employers would not allow her to see him until he passed away. While she was grieving over his death, her employers renewed her B-1 visa for travel to the United States without informing her. She could not return to the Philippines because she did not have her passport or money for airline tickets. She was also worried that she would be harmed in the Philippines for returning without her employer's permission. When she returned to the United States, her employers continued to control her passport and they would not allow her to leave the house or speak with anyone outside the home.

The applicant's employer's returned to Saudi Arabia for a short visit and left the applicant with their friend who introduced the applicant to [REDACTED], a pastor who was involved with an international human rights agency. The applicant told [REDACTED] and his wife, [REDACTED] about the situation with her employer and she received information from them on her rights in the United States. The applicant's employers thereafter informed her that she could return to the Philippines. They gave the applicant her passport and an airline ticket for the Philippines. The applicant did not return to the Philippines and instead stayed with her aunt in Chicago and then moved to the [REDACTED] and [REDACTED] home. They helped the applicant attend school and obtained a restraining order against the applicant's former employers to protect the applicant and themselves.

Physical Presence in the United States on Account of Trafficking

A T nonimmigrant must establish that her continued presence in the United States is directly related to the original trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act and explicated in the regulation at 8 C.F.R. § 214.11(g). To establish that an alien is physically present in the U.S. on account of a severe form of trafficking in persons, the alien must demonstrate that he or she is presently being subjected to such trafficking, was recently liberated from such trafficking or was subject to such trafficking in the past and his or her continuing presence in the United States is directly related to the original trafficking. 8 C.F.R. § 214.11(g). The regulation at 8 C.F.R. § 214.11(g)(3) also states that an alien who has voluntarily left or been removed from the United States after the act of trafficking shall be deemed not to be present in the United States on account of such trafficking unless the alien's reentry resulted from continued victimization or a new incident of trafficking.

In her initial declaration, the petitioner recounted that she first traveled with her employers to the United States in August 1989. She stated that she returned with her employers to Saudi Arabia in December 1990 to visit her father who was ill. The applicant recounted that while she was grieving over his death her employers renewed her B-1 visa for travel to the United States without informing her. She recounted that she was forced to return to the United States with her employers because she did not have her passport or money for airline tickets to travel to the Philippines. She also stated that she was worried that she would be harmed in the Philippines for returning without her employer's

permission. The applicant submitted a copy of her expired passport, which shows that she received a one-year multiple entry B-1 nonimmigrant business visa at the U.S. Consulate in Riyadh, Saudi Arabia on January 7, 1991. An admission stamp in her passport reflects that she returned to the United States on January 19, 1991.

The applicant's testimony and corroborating documentation in the record establish that her reentry in January 1991 was the result of continued victimization by her employers. The applicant submitted an April 17, 1992 complaint for back wages that she filed against her former employers in the Circuit Court of the Ninth Judicial Circuit in [REDACTED] Illinois in which she alleged that her period of employment was from September 1987 until December 1991. The record shows that she also filed a petition for a protection order in the same court on January 22, 1992, in which she stated that she was used as an "indentured domestic." She further stated that she was denied access to her passport, was required to work extremely long hours, and after she escaped, her former employers ordered her to return to the Philippines. The applicant's claims of continued victimization are further corroborated by numerous media reports she submitted. This evidence demonstrates that the petitioner was forced to return to the United States on January 19, 1991 for the purpose of continued subjection to involuntary servitude.

However, the record reflects that the applicant again departed and reentered the United States after she escaped her traffickers. The applicant submitted a July 19, 2011 letter from [REDACTED] Reverend of the [REDACTED], who stated that after the applicant's escape from her traffickers, she resided with him and his family. He recounted that he began receiving threatening phone calls, including a threat to murder the applicant. [REDACTED] stated that for this reason they obtained a protection order against the applicant's former employers. He also explained that in order to keep the applicant in legal status, they enrolled her at [REDACTED] and obtained a student visa from the U.S. Consulate in Toronto, Canada. In her August 6, 2012 letter issued in response to the RFE, the applicant recounted that after she escaped her traffickers she was admitted to [REDACTED] in Illinois and she traveled to Canada for three to four days to obtain a student visa. The applicant's passport shows that on June 30, 1992, she was issued an F-1 nonimmigrant student visa in Toronto, Canada for study at [REDACTED] in Canton, Illinois. The applicant's Form I-94, Departure Record, reflects that on July 2, 1992 she was admitted to the United States for the duration of her status as an F-1 student. The director determined that the applicant's testimony does not show that her reentry into the United States on July 2, 1992 was the result of continued victimization or a new incident of trafficking.

On appeal, the applicant asserts that [REDACTED] had advised her that in order to survive in the United States, she had to acquire education and skills. She recounts that she had to leave the United States and reenter as a student to change her status. She contends that even after she changed her status, her former employers threatened that she had to return to them or she and her family in the Philippines would "suffer the consequences." She notes that her story was broadcasted through the media and individuals who supported her know that she "was constantly under threat, duress and trauma as a result of continuous harassment and threats" from her former employers. Although the applicant has demonstrated that she continued to receive threats from her employers after she escaped them, she has not demonstrated a causal link between those threats and her reentry to the United States on July 2, 1992. The applicant's second reentry was not the result of continued victimization by her former employers or a new incident of trafficking, but her decision to attend

college and change her status to that of an F-1 student. The applicant has therefore failed to establish that she is physically present in the United States after her last reentry on account of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act.

Conclusion

The appeal will be dismissed for the above stated reasons. 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.