



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 24 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).

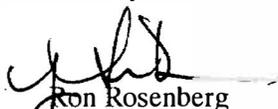
ON BEHALF OF APPLICANT:
[REDACTED]

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. 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 September 22, 2006 as an H-1B nonimmigrant petitioned for by [REDACTED]. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on July 12, 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 June 27, 2013 and January 6, 2014 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and its recruiters in the Philippines.

In August 2004, the applicant, a teacher, learned about [REDACTED], an agency that was recruiting in the Philippines for U.S. schools. She went to an orientation seminar and a qualifying interview with [REDACTED]. The applicant passed the interview and was asked to pay fees related to an evaluation of her transcripts and the [REDACTED] teaching certification examination. After she passed the examination she was scheduled for an interview with the Human Resource Department of [REDACTED]. On November 17, 2004, the applicant was interviewed and given a letter of intent for employment with [REDACTED] in the 2006 to 2007 school year.

In order to complete her credentials for employment, the applicant took six weeks of courses in reading and special education at [REDACTED]. The applicant started to feel anxiety because she knew she had to expend her savings on the processing fees for employment in the United States. She felt that she had to continue with the process because she had already paid a considerable amount.

On July 29, 2006, the applicant paid fees for the [REDACTED] Music test. She took the test and was awarded a Maryland Advanced Professional Certificate in Pre-K to 6 Music. On August 2, 2006, the applicant paid for a "start-up allowance," which she was informed included the payment of an apartment, furniture rental, food and transportation. She also paid fees for her visa interview, pre-departure orientation seminar, placement and consultation, overseas support and service, in-service training and mentorship, airfare, H-1B filing and related fees and an immigration attorney. In September 2006, the applicant and her husband withdrew all of their savings and closed their bank account.

The applicant took a mandatory stress management seminar and then she was grouped with other teachers according to apartment assignments. She and the other teachers were instructed not to bring their families to the United States for a period of six months otherwise they would be "blacklisted." The applicant received her H-1B visa and it was held until she arrived at the airport. On September 22, 2006, the applicant flew with 100 other teachers to the United States.

After the applicant and the other teachers arrived in the United States, they were met by [REDACTED] personnel and bused to an apartment building. The teachers were reminded not to bring family members to the apartments for six months. The applicant was told to give [REDACTED] her social security number and she witnessed that her roommate was "blacklisted" for her failure to provide this information. The applicant later learned that [REDACTED] received commission for new apartment tenants.

On July 30, 2007, the applicant purchased a house in anticipation of the arrival of her husband and two children. The applicant's two children and husband arrived in the United States in August 2007. Her husband returned to the Philippines because he was not authorized for employment in the United States. In April 2008, the applicant's father-in-law was diagnosed with cancer and the applicant had to financially support her in-laws. The applicant had to short-sale her home because of her growing expenses. Her father-in-law passed away on February 9, 2009. On May 25, 2009, the applicant's father passed away and she had to help her family with his expenses.

The applicant was promised to have her "green card" processed with [REDACTED] after having over two years of employment with school system. The applicant submitted her paperwork in 2008, but learned that it was lost one year later. In the summer of 2010 her documentation was refiled and she received an approval of her labor certification in September 2010. In March 2011, [REDACTED] attorney informed the H-1B teachers that they would not be rehired if they were not teaching in a critical area, which included Special Education, Math, Science and ESL. In May 2011, [REDACTED] Chief Human Resource Officer sent out a notice that [REDACTED] rescinded its decision to only rehire teachers on the critical area list. The applicant felt hope and relief because she believed that she would receive her "green card" and her husband would be able to join her in the United States.

The applicant had her Form I-140 (Immigrant Petition for Alien Worker) expedited in April 2011 after hearing of a possible debarment of [REDACTED] from hiring foreign nationals. Her Form I-140 petition was approved shortly thereafter. On April 4, 2011, the applicant received a notice via certified mail from the Department of Labor about [REDACTED] violation of laws regarding the filing of petitions for foreign teachers. The notice informed the applicant that [REDACTED] received a two-year debarment from 2011 to 2013 for hiring foreign nationals. The applicant could not receive a renewal of her H-1B status, which expired during this period in September 2012.

The applicant explained that since the termination of her employment with [REDACTED] she has attempted to apply for positions in other school systems, but was unsuccessful. The applicant exhausted her savings in the Philippines to come to the United States and she no longer has savings from her employment with [REDACTED] now that she is unemployed. The applicant and her children are residing with her friend and in exchange the applicant provides childcare and music lessons. The

applicant receives food from a food pantry and her children receive free meals at school. She is concerned that if she returns to the Philippines her children will not be able to adjust to the school system and culture. The applicant is also worried that because of her age she will not be able to find a teaching position in the Philippines. The applicant indicated that she also has family ties in the United States because her siblings, sister-in-law and mother-in-law reside here.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed that she was the victim of labor trafficking because [REDACTED] and its recruiter, [REDACTED] 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, was employed in an agreed upon position and accepted the renewal of her employment and H-1B status. 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 [REDACTED] 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 she "was the victim of involuntary servitude and peonage" by [REDACTED] and [REDACTED] which "recruited [her] through fraudulent misrepresentation and false statements." 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 it did so through fraud or coercion for the purpose of subjecting the applicant to involuntary servitude and 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 from September 2006 to September 2012. The record lacks evidence that [REDACTED] or [REDACTED] ever subjected the applicant to any "condition of servitude," the underlying requisite to involuntary servitude and peonage.

The applicant submitted a copy of her employment contract with [REDACTED] and a March 15, 2006 letter [REDACTED] sent to the Vermont Service Center for the processing of her initial H-1B visa petition, which requested approval for three years at a minimum salary of \$36,129.00 per year. Copies of the applicant's federal income tax returns for her last three years of employment with [REDACTED] show that she earned far greater than this amount. She earned \$69,127 in 2010; \$72,543 in 2011; and \$56,446 in 2012. The record contains her Wage and Tax Statements (Form W-2s), which show that she earned \$79,760.13 in 2007; \$74,349.56 in 2008; and \$73,080.73 in 2009. The applicant's employment contract, tax returns and wage and tax statements show that she entered into agreements with [REDACTED] for her continued employment and was paid for her work accordingly. An earnings and deductions statement in the record from August 2012 shows that she received medical and dental benefits. The applicant stated in her affidavit that she received tenured after two years of employment with [REDACTED] and the school system filed an immigrant petition on her behalf. There is no indication that she did not receive the same benefits as other [REDACTED] employees. The record lacks any evidence that [REDACTED] or [REDACTED] actually or intended to subject the applicant to a condition of servitude.

The record also does not show that [REDACTED] or [REDACTED] actually or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. The applicant provided a list of fees from [REDACTED] that totaled \$11,633. She explained in her affidavit that she decided to pay the fees and travel to the United States because the economy is "very shaky" in the Philippines. She stated that she paid the fees with her and her husband's personal funds. The applicant further recounted that she paid [REDACTED] for all of her initial housing costs shortly before her arrival in the United States and that she purchased her own home in June 2007 in anticipation of her family's arrival to the United States. She stated that she had to short sale her home two years later because of the rise in taxes and her father-in-law's medical expenses. She did not indicate that [REDACTED] or [REDACTED] induced her to take any loans. The applicant briefly stated in her second affidavit that she has a "massive amount of debt," but she did not further discuss or document her claimed debt.

The record shows that on April 4, 2011, the Administrator of the Wage and Hour Division of the U.S. Department of Labor (DOL) determined that [REDACTED] committed the following violations of the Immigration and Nationality Act: willful failure to pay wages as required, failure to pay wages as required and failure to maintain documentation as required. All violations were related to workers in the [REDACTED] who had been granted H-1B nonimmigrant status.² A joint motion to approve settlement

² [REDACTED] was ordered to pay a civil money penalty of \$1,740,000 and back wages in the amount of \$4,222,146.35 to 1,044 H-1B nonimmigrant workers. In addition, the Administrator proposed that [REDACTED] be debarred for a period of two years during which employment related visa petitions filed under section 204 or 214(c) of the Immigration and Nationality Act would not be approved.

between the Administrator and the Board of Education of [REDACTED] clarified that the Administrator found that the Board of Education committed willful wage violations by requiring teachers to pay certain fees related to the filings of their H-1B visa petitions, requiring teachers to pay other fees and expenses associated with the filing of their H-1B visa petitions and by failing to pay two teachers the full amount of wages they were required to be paid. The applicant's name is listed in the determination as one of the H-1B workers who was impacted [REDACTED] violations and the school system was ordered to pay her restitution in the amount of \$5,700. The record shows that [REDACTED] violated provisions of the Immigration and Nationality Act and the DOL regulations³ by requiring the applicant to pay the fees for her H-1B visa petitions, but the relevant evidence does not show that [REDACTED] forced the applicant into indebtedness to cover those costs.

The preponderance of the evidence shows that [REDACTED] advised the applicant of the costs associated with her recruitment, visa petition and application, travel to and initial housing in the United States. The applicant voluntarily withdrew her personal savings from her bank account to pay her costs. After the applicant's arrival in the United States, she purchased a home and then sold the home two years later due to family medical expenses. The record does not show that the applicant is currently in debt or that [REDACTED] or [REDACTED] induced her to take any loans. Although [REDACTED] violated provisions of the Immigration and Nationality Act and the DOL regulations by requiring the applicant to pay the fees for her H-1B visa petitions, there is no evidence that [REDACTED] forced the applicant into indebtedness to cover those costs. Consequently, the record does not demonstrate that [REDACTED] or [REDACTED] 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: involuntary servitude and 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 [REDACTED] recruited her "through fraudulent misrepresentation and false statements." Fraud is commonly defined as, "[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." See BLACK'S LAW DICTIONARY (B.A. Garner, ed.) (9th ed. 1999). The applicant further claims that Arrowhead engaged in actions that restricted her freedom. 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 [REDACTED] recruited the applicant through fraudulent misrepresentation and false statements by requiring that she pay almost \$12,000 in fees for

³ See 20 C.F.R. § 655.731(c)(9)(iii)(C) (employer not authorized to deduct H-1B visa petition and attorney's fees or related costs from the employee's wages).

employment with [REDACTED]. As discussed, the Administrator of the Wage and Hour Division of DOL determined that [REDACTED] committed willful wage violations by requiring teachers to pay certain fees related to the filings of their H-1B visa petitions. [REDACTED] was ordered to pay the applicant restitution in the amount of \$5,700.⁴ The relevant evidence shows that [REDACTED] engaged in wage violations, but it does not demonstrate that these violations resulted in recruitment of the applicant through the use of fraud. The record instead shows that the applicant was recruited for a teaching position in the United States, entered into a voluntary employment agreement with [REDACTED] was employed in an agreed upon position, received a salary higher than the prevailing wage, accepted the renewal of her employment and H-1B status and was the beneficiary of an immigrant visa petition filed by [REDACTED].

Finally, the record does not support the applicant's claim that [REDACTED] trafficked the applicant through coercion involving physical restraint by restricting her movement. The applicant claims that [REDACTED] retained her passport after she received her visa until she arrived at the airport for travel to the United States and once she arrived in the United States she was required to reside at a designated apartment for six months. However, the applicant submitted copies of her passport reflecting that after her initial entry into the United States on H-1B status she traveled to the Philippines and then Honduras. The record also contains copies of the applicant's H-1B visa petition approval notices showing that she was granted continuous H-1B nonimmigrant status for six years since her entry on September 2006 through September 2012. In her affidavits, the applicant failed to indicate the span of her residence at the apartment building designated by [REDACTED]. She stated that she was refunded the \$2,000 she paid in the Philippines for her living allowance and in July 2007 she purchased a home. Her children subsequently moved to the United States to reside with her while her husband decided to remain in the Philippines. The record shows that the applicant had possession of her identity and immigration documents and she purchased her own home within one year of her arrival in the United States. The record thus does not show that [REDACTED] or [REDACTED] secured the applicant's services by fraud 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 Arrowhead ever subjected the applicant to a severe form of trafficking in persons. The record establishes that [REDACTED] violated certain provisions of the Immigration and Nationality Act and the DOL regulations regarding the H-1B program, but there is no evidence that the school system 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 visa three times, employed her as a teacher from 2006 to 2012 and petitioned for her immigrant visa. The relevant evidence does not establish that [REDACTED] or [REDACTED] obtained the applicant's services through force, fraud or coercion for the purpose of subjecting her to involuntary servitude, peonage, debt bondage, or slavery.

⁴ In the September 20, 2011 decision and order approving a settlement agreement between the Administrator of the Wage and Hour Division and the Board of Education of [REDACTED] the DOL Administrative Law Judge explained that costs incurred for services provided by [REDACTED] that are unrelated to the cost of obtaining permission to work in the United States do not violate the DOL regulations and therefore are not recoverable.

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 a copy of a letter sent on her behalf to U.S. Immigration and Customs Enforcement (ICE) requesting deferred action. This document evidences the applicant's attempt to notify ICE of her claims, but the record fails to establish that any severe form of human trafficking occurred 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.

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)-(III) of the Act.

ORDER: The appeal is dismissed.