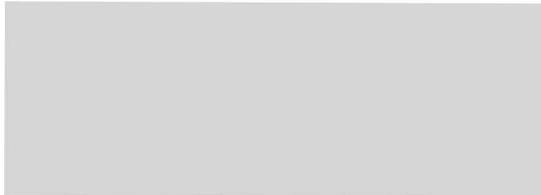




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 23 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:
[REDACTED]

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, 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.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 September 29, 2007, as an H-2B nonimmigrant to be employed as a housekeeper at the [REDACTED] in Arizona ([REDACTED] until Jun3 30, 2008. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services ("USCIS") on February 7, 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 January 21, 2014 and July 8, 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 his brother-in-law. According to the applicant, [REDACTED] arranged for him to be interviewed by the [REDACTED] for a job that it would provide in the United States. In his initial statement, the applicant explained that the [REDACTED] advised him that he was qualified for a position as a housekeeper and would work at least 40 hours per week. The applicant provided a copy of the [REDACTED] written offer of employment showing that he would be paid \$8.00 per hour, although the applicant asserted that he ultimately earned \$7.00 per hour. In his second statement, the applicant stated that the [REDACTED] told him that he would be paid \$8.00 per hour. He indicated that [REDACTED] separately assured him that he would have discounted housing, free transportation to and from work, some free meals, and three years of employment with automatic visa renewals.

The applicant provided a December 18, 2013 affidavit regarding his loans, in which he explained that he took loan of PhP 150,000 from [REDACTED] and an additional loan of \$2,000.00 from [REDACTED]. However, the applicant also provided two additional conflicting statements. In his January 21, 2014 statement, the applicant stated that he took out a one-year loan of PhP 120,000.00 with a 25% interest rate from an unnamed lending company, and in his July 8, 2014 affidavit, he stated that he took out a six-month loan of PhP 100,000 at a 25% interest rate. In response to the RFE, he provided the actual loan agreement showing that he took out a six-month loan of

PhP 155,000, including interest. It is unclear why the applicant's personal statements regarding the size and nature of the loan are contradictory.

When he arrived in the United States, the applicant stated that he was placed in a two-bedroom apartment with three other people and that \$400.00 per month was deducted from his paychecks. He indicated that he was discouraged from finding other living arrangements and advised that even if he found new housing, he would still have the \$400.00 deducted from his paycheck. The applicant stated that he was not provided any free meals or transportation to and from work, and that all of these unexpected expenses further strained his finances.

After starting his job, the applicant indicated that he was not given full-time employment and sometimes only worked two or three days per week. The applicant attested that after the [REDACTED] declined to secure him an extension of his nonimmigrant status, he sought new employment through another placement agency to which he paid a fee, it defrauded him and failed to secure him a new job. The applicant explained that he moved and is now residing in [REDACTED] where he works as a caregiver. He indicated that his wife was able to make his debt payments, which were ultimately PhP 200,000 with interest, and that their relationship is now strained. In response to the RFE, the applicant reiterated his initial claims, adding that he never signed a contract with Northwest Placement in the Philippines and that all their promises were oral. He advised that he signed an employment contract with the [REDACTED] prior to beginning his employment, but did not understand what he was signing. Although the applicant stated that he was paid \$7.00 per hour and not provided enough days of work to make a 40-hour week, he provided a December 11, 2007 letter from the [REDACTED] and a pay stub showing that he was paid at the rate of \$8.50 for over 40 hours of work, including overtime.

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 elaborates that he now suffers from diabetes, heart disease and fatty liver disease due to stress. 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.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed he was a victim of labor trafficking by the [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 the [REDACTED], the applicant must show that this entity recruited, harbored, transported, provided or obtained his 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 the [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 the [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 the [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 placement and visa renewal fees, restriction of movement by controlling his housing, false promises, and isolation. The record does not support the applicant’s claims to have been trafficked for three principal reasons.

First, although the applicant initially stated that he was trafficked by the [REDACTED] the applicant explained that he ultimately left the [REDACTED] when it declined to renew his term of employment, and moved, ultimately coming to [REDACTED] where he has worked as a caregiver.² The applicant provided a single pay stub from November of 2007. He also provided a December 11, 2007 letter from the [REDACTED] indicating that he worked there from October 2, 2007 until December 11, 2007. Because the Form I-797, Notice of Action, contained in the applicant’s administrative record reflects that he was authorized to work for the [REDACTED] until June 30, 2008, it appears that the applicant freely left the [REDACTED] for employment in other states before his authorized period of employment expired on June 30, 2008. There is no evidence that he left because the [REDACTED] declined to file a visa petition seeking an extension of authorization to employ him. Consequently, the record shows that the applicant freely moved to a new employment situation and lacks evidence that his employer actually subjected or intended to subject him to involuntary servitude.

Second, the record does not show that the [REDACTED] intended to subject him to peonage through involuntary servitude based on real or alleged indebtedness. In his December 18, 2003 affidavit, the

² On appeal, the applicant asserts that he was trafficked by [REDACTED] and does not discuss his actual employer, the [REDACTED]. We have adjudicated the appeal based on the applicant’s underlying assertions to the director that he was trafficked by the [REDACTED] since that claim and supporting evidence formed the basis of the director’s decision.

applicant explained that he took a loan of PhP 150,000 from [REDACTED] and an additional loan of \$2,000.00 from [REDACTED] in order to pay his foreign recruiter, [REDACTED]. As discussed, he provided two additional contradictory statements regarding the amount of his loan and the duration of the period of repayment. Regardless, the applicant stated that his wife helped him make payments on his debts. Moreover, although the applicant claims on appeal that he was also forced to pay for visa renewals, he previously indicated that the [REDACTED] did not renew his initial term of employment. He left employment at the [REDACTED] in December of 2007, and indicated that he has lived and worked in various states since then as a caregiver. 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 the [REDACTED] or that it forced him into indebtedness.

Third, the record does not support the applicant's claim that the [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 the applicant took out was to pay a foreign recruiter in the Philippines rather than the [REDACTED]. 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 and obtained a private loan to do so prior to his entry. Moreover, he explained that his wife was able to make payments on the loan; therefore, it is unclear why he would face debtor's prison. 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 the [REDACTED] trafficked him through force or coercion by restricting his movement by providing him housing and then deducting the cost of the housing from his payroll. Although the applicant explained that when the [REDACTED] failed to secure an extension of his status, he left its employ and is now living in [REDACTED] as a home care giver, he provided a letter from the [REDACTED] showing that he only worked there from October 2, 2007 to December 11, 2007, well before his authorized period of employment expired. The record thus does not show that the [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 the [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 himself and his family and experienced stress and anxiety, the relevant evidence does not show that the [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 the [REDACTED], or that the [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 the [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, and 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 left the [REDACTED] well before his

authorized period of employment expired and has pursued other employment as a caregiver in the following seven years. 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 director also determined 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).

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 by [REDACTED]. It is noted that the applicant asserted in his affidavits that he was trafficked by the [REDACTED] rather than [REDACTED]. Regardless, these communications evidence the applicant's attempts to notify DOJ of the claimed trafficking, but the record does not reflect a response from DOJ. As the record otherwise does not establish any severe form of human trafficking in connection with the applicant's employment with the [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 also indicated that his wife had made his loan payments; therefore, it is not clear that he has any debt or would face debtor's prison. The applicant 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. 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.

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 the [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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.