



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:



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

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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 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.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 first entered the United States on October 15, 2008, as an H-2B nonimmigrant to be employed as a steward/kitchen worker at the [REDACTED] Florida, a position that [REDACTED] secured. He submitted a contingent offer of employment dated September 15, 2008, from an agent of the [REDACTED] 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 [REDACTED] he worked for the [REDACTED] 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 [REDACTED] and his recruiters in the Philippines.

The applicant initially recalled that he learned about [REDACTED] 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 [REDACTED]. In his initial statement, the applicant explained that [REDACTED] 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, [REDACTED] initially notified him that he would be required to pay a placement fee of \$1,500.00, and that he ultimately paid [REDACTED] over \$3,000.00 in recruitment fees. In a separate statement regarding his loan, the applicant claimed to have borrowed \$4,000.00 from [REDACTED] 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.”

When he arrived in the United States, the applicant stated that he was picked up at the airport by hotel staff and placed in a two-bed apartment with two other men. According to the applicant, he was charged \$386.06 per month for the housing, but this is close to the fee of “approximately \$83.34” that was estimated in the employment offer from [REDACTED]. The applicant asserted that although he was paid \$7.75 per hour, he was only given 26 hours of work per week. The applicant explained that he took on odd-jobs to make additional money, including painting rooms at the hotel, yard work and home care. As his visa was set to expire, he was given a new position as a cook at a [REDACTED] in South Carolina. When that contract was about to expire, the applicant decided to travel to [REDACTED] and [REDACTED] Florida to seek work through another placement agency, but was unsuccessful. He ultimately found employment at [REDACTED] but that employment came to an end when his extension petition was denied. The applicant described moving to various states in his continuing search for employment, and explained that he has often had to rely on his friends and charitable organizations for food and groceries.

The applicant recounted that he is single and the sole support of his mother, who has numerous medical issues. He indicated that he also helps to send his siblings to school. He claimed he had not been able to pay the loan he took from his aunt-in-law. The applicant added that [REDACTED] asked him to sign a waiver statement indicating that he never paid them a placement fee, and that he felt coerced into signing it. The applicant advised that although he signed an employment contract with [REDACTED] he did not understand what he was signing. According to the applicant, the housing he was given was more expensive than he was led to believe it would be, felt unsafe, and was dirty. The housing provided to the applicant at [REDACTED] was an apartment shared by fourteen people, and the applicant claimed that he was threatened with deportation when he did not vacate it at the end of his term of employment.

On appeal, the applicant again asserts that he suffered financial, emotional, and physical hardship related to his employment, immigration status, and corresponding worries regarding his and his family’s future and wellbeing. He indicates that he is the sole support for his aging mother, and fears debtor’s prison if forced to return to the Philippines. The applicant contends for the first time that he was initially promised that his rental deduction would be only \$125.00 per month.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed he was a victim of labor trafficking by [REDACTED] and [REDACTED] all of which he alleges 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] and [REDACTED] the applicant must show that these entities 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] and [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] or [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 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] for work weeks that were between 30 and 40 hours. The applicant did not provide an employment offer from [REDACTED] or any related pay stubs. Consequently, the record shows that the applicant worked for [REDACTED] and that [REDACTED] paid him, and lacks evidence that [REDACTED] or [REDACTED] actually subjected or intended to subject the applicant to involuntary servitude. The record does not otherwise support the applicant's claim to have been trafficked by [REDACTED], [REDACTED], or [REDACTED] for four principal reasons.

First, although the applicant stated that he was trafficked by his foreign recruiter [REDACTED] and [REDACTED] the applicant explained that he left [REDACTED] to work for another [REDACTED] in South Carolina, and then [REDACTED] in Pennsylvania, and has since 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 [REDACTED] and also has sought new employment since he ceased to work for [REDACTED]. The record lacks evidence that [REDACTED] or his U.S. employers actually subjected or intended to subject the applicant to involuntary servitude.

Second, the record does not show that [REDACTED] or [REDACTED] intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In his affidavits, the applicant explained that he borrowed money from family to pay the fee that [REDACTED] requested. The applicant provided evidence in the form of his personal sworn statement asserting that he took a loan of \$4,000.00 from his aunt-in-law. The applicant also explained that he was requested to pay the filing fees relating to his petition seeking extension of H-2B status and paid the fee to a different employment agency, but did not claim that he was in debt over the fee. Accordingly, the relevant evidence shows that the applicant incurred personal debt to his aunt-in-laws shortly before his employment in the United States, but the record does not indicate that the applicant was ever indebted to [REDACTED] or [REDACTED] or that these entities forced him into indebtedness.

Third, the record does not support the applicant's claim that [REDACTED] or [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 permanent residence." The applicant provided a copy of his signed offer of conditional employment, in which he agreed to an hourly salary of \$7.75 for an eight-month period and weekly rent deductions of "approximately" \$83.34. Although he asserts on appeal that he was promised that his monthly rental deduction would be \$125.00, this contradicts his earlier statements as well as information in his employment contract, that he was advised he would be charged \$83.34 per week. Regardless, the applicant appears to have signed the contract prior to his entry into the United States. The applicant also provided several pay stubs showing that [REDACTED] paid him the proffered rate of \$7.75 per hour for work weeks that were generally between 30 and 40 hours per week; therefore, it does not appear that [REDACTED] failed to keep the terms of its initial offer of employment as it appears in the signed offer letter. As discussed, the record does not contain an employment offer from [REDACTED] or related pay stubs. Although the applicant asserts on appeal that he would face hardship in the Philippines and possibly debtor's prison for non-payment of the money he borrowed, he voluntarily agreed to pay the recruiter fees to [REDACTED] before he came to the United States and he obtained a 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 [REDACTED] or [REDACTED].

Finally, the record does not support the applicant's claim that [REDACTED] or [REDACTED] trafficked him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere. The applicant's evidence shows that he worked for [REDACTED] and did various odd jobs for people within the United States after his arrival. He also worked for a [REDACTED] in Florida, [REDACTED], and then moved to various states to seek new employment. The applicant has not established that [REDACTED] or [REDACTED] prevented him from seeking other employment, and in fact he has done so. The record thus does not show that [REDACTED], or [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] or [REDACTED] 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] or [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 [REDACTED], or that [REDACTED], or [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] or [REDACTED] ever intended to subject him to such conditions. To the contrary, the record shows that [REDACTED] and [REDACTED] 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 [REDACTED] paid him at the hourly rate that it initially proffered. Moreover, since his employment with Westin [REDACTED] and [REDACTED] terminated, the applicant has pursued 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 [REDACTED] and employment with [REDACTED] and [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

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 [REDACTED] and [REDACTED] related to the applicant's employment.² 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.

² The applicant does not appear to have attempted to report [REDACTED] as a trafficker to DOJ.