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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

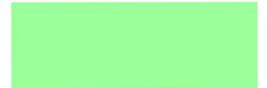


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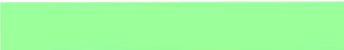
Office: VERMONT SERVICE CENTER

FILE:



IN RE:

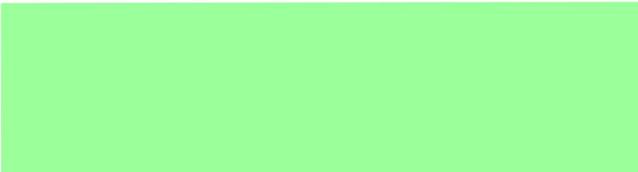
Applicant:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 27, 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 27, 2007 and her last contract on May 15, 2012. 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 28, 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 7, 2013 and October 26, 2013 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and its recruiters in the Philippines.

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, transcript and a copy of her passport to the recruiting agency and paid approximately \$85 to attend a recruitment seminar held in March 2007. During the seminar she was interviewed by two representatives of [REDACTED]. The applicant learned that she was hired the same day that she was interviewed.

The recruitment agency informed the applicant of the H-1B visa process and she learned about the schedule of fees, which totaled \$9,639.15. She also paid approximately \$1,000 to attend an enrichment class. The applicant borrowed money from her relatives, friends and a finance company [REDACTED] to pay for the fees. The applicant recounted that in July 2007 she began feeling panic because her approval notice had not arrived and she had already resigned from her teaching position in the Philippines and paid the stipulated fees.

The applicant received her H-1B visa and she arrived in the United States on August 27, 2007. She was welcomed as an [REDACTED] employee, a member of the Filipino-American community and other Filipino teachers. The applicant rented an apartment and furniture with three other Filipino teachers.

She and her three roommates split the cost of \$890 in monthly rent plus the cost of rental furniture. The rental furniture was eventually removed and the applicant and her roommates replaced it with donated furniture.

The applicant had a week to prepare for her Chemistry and Biology classes. When she began teaching she found her students to be difficult and disrespectful towards her. The applicant started to feel nervous about teaching her class and she cried over the humiliating experiences she had. She could not return to the Philippines because she owed approximately \$20,000 in loans. The applicant's salary of \$1,720.84 per month was not high enough to cover all of her expenses. Her roommates lent her money and became her support system in the United States.

The applicant's initial period of authorized stay in H-1B status was only until June 2008. The Board of Education deducted \$1,169.96 from her salary for her H-1B status to be extended. Her extension was valid for two years. In January 2011, she had to pay an additional \$1,520 for another extension of her H-1B status. She also had to pay for the extensions of her husband's and son's dependent status. The applicant still owes more than half of her debt and she fears not having her employment contract renewed.

The applicant recounted psychological and financial hardships during her employment with [REDACTED]. She lived in fear of deportation because of the possibility that her employment contract and H-1B status would not be renewed. The applicant felt that she had to continue working for [REDACTED] to pay off her debt. She also felt restrained from seeking other employment because [REDACTED] promised to petition for her permanent residency. The applicant and her colleagues had to pay legal fees for the attorney selected by [REDACTED]. The applicant felt deceived by [REDACTED] once she learned that it could not petition for her permanent residency and it was too late for her to secure employment with another school district. The applicant has remained in the United States because of lack of employment opportunities in the Philippines and the debt she still carries. She is also concerned about her son who had febrile seizures when he was two years old and may have developmental delays and need medical treatment in the future.

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 [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 asserts 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 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 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 [REDACTED] 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 \$12,780 in September through December 2007; \$45,767 in 2008; \$43,746 in 2009; \$48,775 in 2010; \$45,682 in 2011; and \$45,555 in 2012. [REDACTED] a recruiting company based in the United States, and [REDACTED] certified that the applicant had 8 years of experience. The contracts show that when the applicant began her employment with [REDACTED] in 2007, she was hired as a teacher with 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 earnings and deductions statements reflect that she was offered health and life insurance. There is no indication

that she did not receive 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 her recruiters gave her a list of fees totaling \$9,639.15, but that she still decided to accept the job offer because the salary would allow her to purchase her own house in the Philippines and “live a better life.” The applicant explained that she paid all of the fees with personal loans from her family members and friends and a loan from [REDACTED]. Letters from three of the applicant’s family members and one friend show that she repaid the personal loans they gave her. A letter from her mother shows that the applicant also repaid the loans she received from private lenders in the Philippines.

The applicant recounted enduring financial pressures related to her and her family’s living expenses and the repayment of her 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, first through payroll deductions and then through direct payment. She provided a breakdown of her housing expenses for an apartment that was arranged by [REDACTED] recruiters and stated that it was hard for her to meet the expenses, but she also indicated that she was given the option to find other housing. The applicant stated that she still owes more than half of her debt from when she departed the Philippines. However, the letters from her friend and family members state that the applicant repaid all of her loans. She has not shown that she has any outstanding loans that have not been repaid. Nor has she shown that she was unable to meet her and her family’s living expenses with her salary.

The preponderance of the evidence shows that [REDACTED] recruiters advised her of all the costs associated with her recruitment, visa petition and application, and travel to and initial housing in the United States. The applicant voluntarily secured loans to pay her costs and the record does not show that [REDACTED] induced her to obtain the loans. The record shows that she was able to repay the loans and support two dependents with the salary she earned. 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 applicant 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 [the applicant] 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. [REDACTED] account statement, the applicant’s earnings and deduction statements and electronic mail correspondence from [REDACTED] support the applicant’s assertions that she paid the costs for her initial and subsequent H-1B visa petitions. The applicant also stated that she was not paid for the days [REDACTED] furloughed her. A Media report shows that all [REDACTED] teachers were furloughed for three days in 2009. Her tax returns and wage statements reflect that her income decreased from \$45,767 in 2008 to \$43,746 in 2009. 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. See 20 C.F.R. § 655.731(c)(7) (employer must pay employee for time when employee is not working due to a decision of the employer); *Id.* at § 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 petitions through loans which she eventually repaid. 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 the applicant’s services through fraudulent promises of lawful permanent residency. In her affidavits, the applicant recounted that at the time of her job offer when she was in the Philippines, a [REDACTED] representative told her that the H-1B visa is valid for 6 years and it has “a possibility” for a “green card.” The applicant never stated that [REDACTED] or its recruiters promised to secure lawful permanent residency for her in the United States. In addition, 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. A pamphlet from [REDACTED] 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] 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 [REDACTED] 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. 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 the applicant 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. However, the record contains a copy of the applicant's H-1B visa issued in [REDACTED] on August 16, 2007, her Form I-94 (arrival/departure record) for her initial admission into the United States on August 27, 2007 in H-1B status, and a Form I-797 approval notice of [REDACTED] H-1B visa petition issued for the period of July 1, 2011 until June 30, 2013, indicating that the applicant had access to her identity and immigration documents. 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 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 petition processing. However, the applicant was the beneficiary of [REDACTED] 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 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 financial pressures of supporting herself and her family, the uncertainty of whether her employment contract and H-1B status would be renewed and the hardships and challenges of her job, the applicant suffered from stress and anxiety. 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 and employed her as a teacher from 2007 to 2013 pursuant to yearly contracts under which she was paid between \$43,746 and \$48,775 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 [REDACTED], although USCIS will consider credible secondary evidence where the applicant demonstrates his or her good-faith, but unsuccessful attempts to obtain an [REDACTED] 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.

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NON-PRECEDENT DECISION

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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(1)(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.