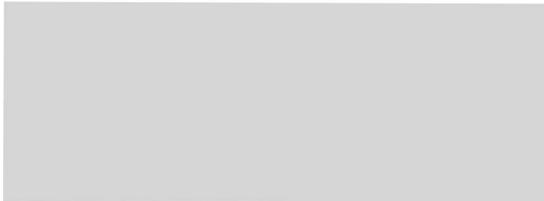




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

JUN 09 2015

FILE #:

APPLICATION RECEIPT #:

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:

NO REPRESENTATIVE OF RECORD

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 physically present in the United States on account of trafficking.

On appeal, the applicant submits a brief.

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 she 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(1) 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.* [U.S. Citizenship and Immigration Services (USCIS)] 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. . . . [USCIS] 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 Philippines who indicated that she first entered the United States on February 18, 2008 as an H-1B nonimmigrant to be employed as a teacher by the [REDACTED] in Louisiana. She explained that she initially worked as an English teacher at [REDACTED], but was demoted to assistant teacher at [REDACTED]. The record shows that effective April 30, 2009, the applicant was terminated from employment in [REDACTED] based on her poor performance. USCIS records show that effective May 1, 2009, the agency approved the applicant's first Form I-539 application for change of status, changing her status to that of a B-2 nonimmigrant visitor.

On August 20, 2009, the [REDACTED] School Board filed a Form I-129 H-1B petition on behalf of the applicant, seeking to employ her as a teacher. The petition was granted with a validity date of February 17, 2010 to August 4, 2010. On August 4, 2010, the petitioner filed a second Form I-539 application for change of status, again seeking to change her status to that of a B-2 nonimmigrant visitor. The application was approved, with a validity date of September 29, 2010 to February 3, 2011. On October 18, 2010, the [REDACTED] School Board filed a second Form I-129 petition on the applicant's behalf, seeking to extend its authorization to employ her as an H-1B nonimmigrant worker. The petition was subsequently approved with a validity date of December 7, 2010, to October 24, 2013. On January 17, 2012, the petitioner filed a third Form I-539 application for change of status seeking to change her status to that of a B-2 nonimmigrant visitor. The application was approved, with a validity date of February 24, 2012 to July 6, 2012.

With her Application for T Nonimmigrant Status (Form I-914), the applicant provided a copy of a Form DL 1-201A, U.S. Department of Labor Complaint Information Form, in which she alleged that the [REDACTED] School Board had discriminated against her on October 9, 2011, and on October 5, 2012. Specifically, she asserted that she "worked in [REDACTED] for 2 years as Library Media Specialist 20101-11," but "after that...the former principal of [REDACTED] told [the applicant that she was] a misplaced employee." She indicated that despite her subsequent efforts, no other position was given to her in the same parish, and that she instead worked as a substitute teacher and cleaned houses. The petitioner last entered the United States on January 14, 2013, and was authorized entry as an H-1B nonimmigrant worker based on the applicant's presentation of the Form I-797A Notice of Action issued for the 2010 Form I-129 petition from [REDACTED] School Board.

(b)(6)

Page 4

The applicant filed the instant Form I-914 with USCIS on July 25, 2013. The director issued a Request for Evidence (RFE) that, among other things, the applicant was physically present in the United States a victim of trafficking, to which the applicant responded with additional evidence. The director ultimately denied the applicant's Form I-914 on this ground and the applicant has subsequently appealed.

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. She first entered the United States on February 18, 2008, as an H-1B nonimmigrant to be employed as a teacher by the [REDACTED], but was terminated effective April 30, 2009, due to her poor performance.

She last entered the United States on January 14, 2013, as an H-1B nonimmigrant teacher authorized to work for a different [REDACTED] School system. In her second affidavit, the applicant indicated that she left the United States in December of 2012 because her oldest son claimed to be suffering from kidney pain. On appeal, the applicant asserts that she reentered the United States in January of 2013 because she did not think she could repay the debt she claims to have incurred as a result of the alleged trafficking if she were to remain the Philippines. She suggests that the debt she incurred establishes her continued victimization. She also indicates that she was afraid of retaliation in the Philippines because her alleged trafficker "was a powerful woman with powerful connections" who "could make her life miserable." The applicant did not explain what actions she believed her alleged trafficker would take against her in the Philippines.

In this case, the applicant has not demonstrated that she is currently in the United States on account of trafficking. In her second affidavit and on appeal, the applicant explained that she returned to the Philippines in December 2012, more than three years after she had escaped from her alleged traffickers, because her son was ill, and that she returned to the United States after arranging for his medical care and determining that she could make more money to pay her debt. The record establishes that the applicant's reentry into the United States in January 2013 resulted from her submission of the Form I-797 Approval Notice to U.S. immigration authorities at the U.S. port of entry to demonstrate that she was in valid H-1B nonimmigrant status. The applicant has presented no evidence that her reentry into the United States was permitted to allow her to participate in investigative or judicial processes associated with an act or a perpetrator of trafficking. *See* Section 101(a)(15)(T)(i)(II) of the Act. In sum, the record does not demonstrate that the applicant is physically present in the United States on account of a severe form of trafficking in persons.

Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Beyond the director's decision, the record also does not demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon her removal from the United States.² In

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See*

her affidavits, the applicant claimed she would suffer extreme hardship if forced to return to the Philippines because it would be difficult for her to find work there, as she would be considered old and face age discrimination. She also asserted that she would be considered a failure for having been required to return from the United States. As a consequence, she contends that she would be unable to pay off her current debt from within the Philippines, face debtor's prison, and unable to support her family. On appeal, the applicant also suggests that she returned to the United States to pursue her legal case and seek justice.

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). The applicant submitted no evidence to support her claims that difficulty in obtaining employment, and the detriment to her children's education 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 applicant described the financial and emotional difficulties she endured while employed by [REDACTED]. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.