U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-D-L-S-

DATE: OCT. 16, 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 because 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 such trafficking, and had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. 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,
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> (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;
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> (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
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> (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:

> 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.* [U.S. Citizenship and Immigration Services (USCIS)] 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. . . . [USCIS] will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.
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> (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 6, 2008, as an H-2B nonimmigrant to be employed by [redacted] as a housekeeper for [redacted] The Applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on March 10, 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, filing a brief. In his February 15, 2014 and September 17, 2014 affidavits, the Applicant provided the following account of his employment with and claimed trafficking by, collectively, [redacted]

The Applicant initially recalled that a former co-worker told him about [redacted] a recruiting agency in the Philippines. The Applicant visited [redacted] and, during his final interview with [redacted] claimed that [redacted] promised that the Applicant would have plenty of work, a "huge possibility of working overtime, and an hourly wage of $8.00. In response to the RFE, he elaborated that [redacted] also promised him 40 hours of work

[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(9) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

per week, housing within walking distance to work, and three years of employment with automatic renewals of his visa. The Applicant stated that asked him to pay a recruitment fee of $2,500.00. According to the Applicant, he borrowed $460.00 from his aunt and $925.00 from , a lending agency, to help finance the fee. The Applicant initially indicated that his "visa was sponsored by but that his contract was with

When he arrived in the United States to work for at the the Applicant indicated that he was placed in a three-bedroom, two-bath apartment with five other males. The Applicant explained that the apartment was empty, so he and the other occupants had to carry company mattresses to the apartment, and set everything else up. The Applicant found that a weekly fee of $75.00 was deducted from his pay checks for rent, in additional to other deductions, such as utilities, to such an extent that his paycheck was often $0.00. Although the Applicant asserted that he was paid, he asserted that it was $7.50 per hour rather than the hourly rate of $8.00 that he was promised. Moreover, the Applicant also explained that he was required to clean 18 to 20 rooms per shift and frequently skipped eating meals in order to complete his tasks. The Applicant advised that he left shortly after being transferred to a new hotel assignment in , Florida, where he asserted he was given less working hours and placed in a "filthy" house with "subhuman living conditions." The applicant asserted that he has suffered from depression and worry about his inability to support his family and fear that his traffickers would retaliate against him for talking about his situation. He indicated that he had trouble repaying the loan to his aunt. In response to the RFE, the Applicant provided a letter from his aunt confirming that he repaid the loan in 2008.

The Applicant provided a 2008 conditional offer of temporary employment from , which offered the Applicant $8.00 per hour for approximately nine and one-half months of employment from November 14, 2008, to August 31, 2008; however, as the Applicant asserted that he worked for this document does not appear to relate to his trafficking claims. The record does not contain contracts or other conditional offers from any of the Applicant's other claimed employers. Instead, the Applicant provided an information packet from which he appears to have signed on June 29, 2008. According to the information packet, the Applicant was to be provided housing by his prospective U.S. employer, and would be charged $100.00 to $110.00 per week in rent. The Applicant included three pay stubs from October and November of 2008 showing that paid him at an hourly rate of $7.50 for work weeks that ranged from 15.75 to 31 hours. The final pay stub and related check from reflects that after deductions for rent, transportation, utilities, and a "housing/contract deposit," the Applicant was paid for "$0.00" for the 15.75 hours of work he performed. In response to the RFE, the Applicant reiterated his initial claims, adding that because he never signed a contract with all their promises were oral. He asserted for the first time that he signed a contract with but did not provide a copy and suggested that he did not understand what he had signed. He also indicated that he signed an employment contract with prior to beginning his employment, but did not provide a copy and again suggested that he did not understand what he was signing.

As a result of his alleged trafficking, the applicant indicated that he has suffered from constant fear and worry, and consequently developed an ulcer.

On appeal, the Applicant again asserts he suffered financial, physical, and emotional hardship related to his employment, immigration status, and corresponding worries regarding his and his family's future and wellbeing. He lists his traffickers as but does not claim to have been trafficked by another other entities on appeal. Accordingly, we will address his claims to have been trafficked by these two entities.

III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant claimed he was a victim of labor trafficking by which he alleged 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 did not establish 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 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 these entities subjected him to forced labor through coercion, peonage, and abuse of the H-2B process. The Applicant's claims are insufficient to establish his eligibility. The Applicant has not established by a preponderance of the evidence that trafficked him through employment 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 indirectly coerced him because he was "fraudulently persuaded to incur extensive debt just to be able to come in the United States in exchange of promises of a better working condition and the chance to uplift and alleviate the living condition of his family." He claims that his recruiters used a variety of coercive tactics to control him and force him to provide services to them, including false promises, forcing him to pay high placement and housing fees, restriction of movement, and

segregation. The record does not support the Applicant's claims to have been trafficked for four principal reasons.

First, although the Applicant has asserted that he was trafficked by , he appears to have voluntarily left his employment situation in Florida after approximately eight weeks to seek other employment in California and then New York, where he is still working. Consequently, the record shows that the Applicant has moved between multiple, unrelated employers and lacks evidence that actually subjected or intended to subject him to involuntary servitude.

Second, the record does not show that intended to subject the Applicant to peonage through involuntary servitude based on real or alleged indebtedness. According to the Applicant, he borrowed money from his aunt and a private lending company to pay the recruiter fees shortly before travelling to his employment in the United States; however, the record does not reflect that he was ever indebted to or that these entities forced him into indebtedness.

Third, the record does not support the Applicant's claim that engaged in coercion because he was "fraudulently persuaded to incur extensive debt just to be able to come in the United States in exchange of promises of a better working condition and the chance to uplift and alleviate the living condition of his family." The Applicant borrowed money from his aunt and a private lending company for the payment to , a foreign recruiter in the Philippines, and not to Moreover, he voluntarily agreed to pay the recruiter fees to before he came to the United States. The actions outlined by the Applicant do not establish that he was forced to borrow money from his aunt and a private lending company. Once in the United States, although he was not always provided full time work, he was paid an hourly rate of $7.50. As discussed, the Applicant provided an offer of employment from an entity with which the Applicant does not appear to have had a relationship. The Applicant appears to have signed an information packet from in which it advised him that he would be required to pay $100.00 to $110.00 per week in rent to his U.S. employer, and a rental deposit of $300.00. In fact, the Applicant appears to have paid his employer a substantially lower rate of $75.00. Because the record does not contain additional evidence, such as actual employment contracts reflecting the terms of the Applicant's prospective employment, housing and transportation, it is not possible to assess whether or not the Applicant's salary, employment conditions, and housing ultimately comported with what he was offered while still in the Philippines.

Finally, the record does not support the Applicant's claim that trafficked him through force or coercion by restricting his movement, forcing him to pay for housing, and preventing him from seeking employment elsewhere. is the entity that actually paid the Applicant for his work in the United States and the Applicant confirmed he left this entity after what appears to have been eight weeks of employment. The record thus does not show that obtained the Applicant's services through fraud, force, or coercion involving physical restraint or other restriction of his movement.

In summary, the Applicant has not established that ever subjected him to a severe form of trafficking in persons. Although the record suggests that the Applicant was under considerable financial pressure and experienced stress and anxiety, the relevant evidence does not show that obtained the Applicant's labor through force, fraud, or coercion for the purpose of subjecting him to involuntary servitude, peonage, debt bondage, or slavery. The record contains no evidence that the Applicant was ever indebted to or that these 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 ever intended to subject him to such conditions. Although the Applicant's U.S. employer, may not have provided the Applicant with full-time employment, the record shows that it paid him, and that it deducted a housing rental fee that was less than the prospective fee first suggested to the Applicant while he was still in the Philippines. After what appears to have been a period of approximately eight weeks, the Applicant voluntarily left to pursue other employment in California and New York. 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 to Law Enforcement Investigation or Prosecution of Trafficking

The Applicant also has 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 copies of a letter and electronic mails 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 the record does not reflect a response from DOJ beyond acknowledgement of receipt of the information. As the record otherwise does not establish any severe form of human trafficking in connection with the Applicant's employment, the Applicant has not met the assistance requirement of section 101(a)(15)(T)(i)(III) of the Act.

D. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

Our *de novo* review of the record also does not lead to a conclusion that the Applicant would suffer extreme hardship involving unusual and severe harm upon removal. In his affidavits, the Applicant claimed he would suffer extreme hardship if forced to return to the Philippines because he believes his alleged traffickers in the Philippines would retaliate against him and his family. He asserted that it would be difficult to find work in the Philippines because he would be considered old and feared what his potential employers there would think of him for not having been successful in the United States. In response to the RFE, 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.

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 § 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 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 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 D-D-L-S-*, ID# 14831 (AAO Oct. 16, 2015)