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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 0 1 2014 Office: VERMONT SERVICE CENTER FILE:

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 (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 Acting Director, Vermont Service Center, ("the director") denied the application for T nonimmigrant status and certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed as modified below.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application for failure to establish that the applicant was a victim of a severe form of trafficking in persons, was physically present in the United States on account of such trafficking and had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking. On certification, counsel submits a brief and additional evidence.

Applicable Law

Section 101(a)(15)(T)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she:

> (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,
>
> (II) is physically present in the United States . . . on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
>
> (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime . . . ; and
>
> (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . . ..

The term "severe forms of trafficking in persons" is defined, in pertinent part, as:

> the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[1]

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

[1] This definition comes from section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386 (Oct. 28, 2000), which has been codified at 22 U.S.C. § 7102(8) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

(1) *De novo review*. The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(2) *Burden of proof*. At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

Pertinent Facts

The applicant is a citizen of the Bahamas who entered the United States in 2003 and was later granted H-1B nonimmigrant worker status as a teacher employed by the City of County, The applicant entered successive, school-year contracts with commencing her employment in June 2007 and ending in August 2013. In her April 16 and November 20, 2013 affidavits, the applicant provided the following account of her employment with and claimed trafficking by

The applicant recalled that in June 2007, she heard through a friend that was offering H-1B visas and a signing bonus of approximately $2,000 for teachers in Title I schools. The applicant contacted the and claims that the human resources director told her that sponsored teachers for "green cards." After applying and interviewing, the applicant was offered a position as a special education teacher at an elementary school contingent upon her obtaining the requisite teaching certification. The applicant became certified and she and her family borrowed $4,500 from relatives to finance their move to The applicant was later told that she would not receive a signing bonus as the money would be used for her initial H-1B visa petition.

The applicant's initial H-1B status was valid for only three years, but the applicant recounted that held three to four meetings with her and other H-1B teachers in her first year explaining the "green card process." According to the applicant, stated that the "green card" would be processed in the fourth year if there were student gains, a principal recommended them and they remained working as special education, math or science teachers. However, stated that by that point they would be considered "tenured teachers" and there would be "nothing to worry about."

The applicant received an electronic mail message from attorney in 2010, the last year of her initial H-1B status, explaining that if she was interested in a "green card," she would have to pay $1,500 to attorney to renew her H-1B visa. The applicant used her income tax refund to pay the fee and received an extension to August 19, 2013. The applicant described her job as challenging because the students "demonstrated difficult and unmanageable behaviors," but she continued working for "believing that they would process my papers . . . that it would be better to go home after I received my green card." The applicant indicated that ultimately, declined to sponsor her for the "green card" and did not give her notice in time for her to seek employment elsewhere. The applicant claimed she suffered financial, emotional and physical hardship related to her employment, immigration status and corresponding worries regarding her and

her family's future and wellbeing. She also recounted suffering from anxiety, hypertension and periodontal disease.

Victim of a Severe Form of Trafficking in Persons

Counsel claimed the applicant was a victim of labor trafficking by which forced her into involuntary servitude and peonage. After reviewing counsel's initial submission and response to a request for further evidence, the director determined the applicant was not a victim of a severe form of trafficking in persons because the record showed that she entered into a voluntary employment agreement with was paid according to her contracts and the informed the applicant that it could not ultimately sponsor her for permanent residency due to legitimate reasons.

To establish that she was a victim of a severe form of trafficking by the applicant must show that recruited, harbored, transported, provided or obtained her for her labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). On certification, counsel asserts that subjected the applicant to forced labor through coercion, peonage and threatened abuse of the immigration laws. Counsel's claims and the additional evidence submitted on certification fail to establish the applicant's eligibility. The record shows that employed the applicant as a teacher, but the relevant evidence does not establish that they did so through fraud or coercion for the purpose of subjecting the applicant to peonage.

As used in section 101(a)(15)(T)(i) of the Act, the term coercion is defined as: "threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process." 8 C.F.R. § 214.11(a). Peonage is defined as "a status or condition of involuntary servitude based upon real or alleged indebtedness." *Id.* Involuntary servitude is defined, in pertinent part, as "a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person . . . would suffer . . . the abuse or threatened abuse of legal process." *Id.* On certification, counsel asserts that abused and threatened to abuse immigration law "by improperly using the H-1B visa system to force [the applicant] to take on a huge amount of debt" and that the applicant "was fraudulently induced to take on substantial debt in order to remain in the United States with promises of a better life and the prospect of permanent residence." The record does not support counsel's claims for five principal reasons.

First, the relevant evidence shows that the applicant was employed and compensated by as a teacher pursuant to successive employment contracts from June 2007 to August 2013. The record contains no evidence that the applicant was ever placed in a condition of involuntary servitude. The applicant submitted the first page of five school-year employment contracts between her and All five contracts state that the applicant would be paid semi-monthly on a twelve-month basis pursuant to the salary schedule approved by the Georgia Board of Education based on the applicant's certification level and years of experience as noted on the contract. The applicant did not submit a

complete copy of her contracts or the salary schedule, however, copies of her federal income tax returns show that she earned $34,036 in 2007; $38,944 in 2008; $36,292 in 2009; $38,875 in 2010; $47.506 in 2011; and $50,960 in 2012. The contracts show that when she began her employment with in 2007, the applicant had an estimated two years of experience and that she was credited with an additional year of experience upon each successive employment agreement. The applicant's contracts and income tax returns show that she willingly entered employment agreements with and was paid for her work accordingly. The record lacks any evidence that the actually or intended to subject the applicant to involuntary servitude.

Second, the record does not show that intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In her second affidavit, the applicant stated, "I continued to work for the district because I was indebted to pay off my debts that were incurred as a result to moving to " She listed her expenses related to her move to to accept employment with including $3,709 for housing, transportation, lodging, food, moving boxes and a fee for ending an apartment lease. The applicant stated that she suffered from stress and anxiety related to her work and financial burdens, which caused her to contract periodontal disease, treatment for which cost her $1,508. The applicant recounted that she and her husband also borrowed $4,500 from relatives to cover their initial moving expenses. The applicant also stated that she purchased a house in because the mortgage loan payments were less than what she had paid for rent and utilities in an apartment. On certification, the applicant submits copies of a bank statement, credit card bills, and statements for an automobile loan and a mortgage loan, and a homeowners association's assessments all dated between January and March 2013. The bills and statements indicate that the applicant is in good standing on all of the accounts and show no arrearages. The relevant evidence shows that the applicant incurred personal loans and living expenses shortly before and during her employment with but the record does not indicate that the applicant was ever indebted to forced her into indebtedness.

Third, the record does not support counsel's claim that engaged in coercion by abusing and threatening to abuse immigration law "by improperly using the H-1B visa system to force [the applicant] to take on a huge amount of debt." Counsel asserts that attorney required the applicant to pay the costs for her H-1B visa and did not compensate her for days when teachers were furloughed, acts which violated Department of Labor regulations regarding the H-1B program. The applicant submitted receipts and correspondence which show that in March 2010, she paid attorney $1,500 to process the extension of her H-1B status. Media reports show that all teachers were furloughed for three days in 2009 and five days in 2010. The record does not demonstrate, however, that these actions forced the applicant to take on a huge amount of debt as counsel claims. In her first affidavit, the applicant stated that she used her income tax refund to pay the $1,500 to attorney in 2010. In her second affidavit, the applicant asserted that she suffered financial hardship from 2009 to 2011 because gave "the international teachers a mandatory furlough" and her salary did not correlate with her contract. The record shows, however, that all teachers, not just those in H-1B status, were furloughed in 2009 and 2010 for a total of eight days and the applicant did not state or provide documentation of her contracted and corresponding decrease in salary.

Fourth, the record does not support counsel claim that [redacted] secured the applicant's services through fraudulent promises of lawful permanent residency. In her affidavits, the applicant recounted that [redacted] promised to sponsor her for a "green card" at the time of her initial contract and held three or four meetings with her and other H-1B teachers regarding the "green card" process. The applicant recalled [redacted] attorney as stating that student gains must be evident, their principals would have to recommend them, they would have to continue working as special education, math or science teachers; and the "green cards" would be processed during their fourth years of teaching at which time they would be considered tenured teachers. The applicant recounted suffering financial, emotional and physical hardship during her challenging work, but explained that she persevered in order to support and secure a better future for herself and her family. Although the applicant indicated that [redacted] attorney told her in 2010 that if she wanted to obtain lawful permanent residency, she would have to pay for her H-1B extension, a January 7, 2010 electronic mail message from the attorney to the applicant only refers to "H-1B Petition and Extensions" and does not mention permanent residency. After she obtained her extension, the applicant claimed [redacted] did not inform her that they halted their sponsorship of the H-1B teachers for permanent residency until a few months before her H-1B status expired making it difficult for her to seek employment elsewhere. On certification, counsel asserts that [redacted] "dangled the prospect of a green card before [the applicant] to secure her labor, knowing that such a possibility would coerce her to continue working for the District."

The record does not show that [redacted] engaged in fraud or coercion regarding the permanent residency process. The relevant evidence shows that [redacted] initially intended to petition for the H-1B teachers' permanent residency, but were ultimately unable to do so because unanticipated numbers of U.S. teachers applied for the positions and [redacted] was unable to obtain the requisite labor certification showing that there were no qualified U.S. applicants for the teaching jobs. Minutes from the October 5, 2011 meeting of the [redacted] Georgia Board of Public Education and an October 17, 2011 article from the [redacted] show that the Board passed a measure to spend $186,600 to sponsor permanent residency for the foreign teachers. The Board meeting minutes specified the procedures, but Board members also stated: "There is no guarantee that LPR [lawful permanent residency] will be granted at the conclusion of the process," and affirmed "this is a necessary decision that we must base on the needs of our students and the fact that these folks have given good service to us at a time when we needed it. We will continue to support [sic] if we are not able to fulfill those needs through the national searches."

Despite these initial efforts, [redacted] was ultimately unable to secure the labor certification prerequisite to petitions for permanent residency for the foreign teachers. The applicant submitted two letters addressed to her from [redacted] dated May 14 and June 4, 2012 explaining that [redacted] had received unfavorable prevailing wage determinations regarding the teaching positions, the initial step in the labor certification process required before the corresponding employment-based immigrant visa petitions could be filed with U.S. Citizenship and Immigration Services (USCIS). The letters stated that the unfavorable determinations "did not necessarily mean" that the [redacted] would not pursue further employment or permanent residence for the H-1B teachers upon expiration of their H-1B status and that the [redacted] was considering its options and would inform the teachers of their decision as soon as possible. Electronic mail correspondence dated in the Spring of 2012 between [redacted] counsel and an attorney representing the H-1B teachers as well as an October 22, 2012 newspaper

article also confirm the unfavorable prevailing wage determinations and show that when advertised for the teaching positions, an unanticipated number of U.S. teachers applied and the could not certify that there were no qualified U.S. applicants for the positions. The record thus shows that did not engage in fraud to obtain the applicant's services, but that it initially appropriated funds and began the process to secure permanent residency for the applicant, but never guaranteed success and was ultimately unable to complete the process.

Finally, the record does not support counsel's claim that trafficked the applicant through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. Counsel claims retained the applicant's Form I-797 approval notice of her H-1B visa petition, but the record contains a copy of the applicant's passport, Form I-797 approval notice of petition for the applicant dated August 26, 2010 and the applicant's corresponding Form I-94 showing that her H-1B nonimmigrant status was extended from August 20, 2010 to August 19, 2013. If counsel is referring to the applicant's initial Form I-797, the applicant herself does not indicate that she ever asked for that form or sought other employment during her first three years in The record thus does not show that obtained the applicant's services through fraud, force or coercion involving physical restraint or other restriction of her movement.

In summary, the record documents the applicant's employment with but does not establish that ever subjected her to a severe form of trafficking in persons. The record indicates that due to the uncertainty of whether her contract would be renewed each year and whether would sponsor her for permanent residency as well as the challenges of her job, the applicant was under considerable financial pressure to support her family and experienced stress, anxiety, elevated blood pressure and periodontal disease. However, the relevant evidence does not show that obtained the applicant's labor through force, fraud or coercion for the purpose of subjecting her to involuntary servitude, peonage, debt bondage, or slavery. While the applicant submitted evidence of her personal expenses, including a mortgage loan, and that she paid the fees associated with the extension of her H-1B nonimmigrant status in March 2010, the record contains no evidence that the applicant paid any fee associated with the permanent residency process, was ever indebted to or that forced or coerced her to go into debt. The relevant evidence documents some of the applicant's personal expenses, including her mortgage and automobile loans, but none of her accounts are in arrears. Finally, the record lacks any evidence that the applicant was ever subjected to involuntary servitude or peonage or that ever intended to subject her to such conditions. To the contrary, twice petitioned for the applicant's H-1B nonimmigrant status and employed her as a teacher for six academic years pursuant to yearly contracts. Consequently, the applicant has not demonstrated that she was the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.

Physical Presence in the United States on Account of Trafficking

The applicant has failed to overcome the director's determination that she is not physically present in the United States on account of the claimed trafficking. As discussed above, the record does not show that the applicant was the victim of a severe form of human trafficking and she consequently cannot show that she is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Assistance to Law Enforcement Investigation or Prosecution of Trafficking

The applicant has also not overcome the director's determination that she has not complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or the investigation of associated crime, as required by section 101(a)(15)(T)(i)(III) of the Act. Primary evidence of this compliance is an endorsement from a Law Enforcement Agency (LEA), although USCIS will consider credible secondary evidence where the applicant demonstrates his or her good-faith, but unsuccessful attempts to obtain an LEA endorsement. 8 C.F.R. § 214.11(h). Counsel submitted copies of letters sent on the applicant's behalf to U.S. Immigration and Customs Enforcement (ICE) requesting deferred action and to the U.S. Department of Labor seeking law enforcement certification for U nonimmigrant status and reporting a claimed violation of the H-1B provisions. These letters evidence counsel's attempts to notify these agencies of the claimed trafficking, but the record fails to establish any severe form of human trafficking in connection with the applicant's employment with Consequently, the applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Beyond the decision of the director, the record also fails to demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon removal.[2] In her affidavits, the applicant claimed she would suffer extreme hardship if forced to return to the Bahamas because the cost of living is very high and there is a lot of crime. The applicant asserted that it would be extremely difficult for her to find work because the unemployment rate is high and she would be considered old at 39 as employers prefer younger professionals. The applicant claimed she would have no medical insurance for her and her family and stated that she has suffered from periodontal disease and hypertension and that surgery was recommended for her daughter in 2009, but the applicant was unable to pay for it. The applicant also expressed concern that her children would not receive as good an education in the Bahamas and that her youngest daughter would be unable to attend public schools because she is a U.S. citizen. The applicant explained that she would be misjudged upon return to the Bahamas for her failure to obtain "the American Dream." She also expressed her fear of retaliation by if she pursued her "case against them from the Bahamas" and her desire not to leave the United States "without seeking justice" for what was done to her. In her May 6, 2013 letter, counsel also asserted that the applicant feared "retaliation from her traffickers because she has filed a labor complaint against them" and that if removed, the applicant would lose access to U.S. courts and agencies that could provide her with restitution.

Extreme hardship involving unusual and severe harm may not be based on current or future economic detriment, or the lack of, or disruption to social or economic opportunities. 8 C.F.R. § 214.11(i)(1). In addition, five of the eight factors considered in the hardship determination relate

[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

to an applicant having been a victim of a severe form of human trafficking. *Id.* at §214.11(i)(1)(iii)-(vii). The applicant in this case has not established that she was the victim of a severe form of human trafficking and she submitted no evidence to support her claims that difficulty in obtaining employment, health care and the detriment to her children's education would cause her extreme hardship involving unusual and severe harm. The applicant has also not shown that she would suffer such hardship under the remaining factors. The record contains a copy of a U.S. Department of Labor form on which the applicant's attorney claimed the violated provisions of the H-1B program, but there is no evidence that the Department of Labor or any other U.S. government agency initiated an investigation or prosecution of related to the applicant's employment. The record also lacks evidence that the crime rate or other conditions in the Bahamas are equivalent to civil unrest or armed conflict resulting in the designation of Temporary Protected Status or other relevant protections under U.S. immigration law, as described at 8 C.F.R. § 214.11(i)(1)(viii).

The applicant credibly described the financial and emotional difficulties she endured while employed by However, the relevant evidence does not establish that she would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at 8 C.F.R. § 214.11(i)(1) and as required by section 101(a)(15)(T)(i)(IV) of the Act.

Conclusion

The 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). On certification, the applicant has not met any of the eligibility criteria for T nonimmigrant classification at subsections 101(a)(15)(T)(i)(I)-(IV) of the Act. The director's decision denying her application will be affirmed as modified by the foregoing discussion.

ORDER: The April 2, 2014 decision of the Vermont Service Center is affirmed. The application is denied.