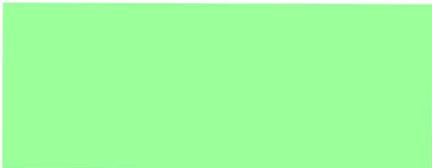




U.S. Citizenship  
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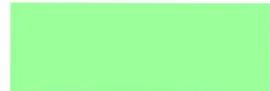
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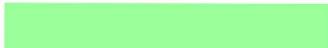
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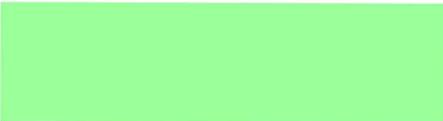


IN RE: Applicant:



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:



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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5.

**Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center (the director) denied the Application for T Nonimmigrant Status (Form I-914) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

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 was a victim of a severe form of trafficking in persons; she was physically present in the United States on account of such trafficking; and that she would suffer extreme hardship involving unusual and severe harm if she were removed from the United States. On appeal, counsel submits a brief.

*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) subject 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;

\* \* \*

and

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

Section 103(8)(B) 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,” 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.

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)).

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*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.

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*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 VTVPA<sup>1</sup> and in this section.

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

(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.

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

\* \* \*

(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.* Extreme hardship involving unusual and severe harm is a higher standard than that of extreme hardship as described in § 240.58 of this chapter. 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.

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).

### *Facts and Procedural History*

The applicant is a citizen of Zimbabwe, who filed her Form I-914 on March 4, 2011. 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 February 28, 2011 affidavit, the applicant stated that she was working as a domestic servant/nanny for a couple in Zimbabwe when the husband was offered a job at the [REDACTED] in Washington, D.C. in 2003. According to the applicant, the wife asked the applicant whether she would accompany the family to the United States to continue working as its domestic servant/nanny and told her that she would be paid "the standard amount." The applicant agreed and was granted a B-1/B-2 visa from the U.S. Embassy in Harare in December 2004, the same month that she arrived in the United States.

According to the applicant, the couple agreed to pay her \$600 per month but she didn't have a bank account and assumed that the couple was holding her monthly salary for her. The applicant stated that when she told the couple that she needed a certain amount of money, they would give it to her and she assumed that the couple was keeping track of the amount they gave to her and keeping the remainder for her. The applicant asserted that when she arrived in the United States she worked from approximately 7:00 am until 9:00 pm seven days per week, but after a couple of months she began attending Sunday Mass.

The applicant testified that she asked the couple about the expiration of her B-1/B-2 visa, at which time they told her that they had a good friend in New York who would help them procure the necessary visa for her continued employment with them. According to the applicant, she signed a contract between her and the couple's friend, which stipulated that she would be working for him five days per week, eight hours per day, at a rate of \$8.00 per hour. The applicant stated that she and the couple's friend flew to Ottawa, Canada, where she was interviewed at the U.S. Embassy and issued a G-5 visa. The applicant was admitted to the United States in G-5 nonimmigrant status on May 19, 2005.

The applicant stated that upon her return to the United States she continued to work for the couple, not the couple's friend, seven days per week for approximately 14 hours per day. The applicant maintained that she asked the couple why she was not being paid \$8.00 per hour and they told her that they were paying her what they could afford and that the only purpose of the contract that she signed was to obtain her G-5 nonimmigrant visa. The applicant testified that in the summer of 2005, she stopped working on Saturdays and Sundays by going to church.

According to the applicant, in early 2006 the couple agreed to pay her \$1,000 per month. She stated that the couple was still keeping her money but she obtained a social security number when the couple was on an overseas vacation and left their two children in her care. Shortly thereafter, the

applicant opened a bank account and told the couple that she wanted to be paid \$1,000 per month in cash, which she could deposit into her account. She claimed that her work situation and her relationship with the couple became progressively worse and she eventually realized that she was being seriously underpaid and possibly exploited. The applicant stated that she began to educate herself about her rights after visiting the [REDACTED] which assists immigrants. The applicant stated that she began to complain to the couple about her salary and hours of work but they always told her that they were paying her as much money as they could afford.

The applicant stated that in November 2006 she volunteered to help someone from church with her three children, which turned into a part-time job while she was still working for the couple. According to the applicant, the wife of the couple was angry about this arrangement so the applicant told the couple that she was going to leave their employ at the end of 2006. The applicant stated that the wife had her sign a document terminating the contract but that the couple asked her whether she would stay if they paid her \$1,500 per month. The applicant told them that she was not interested in remaining but they assured her a monthly salary of \$1,500 from January until April 2007 when she found a job with another family. The applicant stated that her employment with this family did not work out, and after about two or three weeks with them she found another family to work for and has remained in their employ since that time.

The applicant's counsel reported the applicant as a victim of a severe form of trafficking in persons to the Federal Bureau of Investigations (FBI) in December 2008. According to the applicant, she has never been contacted by anyone from the FBI but in September 2011 she was interviewed by an agent with U.S. Immigration and Customs Enforcement (USICE) but never heard back from the agent or anyone else at USICE.

On November 10, 2011 the director issued a Request for Evidence (RFE) regarding the applicant's claims of having been subjected to involuntary servitude, to which the applicant responded. In his denial decision, the director determined that the applicant was not a victim of a severe form of trafficking in persons, in part, because the USICE investigation was closed without a finding that the applicant was a victim of a severe form of trafficking in persons. The director determined further that the applicant's own testimony failed to demonstrate her victimization. On appeal, counsel states, in part: "[I]t is legally insufficient for [the director] to merely cite the act that one USICE agent decided to do nothing about this matter as a basis to deny [the applicant's] very serious complaint."

### *Analysis*

#### The applicant is not a victim of a severe form of trafficking in persons

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 couple.

The applicant testified that she agreed to accompany the couple to the United States in 2004, believing “that this would be a better opportunity for me economically than remaining in Zimbabwe.” Although she was an innocent participant in the couple and their friend’s plan to fraudulently obtain a G-5 nonimmigrant visa on her behalf once she arrived in the United States, she provided no testimony that either the couple or their friend overtly or implicitly threatened her with serious harm or physical restraint, or the abuse or threatened abuse of a legal process to participate in their scheme.

In response to the director’s RFE, the applicant submitted a second affidavit, dated January 17, 2012, that contained statements contradictory to her prior affidavit and which undermine her claim to having been the victim of involuntary servitude. In this second affidavit, the applicant testified:

I know that [the couple] obviously had friends in high places, and that I was basically powerless to do anything to assert myself in any real way, and that if I did, I would potentially face the worst kind of emotional and psychological abuse. I eventually felt like a prisoner in their house, and they always made it perfectly clear that there was nothing I could really do to assert my rights. I had no friends, really, and relied on them almost entirely for even the most basic human contact. . . .

The applicant’s statements regarding her isolation and feelings of powerlessness are belied by her earlier testimony. According to her initial affidavit, the applicant stated that within two months of her arrival in the United States, she stopped working seven days per week on her own initiative and by the time she had been in the country for approximately six or seven months, she began working only Monday through Friday, with weekends off. The applicant submitted no testimony that the couple threatened to take or actually took any adverse action against her for refusing to work seven days per week. To the contrary, the applicant was able to negotiate an increase in her pay after approximately one year in the couple’s employ. The applicant’s claims of isolation are also belied by her earlier testimony of attending church every weekend, “socializ[ing] with a few friends,” working part-time for another family, opening a bank account into which she deposited her pay, and consulting an immigrant rights organization. In addition, the applicant testified that when she informed the couple that she no longer wished to work for them, they proposed to increase her salary as an incentive for her to remain with them, and she stayed another four months. Neither affidavit details any threats or coercion made by the couple to keep the applicant in a state of involuntary servitude.

The director did not exclusively rely upon the information about the USICE investigation to determine that the applicant was not the victim of a severe form of trafficking in persons. Rather, the director found, as do we, that the applicant’s testimony does not support a claim of being 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 is not present in the United States on account of trafficking

As the applicant has not demonstrated the fundamental eligibility criterion of being the victim of a severe form of trafficking in persons, she cannot establish that her continued presence in the United States is directly related to the original trafficking, as required by section 101(a)(15)(i)(II) of the Act.

The applicant would not suffer extreme hardship involving unusual and severe harm upon her removal.

Even if the applicant could have established that she was the victim of a severe form of trafficking in persons, the evidence fails to demonstrate that she would suffer extreme hardship involving unusual and severe harm if she were removed to Zimbabwe, her county of nationality.

The applicant stated in her first affidavit, dated February 28, 2011, that she would suffer extreme hardship involving unusual and severe harm because conditions in Zimbabwe, both economically and politically, “are about as bad as one can imagine.” The applicant, however, did not elaborate on this statement or refer to any specific incidents or country conditions reports to illustrate and support her assertion.

In her second affidavit, dated January 17, 2012, the applicant stated that she cannot return to Zimbabwe because her husband, who is a member of the [REDACTED] in Zimbabwe, was beaten and detained and she, too, was an [REDACTED] member and therefore also feared for her safety.<sup>2</sup> The applicant also asserted that as an older woman who has been in the United States for several years, there is nothing left for her to return to in Zimbabwe, which she opined is “one of the poorest, most corrupt and violent countries on the face of the earth.”

The regulation at 8 C.F.R. § 214.11(i) sets forth the standard of proof and the factors that U.S. Citizenship and Immigration Services (USCIS) considers when determining whether an applicant will face extreme hardship involving unusual and severe harm upon removal. The factors include, but are not limited to, the age and personal circumstances of the applicant, relevant conditions in the country of intended removal, and serious physical or mental illness of the applicant.

The applicant has failed to establish that removal to Zimbabwe would cause her extreme hardship involving unusual and severe harm. The applicant does not assert that she suffers from any physical or mental health issues that would cause her extreme hardship upon removal from the United States. The applicant’s age and extended absence from Zimbabwe are understandable reasons why she does not want to return to that country; however, they are not factors that demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon return to Zimbabwe. The political situation that prompted the applicant to file an asylum application in 2008 has also since changed. According to the March 25, 2013 daily press briefing given by a Department of State (DOS) spokesperson, the United Nations lifted some, but not all, of its sanctions against Zimbabwe based upon a “credible referendum” that Zimbabwe had conducted in the prior two weeks. While the United States has not lifted its sanctions against Zimbabwe, the country is poised to hold presidential elections later this year.<sup>3</sup> Given the apparent change in the country’s political situation and the lack of evidence that

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<sup>2</sup> The applicant did not provide an exact timeframe for when the incident to her husband occurred, but stated that this incident prompted her to file an asylum application (Form I-589) in 2008.

<sup>3</sup> The daily briefing may be accessed at:

<http://www.state.gov/r/pa/prs/dpb/2013/03/206637.htm#ZIMBABWE>.

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the applicant's personal safety is at risk, there is insufficient evidence that applicant would suffer would extreme hardship involving unusual and severe harm upon return to Zimbabwe on account of her political beliefs. Overall, the evidence fails to demonstrate that the applicant has satisfied subsection 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 failed to overcome the director's grounds for denial on appeal, and she is ineligible for T nonimmigrant classification under subsections 101(a)(15)(T)(i)(I), (II), and (IV) of the Act.

**ORDER:** The appeal is dismissed. The application remains denied.