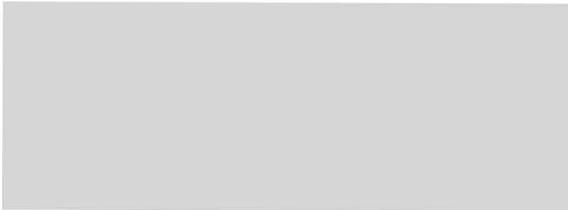




U.S. Citizenship
and Immigration
Services

(b)(6)



JUN 23 2015

DATE:

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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

REV 3/2015

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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 and was physically present in the United States on account 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

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 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

The applicant is a citizen of the Philippines who last entered the United States on April 13, 2009, as an H-2B nonimmigrant to be employed as a waiter for [REDACTED] at [REDACTED] in Colorado. He provided a copy of his employment contract, which he appears to have signed on February 2, 2009, before his entry into the United States, showing that he agreed to the proffered salary of \$7.28 per hour and 32 to 40 hours of work per week. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (“USCIS”) on December 19, 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 December 2, 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 colleague. The applicant asserted that during his orientation with [REDACTED] the recruiter made several promises, including an hourly wage of \$7.75 per hour plus overtime of \$11.00 per hour, at least 40 hours of work per week, a nice apartment with a private bedroom for each worker, free transportation to and from the worksite, the ability to petition for family members, and the ability to apply for a green card. During the recruitment process, the applicant was interviewed by [REDACTED] for a job that [REDACTED] would provide in the United States. After his visa was approved, [REDACTED] told the applicant that he was required to pay it PHP 170,000 for his placement fee. The applicant then withdrew his savings from his bank account, sold some of his possessions, including his car, and borrowed money from his sister and brother-in-law to pay [REDACTED]

When he arrived in the United States, the applicant stated that for the term of his first contract he was placed in a rent-free, two-bed cabin that he described as an uninsulated tool house with a portable heater. The facility lacked a bathroom and the applicant explained that he had to walk a quarter mile to the public bathroom, which he shared with 40 other people. Despite this, the applicant said the housing was “decent.” The applicant indicated that he was also provided free bus transportation to and from work.

After starting his job, the applicant claimed he found out that his initial term of employment was valid for only six months and he would not be given a permanent job. He also asserted that he was given only two to four days of work per week and was paid \$7.52 per hour. According to the applicant, he was assigned to work in different places, but always reported to [REDACTED]. After the assignment for [REDACTED], the applicant stated that he worked at [REDACTED] and [REDACTED] for two months, finally ending up working for "[REDACTED]" for six weeks. The applicant indicated that his H-2B visa was extended three times, and that each time he paid \$600.00. Finally, after his visa expired, the applicant attested that he left Colorado, and traveled to various states seeking employment. He recounted that he has never been able to fully repay his debt to his family, has never recovered his personal savings, and is embarrassed because he is unable to send money to the Philippines to support his aging mother and son. As a result of his situation, the applicant asserted that he now suffers from constant worry. 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] when he arrived in Colorado, 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. Contrary to the applicant's assertion, he appears to have signed the contract on February 2, 2009, prior to his entry into the United States. The applicant also provided several pay stubs showing that [REDACTED] paid him between \$7.52 and \$8.38 per hour for work weeks that ranged from 32.20 hours per week to 40 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 contends that he still owes his brother PHP 100,000 and could face debtor's prison if he returns to the Philippines. The applicant 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. He includes an article showing that several overseas recruiting agencies have been closed by the government in the Philippines.

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 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] 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 [REDACTED] subjected him to forced labor through coercion, peonage, and misrepresentation of his prospective employment situation. 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 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 fees, restriction of movement, and isolation. To the extent that the applicant voluntarily paid [REDACTED] recruiter fees prior to his entry into the United States, his relationship with that entity appears to have terminated before his period of employment in the United States. The record does not support the applicant’s claims to have been trafficked by [REDACTED] for three principal reasons.

First, although the applicant stated that he was trafficked by his employer, [REDACTED] the applicant explained that he worked for several employers during his three years of H-2B nonimmigrant status, and subsequently moved to several states working in various jobs while seeking steady employment. Consequently, the record shows that the applicant has moved between multiple, unrelated employers and lacks evidence that [REDACTED] or his employer 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 initial affidavits, the applicant explained that he paid for part of his recruiting fee and borrowed the remaining money from his sister and brother-in-law. On appeal, he asserts that he owes his brother PHP 100,000. Based on these contradictory assertions, it is unclear to whom he owes money. Regardless, there is no evidence that [REDACTED] required him to pay the recruiter fee. Moreover, although the applicant claims 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. 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 borrowed from family was to pay [REDACTED] the 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 and he has asserted that he obtained the private loan 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

Finally, the record does not support the applicant's claim that trafficked him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere. The applicant explained that the housing that provided was isolated. The record does not establish that by providing isolated and unsatisfactory housing, obtained the applicant's services through fraud, force, or coercion involving physical restraint or other restriction of his movement.

In summary, the applicant has not established that ever subjected him to a severe form of trafficking in persons. Although the record suggests that the applicant was under financial pressure to support his family and experienced stress and anxiety, the relevant evidence does not show that 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 from family with respect to the recruiter fees for his initial H-2B petition, the record contains no evidence that the applicant was ever indebted to or that 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 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 he signed his employment offer on February 2, 2009, agreeing to a proposed salary of \$7.28 per hour and a work week of 32 to 40 hours per week well before his April 13, 2009 entry into the United States, and provided pay stubs showing that he worked between 32 and 40 hours per week. Moreover, the pay stubs show that appears to have paid him at or more than the hourly rate listed in his signed contract. In addition, the applicant pursued other employment during and after his three years of H-2B status. 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 basis 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).

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 11, 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; however, he also 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

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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.