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

U.S. Citizenship and Immigration Services

(b)(6)

Date: AUG 0 3 2015

FILE #:
APPLICATION RECEIPT #:

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:

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

DISCUSSION: The Director, Vermont Service Center, (the director) denied the application 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 previously filed 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 . . . .;
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> (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;
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> (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
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> (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal . . . .

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

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

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

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

(1) *De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

Pertinent Facts and the Applicant's Claims

The applicant is a citizen of the Philippines who entered the United States on March 7, 2006 as an H-2B temporary worker petitioned for by , located in Washington. The applicant was admitted to the United States in H-2B status for a period of five months, until August 10, 2006. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on December 16, 2013. 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 subsequently appealed. In his November 20, 2013 and June 5, 2014 affidavits, the applicant provided the following account of his journey to the United States and claimed trafficking by , and .

The applicant recalled that he learned about employment opportunities at a factory in the United States through a recruiting agency licensed by the Philippine Overseas Employment Administration (POEA). He was told that the United States counterpart to , would employ him in the United States. showed him videos and photographs of the work site, and promised that he would be provided with free transportation to and from work and a free apartment to share with three other workers. After seeing videos and photographs of the workplace, he decided to accept the offer. He paid the following fees: 10,000 Philippine pesos (PhP) ($200) to PhP 2,375 ($48) to the POEA for work authorization; PhP 5,400 ($108) for his visa interview; $2,700 to NARI; PhP 10,000 ($200) for his work visa; and $500 for his airline ticket. The applicant borrowed money from his brother-in-law to pay the fees with a verbal agreement that he would repay him in one year with 5% interest.

The applicant received his H-2B visa from one week prior to his departure. When he arrived in , Oregon on March 7, 2006, an individual named picked him up from the airport and then took him to her house.[2] He stayed at house for a couple of days. He was then brought to his "permanent" home, which was a two-bedroom, one-bathroom house that he was to share with 19 of his coworkers. The applicant slept on the floor of the house and found it difficult to take turns using the kitchen appliances, washing machine and bathroom. He was charged $50 per month in rent.

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[2] The applicant's contract with shows that was the Human Resources Supervisor at the company.

While employed with the applicant had several duties, including line cutter, breast cutting operator, trimmer, processor and maintenance. The job was physically hard for him and his hands sometimes became numb. He generally worked 40 hours per week with some overtime hours. He was not given free transportation and instead had to walk for 45 minutes to reach his work site.

At the end of the applicant's employment contract, he paid $1000 for the extension of his H-2B status with When his H-2B extension with was denied, he paid $200 to change his status to that of a B-2 visitor. then found the applicant a position as a banquet server with the in Arizona. The applicant paid fees for the processing of H-2B visa petition on his behalf. The petition was granted and the applicant moved to Arizona to work for but he left his position before the expiration of his contract because he was not consistently employed for 40 hours per week. The applicant then moved to California where he found a new employer who petitioned for his immigrant visa.

The applicant recalled financial and physical hardships during his employment with He stated that he resided in a crowded home, he walked to his work site, and his hands became weak from working in the factory. The applicant stated that he had poor health from sleeping on the floor and he did not have medical insurance. He recounted that he could not meet his needs in the United States, repay his loan, and financially support his child and family members in the Philippines. He stated that he and his wife had arguments over their finances and their marriage has since been annulled. The applicant claimed that he signed an employment contract with and not fully understanding its terms and believed would provide him employment for one year at a salary of $1,200 per month. He noted that he remains in the United States because the Philippine job market is bleak and he would suffer from age discrimination.

Victim of a Severe Form of Trafficking in Persons

The applicant asserted below that he was a victim of labor trafficking by and its agents or recruiters, and which he claimed forced him into involuntary servitude and peonage. After reviewing the applicant's initial submission and response to a request for further evidence, the director acknowledged that aspects relating to living conditions, guaranteed number of weekly hours, unexpected expenses, and continuous employment for a certain period may have been misrepresented to the applicant. The director determined, however, that the applicant was not a victim of a severe form of trafficking in persons because the record does not show that he was subject to a scheme involving force, fraud or coercion to create an atmosphere of fear, as required to establish involuntary servitude and peonage.

On appeal, the applicant asserts that was his Philippine recruiter and was his U.S. employer. He contends that he "experienced Coercion, Peonage and Threatened Abuse of Law or Legal Process during his recruitment and employment with " which "fraudulently induced [him] to take on substantial debt . . . with promises of a better life and the prospect of at least three years of steady, full-time employment." Although the applicant now claims that he was employed by the record shows otherwise. The applicant submitted a document entitled "employment contract" between him and , but that contract was for the applicant's

prospective employment in the United States. He did not provide earnings statements, Wage and Tax Statements (Form W-2s), an H-2B visa petition approval notice, or any other evidence to demonstrate that actually employed him in the United States.

The relevant evidence instead shows that recruited the applicant in the Philippines and , a placement agency in the United States, secured the applicant's employment with . To establish that he was a victim of a severe form of trafficking by and its agents or recruiters, the applicant must show that they 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"). While it is clear that , and obtained the applicant's services as a poultry dressing worker, to establish a severe form of human trafficking, he must also demonstrate two essential elements: a means (force, fraud or coercion) and an end (involuntary servitude, peonage, debt bondage or slavery). The record in this case fails to establish either of these elements.

No End: No Peonage or Involuntary Servitude

As used in section 101(a)(15)(T)(i) of the Act, the term peonage is defined as "a status or condition of involuntary servitude based upon real or alleged indebtedness." 8 C.F.R. § 214.11(a). 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 serious harm or physical restraint; or the abuse or threatened abuse of legal process." *Id.* Servitude is not defined in the Act or the regulations, but is commonly understood as the condition of being a servant or slave, or a prisoner sentenced to forced labor. *See* BLACK'S LAW DICTIONARY (B.A. Garner, ed.) (9th ed. 1999). In this case, the relevant evidence shows that the applicant was employed and compensated by as a poultry dressing worker pursuant to his seasonal employment contract. The record lacks evidence that or its agents or recruiters ever subjected the applicant to any "condition of servitude," the underlying requisite to involuntary servitude and peonage.

The temporary employment contract between the applicant and was executed in January 2006, prior to the applicant's arrival in the United States. The contract specifies that it is only for "seasonal employment" and that the applicant's period of employment was from his entry into the United States with a valid H-2B visa until July 31, 2006 at a salary of $7.50 per hour. The applicant submitted his 2006 federal income tax return, but not his 2006 Wage and Tax Statements (Forms W-2). The selected earnings statements he submitted from and Company (which he claims were also issued for his employment with) show that near the end of the applicant's employment with , he was earning $9.20 as his base salary. The earnings statements from show that during five months of employment the applicant had earned a gross salary of $6,582.58 from regular and overtime hours. It is unclear if the earnings from Company are included in this total. Regardless, the record shows that the applicant entered into a seasonal employment contract with for a defined period of time, he was placed in an agreed-upon position, and he was paid for the hours he worked at a salary of $9.20/hour, a higher rate than specified on his contract. The record thus lacks any

evidence that or its agents or recruiters actually or intended to subject the applicant to a condition of servitude.

The record also does not show that or its agents or recruiters actually or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. The applicant stated, and receipts show, that he paid all of the required fees before leaving the Philippines for the United States. He executed a document he entitled "Certification of Loan and/or Incurred Debt," in which he stated that he took a loan in the amount of PhP 250,000 ($5,000) from to pay these fees. He did not, however, indicate that induced him to obtain this loan. Although the applicant recounted financial pressures related to having incurred unanticipated expenses, and to sometimes working less than 40 hours weekly, the applicant has not submitted any documentary evidence showing that he took out any additional loans or that he was or is in arrearages on any debt. Rather, the applicant stated that he was able to repay the loan from The relevant evidence thus shows that the applicant incurred a private loan before entering the United States, but it does not indicate that he was ever indebted to or its agents or recruiters, or that these agencies forced him into indebtedness.

De novo review of the record, as supplemented on appeal, fails to show any actual or intended condition of servitude or real or alleged indebtedness to or its agents or recruiters. Consequently, the record does not demonstrate the claimed end of the alleged trafficking: peonage.

No Means: No Force, Fraud or Coercion

The record also does not evidence the means requisite to the applicant's trafficking claim. 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). The applicant claims that his recruiters engaged in a "psychologically coercive and financially ruinous trafficking scheme that subjected him to exorbitant debt and forced labor." He adds that and used a variety of coercive tactics, "including abuse of the legal process, isolation, and segregation to attempt to control his actions and to force him to provide service to them."

The applicant, however, has not provided any examples showing that he was isolated or segregated by or its agents or recruiters in an attempt to force him to provide service. Rather, the applicant stated that he resided with his fellow workers in housing provided for by He recounted that he struggled with the lack of transportation, but the record shows he had access to his identity documents and he indicated that he sometimes carpooled with his coworkers. There is no assertion or indication that he was not free to socialize or travel outside of work. The applicant recounted that after his H-2B extension with was denied, placed him with , from which he soon resigned, and then he traveled with his friend to California where he independently sought and secured employment. The record therefore does not support the applicant's assertions of isolation, segregation or forced service by or its agents or recruiters.

The applicant asserts that the recruiters coerced him by violating Department of Labor (DOL) regulations regarding the H-2B program by requiring him to pay the costs for his H-2B visa petition and renewal. The applicant has not provided an expense sheet or account statement from or . However, even if the recruiters violated the DOL regulations, these violations did not compel the applicant to work by inducing his indebtedness. Rather, the applicant paid for his H-2B visa and petition through a private loan he secured, which he eventually repaid. Although the applicant stated that he was warned when he resigned from that they would "report [him] to the immigration" if he were to leave, he was at the time only authorized to work for *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). The relevant evidence therefore does not show that or its agents or recruiters' actions amounted to coercion through the abuse or threatened abuse of the legal process against the applicant.

The record also does not support the applicant's claim that or its agents or recruiters secured his services through fraudulent promises of three years of employment. The applicant conceded in his first statement that he knew before leaving the Philippines that his H-2B visa was valid only for a few months. He now claims, though, that he entered a contract for one year of employment, renewable for three years. The agreement he signed with and reflects that the recruiters offered him prospective employment with an unspecified employer in the United States for one year, extendable to three years, as a factory worker. However, the specific position the applicant ultimately accepted was for temporary, seasonal employment with . His employment contract with , signed by him and prior to his arrival in the United States, specifies that it was valid only until July 31, 2006. While, as the director stated, certain terms of the applicant's employment may have been misrepresented to him, the record does not show recruitment for labor through false promises of long-term employment for the applicant. Rather, it shows that the applicant knowingly entered into temporary, seasonal employment with as an H-2B temporary worker.[3]

Finally, the record does reflect that or its agents or recruiters trafficked the applicant through force or coercion by restricting his freedom of movement. The applicant provided copies of his birth certificate, Social Security Card, the biographical page of his passport, H-2B approval notices, H-2B visa and Form I-94 (Departure Record), indicating that he had access to his immigration and identity documents. There is no indication that or physically restrained him. Although the petitioner expressed having issues with the lack of transportation when he was employed with , he did not indicate any restrictions with his travel. As discussed, after the applicant resigned from his position with , he traveled to California, where he independently sought and found employment. There is no indication that either agency prevented him from securing this employment by restricting his movement. The record thus does not show that or its agents or recruiters secured the applicant's services through fraud, force or coercion through physical restraint.

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[3] The applicant stated that after his contract with expired, helped with the renewal of his H-2B visa. Correspondence in the record shows that filed a temporary labor certification to extend the applicant's H-2B status as a temporary worker with but the labor certification was denied.

Summary: No Severe Form of Trafficking in Persons

The record documents that the applicant was a temporary worker with , but does not establish that this company or its recruiters ever subjected him to a severe form of trafficking in persons. The applicant stated that he voluntarily accepted an offer of employment from , was paid for the hours he worked, and he was employed in an agreed-upon position. The applicant secured a private loan to pay for recruitment fees, but there is no evidence that or forced the applicant into indebtedness to cover those costs. The record shows that the applicant had freedom of movement, access to his immigration and identity documents, and he independently secured employment with another business, without evidence of any interference from or . The relevant evidence does not establish that or its agents or recruiters obtained the applicant's services through force, fraud or coercion for the purpose of subjecting him to involuntary servitude, peonage, debt bondage, or slavery. 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 he consequently cannot show that he is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

Assistance to Law Enforcement Investigation or Prosecution of Trafficking

The applicant 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 an unsigned copy of a letter and a follow-up electronic mail message addressed on the applicant's behalf to the U.S. Department of Justice, Civil Rights Division seeking law enforcement certification as a victim of human trafficking. These documents evidence the applicant's attempts to notify this agency of his claims, but the record fails to establish that any severe form of human trafficking occurred in connection with the applicant's employment with . Consequently, the applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

Conclusion

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). On appeal, the applicant has not

met the eligibility criteria for T nonimmigrant classification at subsections 101(a)(15)(T)(i)(I)-(III) of the Act.

ORDER: The appeal will be dismissed. The application remains denied.