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 4 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 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 and was physically present in the United States on account of such trafficking. On appeal, the applicant submits a brief and his 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;
>
> (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]

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:

---

[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 April 6, 2009 as an H-2B temporary worker petitioned for by He was admitted to the United States in H-2B status for a period of eight months, until December 11, 2009. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on November 19, 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 first (undated) statement and second statement, dated September 11, 2014, 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 September, a recruiting company based in the Philippines, from his sister-in-law. In the middle of 2008, he visited office in City in the Philippines. He was offered a position as a housekeeper at a hotel in the United States and promised the following: 40 hours of work per week plus overtime; a salary of $7.39 per hour; free housing for the first month; free transportation to and from work; sick and personal leave; and a six-month visa, renewable for three years. He was told that the visa renewal would be managed by the petitioner, and assistants, and .[2] The contract the applicant signed with his employer, was written in English and not translated into his native language.

The applicant recounted that he had to pay the following fees: 12,000 Philippine pesos (PhP) for his training; a visa application fee of $135; PhP 1,500 to schedule his interview; PhP 3,500 for his medical examination; $4,000 for placement; and PhP 500 for a jacket containing the logo. The applicant took loans from the and to cover the cost of the fees. The applicant had a twelve-month repayment plan with and a six-month repayment plan with

[2] The applicant explained in response to the RFE that is a U.S. based staffing company in Florida. The applicant's two employment contracts with show that was the company's representative and was the company's president.

held the applicant's passport until the day of his departure. The applicant arrived in the United States on April 6, 2009. He was placed in a two-bedroom, one-bathroom apartment in , Florida that he shared with seven other people. His rent was deducted from his paycheck in the amount of $70 to $150 every two weeks, depending on his income, and he was provided with transportation to and from work. The applicant was assigned to more than one resort and his duties required him to carry and lift heavy objects. He was not given a 40 hour per week work schedule and fell behind on his loan payments to . The applicant and the cosigners of his loan received "demand letters" with threats of legal action from the lending agency.

The applicant paid $300 for to file a petition to extend his H-2B status, but he never received the receipt number.[3] When the applicant asked for more work, placed him in a bottling company for three months. While the applicant was employed at the bottling company he was able to repay his loan from . After he was transferred from the bottling company back to the resort, the applicant decided to move to California with his friend.[4] In California, the applicant found a position as a caregiver. He was not paid well, but felt that he had no choice because he did not have work authorization.

The applicant also discussed other physical, financial and emotional hardships since his entry into the United States. He stated that he could not support his family in the Philippines, he had an outstanding loan from and he struggled to meet his expenses in the United States. He noted that because of his financial situation he did not seek medical attention for his back pain and a urinary tract infection. He also recounted the following fears if returned to the Philippines: he will be unable to secure employment due to age discrimination; the typhoon of 2013 has made it even more difficult to find work and has taken a toll on the economy; continues to do business in the Philippines and may retaliate against him and his family; and potential employers in the Philippines would think unfavorably of him for not succeeding in the United States.

Victim of a Severe Form of Trafficking in Persons

The applicant asserts that he was a victim of labor trafficking by his U.S. employer, and his Philippine recruiter, which he claims 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 the type and costs of housing, unexpected visa renewal fees and guaranteed number of weekly hours 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.

---

[3] The applicant did not disclose the outcome of this petition. However, the record contains a June 19, 2010 letter from a law firm indicating that retained an attorney from the firm to appeal the denial of a labor certification.

[4] The applicant repeatedly stated that his work site was at "the Resort" and "the Beach Resort," but he did not provide the specific names and locations of these hotels.

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 hotel room attendant (housekeeper), 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.

On appeal, the applicant claims that he "experienced Coercion, Peonage and Threatened Abuse of Law or Legal Process and Involuntary Servitude 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. . . ." The applicant's claims and documentary evidence do not establish his eligibility. The record shows that recruited the applicant and petitioned for his H-2B visa and employed him as a housekeeper, but the relevant evidence does not establish that they did so through fraud or coercion for the purpose of subjecting the applicant to peonage.

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). 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 record shows that the applicant accepted a written offer of temporary employment from , signed by , for the position of "hospitality service" from his entry into the United States with an H-2B visa until December 1, 2009 at a salary of $7.38 per hour.[5] The applicant was admitted to the United States on April 6, 2009 as an H-2B temporary worker for eight months of employment with , but he did not indicate the actual duration of his employment with and it is unclear how long he remained with the company. The applicant indicated in his first statement that he was employed with as a hotel housekeeper for 25 to 30 hours per week at a salary of $8 per hour, a higher rate than the agreed-upon wage. He submitted his 2009 federal tax return transcript from the Internal Revenue Service (IRS), but he did not provide his earnings statements or a Wage and Tax Statement (Form W-2) to show his income from .

---

[5] A receipt from the shows the applicant's position as "attendant housekeeping."

The record shows that the applicant willingly entered into a temporary employment contract with for a defined period of time and he was placed in an agreed-upon position. He did not assert or provide evidence to demonstrate that he was not paid for the hours he worked. Rather, he stated that he was paid for the hours he worked at a higher salary than the proffered wage. 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 recounted that he spent over $4,000 in recruitment fees before leaving the Philippines for the United States. He explained that to cover the fees he took loans from and . He stated that he was able to repay the loan from , but he defaulted on his twelve-month payment plan with [6] Although the applicant claimed that he experienced unanticipated expenses and was not given 40 hours per week of employment, he failed to fully disclose his financial situation during his first year in the United States. While his 2009 tax return transcript shows that he earned $3,452.00 during his first eight months in the United States, this amount is less than what he would have earned working for at his claimed rate of $8 per hour for 25 to 30 hours per week. The applicant has not provided his Form W-2 or earnings statements from as evidence of his salary and deductions from the company. Nor has he discussed the actual duration of his employment with the company.[7] Accordingly, the relevant evidence shows that the applicant incurred personal loans before entering the United States, but the record does not indicate that the applicant was ever indebted to or its agents or recruiters or that these entities 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 and its agents or recruiters

---

[6] He submitted an account statement from reflecting that as of September 27, 2010, he had an outstanding balance with the lending agency.

[7] In his first statement, the applicant indicated that he paid on one occasion to petition for his H-2B visa extension and he never received the receipt notice. On his second statement, he recounted, "[e]ach time my visa was about to expire, I was asked to pay the renewal fee," indicating that filed multiple H-2B visa petitions for him and he remained employed with beyond the duration of his initial eight-month contract.

subjected him to "forced labor" and "used coercive tactics, isolation, segregation, abuse of the legal process, and false promises in [his] recruitment and employment."

The applicant has not provided any examples showing that he was isolated and segregated by or its agents or recruiters in an attempt to force him to provide service. Rather, the record shows that while the provided housing was not as "nice" as the applicant had hoped, did indeed provide housing for him to share with other Filipino workers. There is no indication that he was not free to socialize or come and go as he liked outside of work. The applicant stated that while he was in the United States he "held [his] own passport and Notice of Action" and he had access to transportation to and from work, to the grocery store, and he had use of the company vehicle with approval by his supervisor. He also stated that when he was ready to leave , he received permission from the company to find another employer.[8] As discussed, the applicant voluntarily accepted an offer of employment from , was placed in the agreed-upon position and was paid for the hours he worked. The record therefore does not support the applicant's assertions of isolation, segregation or forced service.

The applicant asserts that and its agents or recruiters coerced him by violating Department of Labor (DOL) regulations regarding the H-2B program by requiring the applicant to pay the costs for his H-2B visa petition. However, as explained above, these possible violations did not compel the applicant to work by inducing his indebtedness. Rather, the applicant stated that he paid for his H-2B visa and petition through personal loans. The applicant indicated that before completing his term of authorized employment, he received permission to leave and secured employment as a caregiver in California. The applicant made this employment arrangement independent from or , without any interference or threats of legal action by either agency. 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 long-term employment. The applicant asserts that and its agents or recruiters "dangled the prospect of permanent work before him to secure his labor." In his statements, the applicant indicated that he was promised he would have three years of employment with automatic renewals of his visa. However, none of the documents in the record reference any of these terms. The applicant's employment contract with specifies that it is only "seasonal" and offers him a term of employment for eight months (April 2009 to December 2009). Similarly, the undated "master employment contract" filed with the shows that the applicant entered into temporary period of employment with for the duration of eight months. Neither of these documents mentions a permanent position or three years of employment with automatic visa renewals.

Finally, the record does not support the applicant's claim that or its agents or recruiters trafficked him through force or coercion by restricting his freedom of movement. Although the applicant claimed that he had to stay in the provided housing, he did not indicate any restrictions on

---

[8] The applicant recounted in his first statement, "I did not escape. I asked permission from the management if I can go and find another job and they let me go . . . ."

his travel and he stated that he was provided with transportation. The applicant provided copies of the biographical page of his passport, his H-2B visa, Form I-94 (Departure Record), Social Security Card and Florida Identification Card, indicating that he had access to his immigration and identity documents. As discussed, the applicant stated that while he was employed with , he moved from Florida to California, where he sought and obtained a position as a caregiver with another employer. Although the applicant was presumably still within the terms of his employment contract with when he departed, the applicant indicated that he received permission to leave without any threats of physical restraint or other against him. 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.

Summary: No Severe Form of Trafficking in Persons

The record documents employment of the applicant, but does not establish that this company or its agents or 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 record shows that the applicant had freedom of movement, access to his immigration and identity documents, and he independently secured other employment without any interference from or its agents or recruiters. The applicant secured personal loans to pay for recruitment fees, but there is no evidence that or forced the applicant into indebtedness to cover those costs. 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.

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)-(II) of the Act.

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