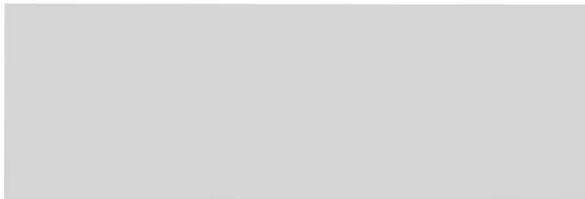




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 23 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) 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

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 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, had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking, and would face extreme hardship involving unusual and severe harm upon removal.

On appeal, the applicant submits a brief and resubmits previously provided evidence.

Applicable Law

Section 101(a)(15)(T)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she :

- (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,
- (II) is physically present in the United States . . . on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
- (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime . . . ; and
- (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal

The term “severe forms of trafficking in persons” is defined, in pertinent part, as:

the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹

¹ This definition comes from section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386 (Oct. 28, 2000), which has been codified at 22 U.S.C. § 7102(8) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

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 first entered the United States on March 14, 2006, as an H-2B nonimmigrant to be employed as a chicken factory worker for [REDACTED] in [REDACTED] Washington. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services ("USCIS") on December 16, 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 November 20, 2013 and October 29, 2014 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and her recruiters in the Philippines.

The applicant initially recalled that a friend told her of an overseas job vacancy through another friend who worked at a recruiting agency in the Philippines named [REDACTED]. The applicant advised that she contacted [REDACTED] in order to seek overseas employment in a chicken factory sometime in 2006. [REDACTED] arranged for the applicant to meet [REDACTED] a human resources employee of [REDACTED] for a job that [REDACTED] would provide in the United States. The applicant advised that Ms. [REDACTED] and [REDACTED] promised her lots of overtime work. According to the applicant, she was promised a secure job at [REDACTED] for up to three years, a monthly salary of at least \$1,200.00, free housing with three other roommates, and free transportation to and from work. The applicant attested that she was advised that she would have to pay a series of fees totaling \$5,000.00 to [REDACTED]. The applicant explained that she borrowed \$5,000.00 from a man named [REDACTED].

When she arrived in the United States, the applicant stated that she was placed in a two-bedroom, one-bath house that belonged to [REDACTED] "for more than a week." She explained that she lived in the house with more than 20 other people, some of whom slept in the living room or kitchen. The applicant explained that the house was so crowded that she slept in the attic with three other girls with only a sleeping bag, and was charged a monthly rent of \$100.00 plus utilities. The

applicant advised that she did not have free transportation to and from work, and instead walked 45 minutes each way.

After starting her job, the applicant asserted that she was paid \$7.80 per hour, but was never given 40 hours of work per week and instead worked four to eight hours per day. She indicated that sometimes her pay check was less than \$125.00. When her term of employment with [REDACTED] was about to expire, the applicant attested that she was told she would have to pay a visa renewal fee of \$500.00 to [REDACTED] who worked for [REDACTED] the U.S. recruiting agency represented by [REDACTED] in the Philippines. According to the applicant, her visa extension for [REDACTED] was denied, and [REDACTED] told her friend that the applicant would have to move to New Jersey to work at a [REDACTED]. The applicant claimed that she borrowed money from a friend to pay for her plane ticket, and worked at the [REDACTED] but was treated "badly" and only given a few hours of work each day. After the applicant's toes were crushed on the job, she had to take unpaid leave. The applicant eventually left the [REDACTED] to move to California with her boyfriend, and has been working there since.

The applicant recounted that she paid off her loan in two years, but has accumulated credit card debt while in the United States. Despite this, the applicant explained that she has been able to support her family in the Philippines, pay for medical treatment of various family members, and send some of her siblings to school. The applicant asserted that she would probably face unemployment or a low-paying job in the Philippines. The applicant asserted that she now suffers from constant abdominal pain, and would never have taken the job in the United States if she had known how little money she would make and that she would be employed by [REDACTED] for only a few months.

The applicant provided an employment contract from [REDACTED], and its agent in the Philippines, [REDACTED] explaining that the applicant would be working as a factory worker for 40 hours per week at a monthly salary of \$1,200.00. Although [REDACTED] is listed as the employer, the applicant provided a separate Seasonal Contract from [REDACTED] in which [REDACTED] is listed as the applicant's employer. According to that contract, the applicant was offered a salary of \$7.50 per hour for a term of employment to end on July 31, 2006. The applicant signed that contract on February 10, 2006, before she left the Philippines.

The applicant also included pay stubs showing that [REDACTED] paid her \$7.80 per hour for one-half hour of work at [REDACTED] for the week of March 20, 2006, and subsequently paid her the same rate for work weeks ranging from 17.70 to 40.0 hours per week until August 8, 2006. Although the applicant claimed she was never given a full week of work, her final paystub shows that she worked 40 hours of standard time and five hours of overtime.

On appeal, the applicant again asserts she suffered financial and emotional hardship related to her employment, immigration status, and corresponding worries regarding her and her family's future and wellbeing as she is the sole provider for her family. She reasserts that she has substantial debt, and claims that she was forced to pay her visa extension fees. The applicant also describes suffering from anxiety during and after her period of employment, and worrying about how she would support her family members in the Philippines and repay her debts.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed she was a victim of labor trafficking by [REDACTED] and [REDACTED] which forced her into involuntary servitude and peonage. After reviewing the applicant's initial submission and response to a request for further evidence, the director determined the applicant was not a victim of a severe form of trafficking in persons because the record showed that she appeared to have entered into a voluntary employment agreement to work in the United States and appeared to have been compensated.

To establish that she was a victim of a severe form of trafficking by [REDACTED] and [REDACTED] the applicant must show that these entities recruited, harbored, transported, provided or obtained her for her labor or services through the use of force, fraud, or coercion for the purpose of subsection to involuntary servitude, peonage, debt bondage or slavery. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). On appeal, the applicant asserts that [REDACTED] and [REDACTED] subjected her to forced labor through coercion, peonage, and threatened abuse of the immigration laws. The applicant's claims and the additional evidence submitted on appeal are insufficient to establish her eligibility. The applicant has not established by a preponderance of the evidence that [REDACTED] and [REDACTED] trafficked her through fraud or coercion for the purpose of subjecting her to peonage.

As used in section 101(a)(15)(T)(i) of the Act, the term "coercion" is defined as: "threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process." 8 C.F.R. § 214.11(a). "Peonage" is defined as "a status or condition of involuntary servitude based upon real or alleged indebtedness." *Id.* "Involuntary servitude" is defined, in pertinent part, as "a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person . . . would suffer . . . the abuse or threatened abuse of legal process." *Id.* On appeal, the applicant asserts that [REDACTED] indirectly coerced her and that her recruiter and employer used a variety of coercive tactics to control her and force her to provide service to them, including forcing her to pay initial and extension petition fees, restriction of movement, and isolation. The record does not support the applicant's claims to have been trafficked for three principal reasons.

First, although the applicant stated that she was trafficked by [REDACTED] and [REDACTED] the applicant explained that she ceased to work for [REDACTED] when her work authorization expired and moved to New Jersey at the direction of [REDACTED] who worked for the U.S. agency represented by [REDACTED] in order to work at a hotel. The applicant explained that she voluntarily resigned from the hotel because she was unhappy with her working conditions and moved to California, where she is still working. Consequently, the record shows that the applicant has moved between multiple, unrelated employers and lacks evidence that [REDACTED] or [REDACTED] actually subjected or intended to subject her to involuntary servitude.

Second, the record does not show that the applicant's employers intended to subject her to peonage through involuntary servitude based on real or alleged indebtedness. The applicant explained that

she took a loan of \$5,000.00 from [REDACTED] and provided a personal affidavit to support that assertion. The applicant indicated that she subsequently repaid the loan. Moreover, although the applicant claims on appeal that she was also forced to pay for visa renewals, the record does not show that [REDACTED] required her to pay any visa petition extension fees. Accordingly, the relevant evidence shows that the applicant incurred private and personal loans shortly before her employment in the United States, but the record does not indicate that the applicant was ever indebted to [REDACTED] or that any entity forced her into indebtedness.

Third, the record does not support the applicant's claim that [REDACTED] or [REDACTED] engaged in coercion because she was "fraudulently induced to take on substantial debt in order come to the United States with promises of a better life and the prospect of at least three years of gainful employment." The loan the applicant agreed to was with respect to the fees charged by a foreign recruiter in the Philippines. She voluntarily agreed to pay the recruiter fees before she came to the United States and she obtained a private loan to do so prior to her entry. Although the applicant indicated that she has subsequently accumulated credit card debt in the United States, she also paid off the loan that she took out for the recruiter fees. The actions outlined by the applicant do not establish that she was forced to take on a huge amount of debt.

Finally, the record does not support the applicant's claim that [REDACTED] or [REDACTED] trafficked her through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. The applicant explained that when her period of employment for [REDACTED] expired, she moved to New Jersey for a job that [REDACTED] arranged, but resigned from that job to move to California for a new employment position. The record thus does not show that [REDACTED] or [REDACTED] obtained her services through fraud, force, or coercion involving physical restraint or other restriction of her movement.

In summary, the applicant has not established that [REDACTED] or [REDACTED] ever subjected her to a severe form of trafficking in persons. Although the record suggests that the applicant was under considerable financial pressure to support her family and experienced stress and anxiety, the relevant evidence does not show that [REDACTED] or [REDACTED] obtained the applicant's labor through force, fraud, or coercion for the purpose of subjecting her to involuntary servitude, peonage, debt bondage, or slavery. Although the applicant submitted evidence relating to a loan she claims to have taken out with respect to her initial H-2B petition, she has since paid the loan and the record contains no evidence that the applicant was ever indebted to [REDACTED] or that [REDACTED] or [REDACTED] forced or coerced her to go into debt. Finally, the record lacks any evidence that the applicant was ever subjected to involuntary servitude or peonage or that [REDACTED] or [REDACTED] ever intended to subject her to such conditions. To the contrary, the record shows that [REDACTED] petitioned for the applicant as an H-2B nonimmigrant worker. Although the employer did not always provide her with full-time employment at the chicken factory, she sometimes worked more than 40 hours per week, was paid overtime for the additional hours, and was paid an hourly salary greater than the one initially proffered in [REDACTED] Seasonal Contract. Moreover, the applicant voluntarily left [REDACTED] when her period of employment expired to pursue other employment in New Jersey and then California. 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 not 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 not established that she has 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 her or her good-faith, but unsuccessful attempts to obtain an LEA endorsement. 8 C.F.R. § 214.11(h).

The applicant submitted copies of a letter and electronic mails sent to Department of Justice ("DOJ") on her behalf requesting law enforcement certification for the applicant as victim of trafficking. These communications evidence the applicant's attempts to notify DOJ of the claimed trafficking, but the record does not reflect a response from DOJ beyond acknowledgement of receipt of the information. As the record otherwise does not establish any severe form of human trafficking in connection with the applicant's employment with [REDACTED] the applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

Extreme Hardship Involving Unusual and Severe Harm Upon Removal

The applicant has not established that she would suffer extreme hardship involving unusual and severe harm upon removal. In her affidavits, the applicant claimed she would suffer extreme hardship if forced to return to the Philippines because she could not pay her debts or support her family and because she believes her alleged traffickers in the Philippines would retaliate against her and her family. She asserted that it would be difficult for her to find work in the Philippines and expressed fear of debtor's prison upon return to the Philippines because of her remaining debts.

Extreme hardship involving unusual and severe harm may not be based on current or future economic detriment, or the lack of, or disruption to social or economic opportunities. 8 C.F.R. § 214.11(i)(1). In addition, five of the eight factors considered in the hardship determination relate to an applicant having been a victim of a severe form of human trafficking. *Id.* at § 214.11(i)(1)(iii)-(vii). The applicant in this case has not established that she was the victim of a severe form of human trafficking and she submitted no evidence to support her claims that difficulty in obtaining employment would cause her extreme hardship involving unusual and severe harm. The applicant has also not shown that she would suffer such hardship under the remaining factors. The record contains a copy of the correspondence that the applicant's attorney sent to DOJ, but there is no evidence that DOJ or any other U.S. government agency initiated an investigation or prosecution of [REDACTED] related to the applicant's employment. The record also lacks evidence that the crime

rate or other conditions in the Philippines are equivalent to civil unrest or armed conflict resulting in the designation of Temporary Protected Status or other relevant protections under U.S. immigration law, as described at 8 C.F.R. § 214.11(i)(1)(viii).

The applicant described the financial and emotional difficulties she endured while in the United States. However, the relevant evidence does not establish that she would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at 8 C.F.R. § 214.11(i)(1) and as required by section 101(a)(15)(T)(i)(IV) of the Act.

Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The applicant bears the burden of proof to establish her eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.