



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-J-N-

DATE: DEC. 7, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks nonimmigrant classification as a victim of a severe form of trafficking in persons. *See* Immigration and Nationality Act (the Act), § 101(a)(15)(T)(i), 8 U.S.C. § 1101(a)(15)(T)(i). The Director, Vermont Service Center, denied the application, determining that the Applicant did not establish that he was a victim of a severe form of trafficking in persons, was physically present in the United States on account of trafficking, and did not comply with reasonable requests in the investigation or prosecution of acts of trafficking. The matter is now before us on appeal. The appeal will be dismissed.

I. 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, subject to section 214(o) of the Act, 8 U.S.C. § 1184(o):

- (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) [w]ould suffer extreme hardship involving unusual and severe harm upon removal

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

Matter of J-J-N-

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(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.

II. PERTINENT FACTS

The Applicant is a citizen of the Philippines who first entered the United States on October 15, 2007, as an H-2B nonimmigrant to be employed as a night cleaner at [REDACTED] in Arizona, a position that [REDACTED] secured. The Applicant alleged that his employer provided him with the promised compensation, but that he was forced to finish all of his assigned work even if he was not compensated for the overtime. He indicated that his paychecks were less than promised because of deductions for his rent and other expenses. He submitted a conditional offer for temporary employment dated July 5, 2007, from the Executive Director of Human Resources for [REDACTED] indicating that the Applicant would be paid \$9.00 per hour for eight months of employment. The Applicant filed the Form I-914, Application for T Nonimmigrant Status, with U.S. Citizenship and Immigration Services (USCIS) on June 17, 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 March 12, 2014 and October 24, 2014 affidavits, the Applicant provided the following account of his employment with and claimed trafficking by [REDACTED] and his recruiters in the Philippines.

The Applicant initially recalled that he learned about [REDACTED] an overseas recruiting agency, from a friend at his church. The Applicant applied for a housekeeping job in the United

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).

Matter of J-J-N-

States through [REDACTED]. The Applicant explained that [REDACTED] advised him that he would have free transportation and housing, and three years of employment. In his second statement, the Applicant asserted that [REDACTED] promised that he would work at least 40 hours per week, have free transportation, be provided free meals at work and at home, and would receive very discounted housing. [REDACTED] also notified the Applicant that he would be required to pay a placement fee. The Applicant indicated that he ultimately paid [REDACTED] \$3,000.00, and that he borrowed the money from a friend. In a separate statement regarding the loan, his friend, [REDACTED] indicated that she loaned the Applicant \$2,300.00.

When he arrived in the United States, the Applicant stated that he was picked up at the airport and placed in a two-bedroom, two-bath apartment with four other men. Although the Applicant expected to work as a dishwasher, he attested that he was assigned to work as a night cleaner. According to the Applicant, the housing and food were not free and he was charged approximately \$320.00 per month for his apartment. The Applicant asserted that although he was paid the proffered rate, he was forced to work uncompensated overtime in order to finish assigned work. The Applicant claimed that he had to pay \$80.00 a month for transportation “plus medicare and SSS as well as federal and state taxes.” When his visa was about to expire, the Applicant indicated that [REDACTED] advised him that he would have to pay a visa extension fee of \$700.00 if he wanted to have his nonimmigrant status extended. The Applicant indicated that his wife had to send him money for the visa extension fee. In his first statement the Applicant indicated that he had not been able to pay his loan, but in his second statement he indicated that he finally did so.

The Applicant advised that because he never signed a contract with [REDACTED] all their promises were oral. According to the Applicant, he believed he had no choice but to agree to the housing once he was in the United States, because he believed that the rent would be deducted from his paycheck even if he moved. The Applicant indicated that he is the sole support for his aging parents and children, and would have no work in the Philippines because of age-discrimination in hiring. He also indicated that he feared his traffickers would retaliate against him and his family, and that no employer in the Philippines would hire him because he was not “successful” in the United States.

On appeal, the Applicant again asserts that 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.

III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant claimed he was a victim of labor trafficking by [REDACTED] and [REDACTED] 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

Matter of J-J-N-

determined the Applicant had not established that he was a victim of a severe form of trafficking in persons.

To establish that he was a victim of a severe form of trafficking by [REDACTED] and [REDACTED] 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 that [REDACTED] and [REDACTED] 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 [REDACTED] or [REDACTED] trafficked him through fraud or coercion for the purpose of subjecting him 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 [REDACTED] and [REDACTED] 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 his recruiter and employer used a variety of coercive tactics to control him and force him to provide service to them, including forcing him to pay petition extension fees, restriction of movement, and isolation.

According to the Applicant, he was employed and compensated by [REDACTED] as a night cleaner. The Applicant submitted a copy of two conditional offers of employment from [REDACTED] in which it proffered an hourly salary of \$9.00 for approximately eight months of employment during 2007 and 2008, and again in 2008 and 2009. The Applicant appears to have signed both offers of employment, and in his statements he indicated that he willingly entered into an employment agreement with [REDACTED] and agreed to be paid for his work. Although the Applicant asserted that he was not always paid overtime, he provided pay stubs with his initial filing materials to show he was often paid \$10.00 per hour by [REDACTED] was frequently paid overtime, and was also paid a holiday rate on occasion. It is noted that this hourly rate was more than what [REDACTED] initially proffered. Consequently, the record shows that the Applicant worked for [REDACTED] and that [REDACTED] paid him, and lacks evidence that [REDACTED] actually subjected or intended to subject the Applicant to involuntary servitude. The record does not

Matter of J-J-N-

otherwise support the Applicant's claim to have been trafficked by [REDACTED] for four principal reasons.

First, although the Applicant stated that he was trafficked by [REDACTED] the Applicant explained that he is now working as a home care worker. Other documents in the Applicant's administrative record show that he is employed in California in that capacity. Consequently, the record shows that the Applicant has moved to another state after his authorized period of employment with [REDACTED] ended and lacks evidence that [REDACTED] actually subjected or intended to subject him to involuntary servitude.

Second, the record does not show that [REDACTED] intended to subject the Applicant to peonage through involuntary servitude based on real or alleged indebtedness. In his affidavits, the Applicant explained that he borrowed money from a friend to pay the fee that [REDACTED] requested, and that he has since repaid the loan. The Applicant also explained that he was requested to pay the filing fees relating to his petition seeking extension of his H-2B status, but did not claim that he was in debt over the fees. Accordingly, the relevant evidence shows that the Applicant incurred private and personal loans shortly before his employment in the United States, but the record does not indicate that the Applicant was ever indebted to [REDACTED] or that they forced him into indebtedness.

Third, the record does not support the Applicant's claim that [REDACTED] 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." The Applicant provided copies of his signed offers of conditional employment, in which he agreed to an hourly salary of \$9.00 per week for each eight-month period of employment. He appears to have signed the initial employment offers prior to his entry into the United States. The Applicant also provided several pay stubs showing that [REDACTED] paid him a higher rate of \$10.00 per hour and frequently provided him with bonuses and overtime pay; therefore, it does not appear that [REDACTED] failed to keep the terms of its initial offer of employment as it appears in the signed offer letters. Although the Applicant asserts on appeal that he would face hardship in the Philippines and possibly debtor's prison for non-payment of the money he borrowed, he voluntarily agreed to pay the recruiter fees to [REDACTED] before he came to the United States and he obtained private loans to do so prior to his entry. Although he asserts on appeal that he has been prevented from earning enough money to repay the loan he took for his placement fees, in response to the RFE, he stated that he had repaid the loan. The actions outlined by the Applicant do not establish that he was forced to take on a huge amount of debt by [REDACTED]

Finally, the record does not support the Applicant's claim that [REDACTED] trafficked him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere. As discussed, the Applicant's evidence shows

Matter of J-J-N-

that he worked for [REDACTED] within the United States after his arrival, and not [REDACTED]. He is now working as a caregiver in Arizona. The Applicant has not established that [REDACTED] and [REDACTED] prevented him from seeking other employment once his period of employment with [REDACTED] terminated, and in fact he has done so. The record thus does not show that [REDACTED] and [REDACTED] obtained his services through fraud, force, or coercion involving physical restraint or other restriction of his movement.

In summary, the Applicant has not established that [REDACTED] and [REDACTED] 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 [REDACTED] and [REDACTED] 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 loans he claims to have taken out with respect to his initial H-2B petition, the record contains no evidence that the Applicant was ever indebted to [REDACTED] and [REDACTED] or that these two entities 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 [REDACTED] ever intended to subject him to such conditions. To the contrary, the record shows that [REDACTED] petitioned for the Applicant as an H-2B nonimmigrant worker, and that although the Applicant asserts he was not always provided with full-time employment, it appears that [REDACTED] frequently paid him overtime and bonuses, and paid him a higher hourly rate than it initially proffered. Moreover, since his employment with [REDACTED] terminated, the Applicant has pursued employment as a caregiver in Arizona. 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.

B. Physical Presence in the United States On Account of Trafficking

The Applicant has not 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.

C. Assistance in the Investigation or Prosecution of Acts 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

Matter of J-J-N-

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 by [REDACTED] and [REDACTED], rather than [REDACTED]. The record does not reflect a response from DOJ. As the record otherwise does not establish any severe form of human trafficking in connection with the Applicant's recruitment by [REDACTED] or his employment by [REDACTED] the Applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) of the Act.

D. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Based on our *de novo* review of the record, the Applicant also has not demonstrated that he would suffer extreme hardship involving unusual and severe harm upon removal. In his statements, the Applicant claimed he would suffer extreme hardship if forced to return to the Philippines because he could not 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 at his age. The Applicant suggested that he is hoping a criminal case will be brought against his alleged traffickers and that he wants to remain in the United States to pursue a case. On appeal, the Applicant expressed fear of debtor's prison upon return to the Philippines because he has not fully paid his loan.

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 8 C.F.R. § 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 that the Applicant's attorney sent to DOJ, but there is no evidence that DOJ or any other U.S. government agency initiated an investigation or prosecution of [REDACTED] or [REDACTED] 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 in the United States. 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

Matter of J-J-N-

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.

IV. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of J-J-N-*, ID# 13076 (AAO Dec. 7, 2015)