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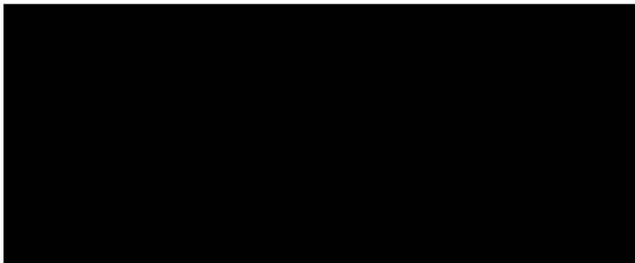
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Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

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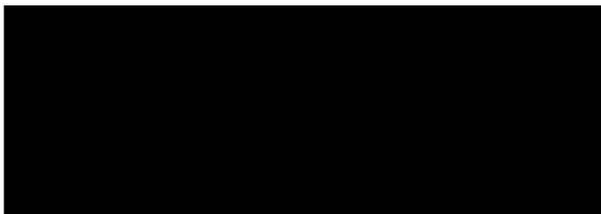
Applicant:



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 Chile who entered the United States on April 27, 2005 pursuant to an H-2A visa in order to work as a Range Calver on a ranch. The applicant asserts that he worked in harsh conditions, and that his employer exercised complete control over his movements, access to food, and financial resources. 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 October 10, 2006. On October 30, 2006, the center director issued correspondence requesting that the applicant provide additional documentation and explanation to support his application. The applicant filed a response, yet the center director found that the applicant failed to overcome all of the issues addressed in the request for evidence and denied the application accordingly. *Decision of the Center Director*, dated February 13, 2007. Specifically, the center director found that the applicant failed to show that: (1) he is a victim of a severe form of trafficking in persons; (2) his physical presence in the United States is on account of a severe form of human trafficking in persons; (3) he has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, and; (4) he would suffer extreme hardship involving unusual and severe harm should he be removed from the United States.

On appeal, counsel for the applicant contends that the record shows that the applicant was subjected to debt bondage, involuntary servitude and peonage, and thus he was a victim of human trafficking. *Brief from Counsel* at 7-14. Counsel asserts that the applicant is in the United States on account of the trafficking scheme to which he was subjected. *Id.* at 14. Counsel asserts that the applicant has provided sufficient documentation to show that he has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. *Id.* at 16-17. Counsel contends that the applicant will suffer extreme hardship involving unusual and severe harm should he be removed from the United States. *Id.* at 14-16.

#### **Evidence of Record**

The record contains: a brief from counsel; statements from the applicant; a copy of a police report regarding the departure of a man from the ranch on which the applicant worked; a hand-drawn map of the ranch on which the applicant worked; documentation in connection with the U.S. Federal Bureau of Investigation's (FBI) investigation of the applicant's alleged traffickers; copies of approval notices granting the applicant's co-workers T status; a statement from a photographer attesting to conditions on the ranch on which the applicant worked; documentation in connection with the U.S. Department of Labor's (DOL) approval of the applicant's employer's petition for H-2A positions on their ranch for 13 Range Calvers; copies of the applicant's passport, H-2A visa, and social security card; a copy of an airline ticket for the applicant's passage to the United States; documentation in connection with the applicant's bank account; payment reports reflecting the applicant's expenses and compensation for his work; copies of correspondence regarding the applicant's and his co-worker's attempt to receive their wages; an evaluation of the applicant's mental health; correspondence from counsel to the FBI reporting the applicant's victim status and willingness to assist in investigating his alleged traffickers; news articles and reports on conditions for foreign workers on ranches and conditions in Chile; an affidavit from counsel attesting to facts of which she has direct knowledge; copies of wire transfer receipts; a calendar showing the hours the applicant worked in March 2006, and; a news

article regarding a civil suit against the applicant's alleged traffickers. The entire record was reviewed and considered in rendering a decision on the appeal.

### Applicable Law

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 term “slavery” is not defined under section 101 of the Act or the regulations that control applications for T status. Nor are there any precedent decisions from a court or administrative body with binding authority over the present proceeding that provide a definition of slavery for the purpose of adjudicating an application for T status. However, common notions of slavery involve the performance of labor. For example, The American Heritage Dictionary of the English Language, Fourth Edition, defines “slavery” as:

1. The state of one bound in servitude as the property of a slaveholder or household.
2. a. The practice of owning slaves.  
b. A mode of production in which slaves constitute the principal workforce.
3. The condition of being subject or addicted to a specified influence.
4. A condition of hard work and subjection: *wage slavery*.

"Slavery," *The American Heritage Dictionary of the English Language*, (4<sup>th</sup> ed., Houghton Mifflin Company 2004) <<http://dictionary.reference.com/browse/slavery>> (accessed July 18, 2007). Webster's New World College Dictionary defines slavery as:

1 the owning or keeping of slaves as a practice or institution; slaveholding 2 the condition of being a slave; bondage; servitude 3 a condition of submission to or domination by some influence, habit, etc. 4 hard work or toil like that done by slaves; drudgery

*Webster's New World College Dictionary* 1347 (4<sup>th</sup> ed., IDG Books Worldwide, Inc. 2001). In the context of the present proceeding, slavery is listed as one of four harms that may serve as a basis for T status, in addition to involuntary servitude, peonage, and debt bondage. Trafficking Victims Protection Act, 22 U.S.C. § 7102(8). In light of the fact that involuntary servitude, peonage, and debt bondage each involve labor to be performed by the victim, and in light of the fact that slavery is commonly understood to denote a condition of forced labor, the AAO finds that to meet the definition of slavery as contemplated by the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8), an applicant must establish that she was held in a condition that involved her involuntary labor for her captors.

### Facts

The applicant did not submit a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 Supplement B, (Law Enforcement Agency [LEA] Endorsement). Nor did the applicant submit evidence that he has been granted deferred action or continued presence in accordance with 28 C.F.R.

§ 1100.35. Thus, the applicant has not submitted primary evidence that he is a victim of a severe form of trafficking in persons.

As secondary evidence, the applicant submitted statements in which he explained his experiences. He stated that he has worked in the United States on three occasions in H-2A status as a livestock herder, from 1996 to 1999, from 2001 to 2004, and beginning in April 2005. *Statement from Applicant*, dated September 8, 2006. The applicant explained that he paid a \$300 fee to a recruiter in Chile in order to arrange employment in the United States with the Vermillion Ranch Limited Partnership (Vermillion Ranch) in Moffat County in northwest Colorado and parts of Wyoming and Utah. *Id.* at 1. The applicant stated that he is the sole source of economic support for his mother, father, and brother, thus he desperately needed work. *Id.* He indicated that the recruiter did not give him a choice of where to work in the United States. *Id.*

The applicant explained that the Vermillion Ranch is very isolated, and that his only access to transportation was through his employers, the [REDACTED]. *Id.* at 2. The applicant stated that his employers severely limited his access to a telephone, and he only left the ranch two times in eleven months of working there. *Id.* The applicant explained that [REDACTED] took his passport, Form I-94, and social security card, and that another employee informed him that it was a measure to ensure they didn't leave. *Id.* The applicant stated that he felt he had to follow the instructions of his employers or they would deport him. *Id.* He indicated that conditions at the ranch were much worse than those where he had previously worked. *Id.*

The applicant explained that he did not receive paychecks while working for Vermillion Ranch, but he received statements of his pay, including deductions for taxes and expenses charged to him. *Id.* He reported that sometimes he owed money to the ranch due to deductions. *Id.* The applicant stated that his employers opened a bank account in his name and deposited his compensation into it, yet he was not given monthly bank statements, the account number, or access to the account. *Id.*

The applicant explained that he had to work seven days per week, and that he was told he could not leave his workstation or the ranch. *Id.* at 3. The applicant stated that his employers frequently yelled at the workers. *Id.* He indicated that one of his employers told him that he would be sent back to Chile if he didn't work. *Id.* The applicant recounted an incident when one of his employers criticized his work and told him that if he did not improve he would be deported. *Id.* The applicant stated that he observed workers being sent home for questioning the working conditions, thus he believed the Dickinson's threats to deport workers. *Id.*

The applicant stated that he regularly worked 10 to 12 hours per day, sometimes 15 hours per day, and that in the winter he often worked into the night. *Id.* The applicant indicated that his pay sometimes amounted to less than \$2.00 per hour. *Id.* He provided that the only time off he was permitted was half a day on Christmas. *Id.* The applicant stated that at times his employers did not give him adequate food, and they became angry with him if he requested more. *Id.* The applicant explained that on one occasion he did not eat for a day and a half because he ran out of food. *Id.*

The applicant stated that three workers escaped the ranch in 2005 due to the harsh conditions. *Id.* The applicant provided that another worker brought a worker's compensation claim against the applicant's employers when he was injured on the job, and the applicant's employers made the worker sign a document to dismiss his lawyer. *Id.* The applicant stated that two other workers were returned to Chile before their contracts were completed. *Id.* The applicant explained that he believed this was an effort by the [REDACTED] to intimidate the workers to prevent them from asserting their rights. *Id.* at 4.

The applicant explained that he lived close to the main ranch house, and he was able to use a telephone with a calling card. *Id.* He stated that he believed the telephone conversations were recorded, and thus he did not speak freely about conditions on the ranch. *Id.*

The applicant stated that, in March 2006, he had the opportunity to use a phone “that was not bugged,” and he made calls to his family members to get someone to help him escape the ranch. *Id.* The applicant explained that he was picked up at night from the ranch, and he had to leave without his wages, passport, and social security card. *Id.*

The applicant stated that he reported his experience to an FBI agent, and he is willing to cooperate with the FBI in an investigation of his employers. *Id.*

The applicant stated that he wishes to remain in the United States to participate in a criminal investigation. *Id.* at 5. The applicant explained that he lived in a remote area of Chile where communications are limited, and should he return he would be unable to meaningfully participate in an investigation of Vermillion Ranch. *Id.* The applicant further stated that the man who recruited him in Chile “knows everyone,” and the “[the applicant doesn’t] know what [the recruiter] can do if he learns that [the applicant is] participating in an investigation. *Id.* at 5-6.

In a separate statement, the applicant asserted that Vermillion Ranch mischaracterized his duties in order to gain approval with the DOL to pay a lower wage. *Statement from the Applicant*, dated July 24, 2007. The applicant stated that the conditions of his employment constituted involuntary servitude, as he did not have access to his bank account or documentation including his passport. *Id.* at 1.

The applicant stated that he would suffer extreme hardship involving severe and unusual harm should he return to Chile. *Id.* at 3. The applicant indicated that he suffers from Post Traumatic Stress Disorder and Panic Disorder. *Id.* He stated that in the United States he can receive the psychological assistance he requires. *Id.* He stated that Chile lacks mental health services, and those with mental disorders are stigmatized in Chilean society. *Id.*

Counsel submitted a statement to attest to facts of which she has a direct knowledge.<sup>1</sup> Counsel explained her efforts to assist the applicant, and she asserted that Moffat County Sheriff’s Office engaged in behavior intended to discourage her from representing the applicant and other workers in his circumstances. *Statement from Counsel*, dated January 18, 2007. Counsel noted that a member of the [REDACTED] was a former county commissioner, and thus she suggested that the [REDACTED] worked in conjunction with the Sheriff’s Office in their wrongdoing. *Id.* at 2.

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<sup>1</sup> The center director stated that the affidavit from counsel may not be used as evidence. *Decision of the Center Director*, at 2, dated February 13, 2007. Counsel’s recounting of facts of which she has no direct knowledge is not considered evidence. However, counsel’s statements regarding the facts of her direct experiences, including her experiences with the Moffat County Sheriff’s Office and her interactions with the applicant around the time of his departure from the Vermillion Ranch, are given due weight as witness testimony. The fact that counsel is a representative for the applicant does not disqualify her testimony from consideration.

Counsel submitted a brief in which she recounts the facts of the applicant's experiences. *Brief from Counsel*, dated April 12, 2007. Counsel asserts that the center director failed to give adequate weight to the evidence provided by the applicant. *Id.* at 4-15. Counsel contends that the applicant has provided sufficient evidence to show that a lawsuit is pending against the Vermillion Ranch, including a one-page order from a judge and a newspaper article regarding the suit. *Id.* at 6. Counsel notes that the center director referenced the applicant's wife, when in fact the applicant has no spouse and has not asserted that he does. *Id.* at 7. Counsel contends that this discrepancy reflects that the center director failed to conduct a careful review of the record. *Id.*

Counsel contends that the record shows that the applicant was subjected to debt bondage, involuntary servitude and peonage, and thus he was a victim of human trafficking. *Id.* at 7-14. Counsel states that the threat of deportation may serve as a sufficient basis to find that an applicant has been placed in involuntary servitude. *Id.* at 8. Counsel contends that the Vermillion Ranch obtained the applicant's labor by abuse of legal process, in that they failed to adequately describe his duties in filings with the DOL and in hiring the applicant. *Id.* Counsel explains that the [REDACTED] controlled the applicant through the threat of deportation, isolation on the ranch, lack of access to his documentation, inability to obtain his wages, and the practice of sending other H-2A workers back to Chile. *Id.* at 9-12.

Counsel asserts that the fact that the applicant's duties were approved by the DOL does not require a finding that he was not subject to trafficking in persons. *Id.* at 13. Counsel further contends that it is inconsequential that the applicant entered the United States voluntarily and through lawful means. *Id.*

Counsel asserts that the applicant is in the United States on account of the trafficking scheme to which he was subjected. *Id.* at 14.

Counsel asserts that the applicant has provided sufficient documentation to show that he has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. *Id.* at 16-17.

Counsel contends that the applicant will suffer extreme hardship involving unusual and severe harm should he be removed from the United States. *Id.* at 14-16. Counsel states that the applicant has provided sufficient evidence that he suffers from mental health problems for which he requires care that is not available in Chile. *Id.* at 15.

### **Analysis**

The issues in the present proceeding are whether: (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; (3) whether the applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, and; (4) whether the applicant would suffer extreme hardship involving unusual and severe harm upon removal.

Upon review, the applicant has not established that he has been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act. As noted above, the applicant has not provided primary evidence that he is a victim of a severe form of trafficking in persons, thus the AAO must rely on secondary evidence, including statements from the applicant, counsel, and from a photographer.

The applicant has not shown that he was subjected to debt bondage. 8 C.F.R. § 214.11(a). The applicant has not asserted that he pledged his personal services as security for a debt that he owed to Vermillion Ranch, or to any other party. *Id.*

The applicant has not established that Vermillion Ranch subjected him to involuntary servitude, peonage, or slavery. The applicant described the harsh conditions in which he worked, including living in remote locations on the Vermillion Ranch where he lacked access to transportation, sources of sustenance such as stores, or the bank where his wages were deposited. The applicant explained that he worked long hours, seven days per week. However, the applicant has not shown that the conditions of his employment were significantly different than those covered by his original employment description, as approved by the U.S. Department of Labor for the position of Range Calver for Vermillion Ranch. *Form ETA-790.*

In Vermillion Ranch's filing with the DOL, it indicated that Range Calvers would perform tasks related to the care and maintenance of cattle, breaking horses, shoeing horses, branding, maintenance of lands, and repairing fences. *Id.* at 1, 3. Vermillion Ranch indicated that Range Calver's would be paid \$800 per month in addition to housing. *Id.* at 2. Vermillion Ranch specified that Range Calvers would have deductions from their pay for taxes, long distance phone charges, costs of personal items such as rain coats and boots, damage to ranch-owned equipment due to negligence, and food. *Id.* at 2, 5. Vermillion Ranch provided that Range Calvers would be on call 24 hours per day, seven days per week, thus they must be at the job site 24 hours per day, seven days per week, including Sundays and holidays. *Id.* at 2. Vermillion Ranch estimated that it would have 56-63 hours of work per week for Range Calvers. *Id.* Vermillion Ranch stated that Range Calvers must be "willing to live and work singly or in small groups in isolated areas for extended periods of time." *Id.* at 3. Vermillion Ranch indicated that Range Calvers would work outdoors in all types of weather and extremes of heat, including -40 degrees to 100 degrees Fahrenheit. *Id.* at 4. Vermillion Ranch stated that Range Calvers may assist with farm equipment related to the performance of their duties. *Id.* Vermillion Ranch specified that Range Calvers' housing would meet the mobile housing standards published by the DOL. *Id.* at 5. Vermillion Ranch provided that, "[w]hen required, transportation between the worker's on-site housing provided by the employer and the employer's worksite will be provided by [the] employer at no cost to the worker . . ." *Id.*

The AAO acknowledges that the requirements of the position of Range Calver for Vermillion Ranch pose considerable hardship. Yet, the applicant has not established that Vermillion Ranch required him to perform tasks that were not contemplated by their original agreement, as approved by the DOL. The applicant has not shown that his isolated living conditions fell outside of those described by his employment agreement. The fact that the applicant was required to remain on the ranch was indicated in the employment agreement, and the applicant has not shown that he was unaware of this element of his duties.

The applicant asserted that Vermillion Ranch controlled access to his bank account and pay. However, the applicant has not shown that Vermillion Ranch took unreasonable measures regarding his form of compensation. As the applicant worked in isolated conditions, ostensibly far from a bank or stores where he might spend money, it is evident that he did not have need of or use for a pay check, or the opportunity to spend his earnings. The Vermillion Ranch's deposit of the applicant's compensation in a bank account on his behalf appears to have been a reasonable measure to safeguard the applicant's earnings and to prevent the applicant's need to hold financial instruments while living and working in a remote area in rustic conditions. The record lacks sufficient explanation or evidence to establish by a preponderance of the evidence that Vermillion Ranch deposited the applicant's earnings in an account in order to prevent the applicant from

accessing it and to restrict the applicant's ability to end his employment situation and depart the ranch. While the applicant submitted a copy of a letter from Vermillion Ranch's counsel to his co-workers who requested their pay, he has not shown that Vermillion Ranch failed to give him his bank account information or access to his pay when requested.

The applicant asserted that the [REDACTED] held his passport, visa, and social security card as a means to control him. However, the record lacks sufficient explanation or evidence to show by a preponderance of the evidence that the [REDACTED] held his documents as a means to control him or restrict his freedom. The applicant has not indicated that he requested his documentation and was refused.

The applicant asserted that he received deductions from his pay, as noted in the pay statements he received. However, the applicant has not established that deductions were made that were not in accord with his employment agreement. The applicant has not shown that Vermillion Ranch took deductions from his pay as a means to limit his access to economic resources in order to keep him under their control.

The applicant asserted that conditions on the Vermillion Ranch were significantly worse than those on other ranches on which he worked in the United States. However, the fact that the applicant found conditions with his other employers more favorable than the Vermillion Ranch does not establish that conditions on the Vermillion Ranch rose to the level of a severe form of trafficking in persons. The applicant has not shown that the conditions of his employment were significantly different than those contained in his original job description, as approved by the DOL.

The applicant stated that he feared Vermillion Ranch would deport him if he criticized his working conditions or failed to perform his duties. However, the applicant has not sufficiently described the [REDACTED] reference to or use of deportation to shown that they used the threat of deportation or legal action as a means to coerce the applicant to remain in their employ against his will. The applicant indicated that he was aware that Vermillion Ranch had deported other workers. Yet, he has not provided sufficient detail regarding these incidents such that the AAO can assess whether deportation was used as a means of coercion as contemplated by the Trafficking Victims Protection Act, 22 U.S.C. § 7102(8)(B). The applicant has not shown that deportation was not warranted in the referenced incidents. The applicant's H-2A immigration status was based on his employment with Vermillion Ranch as a Range Calver. In the absence of an alternate means to a legal immigration status, should the applicant's employment with Vermillion Ranch have ended, he would no longer have had a legal status in the United States. The applicant has not shown that any reference to possible deportation by the [REDACTED] was intended as a means to coerce him to remain under their control or to coerce him to perform tasks against his will.

The applicant recounted an incident in which a member of the [REDACTED] criticized his work. The AAO does not condone an employer treating an employee in a disrespectful manner, or taking unnecessarily harsh remedial measures for unsatisfactory performance. Yet, the applicant has not sufficiently described the referenced incident, such that the AAO can assess whether threatening or coercive actions were taken by a member of the [REDACTED]. It is noted that the applicant has not asserted that any member of the [REDACTED] threatened him with violence. Nor has the applicant asserted that any member of the [REDACTED] has harmed, or threatened to harm, another worker.

The requirements of the applicant's employment necessarily placed him in a position of dependence on the [REDACTED] due to his remote job site, his lack of access to stores and sources of sustenance, and his

lack of transportation and communication devices. However, the applicant has not shown that the elements of his situation fell significantly outside of his original job description, or that he was forced to perform his duties and remain under the control of Vermillion Ranch against his will. The applicant has not provided sufficient evidence and explanation to establish by a preponderance of the evidence that he was under the threat of serious harm, physical restraint, or abusive use of legal process had he declined to continue his employment with Vermillion Ranch. 8 C.F.R. § 214.11(a).

Accordingly, the applicant has not shown that he was subjected to debt bondage, involuntary servitude, peonage, or slavery. The applicant has not established 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.

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 center director found that the applicant failed to show that he has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, as required by section 101(a)(15)(T)(III) of the Act. However, the applicant submitted correspondence from counsel to the FBI reporting the applicant's victim status and willingness to assist in investigating his alleged traffickers. Thus, the record reflects that the applicant has made an effort to work with law enforcement agents to bring action against his employers. The record contains no indication that that applicant declined any request for assistance from law enforcement agents. Thus, the applicant has met the requirements of section 101(a)(15)(T)(III) of the Act, and the center director's finding to the contrary will be withdrawn.

The applicant has not submitted sufficient evidence to establish that he would suffer extreme hardship involving unusual and severe harm should he be removed from the United States. Section 101(a)(15)(T)(i)(IV) of the Act. The applicant stated that he wishes to remain in the United States to participate in a criminal investigation, and that his return to Chile would hinder his efforts. However, the applicant has not shown that criminal action against members of the [REDACTED] is pending or warranted. The applicant provided evidence that Vermillion Ranch is involved in litigation, yet, the applicant has not shown that he is a party in the lawsuit, or that he is serving as a witness. Thus, the applicant has not shown that his absence from the United States would hinder any pending civil or criminal action.

The applicant suggested that he may suffer retaliatory action from the man who recruited him in Chile should he return there. However, the applicant has not described any incidents that suggest that his recruiter has harmed others, has a propensity for violence, has threatened the applicant or other workers. The applicant has not described any particular events that suggest that he may be subjected to retribution should he return to Chile.

The applicant indicated that he suffers from Post Traumatic Stress Disorder and Panic Disorder. The applicant provided a psychological evaluation from Colorado West Regional Mental Health that states that he reported anxiety, episodes of panic, headaches, chest pain, choking, dizziness, and feelings that he will pass out. *Report from Colorado West Regional Mental Health*, dated August 14, 2006. The report indicates that the applicant stated that these symptoms began when he was working on Vermillion Ranch. *Id.* at 1. The

applicant indicated that in the United States he can receive the psychological assistance he requires. He stated that Chile lacks mental health services, and those with mental disorders are stigmatized in Chilean society.

The AAO acknowledges that the applicant would have very limited access to mental health services should he return to the region of Chile where he previously lived. However, the applicant has not submitted sufficient evidence to show that he receives or requires continued care for mental health conditions. The report from Colorado West Regional Mental Health recommends that the applicant receive cognitive behavioral therapy, and medication if symptoms do not relent or worsen. *Report from Colorado West Regional Mental Health* at 2. The applicant filed the present appeal on March 15, 2007, and counsel filed a brief and additional evidence on April 13, 2007. Yet, the applicant has not submitted evidence to show that he received mental health services during the eight months between the date of the evaluation from Colorado West Regional Mental Health on August 14, 2006 and the date counsel made her filing on April 13, 2007. Thus, the record does not reflect whether the applicant is receiving mental health services, whether the applicant's mental health has improved, or whether the applicant continues to require mental health care. Accordingly, the applicant has not established by a preponderance of the evidence that returning to Chile will interrupt or prevent necessary care. The applicant further has not shown that he would be identified in Chile as an individual in need of mental health services, such that he would be subject to societal stigma.

Based on the evidence of record, the applicant has not provided sufficient documentation to establish by a preponderance of the evidence that he would experience extreme hardship involving unusual and severe harm should he be removed from the United States. Section 101(a)(15)(T)(i)(IV) of the Act.

### **Conclusion**

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that: (1) he is a victim of a severe form of trafficking in persons; (2) his physical presence in the United States is on account of a severe form of human trafficking in persons, or; (3) he would suffer extreme hardship involving unusual and severe harm should he return to the Philippines. Section 101(a)(15)(T)(i) of the Act. Accordingly, the applicant 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.