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

(b)(6)

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

DATE: APR 22 2015

FILE #:
APPLICATION #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD[1]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

[1] On March 25, 1015, we requested from the filing of new Notice of Entry of Appearance as Attorney (Form G-28) because the associate who had been handling the applicant's appeal was no longer employed by the firm. As of the date of this decision, we have not received a new Form G-28 as requested for this applicant.

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

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application for failure to establish that the applicant was a victim of a severe form of trafficking in persons, was physically present in the United States on account of such trafficking, and had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking.

On appeal, the applicant submits a brief and additional evidence.

*Applicable Law*

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

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

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

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

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

The regulation at 8 C.F.R. § 214.11(1) prescribes, in pertinent part, the standard of review and the applicant's burden of proof in these proceedings:

> (1) *De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.
>
> (2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

*Pertinent Facts*

The applicant is a citizen of the Philippines who first entered the United States in 2006 as an H-2B nonimmigrant to be employed as a housekeeper by to work at the , Florida. The applicant claims to have entered into ten-month employment contract with He submitted a conditional offer for temporary employment dated August 1, 2006, from the Human Resources Recruiter of indicating that he would be paid $7.00 per hour. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on January 21, 2014. The director issued a Request for Evidence (RFE) of the applicant's claim to being a victim of trafficking, to which the applicant responded with additional evidence. The director ultimately denied the applicant's Form I-914 and the applicant has subsequently appealed. In his affidavits, the applicant provided the following account of his employment with and claimed trafficking by and his recruiters in the Philippines.

The applicant initially recalled that he saw an advertisement about a housekeeping job in the United States from , an overseas recruiting agency in the Philippines. In his December 10, 2013 statement, the applicant explained that he contacted which advised him that he was qualified for a position and, during orientation, notified him that that he would be required to pay a placement fee of $2,500.000 and $150.00 for the visa.[2] The applicant also initially stated that during orientation, indicated that would pay him $7.00 per hour and employ him for 40 hours per week plus overtime in his U.S. job. The applicant advised that also told him he would be given free transportation back and forth to work, free food at work on some days, and free groceries at the apartment. In his affidavit dated December 4, 2013, the applicant asserted that he borrowed PhP 112,000 from ' ' in October of 2006. In his affidavit dated December 10, 2013, the applicant indicated that he took a six-month loan of PhP 80,000 from ' ' and that his sister was the guarantor. He also asserted that he borrowed an additional PhP 100,000 from his sister.

[2] In his May 21, 2014 statement and on appeal, he indicated that that he paid over $3,000.00 in recruitment fees, interviews, visas and travel costs.

When he arrived in the United States, the applicant stated that he was placed in a three-bedroom, two-bathroom apartment with five other males, that he was given only $20.00 for groceries, that he was surprised to find that his payroll included a weekly deduction of $105.00 for his apartment and was also required to pay utilities. Moreover, he was not given transportation to work, and asserted that he had to walk to and from work for two hours each day because he did not want to pay for a commercial bus transport. He also indicated that although he was not given 40 hours of work per week, he was paid $7.50 per hour, a higher rate than he had initially been offered.

The applicant's initial H-2B nonimmigrant status was valid for only one year. Although the applicant stated that previously advised him that he would not have to pay an extension fee, he recounted that his DHI employer, told him that he would have to pay $750.00. Since Ms. did not offer him the opportunity to pay the fee in installments, the applicant explained that he and several similarly-situated coworkers paid an individual who owned a store, to "renew [his] visa." After Mr. stopped returning his phone calls, the applicant indicated that he realized that he would not receive work authorization, and moved first to California and then New Jersey to find employment. In response to the RFE, the applicant reiterated his initial claims, adding that because he never signed a contract with all promises were oral.

The applicant recounted he suffered financial, emotional, and physical hardship related to his employment, immigration status, and corresponding worries regarding his and his family's future and wellbeing. He also described suffering from anxiety during and after his period of employment at and worrying about how he would support his wife, children, and aging parents in the Philippines and repay his debts.

*Victim of a Severe Form of Trafficking in Persons*

The applicant claimed he was a victim of labor trafficking by and which forced him into involuntary servitude and peonage. After reviewing the applicant's initial submission and response to a request for further evidence, the director determined the applicant was not a victim of a severe form of trafficking in persons because the record showed that he appeared to have entered into a voluntary employment agreement to work in the United States and appeared to have been compensated.

To establish that he was a victim of a severe form of trafficking by and the applicant must show that these entities recruited, harbored, transported, provided or obtained him for his labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). On appeal, the applicant asserts more specifically that subjected him to forced labor through coercion, peonage, and threatened abuse of the immigration laws. The applicant's claims and the additional evidence submitted on appeal are insufficient to establish his eligibility.

The applicant has not established by a preponderance of the evidence that , trafficked him through employment in the United States. Although the applicant initially claimed that he was employed by he did not provide evidence that was his employer. Instead, he submitted a Form I-797 approval notice dated September 5, 2006, indicating that ' ' was the petitioning entity authorized to employ 55 unnamed workers from October 1, 2006 to July 31, 2007. The applicant submitted an undated document from titled "International Associate Housing Information Sheet" indicating that a prospective employee must agree to pre-arranged housing at the cost of $90-104 per week "once you arrive in the United States." The applicant also submitted a "Welcome" letter from addressed to him, and a conditional offer for temporary employment dated August 1, 2006 from the Human Resources Recruiter of The applicant signed the conditional offer on September 6, 2006, prior to his entry into the United States, and it appears to be solely prospective rather than a final employment contract. The remaining evidence of his employment that relates to the period of time the applicant claims he was employed by in Florida consists of his 2007 Internal Revenue Service (IRS) Form 1040, Wage and Tax Statement. However, the 2007 IRS Form 1040 shows that he was living in California and employed as an "inspector" in 2007 rather than as a housekeeper in Florida. The applicant did not include any additional evidence establishing that he worked for , , or another entity in Florida once he entered the United States.

In her RFE, the director suggested that the applicant provide additional evidence of employment in Florida, such as a copy of his contract with a copy of the signed application referred to in his International Associate Housing Information Sheet, and copies of paystubs. In response to the RFE, the applicant indicated that his agreements with and were oral, and that although he signed a contract with he did not understand the document. The applicant did not explain whether or not gave him a copy of his contract and, if he in fact worked for why he signed a contract with Based on the contradictory information on his 2007 IRS Form 1040 reflecting employment in California as well as the lack of additional evidence to establish his employment in Florida, the applicant has not established that he worked for, and was trafficked by, or any other entity in Florida.

Moreover, even if the applicant had established that or employed him as a housekeeper, the relevant evidence does not establish that they did so through fraud or coercion for the purpose of subjecting the applicant to peonage.

As used in section 101(a)(15)(T)(i) of the Act, the term "coercion" is defined as: "threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process." 8 C.F.R. § 214.11(a). "Peonage" is defined as "a status or condition of involuntary servitude based upon real or alleged indebtedness." *Id.* "Involuntary servitude" is defined, in pertinent part, as "a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person . . . would suffer . . . the abuse or threatened abuse of legal process." *Id.* On appeal, the applicant asserts that indirectly coerced him because he "was fraudulently induced to take on substantial debt in order to come to the United States with promises of a better life and the prospect of at least three years of steady, full-time

employment." He claims that he was afraid to leave for other employment, but also asserts that he ultimately did so because he did not wish to pay the requested visa petition extension fee of $750.00. The record does not support the applicant's claims for five principal reasons.

First, the applicant stated that he was employed and compensated by as a housekeeper pursuant to an employment contract. Although the applicant did not submit a copy of his ultimate contract or any document reflecting his actual employer or salary, in his statements he indicated that he willingly entered into an employment agreement with and agreed to be paid for his work. He attested that although he was not assigned the promised hours of work, he was paid more per hour than initially offered. According to the applicant, he left and moved to California when Ms. asked for him to pay the H-2B extension petition fee. Although the applicant indicated in his December 10, 2013 statement that advised him that he was precluded from obtaining a second job, this was also a condition of his H-2B nonimmigrant status. *See* 8 C.F.R. § 214.1(e) (a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized). Consequently, the record lacks evidence that the actually subjected or intended to subject the applicant to involuntary servitude.

Second, the record does not show that intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. In his December 10, 2013 affidavit, the applicant explained that he took a six-month loan of PhP 80,000 from plus interest, and that his sister was the guarantor. He also asserted that he borrowed an additional PhP 100,000 from his sister.[3] The applicant provided evidence of his loan from in the Philippines and a letter from his sister confirming her loan to the applicant as well as her position of guarantor to the other loan of PhP 112,000 (including interest) from " " In response to the RFE, the applicant submitted evidence that he had paid PhP 108,000 of the PhP 112,000 by May 30, 2007.

The applicant also explained that he was requested to pay the filing fees relating to his second petition seeking extension of H-2B status, but chose not to do so, instead providing the fee to Mr. an unrelated individual who allegedly defrauded him. Accordingly, the relevant evidence shows that the applicant incurred private and personal loans shortly before his alleged employment with , but the record does not indicate that the applicant was ever indebted to or or that or forced him into indebtedness.

Third, the record does not support the applicant's claim that engaged in coercion because he was "fraudulently induced to take on substantial debt in order come to the United States with promises of a better life and the prospect of at least three years of steady, full-time employment." In his December 10, 2013 affidavit, the applicant asserted that he would face hardship in the Philippines because "I don't have money to pay for what I borrowed from the [sic] and . . . my sister." However, as discussed, the applicant has submitted other information suggesting that he paid all of his initial debt and most of his interest to as of May 2007. Moreover, although he asserted on appeal that " continued to profit

[3] In his December 4, 2013 affidavit, the applicant asserted that he borrowed the money from " ."

from him by charging him for visa renewals," in his prior statements he attested that he freely declined to pay even the first petition extension fee to . The actions outlined by the applicant do not establish that he was forced to take on a huge amount of debt.

Finally, the record does not support the applicant's claim that trafficked him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere. In response to the RFE, he explained that he eventually sought and obtained work with a new employer. The applicant claimed on appeal that and "withheld his passport and visa until all of his fees were paid," but the record shows that the applicant provided copies of his passport, and his Form I-797 approval notice authorizing to employ him from October 2006 to September 2007. Moreover, the applicant provided contradictory information in his May 21, 2014 affidavit, asserting that "I held my own passport and Notice of Action." He also explained that he left in Florida for employment opportunities in California and then New Jersey. Although the applicant indicated that "abandoned" him when he did not provide the initial H-2B extension petition fee, the applicant has not established that prevented him from seeking other employment. The record thus does not show that obtained the applicant's services through fraud, force, or coercion involving physical restraint or otherwise restricted his movements.

In summary, the record does not establish that the applicant was employed by in Florida. Even if the applicant had submitted sufficient evidence to establish his employment with he has not established that ever subjected him to a severe form of trafficking in persons. Although the record suggests that the applicant was under considerable financial pressure to support his family and experienced stress and anxiety, the relevant evidence does not show that obtained the applicant's labor through force, fraud, or coercion for the purpose of subjecting him to involuntary servitude, peonage, debt bondage, or slavery. Although the applicant submitted evidence relating to a loan he claims to have taken out with respect to his initial H-2B petition and a bill that he claimed is related to an H-2B extension petition that Mr. allegedly failed to file, the record contains no evidence that the applicant was ever indebted to , or that forced or coerced him to go into debt. Finally, the record lacks any evidence that the applicant was ever subjected to involuntary servitude or peonage or that ever intended to subject him to such conditions. To the contrary, the record shows that petitioned for the applicant as an H-2B nonimmigrant worker, suggests that employed him at an hourly salary that was greater than initially proffered, and that he voluntarily left Florida to pursue other employment in California and then New Jersey. Consequently, the applicant has not demonstrated that he was the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.

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

The applicant has failed to overcome the director's determination that he is not physically present in the United States on account of the claimed trafficking. As discussed above, the record does not show that the applicant was the victim of a severe form of human trafficking and 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.

*Assistance to Law Enforcement Investigation or Prosecution of Trafficking*

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

The applicant submitted copies of electronic mails and a letter sent to Department of Justice (DOJ) on his behalf requesting law enforcement certification for the applicant as victim of trafficking. These communications evidence the applicant's attempts to notify DOJ of the claimed trafficking, but the record does not reflect a response from DOJ. As the record otherwise fails to establish any severe form of human trafficking in connection with the applicant's alleged employment with or the applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

*Extreme Hardship Involving Unusual and Severe Harm Upon Removal*

As an additional matter, the record also fails to demonstrate that the applicant would suffer extreme hardship involving unusual and severe harm upon removal.[4] In his affidavits, the applicant claimed he would suffer extreme hardship if forced to return to the Philippines because he could not pay his debts or support his family and because he believes his alleged traffickers in the Philippines would retaliate against him and his family. He asserted that it would be difficult for him to find work in the Philippines because he would be considered old and a failure for having been exploited and failing "to make it" in the United States. As a consequence, he contends that "[a]ll that remains . . . in the Philippines is poverty, joblessness, and greater hardships for me and my family." In his May 21, 2014 statement, the applicant suggested he wants to remain in the United States to seek justice against his alleged traffickers.

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

[4] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

or related to the applicant's employment. The record also lacks evidence that the crime rate or other conditions in the Philippines are equivalent to civil unrest or armed conflict resulting in the designation of Temporary Protected Status or other relevant protections under U.S. immigration law, as described at 8 C.F.R. § 214.11(i)(1)(viii).

The applicant described the financial and emotional difficulties he endured while allegedly employed by However, the relevant evidence does not establish that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at 8 C.F.R. § 214.11(i)(1) and as required by section 101(a)(15)(T)(i)(IV) of the Act.

*Conclusion*

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The applicant bears the burden of proof to establish his eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.