



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

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

MATTER OF R-O-L-

DATE: OCT. 29, 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 and was physically present in the United States on account of such trafficking. 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 27, 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 December 2, 2013. 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 October 28, 2013, and December 11, 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 visited the agency to apply for employment as a housekeeper in the United States. During his orientation with [REDACTED] the Applicant was promised that he would work 40 hours per week plus overtime, be paid \$7.38 per hour, have “really good and free housing” for one month, have free transportation to and from work, have 15 days of sick leave and 15 days of vacation, and have a renewable visa every eight months for three years. The Applicant

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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then took out a loan of \$4,500.00 from his cousin, [REDACTED] to pay \$4,000.00 to pay to [REDACTED] as a placement fee and used the remaining money to pay other expenses related to the visa process. The Applicant provided a personal statement regarding the loan from [REDACTED]

When he arrived in the United States, the Applicant stated that he and five other people were placed in an unfurnished two-bedroom, two-bathroom apartment. 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. According to the Applicant, he was not given free transportation, only made \$7.00 per hour for his work as a housekeeper at the [REDACTED] and was frequently charged half of his paycheck for the rent, and had his tips confiscated. As a result of his small paycheck, the Applicant indicated that he often resorted to eating leftover food that he collected from guests at the inn.

After starting his job cleaning at the [REDACTED] the Applicant alleged that he was sometimes given five days of work per week but only four to six hours a day unless there were a lot of guests. The Applicant asserted that he was overworked because he was required to clean 8 to 10 rooms, sweep around beach chairs, and work in the laundry. The Applicant advised that [REDACTED], the owner of [REDACTED] asked him to pay \$500.00 for his visa renewal fee, and suggested that he did not believe that [REDACTED] ever filed the visa extension. According to the Applicant, his salary was not enough for his own expenses and he had no money to send to his mother, so he accepted odd jobs for additional income. The Applicant indicated that he left Florida for employment in Maryland, where he works for an unrelated employer and makes an income that he considers very small.

As a result of his situation, the Applicant asserted that he now suffers from constant worry, fear, and anxiety, especially about his lack of lawful immigration status in the United States. He stated that he has had trouble paying his family members back for the loan. The Applicant provided copies of a 2009 seasonal contract for [REDACTED] which the Applicant appears to have initialed on an unspecified date indicating that he agreed to an hourly salary of \$7.38 for a 40-hour work week and a nine-month period. He also provided a copy of a February 12, 2009, model contract that he and [REDACTED] appear to have initialed. According to the terms of the model contract, the Applicant was promised free transportation to "to the site of employment," but given the context of that language within the contract, it appears to refer only to the initial transportation from the Philippines to Florida. The contract was marked "not applicable" to indicate that the Applicant would not be provided free food or housing. The Applicant provided Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, for 2009 and 2010 showing that he worked for [REDACTED] but the record does not include other evidence, such as pay statements, reflecting how much he was paid per hour and how many hours he worked each week. 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

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successful in the United States. The Applicant indicated that he has not been able to repay his debts, 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 still has debt, and has no savings.

III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant claimed he was a victim of labor trafficking by [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] 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, peonage, and threatened abuse of the law or legal process. The Applicant's claims and the additional evidence submitted on appeal are insufficient to establish his eligibility. The Applicant has not established by a preponderance of the evidence that [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] indirectly coerced him because he "was fraudulently induced to take on substantial debt in order to come to the United States with the hope of a better life." 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 forcing him to pay extension petition fees, restriction of movement, and isolation. The record does not support the Applicant's claims to have been trafficked for three principal reasons.

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First, although the Applicant stated that he was trafficked by [REDACTED] the Applicant left [REDACTED] to move to Maryland where he is still working. Consequently, the record shows that the Applicant has moved between unrelated employers and lacks evidence that [REDACTED] actually subjected or intended to subject him 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, a family member provided him with the money to pay the recruiter fee to [REDACTED]. Although the Applicant claims on appeal that he was also forced to pay for visa renewals, the record does not show that the Applicant was forced to take on additional 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 that they forced him into indebtedness.

Third, the record does not support the Applicant's claim that [REDACTED] engaged in coercion because he "was fraudulently induced to take on substantial debt in order to come to the United States with the hope of a better life." First, the loan he took from a family member was primarily for 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 a private loan 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] 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 sufficient work hours and renewal of his work authorization, he left its employ in Florida for Maryland. The record thus does not show that [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] 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] 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 a family member as a placement fee to [REDACTED] the record contains no evidence that the Applicant was ever indebted to [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] 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. The Applicant asserted that [REDACTED] did not always provide him

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with full-time employment at the proffered hourly rate, but the record does not contain any additional evidence, such as payroll records, that would allow us to assess whether or not [REDACTED] underemployed and underpaid the Applicant. Moreover, the Applicant voluntarily left [REDACTED] to pursue other employment in Maryland. 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

Our *de novo* review of the record does not lead to a conclusion that the Applicant has 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 an 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] 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 her. He asserted that it would be difficult to find work in the Philippines because he would be considered old and feared that 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.

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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(1)(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 R-O-L-*, ID# 14848 (AAO Oct. 29, 2015)