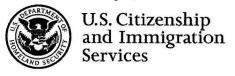
U.S. Department of Homeland Security U.S. Citizenship and Immigration Service Administrative Appeals Office (AAO) 20 Massachusetts Ave., N.W., MS 2090 Washington, DC 20529-2090



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JUL 2 2 2015

FILE #:

APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION:

Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) of the

Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i).

## ON BEHALF OF APPLICANT:

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

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

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

REV 3/2015

www.uscis.gov

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

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application because the applicant did not establish that he was a victim of a severe form of trafficking in persons and was physically present in the United States on account of such trafficking.

On appeal, the applicant submits a brief.

Applicable Law

Section 101(a)(15)(T)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she:

- (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,
- (II) is physically present in the United States . . . on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
- (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime . . . ; and
- (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . . ..

The term "severe forms of trafficking in persons" is defined, in pertinent part, as:

the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>1</sup>

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:

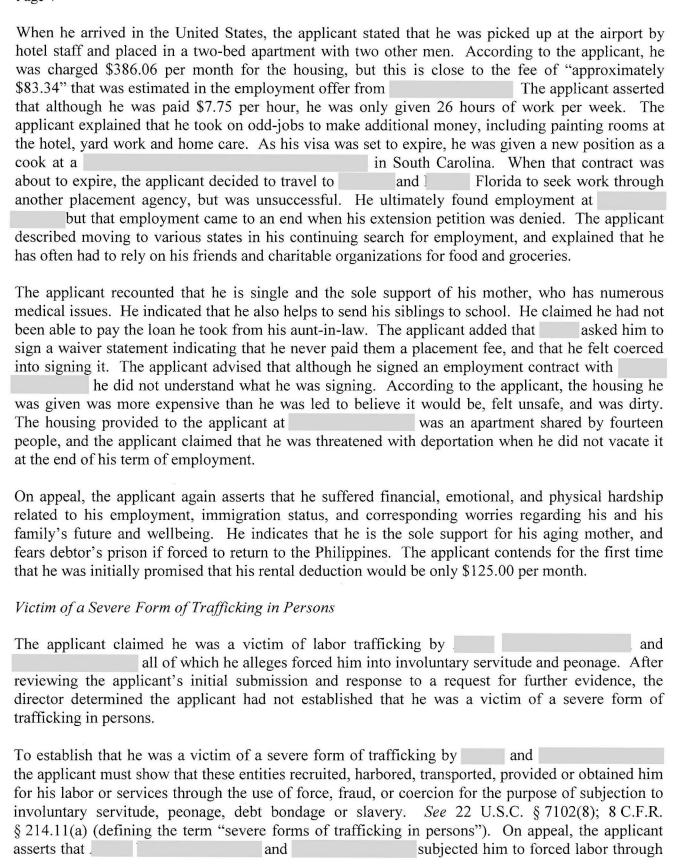
<sup>&</sup>lt;sup>1</sup> This definition comes from section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386 (Oct. 28, 2000), which has been codified at 22 U.S.C. § 7102(8) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

- (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

The applicant is a citizen of the Philippines who first entered the United States on October 15, 2008,
as an H-2B nonimmigrant to be employed as a steward/kitchen worker at the
Florida, a position that
secured. He submitted a contingent offer of employment dated
September 15, 2008, from an agent of the indicating that the applicant would be
paid \$7.75 per hour for work cleaning, transporting, and storing pots and pans, and that he would be
charged approximately \$83.34 per week for housing. After working for the
worked for the in Pennsylvania. The
applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S.
Citizenship and Immigration Services ("USCIS") on March 11, 2014. The director issued a Request
for Evidence ("RFE") of the applicant's claim to being a victim of trafficking, to which the applicant
responded with additional evidence. The director ultimately denied the applicant's Form I-914 and
the applicant has subsequently appealed. In his February 18, 2014 and August 28, 2014 affidavits,
the applicant provided the following account of his employment with and claimed trafficking by
and his recruiters in the Philippines.
The applicant initially recalled that he learned about an overseas recruiting agency, from a
"cousin-in-law" in June of 2008. The applicant applied for a housekeeping job in the United States
through In his initial statement, the applicant explained that advised him that he was
qualified for a housekeeping position and promised that he would work 30 to 40 hours per week, at a
rate of \$7.75 per hour, and that his salary would be \$1,520.00 per month. The applicant asserted that
he was also advised that he would be required to pay \$83.34 per week toward housing, and would be
paid double to work on holidays and would have three years of automatic renewals of his visa.
According to the applicant, initially notified him that he would be required to pay a placement
fee of \$1,500.00, and that he ultimately paid over \$3,000.00 in recruitment fees. In a separate
statement regarding his loan, the applicant claimed to have borrowed \$4,000.00 from
his "aunt-in-law," to cover the recruitment fees, and other miscellaneous expenses related
to travel, such as his plane ticket. After he paid the recruitment fee, the agency indicated that the
housekeeping position the applicant initially sought was no longer available and that the applicant
would have to accept a job as a steward/dishwasher. The applicant advised that he had "no choice"
because he "really wanted to work abroad."







have been trafficked by

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 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 and 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 employers used a variety of coercive tactics to control him and force him to provide service to them, including forcing him to pay petition extension fees, restriction of movement, and isolation. The applicant submitted a copy of his Contingent Offer of Employment from in which it proffered an hourly salary of \$7.75, for an average of 35 to 40 hours per week, for approximately eight months of employment. The offer also reflected that he would be charged approximately \$83.34 per week for housing. The applicant appears to have signed the offer of employment before his entry into the United States and in his statements he indicated that he willingly entered into an employment agreement with and agreed to be paid for his work. Although the applicant asserted that he was not always assigned the promised hours of work, he provided pay stubs with his initial filing materials to show he was paid \$7.75 per hour by for work weeks that were between 30 and 40 hours. The applicant did not provide an employment offer from or any related pay stubs. Consequently, the record shows that the applicant worked for and that paid him, and lacks evidence that actually subjected or intended to subject the or

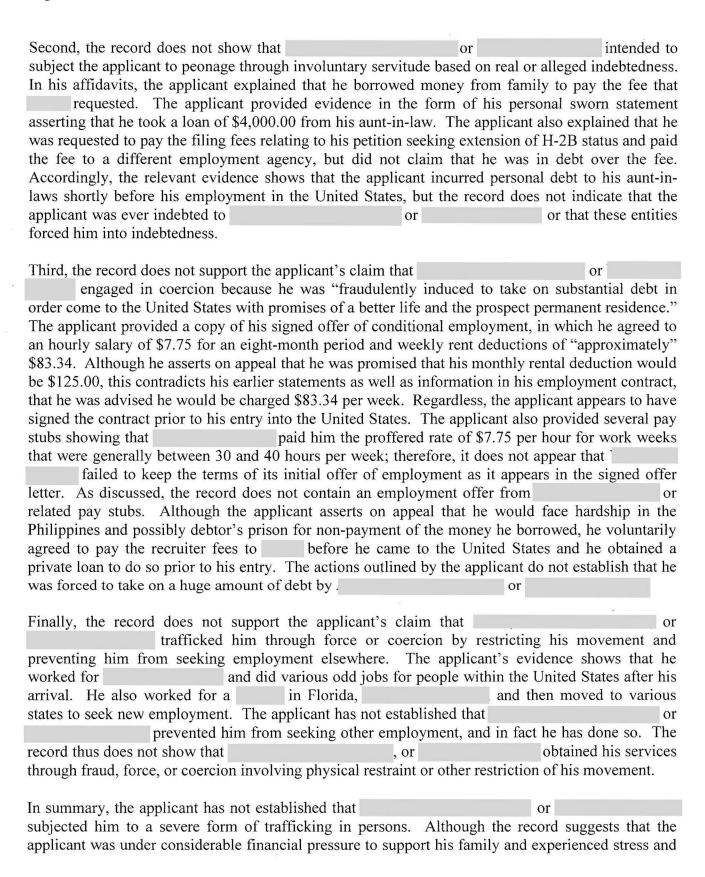
First, although the applicant stated that he was trafficked by his foreign recruiter and the applicant explained that he left to work for in South Carolina, and then in Pennsylvania, and has since another moved to other states seeking employment. Moreover, although his H-2B nonimmigrant status precluded outside employment, the applicant attested that he performed odd jobs for other people to make additional money. Consequently, the record shows that the applicant engaged in other employment both during and after his authorized period of employment with also has sought new employment since he ceased to work for The record lacks evidence that or his U.S. employers actually subjected or intended to subject the applicant to involuntary servitude.

applicant to involuntary servitude. The record does not otherwise support the applicant's claim to

, or

for four principal reasons.







anxiety, the relevant evidence does	not show that		or			
obtained the applicant's labor throug	th force, fraud, or coerc	cion for the purj	pose of subjecting him to			
involuntary servitude, peonage, de	bt bondage, or slaver	y. Although	the applicant submitted			
evidence relating to a loan he claims	s to have taken out with	n respect to his	initial H-2B petition, the			
record contains no evidence that the	applicant was ever inde	ebted to	or			
or that	or	forced o	r coerced him to go into			
debt. Finally, the record lacks any	evidence that the appl	icant was ever	subjected to involuntary			
servitude or peonage or that	or l		ever intended to subject			
him to such conditions. To the con	trary, the record shows	that	and			
petitioned for the applicant as an H-2B nonimmigrant worker, that although the applicant						
asserts he was not always provided with full-time employment, it appears that						
paid him at the hourly rate that it initially proffered. Moreover, since his employment with Westin						
and	terminated, the applica	ant has pursued	l employment in various			
states. Consequently, the applicant has not demonstrated that he was the victim of a severe form of						
trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.						

## Physical Presence in the United States on Account of Trafficking

The applicant has not overcome the director's determination that he is not physically present in the United States on account of the claimed trafficking. As discussed above, the record does not show that the applicant was the victim of a severe form of human trafficking and he consequently cannot show that he is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Assistance to Law Enforcement Investigation or Prosecution of Trafficking

The applicant also has not established that he has not complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or the investigation of associated crime, as required by section 101(a)(15)(T)(i)(III) of the Act. Primary evidence of this compliance is an endorsement from a Law Enforcement Agency ("LEA"), although USCIS will consider credible secondary evidence where the applicant demonstrates his or her good-faith, but unsuccessful attempts to obtain an LEA endorsement. 8 C.F.R. § 214.11(h).

The applicant submitted copies of electronic mails and a letter sent to Department of Justice ("DOJ") on his behalf requesting law enforcement certification for the applicant as victim of trafficking. These communications evidence the applicant's attempts to notify DOJ of the claimed trafficking, but the record does not reflect a response from DOJ, other than a return receipt notice indicating that DOJ had opened the message. As the record otherwise does not establish any severe form of human trafficking in connection with the applicant's recruitment by and employment with and 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

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

Extreme hardship involving unusual and severe harm may not be based on current or future economic detriment, or the lack of, or disruption to social or economic opportunities. 8 C.F.R. § 214.11(i)(1). In addition, five of the eight factors considered in the hardship determination relate to an applicant having been a victim of a severe form of human trafficking. *Id.* at § 214.11(i)(1)(iii)(vii). The applicant in this case has not established that he was the victim of a severe form of human trafficking and he submitted no evidence to support his claims that difficulty in obtaining employment would cause him extreme hardship involving unusual and severe harm. The applicant has also not shown that he would suffer such hardship under the remaining factors. The record contains a copy of the correspondence that the applicant's attorney sent to DOJ, but there is no evidence that DOJ or any other U.S. government agency initiated an investigation or prosecution of and 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.

<sup>&</sup>lt;sup>2</sup> The applicant does not appear to have attempted to report as a trafficker to DOJ.