



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 22 2015

FILE #: [REDACTED]
APPLICATION RECEIPT #: [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:

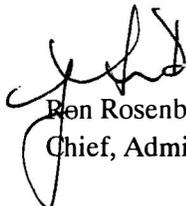
NO REPRESENTATIVE OF RECORD¹

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,


Ben Rosenberg
Chief, Administrative Appeals Office

¹ On March 2, 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. As of the date of this decision, we have not received a new Form G-28 as requested.

DISCUSSION: The Acting 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

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 and the Applicant's Claims

The applicant is a citizen of the Philippines who first entered the United States on August 27, 2007 as an H-1B nonimmigrant petitioned for by the [REDACTED]

[REDACTED] The applicant entered successive, school-year employment contracts as a teacher with [REDACTED] commencing in August 2007 and ending in June 2013. During that period, the applicant returned twice to the Philippines to visit her family, re-entering the United States with her H-1B visa on August 22, 2008 and July 27, 2009. In her May 4 and November 12, 2013 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED], its attorney, and its recruiters in the Philippines.

In June 2006, the applicant heard through a friend that the [REDACTED], a recruiting agency in the Philippines, was seeking teachers for positions overseas. The applicant submitted her resume and in March 2007 she paid approximately \$50 to attend a seminar after which she was interviewed. The applicant passed the interview and attended an orientation conducted by [REDACTED] of [REDACTED], a recruiting company based in the United States, for teachers who had passed their interviews. [REDACTED] gave the teachers a list of fees and schedule of payments, the total cost of which was \$9,575. The applicant borrowed most of the money for the fees from a lending company and the remainder from her sister and her sister's friend. She requested a leave of absence from her employer in the Philippines which was denied, so the applicant made the "bold decision" to resign as it was her dream to work in the United States.

The applicant recounted that she arrived in the United States on August 27, 2007 with six other Filipino teachers; four teachers, including the applicant, shared a furnished apartment and later decided to return the rented furniture and utensils to save money; and she began working on August 28, 2007 at [REDACTED] with severely disabled students. The applicant stated that when it came time to renew their visas for the first time, she and the other teachers agreed to accept an advance which would be repaid through a payroll deduction. She also decided to expedite her visa renewal so she could spend the summer with her family in the Philippines.

The applicant recounted emotional, physical, psychological and financial hardships during her employment with [REDACTED]. She stated that she worked five days a week and sometimes went home exhausted with back pain from lifting and moving disabled children. The applicant recalled that she had to take the bus to work and was uncomfortable because male passengers stared at her. She later received rides from a fellow teacher who asked her to contribute toward gasoline expenses. The applicant explained that because of the loans she took out to finance her H-1B visa, travel and living

expenses, she has no savings and her family has had to live on a very tight budget. She asserts that due to the stress of her situation, she developed Polycythemia, a blood disorder, in 2009, and was prescribed antidepressant/antianxiety medication in 2012 after she learned that she would not be processed for lawful permanent residence. The applicant expressed concern that in the Philippines, she would be unable to access the medical treatment she needs for her blood condition and that she and her husband would be unable to secure employment as a result of age discrimination. The applicant stated that she and her husband had to take out another large loan to finance their decision for him to leave his job in the Philippines and move with their five children to the United States. She worries that if they return to the Philippines, they will be unable to financially support the children, who have become accustomed to life in the United States and will have difficulty readjusting.

The applicant estimated that she paid more than \$13,000 to her recruiters and had to obtain loans to purchase a car, travel twice to the Philippines, and support her family both before and after they joined her in the United States. The applicant asserts that her claimed traffickers were manipulative and used subtle coercive forces to control her and profit from her employment. The applicant frequently wanted to quit her job, but could not because she had to support her family.

The applicant recounted additional hardship and disappointment after [REDACTED] gave her and the other Filipino teachers hope of obtaining permanent employment and residency in the United States, but then terminated their sponsorship. The applicant did not learn of the termination until close to the expiration of her H-1B status, which gave her little time to secure new employment.

Victim of a Severe Form of Trafficking in Persons

On appeal, the applicant claims that she was the victim of labor trafficking because [REDACTED] and its recruiters forced her into involuntary servitude and peonage. After reviewing the petitioner'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, satisfied the debt she incurred to pay her recruitment fees and because [REDACTED] did not engage the applicant's services through force, fraud or coercion.

To establish that she was a victim of a severe form of trafficking by [REDACTED] or its recruiters, the applicant must show that they 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"). While it is clear that [REDACTED] obtained the applicant's services as a teacher, to establish a severe form of human trafficking, she must also demonstrate two essential elements: a means (force, fraud or coercion) and an end (involuntary servitude, peonage, debt bondage or slavery). The record in this case fails to establish either of these elements.

On appeal, the applicant claims that she "experienced Coercion, Peonage and Threatened Abuse of Law or Legal Process during her recruitment and employment with the District [REDACTED]," which

“fraudulently induced [her] to take on substantial debt . . . with promises of a better life and the prospect of permanent residence.” The petitioner’s claims and the additional evidence submitted on appeal do not establish the applicant’s eligibility. The record shows that [REDACTED] petitioned for the applicant’s H-1B visa and employed her 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.

No End: No Peonage or Involuntary Servitude

As used in section 101(a)(15)(T)(i) of the Act, the term peonage is defined as “a status or condition of involuntary servitude based upon real or alleged indebtedness.” 8 C.F.R. § 214.11(a). 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 serious harm or physical restraint; or the abuse or threatened abuse of legal process.” *Id.* Servitude is not defined in the Act or the regulations, but is commonly understood as the condition of being a servant or slave, or a prisoner sentenced to forced labor. See BLACK’S LAW DICTIONARY (B.A. Garner, ed.) (9th ed. 1999). In this case, the relevant evidence shows that the applicant was employed and compensated by [REDACTED] as a teacher pursuant to successive employment contracts from August 2007 to June 2013. The record lacks evidence that [REDACTED] or its recruiters ever subjected the applicant to any “condition of servitude,” the underlying requisite to involuntary servitude and peonage.

The applicant submitted copies of four school-year employment contracts between her and [REDACTED]. All four contracts state that the applicant would be paid semi-monthly on a twelve-month basis pursuant to the salary schedule approved by the [REDACTED] based on the applicant’s certification level and years of experience as noted on the contract. A letter from [REDACTED], dated June 25, 2007, indicated that the international teachers would be paid between \$36,000 and \$45,000 per year, based on their academic preparation and teaching experience. The applicant did not submit federal tax returns or W-2 wage and earning statements. She did, however, submit copies of several paystubs from 2007 and 2008 showing that from the beginning of her employment, she earned at the high end of the scale – i.e., approximately \$3,741 per month in 2007 (\$44,896 annually) and \$4,078 per month in 2008 (\$48,936). The applicant has not disclosed her employment earnings for 2009 through 2013. The contracts show that when she began her employment with [REDACTED] in 2007, the applicant had 16 years of experience and she was credited with an additional year of experience upon each successive employment agreement. The applicant’s contracts and paystubs show that she entered into successive employment agreements with [REDACTED] and was paid for her work accordingly. Her paystubs also indicate that she received health insurance and a pension plan. The record lacks any evidence that [REDACTED] or its recruiters actually or intended to subject the applicant to a condition of servitude.

The record also does not show that [REDACTED] or its recruiters actually or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In her affidavits, the applicant stated that her recruiters gave her a list of fees totaling \$9,575, but indicated that because she was dreaming of working in the United States and [REDACTED] salary offer was substantially more than what she could earn in the Philippines (where salaries are insufficient to support a family), she accepted the offer. The applicant explained that she paid all of the fees with

personal funds and private loans. The applicant stated that after her arrival in the United States, she paid the costs for her and her family's subsequent visa petitions, through payroll deductions, personal loans, the sale of her car in the Philippines, and direct payments. She recounted financial pressures related to her travel and living expenses during her employment with [REDACTED] and submitted documents showing that she took out six loans through the [REDACTED], including three for the same vehicle, all with modest repayment terms. Letters from two different women identifying themselves as foster parents to the applicant show that she timely repaid, within two years, loans borrowed from them to purchase a car, airfare to the Philippines, and travel expenses for her husband and five children to join her in the United States. Copies of canceled checks show that the applicant timely paid her housing expenses during the first two years she was in the United States. The applicant further recounted that she paid her recruiters for all of her initial housing costs shortly before and after her arrival in the United States. The applicant also stated that when she was unable to repay one of her loans (to [REDACTED]) within one year, they restructured the loan for her, giving her an additional year to repay which she did. The applicant did not submit any evidence showing that she had difficulty repaying any other loan, was in arrearages on any debt, or otherwise could not meet her financial obligations.

The preponderance of the evidence shows that [REDACTED] recruiters advised the applicant of all the costs associated with her recruitment, visa petition and application, travel to and initial housing in the United States. The applicant voluntarily secured loans to pay some of her costs and the record shows that she was able to timely repay her initial loans within her first year in the United States. The applicant took on additional personal loans to cover her and her family's living expenses in the United States and the cost of their travel hereto, but the record does not show that any of her accounts are in arrears or that [REDACTED] induced her to obtain those personal loans. While [REDACTED] improperly required the applicant to pay the fees for her H-1B visa petitions, the relevant evidence does not show that [REDACTED] forced the petitioner into indebtedness to cover those costs. Consequently, the record does not demonstrate that [REDACTED] or its recruiters subjected or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness.

De novo review of the record, as supplemented on appeal, fails to show any actual or intended condition of servitude or real or alleged indebtedness to [REDACTED] or its recruiters. Consequently, the record does not demonstrate the claimed end of the alleged trafficking: peonage.

No Means: No Force, Fraud or Coercion

The record also does not evidence the means requisite to the applicant's trafficking claim. The petitioner claims that [REDACTED] and its recruiters engaged in a "psychologically coercive and financially ruinous trafficking scheme that subjected [her] to exorbitant debt and forced labor." She adds that they used a variety of coercive tactics, "including abuse of the legal process, isolation, and segregation to attempt to control her actions and to force her to provide service to the District." The petitioner has not provided any examples showing that she was isolated, segregated, or forced to serve [REDACTED]. Rather, the record shows that the applicant resided in an apartment with three other Filipino teachers; she traveled twice to the Philippines to visit her husband and five children before they joined her in the United States; and she initially utilized public transportation, later obtained rides to and from work with friends, and ultimately purchased her own car. 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).

The petitioner asserts that [REDACTED] and its recruiters coerced her by violating Department of Labor regulations regarding the H-1B program. The record shows that the applicant paid the costs for her initial and subsequent H-1B visa petitions. Media reports show that all [REDACTED] teachers (not just international teachers) were furloughed for three days in 2009 and five days in 2010. The record thus indicates that [REDACTED] and its recruiters may have violated Department of Labor regulations by requiring the applicant to pay the costs for her H-1B visa petitions and by not compensating her for the days she was furloughed. However, as explained above, these violations did not compel the applicant to work by inducing her indebtedness. Rather, the applicant paid for her H-1B visa and petitions through personal funds and personal loans, which she repaid within her first two years of employment. The relevant evidence does not show that any of [REDACTED] or its recruiters’ violations of the H-1B program regulations amounted to coercion through the abuse or threatened abuse of the legal process against the applicant.

The record also does not support the applicant’s claim that [REDACTED] or its recruiters secured her services through fraudulent promises of lawful permanent residency. In her affidavits, the applicant recounted that at the time of her job offer in the Philippines, Mrs. [REDACTED] explained that H1-B visas cost a lot but the advantage is that [REDACTED] could sponsor for “green card later on.” However, none of the documents the applicant submitted from [REDACTED] or its recruiters reference any promise or obligation to secure lawful permanent residency for the applicant in the United States. The recruiter’s statement of account and list of fees only reference costs associated with the nonimmigrant H-1B visa, the recruiter’s fee, documentation, airfare to and housing in the United States. An [REDACTED] pamphlet entitled “International Teacher Placement Program” only discusses the recruiter’s services in identifying candidates and preparing selected individuals for teaching positions in the United States through nonimmigrant J-1 or H-1B visas. In addition, a February 9, 2007 letter from [REDACTED] requests the recruiter’s assistance in finding candidates for teaching positions for the 2007-2008 school year only and does not mention subsequent temporary or permanent employment for any selected teachers. The March 17, 2007 letter from [REDACTED] offering the applicant a teaching position for the 2007-2008 school year as well as her subsequent employment contracts also contain no reference or promise to file an immigrant petition that would lead to lawful permanent residency for the applicant.

On appeal, the applicant nonetheless asserts that she was “fraudulently induced to take on substantial debt in order to come to the United States with promises of a better life and the prospect of permanent residence.” 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 was 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 [REDACTED] meeting of the [REDACTED] and an October [REDACTED] 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." A February 3, 2012 letter addressed to "International Teachers" from [REDACTED] attorney also advised them of the status of the prevailing wage determinations and labor certification process.

Despite these initial efforts, [REDACTED] was ultimately unable to secure the labor certification prerequisite to obtaining permanent residency for the foreign teachers. The petitioner submitted a document dated October 28, 2012 and attributed to "[REDACTED]" The document references a letter to special education teachers from "the HR director, Mr. [REDACTED] dated June 5, 2012 explaining difficulty in obtaining PWD (prevailing wage determination) with the assurance that the school district is still proceeding with the application and promised to send them updates." Although the applicant did not submit the actual letter, it is clear from the [REDACTED] document that [REDACTED] conveyed to the teachers that they 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). Electronic mail correspondence dated in the Spring of 2012 between [REDACTED] counsel and an attorney representing some of the H-1B teachers as well as an October 22, 2012 newspaper article also confirm the unfavorable prevailing wage determinations and show that when [REDACTED] advertised for the teaching positions, an unanticipated number of U.S. teachers applied and [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 applicant's services, but that it initially appropriated funds and began the process to secure permanent residency for the H-1B teachers, but never guaranteed success and was ultimately unable to complete the process.

Finally, the record does not support the petitioner's claim that [REDACTED] trafficked her through force or coercion involving physical restraint by restricting her movement and preventing her from seeking employment elsewhere. The applicant claims, through counsel's appeal brief, that [REDACTED] retained the Form I-797 approval notice of her initial H-1B visa petition, but the record contains a copy of the applicant's passport, I-94 card with multiple U.S. entries on her H-1B visa, and her Form I-797 approval notice of [REDACTED] H-1B petition dated August 8, 2011 and valid from July 1, 2011 to June 30, 2013. Even if the applicant obtained the notice after retaining present counsel, she did not personally assert that [REDACTED] retained any of her Form I-797 approval notices or that she ever asked for copies.

The applicant also claims through counsel that [REDACTED] did not permit her to seek alternative employment or other legal counsel to assist in her visa processing. However, the applicant was the beneficiary of [REDACTED]; three H-1B visa petitions filed on her behalf and the attorneys who filed the visa petitions were retained by [REDACTED] as the petitioner, not the applicant as the beneficiary. See 8 C.F.R. § 103.2(a)(3) (a petitioner may be represented by an attorney, but a beneficiary of a petition is not a recognized party to the petition). In addition, the applicant was employed pursuant to yearly

contracts with [REDACTED] and she did not indicate that she ever sought or considered employment elsewhere before signing each successive contract, even after the serious difficulties she experienced on the job beginning in her first year.

The record also lacks any evidence that [REDACTED] or its recruiters otherwise controlled the applicant's movement and personal freedom. The applicant recounted utilizing public transportation, receiving rides from friends, and purchasing her own automobile, and she did not indicate that [REDACTED] ever forcibly restrained her by any means. The record thus does not show that [REDACTED] or its recruiters secured the applicant's services through fraud, force or coercion through physical restraint.

Summary: No Severe Form of Trafficking in Persons

The record documents the applicant's employment with [REDACTED] but does not establish that [REDACTED] or its recruiters ever subjected her to a severe form of trafficking in persons. The record indicates that due to the uncertainty of whether her employment contract and H-1B status would be renewed, the hardships and challenges of her job, being separated initially from her husband and five children in the Philippines, her medical condition, and the cost of purchasing an automobile, traveling twice to visit her family in the Philippines, and then securing their relocation to the United States, the applicant was under considerable financial pressure and she suffered from stress, anxiety and depression. The record also indicates that [REDACTED] and its recruiters may have violated certain provisions of the Department of Labor regulations regarding the H-1B program, but there is no evidence that they ever subjected or intended to subject the applicant to involuntary servitude or peonage. The record shows that [REDACTED] petitioned for the applicant's H-1B nonimmigrant status three times over six years and employed her as a teacher from 2007 to 2013 pursuant to yearly contracts under which her salary increased from \$44,896 to \$48,936 after the first year alone. The relevant evidence does not establish that [REDACTED] or its recruiters obtained the applicant's services through force, fraud or coercion for the purpose of subjecting her to involuntary servitude, peonage, debt bondage, or slavery. 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-

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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 documents evidence the applicant's attempts to notify these agencies of her claims, but the record fails to establish that any severe form of human trafficking occurred 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.

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 appeal, the applicant has not met the eligibility criteria for T nonimmigrant classification at subsections 101(a)(15)(T)(i)(I)-(III) of the Act.

ORDER: The appeal will be dismissed. The application remains denied.