



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

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

MATTER OF S-R-

DATE: AUG. 17, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant seeks “T-1” nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director, Vermont Service Center, denied the application. The Director concluded that the Applicant was not physically present in the United States on account of a severe form of trafficking.

The matter is now before us on appeal. On appeal, the Applicant submits a brief. The Applicant claims that she is physically present in the United States on account of a severe form of trafficking because her reentry was directly related to her past victimization and the result of a new incident of a severe form of trafficking in persons.

Upon *de novo* review, we will dismiss the appeal.

#### 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:

(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:

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.<sup>1</sup>

To establish physical presence in the United States on account of trafficking, the regulation at 8 C.F.R. § 214.11(g) specifies:

*Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States . . . on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. Specifically, the physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.

. . . .

(3) *Departure from the United States.* An alien who has voluntarily left . . . the United States at any time after the act of a severe form of trafficking in persons shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien’s reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

The burden of proof is on an applicant demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010); 8 C.F.R. § 214.11(l)(2). An applicant may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. 8 C.F.R. § 214.11(l)(1).

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<sup>1</sup> 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).

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## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Applicant is a citizen of the Philippines who last entered the United States as an H-2B nonimmigrant. In her statements, the Applicant indicated and the evidence in the record shows that the owner of [REDACTED] recruited, harbored, and obtained the Applicant through fraud and coercion for the purpose of subjecting her to involuntary servitude. After the Applicant arrived in the United States, [REDACTED] placed the Applicant as a special education teacher at [REDACTED] a school that the Applicant asserts was for older students who were physically large and intimidating. The Applicant stated that she was harassed, stolen from, and physically assaulted while she worked at [REDACTED]. In December 2008, the Applicant left [REDACTED] after a student threatened to kill her.

The Applicant then independently found employment with [REDACTED] and began working there in January 2009. [REDACTED] “pressured” the Applicant to use her services to transfer the visa to her new employer, and the Applicant agreed. The Applicant asserts that [REDACTED] befriended her new employer at [REDACTED] and convinced [REDACTED] to lower her salary before the Applicant accepted the position.

On March 20, 2010, the Applicant returned to the Philippines because she missed her family and reentered the United States on April 28, 2010. The Applicant claimed that before she left, [REDACTED] agreed to sponsor her for lawful permanent residence so that she could bring her family from the Philippines, but only on the condition that the Applicant work for [REDACTED] “forever.” The Applicant agreed and reported that she returned to the United States because her legal rights were still being investigated by the U.S. Department of Labor and because she had promised to work for her new employer forever. She indicated that after she brought her family into the United States, [REDACTED] became more demanding and asked her to stay late and work some weekends. At one point, after [REDACTED] told the employees she would be ending the business because she couldn’t afford to keep it, the Applicant offered to give up a day of pay per week to help out. Eventually the Applicant enrolled in a master’s program, and quit working for [REDACTED] in July 2014.

The Applicant subsequently filed the Form I-914, Application for T Nonimmigrant Status (T application), with U.S. Citizenship and Immigration Services (USCIS). The Director concluded that the Applicant did not establish her physical presence in the United States on account of a severe form of trafficking.<sup>2</sup> Specifically, the Director found that the Applicant had departed from the

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<sup>2</sup> Although the Director incorrectly included one sentence in which she indicated that the record did not establish that the Applicant qualified under the “complied with reasonable requests of law enforcement” provision, the remainder of the decision made clear that the Director found that the Applicant had not established the physical presence requirement. Similarly, while the Director stated that “the record *does* demonstrate that your experiences following your return to the United States equate to a trafficking scheme,” (emphasis added), read in the context of the remainder of the decision it is clear that the Director meant to state that the record “does not demonstrate that your experiences following your return to the United States equate to a trafficking scheme.” As neither error resulted in prejudice to the Applicant, we will not address these errors further.

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United States and that her reentry was not the result of a continuation of the original trafficking scheme or a new incident of a severe form of trafficking in persons. We concur.

### III. ANALYSIS

The Applicant has not established that she is physically present in the United States on account of trafficking. Because the Applicant voluntarily left the United States after the act of trafficking in persons, she must show that her reentry into the United States was the result of her continued victimization or a new incident of a severe form of trafficking in persons. *See* 8 C.F.R. § 214.11(g)(3). The record shows that the Applicant left the position [REDACTED] had placed her in, at [REDACTED] in December 2008. The record does not indicate that any trafficking by [REDACTED] continued beyond that point, as the Applicant was no longer subject to involuntary servitude or peonage. Rather, the relevant evidence shows that the trafficking of the Applicant ceased, at the latest, after she left the employment arranged by [REDACTED] at [REDACTED] school. Although the Applicant asserts that [REDACTED] pressured her into using her immigration attorney's services and developed a friendship with her new employer, the Applicant has not established that after she left [REDACTED] and found employment independently, she was in a condition of servitude induced by [REDACTED] by means of any scheme, plan, or pattern intended to cause her to believe that, if she did not enter into or continue in such condition, she would suffer the abuse or threatened abuse of legal process. *See* 8 C.F.R. § 214.11(a). Accordingly, the record indicates that the Applicant was trafficked into the United States but that after she left [REDACTED] she was not subjected to any continuing trafficking by [REDACTED].

On appeal, the Applicant further contends that she also became the victim of a new incident of a severe form of trafficking in persons because she was subjected to involuntary servitude and peonage by [REDACTED]. However, the Applicant has not established that [REDACTED] or anyone else from [REDACTED] recruited, harbored, transported, provided, or obtained her 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. In fact, after she escaped from her traffickers, the Applicant independently found her position with [REDACTED] which indicates that [REDACTED] did not recruit, harbor, transport, provide, or obtain the Applicant for forced labor.

Although the Applicant asserts that [REDACTED] took advantage of her and she "felt" she was being "trafficked again," the Applicant hasn't established that anyone at [REDACTED] used force, fraud, or coercion for the purpose of subjecting her 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"). "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 . . . the abuse or threatened abuse of legal process." *Id.* Notwithstanding the Applicant's assertion that [REDACTED] lowered her promised salary before she started working and that she only offered to sponsor the Applicant if she would agree to work for [REDACTED] forever, the Applicant did not describe any threats or actions by [REDACTED] that show that

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she intended to cause the Applicant to believe she would suffer abuse or threatened abuse of the legal process. As such, the Applicant has not shown that her interactions with [REDACTED] or any other subsequent events in her life in the United States constitute a new incident of a severe form of trafficking in persons.

On appeal, the Applicant contends that her reentry into the United States was for reasons directly related to her original victimization because she wanted to pursue her legal rights through the DOL investigation and because her new employer would only sponsor her for a visa to remain in the United States if the Applicant agreed to work for her forever. However, after an applicant has departed, the applicant must not simply show that her presence in the United States is directly related to trafficking, but rather that her reentry was the result of her continued victimization or a new incident of a severe form of trafficking in persons. As explained above, because the Applicant voluntarily departed the United States after she escaped her trafficking situation and has not shown that her reentry was the result of a continuation or a new incident of a severe form of trafficking in person, the Applicant has not demonstrated 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.

#### IV. CONCLUSION

In visa petition proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-R-*, ID# 17558 (AAO Aug. 17, 2016)