



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 25 2015**

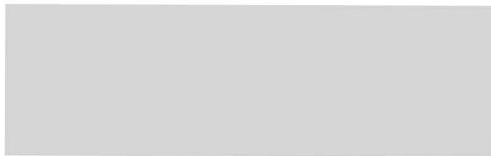
FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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 Director, Vermont Service Center, (the director) denied the application and 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 and was physically present in the United States on account of such trafficking. On appeal, the applicant submits a brief and previously filed 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 March 3, 2006 as an H-2B temporary worker petitioned for by [REDACTED]. The applicant was admitted in H-2B status for a period of five months, until August 10, 2006. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on December 9, 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 subsequently appealed. In her November 25, 2013 and July 24, 2014 affidavits, the applicant provided the following account of her journey to the United States and claimed trafficking by [REDACTED] and [REDACTED].

The applicant recalled that she learned about job vacancies for chicken factory workers in the United States through the [REDACTED] website. The applicant stated that [REDACTED] held a presentation on employment opportunities led by [REDACTED] the Human Resource supervisor of [REDACTED]. She recounted that Ms. [REDACTED] discussed the workplace environment, job duties and salary and [REDACTED], an [REDACTED] employee, informed the applicant and other workers of their living accommodations. The applicant stated that she agreed to accept the offer after hearing the presentations.

The applicant stated that [REDACTED] told her that she would have to pay: \$1,750 for a visa interview to be scheduled at the U.S. Embassy; \$100 for representation during the interview; \$5,500 to secure employment; and \$540 for a ticket to the United States. She explained that the payments were deposited into the account of [REDACTED], the U.S. based counterpart of [REDACTED], and she borrowed money to cover the fees.

The applicant recounted that she was issued an H-2B visa on February 10, 2006 and shortly thereafter traveled to the United States. She stated that when she arrived in [REDACTED] Oregon on March 3, 2006, Ms. [REDACTED] picked her up from the airport and then took her to Ms. [REDACTED] house. She recounted that she stayed in Ms. [REDACTED] home for one week with 30 other Filipino workers sharing two bedrooms and one bathroom. The applicant explained that because of the overcrowding, she decided to find her own housing and rented a two-bedroom apartment with 10 other individuals.

The applicant recalled that after one week of employment at [REDACTED] her hands became swollen from cleaning chickens. She stated that she was reassigned to the packaging department. The applicant recounted that she was paid \$7.80 per hour, but she did not receive overtime hours as she was promised. She stated that she had to walk two miles to her workplace because she did not have transportation.

The applicant stated that when her contract with [REDACTED] expired, she asked [REDACTED] for help with an extension of her H-2B status. She explained that she applied to change her status to that of a B-2 visitor during the processing of her H-2B visa petition and paid [REDACTED] \$750 for the immigration filings. The applicant did not further discuss the processing and outcome of the petition to extend her H-2B status.

The applicant recounted financial, physical and emotional hardships during her employment with [REDACTED]. She stated that during her one-week stay with Ms. [REDACTED] she had to help with household chores and provide child care for Ms. [REDACTED] children. The applicant indicated that there was an expectation that she continue to provide child care for Ms. [REDACTED] on her days off from work. She added that the [REDACTED] doctor did not give her medication when her hands swelled from cleaning chickens and he instead bandaged her hands. She felt that the job was very labor intensive and she had chronic pain in her hands.

The applicant recalled that when she was in the Philippines she was told she would receive free transportation and housing while she was employed with [REDACTED]. She instead struggled with walking two miles to her workplace and paying for her housing. The applicant stated that she felt that Ms. [REDACTED] maintained control over her housing even after she moved into her own apartment. She stated that she suffered financially because she was sometimes working less than 40 hours per week. The applicant claimed that she signed her employment contract not fully understanding its terms and believed that she would be employed with [REDACTED] on a three-year contract that was subject to renewal.

The applicant recounted that after her employment with [REDACTED] she took a position with a homecare facility in California where she had to work twenty-four hours a day for six days a week. The applicant, however, stated that she does not want to return to the Philippines because she owes money to creditors and she wants to provide for her family members' education and medical expenses.

Victim of a Severe Form of Trafficking in Persons

The applicant asserted that she was a victim of labor trafficking by [REDACTED] and its recruiters, [REDACTED] and [REDACTED] which she claimed forced her into involuntary servitude and peonage. After reviewing the applicant's initial submission and response to a request for further evidence, the director acknowledged that aspects relating to the cost of housing and transportation, guaranteed number of weekly hours and continuous employment for a certain period may have been misrepresented to the applicant. The director determined, however, that the applicant was not a victim of a severe form of trafficking in persons because the record does not show that she was

subject to a scheme involving force, fraud or coercion to create an atmosphere of fear, as required to establish involuntary servitude and peonage.

To establish that she was a victim of a severe form of trafficking by [REDACTED] and her 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] and [REDACTED] obtained the applicant’s services as a poultry dressing worker, 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 [REDACTED],” which “fraudulently induced [her] to take on substantial debt . . . with promises of free housing, free transportation, and \$1,200 salary per month with the prospect of at least three years of steady, full-time employment. . . .” The applicant’s claims do not establish her eligibility. The record shows that [REDACTED] and [REDACTED] recruited the applicant and [REDACTED] petitioned for her H-2B visa and employed her as a poultry dressing worker, 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 poultry dressing worker pursuant to her seasonal employment contract with [REDACTED]. 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 an employment contract between herself and [REDACTED] executed in January 2006. The contract specifies that it is only for “seasonal employment” and that her period of employment was from her entry into the United States with a valid H-2B visa until July 31, 2006. The applicant did not submit her 2006 federal income tax return. She instead submitted her 2006 State of Arizona income tax return for the period August 30, 2006 until December 31, 2006, which is outside the dates of her seasonal employment with [REDACTED] in the State of Washington. The selected earnings statements she submitted from [REDACTED] show that during five months of employment she had earned \$5,294.15. She also submitted selected earnings statements from [REDACTED]

which she claims were also issued for her employment at showing that at the end of April 2006 she had earned \$1,513.59, including payment for overtime employment. The record shows that the applicant entered into a seasonal employment contract with for a defined period of time and she was paid for the hours she worked at a rate of \$7.80, a higher rate than specified on her contract. The record lacks any evidence that or its recruiters actually or intended to subject the applicant to a condition of servitude.

The record also does not show that or its recruiters actually or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. The applicant recounted that she paid \$1,750 for a visa interview to be scheduled at the U.S. Embassy; \$100 for representation during the interview; \$5,500 to secure employment; and \$540 for a ticket to the United States. She stated that two individuals, and "lent her money through a verbal agreement to help cover the expenses. In a document she entitled, "certification of loan and/or incurred debt," she specified that lent her \$5,500 in January 2006 for her expenses, but she did not discuss the amount lent by . The applicant showed a copy of a bank deposit receipt from August 2006, which she indicates is evidence of her payments to . She also submitted a letter from who stated that she lent the applicant money prior to the applicant's departure to the United States and this loan was fully repaid by the applicant. The record does not show that or its recruiters induced the applicant to obtain these personal loans. The applicant has not submitted any evidence showing that she took out any additional loans, had difficulty repaying the money she borrowed, or that she was or is in arrears on any debt or otherwise could not meet her financial obligations.

The applicant further asserts that she "was asked to sign a bond agreement with other people . . . stating that they are all liable to pay PHP 250,000 (\$5,578) in the event [she] does not finish her 3-year contract." The applicant, however, did not further explain the terms of the bond agreement, the names of the individuals that signed it with her, or the name of the agency or agencies that asked her to sign it. The record also does not contain any documentary evidence of a bond agreement. The record shows that the agreement the applicant signed with and for her prospective employment in the United States was for the term of one year and her seasonal employment contract with was for only temporary employment not to exceed seven months. There is no evidence that the applicant was forced to work for or its recruiters for three years or that or its recruiters took any action against the applicant once her employment ended in August 2006.

The preponderance of the evidence shows that and its recruiters advised the applicant of the costs associated with her recruitment, visa petition and processing, travel to the United States, and the duration of her seasonal employment. The applicant voluntarily secured personal loans to pay these costs. She has not indicated if she repaid all of her initial loans, but the record does not show that she took on any additional debt. Nor does the record show that she is responsible for any account that is in arrears. While her recruiters may have improperly required the applicant to pay the fees for her H-2B visa petitions, the relevant evidence does not show that or forced the applicant into indebtedness to cover those costs. Consequently, the record does not demonstrate that 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, as supplemented on appeal, 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 a "psychologically coercive and financially ruinous trafficking scheme that subjected her to exorbitant debt and forced labor." She adds that they used a variety of coercive tactics, "including abuse of the legal process, isolation, and segregation to attempt to control her actions and to force her to provide service to them." The applicant has not provided any examples showing that she was isolated, segregated, or forced to serve [REDACTED]. Rather, the applicant stated that she decided not to reside in housing provided for by [REDACTED] and found her own housing with other Filipino workers. She recounted that she struggled with the lack of transportation, but there is no assertion or indication that she was not free to travel outside of work. The applicant stated after she complained that her hands were swelling from cleaning chickens, [REDACTED] provided her with medical care and reassigned her to a different position. The selected earnings statements the applicant provided show that she was paid for the hours she worked, including overtime hours. The record therefore does not support the applicant's assertions of isolation, segregation or forced service to [REDACTED].

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 the recruiters coerced her by violating Department of Labor (DOL) regulations regarding the H-2B program by requiring her to pay the costs for her H-2B visa petition and renewal. The applicant has not provided an expense sheet or account statement from AIMS or NARI. However, even if the recruiters violated the DOL regulations, these violations did not compel the applicant to work by inducing her indebtedness. Rather, the applicant paid for her H-2B visa and petition through personal funds and loans she secured. The relevant evidence does not show that [REDACTED] or any of its recruiters' possible violations of the H-2B 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 her services through fraudulent promises of long-term employment. The applicant concedes that she knew before leaving the Philippines that her H-2B visa was valid only for a few months. She claims, though, that she relied on an employment contract from [REDACTED] that stated she would be employed for three years. The undated agreement she signed with [REDACTED] and [REDACTED] reflects that the recruiters offered her prospective employment with an unspecified employer in the United States for one year, extendable to three years, as a factory worker. However, the specific position the applicant ultimately accepted was for temporary, seasonal employment with [REDACTED]. Her employment contract with [REDACTED], signed by her and Ms. [REDACTED] in January 2006, specifies that it was valid only until July 31, 2006. She stated that after her contract with [REDACTED] expired, [REDACTED]

helped with the renewal of her H-2B visa. Correspondence in the record shows that [REDACTED] filed a temporary labor certification to extend the applicant's H-2B status, but the labor certification was denied. While, as the director stated, certain terms of the applicant's employment may have been misrepresented to her, the record does not show recruitment for labor through false promises of long-term employment for the applicant. Rather, it shows that the applicant knowingly entered into seasonal employment with [REDACTED] as an H-2B temporary worker and after her period of authorized employment expired, [REDACTED] began immigration processing to extend her H-2B status, but it was ultimately unable to complete the process because DOL denied the labor certification.

Finally, the record does not support the applicant's claim that [REDACTED] or its recruiters trafficked her through force or coercion by restricting her freedom of movement. The applicant states that Ms. [REDACTED] arranged for her to stay in a two-bedroom apartment with 30 other Filipino workers. She, however, concedes that she was not forced to stay in that accommodation and she found her own housing. The applicant provided copies of the biographical page of her passport, H-2B approval notice (Form I-797), her H-2B visa and Form I-94 (Departure Record), indicating that she had access to her immigration and identity documents. There is no indication that [REDACTED] physically restrained her. Although the petitioner expressed having issues with the lack of transportation at her apartment building, she stated that she walked to her place of employment and she did not indicate any restrictions with her travel. 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 this company or its recruiters ever subjected her to a severe form of trafficking in persons. The record indicates that the applicant was under financial pressure to support herself and her family members in the Philippines and she was disappointed that she did not earn as much money working as an H-2B temporary employee in the United States as she anticipated. The record also indicates that the applicant secured personal loans to pay the recruitment fees, but there is no evidence that [REDACTED] or [REDACTED] forced the applicant into indebtedness to cover those costs. 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.

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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(l)(2). On appeal, the applicant has not met the eligibility criteria for T nonimmigrant classification at subsections 101(a)(15)(T)(i)(I)-(II) of the Act.

ORDER: The appeal will be dismissed. The application remains denied.