



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-B-P-

DATE: JAN. 17, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant, a native and citizen of India, seeks T-1 nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant did not demonstrate that she was a victim of a severe form of trafficking in persons and that she was physically present in the United States on account of such trafficking.

On appeal, the Applicant submits a brief and additional evidence and asserts that the Director's decision was in error.

Upon *de novo* review, we will dismiss the appeal.<sup>1</sup>

## I. LAW

Section 101(a)(15)(T)(i) of the Act provides that an applicant may be classified as a T-1 nonimmigrant if he or she: is or has been a victim of a severe form of trafficking in persons; is physically present in the United States on account of such trafficking; has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

The term "severe form of trafficking in persons" is defined 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." 8 C.F.R. § 214.11(a) (2017).<sup>2</sup>

<sup>1</sup> We decline the Applicant's request for oral argument. 8 C.F.R. § 103.3(b).

<sup>2</sup> The Department of Homeland Security issued an interim rule, effective January 18, 2017, amending its regulations at 8 C.F.R. § 214.11 for victims of human trafficking who seek T nonimmigrant status. *See Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266,

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the evidentiary value to give that evidence. 8 C.F.R. § 214.11(d)(5).

## II. ANALYSIS

The Applicant, a citizen of India, entered the United States in January 2001 without inspection, admission, or parole. She filed her T application in May 2016.

### A. The Applicant's Trafficking Claim

In her personal statement with her T application, the Applicant claimed she and her spouse hired an attorney,<sup>3</sup> K-S-<sup>4</sup> to assist her in obtaining lawful permanent residence. She explained that another attorney had previously helped her file an employment-based immigrant petition, which was approved,<sup>5</sup> but informed her she had to wait until her priority date became current before she could benefit from that petition. She stated K-S- contradicted that information, instead claiming that the law had changed and he could help her benefit immediately from her approved employment-based petition. According to the Applicant, K-S- was "very aggressive" after an initial meeting with the Applicant's spouse and "continued to contact [her spouse] to begin the work." She stated that she and her spouse agreed to pay a total of \$16,800 to K-S- to process the Applicant's lawful permanent residence application, including a \$5,000 down payment, \$5,000 when the fingerprinting appointment was scheduled, and \$6,800 when the Applicant received her work permit. She recalled that K-S- was unwilling to answer detailed questions about the process, but she and her spouse paid K-S- the initial \$5,000 to begin the process. She reported that K-S- later demanded an extra \$5,000 in order to file a waiver application for the Applicant due to her manner of entry into the United States, despite having been informed at the initial meeting that the Applicant had not entered legally.

The Applicant stated that she and her spouse decided at that point to stop seeking assistance from K-S- because they feared he would request additional unexpected fees later. She recalled they requested a refund of their initial \$5,000 payment, but K-S- refused to refund it on the ground that he had already earned it. According to the Applicant, K-S- later offered to reduce the price of his representation if the Applicant and her spouse referred new customers to him, but they informed him that they could not do so in good conscience because they feared he would "try to do the same tricks" with others. She stated that K-S- "then became enraged," stated that "to back out now would result in removal proceedings against [the Applicant]," threatened to inform immigration officials

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92308-09 (Dec. 19, 2016).

<sup>3</sup> Other evidence in the record indicates that this individual was not a licensed attorney.

<sup>4</sup> We use initials in this decision to protect the identities of the individuals.

<sup>5</sup> U.S. Citizenship and Immigration Services (USCIS) records show the Applicant was the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker.

that her spouse had an outstanding prior removal order, and indicated that immigration officials would arrest the Applicant, her spouse, and their two children and that K-S- “would see to it that [they] are all deported.” Furthermore, according to the Applicant, K-S- stated he “had problems in the past with Indian clients . . . [and] arranged for them to be arrested upon [their] return to India.”

According to the Applicant, after she and her spouse “pleaded with [K-S-] not to be so difficult” because they could not afford to pay him the additional sum so soon, K-S- “told [them] that he would give [them] one week to pay the extra \$5,000.00 or to find five more clients for him.” She recalled that he reminded them that he is from provinces in India “known for their criminal activity, and that he could do anything.” She stated that she and her spouse initially searched for new clients for K-S-, but then agreed they could not refer anyone else to him in good conscience, so they “decided to put in the extra hours” of work, beyond their normal 16-hour work days, to earn the additional \$5,000 fee. She recalled that she washed laundry and her spouse worked as a handyman at a motel in order to earn the \$5,000 within a week. She stated they did similar work approximately one month later in order to pay the \$5,000 fee due when the fingerprint appointment was scheduled, and again about one-and-a-half months later when her work permit arrived. The Applicant claimed K-S- then stopped threatening them and told them to wait for the lawful permanent resident card to arrive, but later stated they must pay an additional \$20,000 to apply for it, as well as \$10,000 to renew the Applicant’s expiring work permit. She recalled that she and her spouse then stopped contacting K-S- and did not respond to his communications because they were unable to pay the amounts he demanded and feared receiving further threats of deportation and arrest. According to the Applicant, she and her spouse lived in fear of law enforcement officials and did not leave the motel where they lived and worked. She stated an immigration official did eventually contact her at the motel, at which point she learned that K-S- had filed a family-based petition on her behalf in which he falsely listed a different person as her spouse.<sup>6</sup> She noted that she provided information to law enforcement about her victimization and continues to fear K-S-.

In response to a request for evidence (RFE) from the Director, the Applicant submitted an additional personal statement in which she repeated her previous claims and indicated that when she initially agreed to search for new clients for K-S-, he met with her at his office and instructed her on how to complete immigration paperwork for potential clients. She recalled that K-S- reviewed the details of the forms with her and instructed her not to show the completed forms to potential clients. She stated K-S- stood over her during this meeting and made her feel unable to leave. She reported that K-S- said he was relying on her to get him more clients from the [REDACTED] community, to which she belongs, and to help overcome a language barrier with [REDACTED] people. She stated he also wanted to give her phone number to potential clients so that she could falsely inform them that K-S- had helped her receive lawful permanent residence. The Applicant stated that she and her spouse, who witnessed the meeting, “understood that [she] was to be [K-S-]’s employee, but [she] would not be paid for it,” but the debt K-S- claimed she owed would instead be reduced incrementally for each

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<sup>6</sup> USCIS records contain a Form I-130, Petition for Alien Relative, and related Form I-485, Application to Register Permanent Residence or Adjust Status, indicating the Applicant married a U.S. citizen, R-G-D-J-, in the United States in 2013.

successful referral. She stated that K-S- required her to complete the immigration forms for each potential client regardless of whether those people actually hired him, meaning that she did the work in advance without knowing whether it would result in a successful referral and reduction of her debt. Also, she noted that K-S- did not properly credit her for one successful referral and later demanded additional unexpected fees despite her attempts to obtain new clients for him. She reported that she and her spouse “contacted everyone [they] could possibly think of who would need Immigration help,” visited people at their homes, tried to convince people to complete the immigration paperwork or hire K-S-, and requested the contact information of other people they could potentially refer to K-S-. According to the Applicant, she visited the homes of five or six people and two businesses in an attempt to recruit clients, and her spouse called 16 or 17 people. She stated she completed paperwork for “at least two people,” but was unable to successfully refer anyone to K-S-. She also asserted that someone later told her they hired K-S- after speaking with her, but K-S- refused to reduce her debt based on that referral because he claimed the person was referred by someone else.

The Applicant also provided a statement from a friend with her RFE response. The friend, K-P-, stated the Applicant’s spouse contacted him to ask whether he knew of anyone who needed immigration assistance. According to K-P-, the Applicant’s spouse explained that he and the Applicant were seeking five new clients for K-S- because they could not afford to pay him. K-P- further stated that the Applicant arrived at his home the next day with immigration paperwork and pleaded with him to call a friend K-P- thought might need immigration assistance. He recalled that the Applicant told him she was in a hurry to find new clients for K-S- by the end of the week, but then began crying because she did not want another person “to go through the same thing she was experiencing.” K-P- claimed the Applicant worked for K-S- as a “referral locator . . . [and] intake recorder.” K-P- also stated that the Applicant left his home to go to work, and he did not understand why she did so given that it was the evening and she had already worked the entire day.

As additional supporting evidence with her RFE response, the Applicant provided a letter from her employer, M-P-, at the motel where she and her spouse worked temporarily in order to earn money to pay K-S-. M-P- indicated the Applicant and her spouse worked “[f]or about three consecutive months . . . approximately one week at nights” and that they explained to him that they were working extra hours to pay their attorney. He also stated that the Applicant asked him whether he knew anyone who needed immigration help.

In a statement on appeal, the Applicant claims K-S- coerced and defrauded her into providing labor and services for him, and that she suffered a back injury as a result of the work she did. She provides medical records showing that she was evaluated for back pain.

#### B. The Applicant Has Not Established She Is a Victim of a Severe Form of Trafficking in Persons

The Director concluded that the Applicant did not establish that she is a victim of a severe form of trafficking in persons. The Applicant has not overcome this ground on appeal.

An applicant seeking to demonstrate that he or she was a victim of a severe form of trafficking must show: (1) that he or she was recruited, harbored, transported, provided, or obtained for his or her labor or services, (2) through the use of force, fraud, or coercion, (3) 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”).<sup>7</sup> Thus, an applicant must show both the particular “means” used (force, fraud, or coercion) and that such means was used for a particular “end” – namely for the purpose of subjecting the applicant to involuntary servitude, peonage, debt bondage, or slavery.

As defined at 8 C.F.R. § 214.11(a), coercion means “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.”

The record shows that K-S- recruited or obtained the Applicant through coercion. The Applicant attempted to terminate her business relationship with K-S-, but K-S- threatened to abuse the legal process by arranging her deportation and to harm her and her family upon their return to India if she did not continue with his representation. As a condition of that representation, K-S- demanded that the Applicant pay him unexpected fees, either in cash or through recruitment of new clients. Accordingly, his actions amounted to coercion as defined at 8 C.F.R. § 214.11(a).

However, the Applicant has not demonstrated that K-S- recruited or otherwise obtained her for the purpose of subjecting her to debt bondage, involuntary servitude, or peonage, as she claims.

As used in section 101(a)(15)(T)(i) of the Act, the term “debt bondage” means:

the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

8 C.F.R. § 214.11(a). In her brief on appeal, the Applicant alleges she was “tricked into working excessive hours, with no control over [her] debt and in constant fear of being deported.” However, the evidence does not establish that the Applicant owed a debt to K-S- for which she pledged her personal services as a security. A debt is a “[l]iability on a claim; a specific sum of money due by agreement or otherwise.” *Black’s Law Dictionary* (B.A. Garner, ed.) (10th ed. 2014). The record indicates that K-S- told the Applicant that his assistance with her waiver application would cost \$5,000 and that she would be deported if she did not proceed with the representation. However, at the time K-S- demanded that the Applicant pay this waiver fee or recruit five new clients within a

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<sup>7</sup> The definition of a severe form of trafficking also includes commercial sex trafficking, which does not apply in this case. 8 C.F.R. § 214.11(a).

week, the Applicant had already paid the initial retainer fee in full, had not accrued charges for the fingerprinting appointment or receipt of the work permit, and had not yet agreed to hire K-S- for representation on her waiver application. She therefore did not incur or owe a debt to K-S-. Although the Applicant subsequently attempted to recruit clients for K-S- and worked extra hours at a motel to earn the extra \$5,000 he demanded, she did so in order to pay a fee for services not yet rendered. Her failure to pay would have resulted in K-S-'s withdrawal of representation and possible action on his threats, but not inurrence of a debt. Additionally, despite the fact that the Applicant and her spouse worked extra hours in order to pay subsequent fees to K-S- upon scheduling of her fingerprinting appointment and receipt of her work permit, they had agreed in advance, at their initial meeting with K-S-, to pay those amounts for his assistance with her immigration application process.

The evidence appears to indicate that K-S- extorted the Applicant by obtaining money from her through the wrongful use of force or fear. *See* Cal. Penal Code § 518 (defining extortion under California law); *Black's Law Dictionary* (B.A. Garner, ed.) (10th ed. 2014). The Applicant, however, asserts that she was subjected to debt bondage rather than extortion, because she maintains that K-S- was aware that she was unable to pay the fees within the timeframe he demanded and left her no choice but to provide personal services as payment by recruiting new clients for him instead. The record does not support the Applicant's claim that K-S- subjected her to debt bondage. After briefly attempting to reduce the amount of her fees by providing recruitment services for K-S-, the Applicant ultimately paid the fees within the timeframe on her own and thus, did not incur any debt for which she pledged her personal services to K-S-. The record here establishes that the Applicant was forced to continue being represented by K-S- and pay him additional fees. Nevertheless, the evidence does not support a finding that the Applicant was in debt to K-S- or that she pledged her personal services as a security for such debt.

Further, the evidence does not show that K-S-'s recruitment of the Applicant through coercion was for the purpose of subjecting her to involuntary servitude or peonage under 8 C.F.R. § 214.11(a). Involuntary servitude is, in relevant part:

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 or another person would suffer serious harm or physical restraint; or a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or injury or by the use or threat of coercion through the law or the legal process.

*Id.* Servitude is not defined in the Act or the regulations, but is commonly understood as “the condition of being a servant or slave,” or a prisoner sentenced to forced labor. *Black's Law Dictionary* (B.A. Garner, ed.) (10th ed. 2014). Slavery is defined as “a situation in which one person has absolute power over the life, fortune, and liberty of another.” *Id.*

The record does not establish that K-S- subjected, or intended to subject, the Applicant to a condition of servitude. In her brief on appeal, the Applicant claims K-S- coerced her to “work[] unrealistically long hours against her will” to earn \$5,000 or “recruit five clients for [K-S-] and to complete their immigration-related paperwork.” She also asserts K-S- subjected her to abuse of the legal process by threatening to deport her and her family if she did not comply with his demands within a week. However, although K-S- coerced her into continuing with her immigration application and the Applicant attempted to recruit clients for K-S- and worked extra hours at a motel in order to pay the related fees, the record does not show that she was his servant or slave, or that she was forced to work for K-S- under threat of physical restraint, injury, or abuse of the legal process. While K-S- offered to reduce the fees if the Applicant successfully recruited new clients, she was not required to pay him through that method. In fact, the record shows that the Applicant was able to meet K-S-’s demands by paying the fees outright instead. The Applicant indicated in her RFE statement that she and her spouse earned the money to pay K-S- by working at a motel, and that K-S- rarely contacted them once they had paid all of the fees. Although the Applicant worked more hours than usual at a temporary job in order to earn the money to pay K-S-, she moved about freely, chose her own employment, and was compensated for her labor by her employer. The evidence does not show that K-S- required that she work at the motel or otherwise controlled her actions during that time. The evidence indicates that K-S- coerced and extorted the Applicant to pay him unexpected fees and continue representation with him, but it does not demonstrate that he placed her in a condition of involuntary servitude as that term is defined at 8 C.F.R. § 214.11(a).

Peonage means “a status or condition of involuntary servitude based upon real or alleged indebtedness.” 8 C.F.R. § 214.11(a). Because the Applicant has not established she was in a condition of involuntary servitude or that she had a debt to K-S-, she necessarily cannot establish that she was in a condition of peonage.

Accordingly, the Applicant has not established that she is the victim of a severe form of trafficking in persons as required by section 101(a)(15)(T)(i) of the Act.

### C. The Applicant is Not Physically Present in the United States on Account of Trafficking

The Director also concluded that the Applicant had not established that she was physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires. The Applicant has not overcome this ground on appeal.

In determining the physical presence requirement, USCIS must consider a T applicant’s presence in the United States at the time the application is filed. 8 C.F.R. § 214.11(g)(1). This physical presence requirement reaches an applicant who at the time of filing: is currently being subjected to trafficking; was liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved; was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or was allowed to enter the United States to participate in investigative or judicial processes related to the trafficking. 8 C.F.R. §§ 214.11 (g)(1)(i)-(iv).

*Matter of H-B-P-*

As the record does not establish that the Applicant was the victim of a severe form of trafficking in persons, she consequently cannot show that she 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.

### III. CONCLUSION

The Applicant has not established that she is the victim of a severe form of trafficking in persons and is physically present in the United States on account of such trafficking. Accordingly, she is ineligible for T nonimmigrant status.

**ORDER:** The appeal is dismissed.

Cite as *Matter of H-B-P-*, ID# 815753 (AAO Jan. 17, 2018)