



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 09 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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; was physically present in the United States on account of such trafficking; and had complied with any reasonable request for assistance in the investigation or prosecution of such trafficking. On appeal, the applicant submits a brief and additional evidence.

Applicable Law

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

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

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

the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subsection 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 October 6, 2008 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 April 1, 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 subsequently appealed. In his March 19, 2014 and September 10, 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 he learned about [REDACTED] an overseas recruitment agency in the Philippines, through his wife who was placed by the agency to work in the United States. The applicant recounted that before coming to the United States, [REDACTED] one of the owners of [REDACTED] verbally promised that he would be given 40 hours of work per week plus overtime, discounted housing, free transportation to and from work, and three years of employment with automatic renewals of his visa. He noted that these promises were also guaranteed by [REDACTED].² He recounted that he had to pay 5,000 in Philippine pesos (PhP) for the visa application fee and almost \$4,000 in recruitment fees. He stated that his sister obtained a loan in the amount of PhP 200,000 and his wife borrowed an unspecified amount to help him finance the recruitment fees. The applicant stated that the contract he signed with [REDACTED] was written in English and not explained in his native language. The applicant stated that after his interview at the U.S. Embassy he was issued an H-2B visa and it was valid from September 4, 2008 until November 15, 2008. He noted that he received his passport and visa just before his departure from the Philippines.

The applicant stated that when he arrived in the United States he and his fellow Filipino workers were met at the airport by [REDACTED] and a driver who took them to a three-bedroom, two-bathroom apartment. He noted that he resided in the apartment with six males and two females and he had to pay \$75 for the apartment rental, \$7 for utilities and \$15 for transportation each week. The applicant stated that [REDACTED] placed him at the [REDACTED].

² The applicant's initial brief explains that [REDACTED] was the owner of [REDACTED] a staffing agency in the United States.

Florida.³ He explained that the work was difficult because he had to clean 20 rooms within an eight-hour shift. The applicant recounted that he had to extend his shift to nine or ten hours a day to complete the tasks. He stated that he was employed around 25 hours per week at salary of \$7.50 per hour, instead of the promised \$8 per hour.

The applicant stated that he was subsequently employed with [REDACTED] but he did not further discuss his employment with this company. The applicant recalled that [REDACTED] informed him that she could not renew his visa. He stated that he sent money to an individual named [REDACTED] for his visa renewal, but never received his visa. He recounted that at some point he decided to move to [REDACTED] Florida where his wife was residing. The applicant stated that he is currently living in [REDACTED] Florida.

The applicant recounted financial, physical and emotional hardships since his arrival in the United States. He stated that it was physically difficult to complete housekeeping of 20 rooms during one work shift. The applicant explained that he feels stressed because of his separation from his children and other family members who reside in the Philippines. The applicant recounted that he is still unable to financially support his family members and find a decent job. The applicant recounted that when he was in [REDACTED] his wife had to work in three jobs in [REDACTED] to financially support him and their children. He stated that he had surgery to remove his kidney stones and cataract surgery. He claimed that he has medical bills and has been unable to repay the loan from his sister. He recalled that he had to take a position as a live-in caregiver and it involved "strenuous tasks."

The applicant 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 the [REDACTED] [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 not have access to medical care related to the removal of his kidney stones and cataract surgery.

Victim of a Severe Form of Trafficking in Persons

The applicant claimed below that he was a victim of labor trafficking by [REDACTED] and [REDACTED] 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, housing and transportation 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 intended to create an atmosphere of fear, as required to establish involuntary servitude and peonage.

³ A copy of a class action complaint in the record states that [REDACTED] recruitment and hiring agent is [REDACTED]

On appeal, the applicant asserts that [REDACTED] was his Philippine recruiter and [REDACTED] 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 [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.” Although the applicant now claims that he was employed by [REDACTED] the record shows otherwise. The applicant did not provide an employment contract, earnings statements, Wage and Tax Statements (Form W-2s), or any other evidence that [REDACTED] was his employer. The record shows that on August 18, 2008, [REDACTED] issued a letter notifying the U.S. Consulate that her agency would request an extension of H-2B status for the 65 workers petitioned for by [REDACTED] to transfer to [REDACTED]. The applicant received an offer of conditional temporary (seasonal) employment with [REDACTED] from November 15, 2008 until August 31, 2009. However, the applicant never indicated or submitted documentation to demonstrate that he accepted this offer and was employed with [REDACTED] or [REDACTED] as its agent.

The record shows that the Department of Labor (DOL) certified an Application for Alien Employment Certification (Form ETA 750) from [REDACTED] for cleaners/housekeepers for the period of February 15, 2008 until November 15, 2008. USCIS issued an H-2B approval notice (Form I-797) dated August 5, 2008, indicating that “[REDACTED]” was authorized to employ 65 unnamed workers from October 1, 2008 until November 15, 2008. The applicant’s H-2B visa and Form I-94 (departure record) show that he entered the United States on October 6, 2008 for employment with [REDACTED] and his earnings statements were issued by [REDACTED]. The applicant submitted a copy of a letter dated September 11, 2008 from [REDACTED] authorizing [REDACTED] to recruit 30 temporary workers who would be transferred to [REDACTED] after their period of work authorization with [REDACTED] expired on November 15, 2008. The letter indicates that [REDACTED] had an approved labor certification valid until June 30, 2009. The applicant stated in his initial affidavit that he was employed with [REDACTED] but he did not provide the start date or duration of this employment. The record does not contain a job offer, employment contract, H-2B approval notice, earnings statements or a Wage and Tax Statement to demonstrate his claimed employment with [REDACTED].

The relevant evidence therefore shows that: [REDACTED] recruited the applicant in the Philippines; [REDACTED] a placement agency in the United States, had a relationship with [REDACTED] and [REDACTED] recruitment and hiring agent, [REDACTED] petitioned for the applicant’s H-2B visa and employed him at the [REDACTED]. 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 its agents or recruiters obtained the applicant’s services for employment as a housekeeper at the [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.

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 employment agreement. 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 the applicant was admitted to the United States on October 6, 2008 as an H-2B temporary worker for [REDACTED]. The applicant asserted that he was promised a salary of \$8 per hour, but he did not submit his employment contract or offer of employment. The Application for Alien Employment Certification filed by [REDACTED] for housekeepers shows the proffered salary as \$7.25 per hour. The selected earning statements the applicant submitted indicate that he was paid for the hours he worked at an even higher salary of \$7.50 per hour. The applicant submitted selected tax returns (Form 1040s), but did not include his 2008 tax return or a Wage and Tax Statement from [REDACTED]. Although the applicant did not submit a copy of his employment contract or any document reflecting his gross salary, in his statements he indicated that he willingly entered into an employment agreement with [REDACTED] was placed in an agreed upon position, and was paid for the hours he worked. 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 had to pay PhP 5,000 for the visa application fee and almost \$4,000 in recruitment fees. He recounted that his wife borrowed an unspecified amount and “use[d] up all her credit cards” and his sister lent him PhP 200,000 to help him finance the recruitment fees. He did not, though, provide evidence of his wife’s credit card or other debt. He executed an affidavit he entitled, “certification of loan and/or incurred debt,” in which he attested to borrowing PhP 200,000 from [REDACTED] on June 2008 to pay for his placement fee and travel expenses. Although the applicant stated that he has not been able to repay his sister for her loan, he did not fully disclose his financial situation during his employment with [REDACTED]. As discussed, the applicant has not provided his employment contract from [REDACTED] his 2008 tax return and Wage and Tax Statement, or specified the duration of his employment with [REDACTED]. He submitted a letter from [REDACTED] indicating that he would be transferred to [REDACTED] after his authorized period of employment with [REDACTED] ended. However, he has not further discussed or provided any evidence to demonstrate the terms and duration of his claimed employment with [REDACTED]. Moreover, the record does not show that [REDACTED] or its agents or recruiters induced the applicant or his wife to obtain any personal loans to pay the recruitment fees. 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 or otherwise could not meet his financial obligations.

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 his employers and recruiters 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 housed in a three-bedroom, two bathroom apartment with other Filipino workers and they were provided with transportation. The record shows that the applicant had access to his identity documents and he was in contact with his wife who also resided in Florida. There is no indication that he was not free to socialize or come and go as he liked outside of work. The evidence presented by the applicant reflects that he voluntarily accepted an offer of employment from [REDACTED], he was placed in the agreed upon position, and he 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 [REDACTED] and its agents or recruiters coerced him by violating 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. The applicant stated that he eventually "escaped" his alleged traffickers and sought employment in another location. However, the applicant did not indicate that [REDACTED] or its recruiters or agents took any legal action against him for leaving and finding employment elsewhere. 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 record instead shows that the applicant was authorized for employment as an H-2B temporary worker with [REDACTED] from his admission into the United States on October 6, 2008 until November 15, 2008. Although the applicant received an offer of employment from [REDACTED] for employment from November 15, 2008 until August 31, 2009 and provided evidence that [REDACTED] planned to petition for the transfer of [REDACTED] workers for temporary employment during the same time period, from November 15, 2008 until June 30, 2009,

there is no indication that these opportunities were promised to him or induced him to believe that he would then have three years of continuous employment. The applicant submitted no documentation from [REDACTED] or its agents or recruiters that references three years of employment, 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 prohibited by [REDACTED] and [REDACTED] from looking for alternative housing, he did not indicate any restrictions on his travel, and he stated that he was provided with transportation. The applicant submitted copies of his birth certificate, the biographical page of his passport, his H-2B visa, Form I-94, Social Security Card, and the H-2B approval notice issued to [REDACTED] demonstrating that he had access to his immigration and identity documents. The applicant stated that he later found other employment opportunities in [REDACTED] and [REDACTED] Florida and there is no indication that [REDACTED] or its agents or recruiters prevented him from seeking other employment. The record thus does not show that [REDACTED] or its agents or recruiters 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. The record indicates that the applicant was under financial pressure to support himself and his family members in the Philippines and he was disappointed that his earnings as an H-2B temporary worker in the United States were less than he had anticipated. The applicant stated that he borrowed money to pay the recruitment fees, but there is no evidence that [REDACTED] or its agents or recruiters forced the applicant into indebtedness to cover those costs. The relevant evidence does not establish that the [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.

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 and reporting a claimed violation of the H-2B provisions. 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 [REDACTED] or its agents or recruiters. 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.