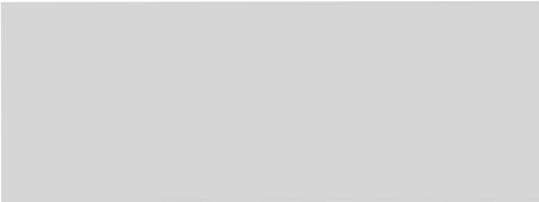




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 22 2015

FILE #: [REDACTED]

APPLICATION #: [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:

NO REPRESENTATIVE OF RECORD¹

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

¹ On March 16, 2015, we requested from [REDACTED] the filing of new Notice of Entry of Appearance as Attorney (Form G-28) because the associate who had been handling the applicant's appeal was no longer employed by the firm. On March 24, 2015, we received a letter from [REDACTED] requesting seven (7) days to submit a new Form G-28, but we have not received such document as of the date of this decision.

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the application for T nonimmigrant status and 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 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 appeal, the applicant 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

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).

(b)(6)

Page 3

The regulation at 8 C.F.R. § 214.11(1) prescribes, in pertinent part, the standard of review and the applicant's burden of proof in these proceedings:

- (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 Philippines who first entered the United States in 2007 as an H-1B nonimmigrant to be employed as a teacher by the [REDACTED]. The applicant claims to have entered into successive school-year employment contracts as a teacher with [REDACTED]. She signed her first master contract on an unspecified day in August of 2007. Although she did not submit other contracts, two Form I-797 approval notices of [REDACTED] extension petitions and the applicant's corresponding Form I-94s show that her H-1B nonimmigrant status was extended from July 1, 2008 to June 30, 2013, permitting her to continue working for [REDACTED]. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on September 27, 2013. The director issued a Request for Evidence (RFE) of the applicant's claim to being a victim of trafficking, to which the applicant responded with additional evidence. The director ultimately denied the applicant's Form I-914 and the applicant has subsequently appealed. In her August 26, 2013 and April 23, 2014 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and her recruiters in the Philippines.

The applicant recalled that she heard through a colleague about the overseas recruiting agency and its work finding teachers, so the applicant decided to talk to the recruiting agency. After applying and interviewing, the applicant was offered a position as a special education teacher at [REDACTED]. She borrowed money from a friend to fly to Manila to attend an orientation session. During the orientation session, the applicant received a schedule of fees showing that she would have to pay \$9,500.00. The applicant stated that she borrowed half of the money from her aunt and another half from a private lending entity. Finally, the applicant borrowed an additional amount of \$640.00 from a bank in order to pay for fees related to her visa interview. During her first year at the school, she and a group of five other Filipino teachers were informed that two of them would not be given a contract. After worrying for days, the applicant was relieved to learn that she would be hired for the coming year.

The applicant's initial H-1B nonimmigrant status was valid for only one year, and the applicant recounted that she twice borrowed money to pay visa processing fees to give to [REDACTED] attorney to renew her H-1B nonimmigrant status: the first time in the amount of \$1,200.00 and the second time

in the amount of \$1,225.00. She indicated that the attorney returned \$1,000.00 to her from the second fee because her approval notice had already been issued. In response to the RFE, the applicant said that because she ultimately found out that the [REDACTED] Board of Education “started working on our [permanent residence] papers late,” she applied for and accepted a job with another employer in April of 2013.

The applicant recounted that she particularly struggled during her first year in the United States because her daughter suddenly died in the Philippines of dengue fever and, after the applicant was able to bring her husband and son to live with her in [REDACTED] she was diagnosed with cervical cancer and had major surgery. 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 during and after her period of employment at [REDACTED] worrying about how she would support her family and repay her debts, and fearing for her health and that of her family because she has no health insurance.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed she was a victim of labor trafficking by [REDACTED] which forced her into involuntary servitude and peonage. After reviewing the applicant’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 [REDACTED], was paid according to her contracts, and the [REDACTED] 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 [REDACTED] the applicant must show that [REDACTED] 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 appeal, the applicant asserts that [REDACTED] subjected her to forced labor through coercion, peonage, and threatened abuse of the immigration laws. The applicant’s claims and the additional evidence submitted on appeal are insufficient to establish her eligibility. The record shows that [REDACTED] 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 appeal, the applicant asserts that [REDACTED] indirectly coerced her because she “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.” She claims that she was afraid to leave [REDACTED] for other employment. The record does not support the applicant’s claims for five principal reasons.

First, the relevant evidence shows that the applicant was employed and compensated by [REDACTED] as a teacher pursuant to successive employment contracts from August 2007 through at least part of the 2012-2013 school year. The record contains no evidence that the applicant was ever placed in a condition of involuntary servitude. The applicant submitted her initial master employment contract from August of 2007, but it does not reflect her proffered salary. An attached letter dated June 25, 2007 from the [REDACTED] representative to the recruiter in the Philippines indicates that the salary for the applicant and other teachers would be between \$36,000.00 and \$45,000.00, “based on [the teachers’] academic preparation and teaching experience.” An accompanying letter from the [REDACTED] Human Resources Department indicated that the applicant’s “minimum salary is \$33,475.” The applicant did not submit a complete copy of her ultimate [REDACTED] contract or any document reflecting her actual salary; however, the evidence that the applicant provided shows that she willingly entered into an employment agreement with [REDACTED] through her recruiters and agreed to be paid for her work accordingly. The record lacks any evidence that the [REDACTED] actually subjected or intended to subject the applicant to involuntary servitude.

Second, the record does not show that [REDACTED] intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In her first affidavit, the applicant stated that she borrowed over \$9,000.00 from her aunt and an entity in the Philippines to pay the overseas recruiter for her various fees relating to her visa packet and housing in the United States. She subsequently brought her husband and son to join her in the United States. The applicant provided evidence of her loan from the private entity in the Philippines and a letter from her aunt confirming that she had loaned the applicant \$8,500.00. The applicant also asserts that she had to pay the filing fees relating to her two petitions seeking extension of H-1B status. In her second affidavit, the applicant asserted that she “felt psychologically and emotionally threatened by my traffickers by the threat of not renewing my visa or of not being offered a yearly school contract.” She asserts that her debt “left me with no choice but to work for my traffickers and made the threat of non-renewal compelling and terrifying.” On appeal, the applicant submits a schedule showing the breakdown of the fees that she paid to the overseas recruiter. The relevant evidence shows that the applicant incurred personal loans and living expenses shortly before and during her employment with [REDACTED] but the record does not indicate that the applicant was ever indebted to [REDACTED] or that [REDACTED] forced her into indebtedness.

Third, the record does not support the applicant’s claim that [REDACTED] engaged in coercion because she 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.” In her first affidavit, the applicant stated that she borrowed money from her aunt and a private entity in the Philippines in order to pay recruiter fees and all filing fees relating to her initial H-1B petition. On appeal, the applicant again asserts that [REDACTED] attorney required her to pay the costs for her H-1B visa and that she “continued to be forced to pay rental fees, attorneys [sic] fee, and renewal fees to her employer,” which violated Department of Labor regulations regarding the H-1B program. The record does not demonstrate, however, that these actions forced the applicant to take on a huge amount of debt. To

the extent that the applicant took on over \$9,000.00 in initial debt before entering the United States, she indicated in her initial affidavit that she was able to make monthly payments back to her aunt and to the lending agency. She also confirmed that after her first year of employment, she was able to secure new housing, and that her attorney returned \$1,000.00 of the second extension petition fees.

Fourth, the record does not support the applicant's claim that [REDACTED] secured her services through fraudulent promises of lawful permanent residency. In her affidavits, the applicant recounted that [REDACTED] promised to sponsor her for permanent residence at the time of her initial contract and held several meetings with her and other H-1B teachers regarding the process. The applicant recalled that [REDACTED] human resources director, [REDACTED] advised the teachers that they would have to pass a certification test, that each teacher's principal would have to recommend the teacher for permanent employment, and that not every teacher would be offered permanent employment. She indicated that this uncertainty placed her under constant stress and worry for her future. The applicant recounted suffering financial, emotional, and physical hardship during her work, but explained that she persevered in order to support and secure a better future for herself and her family. In response to the RFE, the applicant claimed that [REDACTED] Board of Education began the permanent employment process "too late" and withheld this information until late in the school year, making it difficult for her to seek employment elsewhere. Despite this, the applicant submitted evidence that she freely sought and obtained new employment in April 2013.

The relevant evidence shows that [REDACTED] initially intended to submit immigrant petitions for authorization to employ some H-1B nonimmigrant teachers on a permanent basis, but was ultimately unable to do so because unanticipated numbers of U.S. teachers applied for the positions. As a consequence, [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 [REDACTED] 2011 article from the [REDACTED] show that the Board passed a measure to spend \$186,600 to sponsor permanent residency for certain 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."

Accordingly, despite its initial efforts, [REDACTED] was ultimately unable to secure the labor certification prerequisite to petitions for permanent residency for some of its foreign teachers. The applicant provided electronic mail correspondence dated in the spring of 2012 between [REDACTED] counsel and an attorney representing the H-1B teachers as well as an [REDACTED] 2012 newspaper article. These documents confirm the ultimately unfavorable prevailing wage determinations and show that when [REDACTED] advertised for the teaching positions, an unanticipated number of U.S. teachers applied and the [REDACTED] could not certify that there were no qualified U.S. applicants for the positions. The record thus shows that [REDACTED] did not engage in fraud to obtain the services of its foreign teachers, but that it initially appropriated funds and began the process to secure permanent residency for several other teachers, never guaranteed success, and was ultimately unable to complete the process.

Finally, the record does not support the applicant's claim that [REDACTED] trafficked her through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. In response to the RFE, she explained that she eventually sought and obtained work with a new employer. The applicant claims in response to the RFE and on appeal that [REDACTED] retained her "Notice of Action," which "controlled her freedom of movement," but the record shows that the applicant provided copies of her passport, and all three of her Form I-797 approval notices for [REDACTED] petitions. These include the initial Form I-797 approval notice and two Form I-797 approvals of [REDACTED] extension petitions and the applicant's corresponding Form I-94s showing that her H-1B nonimmigrant status was extended from July 1, 2008 to June 30, 2013. The applicant does not indicate that she ever asked [REDACTED] for these forms. Moreover, in her August 26, 2013 declaration, the applicant explained that: "the approval of my H1B extension was arrived in September 2008. . . . So as a result both myself and my husband were driving without license between June 20, 2008 until I had my approval in September." Accordingly, it appears that the applicant was in possession of evidence of her extended H-1B status that allowed her to secure her driver's license in September of 2008. The applicant has not established that [REDACTED] prevented her from seeking other employment, and in fact the applicant asserts she began working for a new employer in April of 2013. The record thus does not show that [REDACTED] 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 [REDACTED] but does not establish that [REDACTED] 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 [REDACTED] would sponsor her for permanent residency as well as the challenges of her personal life, the applicant was under considerable financial pressure to support her family and experienced stress and anxiety. However, the relevant evidence does not show that [REDACTED] obtained the applicant's labor through force, fraud, or coercion for the purpose of subjecting her to involuntary servitude, peonage, debt bondage, or slavery. Although the applicant submitted evidence relating to the fees associated with her initial H-1B petition and the extension of her H-1B nonimmigrant status, the record contains no evidence that the applicant paid any fee associated with the permanent residency process, was ever indebted to [REDACTED] or that [REDACTED] forced or coerced her to go into debt. The applicant's evidence includes documents relating to expenses for the applicant's medical treatment, but there is no evidence that the cost of her treatment for cancer is related to the conditions of her employment with [REDACTED]. Finally, the record lacks any evidence that the applicant was ever subjected to involuntary servitude or peonage or that [REDACTED] ever intended to subject her to such conditions. To the contrary, [REDACTED] petitioned for the applicant as an H-1B nonimmigrant worker on three occasions and employed her as a teacher for nearly 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).

The applicant submitted copies of letters sent to U.S. Immigration and Customs Enforcement (ICE) on her behalf 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 statutory and regulatory provisions requiring the petitioning H-1B employer to pay all costs associated with the petition. These letters evidence the applicant's attempts to notify these agencies of the claimed trafficking. In her August 26, 2013 statement, the applicant asserts that she "was interviewed by the Department of Labor personnel . . . from the Wage and Hour Division," but there is no evidence relating to the interview. The record fails to establish any severe form of human trafficking in connection with the applicant's employment with [REDACTED]. 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

As an additional matter, 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 Philippines because her family has settled into the United States, and she does not believe that she and her family would be able to afford adequate medical care in the Philippines. She asserted that it would be difficult for her to find work in the Philippines because she would be considered old and a failure for having been required to return from the United States. As a consequence, she contends that she would return even poorer than when she left the Philippines, would be unable to work off her current debt, and does not believe she would be able to support her family. In her April 23, 2014 statement, the applicant suggested that if she were forced to leave the United States she would lose access to U.S. courts and agencies that could help her seek justice.

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 and medical treatment 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 [REDACTED] 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 [REDACTED] related to the applicant's employment. The record also lacks evidence that the crime rate or other conditions in the Philippines 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 described the financial and emotional difficulties she endured while employed by [REDACTED]. 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.