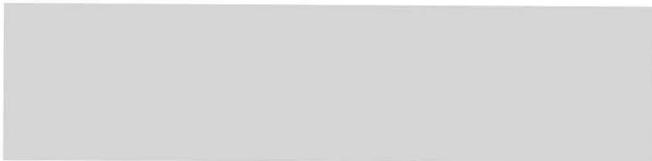




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 22 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



INSTRUCTIONS:

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](http://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

**DISCUSSION:** The Director, Vermont Service Center, (the director) denied the application for T nonimmigrant status and 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 for failure to establish that: the applicant 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 and additional evidence.

*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 subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>1</sup>

The regulation at 8 C.F.R. § 214.11(l) prescribes, in pertinent part, the standard of review and the applicant’s burden of proof in these proceedings:

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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).

- (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 and the Applicant's Claims*

The applicant is a citizen of the Philippines who entered the United States on October 15, 2006 as an H-2B temporary worker petitioned for by the [REDACTED]. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on January 10, 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 subsequently appealed. In his December 8, 2013 and July 3, 2014 affidavits, the applicant provided the following account of his journey to the United States and claimed trafficking by [REDACTED] and [REDACTED].

The applicant recalled that in June 2006 he learned from an advertisement that [REDACTED] a recruiting agency licensed by the [REDACTED] had employment opportunities in the United States for Filipino workers. He stated that he visited the [REDACTED] office and was told that the agency's U.S. based counterpart, [REDACTED] was seeking individuals to work at hotels in Florida. He stated that he applied for the position and a representative of the [REDACTED] interviewed him. The applicant recounted that he passed the interview and [REDACTED] the owner of [REDACTED] informed him orally, but not in a written agreement, that the job offer included: forty hours of work per week plus overtime; a salary of \$7.50 per hour; housing for \$250/month; free meals at work and at home; free transportation; and his 10-month visa would be renewable. The applicant stated that the contract he signed with [REDACTED] was in English and was not translated into his native language.

The applicant recounted that after he passed the interview he had to pay \$500 for [REDACTED] to schedule his interview with the U.S. Embassy. The applicant explained that he spent 2,000 Philippine pesos (PhP) for his medical examination and employment authorization from the [REDACTED] and he paid [REDACTED] \$2,000 as the placement fee. The applicant stated that to cover the fees he took loans from [REDACTED] and [REDACTED].

The applicant recalled that he flew into [REDACTED] on October 15, 2006 and reached his final destination in [REDACTED] Florida the next day. He stated that he was placed in a three-bedroom, two-bathroom house that he was expected to share with five other male Filipino workers. He noted that \$400 per month was deducted from his paychecks for rent. The applicant recounted that he was

initially given a full-schedule, but the hotel occupancy was low in January and he sometimes did not have work.

He recounted that after three months of employment with [REDACTED] he traveled to [REDACTED] and found new employment as a caregiver and a hotel attendant. He stated that he took these positions and decided not to return to [REDACTED]. The applicant explained that he has since been employed in [REDACTED] Missouri and now in [REDACTED] where he is a caregiver for an elderly individual.

The applicant discussed his financial and emotional hardships since his entry into the United States. He stated that he defaulted on his loan payments because of his meager income. The applicant stated that he had to work long hours, skip meals, and walk to work in order to meet his expenses. He stated that when he was at [REDACTED] he was not given a full-time work schedule and he had to pay for transportation and food. The applicant recounted that he misses his children, siblings and mother in the Philippines and he struggles to financially support them. He noted that he was arrested in [REDACTED] but the criminal charge against him was dismissed.

He also recounted the following fears if returned to the Philippines: he will be unable to secure employment due to age discrimination; the typhoon of 2013 has made it even more difficult to find work and has taken a toll on the economy; even though [REDACTED] license with [REDACTED] was cancelled, it continued to do business and may retaliate against him and his family; and potential employers in the Philippines would think unfavorably of him for not succeeding in the United States.

#### *Victim of a Severe Form of Trafficking in Persons*

The applicant asserted below that he was a victim of labor trafficking by [REDACTED] and its agents or recruiters, which he claimed forced him into involuntary servitude and peonage. After reviewing the applicant's initial submission and response to a request for further evidence, the director acknowledged that aspects relating to the costs of housing, transportation and food as well as guaranteed number of weekly hours may have been misrepresented to the applicant. The director determined, however, that the applicant was not a victim of a severe form of trafficking in persons because the record does not show that he was subject to a scheme involving force, fraud or coercion to create an atmosphere of fear, as required to establish involuntary servitude and peonage.

On appeal, the applicant asserts that [REDACTED] was his Philippine recruiter and [REDACTED] was his U.S. employer. He contends that he "experienced Coercion, Peonage and Threatened Abuse of Law or Legal Process during his recruitment and employment with [REDACTED]," which "fraudulently induced [him] to take on substantial debt . . . with promises of a better life and the prospect of at least three years of steady, full-time employment." Although the applicant now claims that he was employed by [REDACTED] the record shows otherwise. The applicant did not provide an employment contract, earnings statements, Wage and Tax Statements (Form W-2s), or any other evidence to demonstrate that [REDACTED] was his employer.

The applicant previously asserted that [REDACTED] recruited him in the Philippines, and [REDACTED] its U.S. based counterpart, placed him at [REDACTED] for employment as a hotel housekeeper. Evidence in the record, including a receipt issued to the applicant from the [REDACTED], a Certificate of Attendance for a

pre-departure orientation seminar from [REDACTED], and the applicant's H-2B visa showing the [REDACTED] as the petitioning entity, supports the applicant's assertions. To establish that he was a victim of a severe form of trafficking by [REDACTED] and its agents or recruiters, the applicant must show that they 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"). While it is clear that [REDACTED] and [REDACTED] intended to obtain the applicant's services as a hotel housekeeper, to establish a severe form of human trafficking, the applicant must also demonstrate two essential elements: a means (force, fraud or coercion) and an end (involuntary servitude, peonage, debt bondage or slavery). The record in this case fails to establish either of these elements.

*No End: No Peonage or Involuntary Servitude*

As used in section 101(a)(15)(T)(i) of the Act, the term 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 serious harm or physical restraint; or the abuse or threatened abuse of legal process." *Id.* Servitude is not defined in the Act or the regulations, but is commonly understood as the condition of being a servant or slave, or a prisoner sentenced to forced labor. *See* BLACK'S LAW DICTIONARY (B.A. Garner, ed.) (9th ed. 1999). The record lacks evidence that [REDACTED] or its agents or recruiters ever subjected the applicant to any "condition of servitude," the underlying requisite to involuntary servitude and peonage.

The applicant did not provide any evidence that he actually worked for [REDACTED] after his entry into the United States, other than a copy of an identification card issued by the [REDACTED]. In his initial statement, the applicant briefly discussed his duties as a housekeeper for [REDACTED] but he did not indicate the duration of his employment. In his second statement, submitted in response to the director's RFE, the applicant asserted that he was employed with [REDACTED] for three months. However, he did not submit his employment contract and earnings statements from [REDACTED] which is documentation that the director specifically requested. The record on appeal remains deficient in that it still does not contain a job offer, employment contract, earnings statements, Form W-2, employment verification letter, or any other documentary evidence to demonstrate the applicant's claimed period of employment with [REDACTED]. Nonetheless, the applicant indicated in his statements that he willingly entered into a 10-month period of temporary employment with [REDACTED] he was placed in an agreed-upon position, and he was paid for the hours he worked. The record therefore lacks any evidence that [REDACTED] or its agents or recruiters actually or intended to subject the applicant to a condition of servitude.

The record also does not show that [REDACTED] or its agents or recruiters actually or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. The applicant recounted that he spent approximately \$2,500 in placement fees and Php 2,000 for his medical examination and employment authorization from the [REDACTED]. The applicant stated that to cover the fees he took loans from [REDACTED] and [REDACTED]

██████████ In affidavits he entitled, "Certification of Loan," the applicant attested to taking loans in the amount of \$800 from ██████████ and \$700 from ██████████. Although the applicant recounted financial pressures related to having incurred unanticipated expenses, and to sometimes working less than 40 hours weekly, the applicant has not submitted any documentary evidence showing that he took out any additional loans or that he was or is in arrearages on any debt. Rather, his account statement from ██████████ shows that he repaid his loan in full on July 30, 2007, which is within the time period of his H-2B status as a temporary worker with ██████████. A December 9, 2013 letter from ██████████ also certifies that the applicant's account was "already fully paid."<sup>2</sup> The relevant evidence thus shows that the applicant incurred personal loans before entering the United States, but it does not indicate that the applicant was ever indebted to ██████████ or its agents or recruiters, or that these agencies forced him into indebtedness.

*De novo* review of the record, as supplemented on appeal, fails to show any actual or intended condition of servitude or real or alleged indebtedness to ██████████ or its agents or recruiters. Consequently, the record does not demonstrate the claimed end of the alleged trafficking: peonage.

*No Means: No Force, Fraud or Coercion*

The record also does not evidence the means requisite to the applicant's trafficking claim. 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). The applicant claims that his recruiters engaged in a "psychologically coercive and financially ruinous trafficking scheme that subjected him to exorbitant debt and forced labor." He adds that ██████████ and ██████████ used a variety of coercive tactics, "including abuse of the legal process, isolation, and segregation to attempt to control his actions and to force him to provide service to them."

The applicant has not provided any examples showing that he was isolated and segregated by ██████████ or its agents or recruiters in an attempt to force him to provide service. Rather, the record shows that while the provided housing was not "as nice" as the applicant had hoped, ██████████ did indeed provide housing for him to share with other Filipino workers. There is no indication that he was not free to socialize or come and go as he liked outside of work. The applicant stated that while he was in the United States he "held [his] own passport and Notice of Action" and he had access to transportation. During the applicant's employment with ██████████ he was given two-weeks of leave to travel from ██████████ to ██████████ to visit his cousin. As discussed, the applicant indicated that he voluntarily accepted an offer of employment from ██████████ was placed in the agreed upon position, and he was paid for the hours he worked. The record therefore does not support the applicant's assertions of isolation, segregation or forced service.

The applicant asserts that ██████████ and its agents or recruiters coerced him by violating Department of Labor (DOL) regulations regarding the H-2B program by requiring the applicant to pay the costs

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<sup>2</sup> The applicant did not discuss the status of his account with ██████████

for his H-2B visa petition. However, as explained above, these possible violations did not compel the applicant to work by inducing his indebtedness. Rather, the applicant stated that he paid for his H-2B visa and petition through personal loans. Before completing his initial term of authorized employment, the applicant left his employer and secured employment in other positions. The applicant made these employment arrangements independent from [REDACTED] or [REDACTED] without any interference or threats of legal action by either agency or [REDACTED]. The relevant evidence therefore does not show that [REDACTED] or its agents or recruiters' actions amounted to coercion through the abuse or threatened abuse of the legal process against the applicant.

The record also does not support the applicant's claim that [REDACTED] or its agents or recruiters secured his services through fraudulent promises of long-term, full-time employment. The applicant claimed that [REDACTED] promised he would have three years of employment, automatic renewals of his visa, free transportation and food and discounted rent. However, none of the documents in the record reference any of these terms and the applicant's statements indicate otherwise. In his first statement he indicated that he assumed his meals would be for free based on his experiences working in the Middle East, but he was not directly told this information. The applicant indicated in his second statement that he understood that the duration of his employment was only ten months and that his H-2B visa status was "renewable," not that it was an "automatic renewal." There also is no evidence that the applicant actually relied upon promises of long-term employment by [REDACTED] as the applicant stated that he left his employment with [REDACTED] before the end of his employment contract.

Finally, the record does not support the applicant's claim that [REDACTED] or its agents or recruiters trafficked him through force or coercion by restricting his freedom of movement. Although the applicant claimed that he had to stay in the provided housing, he did not indicate any restrictions on his travel and he stated that he was provided with transportation. The applicant provided copies of the biographical page of his passport, his H-2B visa, Form I-94 (Departure Record) and Social Security Card, indicating that he had access to his immigration and identity documents. As discussed, the applicant stated that after three months working for [REDACTED] he moved to [REDACTED] where he sought other employment. Although the applicant was presumably still within the terms of his employment contract with [REDACTED] when he departed, the applicant did not indicate that [REDACTED] or [REDACTED] took any action against him. Nor does the applicant state that these entities took any action against him in the years that followed during his employment in various positions in [REDACTED] Missouri and [REDACTED]. The record thus does not show that [REDACTED] or [REDACTED] secured the applicant's services through fraud, force or coercion through physical restraint.

*Summary: No Severe Form of Trafficking in Persons*

The record documents [REDACTED] recruitment and placement of the applicant at the [REDACTED] [REDACTED] for employment as a housekeeper, but does not establish that these agencies ever subjected him to a severe form of trafficking in persons. The applicant stated that he voluntarily accepted an offer of employment from [REDACTED] was paid for the hours he worked, and he was employed in an agreed-upon position. The record shows that the applicant had freedom of movement, access to his immigration and identity documents, and he subsequently secured employment with other agencies without any interference from [REDACTED] or its agents or recruiters. The applicant secured personal loans to pay for recruitment fees, but there is no evidence that [REDACTED]

or [REDACTED] forced the applicant into indebtedness to cover those costs. The relevant evidence does not establish that [REDACTED] or its agents or recruiters obtained the applicant's services through force, fraud or coercion for the purpose of subjecting him to involuntary servitude, peonage, debt bondage, or slavery. 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 failed to 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 an unsigned copy of a letter and a follow-up electronic mail message addressed on the applicant's behalf to the U.S. Department of Justice, Civil Rights Division seeking law enforcement certification as a victim of human trafficking and reporting a claimed violation of the H-2B provisions. These documents evidence the applicant's attempts to notify this agency of his claims, but the record fails to establish that any severe form of human trafficking occurred in connection with the applicant's employment with [REDACTED]. Consequently, the applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

*Conclusion*

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). On appeal, the applicant has not met the eligibility criteria for T nonimmigrant classification at subsections 101(a)(15)(T)(i)(I)-(III) of the Act.

**ORDER:** The appeal will be dismissed. The application remains denied.