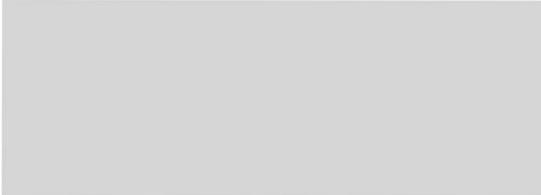




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 01 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:

NO REPRESENTATIVE OF RECORD

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

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 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, had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking, and would face extreme hardship involving unusual and severe harm upon removal.

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 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 April 22, 2008, as an H-2B nonimmigrant to be employed as a waiter for [REDACTED] in Colorado. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services ("USCIS") on December 2, 2013. 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 November 20, 2013 and July 2, 2014 affidavits, the applicant provided the following account of his employment with and claimed trafficking by [REDACTED] and his recruiters in the Philippines.

The applicant initially recalled that he learned about a recruiting agency in the Philippines named [REDACTED] through a member of his church. During his orientation with [REDACTED] the applicant was interviewed by [REDACTED] for a job that it would provide in the United States. The applicant explained that [REDACTED] advised him that he was qualified for a position as a waiter and would work at least 40 hours per week, be paid \$7.50 per hour plus \$10.00 per hour in overtime, and would retain his tips. He indicated that [REDACTED] separately assured him that he would have free transportation to and from work, and three years of employment with automatic visa renewals. The applicant then took out a loan from [REDACTED], which he agreed to pay off in six months.

When he arrived in the United States, the applicant stated that he was placed in a two-bed room that he described as an uninsulated shed. The facility lacked a bathroom and he and his roommate had to walk a quarter mile to the public bathroom that they shared with 40 other people. Despite this, the applicant said the housing was "decent." The applicant stated that he was also provided free transportation to and from work, but was tied to the driver's schedule and often had to get to work very early or stay very late in order to secure a ride.

After starting his job, the applicant found out that he would not be given a permanent job, would only be given two to four days of work per week, and would not be permitted to keep his tips. Instead of working as a waiter, he was assigned to work as a bus boy in a fast food restaurant where

he moved garbage and cleaned bathrooms. Finally, after [REDACTED] failed to provide him with full-time work or secure him an extension of his nonimmigrant status, the applicant attested that he left Colorado, stayed briefly in [REDACTED] and then moved first to California and then to New York to find employment. He recounted that he has never been able to fully repay his debt even though he paid the principal because he continues to owe interest and penalties. As a result of his situation, the applicant asserted that he now suffers from constant stress and worry. He stated that his sister in the Philippines had been harassed by [REDACTED] because she co-signed his loan, and ultimately lost her apartment because the applicant could not send her enough money. In response to the RFE, the applicant reiterated his initial claims, adding that because he never signed a contract with [REDACTED] all their promises were oral. He advised that he signed an employment contract with [REDACTED] prior to beginning his employment, but did not understand what he was signing. The applicant provided a copy of his signed contract, in which he agreed to an hourly salary of \$7.28 for 32-40 hours per week for a six-month period. He also provided pay stubs showing that he was paid at that rate for work weeks that ranged from 19 hours per week to just over 38 hours per week.

On appeal, the applicant again asserts he suffered financial and emotional hardship related to his employment, immigration status, and corresponding worries regarding his and his family's future and wellbeing. He reasserts that he has substantial debt in the form of interest and penalties, and claims that he was forced to pay his visa extension fees. He also describes suffering from anxiety during and after his period of employment, and worrying about how he would support his family members in the Philippines and repay his debts. The petitioner includes more recent tax records from 2013, which post-date his employment with [REDACTED]

Victim of a Severe Form of Trafficking in Persons

The applicant claimed he was a victim of labor trafficking by [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 was not a victim of a severe form of trafficking in persons because the record showed that he appeared to have entered into a voluntary employment agreement to work in the United States and appeared to have been compensated.

To establish that he was a victim of a severe form of trafficking by [REDACTED] the applicant must show that this entity 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] 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] 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] 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 fees, restriction of movement, and isolation. The record does not support the applicant’s claims to have been trafficked for three principal reasons.

First, although the applicant stated that he was trafficked by [REDACTED] the applicant explained that he ultimately left [REDACTED] even before the end of his employment contract, and moved first to California to work as a caregiver, and then to New York where he claims he is still seeking steady employment, and only works sporadically. Consequently, the record shows that the applicant has moved between multiple, unrelated employers and lacks evidence that his employer actually subjected or intended to subject him to involuntary servitude.

Second, the record does not show that the applicant’s employers intended to subject him to peonage through involuntary servitude based on real or alleged indebtedness. In his February 21, 2014 affidavit, the applicant explained that he took a six-month loan of PhP 195,000 from [REDACTED] plus interest, and that his sister and his friend were the guarantors. According to the applicant, his sister provided him with an additional amount of PhP 55,000 to pay the remaining recruiter fee to [REDACTED]. The applicant provided evidence of the final amount of the loan from [REDACTED] as being PhP 195,000. In response to the RFE, the applicant provided evidence of a payment to [REDACTED] that was stamped “account closed” as of October 15, 2009, establishing that he paid off his personal loan. Although the applicant asserted that he still has substantial interest and penalties to pay to [REDACTED], there is no evidence of this in the record. Moreover, although the applicant claims on appeal that he was also forced to pay for visa renewals, the record does not show that [REDACTED] required him to pay any visa petition extension fees. In fact, the applicant indicated that he left [REDACTED] employment before the end of his authorized employment period. 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] 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.” First, the loan he agreed to was with a foreign recruiter in the Philippines. Although the applicant asserted that he would face hardship in the Philippines and perhaps debtor’s prison, he voluntarily agreed to pay the recruiter fees before he came to the United States, he obtained a private loan to do so prior to his entry, and the letter from [REDACTED] shows that he paid off his initial loan

debt in full. The actions outlined by the applicant do not establish that he was forced to take on a huge amount of debt.

Finally, the record does not support the applicant's claim that [REDACTED] trafficked him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere. The applicant explained that when [REDACTED] failed to secure an extension of his status, he left its employ for California and New York, and provided tax returns showing that he has been working in various occupations in New York since 2009. The record thus does not show that [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] 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] 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 a loan 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 that [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] ever intended to subject him to such conditions. To the contrary, the record shows that the applicant's employer petitioned for the applicant as an H-2B nonimmigrant worker, that although they did not always provide him with full-time employment, they employed him at the hourly salary listed in his signed contract. Moreover, he voluntarily left [REDACTED] to pursue other employment in California and New York. 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

Our *de novo* review of the record reveals an additional bases of ineligibility, namely that the applicant 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 his good-faith, but unsuccessful attempts to obtain an LEA endorsement. 8 C.F.R. § 214.11(h).

[REDACTED]

The applicant submitted copies of a letter and electronic mails 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 beyond acknowledgement of receipt of the information. 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

Our *de novo* review of the record also does not lead to a conclusion that the applicant would suffer extreme hardship involving unusual and severe harm upon removal. In his affidavits, 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 because he would be considered old and a failure for not having been successful in the United States. He expressed fear of debtor’s prison upon return to the Philippines because his debts have continued to increase while in the United States. In his July 2, 2014 statement, 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; although he provided evidence that [REDACTED] was convicted of visa fraud in 2012.

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 his 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.

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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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.