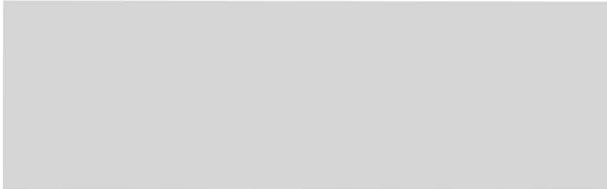




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: AUG 25 2015

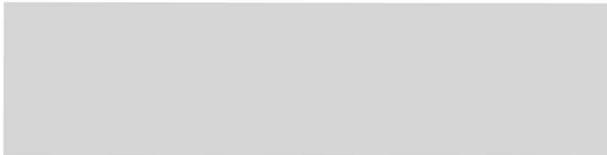
FILE #: [REDACTED]

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:



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](http://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

REV 3/2015

**DISCUSSION:** The Vermont Service Center director (the director) denied the application. 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 because the Applicant did not demonstrate that she was physically present in the United States on account of a severe form of trafficking in persons.

On appeal, the Applicant submits a brief and additional documents.

*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.<sup>1</sup>

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

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<sup>1</sup> 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(9) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States . . . 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 in the past and whose continuing presence in the United States is directly related to the original trafficking in persons. . . .

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 the Philippines who last entered the United States on July 28, 2013, as an H-1B nonimmigrant to be employed as a special education teacher at a [REDACTED] school in Louisiana. She indicated that she secured this position through [REDACTED] Philippines [REDACTED], a foreign recruiting agency with ties to [REDACTED], a U.S. recruiting agency. The Applicant explained that [REDACTED] charged her over \$20,000.00 in various fees and demanded 10 percent of her gross salary. The Applicant filed the instant Form I-914 on March 21, 2014. In these proceedings, the Applicant stated that she first entered the United States on September 9, 2008. In her statements, the Applicant advised that she made the following three return trips to the Philippines: (1) one trip in June of 2009, with the Applicant returning to the United States approximately one month later in July of 2009; (2) a second trip in December of 2010, with the Applicant returning on January 19, 2011; and (3) a third trip on July 8, 2013, with a return trip on July 28, 2013. In each instance, the record reflects that the Applicant returned to continue her employment as a teacher with the [REDACTED] Schools in Louisiana, where she is still employed. On September 15, 2014, the director issued a Request for Evidence (RFE) of the Applicant's presence in the United States on account of a severe form of trafficking in persons and evidence that she would suffer extreme hardship involving unusual and severe harm upon removal. The Applicant responded with additional evidence, which the director found insufficient to establish that she was physically present in the United States on account of trafficking. The Applicant timely appealed.

On appeal, the Applicant asserts that although she left the United States voluntarily on three occasions, all of her subsequent returns were the result of continued victimization.

*Physical Presence in the United States on Account of Trafficking*

The director determined that the Applicant demonstrated that she was a victim of a severe form of trafficking in persons in the past. However, the director also determined that the Applicant has not established that her continued presence in the United States after her 2013 trip to the Philippines is directly related to the original trafficking.

In her first declaration, the Applicant stated that she returned to the Philippines in 2009 for her brother's surgery and to convince her stepfather to undergo eye surgery. The Applicant asserted that an agent of ██████ called her and her sister while she was in the Philippines, demanding that the Applicant repay her loan totaling \$17,170.00. In the alternative, the Applicant alleged that ██████ suggested it would hold the Applicant's visa or have one of her family members jailed. The Applicant explained that she returned the United States, and then traveled back to the Philippines in December 2010 to convince her stepfather to have additional surgery and to renew her visa at the U.S. Embassy in Manila. The Applicant indicated that she returned in July of 2013 to visit her children, to convince her mother to undergo eye surgery, and to check whether or not her "family members were safe from ██████ [the agent of the U.S. recruiting agency ██████] threat." Although the Applicant claimed that the foreign recruiter indicated that it might have a family member who co-signed the Applicant's loan jailed if the Applicant did not may payment arrangements, the Applicant did not discuss specific threats against a particular family member.

In her second affidavit, the Applicant explained that when she returned to the Philippines in 2009, it was to visit her father and "to make arrangement about [her] loan payment which total amount was \$17,170.00 or else [the recruiter] will hold [her] visa again" or send the Applicant or a family member to jail. She reiterated that her visits in 2009 and 2010 were to ensure that her family members were safe, but did not describe specific threats to any family members or explain why she returned to the United States once she had escaped her claimed traffickers. The Applicant specified that since an adverse court decision against ██████ in December of 2012, she "believe[s] that [she is] now liberated from.. ██████ when [they] stopped sending demand letters." She then indicated that her son has been harassed by men on the way home from school and suggested that it could have been by ██████ employees, but did not explain the nature of the harassment or conclude that the harassment was by ██████. The Applicant also stated that she remains afraid for her family in the Philippines because ██████ "are capable of doing something to force" the Applicant to make her remaining payments, but did not describe any specific threats or explain what she believed ██████ would do or why it would take action against her. The Applicant indicated that there have been "reported phone calls" to family members from ██████ in the past year, but did not indicate who received the phone calls or describe the nature of the phone calls.

Section 101(a)(15)(T)(i)(II) of the Act requires a victim to demonstrate that he or she "is physically present in the United States on account of such trafficking . . . ." (Emphasis added). Because physical presence is phrased only in the present tense, we look at a trafficking victim's current presence in the United States to determine whether such presence is on account of trafficking. None

of the Applicant's entries into the United States in 2009, 2011 or 2013 were facilitated by a law enforcement entity so that the Applicant could participate in an investigation or judicial process involving her traffickers. Accordingly, the Applicant must demonstrate that her physical presence in the United States results from a continuing or new incident of trafficking. Here, the Applicant has not made such a demonstration.

In looking at the Applicant's last entry in July 2013, it is important to note that the record contains no evidence that the Applicant had any contact with [REDACTED] after 2012 when the Applicant herself stated that she was "liberated." Equally important is the absence of any detailed information provided by the Applicant either with the filing of her Form I-914 or on appeal linking her departures from and returns to the United States for reasons relating to a continuing or new incident of trafficking. According to her statements, the Applicant has returned to the Philippines on three different occasions to tend to the medical conditions of her family members, where she also renewed her H-1B visa relating to her employment as a teacher in Louisiana. Regarding her last entry into the United States in July 2013, the Applicant cites to telephone calls against unnamed family members and possible harassment of her son to show that she continues to be victimized by [REDACTED] or [REDACTED] however, she does not describe in any probative detail specific contact between her or her family members with her traffickers since December of 2012, the year before she left the United States to visit her mother in the Philippines and the date of her claimed liberation from her traffickers. As previously mentioned, section 101(a)(15)(T)(i)(I) of the Act requires an applicant to demonstrate that he or she *is presently* in the United States relating to a continuing or new incident of trafficking to include assisting a law enforcement entity in an investigation or judicial process relating to trafficking of which an applicant is or has been involved. No evidence in the record provides a causal connection between the Applicant's continuing presence in this country and an incident of trafficking.<sup>2</sup> Consequently, the Applicant has not established that her continued presence in the United States is on account of a severe form of trafficking in persons, as required by section 101(a)(15)(i)(II) 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); *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.

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<sup>2</sup> We note that on July 20, 2015, the Applicant's current spouse filed an alien relative petition (Form I-130) on the Applicant's behalf and the Applicant filed a corresponding adjustment application (Form I-485). Both of these benefit requests remain pending with U.S. Citizenship and Immigration Services.