



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

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

MATTER OF E-A-O-

DATE: OCT. 21, 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,
- (II) is physically present in the United States . . . on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
- (III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime . . . ; and
- (IV) [w]ould suffer extreme hardship involving unusual and severe harm upon removal

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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.
- (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 April 6, 2009, as an H-2B nonimmigrant to be employed by [REDACTED] as a housekeeper for hotels in Florida. The Applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on March 4, 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 September 14, 2013 and December 2, 2014 affidavits, the Applicant provided the following account of his employment with and claimed trafficking by [REDACTED] and his recruiters in the Philippines.

The Applicant initially recalled that he heard about a recruiting agency in the Philippines named [REDACTED] from a friend, and applied to them for employment as a housekeeper in the United States. The Applicant alleged that during his orientation, [REDACTED] promised that he would work 40 hours per week plus overtime, be paid \$7.38 per hour, have one month of free housing, have free transportation to and from work, have 15 days of sick leave and 15 days of vacation, and have a renewable visa every six months for three years. The Applicant then took out a loan of PHP 100,000 from [REDACTED] to pay \$4,000.00 to [REDACTED] to cover its placement fee and other

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).

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expenses related to the visa process. The Applicant also attested that his mother helped him to find other lenders from whom to borrow additional funds. The Applicant provided a personal statement indicating that he took a loan for an unspecified amount of money from [REDACTED] in March of 2009.

When he arrived in the United States, the Applicant first stated that he and four other people were placed in a one-room apartment in [REDACTED] Florida. He then indicated that he and seven other people were placed in a three-bedroom, one-bath apartment with mattresses but no beds, no dressers, and no closets. The first month of rent was not free, and the Applicant explained that he had payments of \$100.00 or \$150.00 deducted from his biweekly paycheck. Moreover, the Applicant indicated that there were not enough mattresses for all occupants and he was forced to sleep on the floor, that there was no bedding, blankets, or kitchen wares, and that he could not immediately afford to purchase those amenities. Although the Applicant advised that [REDACTED] had promised him one month of free rent, he stated that he was charged the first month of rent, and was subsequently charged various rental fees depending on the number of hours he worked.

The Applicant explained that when he signed an employment agreement with [REDACTED] he was promised that he would be working in a hotel, but was instead assigned to work for a British couple who he claimed treated him poorly. He explained that although he had allergic rhinitis, the couple expected him to take care of their shedding, geriatric dog. According to the Applicant, he stayed one night, but when his allergies flared he was reassigned to work at a place he named as the [REDACTED]

The Applicant recounted that the [REDACTED] provided him with an irregular schedule, and that he only worked 3 to 4 hours each day, for three days a week. After a month and a half, the Applicant advised that there was no work, so he was transferred to work as an assistant cook at [REDACTED] where he remained for six months. According to the Applicant, the owner of the facility, [REDACTED] charged the Applicant a monthly rental fee of \$150.00 to stay in his house, and required the Applicant to work overtime and holidays but did not pay him for the overtime or holiday rates.² The Applicant attested that [REDACTED] required him to pay a fee of \$300.00 for renewal of his visa, but did not provide him evidence that he filed the renewal petition. Because the Applicant's visa expired, [REDACTED] "removed" the Applicant for about three months. Ultimately, as [REDACTED] continued to pressure the Applicant for evidence of his work authorization, the Applicant decided to follow some co-workers to New York, where he found what he described as a job with a low hourly rate and no benefits through an agency.

As a result of his situation, the Applicant asserted that he now suffers from constant fear, worry, and anxiety over his situation, including his inability to pay for his expenses in the United States and his debt. In response to the RFE, he specified that he had trouble repaying his loan to [REDACTED] in the Philippines, and that his wife had to mortgage their house to pay his loan. The Applicant also advised that [REDACTED] had threatened his wife with prison time over non-payment of the loan.

² The Applicant uses the spelling [REDACTED] and [REDACTED] interchangeably in his affidavits.

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The Applicant provided copies of a 2009 seasonal contract for [REDACTED] which he signed on January 20, 2009, and in which he agreed to an hourly salary of \$7.38 for a 40-hour work week over an eight-month period. The contract reflects that the Applicant would have the possibility of overtime and housing at a cost to the Applicant that would be determined based on the location. He also provided a copy of a January 9, 2009, model contract that he and [REDACTED] appear to have initialed. According to the terms of the model contract, the Applicant was promised an hourly wage of \$7.38, a maximum of eight hours of employment for six days a week, 15 days each of sick leave and vacation. Although the model employment contract indicated that the Applicant was to be provided free transportation to the site of employment, this appears to refer only to travel from the Philippines to the United States. Moreover, the contract was marked “not applicable” to indicate that the Applicant would not be provided free food or housing. In response to the RFE, the Applicant reiterated his initial claims, adding that because he never signed a contract with [REDACTED] all their promises were oral. He confirmed that he signed an employment contract with [REDACTED] prior to beginning his employment, but suggested that he did not understand what he was signing. The Applicant advised that he would face hardship in the Philippines because he would be unemployable due to age discrimination and because of the perception that he was not successful in the United States. The Applicant indicated that he has not been able to repay his debt to [REDACTED] and feared that his alleged traffickers would retaliate against him if he were to return to the Philippines by placing him on a blacklist.

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 reasserts that he has substantial debt and claims that he was asked to pay \$320.00 in monthly rent but had been promised free housing. He also describes worrying about how he would repay his debt to [REDACTED]. The Applicant includes recent tax records from 2013 showing that he is now employed in New York in maintenance.

III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant claimed he was a victim of labor trafficking by [REDACTED] and [REDACTED] which forced him into involuntary servitude and peonage. After reviewing the Applicant’s initial submission and response to a request for further evidence, the Director 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 [REDACTED] and [REDACTED] the Applicant must show that these entities recruited, harbored, transported, provided, or obtained him for his labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term “severe forms of trafficking in persons”). On appeal, the Applicant asserts that both entities subjected him to forced labor through coercion, fraud, peonage, and threatened abuse of the legal process. The Applicant’s claims and the additional evidence submitted

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on appeal are insufficient to establish his eligibility. The Applicant has not established by a preponderance of the evidence that [REDACTED] and [REDACTED] 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 [REDACTED] and [REDACTED] indirectly coerced him because he “was fraudulently induced to borrow huge amounts of money in order work in the United States with promises of a better life and the prospect of at least three years of steady, full-time employment.” He claims that his recruiter and employer used a variety of coercive tactics to control him and force him to provide services to them, including isolation, segregation, abuse of the legal process, and false promises in his recruitment and employment. The record does not support the Applicant’s claims to have been trafficked for several reasons.

First, the applicant stated that he was employed and compensated by [REDACTED] as a housekeeper pursuant to an employment contract. In his statements he indicated that he willingly entered into an employment agreement with [REDACTED] and agreed to be paid for his work. He attested that when he had an allergic reaction to the dog that lived at his first place of assignment, [REDACTED] transferred him to a new position. Although he was not assigned the promised hours of work, he was paid for his work. According to the applicant, he left [REDACTED] and moved to New York when the company failed to secure an extension of his status and work authorization. Consequently, the record lacks evidence that the [REDACTED] actually subjected or intended to subject the Applicant to involuntary servitude.

Second, the record does not show that the Applicant’s employers intended to subject him to peonage through involuntary servitude based on real or alleged indebtedness. According to the Applicant, [REDACTED] company provided him with most of the money to pay the recruiter fee to [REDACTED] and the Applicant borrowed the rest from another unnamed entity. Although he indicated that he paid \$300.00 to [REDACTED] to have his visa renewed, he did not claim to have gone into debt to do so. Accordingly, the relevant evidence shows that the Applicant incurred private and personal loans shortly before his employment in the United States, but the record does not reflect that the Applicant was ever indebted to [REDACTED] or [REDACTED] or that they forced him into indebtedness.

Third, the record does not support the Applicant’s claim that [REDACTED] and [REDACTED] engaged in coercion because he was “was fraudulently induced borrow huge amounts of money in order to

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work in the United States with promises of a better life and the prospect of at least three years of steady, full-time employment.” The loans he took from [REDACTED] were for a partial payment to [REDACTED] a foreign recruiter in the Philippines, and not to his employer, [REDACTED]. Although the Applicant asserted that he would face hardship in the Philippines, he voluntarily agreed to pay the recruiter fees before he came to the United States and he obtained private loans to do so prior to his entry. The actions outlined by the Applicant do not establish that he was forced to take on a huge amount of debt.

Finally, the record does not support the Applicant’s claim that [REDACTED] or [REDACTED] trafficked him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere. The Applicant explained that when [REDACTED] failed to provide him with extended work authorization, he left its employ for New York. The record thus does not show that [REDACTED] or [REDACTED] obtained his services through fraud, force, or coercion involving physical restraint or other restriction of his movement.

In summary, the Applicant has not established that [REDACTED] or [REDACTED] 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 [REDACTED] or [REDACTED] obtained the Applicant’s labor through force, fraud, or coercion for the purpose of subjecting him to involuntary servitude, peonage, debt bondage, or slavery. Although the Applicant submitted evidence relating to money he borrowed from [REDACTED] as a placement fee to [REDACTED], the record contains no evidence that the Applicant was ever indebted to [REDACTED] or [REDACTED] 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 [REDACTED] or [REDACTED] ever intended to subject him to such conditions. To the contrary, the record shows that the Applicant’s employer petitioned for him as an H-2B nonimmigrant worker and that although it did not always provide him with full-time employment, it paid him for his work and even transferred him from his initial, unsatisfactory working conditions when he had an allergic reaction. Moreover, the Applicant left Florida and [REDACTED] in order to pursue other employment in New York when the [REDACTED] failed to secure an extension of his status and work authorization. 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.

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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 by [REDACTED]. 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 with [REDACTED], 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 had not paid his debts and because he believes his alleged traffickers in the Philippines would retaliate against him. 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 poorly 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 regarding [REDACTED], but there is no evidence that DOJ or any other U.S. government agency initiated an investigation or prosecution of [REDACTED] or [REDACTED] related to the Applicant's employment. The record also lacks evidence that the crime rate or other conditions in the Philippines are equivalent to civil unrest or armed conflict resulting in the designation of

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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 E-A-O-*, ID# 14610 (AAO Oct. 21, 2015)