



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 26 2015** Office: VERMONT SERVICE CENTER FILE:

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 please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 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 September 29, 2008 as an H-2B temporary worker petitioned for by the [REDACTED]. The applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on January 27, 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 December 2, 2013 and May 13, 2014 affidavits, the applicant provided the following account of his journey to the United States and claimed trafficking by [REDACTED] and [REDACTED].

In July 2008, the applicant's home town government sponsored a job fair in partnership with [REDACTED] a recruiting agency licensed by the [REDACTED]. The featured positions were for seasonal employment in the United States for which the applicant felt he was qualified to work as a cook; he participated in a pre-hiring interview and was pre-qualified for the job, and was directed to go to [REDACTED] Manila office along with hundreds of other job-seekers from his town. The applicant paid [REDACTED] a \$6 application fee and attended a pre-employment seminar during which it was explained that the attendants would pay a \$1,600 placement fee, \$800 for air travel, and an unspecified cost to interview with the U.S. employer. He successfully completed the interview and was offered temporary employment as a cook in Arizona. The applicant stated that he paid more than \$3,000 to [REDACTED] altogether but borrowed \$6,000 from a lending agency to pay the recruitment fees, his air travel to the United States, costs related to his U.S. Embassy interview and travel back and forth to Manila, meal allowances during those trips, and other unspecified personal expenses. He asserted that [REDACTED] agent guaranteed he could work 40 hours per week plus overtime and extra/double pay to work holidays, he would be charged \$125 per month for housing, and his job would be secured for three years. The applicant's H-2B visa was granted and valid from September 17, 2008 to May 31, 2009, but he claimed that [REDACTED] told him not to worry because the visa would be automatically renewed for three years. Before leaving the Philippines, the applicant signed a waiver at [REDACTED] request stating that he did not pay them money, and while he knew this was wrong and a lie, he believed if he did not sign he would lose the money he paid and his job abroad.

The applicant recounted that [REDACTED] gave him only 30 to 35 hours of work per week, he sometimes worked more than 40 hours and on holidays but was not paid overtime, and instead of being charged \$125 per month for housing, \$193 was deducted from his paycheck every other week for the first month and \$208 thereafter. He claimed he had also been told in the Philippines that he would be

transferred from hotel to hotel during each state's peak season but learned after arriving in the United States this was not the case and he could be fired if [REDACTED] was not able to provide him with enough hours. The applicant further asserted that the housing provided was not as nice or spacious as he was led to believe, the neighborhood made him feel unsafe, and [REDACTED] would not arrange for him to live elsewhere. While he conceded that he was paid a higher hourly salary than agreed, the applicant claimed "things evened out" because he was not always given 40 hours of work each week plus overtime as he expected. When the applicant learned under unspecified circumstances that his H-2B visa would not be automatically renewed, his [REDACTED] boss helped by referring him to [REDACTED] in South Carolina, which in turn petitioned for and secured him a new H-2B visa valid from April 1 to December 3, 2009. He stated that there was plenty of work in South Carolina, his housing costs were \$380 per month, but the executive sous chef discriminated against him in an unspecified manner, yelled at him without provocation, and banged doors and other things when he was angry. The applicant recounted that in mid-September 2009, he and some coworkers decided to travel to Florida to find an agency to help secure them another job when their current visas expired, but due to the high fees quoted, they declined. The applicant did not discuss any employment in Florida but two paystubs submitted for the record indicate that he was employed by a [REDACTED] affiliate in Naples, Florida from October 15 to November 16, 2009. According to the applicant, he and the coworkers with whom he traveled to Florida approached a [REDACTED] representative who referred them to someone who sent them to work at a resort in Pennsylvania. The applicant stated that 46 days before his H-2B visa expired, he decided to leave Pennsylvania and try his luck elsewhere and he risked being an illegal immigrant because he did not want to return to the Philippines without having achieved success. The applicant did not discuss his Pennsylvania or post-Pennsylvania employment, but he indicated on his Form I-192 waiver application that he has resided in Illinois since November 2009 and he submitted federal tax return transcripts reflecting an Illinois address for 2010, 2011 and 2012.

The applicant recounted financial, physical and emotional hardships during his employment with [REDACTED] and [REDACTED] including that he was not given as many hours to work as he expected and thus earned less money to support his family, he was initially left with only \$300 per week to send home to his family and repay his loans, had to clean backyards to earn extra cash, allegedly worked overtime and holidays without compensation, his initial apartment and neighborhood was not as nice as anticipated, he did not feel safe there and had difficulty sleeping, he was later yelled at by his boss in South Carolina, and he felt alone and helpless. He added that he would have difficulty finding work in the Philippines because of his age, his house there was destroyed by fire in August 2013 and his family left with nothing and the Philippines is reeling from that year's typhoon. The applicant 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; his home burned down, his family is living with relatives and he would have no place to live or money to buy a home; though [REDACTED] license with [REDACTED] was cancelled in 2012, they may still have influence and retaliate against him and his family; and potential employers in the Philippines would think unfavorably of him for not succeeding in the United States. The applicant also wishes to remain to assist in any prosecution of his claimed traffickers.

Victim of a Severe Form of Trafficking in Persons

On appeal, the applicant claims that he was the victim of labor trafficking because his recruiters forced him into involuntary servitude and peonage. After reviewing the applicant's initial submission and response to a request for further evidence, the director determined the applicant was not a victim of a severe form of trafficking in persons because the record showed that he was recruited for a temporary job in the United States, and though aspects relating to the initial cost of housing, guaranteed number of weekly hours and continuous employment for a certain period may have been misrepresented or miscommunicated to him, he was employed in the position he pursued and for which he was provided an H-2B visa, was paid at a higher hourly rate than agreed, chose to leave his employment 46 days prior to the expiration of his H-2B visa of his own accord to find work elsewhere, and because his recruiters did not engage the applicant's services through force, fraud or coercion.

To establish that he was a victim of a severe form of trafficking by his 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] obtained the applicant's services as a cook, 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 during her 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 the applicant's eligibility. The record shows that [REDACTED] recruited the applicant and [REDACTED] and [REDACTED] petitioned for his successive H-2B visas and employed him as a cook, 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 first by [REDACTED] and then by [REDACTED] pursuant to employment offers and acceptances as a cook from October 1, 2008

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to December 3, 2009, though the applicant decided to leave several months before the completion of his H-2B visa term to seek other employment opportunities. The record lacks evidence that [REDACTED] or their recruiters ever subjected the applicant to any "condition of servitude," the underlying requisite to involuntary servitude and peonage.

The applicant submitted formal employment offers from [REDACTED] and [REDACTED]. The [REDACTED] offer and the applicant's acceptance are both undated, and the [REDACTED] offer is dated March 17, 2009 and the applicant's acceptance, March 24, 2009. Both offers state that the applicant's employment will be as a cook contingent upon his ability to obtain an H-2B temporary work visa, that the H-2B visa is very restrictive, he is only authorized to work for the company stated, the offers are valid only during the specified periods (October 1, 2008 to May 31, 2009 for [REDACTED], and April 1, 2009 to December 3, 2009 for [REDACTED]), he must work until the final legal workday of that period and return to his home country immediately thereafter, the job site may terminate his employment earlier if unable to supply him with enough hours, he is responsible for the cost of his transportation to and from the United States, he will be paid on a biweekly basis, will not be paid for vacation or sick days as the job is temporary, and must adhere to a dress code/appearance policy. The [REDACTED] offer contains additional terms including a rate of pay of "\$9.92/per hour (may be higher based on experience)"; that he will be required to pay federal, social security, local taxes, and any other applicable taxes, to reside in arranged housing for \$90 per week (plus a \$150 deposit), both of which will be payroll deducted; housing costs will include utilities up to \$100 per month, the housing will include two people per room, each provided with his own bed and other furnishings including full kitchen, stove/oven, dishwasher, central air conditioning, washer/dryer, and eating and cook utensils, uniforms (excluding shoes) will be provided; and he can expect to work an average of 30 to 40 hours per week, five days per week including all weekends and holidays, and overtime hours may be required based on business demands but should not be relied upon for budgeting purposes. The offer also discusses health insurance, orientation and other skills training and specifies that the position requires an "Excellent" level of English to retain the position and he must complete an employment application in English during his orientation program.

Although the [REDACTED] contract does not specify a salary, the applicant stated that he was paid a higher hourly wage than expected. He submitted a selection of paystubs reflecting a portion of his employment with [REDACTED]. They show that the applicant was paid at an hourly rate of \$8.40 per hour through the first 40 hours he worked each week and \$12.60 for all overtime hours (hours worked in excess of 40 in any single week). None of the paystubs submitted confirm the applicant's claim that he was not properly compensated for overtime. Rather, for the 10 weeks reflected in the five paystubs, the applicant worked an average of 38 hours per week, including 15.25 hours of overtime for which he was compensated at one and a half times his regular hourly rate. The applicant appears to have submitted all paystubs related to his employment with [REDACTED] from April 19 to September 19, 2009, when he left to seek other work. During the 22 weeks reflected in these paystubs, the applicant worked an average of 42.90 hours per week, was paid approximately \$10.00 per hour through the first 40 hours weekly and approximately \$15.00 per hour overtime. All paystubs from [REDACTED] and [REDACTED] include payroll deductions for housing costs, deductions generally authorized at 29 C.F.R. § 503.16(c). The applicant stated that when the initial term of his temporary H-2B visa was coming to an end and he learned it would not be automatically renewed, his [REDACTED] boss helped facilitate a visa renewal by referring him to a sister hotel in South Carolina. That hotel, [REDACTED] then

petitioned for and secured a new H-2B visa for the applicant, valid from April 1, 2009 to December 3, 2009, effectively extending his legal temporary employment in the United States by nearly three months. The applicant stated that [REDACTED] provided him with plenty of work, and his employment offer and paystubs show that he earned a substantially higher salary than in Arizona, worked more than the number of weekly hours expected and was paid time and a half his regular salary for all overtime hours. While still under contract with [REDACTED] the applicant and a group of his coworkers voluntarily sought other employment first in Florida then in Pennsylvania, and he ultimately decided to relocate to Illinois under unspecified circumstances. The record lacks any evidence that [REDACTED] or their recruiters actually or intended to subject the applicant to a condition of servitude.

The record also does not show that [REDACTED] or their recruiters actually or intended to subject the applicant to peonage through involuntary servitude based on real or alleged indebtedness. His affidavits, payment receipts, and loan documents indicate that before departing the Philippines, the applicant paid [REDACTED] approximately \$3,000 for placement and recruitment-related fees and air travel to the United States, and that he borrowed \$6,000 from a lending company to cover these fees as well as for travel-related expenses between his hometown and Manila and other unspecified expenses. The lending company certified on November 4, 2013, that the applicant's loan has been "fully paid," and that he borrowed 252,000 Philippines pesos or approximately \$6,000 U.S.D. on August 8, 2008 with a repayment term of three years concluding on August 8, 2011. The applicant stated and [REDACTED] receipts show that he paid all of [REDACTED] required fees before leaving the Philippines for the United States. The applicant stated that after his arrival in the United States, he paid the costs for his housing rental and utilities through payroll deductions, though the deduction was higher than what was told him by [REDACTED] and he also found his Arizona housing accommodations to be crowded, not as nice as expected and the neighborhood unsafe, causing him to have difficulty sleeping. He recounted financial pressures related to paying a higher housing deduction than anticipated, and claimed that he worked only 30 to 35 hours per week, was not compensated for working overtime and holidays, and thus was unable to support his family in the Philippines to the extent he had hoped. However, paystubs submitted by the applicant show that while working for [REDACTED] in Arizona, he worked an average of 38 hours per week and was compensated for overtime hours (all hours worked in excess of 40 in any single week), at one and a half times his regular hourly wage. Paystubs for the applicant's employment with [REDACTED] in South Carolina show that he earned an even higher salary there, worked an average of nearly 43 hours per week, and was properly compensated for both overtime and holiday hours. The applicant has not asserted nor submitted any evidence showing that he took out any additional loans, had difficulty repaying within three years the money he borrowed before leaving the Philippines, or that he was or is in arrearages on any debt or otherwise could not meet his financial obligations. While the applicant submitted evidence showing that his home in the Philippines was destroyed by fire on August 24, 2013, this incident is not related to the within application or the claims made therein.

The preponderance of the evidence shows that [REDACTED] advised the applicant of the costs associated with his recruitment, visa petition and processing, travel to and pre-arranged housing in the United States. The applicant voluntarily secured a personal loan to pay these costs in full and to cover additional personal expenses. The applicant repaid his initial loan within the term of three years he agreed upon, he has not indicated that he took on any additional debt, and the record does not show that any account is in arrears or that [REDACTED] or [REDACTED] induced him to obtain any

personal loan. While his recruiters improperly required the applicant to pay the fees for his H-2B visa petitions, the relevant evidence does not show that [REDACTED] or [REDACTED] forced the applicant into indebtedness to cover those costs. Consequently, the record does not demonstrate that [REDACTED] or their 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 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. The applicant claims that [REDACTED] and their recruiters engaged in a "psychologically coercive and financially ruinous trafficking scheme that subjected him to exorbitant debt and forced labor." He adds that they 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, segregated, or forced to serve [REDACTED] or [REDACTED]. Rather, the record shows that while his initial apartment and neighborhood were not as nice as he expected, [REDACTED] did indeed provide an apartment for him to share with other Filipino workers employed temporarily in accordance with their H-2B visas. There is no assertion or indication that the applicant was not free to come and go as he liked outside of work, and though [REDACTED] declined to reestablish the applicant in another apartment at his request, when he expressed disappointment that his H-2B visa would not be "automatically renewed" at the end of its initial term, [REDACTED] willingly helped him secure successive employment at its sister hotel ([REDACTED] in South Carolina which petitioned for and secured for him a second H-2B visa that extended his legal term of employment in the United States. The applicant was free to relocate to South Carolina and embark on employment with [REDACTED] the terms of which he agreed to in a detailed employment contract under which he was paid an even higher salary than in Arizona and worked a greater number of hours, including regular overtime for which he was compensated at one and a half times his regular hourly rate. Despite still be under contract with [REDACTED] the applicant decided to leave his H-2B employer and pursue other opportunities in Florida, Pennsylvania and Illinois, all before the completion of the term of his H-2B visa as petitioned for on his behalf by [REDACTED].

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 asserts that [REDACTED], [REDACTED] and their recruiters coerced him by violating Department of Labor regulations regarding the H-2B program. The record shows that the applicant paid the costs for his H-2B visa petition. Media reports show that [REDACTED] is among numerous recruiters whose licenses the [REDACTED] cancelled in 2012, years after the applicant's recruitment, for violating various unspecified recruitment rules. The record indicates that [REDACTED], [REDACTED] and [REDACTED] may have violated Department of Labor regulations by requiring the applicant to pay the costs for his H-2B visa petition. However, as explained above, these violations did not compel the applicant to work by inducing his indebtedness. Rather, the applicant paid for his

H-2B visa and petition through personal funds and a personal loan he secured from a lender in the Philippines with a three-year repayment term he successfully fulfilled. Upon completion of his initial H-2B visa term, [REDACTED] referred the applicant to [REDACTED] which successfully petitioned for and secured him a new H-2B visa/renewal that extended the term of his legal temporary employment in the United States. Before the end of the duration of the applicant's H-2B employment with [REDACTED] he decided to pursue other employment opportunities in three different states and he did so without any asserted interference by any of his alleged traffickers. The relevant evidence does not show that [REDACTED] [REDACTED] or any of their recruiters' violations of the H-2B program regulations 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] [REDACTED] or their recruiters secured his services through fraudulent promises of long-term full-time employment. Although the applicant conceded that he knew before leaving the Philippines his H-2B visa was valid only from September 17, 2008 to May 31, 2009, he claimed that [REDACTED] told him he would enjoy automatic renewals for three full years. However, none of the documents the applicant submitted from [REDACTED] or [REDACTED] reference any promise or obligation to secure three years of full-time employment or automatic renewals of his H-2B visa in the United States. As detailed previously, the applicant entered into formal employment contracts both with [REDACTED] and [REDACTED]. And while he raised in his second affidavit that he did not sign the [REDACTED] contract until he was in the United States and it was not explained to him in Tagalog, the terms of the contract he signed with [REDACTED] only a few months later require that cooks exhibit "Excellent" proficiency in English indicating that he understood the terms of both employment agreements. Both contracts clearly state that the H-2B visa is very restrictive, he is authorized to work only for the company specified and only during the dates specified, he must work until the final legal workday of that period and return to his home country immediately thereafter, and the job site may terminate his employment earlier if unable to supply him with enough hours. The [REDACTED] contract includes detailed salary and paycheck deduction information, all of which his paystubs confirmed as accurate, and further states that the applicant could expect to work an average of 30 to 40 hours per week, five days per week including all weekends and holidays, and that overtime hours may be required based on business demands but should not be relied upon for budgeting purposes. [REDACTED]'s accurate adherence to these terms is reflected in the corresponding paystubs. Although the [REDACTED] contract does not delineate the applicant's hourly salary or payroll deductions for housing costs, the applicant stated that he was paid at a higher hourly wage than expected. Despite that his housing deduction was higher than what [REDACTED] led him to believe, the corresponding paystubs show that the applicant worked an average of 38 hours per week, sometimes worked overtime, and was properly compensated for overtime (all hours worked in excess of 40 hours any single week), at one and a half times his regular hourly rate. None of the documents submitted reference free housing with a nominal \$125 per month fee, 40 hours per week of work guaranteed plus extra or double pay for holidays, automatic transfers between hotels based on each states' peak seasons, or continued employment beyond the term agreed upon and/or free or automatic visa renewals.

Finally, the record does not support the applicant's claim that his recruiters trafficked him through force or coercion involving physical restraint by restricting his movement and preventing him from seeking employment elsewhere. The applicant conceded that he retained his own passport, visa and the Form I-797A approval notice of his initial H-2B visa petition, but claimed he "was still trapped"

because [REDACTED] “forced” him to remain in his arranged housing though he complained that his apartment was “crowded, dirty and expensive.” While the applicant’s accommodations and neighborhood in Arizona were not as nice as he expected, there is no indication that [REDACTED] physically restrained him and in fact, though he would have preferred alternate housing there is no indication that he was not free to otherwise come and go as he pleased. The record shows that [REDACTED] and [REDACTED] consistently provided the applicant with workweeks of close to or in excess of 40 hours, paid him at time and a half his regular hourly wage for all overtime hours, and properly compensated him for holidays. Moreover, when the term of his initial H-2B visa was coming to a close, [REDACTED] helped the applicant secure employment in another state with [REDACTED], a sister hotel, through whom he was the recipient of another H-2B visa which extended his legal temporary employment in the United States. The applicant conceded that he was given even more hours to work through [REDACTED] in South Carolina, where paystubs showed that he worked a significant number of overtime hours, was compensated accordingly, and was paid an even higher hourly salary than in Arizona. Moreover, the applicant voluntarily left [REDACTED] employ while still under the terms of his H-2B visa in order to pursue other employment opportunities in other states.

The record also lacks any evidence that [REDACTED], [REDACTED] or their recruiters otherwise controlled the applicant’s movement and personal freedom. Although the applicant claimed that he was “forced” to stay in the housing provided and for which his share of the rent and utilities were deducted from his paychecks, he was free to come and go as he liked and to engage in social and other activities outside of working hours. Not only did [REDACTED] not prevent him from seeking other employment, but referred the applicant to his subsequent employer, [REDACTED] through whom he secured his next H-2B visa. In addition, when the applicant decided to leave [REDACTED] employ while still under the terms of his H-2B visa, [REDACTED] offered no apparent resistance or repercussions. The record does not show that [REDACTED], [REDACTED] or its 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 the applicant’s employment with [REDACTED] and [REDACTED] but does not establish that either employer or their recruiters ever subjected him to a severe form of trafficking in persons. The record indicates that the applicant did not earn as much money working as an H-2B temporary employee in the United States as he anticipated. He claimed that his housing deduction was far greater than he had been led to believe in the Philippines, he felt unsafe and had difficulty sleeping related to his accommodations in Arizona, experienced unspecified discrimination by a sous chef in South Carolina who would yell and bang things without provocation, as well as the difficulty of being separated from his family in the Philippines and being unable to support them to the extent he anticipated, resulting in considerable financial pressure, stress and anxiety.

The record also indicates that [REDACTED], [REDACTED] and [REDACTED] may have violated certain provisions of the Department of Labor regulations regarding the H-2B program, but there is no evidence that they ever subjected or intended to subject the applicant to involuntary servitude or peonage. The record shows that [REDACTED] and [REDACTED] petitioned for the applicant’s H-2B temporary status and employed him as a cook successively from October 1, 2008 through December 3, 2009 pursuant to formal employment agreements. The relevant evidence does not establish that [REDACTED], [REDACTED] or their recruiters obtained

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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). Counsel 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 [REDACTED]. 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.