

Administrative Appeals Office

April 06, 2017

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

*BIA & AAU Non-Precedent Decisions*

**Reporter**

2017 Immig. Rptr. LEXIS 11700 \*

## **MATTER OF M-F-C-**

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### **Core Terms**

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redact, traffic, recruiter, peonage, involuntary servitude, severe form, nonimmigrant, visa, reconsider, coercion, reopen, classification, coerce

**Opinion By:** [\*1] Decision transmittal issued by: Perry Rhew, Chief, Administrative Appeals Office

### **Opinion**

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**AAO Designation: D12**

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

The Applicant, a native and citizen of the Philippines, 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 11 **84(o)**. The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the record did not establish, as required, that the Applicant was a victim of severe forms of trafficking in persons, and consequently, also did not demonstrate her statutory eligibility criteria for T nonimmigrant classification at section 101(a)(15)(T)(i)(II) and (III) of the Act. We dismissed the Applicant's appeal and denied a subsequent motion to reopen and reconsider. The Applicant [\*2] has now filed a second motion to reopen and reconsider.

On motion, the Applicant submits a brief and additional evidence, asserting that we relied on erroneous factual findings in concluding that she had not established that she was a victim of severe forms of trafficking in persons. In addition, she submits a supplemental statement in support of her new assertion that after escaping her alleged initial traffickers, she again became a victim of trafficking by another individual in the United States.

Upon review, we will deny the motion.

## I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. [8 C.F.R. § 103.5\(a\)\(2\)-\(3\)](#). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

An applicant seeking to demonstrate that he or she was a victim of a severe form of trafficking must show: (1) that he or she was recruited, harbored, transported, provided, or obtained for labor or services, (2) through the use of force, fraud, or coercion, (3) for the purpose of subjection [\*3] to involuntary servitude, peonage, debt bondage or slavery. See [22 U.S.C. § 7102\(9\)](#) (defining the term "severe forms of trafficking in persons"); [8 C.F.R. § 214.11\(a\)](#).<sup>1</sup> Thus, an applicant must show both the particular "means" used (force, fraud, or coercion) and that such means was used for a particular "end" - namely for the purpose of subjecting the applicant to involuntary servitude, peonage, or debt.

## II. ANALYSIS

In our prior decision on appeal, we found that the Applicant did not establish that she was a victim of a severe form of trafficking by [redacted] and their recruiter in the Philippines, [redacted] Specifically, we concluded that the Applicant's written statements and other supporting documentation had not established that the claimed traffickers: recruited her through fraudulent promises of full-time employment and automatic renewals of her H-2B visa; engaged in psychological coercion, [\*4] abuse of legal process, physical restraint, or restriction of movement for the purpose of subjecting her to involuntary servitude; or induced her to incur debt or used her real or alleged indebtedness for the purpose of subjecting her to peonage. On the Applicant's subsequent motion to reopen and reconsider, we found that the Applicant had not established her claim of ineffective assistance by her former counsel, and further denied the motion because the Applicant had not satisfied the requirements for a motion to reopen and reconsider.

On her current motion, the Applicant asserts that we erroneously concluded that she did not establish that she was a victim of a severe form of trafficking by [redacted] and [redacted] In addition, she contends for the first time that after escaping her alleged traffickers in the United States, she once again became a victim of trafficking by another trafficker,[redacted]

### A. Claimed Trafficking by [redacted] and [redacted]

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<sup>1</sup>Footnote 1. The Department of Homeland Security issued an interim rule, effective January 18, 2017, amending its regulations at [8 C.F.R. § 214.11](#) for victims of human trafficking who seek [\*16] T nonimmigrant status. See *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), [81 Fed. Reg. 92266, 92308-09](#) (Dec, 19, 2016) . Accordingly, we cite to the pertinent T regulations, as amended by the Interim T Rule, throughout this decision here.

On the instant motion, the Applicant asserts that the findings made in support of the denial of her T application were erroneous and not reflective of the facts. She contends, through counsel, that [\*5] contrary to one such finding, the record showed that she did not agree to pay [redacted] the recruiter fees in the Philippines, but rather, that [redacted] forced her to do so. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, none of the Applicant's multiple statements below, or on her prior appeal and motion before us, ever indicated that [redacted] forced her to take out the loan in order to pay the recruiter fees. Although the Applicant maintains that her prior statements lacked all the relevant details of her trafficking because of the ineffective assistance of her former counsel,<sup>2</sup> she signed those statements affirming the veracity of their content. Moreover, although the Applicant made the same allegations [\*6] of ineffective assistance in her *pro se* statement on her first motion before us and added more detail regarding her trafficking claim, she still did not assert that [redacted] forced her into taking out a loan by withholding her passport. The Applicant now submits a new supplemental statement on motion, but it too is insufficient to support counsel's assertions. In it, the Applicant indicates that [redacted] required her to have the U.S. Embassy send her passport containing the H-2B visa to its office and did not release the passport to her until she had signed loan documents to borrow money for the placement fees. The Applicant's statement does not show that [redacted] coerced her to take out the loan and to continue the recruitment process. Rather, the record indicates that the Applicant agreed to incur debt to pay the fees because she chose to continue with the H-2B recruitment process and needed the passport containing her H-2B visa in order to do so. Accordingly, the Applicant has not shown that [redacted] coerced her to take out the loan and that they did so as a means of recruiting her through force or coercion for the purpose of involuntary servitude or [\*7] peonage with [redacted] and [redacted]

Regarding her claim of involuntary servitude and peonage, the Applicant disputes our reliance on the fact that she was employed at an hourly rate higher than promised per the terms of the job offer from [redacted] and her U.S. H-2B employer, [redacted]. She asserts that despite the higher hourly wage, she received less pay than promised because she did not always receive the full-time or 40 hours of work per week that was promised. However, our prior decision acknowledged that the Applicant did not always receive full-time employment, but noted that the record also showed that during the period of her temporary H-2B employment, she generally worked 38 or 39 hours each week at a higher pay and in the promised housekeeping position.<sup>3</sup> The evidence therefore indicated that the Applicant was generally compensated for her labor in accordance with the temporary job offer she signed. The Applicant recounted the physical hardships of her employment, as [\*8] well as the emotional and financial hardships arising from low wages, the housing and other costs imposed by [redacted] and her outstanding loans. However, these claims do not establish that she was subjected to a condition of servitude, particularly as the record did not show she was subjected to physical restraint or that her freedom of movement was restrained in any manner. To the contrary, the record below showed that she was able to

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<sup>2</sup>Footnote 2. As previously asserted on her first motion, the Applicant states that prior counsel did not effectively represent her, but she acknowledges that she still has not met the requirements for an ineffective assistance of counsel claim under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) *aff'd*, 857 F.2d 10 (1st Cir. 1988). Although she indicates that she intends to submit evidence of compliance with *Lozada* requirements, as of the date of this decision, we have not received such evidence.

<sup>3</sup>Footnote 3. The record contains most of the Applicant's paychecks with [redacted] from between December 2006 through the end of her H-2B employment with them in August 2007.

leave [redacted] decline [redacted] offer to renew her visa, and seek other H-2B employment after she completed her contract with [redacted] Based on these factors, the Applicant did not establish that [redacted] or its recruiters actually subjected or intended to subject the Applicant to a condition of servitude, an underlying requisite to involuntary servitude, as well as peonage. *See 8 C.F.R. § 214.11(a)* (defining "involuntary servitude" and "peonage," as used in section 101(a)(15)(T)(i) of the Act).

The Applicant also maintains that we improperly considered the fact that she paid off the loan she incurred to pay recruitment fees within seven months as evidence that she was not [\*9] trafficked. She asserts that we did not take into consideration the personal sacrifices she made to do so, including not being able to send money to support her family in the Philippines or have enough for her own comfort here. She contends that her early payment of the loan did not render her ineligible for T classification. We do not discount the hardships the Applicant faced in order to pay off her debt in the Philippines. However, our consideration of the Applicant's payment of her loan was one among several factors on which we relied in concluding that the record did not demonstrate that [redacted] or its recruiters used or intended to use the Applicant's real or alleged indebtedness to subject her to peonage. We note that the Applicant also claimed that she sold her home and land in the Philippines to pay off her debt,<sup>4</sup> and that the additional loans she took were only made after she left her employment with [redacted] and [redacted] in the United States. The Applicant did not explain [\*10] how, and the record does not show that, [redacted] or their agents used her debt to subject her to peonage by coercing her into a condition of servitude.

The Applicant also asserts that we did not consider the totality of the circumstances of her recruitment and working conditions demonstrating that she was subjected to peonage through involuntary servitude, including: being forced to pay recruitment fees in violation of H-2B rules; being obligated to reside in overcrowded housing controlled by [redacted] being made to sign a contract for automatic deduction of \$420 month from her wages for housing; not being provided free transportation as promised; not being given the promised full-time employment; and being threatened with deportation and cancellation of her H-2B visa if she changed her housing or worked for another employer. She maintains that [redacted] subjected her to these conditions as a means of controlling her and ensuring that she continued to work for [redacted] In our prior decision, apart from the Applicant's claims she was threatened by [redacted] we did consider all the factors cited by the Applicant on motion, but concluded that they were insufficient [\*11] in demonstrating that: (1) [redacted] or its recruiters recruited her and obtained her for labor services through fraud, force, or coercion; and (2) they had done so for the purpose of involuntary servitude or peonage. In her supplemental statements in support of her motions, the Applicant asserts for the first time that she was threatened with deportation and cancellation of her H-2B nonimmigrant visa when she complained about her housing situation and asked to look for other accommodations and part-time work to offset her financial obligations. In contrast, none of her statements below indicated that [redacted] its recruiters, or its agents had ever threatened her with deportation and cancellation of her nonimmigrant visa. In fact, in a May 2014 statement responding to the Director's request for evidence to demonstrate the Applicant's alleged victimization, including details of any "threats of deportation, removal, or police involvement," the Applicant specifically asserted that she had *never* complained regarding her housing situation. The Applicant offers no explanation for this discrepancy in her statement

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<sup>4</sup>Footnote 4. Although the Applicant proffered a certificate of title for her property in the Philippines, she has not provided evidence of the sale. Further, contrary to her assertions below that she sold her home in order to pay off her loan in the Philippines for the recruitment fees, the Applicant inconsistently stated in her first motion that she borrowed more money to pay off her original loan.

on motion here. Regardless, neither of the Applicant's statements [\*12] on her motions before us provides any probative details about any particular incident in which she claims to have been threatened. Accordingly, the Applicant has not demonstrated that [redacted] used such threats to control and coerce her for the purpose of subjecting her to involuntary servitude and peonage.

### **B. Claimed Trafficking by [redacted]**

The Applicant also asserts for the first time on motion that she was also the victim of a severe form of trafficking by a second individual, [redacted] after she left her H-2B employment with [redacted] and [redacted] in Florida. She contends that her prior counsel referenced [redacted] role in extending her H-2B status in her previous statements, but did not detail the trafficking to which [redacted] had subjected her. The Applicant maintains that [redacted] coerced her into continuing to work for him by unlawfully and deliberately withholding from her the H-2B approval notice that she needed to obtain an extension of her status or seek new H-2B employment. In her supplemental statement on motion, the Applicant provides a brief and general account of her employment with [redacted] She recalls that [\*13] after six weeks of H-2B employment as a pool ambassador in South Carolina, [redacted] took her and the other H-2B workers to Kansas for another job placement that did not materialize. According to her, [redacted] was unable to find another job opportunity for her and eventually stopped returning her calls. She asserts, however, that during that waiting period, [redacted] made it clear that she could not leave his employment and that he would cancel her nonimmigrant visa and report her to immigration authorities if she did so. She states that she received no wages during that period, but she did not indicate the duration of time she was unpaid and how she supported herself. The Applicant also provides no probative details about any specific incident in which [redacted] purportedly threatened her and has not otherwise established that [redacted] deliberately withheld her approval notice to force her into remaining in his employ.

Additionally, the record also does not show that [redacted] physically restrained her, restricted her movement, or prevented her from seeking other employment as she claims. In her statement, the Applicant indicates that during the [\*14] period she waited for [redacted] to provide her with employment, she was residing in Florida and then moved on her own to Illinois while he was in another state looking for job placements. Her February 2014 statement below further indicated that after [redacted] first brought her and other H-2B workers back from South Carolina, some of the others "opted" to go to [redacted] while the Applicant returned to Florida. She indicated that she decided to go to [redacted] because she was unable to find work in Florida and [redacted] did not have any more job placements for her. The Applicant did not assert that [redacted] forbid her from seeking other employment, as she now maintains. Accordingly, the record as a whole does not establish that [redacted] recruited or obtained her labor services through force and coercion for the purpose of subjecting her to involuntary servitude.

### **III. CONCLUSION**

On motion, the Applicant has not overcome the grounds for denial, as she has not established that she was a victim of a severe form of trafficking by [redacted] or its recruiters. She also has not established that she was victimized a second time by [redacted] [\*15] after she left her H-2B employment with [redacted] and [redacted] as she now maintains on motion. As the Applicant has not established that she is a victim of a severe forms of trafficking persons, she necessarily has also not demonstrated that she is physically present in the United States on account of such trafficking and that she had complied with any

reasonable requests for assistance in the investigation or prosecution. Section 101(a)(15)(T)(i)(II) and (III) of the Act (demonstrating victim of severe forms of trafficking in persons as a requisite of each criteria).

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of M-F-C-*, ID# 181142 (AAO Apr. 6, 2017)

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