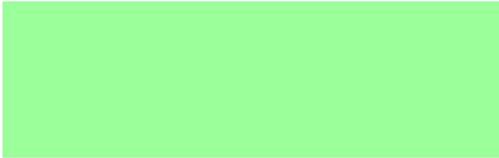


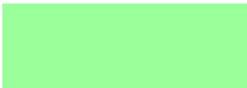


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 19 2015** Office: VERMONT SERVICE CENTER

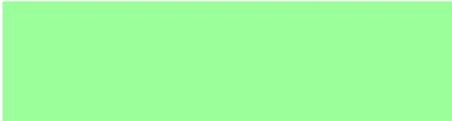
FILE: 

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:

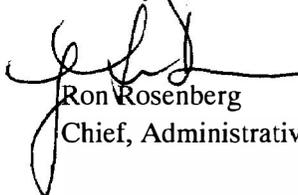


INSTRUCTIONS:

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,



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 26, 2007 as an H-1B nonimmigrant petitioned for by the [REDACTED] Georgia School District [REDACTED]. The applicant entered successive, school-year employment contracts as a teacher with [REDACTED]. She signed her first contract on November 8, 2007 and her last contract on May 1, 2012. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on May 23, 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 and October 9, 2013 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and its recruiters in the Philippines.

In March 2006, the applicant was residing with her husband and daughter in Saudi Arabia when she heard through a friend about employment opportunities for teachers in the United States. She contacted the [REDACTED] a recruiting agency in the Philippines, and learned about a seminar for teachers seeking positions overseas. In June 2006, the applicant submitted her resume and paid \$85 to attend a seminar. The applicant was interviewed in March 2007 by three representatives of [REDACTED]. The applicant passed the interview and was offered employment with [REDACTED]. The applicant understood that [REDACTED] would sponsor her for six years on an H-1B visa and then U.S. citizenship. [REDACTED] informed the applicant that she must pay \$8,750 in processing fees prior to departing for the United States. The applicant borrowed \$9,000 from her brother-in-law who resides in California to pay the fees.

Before the applicant departed for the United States she left her 12-year-old daughter in the Philippines. Her husband remained employed in Saudi Arabia. The applicant arrived in the United States on August 26, 2007 and she was greeted by an [REDACTED] employee and a member of the Filipino American community. She was taken to the [REDACTED] Apartment building where she stayed in one apartment with 10 other Filipino teachers for one week. After one week the applicant moved into her own apartment with three other housemates. She and her three roommates split the \$890 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 Algebra I and Geometry classes. When the applicant began teaching she found the students to be disrespectful. After two months the applicant was transferred to a new school where she taught a Math 1 class. She found that she was teaching "problem students." The applicant started to feel nervous about teaching her class and she cried over the humiliating experiences she had. The applicant was also worried about her daughter who was frequently sick in the Philippines.

The applicant's initial period of authorized stay in H-1B status was only until June 2008 and [REDACTED] told her she would have to pay \$1,500 for her status to be extended. She paid the fee and her H-1B extension was valid for two years. In December 2008 she paid \$1,125 for her daughter's H-4 visa. In January 2011 she had to pay an additional \$1,520 for another extension of her H-1B status and her daughter's H-4 status.

The applicant recounted emotional, physical, psychological and financial hardships during her employment with [REDACTED]. The applicant stated that she is taking medication for hypertension and a thyroid disorder. The applicant cannot return to the Philippines because she has no savings and she has not repaid her brother-in-law. Her daughter has frequent fevers, stomachaches and was twice hospitalized. The applicant could not pay the medical bills on time. On one occasion, the applicant felt that she was in danger when riding the bus to school. When she asked her fellow teachers to drive her to school she was told that she had to ride the bus because the Board of Education created a special bus schedule for international teachers.

The applicant stated that 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.

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 claims that “[s]he 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 November 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 Georgia Board of Education based on the applicant’s certification level and years of experience as noted on the contract. [REDACTED], a recruiting company based in the United States, and [REDACTED] certified that the applicant had 16 years of experience. Copies of the applicant’s federal income tax returns show that she earned \$15,926 in September through December 2007; \$47,776 in 2011; and \$47,557 in 2012.² The contracts show that when she began her employment with [REDACTED] in 2007, the applicant had 16 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

² The applicant did not provide her tax returns for 2008, 2009 or 2010.

successive employment agreements with [REDACTED] and was paid for her work accordingly. The applicant's medical bills show that she received health insurance for herself and her daughter. 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 \$8,750, but that she and her husband decided that it was best for their family's future for her to accept the offer. The applicant explained that she paid all of the fees with a \$9,000 loan from her husband's brother who resides in California. The applicant recounted that she decided to stop paying her brother-in-law the outstanding balance on his personal loan after her daughter arrived in the United States. However, the applicant was able to repay the majority of her brother-in-law's loan in an eight-month period of her employment in the United States and there is no evidence that she remains indebted to him. In a notarized letter from the applicant's brother-in-law, he states that between September 2007 and April 2008 the applicant repaid him \$8,000. He acknowledges that the applicant has not repaid him in full, but states that he understands her situation. He does not indicate that he expects continued repayment of his loan. He states that he has since sponsored the applicant's daughter's student visa, co-signed for the purchase of the applicant's car and paid for the applicant's airline tickets.

The applicant stated that after her arrival in the United States, she also paid the costs for her and her family's subsequent visa petitions and she recounted enduring financial pressures related to her and her daughter's medical and other living expenses during her employment with [REDACTED]. The record shows that the applicant obtained a vehicle loan for the purchase of a car in June 2008. The applicant submitted several of her medical bills and vehicle loan statements, none of which show that she is in arrears on any of her payments.

The preponderance of the evidence shows that [REDACTED] recruiters advised the applicant of all the costs associated with her recruitment, visa petition and application, travel to and initial housing in the United States. The applicant voluntarily secured a personal loan from her brother-in-law to pay her costs and the record shows that she was able to repay the majority of the loan within the first eight months of her employment in the United States. After the applicant's arrival in the United States, she purchased a car with a vehicle loan and she has since received additional financial support from her brother-in-law. The record does not show that the applicant is in arrears on any of her payments or that [REDACTED] induced her to obtain those loans. 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 petitioner 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 her 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 the applicant by violating Department of Labor regulations regarding the H-1B program. Receipts and a [REDACTED] account statement show that the applicant paid the costs for her initial and subsequent H-1B visa petitions.³ 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. 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 and petitions through personal funds and loans, which she repaid while employed with [REDACTED]. 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 initial affidavit, the applicant recounted that at the time of her job offer in the Philippines, a [REDACTED] representative stated that the Board of Education would sponsor the teachers for permanent residency and U.S. citizenship. However, 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. An [REDACTED] pamphlet 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.

³ The applicant also asserts on appeal that she was not paid for the days [REDACTED] furloughed her, but she failed to specify the dates that she was furloughed. She references in her exhibit list a media report dated [REDACTED] 2009 entitled "[REDACTED]". However, she failed to provide her earnings statements or tax returns for 2008, 2009 and 2010.

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 [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 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 “International Teachers” 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 also 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, but the record contains a copy of the applicant’s passport and all the Form I-797 approval notices of [REDACTED] H-1B petitions for the applicant dated July 30, 2007, July 1, 2008 and July 1, 2010, showing that she was granted continuous H-1B nonimmigrant status for six years since her entry on August 26, 2007 through June 30, 2013. Even if the applicant obtained the notices after retaining present counsel, she did not indicate that she ever asked for copies. 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 the applicant to seek alternative employment or other legal counsel to assist in her visa processing. However, the applicant was the beneficiary of [REDACTED] three 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 serious 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 uncertainty of whether her employment contract and H-1B status would be renewed, the challenges of her job and her and her daughter's medical expenses, the applicant was under considerable financial pressure to support herself and her family and she 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 three times and employed her as a teacher from 2007 to 2013 pursuant to yearly contracts. 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 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 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

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NON-PRECEDENT DECISION

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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.

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(i)(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.