



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-A-A-

DATE: SEPT. 17, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks nonimmigrant classification as a victim of a severe form of trafficking in persons. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(T)(i) , 8 U.S.C. § 1101(a)(15)(T)(i). The Director, Vermont Service Center, denied the application because the Applicant did not establish that she 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 acts of severe forms of trafficking in persons. The matter is now before us on appeal. The appeal will be dismissed.

I. 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, subject to section 214(o) of the Act, 8 U.S.C. § 1184(o):

- (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) [w]ould suffer extreme hardship involving unusual and severe harm upon removal

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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) *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.

II. PERTINENT FACTS

The Applicant is a citizen of the Philippines who first entered the United States on September 30, 2006, as an H-2B nonimmigrant to be employed as a housekeeper at the [REDACTED] in [REDACTED] Florida, a position that [REDACTED] secured. The Applicant alleged that her employer, [REDACTED] did not always provide her with the agreed upon hours of work. She submitted a conditional offer for temporary employment dated August 1, 2006, from the Human Resources Recruiter of the [REDACTED] indicating that the Applicant would be paid \$7.00 per hour. The Applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on February 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, filing a brief. In her January 24, 2014, and August 21, 2014 affidavits, the Applicant provided the following account of her employment with and claimed trafficking by, collectively, [REDACTED] and [REDACTED]

The Applicant initially recalled that she read about [REDACTED] in a newspaper advertisement, and contacted the agency. The Applicant explained that [REDACTED]

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(9) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

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advised her that she was qualified for a housekeeping position and promised that she would work at least 40 hours per week. In response to the RFE, she elaborated that [REDACTED] also promised her overtime, “very discounted housing,” free visa renewals, free transportation to and from work, and frequent free meals at work and home. The Applicant ultimately applied for a housekeeping job at [REDACTED]. The Applicant indicated that [REDACTED] asked her to pay an additional placement fee of \$2,250.00, and that she had to pay additional costs for her initial nonimmigrant visa application fee, and visa. The Applicant indicated that she borrowed \$2,500.00 from her sister, who had borrowed the money from her own employer with the promise to repay the loan in a year. The applicant indicated in response to the RFE that she ultimately paid [REDACTED] over \$3,000.00 in fees.

When she arrived in the United States, the Applicant stated that she was picked up by [REDACTED] which she described as the U.S. counterpart to [REDACTED] and placed in a three-bedroom apartment with five other females. The Applicant indicated that \$420.00 was deducted from her paycheck for the monthly rent. In response to the RFE, she asserted that she was not permitted to look for new housing and that the housing appeared to be overpriced. The Applicant advised that although she was paid \$7.00 per hour, she was not always provided 40 hours of work per week, and did not have free meals or free transportation, and frequently had to walk an hour to work. The Applicant indicated that [REDACTED] of [REDACTED] advised her that she was precluded from obtaining additional part-time work while working for [REDACTED] however, 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). When the Applicant’s initial visa expired, she indicated that she chose not to seek the assistance of [REDACTED], but instead paid \$1,500.00 to another agency that failed to help her obtain an extension of her status. After this, the Applicant indicated that she paid a third entity name [REDACTED] \$600.00, but they “failed to file the necessary papers.” In her second statement, the applicant indicated that [REDACTED] abandoned her when the owner realized that the Applicant could not pay the visa extension fee. The Applicant also indicated that she was introduced to an individual named [REDACTED] who charged her \$750.00 to have her visa renewed in order to work for another entity, but that he ultimately failed even to respond to her phone calls. Based on these contradictory claims, it is unclear whether the Applicant paid \$2,100.00 or \$750.00 in visa extension fees. The Applicant asserted that she ultimately moved to various states seeking new employment opportunities and is currently working as a home health aide.

The Applicant recounted that she experienced financial difficulties while working for [REDACTED] because her paycheck was frequently less than \$500.00 after deductions. The Applicant asserted that she suffered from stress because of her lack of pay, and lost weight after she left [REDACTED] because she had to take on a heavy workload. The Applicant explained that she persevered in order to provide for her children in the Philippines. The Applicant added that because she never signed a contract with [REDACTED] all their promises were oral. She advised that she felt that she had “no choice” but to accept the housing that was provided, and that “they” threatened the apartment occupants with deportation if they tried to live anywhere else.

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On appeal, the Applicant again asserts that 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.

III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant has claimed she was a victim of labor trafficking by [REDACTED] and [REDACTED] which she alleged 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 had not established that she was a victim of a severe form of trafficking in persons.

To establish that she was a victim of a severe form of trafficking by [REDACTED], and [REDACTED] the Applicant must show that these entities 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(9); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). On appeal, the Applicant asserts that [REDACTED] and [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] or [REDACTED] trafficked her through employment 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] and [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 recruiters and employer 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.

According to the Applicant, she was employed and compensated by [REDACTED] as a housekeeper. The Applicant submitted a copy of her 2006 conditional offer of employment from [REDACTED] in which it proffered an hourly salary of \$7.00 for approximately ten months of employment. The Applicant

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appears to have signed the offer of employment on September 18, 2006, before her entry into the United States on September 30, 2007, and in her statements she indicated that she willingly entered into an employment agreement with [REDACTED] and agreed to be paid for her work. She attested that although she was not assigned the promised hours of work, she was paid \$7.00 per hour. The Applicant provided two pay stubs from June and July of 2007, which reflected that she was paid an hourly rate of \$7.50 for 39 and 40 hours during two pay periods, and \$11.25 for 3 hours of overtime for the pay period ending on July 15, 2007. The second earnings statement also shows the Applicant had year to date earnings of \$8,364.41, accumulated overtime earnings of \$291.61, and overtime earnings of \$60.00. Based on the year to date earnings as of July 15, 2007, these appear to have been weekly earnings statements; therefore, the earnings statements also appear to reflect that [REDACTED] paid the Applicant for 40 hours of work each week of 2007 in addition to occasional overtime, which contradicts her assertion that [REDACTED] failed to provide her with full-time employment and overtime. Consequently, the record shows that the Applicant worked for [REDACTED] and that [REDACTED] paid her for full-time employment, and lacks evidence that [REDACTED], or [REDACTED] actually subjected or intended to subject the Applicant to involuntary servitude. The record does not otherwise support the Applicant's claim to have been trafficked by these entities for four principal reasons.

First, although the Applicant stated that she was trafficked by [REDACTED] and [REDACTED] the Applicant explained that she decided to seek other employment. Consequently, the record shows that the Applicant voluntarily chose to move to a new employer and lacks evidence that [REDACTED] or [REDACTED] actually subjected or intended to subject her to involuntary servitude.

Second, the record does not show that [REDACTED], [REDACTED] or [REDACTED] intended to subject the Applicant to peonage through involuntary servitude based on real or alleged indebtedness. In her initial affidavit, the Applicant explained that she borrowed money from her sister to pay the fee that [REDACTED] requested. The Applicant provided evidence in the form of her personal sworn statement asserting that she took a loan of from her sister, but indicated in response to the RFE that she has repaid the loan. The Applicant also explained that she was requested to pay the filing fees relating to additional petitions seeking extension of her H-2B status; however, her statements regarding the amount of the loans and how many entities she paid the fees to are inconsistent. Regardless, the Applicant did not claim that she was in debt over the fees. 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 [REDACTED] or [REDACTED] or that these entities forced her into indebtedness.

Third, the record does not support the Applicant's claim that [REDACTED], or [REDACTED] 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." The Applicant provided a copy of her signed offer of conditional employment, in which she agreed to an hourly salary of \$7.00 per week for a ten-month period. She appears to have signed the contract prior to her entry into the United States. As discussed, the

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Applicant's earnings statement also shows that in 2007, [REDACTED] paid her higher than the initial proffered hourly rate for 40 hours of work each week plus overtime. Accordingly, the Applicant has not shown that [REDACTED] failed to keep the terms of its initial offer of employment as it appears in the signed offer letter. Although the Applicant asserted that she would face hardship in the Philippines because of her age and related lack of desirability as an employee, she voluntarily agreed to pay the recruiter fees to [REDACTED] before she came to the United States and she obtained private loans to do so prior to her entry. The actions outlined by the Applicant do not establish that she was forced to take on a huge amount of debt by [REDACTED] or [REDACTED]

Finally, the record does not support the Applicant's claim that [REDACTED] or [REDACTED] trafficked her through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. The Applicant's evidence shows that she worked for [REDACTED] within the United States after her arrival, and not [REDACTED] or [REDACTED]. In response to the RFE, the Applicant explained that when other recruiting agents in the United States failed to secure a second extension of her status, she left for other employment and indicated that she is now employed as a home health aide in New York. Although her immigration status precluded her from obtaining part-time employment while working for [REDACTED], the Applicant has not established that [REDACTED] or [REDACTED] prevented her from seeking other employment, and in fact she has done so. 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 Applicant has not established that [REDACTED], or [REDACTED] 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 [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 loans 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 [REDACTED] or that these entities 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 [REDACTED] ever intended to subject her to such conditions. To the contrary, the record shows that [REDACTED] petitioned for the Applicant as an H-2B nonimmigrant worker, that it employed her for at least 40 hours per week, and in 2007 paid her higher than the initial proffered hourly rate in addition to a higher overtime rate. Moreover, the Applicant has pursued other employment in 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.

B. Physical Presence in the United States on Account of Trafficking

The Applicant has not 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

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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.

C. Assistance to Law Enforcement Investigation or Prosecution of Trafficking

The Applicant also has 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 does not 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.

D. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

A de novo review of the record shows that the Applicant has not established that she 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. In response to the RFE, 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 because of the "protection of the justice system."

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 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

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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.

IV. 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(i)(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.

ORDER: The appeal is dismissed.

Cite as *Matter of S-A-A-*, ID# 14185(AAO) Sept. 17, 2015)