



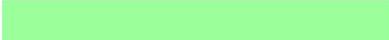
U.S. Citizenship
and Immigration
Services

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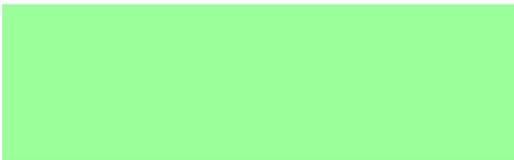
DATE: FEB 20 2015 Office: VERMONT SERVICE CENTER

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. 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 entered the United States on August 26, 2007 as an H-1B nonimmigrant petitioned for by the [REDACTED]. The applicant entered successive, school-year employment contracts as a teacher with [REDACTED]. She signed her first contract on September 26, 2007 and her last contract on May 15, 2012. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on May 23, 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 May 14 and October 30, 2013 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and its recruiters in the Philippines.

In July 2006, the applicant heard through a friend that [REDACTED] a recruiting agency in the Philippines, was seeking teachers for positions overseas. The applicant submitted her resume and in September 2006 she paid \$20 to attend a seminar and she was interviewed. After the seminar she received a certificate from [REDACTED], a recruiting company based in the United States, entitled "Training for Potential Teachers in the USA". In March 2007 she was interviewed by four representatives of [REDACTED]. The applicant passed the interview and was informed that she and others in her group would leave for the United States in late August 2007 as soon as all papers and payments were processed.

In order to pay the processing fees the applicant withdrew savings from her bank account, borrowed money from her family members and she took a \$2,800 loan from [REDACTED]. She also resigned from her teaching position in her hometown in the Philippines, which left her feeling emotionally stressed. She paid the processing fees to [REDACTED] which included fees for a transcript evaluation, processing of credentials, fingerprint clearance, visa processing and attorney fees. She received her approval notice on August 10, 2007. The applicant then paid an additional fee for her airfare, medical examination and entry documentation. After she received her visa for travel from the U.S. embassy she had to make another payment for her orientation of U.S. schools, assistance with housing and her teaching certificate, and fees associated with follow-up on teacher progress.

The applicant arrived in [REDACTED] Georgia with nine other Filipino teachers and they were welcomed by the [REDACTED] human resources director and officers from the [REDACTED].

The applicant and other teachers stayed in the housing that was arranged by . The teachers had previously paid for the apartment rent and rental furniture when they were in the Philippines. The applicant had to share an apartment with ten other teachers before receiving her own apartment with four other teachers one week later. The applicant paid \$222.50 per month in rent plus utilities. After November 2007 the rental furniture was removed and the applicant and her housemates received donated furniture. The applicant felt that she was struggling financially with the costs of food and transportation, the payment of rent and utilities and the repayment of her loans.

The applicant began teaching math at a high school in on September 4, 2007. She found the school to be challenging because the students were disrespectful, racist, disruptive and used profanity. She felt stressed and humiliated by her experiences in the classroom. A gang and drug related shooting occurred outside the school and on one occasion her wallet was stolen. She continued to work because she was concerned about her debt and her family. In 2010, overhauled the high school and terminated all the teachers. The teachers had to reapply for their positions with the school district. The applicant was reassigned to another high school in . She lost her position after one year at the new high school when decided to terminate all teachers in another overhaul. During the summer of 2011 she learned that her mother was diagnosed with cancer. In 2011, the applicant was reassigned to a high school with an alternative program for students who are at high risk for dropping out of school. She continued teaching in the challenging environment because of the opportunity for permanent residency and to financially support her parents.

The applicant's first H-1B visa petition approval notice was valid only from July 31, 2007 to June 20, 2008. The Board of Education made 11 payroll deductions from March 31, 2008 to August 29, 2008 totaling \$1,169.96 to petition for the extension of her H-1B status. She received an extension of her H-1B status from July 1, 2008 until June 30, 2011. In January 2011, the applicant directly paid the Board's attorney \$1,210.00 for the filing of another H-1B visa petition to extend her status. Her H-1B status was extended from July 1, 2011 until June 30, 2013.

The applicant recounted emotional, psychological and financial hardships during her employment with . The applicant stated that the first year she spent almost half her salary on her loan payment to and then she struggled with returning money to her relatives while she was paying the visa petition renewal fees and her mother's cancer treatment. She felt unsafe in her workplace, but continued working because she had to repay her loans and save money for her family. She feared that she would be deported if her employment contract was not renewed and her H-1B status was not extended. The applicant felt deceived after gave her and the other Filipino teachers hope of obtaining permanent employment and residency in the United States, but then terminated its 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. The applicant had purchased a house and a car using loans and had planned to bring her parents to the United States prior to learning that the permanent residency process had been halted. The applicant has remained in the United States because of lack of employment opportunities in the Philippines and the debt she still carries.

Victim of a Severe Form of Trafficking in Persons

The applicant initially stated that she was the victim of a severe form of human trafficking in labor. In response to the RFE, the applicant specified that she has been the victim of 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, was employed in an agreed upon position, accepted the renewal of her employment contracts and H-1B status and was able to pay the debt she incurred. The director concluded that the totality of the evidence did not demonstrate that the applicant was recruited by force, fraud or coercion for the purpose of involuntary servitude, peonage, commercial sex, slavery, or debt bondage.

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 SCSD 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 applicant's claims and the additional evidence submitted on appeal do not establish her 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 September 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 six school-year employment contracts between her and [REDACTED]. All six 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. Copies of the applicant's federal income tax returns show that she earned \$10,792 in September through December 2007; \$32,548 in 2008; \$44,810 in 2009; \$39,148 in 2010; \$38,639 in 2011; and \$38,919 in 2012. The contracts show that when she began her employment with [REDACTED] in 2007, the applicant had 8 years of experience and 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 entered into successive employment agreements with [REDACTED] and was paid for her work accordingly. The applicant's earning and deductions statements also show that she received health and life insurance. She stated that after the two high schools where she was employed terminated their teachers she was reassigned, along with the other teachers, to new teaching positions within the school district. The applicant's statements indicate that she was offered the same benefits as other [REDACTED] employees. 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 she had to pay specified fees to the recruiters for her visa processing and travel to the United States. A [REDACTED] account statement issued to the applicant shows a list of fees that totaled \$9,581. The applicant indicated that she knew of the fees and decided to travel to the United States to help provide for her family in the Philippines. She explained that she paid all of the fees with personal funds and loans from her family members as well as a private loan from [REDACTED]. The applicant stated that she timely repaid her loan to [REDACTED] during her first year in the United States. Notarized letters from the applicant's sister, aunt and grandmother state that the applicant repaid their personal loans. 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 and that she eventually obtained her own housing.

The applicant stated that after her arrival in the United States, she endured financial pressures related to her living expenses and her mother's medical expenses in the Philippines during her employment with [REDACTED]. However, the applicant stated that she was also able to purchase a vehicle and a home. Bank statements show that the applicant obtained a home mortgage and vehicle loan for these purchases. The statements show that the applicant made her payments as scheduled and do not show any arrearages.

The preponderance of the evidence shows that [REDACTED] recruiters advised her 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 repay her initial loans during her employment with [REDACTED]. The applicant took on additional personal loans to purchase a home and vehicle, 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 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 applicant claims that [REDACTED] and its recruiters engaged in coercion through their abuse of U.S. immigration law "by improperly using the H-1B visa system to force her to take on a huge amount of debt." 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 applicant asserts that [REDACTED] and its recruiters coerced her by violating Department of Labor regulations regarding the H-1B program. The applicant's earnings and deduction statements, receipts, electronic mail correspondence from [REDACTED] as well as [REDACTED] and [REDACTED] account statements support the applicant's assertions that she paid the costs for her initial and subsequent H-1B visa petitions.² 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. *See* 20 C.F.R. § 655.731(c)(9)(iii)(C) (employer not authorized to deduct H-1B visa petition and attorney's fees or related costs from the employee's wages). 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 loans, which she repaid while employed with [REDACTED]. The relevant evidence does not show that any of [REDACTED]s 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 the applicant's services through fraudulent promises of lawful permanent residency. In her second affidavit, the applicant stated that when she was in the Philippines the [REDACTED] human resources director promised to work on her "residency papers." 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

² The applicant also asserts that she was not paid for the days [REDACTED] furloughed her, but she failed to specify the dates that she was furloughed. She references in her exhibit list a media report dated July [REDACTED] entitled "[REDACTED]". However, her tax returns show her income increased from \$32,548 in 2008 to \$44,810 in 2009.

entitled “[REDACTED]” 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 [REDACTED] “dangled the prospect of a green card before her 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 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 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.” A February 3, 2012 letter addressed to “International Teachers” from [REDACTED]’s 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. 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 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 applicant’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 [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 and all the Form I-797 approval notices of [REDACTED] H-1B petitions for the applicant dated July 31, 2007, July 1, 2008 and July 1, 2011 and showing that she was granted continuous H-1B nonimmigrant status for six

years since her entry on August 26, 2007 through June 30, 2013. Even if the applicant obtained the approval notice after retaining present counsel, she did not indicate that she ever asked [REDACTED] for copies of any of her approval notices. The applicant's passport shows that in 2010 she traveled outside the United States and was readmitted to the United States in H-1B status, thus indicating that she had access to her identity and immigration documents. The record lacks any evidence that [REDACTED] or its recruiters controlled the applicant's movement and personal freedom.

The applicant also claims 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]'s 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). The applicant stated that she was twice terminated from her teaching position during [REDACTED] overhaul of its high schools yet she still accepted the yearly renewal of her employment contract with [REDACTED]. The applicant 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 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 the applicant 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 and her and her mother's illness and medical treatment, the applicant was under considerable financial pressure to support herself and her family and she suffered from anxiety and stress. 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 and employed her as a teacher from 2007 to 2013 pursuant to yearly contracts under which she was paid between \$32,548 and \$44,810 each year. 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-faith, but unsuccessful attempts to obtain an LEA endorsement. 8 C.F.R. § 214.11(h). The applicant submitted copies of letters sent on her 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 is dismissed.