



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

JUL 09 2015

FILE #:

APPLICATION RECEIPT #:

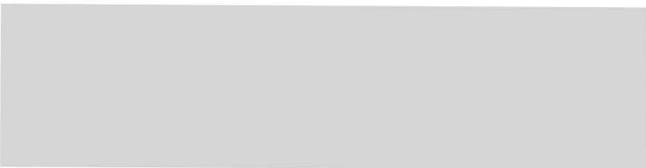
IN RE:

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 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

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 last entered the United States on April 27, 2009 as an H-2B temporary worker petitioned for by [REDACTED]. 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 27, 2013 and July 9, 2014 affidavits, the applicant provided the following account of his journey to the United States and claimed trafficking by [REDACTED] and [REDACTED].

The applicant recalled that in 2009, he learned that [REDACTED] a recruitment agency in the Philippines, had employment opportunities for dining room attendants at hotels in the United States. He stated that he was given a description of his work site during his job interview with the owner of [REDACTED], [REDACTED], and another individual. He stated that his final interview was with [REDACTED], the representative of [REDACTED]. The applicant recounted that [REDACTED] made a verbal promise that he would be given 32-40 hours of work per week plus overtime, free housing with his own bedroom, free transportation to work, and three years of employment with automatic renewals of his visa. He stated that the written offer of employment that he accepted from [REDACTED] was in English and not explained in his native language.

The applicant recounted that he was informed that he would have to pay the following fees to [REDACTED] a placement fee in the amount of 180,000.00 Philippine pesos (PhP) with an advance payment of PhP 25,000; \$150 for his H-2B visa; the costs of his medical examination; and [REDACTED] fees. The applicant stated that he was told that he would receive his passport containing an H-2B visa at the time of his departure after he paid the full placement fee. He stated that he borrowed PhP 180,000 from his friend at a 3% monthly interest rate to pay the fees.

The applicant stated that he and other Filipino workers arrived in the United States on April 27, 2009 and were driven in a bus to [REDACTED] Colorado, where their housing was located. The applicant recalled that he was housed in a tiny, uninsulated home with no water or bathroom. He stated that he had access to a recreation room and shared kitchen as well as a public bathroom, located a few minutes away. The applicant stated that he used a free shuttle bus to travel to work and into town.

The applicant stated that during his employment with [REDACTED] he was assigned to the position of “reliever” and he worked as a cashier, busser, dishwasher and barista based on need. He stated that he worked 20 hours per week for his first two weeks and 37 hours per week thereafter. The applicant recounted that after his employment with [REDACTED] ended, the following companies petitioned for the extension of his H-2B status: [REDACTED] for a period of two months; [REDACTED] for a period of six months; [REDACTED] for a period of five months; [REDACTED] for a period eight months; and [REDACTED] for a period of five months. The applicant stated he is now settled in Arizona where he is employed as a caregiver.

The applicant recounted financial and emotional hardships since his arrival in the United States. He stated that on one occasion he paid [REDACTED] for his H-2B status renewal and was then told that the job offer was canceled. The applicant stated that on other occasions he had to pay his employers fees for their H-2B visa petitions. He explained that he is under financial pressure to support his family members who reside in the Philippines. The applicant stated that he is worried and anxious because of his growing debt. He explained that his wife had to sell property to help make payments on the loan he secured for the placement fees. He stated that because he does not have legal immigration status his employers take advantage of him and he lives in fear of the police. He also stated that he was not able to attend his sister’s funeral.

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; even though [REDACTED] license with [REDACTED] was canceled, it still has influence and may retaliate against him; potential employers in the Philippines would think unfavorably of him for not succeeding in the United States; and he would face expenses for medical treatment for his diabetes and high blood pressure.

Victim of a Severe Form of Trafficking in Persons

The applicant asserted that he was a victim of labor trafficking by [REDACTED] and its agents or recruiters, which he claimed subjected him to 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 guaranteed number of weekly hours, position description, living conditions and H-2B renewal fees 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.

To establish that he was a victim of a severe form of trafficking by [REDACTED] 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 [REDACTED] and [REDACTED] obtained the applicant’s services for employment at [REDACTED] to establish a severe form of human trafficking, the applicant 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 during his recruitment and employment with [REDACTED],” 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 the additional evidence submitted on appeal do not establish his eligibility. The record shows that [REDACTED] recruited the applicant and [REDACTED] petitioned for his H-2B visa and employed him with [REDACTED] assistance as a fast food worker, 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). In this case, the relevant evidence shows that the applicant was employed and compensated by [REDACTED] pursuant to his seasonal employment contract. The record lacks evidence that [REDACTED] 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 on March 1, 2009, the applicant accepted a written offer of employment from [REDACTED], signed by its agent, [REDACTED], for the position of temporary fast food worker from April 14, 2009 until October 1, 2009 at a salary of \$7.28 per hour for 32-40 hours per week. The applicant did not provide a copy of his employment contract with [REDACTED] but indicated in his statement that he was employed with the company from his arrival in the United States at the end of April 2009 until October 2009. His 2009 federal tax return (Form 1040) reflects that he earned \$13,583, but he did not provide his Wage and Tax Statement (Form W-2) to show his income from five months of employment with [REDACTED]. The applicant’s offer of employment and personal statement show that he willingly entered into a temporary employment contract with [REDACTED] for a defined period of time. He indicated that he was placed in the position offered to him for approximately 37 hours per week, which is within the 32-40 hours per week stipulated on his employment offer. Contrary to the applicant’s assertions, full-time employment for H-2B temporary workers was defined under the Department of Labor (DOL) regulations as 30 or more hours per week. See 20 C.F.R. 655.4 (2009)(definitions). He did not assert or provide evidence to demonstrate that he was not paid for these hours according to the agreed upon wage. The record

thus lacks any evidence that [REDACTED] or its agents or recruiters actually or intended to subject the applicant to a condition of servitude.

The record also does not show that [REDACTED] 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 paid [REDACTED] a placement fee in the amount of PhP 180,000.00 and \$150 for his H-2B visa. He also recounted that he paid the costs of his medical examination and [REDACTED] fees. He stated that he borrowed PhP 180,000 from his friend at a 3% monthly interest rate to pay the fees. The applicant submitted a letter from [REDACTED] who stated that he lent the applicant money prior to the applicant's departure from the Philippines to the United States and this loan was fully repaid by the applicant. The record does not show that [REDACTED] or its agents or recruiters induced the applicant to obtain this personal loan. The applicant has not submitted any evidence showing that he took out any additional loans, had difficulty repaying the money he borrowed, or that he was or is in arrearages on any debt or otherwise could not meet his financial obligations.

The preponderance of the evidence shows that [REDACTED] advised the applicant of the costs associated with his recruitment, visa petition and processing, and travel to the United States. The applicant voluntarily took out a personal loan to cover these costs. The applicant has not indicated that he took on any additional debt and the record does not show that any account is in arrears. Nor has the applicant indicated that [REDACTED] or its agents or recruiters induced him to obtain any personal loans. While his recruiters may have improperly required the applicant to pay the fees for his H-2B visa petition, the relevant evidence does not show that they forced the applicant into indebtedness to cover those costs. Consequently, the record does not demonstrate that [REDACTED] or its agents or recruiters subjected or intended to subject the applicant to peonage through involuntary servitude based on real or alleged 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 [REDACTED] 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 [REDACTED] and [REDACTED] 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 has not provided any examples showing that he was isolated and segregated by [REDACTED] or its agents or recruiters in an attempt to force him to provide service. Rather, the

applicant stated that he was provided with free housing in a cabin that accommodated him and another individual, consistent with his offer of employment, which specified that housing would consist of “one room cabins with double occupancy” and is located “30-40 miles from work sites.” The applicant stated that free transportation on a shuttle bus was provided to him, which he used to travel to work and into town. He stated that he shared a recreation room and kitchen with 40 other individuals. There is no assertion or indication that the applicant was not free to socialize or come and go as he liked outside of work. The applicant indicated that he was paid for his work and the hours he received, 37 hours per week, were within the 32-40 hours indicated on his written offer of employment. The record therefore does not support the applicant’s assertions of isolation, segregation or forced service.

The applicant asserts that [REDACTED] and its agents or recruiters coerced him by violating the DOL regulations regarding the H-2B program by requiring him 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 a personal loan which he successfully repaid. At the end of the applicant’s employment with [REDACTED] he decided to pursue other employment opportunities and he did so without any asserted interference by any of his alleged traffickers. The relevant evidence does not show that [REDACTED] 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 [REDACTED] or its agents or recruiters secured his services through fraudulent promises of long-term full-time employment. The applicant claimed that [REDACTED] verbally promised he would have three years of employment and automatic renewals of his visa. However, none of the documents the applicant submitted from [REDACTED] or its agents or recruiters reference any of these terms. The offer of employment from [REDACTED] specified the fast food worker position as temporary from April 14, 2009 until October 1, 2009 at a salary of \$7.28 per hour. The applicant also provided a subsequent employment verification letter from [REDACTED] dated May 4, 2009, which states that he will be employed from May through October 2009 with the company as an “international worker.” The applicant submitted no documentation from [REDACTED] or [REDACTED] that references continued employment beyond the term agreed upon, or “automatic” visa renewals.

Finally, the record does not support the applicant’s claim that [REDACTED] or its agents or recruiters trafficked him through force or coercion by restricting his freedom of movement. Although the applicant claimed that he was “forced” to stay in the free housing provided for him in an isolated area, he was employed at a national park, and his employment offer specified that he would be residing in a cabin located 30-40 miles from his work site. He did not indicate any restrictions on his travel and he stated that he was provided with free transportation to his work site and into town. The applicant provided copies of his H-2B visa, Form I-94 (Departure Record), Social Security Card and approval notices (Form I-797As) for all of his periods in H-2B status, indicating that he had access to his immigration and identity documents. The approval notices show that after the applicant’s employment with [REDACTED] he was employed with [REDACTED] and [REDACTED]. There is no indication that [REDACTED] or its agents or recruiters restricted him from receiving alternate employment or extensions of his H-2B status. The

record thus does not show that [REDACTED] or [REDACTED] secured the applicant's services through fraud, force or coercion.

Summary: No Severe Form of Trafficking in Persons

The record documents the applicant's employment with [REDACTED] but does not establish that this company or its agents or recruiters ever subjected him to a severe form of trafficking in persons. Although the applicant submitted evidence that the [REDACTED] canceled [REDACTED] license and a judgment from the U.S. District Court for the Southern District of Mississippi, which shows that [REDACTED] was convicted of conspiracy to commit visa fraud, false statements and fraud in foreign labor contracting, the applicant has not shown that he himself was a victim of these offenses or that [REDACTED] actions subjected him to labor trafficking as that term is defined in the regulations. The record instead shows that the applicant entered into a voluntary employment agreement with [REDACTED] was given the hours and pay specified in his contract, and he was employed in an agreed upon position. The applicant had freedom of movement, access to his immigration and identity documents, and he subsequently received extensions of his H-2B status without any inference from [REDACTED]. The applicant secured a personal loan to pay for recruitment fees, but there is no evidence that [REDACTED] or [REDACTED] forced the applicant into indebtedness to cover those costs.

In sum, the relevant evidence does not establish that [REDACTED] 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.