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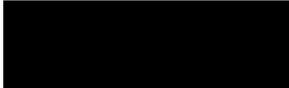
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: APR '25 2006

IN RE:

Applicant:



APPLICATION: Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) and 214(n) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(T)(i) and 1214(n).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for T nonimmigrant status was denied by the Center Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who last entered the United States on July 23, 2003 pursuant to an H-1B visa in order to accept a position as a teacher. The applicant paid a fee to Multicultural Professionals ("MP") in order to be interviewed, tested, and placed in a position in the United States. MP failed to employ the applicant as agreed. The applicant seeks T nonimmigrant status pursuant to section 101(a)(15)(T)(i) of the Immigration and Nationality Act (the Act) in order to remain in the United States.

The applicant filed a Form I-914, Application for T Nonimmigrant Status, on May 4, 2005. On June 20, 2005, the center director issued a Notice of Action requesting that the applicant submit additional evidence to support his application. The applicant provided additional documentation, yet the center director found that the applicant failed to overcome the issues addressed in the notice of action and denied the application accordingly. *Decision of the Center Director*, dated October 17, 2005. Specifically, the director found that the applicant failed to show that: (1) the applicant is a victim of a severe form of trafficking in persons; (2) the applicant's physical presence in the United States is on account of a severe form of human trafficking in persons, or; (4) the applicant would suffer extreme hardship involving unusual and severe harm upon removal.

On appeal, counsel for the applicant contends that the center director improperly required the applicant to show that he has been "'subjected to' a particular end through a particular mean," and that the statute does not require a victim to be subjected to a particular end. *Counsel's Statement on Form I-290B*, dated November 17, 2005. Counsel asserts that the center director erroneously held that the applicant is not a victim of human trafficking because he was not subjected to violence. *Id.*

The record contains a brief from counsel; statements from the applicant in support of the Form I-914 application and in response to the center director's request for evidence; Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons; a letter from the U.S. Department of Health and Human Services ("HHS") certifying that the applicant has been a victim of human trafficking; a copy of an indictment of the alleged traffickers; a press release from the U.S. Department of Justice regarding the indictment of the alleged traffickers; copies of receipts for funds the applicant paid to the alleged traffickers; a copy of a flowchart of the application process the applicant was instructed to follow in connection with the alleged trafficking incident; an affidavit from the husband of the applicant's niece in which he provides that he loaned the applicant funds with which to pay MP; copies of media articles regarding the alleged trafficking incident; a copy of an invoice from MP issued to the applicant for job placement services; copies of the applicant's H-1B visa and Form I-94, and; documentation reflecting that the applicant has been granted continued presence. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) [S]ubject to section 214(o), an alien who the Attorney General [now Secretary of Homeland Security (Secretary)] determines --

- (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, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking,
- (III) (aa) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, [and] . . .
...
- (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . .

A successful section 101(a)(15)(T) application is dependent first upon a showing that the applicant is a victim of a severe form of trafficking in persons. According to the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8), the term “severe forms of trafficking in persons” means:

- A. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- B. 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.

The regulations at 8 C.F.R. § 214.11(f) provide specific guidelines on evidence that may be provided to support an applicant’s contention that she is a victim of a severe form of trafficking. The regulations state:

(f) Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons. The applicant must submit evidence that fully establishes eligibility for each element of the T nonimmigrant status to the satisfaction of the Attorney General. First, an alien must demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement either by submitting an LEA endorsement, by demonstrating that the Service previously has arranged for the alien's continued presence under 28 [C.F.R. §] 1100.35, or by submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim (this showing is not necessary if the person induced to perform a commercial sex act is under the age of 18). An application must contain a statement by the applicant describing the facts of his or her victimization. In determining whether an applicant is a victim of a severe form of trafficking in persons, the Service will consider all credible and relevant evidence.

(1) *Law Enforcement Agency endorsement.* An LEA endorsement is not required. However, if provided, it must be submitted by an appropriate law enforcement official on Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*, of Form I-914. The LEA

endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide persuasive evidence, the LEA endorsement must contain a description of the victimization upon which the application is based (including the dates the severe forms of trafficking in persons and victimization occurred), and be signed by a supervising official responsible for the investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act. The traffickers must have used force, fraud, or coercion to make the victim engage in the intended labor or services, or (for those 18 or older) the intended commercial sex act. The situations involving labor or services must rise to the level of involuntary servitude, peonage, debt bondage, or slavery. The decision of whether or not to complete an LEA endorsement for an applicant shall be at the discretion of the LEA.

(2) *Primary evidence of victim status.* The Service will consider an LEA endorsement as primary evidence that the applicant has been the victim of a severe form of trafficking in persons provided that the details contained in the endorsement meet the definition of a severe form of trafficking in persons under this section. In the alternative, documentation from the Service [CIS] granting the applicant continued presence in accordance with 28 [C.F.R. §] 1100.35 will be considered as primary evidence that the applicant has been the victim of a severe form of trafficking in persons, unless the Service has revoked the continued presence based on a determination that the applicant is not a victim of a severe form of trafficking in persons.

(3) *Secondary evidence of victim status; Affidavits.* Credible secondary evidence and affidavits may be submitted to explain the nonexistence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant be a victim of a severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons; credible evidence of victimization and cooperation, describing what the alien has done to report the crime to an LEA; and a statement indicating whether similar records for the time and place of the crime are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts. Applicants are encouraged to provide and document all credible evidence, because there is no guarantee that a particular piece of evidence will result in a finding that the applicant was a victim of a severe form of trafficking in persons. If the applicant does not submit an LEA endorsement, the Service will proceed with the adjudication based on the secondary evidence and affidavits submitted. A non-exhaustive list of secondary evidence includes trial

transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. In addition, applicants may also submit their own affidavit and the affidavits of other witnesses. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(4) *Obtaining an LEA endorsement.* A victim of a severe form of trafficking in persons who does not have an LEA endorsement should contact the LEA to which the alien has provided assistance to request an endorsement. If the applicant has not had contact with an LEA regarding the acts of severe forms of trafficking in persons, the applicant should promptly contact the nearest Service or Federal Bureau of Investigation (FBI) field office or U.S. Attorneys' Office to file a complaint, assist in the investigation or prosecution of acts of severe forms of trafficking in persons, and request an LEA endorsement. If the applicant was recently liberated from the trafficking in persons situation, the applicant should ask the LEA for an endorsement. Alternatively, the applicant may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline at 1-888-428-7581 to file a complaint and be referred to an LEA.

Debt bondage is defined at 8 C.F.R. § 214.11(a) as:

[T]he 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.

Involuntary servitude is defined at 8 C.F.R. § 214.11(a):

Involuntary servitude means 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 the abuse or threatened abuse of legal process. Accordingly, 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 physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

Peonage is defined at 8 C.F.R. § 214.11(a) as “[a] status or condition of involuntary servitude based upon real or alleged indebtedness.”

The applicant submitted a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 Supplement B, (Law Enforcement Agency [LEA] Endorsement.) This document was approved by Ricardo Hutterer on November 30, 2004. The document explains that the applicant and other Filipino

teachers were defrauded of over \$10,000 each pursuant to offers to place them in teaching positions in the United States. The document provides that the teaching jobs did not exist, and that the applicant was placed in a position of dependency on those who arranged his entry to the United States. The document further states that the applicant escaped from the alleged traffickers, and he is cooperating with Immigration and Customs Enforcement (“ICE”) Agents. The document finally states that the applicant faces possible harm if he returns to the Philippines, because he has cooperated with U.S. law enforcement agents in a prosecution effort, and the alleged traffickers are connected to organized crime in the Philippines.

The applicant further provided documentation from CIS granting him continued presence in accordance with 28 C.F.R. § 1100.35. Thus, the applicant has presented primary evidence that he has been the victim of a severe form of trafficking in persons, and such documentation is given careful consideration.

As secondary evidence, the applicant submits statements in which he explains the alleged trafficking incident. The applicant states that he worked as a teacher in the Philippines. *Applicant’s Statement in Support of the Form I-914 Application*, dated January 31, 2005. Friends encouraged him to apply for a teaching position in the United States, and beginning in July 2001 he paid fees to MP in order to be interviewed, tested, and placed in a position in the United States. *Id.* at 1-4. The applicant provides that he obtained a loan of \$10,000 from his brothers and niece to pay the fees. *Applicant’s Supplemental Affidavit*, dated September 12, 2005. MP offered to arrange a loan for the applicant, yet he declined to borrow money from them or their recommended lender. *Id.* at 6. The applicant resigned his former position, and applied for an H-1B visa based on an offer from MP. *Applicant’s Statement in Support of the Form I-914 Application* at 3. However, upon experiencing complications with obtaining a visa from the U.S. consulate, the applicant learned that his job offer was not arranged as agreed. *Id.* at 4. MP refunded the \$6,500 that the applicant has paid. *Id.*

In November 2002, the applicant again paid a \$6,500 fee to MP to arrange a teaching position, with an agreement to pay MP an additional \$1,000 upon arrival in the United States. *Id.* The applicant explains that he executed a promissory note as evidence that he owed MP \$1,000 in order to convince MP to fly him to the United States. *Applicant’s Supplemental Affidavit* at 8. In a separate portion of the applicant’s statement, he provides that he had paid MP a total of \$4,500 as of the time he departed for the United States. *Id.* at 9. The applicant obtained an H-1B visa, and he arrived in Houston, Texas on July 23, 2003. *Applicant’s Statement in Support of the Form I-914 Application* at 4-5. The applicant states that his job offer and associated H-1B visa were for a position in the El Paso area. *Id.* at 5. Yet once he was in the United States, MP instructed him to instead fly to McAllen, Texas, an area separate from the greater El Paso area. *Id.* The applicant stayed in a hotel with other teachers who were awaiting deployment, and he became aware that MP did not have a job arranged for him. *Applicant’s Supplemental Affidavit* at 11. The applicant indicates that his living conditions were poor, including an overcrowded hotel which required him to sleep on the floor. *Id.* at 12. The applicant felt that he was held involuntarily, as he had no independent transportation or means of income. *Id.* The applicant continued to communicate with an agent of MP, who assured him she was working on securing a position for him. *Id.* at 14. The applicant reports hearing the MP agent refer to herself as a smuggler. *Id.* The applicant states that he was aware that his H-1B only permitted him to work in the specific position that he was offered, so he contacted Citizenship and Immigration Services (“CIS”) in September 2003. *Id.* The applicant states that he cooperated fully with Immigration and Customs Enforcement Agent Shawn Crump. *Id.* The applicant highlights that MP has a history of securing H-1Bs for teachers for one school district, and then placing them in another. *Id.* at 5-6.

In his supplemental statement, the applicant explains that he contacted Agent Dante Orate once he learned that other teachers in the same position were working with U.S. authorities. *Applicant's Supplemental Affidavit* at 17. The applicant explains that MP was subsequently indicted for Conspiracy to Commit Alien Smuggling, Visa Fraud, and Money Laundering. *Id.*

The applicant states that he fears he may be harmed by associates of MP if he returns to the Philippines, as the individuals involved there have not been prosecuted. *Id.* at 18-19. The applicant further contends that he still owes MP \$1,000 and compensation for his living expenses, for which he could be sued in the Philippines. *Id.* at 19.

Counsel for the applicant contends that the center director improperly required the applicant to show that he has been "'subjected to' a particular end through a particular mean," and that the statute does not require a victim to be subjected to a particular end. *Counsel's Statement on Form I-290B*, dated November 17, 2005. Counsel asserts that the center director erroneously held that the applicant is not a victim of human trafficking because he was not subjected to violence. *Id.* Counsel further asserts that the center director incorrectly assumed that the applicant enjoyed a legal immigration status and the freedom to move about the United States due to his H-1B status. *Counsel's Brief in Support of Appeal*, dated November 17, 2005. Counsel contends that the center director failed to give proper weight to the applicant's Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons and the letter from the U.S. Department of Health and Human Services ("HHS") certifying that the applicant has been a victim of human trafficking. *Id.* at 1-2. Counsel states that the center director erroneously defined involuntary servitude, and incorrectly determined that peonage requires a victim to be in debt to the trafficker. *Id.* at 2.

Counsel states that MP recruited the applicant into its scheme because it "simply wanted the huge amount of money that [the applicant] would pay." *Id.* at 3. Counsel explains that the applicant was reduced to a state of dependency on MP due to the fact that no teaching job was available for him in the United States. *Id.* Counsel states that the applicant and other teachers obeyed the directives of MP due to their need for employment and fear that they would be removed from the United States. *Id.* Counsel asserts that the applicant's situation constituted involuntary servitude and peonage, as he believed that he would suffer serious harm if he did not comply with MP's requests. *Id.* at 4. Counsel further alleges that "[f]rom the beginning, MP intended to subject [the applicant] to a condition of involuntary servitude and peonage since MP knew [the applicant] would not have a teaching position when he arrived in Texas." *Id.* at 11.

Counsel contends that the applicant will suffer extreme hardship if he returns to the Philippines. *Id.* at 14. Counsel states that MP is closely associated with organized crime in the Philippines, and their associates could find and harm him there. *Id.* at 16.

Upon review, the applicant has not established that he has been the victim of a severe form of trafficking in persons. The record shows that MP defrauded the applicant by collecting a high fee from him in exchange for a teaching position that did not yet exist. The applicant traveled to the United States pursuant to this fraudulent scheme. However, the applicant has not established that he was brought to the United States "for the purpose of" subjection to involuntary servitude, peonage, debt bondage, or slavery." Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B)(emphasis added).

The condition of involuntary servitude requires that “the victim is forced to work for the defendant.” 8 C.F.R. § 214.11(a). The condition of peonage also requires that the victim is compelled to work for the perpetrator, as it is “[a] status or condition of involuntary servitude.” *Id.*

The applicant has not established that MP subjected him to involuntary servitude or peonage. In fact, the applicant agreed to accept employment through MP and was denied the opportunity to perform work. To establish that he was subjected to involuntary servitude or peonage, the applicant does not have to show that he in fact performed work for MP. Yet, he must show that MP brought him to the United States *for the purpose of* subjection to involuntary servitude or peonage. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B). However, the record does not support that MP intended for the applicant to work. On the contrary, MP had no employment available for the applicant and no tasks for the applicant to perform. As stated by counsel, the record shows that MP “simply wanted the huge amount of money that [the applicant] would pay” pursuant to the employment agreement. *Counsel’s Brief in Support of Appeal* at 3. Without showing that MP intended for the applicant to perform work in the United States, the applicant has failed to establish that he was subjected to involuntary servitude or peonage.

The applicant further has not shown that MP subjected him to debt bondage. The applicant submitted documentation to show that he borrowed money from his family members in order to pay a fee to MP. The funds that the applicant borrowed from his relatives are owed to them, not to MP. The applicant provides that he executed a promissory note to MP for \$1,000, to be paid upon his arrival in the United States. The applicant has not provided a copy of this note such that the AAO can examine any associated terms presented in the document. Yet, the applicant has not indicated that he pledged his personal services or labor to MP to satisfy the \$1,000 debt. The applicant provided that the funds were intended as a final installment for recruiting services. The record does not reflect that MP intended the promissory note as an instrument to bind the applicant to perform services for it. 8 C.F.R. § 214.11(a). The applicant’s statement suggests that he could have paid \$1,000 to MP in cash and the debt would have been deemed satisfied. Accordingly, the applicant has not shown that he pledged his personal services as security for a debt he owed to MP, such that he was subjected to debt bondage. 8 C.F.R. § 214.11(a).

Counsel contends that the center director failed to give proper weight to the applicant’s Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. While the LEA Endorsement serves as primary evidence of victim status, it is not, by itself, conclusive evidence that the applicant has been a victim of a severe form of human trafficking. In examining the endorsement, it is evident that the author described the alleged trafficking enterprise as it relates to the applicant as well as other victims. The statement was not specifically tailored to the particular facts of the applicant’s case. For example, the statement provides that the applicant “and other victims” were defrauded of over \$10,000 each. However, in the applicant’s supplemental affidavit he detailed costs of the application process that totaled approximately \$9,000, including his airfare, immigration charges, recruiting fees, and the \$1,000 he was to pay under the aforementioned promissory note. It is further noted that the record show that other victims of MP’s scheme borrowed money directly from lenders associated with MP, potentially placing them in a condition of debt bondage or peonage, contrary to the applicant’s situation. Thus, as the LEA endorsement appears to address a generalized group of victims of which the applicant was deemed a part, it is not definitive evidence of the applicant’s victim status. Citizenship and Immigration Services (“CIS”) is not required to accept the endorsement as conclusive evidence, and the center director did not err in declining to treat it as such.

Counsel further asserts that the center director failed to give proper weight to the letter from HHS certifying that the applicant has been a victim of human trafficking. However, as correctly noted by the center director, the determination of victim status by HHS is based on its own rules and process for the purpose of determining the applicant's eligibility for HHS services. HHS's determination is not conclusive evidence of victim status for the purpose of establishing eligibility for T status under section 101(a)(15)(T) of the Act, and it is not binding on CIS. It is further noted that the HHS letter does not provide any analysis of the applicant's situation to support its determination. While CIS gives the HHS letter due consideration as primary evidence of victim status, it is not conclusive evidence that the applicant has met the requirement of section 101(a)(15)(T)(i)(I) of the Act.

Counsel asserts that the center director erroneously held that the applicant is not a victim of human trafficking because he was not subjected to violence. While the center director commented that the applicant was not held against his will, the record does not reflect that the center director required the applicant to show that he had been subjected to violence in order to establish eligibility. Counsel's assertion is not persuasive.

Based on the foregoing, the applicant has failed to submit sufficient evidence to show that he has been the victim of a severe form of trafficking in persons. Section 101(a)(15)(T)(i)(I) of the Act.

As the applicant has failed to establish that he has been the victim of a severe form of trafficking in persons, he has failed to show that he is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking. Section 101(a)(15)(T)(i)(II) of the Act. The record shows that the applicant traveled to the United States pursuant to a fraudulent scheme, yet he has failed to show that the scheme involved a severe form of trafficking in persons, as discussed above.

Further, the applicant has failed to establish that he would suffer extreme hardship involving unusual and severe harm upon return to the Philippines, as required by Section 101(a)(15)(T)(i)(IV) of the Act. Counsel contends that the applicant will suffer extreme hardship if he returns to the Philippines. *Id.* at 14. Counsel states that MP is closely associated with organized crime in the Philippines, and their associates could find and harm him there. *Id.* at 16. Yet, the record lacks sufficient documentation to show the breadth of MP's scheme, or to show that MP works in cooperation with organized crime associates in the Philippines. The LEA endorsement states that "several potential Philippine targets are reporte[dly] closely connected to political and organized-crime figures in the Philippines." Yet, the record contains no indication of the basis for this statement. The applicant states that departing the United States constitutes a particular hardship due to the fact that he is now married to a naturalized U.S. citizen who does not wish to return to the Philippines. Yet, the applicant has not provided details of such hardship, or evidence that he is in fact married to a U.S. citizen. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has not articulated any other factors that would result in extreme hardship involving unusual and severe harm should she return to the Philippines, thus he has not satisfied the requirements of Section 101(a)(15)(T)(i)(IV) of the Act.

Based on the foregoing, the applicant has failed to establish that he satisfies the requirements for T status as provided in 101(a)(15)(T)(i) of the Act. The AAO acknowledges that the applicant has endured significant hardship due to the events he has described, however, he has not shown that he is eligible for T status.

In proceedings regarding an application for T nonimmigrant status under section 101(a)(15)(T)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.