



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 19 2015 Office: VERMONT SERVICE CENTER

FILE: [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).

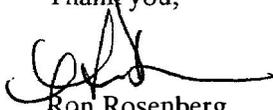
ON BEHALF OF APPLICANT:
[REDACTED]

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 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, 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(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.* 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 Philippines who entered the United States in 2007 as an H-1B nonimmigrant to be employed as a teacher by the [REDACTED] Georgia School District ([REDACTED]). The applicant claims to have entered into successive, school-year employment contracts as a teacher with [REDACTED]. She signed her first contract on October 29, 2007. Although she did not submit other contracts, two Form I-797 approval notices of [REDACTED]; extension petitions and the applicant's corresponding Form I-94s show that her H-1B nonimmigrant status was extended from July 1, 2008 to June 30, 2013, permitting her to continue working for [REDACTED]. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on June 10, 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 28 and October 16, 2013 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and her recruiters in the Philippines.

The applicant recalled that she heard through a friend about the overseas recruiting agency and that when her friend was hired to teach in the United States, the applicant decided to talk to the recruiting agency. After applying and interviewing, the applicant was offered a position as a special education teacher at [REDACTED]. Upon arrival to the school, she was informed that remaining in her position was contingent upon her obtaining the requisite teaching certification. After several failed attempts to pass the certification requirements, she succeeded in obtaining her certification.

The applicant's initial H-1B nonimmigrant status was valid for only three years, and the applicant recounted that she twice borrowed \$1,500 from her father-in-law to give to [REDACTED] attorney to renew her H-1B status. According to the applicant, [REDACTED] advised her and several of the other H-1B nonimmigrant teachers in the school system that a "green card" would be processed if, among other things, there were student gains and a principal recommended them for permanent employment. However, the principal at the applicant's school subsequently determined that the applicant's performance was unsatisfactory, declined to recommend that the [REDACTED] seek to hire the applicant through a permanent employment petition, and replaced the applicant. In her initial statement, the applicant asserted that she left the school's employment after the school year finished in 2012.

The applicant described her job as challenging because the students had developmental and behavioral issues and acted out or mocked her. She also recounted that she particularly struggled to teach and care for her students during her first year in the United States because she was experiencing the pregnancy of her third child and suffered from morning sickness. The applicant claimed she suffered financial, emotional, and physical hardship related to her employment, immigration status, and corresponding worries regarding her and her family's future and wellbeing. She also recounted suffering from anxiety, depression, insomnia, and hypertension during and after her period of employment at [REDACTED], worrying about how she would support her family 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] 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 entered into a voluntary employment agreement with [REDACTED] was paid according to her contracts, and the [REDACTED] informed the applicant that it could not ultimately sponsor her for permanent residency due to legitimate reasons.

To establish that she was a victim of a severe form of trafficking by [REDACTED] the applicant must show that [REDACTED] 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"). On appeal, the applicant asserts that [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 record shows that [REDACTED] employed the applicant 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.

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] abused and threatened to abuse immigration law "by improperly using the H-1B visa system to force [the applicant] to take on a huge amount of debt" and that the applicant "was fraudulently induced to take on substantial debt in order to remain in the United States with promises of a better life and the prospect of permanent residence." The record does not support the applicant's claims for five principal reasons.

First, the relevant evidence shows that the applicant was employed and compensated by [REDACTED] as a teacher pursuant to successive employment contracts from August 2007 through the 2011-2012 school year. The record contains no evidence that the applicant was ever placed in a condition of involuntary servitude. The applicant submitted her initial school-year employment contract between her and [REDACTED], dated October 29, 2007. The contract states 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 “pursuant to the FY 2008 state salary schedule . . . based on [the applicant’s] level of certification and years of acceptable verified experience.” The applicant did not submit a complete copy of her contract or the salary schedule. The contract shows that when she began her employment with [REDACTED] in 2007, the applicant had an estimated nine years of experience and that she was credited with an additional year of experience upon each successive employment agreement. An accompanying letter from the [REDACTED] Human Resources Department indicated that the applicant’s “minimum salary is \$33,475.” The applicant’s contract shows that she willingly entered into an employment agreement with [REDACTED] and agreed to be paid for her work accordingly. The record lacks any evidence that the [REDACTED] actually subjected or intended to subject the applicant to involuntary servitude.

Second, the record does not show that [REDACTED] intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In her first affidavit, the applicant stated that she borrowed over \$9,000.00 from an entity in the Philippines to pay the overseas recruiter for her various fees relating to her visa packet and housing in the United States. She subsequently borrowed \$2,300 from her brother-in-law to pay for her husband and children to join her in the United States, and then had to pay double rent on her arranged apartment to house her family. She also asserts that she twice borrowed \$1,500 from her father-in-law to cover fees relating to her extension of H-1B status. In her second affidavit, the applicant stated, “[k]nowing that I was paying a huge debt, I did not have the money to go anywhere, so I remained faithful to the School District, believing their promises that they would process my papers in the end.” She provided a bank statement showing that she had approximately \$4,000.00 in a U.S. bank account, and was carrying a balance of over \$2,000 on a credit card. The bank statement and credit card statement indicate that the applicant is in good standing and do not reflect arrearages. The applicant also provided a letter showing that the home of an unidentified couple in the Philippines named [REDACTED] was in foreclosure. Although the applicant’s name is handwritten on the letter, it is not clear that the foreclosure letter was intended for her or that she owns any portion of the property in question. On appeal, the applicant submits a schedule showing the breakdown of the fees that she paid to the overseas recruiter. The relevant evidence shows that the applicant incurred personal loans and living expenses shortly before and during her employment with [REDACTED], but the record does not indicate that the applicant was ever indebted to [REDACTED] or that [REDACTED] forced her into indebtedness.

Third, the record does not support the applicant’s claim that [REDACTED] engaged in coercion by abusing and threatening to abuse immigration law “by improperly using the H-1B visa system to force [the applicant] to take on a huge amount of debt.” In her first affidavit, the applicant stated that she twice borrowed \$1,500.00 from her father-in-law to pay the [REDACTED] attorney. She submitted an affidavit from her sister, [REDACTED], who asserted that the applicant “owes amounting of \$1,500.00 to [REDACTED],” but does not identify Mr. [REDACTED] or explain why the applicant owes him money. On appeal, the applicant again asserts that [REDACTED] attorney required her to pay the costs for

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her H-1B visa and also suggests that [REDACTED] did not compensate her for days when teachers were furloughed, acts which violated Department of Labor regulations regarding the H-1B program. Media reports show that all [REDACTED] teachers were furloughed for three days in 2009 and five days in 2010. The record does not demonstrate, however, that these actions forced the applicant to take on a huge amount of debt. To the extent that the applicant took on over \$9,000.00 in initial debt before entering the United States, it appears to have been based on the arrangements of the overseas recruiter rather than [REDACTED]

Fourth, the record does not support the applicant's claim that [REDACTED] secured her services through fraudulent promises of lawful permanent residency. In her affidavits, the applicant recounted that [REDACTED] promised to sponsor her for a "green card" at the time of her initial contract and held three or four meetings with her and other H-1B teachers regarding the "green card" process. The applicant recalled [REDACTED] attorney as stating that student gains must be evident and that their principals would have to recommend them for sponsorship as permanent employees. The applicant recounted suffering financial, emotional, and physical hardship during her challenging work, but explained that she persevered in order to support and secure a better future for herself and her family. Although the applicant indicated that [REDACTED] attorney told her in 2010 that if she wanted to obtain lawful permanent residency, she would have to pay for her H-1B extension, the November 29 and December 7, 2010 electronic mail messages from the attorney to the applicant only refers to "H-1B Renewal Information" and does not mention permanent residency.

The record does not show that [REDACTED] engaged in fraud or coercion regarding the permanent residency process. In the applicant's case, her own assertions and evidence regarding [REDACTED] actions are contradictory. In response to the RFE, the applicant claimed [REDACTED] did not inform her that they halted their sponsorship of the H-1B teachers for permanent residency and that she saw first saw the information in an [REDACTED] 2012 news article published by the [REDACTED]. She asserted that [REDACTED] deliberately withheld this information until late in the school year, making it difficult for her to seek employment elsewhere. On appeal, the applicant asserts that [REDACTED] "dangled the prospect of a green card before [the applicant] to secure her labor, knowing that such a possibility would coerce her to continue working for the District," and at page five of her appeal brief, she contends that the [REDACTED] promise to sponsor her for permanent residence is the reason that she is still working for them and "incapable of finding other work in the United States." However, in her initial statement, the applicant had explained that as early as February of 2012, the principal of her school informed the applicant that she would not be recommended for permanent employment. The applicant explained that she left her employment in the [REDACTED] at the end of the 2011-2012 academic school year and moved to Washington State, where she currently is employed as a substitute teacher. The applicant's brother-in-law provided an affidavit confirming that the applicant has been living with him in [REDACTED] Washington since July of 2012. Accordingly, she knew well before October of 2012 that the principal of her own school would not recommend her for permanent employment, and in fact had been living and working in another state since the summer of 2012. The applicant's contradictory assertions regarding the time and nature of the allegedly coercive treatment by [REDACTED] and its effect on her life diminish her claims of being a trafficking victim.

More generally, the remaining relevant evidence shows that [REDACTED] initially intended to submit immigrant petitions for authorization to employ some H-1B nonimmigrant teachers on a permanent basis, but was ultimately unable to do so because unanticipated numbers of U.S. teachers applied for the positions. As a consequence, [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 [REDACTED] 2011 meeting of the [REDACTED] Georgia Board of Public Education and an [REDACTED] 2011 article from the [REDACTED] show that the Board passed a measure to spend \$186,600 to sponsor permanent residency for certain 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."

Accordingly, despite its initial efforts, [REDACTED] was ultimately unable to secure the labor certification prerequisite to petitions for permanent residency for some of its foreign teachers. The petitioner provided electronic mail correspondence dated in the Spring of 2012 between [REDACTED] counsel and an attorney representing the H-1B teachers as well as an October 22, 2012 newspaper article. These documents confirm the ultimately 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 services of its foreign teachers, but that it initially appropriated funds and began the process to secure permanent residency for several other teachers, never guaranteed success, and was ultimately unable to complete the process. Regardless, the applicant already confirmed in her initial affidavit that because her principal determined that the applicant's performance was unsatisfactory, as of February of 2012 the applicant knew she was not going to be a candidate for permanent employment.

Finally, the record does not support the applicant's claim that [REDACTED] trafficked the applicant through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. The applicant claims [REDACTED] retained the applicant's Form I-797 approval notice of her H-1B extension petitions, but the record shows that the applicant provided copies of her passport, and all three of her Form I-797 approval notices. These include the initial Form I-797 approval notice and two Form I-797 approvals of [REDACTED] extension petitions and the applicant's corresponding Form I-94s showing that her H-1B nonimmigrant status was extended from July 1, 2008 to June 30, 2013. The applicant does not indicate that she ever asked [REDACTED] for these forms or sought other employment until she learned that [REDACTED] did not intend to make her a permanent offer of employment in the spring of 2012. The record thus does not show that [REDACTED] obtained the applicant's services through fraud, force, or coercion involving physical restraint or other restriction of her movement.

In summary, the record documents the applicant's employment with [REDACTED], but does not establish that [REDACTED] ever subjected her to a severe form of trafficking in persons. The record indicates that due to the uncertainty of whether her contract would be renewed each year and whether [REDACTED] would sponsor her for permanent residency as well as the challenges of her job, the applicant was

under considerable financial pressure to support her family and experienced stress, anxiety, and elevated blood pressure. However, the relevant evidence does not show that [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 the fees associated with her initial H-1B petition and the extension of her H-1B nonimmigrant status, the record contains no evidence that the applicant paid any fee associated with the permanent residency process, was ever indebted to [REDACTED], or that [REDACTED] forced or coerced her to go into debt. The relevant evidence documents some of the applicant's expenses relating to her medical treatment as well as the medical and educational treatment of her son, but none of her accounts are in arrears. Finally, the record lacks any evidence that the applicant was ever subjected to involuntary servitude or peonage or that [REDACTED] ever intended to subject her to such conditions. To the contrary, [REDACTED] petitioned for the applicant as an H-1B nonimmigrant worker on three occasions and employed her as a teacher for five academic years pursuant to yearly contracts. 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 to U.S. Immigration and Customs Enforcement (ICE) on her behalf 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 letters evidence the applicant's attempts to notify these agencies of the claimed trafficking, but the record fails to establish any severe form of human trafficking 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.

Extreme Hardship Involving Unusual and Severe Harm Upon Removal

As an additional matter, the record also fails to demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon removal.² In her affidavits, the applicant claimed she would suffer extreme hardship if forced to return to the Philippines because her family has settled into the United States, and her son has been diagnosed with autism and attention deficit hyperactivity disorder and would not receive adequate medical care or education in the Philippines. She asserted that it would be difficult for her and her husband to find work in the Philippines and to work off their current debt. In her October 16, 2013 affidavit, the applicant also asserted that she feared “retaliation from my traffickers in my own country... [because] I do not know how they will react if I try to pursue my case against them from the Philippines.” The applicant suggested that if she were forced to leave the United States she would lose access to U.S. courts and agencies that could help her 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). 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, health care, and the detriment to her children’s education and medical treatment 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 a U.S. Department of Labor form on which the applicant’s attorney claimed that [REDACTED] violated provisions of the H-1B program, but there is no evidence that the Department of Labor 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 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.

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 Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003).

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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.