



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

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

MATTER OF F-G-B-

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, had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, or would suffer extreme hardship involving unusual and severe harm upon removal. 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 asserts that he first entered the United States on November 4, 2009, as an H-2B nonimmigrant to be employed at an amusement park for [REDACTED] after being recruited by a placement agency in the Philippines named [REDACTED]. The Applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on June 3, 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 affidavits dated May 12, 2014 and November 19, 2014, the Applicant provided the following account of his employment with and claimed trafficking by [REDACTED]

The Applicant initially recalled that he read an ad in a newspaper in the Philippines reflecting that [REDACTED] was hiring amusement park workers for employment in the United States. According to the Applicant, [REDACTED] promised that he would be employed as an amusement park worker with various duties including providing patrons with park information, monitoring adherence to rules and safety procedures, cleaning equipment, vehicles, booths, facilities

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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and grounds, and selling tickets and collecting fees. He also asserted that [REDACTED] promised that he would be paid \$7.25 per hour, have decent accommodation, medical insurance, and transportation, and continuous renewal of his visa for up to three years. According to the Applicant, [REDACTED] requested a placement fee and he ultimately paid approximately \$3,500.00 to the entity. The Applicant asserted that he took a loan of \$3,000.00 from [REDACTED] and an additional loan from his brother-in-law.

After he arrived in the United States, the Applicant explained that he was not given the promised job at an amusement park in Tennessee but was instead sent to work at a [REDACTED] fast food entity in [REDACTED] Louisiana. The Applicant claimed he was not provided free housing, but was instead housed in a small, two-bedroom, one-bathroom apartment with five other roommates, and that \$150.00 in rent was deducted from each of his bi-weekly paychecks. The Applicant explained that the apartment was cramped and chaotic, and lacked a bed and other amenities. Because he was not employed for five full days at [REDACTED] the Applicant asked for new employment and was transferred to a [REDACTED]. He explained that it was an hour drive from where he lived, and he had to pay to take the bus to work. The Applicant initially indicated that [REDACTED] paid him \$7.25 per hour but then indicated that he was paid \$7.00 per hour. He advised that he was once more given only part-time employment at [REDACTED]. The Applicant explained that when his term of employment with [REDACTED] terminated, he found an agent named [REDACTED] and went to work at [REDACTED] in Connecticut.

As a result of his situation, the Applicant asserted that he has suffered from feelings of degradation about his inability to support his family. The Applicant initially indicated that he still owes money to [REDACTED] and his brother-in-law, and does not have sufficient savings to fund the needs of his family, especially his sick mother. In response to the RFE, the Applicant indicated that he had paid back most of his loan, but still lacked savings. In his initial statement, the Applicant advised that he no longer feared his traffickers because they had been “closed by the Philippine government”; however, in response to the RFE, he stated that he still feared retaliation from his alleged traffickers if they were to find out he spoke out against them. He added that he “would be devastated to lose the protection of the justice system here in America,” and suggested that he wants to have his alleged traffickers prosecuted. Finally, the Applicant asserted that he is concerned that he would be unemployable in the Philippines because of age discrimination and the perception of potential employers that he was not “successful” in the United States.

The Applicant provided an employment contract from [REDACTED] offering the Applicant employment as an amusement park worker in [REDACTED], Tennessee for \$7.25 per hour with a minimum of 32 hours of work per week, and no guaranteed overtime, tips, or night shifts. According to the contract, the Applicant would be charged \$300.00 per month for provided housing. This contract was signed by the Applicant on October 1, 2009, prior to his travel to the United States; however, in response to the RFE, the Applicant suggested that he did not understand what he was signing. The Applicant provided four bi-weekly paychecks from [REDACTED] showing that he was paid an hourly rate of \$8.00 for work weeks that varied between 10.93 hours and 28.63 hours. The Applicant provided various articles regarding international human trafficking, but these do not specifically discuss his own

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alleged traffickers. The Applicant provided Internal Revenue Service (IRS) tax returns for 2010 and 2011 showing that he lived and worked in Vermont as a housekeeper and then California as a caregiver. The Applicant also provided several Forms I-797A receipt notices showing that he was the beneficiary of various Form I-129 H-2B nonimmigrant worker petitions allowing him to work for several businesses in Vermont, North Dakota, and Texas after his term of employment with [REDACTED]

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.

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 he claims 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 [REDACTED] and [REDACTED] 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 [REDACTED] and [REDACTED] trafficked him through 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.* 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 does not show that the Applicant was subjected to any "condition of servitude," the underlying requisite to involuntary servitude and peonage.

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On appeal, the Applicant asserts that his recruiters and employers used a variety of coercive tactics to control him and force him to provide services to them, including fraudulently inducing him to pay high placement and housing fees, failing to explain his contracts to him in his native language and rushing him into signing them, and failing to provide him with full work hours and the stipulated wage. The record does not support the Applicant's claims to have been trafficked for three principal reasons.

First, the Applicant stated that he was employed and compensated by [REDACTED] in various fast food enterprises. Although the Applicant did not submit a copy of any documents reflecting his actual employer or salary, 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 although he was not assigned the promised hours of work, he was often paid the hourly rate he was initially offered. The paystubs he provided reflect that he was actually paid \$8.00 per hour, more than the hourly rate of \$7.25 that was in his [REDACTED] employment contract. According to the Applicant, he left [REDACTED] when his term of employment was over and moved to Connecticut for new work. Consequently, the record lacks evidence that the [REDACTED] actually subjected or intended to subject the Applicant to involuntary servitude. The Applicant's contracts and income tax returns show that he willingly entered an employment agreement with [REDACTED] and, although he was not always provided full-time work, he was paid more than the hourly rate he was initially offered. The record lacks any evidence that the [REDACTED] actually or intended to subject the Applicant to involuntary servitude.

Second, the record does not show that [REDACTED] and [REDACTED] intended to subject the Applicant to peonage through involuntary servitude based on real or alleged indebtedness. According to the Applicant, he borrowed money from a lending company to pay the [REDACTED] [REDACTED] recruiter fees shortly before travelling to his employment in the United States; however, the record does not reflect that he was ever indebted to [REDACTED] and [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 "deceitfully induced to sign a contract of employment for an enticing job in the United States." Although the Applicant was employed in various fast food enterprises rather than an amusement park, [REDACTED] appears to have generally met the terms of employment reflected in its offer of employment. It did not always provide him with the promised 32 hours of work each week, but appears to have paid him more than the hourly rate it initially proffered. The contract that the Applicant signed did not include offers of free housing or transportation, and clearly stated that he would be charged \$300.00 in monthly rent. The Applicant borrowed money from [REDACTED] for the placement fee to [REDACTED] a foreign recruiter in the Philippines, and not to [REDACTED]. Moreover, he voluntarily agreed to pay the recruiter fees before he came to the United States. The actions outlined by the Applicant do not establish that he was forced to borrow money from the lending company.

In summary, the Applicant has not established that [REDACTED] and [REDACTED] ever subjected him to a severe form of trafficking in persons. Consequently, the Applicant has not demonstrated

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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 with [REDACTED] or affiliation with any other claimed trafficker, including [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 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.

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§ 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 [REDACTED] and [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 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 F-G-B-*, ID# 14701 (AAO Oct. 21, 2015)