



U.S. Citizenship
and Immigration
Services

(b)(6)



JUL 14 2015

DATE:

FILE #:

APPLICATION RECEIPT #:

IN RE: Applicant:

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).

ON BEHALF OF APPLICANT:



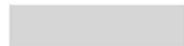
Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

REV 3/2015



DISCUSSION: The Vermont Service Center director (“the director”) denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 application because the applicant did not establish that he 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 such trafficking.

On appeal, the applicant submits a brief.

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:

- (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) the alien would 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 subsection to involuntary servitude, peonage, debt bondage, or slavery.¹

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

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.

Pertinent Facts

The applicant is a citizen of the Philippines who first entered the United States on November 28, 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 his employer did not always provide him the agreed upon hours of work and he sometimes had a weekly paycheck of \$100.00 because of deductions for his rent and other expenses. He submitted a conditional offer for temporary employment dated August 1, 2006, from the Human Resources Manager 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 11, 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. In his March 25, 2014 and July 11, 2014 affidavits, the applicant provided the following account of his employment with and claimed trafficking by [REDACTED], [REDACTED], and his recruiters in the Philippines.

The applicant initially recalled that he learned about [REDACTED] an overseas recruiting agency, from friends. The applicant applied for a housekeeping job in the United States through [REDACTED]. In his initial statement, the applicant explained that [REDACTED] advised him that he was qualified for a housekeeping position and promised that he would work at least 40 hours per week for three years of employment with automatic visa renewals. In his second statement, the applicant elaborated that [REDACTED] also promised overtime, although he had previously indicated that [REDACTED] did not. [REDACTED] also notified the applicant that that he would be required to pay a placement fee of PHP 150,000, which the applicant indicated that he borrowed from his family members.

When he arrived in the United States, the applicant stated that he was picked up at the airport by a representative of [REDACTED] and placed in a three-bedroom apartment with four other men. According to the applicant, the housing was not free and he was charged approximately \$440.00 per month. He asserted that although he was paid \$7.00 per hour, his hours were "cut off." The applicant claimed

that he had to walk an hour to work each day. When his visa was about to expire, the applicant indicated that [REDACTED] advised him that he would have to pay a visa extension fee of \$750.00 if he wanted to have his nonimmigrant status extended. Instead, he went to another employment agency, which defrauded him of his money. The applicant explained that he subsequently moved to Virginia, and did what he “needed to do to survive.”

The applicant recounted that he suffers from Hepatitis B and a hernia, but has not been able to afford a doctor, and suffers mental anguish because he is in the United States without status. He claimed he had not been able to pay the loan he took from his family members. The applicant added that because he never signed a contract with [REDACTED] all their promises were oral. He advised that he signed an employment contract with [REDACTED] but did not understand what he was signing. According to the applicant, he believed he had no choice but to agree to the terms of the housing contract once he was in the United States.

On appeal, the applicant again asserts that he suffered financial, emotional, and physical hardship related to his employment, immigration status, and corresponding worries regarding his and his family’s future and wellbeing. He indicates that he is the sole support for his aging parents and children, and fears debtor’s prison if forced to return to the Philippines.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed he was a victim of labor trafficking by [REDACTED] and [REDACTED] which forced him 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 he was a victim of a severe form of trafficking in persons.

To establish that he 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 him for his 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 [REDACTED] and [REDACTED] subjected him 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 his eligibility. The applicant has not established by a preponderance of the evidence that [REDACTED] or [REDACTED] trafficked him through employment through fraud or coercion for the purpose of subjecting him 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 him because he “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.” He claims that his recruiter and employer used a variety of coercive tactics to control him and force him to provide service to them, including forcing him to pay petition extension fees, restriction of movement, and isolation.

Although the applicant stated that he was trafficked by [REDACTED] his evidence does not establish that he was employed by [REDACTED]. According to the applicant, he was employed and compensated by [REDACTED] as a housekeeper. The applicant submitted a copy of his Offer Letter from [REDACTED] in which it proffered an hourly salary of \$7.00 for approximately ten months of employment. The applicant appears to have signed the offer of employment on August 30, 2006, before his entry into the United States in November of 2006, and in his statements he indicated that he willingly entered into an employment agreement with [REDACTED] and agreed to be paid for his work. Although the applicant asserted that he was not always assigned the promised hours of work, he provided pay stubs with his initial filing materials to show he was paid \$7.50 per hour by [REDACTED] for work weeks that were between 38.78 and 39.50 hours. It is noted that this hourly rate was more than what [REDACTED] initially proffered. Consequently, the record shows that the applicant worked for [REDACTED] and that [REDACTED] paid him, 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 [REDACTED] for four principal reasons.

First, although the applicant stated that he was trafficked by [REDACTED] the applicant explained that he ultimately left [REDACTED] to move to Virginia, where a “relative helped [him] start anew.” Consequently, the record shows that the applicant has moved to another state after his authorized period of employment with [REDACTED] ended and lacks evidence that [REDACTED] actually subjected or intended to subject him to involuntary servitude.

Second, the record does not show that [REDACTED] intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In his affidavits, the applicant explained that he borrowed money from family to pay the fee that [REDACTED] requested. The applicant provided evidence in the form of his personal sworn statement asserting that he took a loan of PHP 120,000 from [REDACTED] and [REDACTED]. The applicant also explained that he was requested to pay the filing fees relating to his petition seeking extension of his H-2B status and paid the fee to a different employment agency, but did not claim that he was in debt over the fee. Accordingly, the relevant evidence shows that the applicant incurred private and personal loans shortly before his employment in the United States, but the record does not indicate that the applicant was ever indebted to [REDACTED] or that it forced him into indebtedness.

Third, the record does not support the applicant’s claim that [REDACTED] or [REDACTED] engaged in coercion because he 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 his signed offer of conditional employment, in which he agreed to an hourly salary of \$7.00 per week for a ten-month period. He appears to have signed the contract prior to his entry into the United States. The applicant also provided several pay

stubs showing that [REDACTED] paid him a higher rate of \$7.50 per hour for work weeks that ranged from approximately 38.25 to 39.50 hours per week; therefore, it does not appear that [REDACTED] failed to keep the terms of its initial offer of employment as it appears in the signed offer letter. Although the applicant asserts on appeal that he would face hardship in the Philippines and possibly debtor's prison for non-payment of the money he borrowed, he voluntarily agreed to pay the recruiter fees to [REDACTED] before he came to the United States and he obtained private loans to do so prior to his entry. The actions outlined by the applicant do not establish that he 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 him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere. As discussed, the applicant's evidence shows that he worked for [REDACTED] within the United States after his arrival, and not [REDACTED]. In response to the RFE, the applicant explained that when another agent in the United States failed to secure an extension of his status, he left for other employment and provided tax returns showing that he is employed as a painter in Virginia. The applicant has not established that [REDACTED] or his actual employer prevented him from seeking other employment once his period of employment with [REDACTED] terminated, and in fact he has done so. The record thus does not show that [REDACTED] or [REDACTED] obtained his services through fraud, force, or coercion involving physical restraint or other restriction of his movement.

In summary, the applicant has not established that [REDACTED] or [REDACTED] ever subjected him to a severe form of trafficking in persons. Although the record suggests that the applicant was under considerable financial pressure to support his 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 him to involuntary servitude, peonage, debt bondage, or slavery. Although the applicant submitted evidence relating to loans he claims to have taken out with respect to his initial H-2B petition, the record contains no evidence that the applicant was ever indebted to [REDACTED] or [REDACTED], or that [REDACTED] or [REDACTED] forced or coerced him 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 him to such conditions. To the contrary, the record shows that [REDACTED] petitioned for the applicant as an H-2B nonimmigrant worker, and that although the applicant asserts he was not always provided with full-time employment, it appears that [REDACTED] employed him close to 40 hours per week and paid him a higher hourly rate than it initially proffered. Moreover, since his employment with [REDACTED] terminated, the applicant has pursued employment in Virginia. Consequently, the applicant has not demonstrated that he was the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.

Physical Presence in the United States on Account of Trafficking

The applicant has not overcome the director's determination that he 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 he consequently cannot show that he 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.

Assistance to Law Enforcement Investigation or Prosecution of Trafficking

The applicant has also not overcome the director's determination that he 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 his 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, other than a return receipt notice indicating that DOJ had opened the message. 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.

Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Based on our de novo review of the record, the applicant also has not demonstrated that he would suffer extreme hardship involving unusual and severe harm upon removal. In his statements, the applicant claimed he would suffer extreme hardship if forced to return to the Philippines because he could not pay his debts or support his family and because he believes his alleged traffickers in the Philippines would retaliate against him and his family. He asserted that it would be difficult for him to find work in the Philippines at his age. The applicant suggested that he is hoping a criminal case will be brought against his alleged traffickers and that he wants to remain in the United States to pursue a case. On appeal, the applicant expressed fear of debtor's prison upon return to the Philippines because he has not fully paid his loan.

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 he was the victim of a severe form of human trafficking and he submitted no evidence to support his claims that difficulty in obtaining employment would cause him extreme hardship involving unusual and severe harm. The applicant has also not shown that he 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 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 he endured while in the United States. However, the relevant evidence does not establish that he 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.

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 his 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.