



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

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

MATTER OF E-G-M-

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

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

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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.* [U.S. Citizenship and Immigration Services (USCIS)] 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. . . . [USCIS] 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 April 6, 2009, as an H-2B nonimmigrant to be employed by [REDACTED] as a housekeeper for hotels in Florida. The Applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on October 28, 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, filing a brief. In her September 20, 2013 and December 12, 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 visited a recruiting agency in the Philippines named [REDACTED] to seek foreign employment, and applied for employment as a housekeeper in the United States. During her orientation with [REDACTED] the Applicant was promised that she would work 40 hours per week plus overtime, would be paid \$7.38 per hour, have one month of free housing and free transportation to and from work, have 15 days of sick leave and 15 days of vacation, and would have a renewable visa every six months. The Applicant then took out a loan from her brother in the amount of PHP 150,000 and used her own savings to pay [REDACTED] a placement fee of \$4,000.00 and other expenses related to the visa process. The Applicant provided a July 24, 2013 affidavit from her brother indicating that the Applicant repaid the loan in 2011.

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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When she arrived in the United States, the Applicant stated that she and five other women were placed in an unfurnished two-bedroom apartment. The Applicant and three other women shared a single bedroom with two mattresses on the floor, and no bedding or blankets. Although the Applicant advised that [REDACTED] had promised her one month of free rent, she stated that she was charged the first month of rent, and was subsequently charged various rental fees depending on the number of hours she worked. She indicated that additional tenants were placed in the apartment and living conditions became crowded and dirty.

The Applicant explained that she signed an employment agreement with [REDACTED] with [REDACTED] as the petitioner, and [REDACTED] as her manager. After starting her job, the Applicant was sometimes given only two to three days of work per week. The Applicant indicated that she had to eat food left-over from resort guests, and that although she was provided free transportation to and from work, it was never on her schedule and was so crowded that female workers had to sit on each other's laps. After two weeks, she was transferred to a fast food restaurant named the [REDACTED] where she initially worked 5 to 8 hours per day. When additional workers arrived from the Philippines and were placed in the [REDACTED] the Applicant's hours were further reduced. According to the Applicant, she was told to find a part-time job on her own, but once she did, her hours at the [REDACTED] were further reduced. She indicated that her salary was not enough for her own expenses and she had no money to send to her family, and instead her family had to send her \$400.00 to pay for her apartment and food. Moreover, the Applicant indicated that there was not enough food for her to eat. The Applicant indicated that she left Florida on July 4, 2009, for employment in New York. The Applicant advised that [REDACTED] the owner of [REDACTED] eventually contacted her to tell her he had obtained additional employment for her and that she could renew her visa. The Applicant traveled back to Florida, and then back to New York when she found that she was again underemployed in Florida. She indicated that [REDACTED] asked her to pay \$700.00 for her visa renewal fee, but that she could only provide \$400.00. Despite paying the fee to [REDACTED] the Applicant asserted that her visa was not extended.

As a result of her situation, the Applicant asserted that she now suffers from constant stress and worry about police asking about her immigration status. She stated that she has had trouble paying her brother back for the loan, although her brother provided an affidavit in which he asserted that the Applicant had repaid the loan in 2011. The Applicant provided copies of a seasonal contract for [REDACTED] which she signed on February 5, 2009, and in which she agreed to an hourly salary of \$7.38 for a 40-hour work week for a nine-month period. She also provided a copy of a model contract that she and [REDACTED] signed in which she was promised free transportation to and from work, but the contract was marked "not applicable" to indicate that the Applicant would not be provided free food or housing. The Applicant provided various pay stubs from April to November of 2009 showing that although she was not always provided full-time employment, she was paid a rate of \$7.36 per hour. 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 confirmed that she signed an employment contract with [REDACTED] prior to beginning her employment, but suggested that she did not understand what she was signing. The Applicant suggested that she would face hardship in the Philippines because she would be unemployable due to age discrimination and because of the perception that she was not successful in

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the United States. The Applicant indicated that she has not been able to repay her debt to her brother, and feared that her alleged traffickers would retaliate against her if she were to return to the Philippines by placing her on a blacklist.

On appeal, the Applicant again asserts she suffered financial, physical, and emotional hardship related to her employment, immigration status, and corresponding worries regarding her and her family's future and wellbeing. She reasserts that she has substantial debt and claims that she was asked to pay her visa extension fees. She also describes worrying about how she would repay her debt to her brother. The Applicant includes recent tax records from 2013 showing that she is employed as a housekeeper in New York.

III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant claimed she was a victim of labor trafficking by [REDACTED] and [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 did not establish 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(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). On appeal, the Applicant asserts that both entities 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] and [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 recruiter and employer used a variety of coercive tactics to control her and force her to provide services to them, including forcing her to pay

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extension petition fees, restriction of movement, and isolation. The record does not support the Applicant's claims to have been trafficked for three principal reasons.

First, although the Applicant stated that she was trafficked by [REDACTED] and [REDACTED], the Applicant twice left [REDACTED], each time moving to New York where she is still working. Consequently, the record shows that the Applicant has moved between multiple, unrelated employers and lacks evidence that [REDACTED] or [REDACTED] 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. According to the Applicant, her brother provided her with part of the money to pay the recruiter fee to [REDACTED] and the Applicant paid the rest. Although the Applicant asserted in response to the RFE and on appeal that she still has not fully repaid the debt to her brother, there is no evidence of this in the record. In fact, the Applicant's brother provided an affidavit in which he asserted that the Applicant repaid the loan in 2011. Moreover, although the Applicant claims on appeal that she was also forced to pay for visa renewals, she also indicated that she only paid what she could in the amount of \$400,000, nor does the record show that the Applicant was forced to take on additional debt to do so. 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 reflect that the Applicant was ever indebted to [REDACTED] or [REDACTED] or that they forced her into indebtedness.

Third, the record does not support the Applicant's claim that [REDACTED] and [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." First, the loan she took from her brother was for a partial payment to [REDACTED], a foreign recruiter in the Philippines, and not to her employer, [REDACTED]. Although the Applicant asserted that she would face hardship in the Philippines, she voluntarily agreed to pay the recruiter fees before she came to the United States, she obtained a private loan to do so prior to her entry, and the letter from her brother shows that she paid off her loan 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] or [REDACTED] trafficked her through force or coercion by restricting her movement and preventing her from seeking employment elsewhere. The Applicant explained that when [REDACTED] failed to provide her with sufficient work hours, she left its employ for New York, and then returned when the entity contacted her and suggested that it could provide her with more work. When she found herself in Florida without sufficient employment, she again left [REDACTED] for employment in New York. The record thus does not show that [REDACTED] or [REDACTED] 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 [REDACTED] ever subjected her to a severe form of trafficking in persons. Although the record suggests that the Applicant was

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under considerable financial pressure 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 a money she borrowed from her brother as a placement fee to [REDACTED] 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. Moreover, her brother advised that the Applicant repaid the money in 2011. 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 the Applicant's employer petitioned for her as an H-2B nonimmigrant worker and that although it did not always provide her with full-time employment, the 2009 pay stubs the Applicant provided show that [REDACTED] employed her at an hourly rate within two cents of the one listed in her signed employment contract. Moreover, the Applicant voluntarily left [REDACTED] to pursue other employment in New York returned to [REDACTED] in Florida when it promised additional employment, and then ultimately left again to seek 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 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 her or her good-faith, but unsuccessful attempts to obtain an LEA endorsement. 8 C.F.R. § 214.11(h).

The Applicant submitted copies of a letter and electronic mails 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 beyond acknowledgement of receipt of the information. 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.

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D. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Our *de novo* review of the record also does not lead to a conclusion 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 had not paid her debts and because she believes her alleged traffickers in the Philippines would retaliate against her. She asserted that it would be difficult to find work in the Philippines because she would be considered old and feared that her potential employers there would think poorly of her for not having been successful in the United States. 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 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 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 ██████████ 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.

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(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.

ORDER: The appeal is dismissed.

Cite as *Matter of E-G-M-*, ID# 13979 (AAO) Sept. 17, 2015)