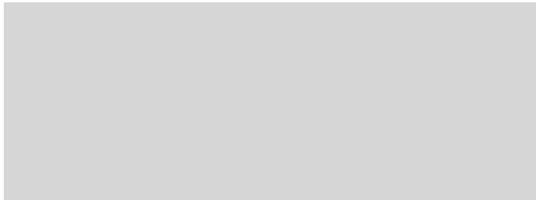




U.S. Citizenship
and Immigration
Services

(b)(6)



MAY 18 2015

DATE:

FILE #:

APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application for failure to establish that the applicant was a victim of a severe form of trafficking in persons, was physically present in the United States on account of such trafficking, had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking, and would face extreme hardship involving unusual and severe harm upon removal.

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 she or she:

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

(II) is physically present in the United States . . . on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime . . . ; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal

The term “severe forms of trafficking in persons” is defined, in pertinent part, as:

the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹

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).

(b)(6)

Page 3

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) *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 the Philippines who first entered the United States in 2007 as an H-2B nonimmigrant to be employed as a housekeeper to work first at the [REDACTED], Arizona, and then for numerous other employers that [REDACTED] subsequently secured for her, including [REDACTED] on [REDACTED], Michigan, [REDACTED], South Dakota, [REDACTED] South Dakota, and [REDACTED] in [REDACTED] Louisiana. The applicant alleged that her employers did not provide her the agreed upon hours of work, and she further asserted that [REDACTED] forced her to work for less than 40 hours per week with no status. She submitted a conditional offer for temporary employment dated August 9, 2007, from the Human Resources Director of [REDACTED] indicating that she would be paid \$8.50 per hour. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on March 10, 2014. 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 February 21, 2014 and July 29, 2014 affidavits, the applicant provided the following account of her employment with and claimed trafficking by [REDACTED] and her recruiters in the Philippines.

The applicant initially recalled that she obtained a certificate of training as a housekeeper so that she could obtain a job overseas. According to the applicant, her training certificate came with a list of agencies that could help obtain employment, including [REDACTED]. The applicant applied for a housekeeping job in the United States through [REDACTED]. In her initial statement, the applicant explained that [REDACTED] advised her that she was qualified for a position and would work at least 40 hours per week. In her second statement, the applicant elaborated that she was also promised overtime, discounted housing, free transportation to and from work, free meals at work and at home, and three years of employment with automatic visa renewals. The applicant paid for her initial nonimmigrant visa application fee in the amount of PhP 5,000.00. [REDACTED] also notified her that that she would be required to pay an additional placement fee. The applicant provided them with a down payment of

\$500.00 and then took out a loan from [REDACTED] in the amount of PhP 120,000.00, which she agreed to pay off in six months.²

When she arrived in the United States, the applicant stated that she was placed in a two-bedroom, two-bathroom apartment with four other females, and that they were only provided sheets. She indicated that “[f]rom what we were told, the employer should have covered the cost of rent,” but instead the rent was deducted from her payroll such that her bi-weekly salary did not exceed \$200.00. She claimed that she was not provided free transportation to and from work, and in fact had to pay her own moving expenses as her employer moved her from state to state when her job assignments changed. Moreover, she indicated that she was asked to pay a \$300.00 “insurance” fee and a visa extension fee of \$500.00 each time she needed to have her nonimmigrant status extended.

After [REDACTED] advised her that her visa could not be renewed again, the applicant stated that she was transferred to [REDACTED] and forced to pay her way to Louisiana with the promise of more work at a [REDACTED] franchise in [REDACTED]. However, she asserted that [REDACTED] ultimately placed her as a housekeeper in a [REDACTED]. Finally, after [REDACTED] failed to provide her with full-time work or secure her an extension of her nonimmigrant status, the applicant attested that she left Louisiana and moved first to New Jersey and then to New York to find employment. She recounted that she has never been able to fully repay her debt and now suffers from hypertension. In response to the RFE, the applicant reiterated her initial claims, adding that because she never signed a contract with [REDACTED], all their promises were oral. She advised that once she was in the United States, she signed an employment contract in a car ride from the airport to [REDACTED] but did not understand what she was signing. She provided an unsigned, at-will employment contract from [REDACTED] and asserted that they never provided her with a signed copy.

The applicant recounted 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 described suffering from anxiety during and after her period of employment at [REDACTED] and worrying about how she would support her spouse, child, and family members in the Philippines 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 appeared to have entered into a voluntary employment agreement to work in the United States and appeared to have been compensated.

To establish that she was a victim of a severe form of trafficking by [REDACTED], the applicant must show that this entity recruited, harbored, transported, provided or obtained her for her labor or services

² In her July 29, 2014 statement and on appeal, she indicated that that she paid [REDACTED] approximately \$2,500.00 in recruitment fees.

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 applicant has not established by a preponderance of the evidence that [REDACTED] trafficked her through employment through fraud or coercion for the purpose of subjecting her 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] indirectly coerced her because she “was fraudulently induced to take on substantial debt in order to come to the United States with promises of a better life and the prospect of at least three years of steady, full-time employment.” She claims that her recruiter and employers used a variety of coercive tactics to control her and force her to provide service to them, including forcing her to pay petition extension fees, restriction of movement, and isolation. The record does not support the applicant’s claims to have been trafficked for four principal reasons.

First, although the applicant stated that she was trafficked by [REDACTED], her evidence does not establish that she was employed by [REDACTED]. According to the applicant, she was employed and compensated by several entities as a housekeeper. For example, she asserted that she signed “Offer Letters” from [REDACTED] and [REDACTED]. Although the applicant did not submit a copy of her signed Offer Letters, in her statements she indicated that she willingly entered into an employment agreement with these entities and agreed to be paid for her work. She attested that although she was not assigned the promised hours of work, she was paid. She provided pay stubs in response to the RFE to show she was paid by [REDACTED], an unspecified entity in South Dakota, and then [REDACTED] which she indicated is [REDACTED]. Accordingly, the applicant’s evidence reflects that she had multiple, independent employers rather than [REDACTED] and that these employers paid her. Moreover, the applicant explained that she ultimately left her last employer, [REDACTED] and moved first to New Jersey and then New York to work as a nanny. Although the applicant indicated that [REDACTED] of [REDACTED] advised her that she was precluded from obtaining additional part-time work, this was also a condition of her H-2B nonimmigrant status. See 8 C.F.R. § 214.1(e) (a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized). Consequently, the record shows that the applicant moved between multiple, unrelated employers and lacks evidence that any of her employers actually subjected or intended to subject her to involuntary servitude.

Second, the record does not show that the applicant’s employers intended to subject her to peonage through involuntary servitude based on real or alleged indebtedness. In her February 21, 2014

affidavit, the applicant explained that she took a six-month loan of PhP 120,000 from [REDACTED] plus interest, and that her sister-in-law was the guarantor. The applicant provided evidence of the final amount of the loan as being PhP 162,000 from “[REDACTED]”. Although the applicant stated that she was subsequently in arrears, her husband obtained an extension. On appeal, the applicant provided a “Certification of Full Payment” establishing that she paid off her personal loan as of March 30, 2009. The applicant also explained that she was requested to pay the filing fees relating to her second petition seeking extension of H-2B status. Accordingly, the relevant evidence shows that the applicant incurred private and personal loans shortly before her employment in the United States, but the record does not indicate that the applicant was ever indebted to her U.S. employers or that they forced her into indebtedness.

Third, the record does not support the applicant’s claim that [REDACTED] or any of the applicant’s employers engaged in coercion because she was “fraudulently induced to take on substantial debt in order come to the United States with promises of a better life and the prospect of at least three years of steady, full-time employment.” Although the applicant asserted that she would face hardship in the Philippines and faced debtor’s prison because of her debt, she voluntarily agreed to pay the recruiter fees before she came to the United States, she obtained a loan to do so prior to her entry, and the letter from [REDACTED] shows that she paid off her debt in full. The actions outlined by the applicant do not establish that she was forced to take on a huge amount of debt.

Finally, the record does not support the applicant’s claim that [REDACTED] trafficked her through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. Her evidence shows that she worked for several independent hotels and employers within the United States after her arrival. In response to the RFE, she explained that when [REDACTED] failed to secure an extension of her status, she left for New Jersey and New York, and provided tax returns showing that she is self-employed. Although she admitted that her immigration status precluded her from obtaining part-time employment, the applicant has not established that [REDACTED] or her actual employers prevented her from seeking other employment, and in fact she has done so. The record thus does not show that [REDACTED] or any of the applicant’s employers obtained her services through fraud, force, or coercion involving physical restraint or other restriction of her movement.

In summary, the applicant has not established that [REDACTED] or her actual employers ever subjected her to a severe form of trafficking in persons. Although the record suggests that the applicant was under considerable financial pressure to support her family and experienced stress and anxiety, the relevant evidence does not show that [REDACTED] or the applicant’s actual employers 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 a loan she claims to have taken out with respect to her initial H-2B petition, the record contains no evidence that the applicant was ever indebted to [REDACTED] or her employers, or that [REDACTED] or her employers forced or coerced her to go into debt. Finally, the record lacks any evidence that the applicant was ever subjected to involuntary servitude or peonage or that [REDACTED] or her employers ever intended to subject her to such conditions. To the contrary, the record shows that the applicant’s employers petitioned for the applicant as an H-2B nonimmigrant worker, that although they did not always provide her with full-time employment, they employed her at an agreed-upon hourly salary, and that she voluntarily left her last employer in Louisiana to pursue other employment in New Jersey and New

York. 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 electronic mails and a letter sent to Department of Justice (DOJ) on her behalf requesting law enforcement certification for the applicant as victim of trafficking. These communications evidence the applicant's attempts to notify DOJ of the claimed trafficking, but the record does not reflect a response from DOJ. As the record otherwise fails to establish any severe form of human trafficking in connection with the applicant's employment with [REDACTED] 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

The record also fails to demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon removal. In her affidavits, the applicant claimed she would suffer extreme hardship if forced to return to the Philippines because she could not pay her debts or support her family and because she believes her alleged traffickers in the Philippines would retaliate against her and her family. She asserted that it would be difficult for her to find work in the Philippines because she would be considered old and a failure for not having been successful in the United States. She expressed fear of debtor's prison upon return the Philippines because her debts have continued to increase while in the United States. In her July 29, 2014 statement, the applicant suggested that she is hoping a criminal case will be brought against her alleged traffickers and that she wants to remain in the United States to pursue a case.

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

(b)(6)

Page 8

human trafficking and she submitted no evidence to support her claims that difficulty in obtaining employment 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 the correspondence that the applicant's attorney sent to DOJ, but there is no evidence that DOJ 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 in the United States. However, the relevant evidence does not establish that she would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at 8 C.F.R. § 214.11(i)(1) and as required by section 101(a)(15)(T)(i)(IV) of the Act.

Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The applicant bears the burden of proof to establish her eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.