

2013 Immig. Rptr. LEXIS 8033

Administrative Appeals Office

Date: MAY 15, 2013

FILE: [redacted]--OFFICE: VERMONT SERVICE CENTER

BIA & AAU Non-Precedent Decisions

Reporter

2013 Immig. Rptr. LEXIS 8033 *

IN RE: Applicant: [redacted]

Core Terms

traffic, redact, severe form, extreme hardship, nonimmigrant, alien, physical presence, eligibility, endorsement, coercion, involuntary servitude, secondary evidence, visa

Counsel

[*1]

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

Opinion By: Decision transmittal issued by: Ron Rosenberg, Acting Chief, Administrative Appeals Office

Opinion

AAO Designation: D12

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).

DISCUSSION: The Director of the Vermont Service Center (the director), denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed the appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion to reopen will be granted. The application will remain denied.

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 petition on May 31, 2011 because the applicant failed to establish that she met the qualifying statutory criteria at subsections 101 (a)(15)(T)(i)(I) - (IV) of the Act.

On appeal, the applicant submitted a [*2] Notice of Appeal (Form I-290B), indicating that no brief or other evidence would be submitted. On the Form I-290B, the applicant stated: "I have read and understood the reasons for the denial and I do not wish to dispute any of them in any way." The applicant asserted that she was appealing the director's decision because her removal from the United States to the Philippines would cause her physical and financial harm. The AAO summarily dismissed the appeal pursuant to the regulation at [8 C.F.R. § 103.3\(a\)\(1\)\(v\)](#) because the applicant did not dispute the director's determination regarding her eligibility for T nonimmigrant status.

On motion, the applicant contends that she was a victim of a severe form of trafficking in persons by a man named [redacted] and resubmits evidence of a contract signed between her and [redacted] in October 2008 for employment at the [redacted] in Ft. Lauderdale or West Palm Beach, Florida. The applicant also submits, in part: a criminal indictment filed in the United States District Court, Southern District of Mississippi, on September 8, 2011, charging [redacted] with visa fraud, false statements, [*3] and foreign labor contracting fraud in violations of sections 1546, [1001](#) and [1531 of Title 8 of the U.S. Code](#) (U.S.C); and a copy of a class-action complaint filed in the United States District Court, Southern District of Mississippi, on October 25, 2011, against [redacted] and several companies.

Applicable Law

Section 101(a)(15)(T) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she is:

(i) subject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (M)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines--

(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, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been [*4] 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;

* * *

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

Section 103(8)(B) of the Trafficking Victims Protection Act of 2000 (TVPA), codified at [22 U.S.C. § 7102\(8\)](#), defines the term "severe forms of trafficking in persons," 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.

This definition is incorporated into the regulation at [8 C.F.R. § 214.11\(a\)](#), which also defines, in pertinent part, the following terms: [*5]

Involuntary servitude means 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 or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes "a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion." (*United States v. Kozminski*, 487 U.S. 931, 952(1988)) .

* * *

Reasonable request for assistance means a reasonable request made by a law enforcement officer or prosecutor to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The "reasonableness" of the request depends on the totality [*6] of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.

* * *

Severe forms of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or 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.

* * *

Victim of a severe form of trafficking in persons means an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the TVPA¹ and in this section.

¹ Footnote 1. Victims of Trafficking and Violence Protection Act of 2000, Pub. Law No. 106-386 (Oct. 28, 2000).

The regulation at [8 C.F.R. § 214.11](#) [*7] also provides specific evidentiary guidelines and states, in pertinent part:

(f) *Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons.* [A]n alien must demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement ... by ... submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim[.]

Secondary evidence of victim status; Affidavits... . [Secondary evidence must include an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons; credible evidence of victimization and cooperation, describing what the alien has done to report the crime to an LEA; and a statement indicating whether similar records for the time and place of the crime are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts... . If the applicant does not submit an LEA endorsement, the Service will proceed with the [*8] adjudication based on the secondary evidence and affidavits submitted.

Obtaining an LEA endorsement... . If the applicant has not had contact with an LEA regarding the acts of severe forms of trafficking in persons, the applicant should promptly contact the nearest Service or Federal Bureau of Investigation (FBI) field office or U.S. Attorneys' Office to file a complaint, assist in the investigation or prosecution of acts of severe forms of trafficking in persons, and request an LEA endorsement. If the applicant was recently liberated from the trafficking in persons situation, the applicant should ask the LEA for an endorsement. Alternatively, the applicant may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline at 1-888-428-7581 to file a complaint and be referred to an LEA.

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the [*9] 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.

(2) *Opportunity to depart.* If the alien has escaped the traffickers before law enforcement became involved in the matter, he or she must show that he or she did not have a clear chance to leave the United States in the interim. The Service will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. Information relevant to this determination may include, but is not limited to, circumstances attributable to the trafficking in persons situation, such as trauma, injury, lack of resources, or travel documents that have been seized by the traffickers. This determination may reach both those who entered the United States lawfully and those who entered without being admitted or paroled. [*10] The Service will consider all evidence presented to determine the physical presence requirement, including asking the alien to answer questions on Form I-914, about when he or she escaped from the trafficker,

what activities he or she has undertaken since that time, including the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States.

(i) *Evidence of extreme hardship involving unusual and severe harm upon removal.* To be eligible for T-1 nonimmigrant status ... an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(1) *Standard.* Extreme hardship involving unusual and severe harm is a higher standard than that of extreme hardship as described in § 240.58 of this chapter. A finding of extreme hardship involving unusual and severe harm may not be based upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities. Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should [*11] take into account both traditional extreme hardship factors and those factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to, the following:

- (i) The age and personal circumstances of the applicant;
- (ii) Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
- (iii) The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
- (iv) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
- (v) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
- (vi) The likelihood of re-victimization [*12] and the need, ability, or willingness of foreign authorities to protect the applicant;
- (vii) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and
- (viii) The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.

* * *

The burden of proof is on the petitioner to demonstrate eligibility for T nonimmigrant classification. [8 C.F.R. § 214.11\(1\)\(2\)](#). The AAO conducts appellate review on a de novo basis. [8 C.F.R. § 214.11\(1\)\(1\), \(q\)](#). See also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The applicant is a native and citizen of the Philippines, who filed her Form I-914 on November 4, 2010.² The applicant's claim to eligibility for T nonimmigrant status is based upon the following account of her journey to the United States and the relevant events which occurred after her arrival.

The applicant stated in her October 28, 2010 declaration that when she lived in the Philippines, she was interviewed by a company called [redacted], for a seasonal job at the [redacted] in Boca Raton, Florida [redacted]. According to the applicant, a man named [redacted] worked for the [redacted] human resources department and had authorized [redacted] to perform the [redacted] recruiting services in the Philippines. The applicant stated that she spoke with someone claiming to be [redacted] over the telephone but never met him in person.

The applicant recounted that after her interview she was told that someone would be submitting the appropriate documents for her to receive an H-2B nonimmigrant visa and that she was required to pay placement and recruitment fees of approximately \$5,800. The applicant stated that she was also required to take a housekeeping training course for an additional \$213. According to the applicant, she borrowed [*14] the money for her fees and training course from her family.

The applicant asserted that after she received her H-2B visa, which was endorsed with her employment for the [redacted], she was informed by [redacted] that the [redacted] no longer had any available jobs but that [redacted] had secured her employment at [redacted] in Virginia. The applicant stated that the [redacted] representative assured her that this type of change in employment was normal.

According to the applicant, when she arrived in the United States at the Los Angeles, California airport, individuals hired by [redacted] helped navigate her to Virginia, which included obtaining a social security number for her employment. The applicant stated that she began working at [redacted] but only worked there for six months because her employment authorization had expired. The applicant stated that she paid approximately \$1,200 to a representative of [redacted], who attempted to obtain an extension of the applicant's H-2B nonimmigrant status for employment with a company called [redacted]. The applicant stated that she was not approved for employment with [redacted], and her [*15] \$1,200 fee was not refunded. The applicant further stated that attempted to obtain employment for her with a company called [redacted] for a fee of \$600, which was approved; however, there were no available jobs with that company.

The applicant stated that she searched for a job on her own and was forced to accept any type of position because she needed the money to survive. The applicant stated that she paid an additional \$670 to [redacted] in an attempt to once again obtain employment in valid H-2B nonimmigrant status; however, such employment never materialized. The applicant stated that she was the victim of human trafficking by [redacted] through [redacted]

The Applicant is Not a Victim of a Severe Form of Trafficking In Persons

The evidence in the record fails to demonstrate that the applicant is a victim of a severe form of trafficking in persons. Neither the indictment nor the class-action lawsuit mentions the applicant by name, and she has not demonstrated that she was a member of any class certified by the court. While [redacted] was sentenced, in part, to fifty-one months in prison for conspiracy to commit fraud in foreign labor

²Footnote 2. On appeal, the applicant claims that she submitted a second Form I-914 to U.S. Citizenship and Immigration Services (USCIS); however, such application has not been properly filed and receipted according to the regulations at [8 C.F.R. § 103.2\(a\)\(1\), \(7\)\(i\)](#).

contracting, [*16] making false statements, and visa fraud in August 2012, the applicant has failed to demonstrate that her recruitment for employment at the [redacted] was accomplished for the purpose of subjecting her to involuntary servitude or any other severe form of trafficking in persons. Accordingly, she has failed to satisfy subsection 101 (a)(15)(T)(i)(I) of the Act.

The Applicant is Not Physically Present in the United States on Account of Trafficking

As the applicant has failed to establish that she was the victim of a severe form of trafficking in persons, she cannot demonstrate that she is physically present in the United States on account of such trafficking as section 101 (a)(15)(T)(i)(II) requires. Even if we were to conclude that she was subjected to trafficking, the applicant has not demonstrated that she did not have a clear chance to depart the United States as described at [8 C.F.R. § 214.11\(g\)\(2\)](#). According to the applicant's declaration, she never worked at the [redacted] any other entity associated with [redacted] she claimed only to have worked at [redacted] for approximately six months. The applicant has [*17] provided no probative details about her inability to return to the Philippines, as she never performed any labor or services for her claimed trafficker, [redacted] or any entity associated with him.

The Applicant has Not Reported Herself as a Victim of Trafficking

The applicant has not satisfied subsection 101(a)(15)(T)(i)(III) of the Act by complying with any reasonable requests for assistance by a law enforcement entity in its investigation or prosecution of a human trafficking crime. According to the applicant's statement submitted on appeal, she never attempted to report herself to a law enforcement agency as a trafficking victim. She, therefore, has not satisfied the regulation at [8 C.F.R. § 214.11\(f\)\(3\)](#) regarding secondary evidence of victim status when a law enforcement endorsement is not submitted.

The Applicant has Not Established that She Would Face Extreme Hardship Involving Unusual and Severe Harm Upon Removal to the Philippines

In her declaration submitted below, the applicant stated that she "will definitely suffer extreme hardship" if she were removed from the United States, but provided no [*18] probative details about the hardships she would face, other than stating that she would feel humiliated and like an "utter failure." The applicant has not addressed the standards and factors at [8 C.F.R. § 214.1](#) l(i) that U.S. Citizenship and Immigration Services (USCIS) considers when determining whether an applicant's removal from the United States would result in extreme hardship involving unusual and severe harm. According, the applicant has not satisfied subsection 101(a)(15)(T)(i)(IV) of the Act, which requires an applicant to establish extreme hardship involving unusual and severe harm upon removal from the United States.

Conclusion

As always, in these proceedings the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act; [8 C.F.R. § 214.11\(1\)\(2\)](#). The applicant has still not met her burden of proving her eligibility as a trafficking victim and the prior decision is affirmed.

ORDER: The motion is granted. The May 24, 2012 decision of the AAO is affirmed, as modified in the foregoing decision. The application remains [*19] denied.

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