



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

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

MATTER OF W-N-R-

DATE: SEPT. 17, 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.* 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.

II. PERTINENT FACTS

The Applicant is a citizen of the Philippines who first entered the United States on October 31, 2007 as an H-2B nonimmigrant to be employed as a housekeeper at the [REDACTED] in [REDACTED] Florida, a position that [REDACTED] secured. The Applicant alleged that his employer, [REDACTED] did not always provide him the agreed upon hours of work and that he believed his housing was too expensive, leaving him little money to send to his family in the Philippines or repay his foreign debt. He submitted a conditional offer for temporary employment dated July 19, 2007, from the Human Resources Recruiter of the [REDACTED] indicating that [REDACTED] intended to pay the Applicant \$7.50 per hour for approximately ten months of employment in housekeeping. The Applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on December 26, 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 December 9, 2013 and November 7, 2014 affidavits, the Applicant provided the following account of his employment with and claimed trafficking by, collectively, [REDACTED]

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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The Applicant initially recalled that a friend told him about [REDACTED] a recruiting agency in the Philippines, which could help him find employment in the United States. The Applicant explained that [REDACTED] advised him that he was qualified for a housekeeping position, promised that he would work at least eight hours per day with the possibility of overtime, and that he would have “a comfortable living condition . . . and a good salary.” The Applicant ultimately applied for a housekeeping job at [REDACTED] with [REDACTED], which he described as the U.S. counterpart to [REDACTED]. In his second statement, the Applicant elaborated that [REDACTED] the owner of [REDACTED] promised that he would have 40 hours of employment each week, plus overtime, “very discounted” housing, free transportation to and from work, free meals on a frequent basis, and three years of employment with automatic renewal of his employment visa. The Applicant indicated that [REDACTED] asked him to pay an additional placement fee of \$1,970.00, so he took a six-month loan of PHP 50,000 from a lending agency and had to mortgage his house as collateral. According to the Applicant, he also had to borrow \$1,500.00 from his brother to cover other costs and agreed to repay him at the rate of \$250.00 each month.

When he arrived in the United States, the Applicant stated that he was placed in a three-bedroom, two-bathroom apartment with five other males. According to the Applicant, there was no free transportation, so he had to walk about an hour to and from work. The Applicant asserted that he eventually purchased a bike, but still commuted during “extreme weather conditions,” and thus “often” came down with the flu and, as a consequence of lifting heavy workloads, suffered from back pain that he could not afford to treat. The Applicant initially indicated that the housing was not free and \$125.00 was deducted from his paycheck for the rent. In response to the RFE, he asserted that \$125.00 to \$150.00 was deducted from each weekly paycheck, and that he was not permitted to look for new housing. The Applicant advised that although he was paid \$7.50 per hour, he was not always provided 40 hours of work each week, and that food was not free. The Applicant advised that he ultimately “ran away” to Connecticut where an individual named [REDACTED] helped him to find other work, but charged him \$1,000.00 for assistance.

The Applicant recounted that he experienced financial difficulties while working for [REDACTED] because his monthly pay was frequently less than \$600.00 after deductions. The Applicant asserted that he suffered from stress because of his lack of pay and difficult working conditions, which included long walks or bike rides to work in all weather conditions. The Applicant explained that he persevered in order to provide for his family in the Philippines. The Applicant added that because he never signed a contract with [REDACTED] all their promises were oral. He advised that once he was in the United States he signed a housing contract, and indicated that he did not “have any option.”

On appeal, the Applicant again asserts that he suffered financial, emotional, and physical hardship related to his employment, immigration status, and corresponding worries regarding his future and wellbeing as well as that of his family.

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III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant has collectively claimed he was a victim of labor trafficking by [REDACTED] and [REDACTED] 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 had not established 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(9); 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 threatened abuse of the immigration laws. 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] or [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 take on substantial debt in order to come to 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 recruiters and employer used a variety of coercive tactics to control him and force him to provide service to them, including restriction of movement, and isolation.

According to the Applicant, he was employed and compensated by [REDACTED] as a housekeeper. The Applicant submitted a copy of his conditional offer of employment from [REDACTED] in which it proffered an hourly salary of \$7.50 for approximately ten months of employment. The Applicant appears to have signed the offer of employment on July 26, 2007, before his entry into the United States in October of 2007, and 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 paid \$7.50 per hour. The Applicant provided two weekly pay stubs, which reflected that he was paid an hourly rate of \$7.50 for 39 hours

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of work one week and 34.75 hours of work another week. Consequently, the record shows that the Applicant worked for [REDACTED] and that [REDACTED] paid him for approximately 35 to 39 hours of weekly employment, and lacks evidence that [REDACTED] or [REDACTED] actually subjected or intended to subject the Applicant to involuntary servitude. The record does not otherwise support the Applicant's claim to have been trafficked by these entities for four principal reasons.

First, although the Applicant stated that he was trafficked by [REDACTED] and [REDACTED] the Applicant explained that he ran away from [REDACTED] and has worked for a new employer or employers in Connecticut since then. Although the Applicant indicated that he was advised that he would be arrested if he tried to leave, he did not explain who threatened him. The Applicant also stated that he was advised that he was precluded from obtaining additional work while working for [REDACTED] however, this was also a condition of his H-2B nonimmigrant status. *See* 8 C.F.R. § 214.1(e) (a nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized). Consequently, the record shows that the Applicant has moved to a new state and at least one new employer, even before his authorized period of employment with [REDACTED] ended, and lacks evidence that [REDACTED] or [REDACTED] actually subjected or intended to subject him to involuntary servitude.

Second, the record does not show that [REDACTED] or [REDACTED] intended to subject the Applicant to peonage through involuntary servitude based on real or alleged indebtedness. In his initial affidavit, the Applicant explained that he borrowed money from [REDACTED] to pay the fee that [REDACTED] requested, and borrowed additional money from his brother for other fees. The Applicant provided evidence in the form of his personal sworn statement asserting that he took a loan of "50,000 pesos on October 3, 2007" from [REDACTED]. The Applicant also explained that when he decided to leave [REDACTED] he was requested to pay \$1,000.00 to an unrelated individual named [REDACTED] in order to secure employment in Connecticut but did not claim that he was in debt over the fee. 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 indicate that the Applicant was ever indebted to [REDACTED] or [REDACTED] or that these entities forced him into indebtedness.

Third, the record does not support the Applicant's claim that [REDACTED] or [REDACTED] engaged in coercion because he "was fraudulently induced to take on substantial debt in order to come to the United States with promises of a better life and the prospect of at least three years of steady, full-time employment." The Applicant provided a copy of his signed offer of conditional employment, in which he agreed to an hourly salary of \$7.50 per week for a ten-month period. He appears to have signed the contract prior to his entry into the United States. As discussed, the Applicant's earnings statement also shows that [REDACTED] appears to have employed the Applicant for approximately 35 to 39 hours per week rather than 40 hours, but that [REDACTED] paid him the proffered hourly rate of \$7.50. Moreover, although the Applicant asserted that he still has loan debt and would face hardship in the Philippines because of his age and related lack of desirability as an employee, he voluntarily agreed to pay the recruiter fees to [REDACTED] before he came to the United States and he obtained private loans to do so prior to his entry. The actions outlined by the

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Applicant do not establish that he was forced to take on a huge amount of debt by [REDACTED] or [REDACTED]

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's evidence shows that he worked for [REDACTED] within the United States after his arrival, and not [REDACTED] or [REDACTED]. In response to the RFE, the Applicant explained that he left [REDACTED] for other employment and indicated that has been working in Connecticut since that time. Although his immigration status precluded him from obtaining additional employment while working for [REDACTED] the Applicant has not established that [REDACTED] or [REDACTED] his actual employer, prevented him from seeking other employment once the Applicant chose to move to a new state, and in fact he has done so. The record thus does not show that [REDACTED] or [REDACTED] 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 [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 to support his family 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 loans he claims to have taken out with respect to his initial H-2B petition, 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] ever intended to subject him to such conditions. To the contrary, the record shows that [REDACTED] petitioned for the Applicant as an H-2B nonimmigrant worker, that it employed him for approximately 35 to 39 hours per week, and paid him the agreed-upon hourly rate. Moreover, since he left his employment with [REDACTED] the Applicant has pursued other employment in Connecticut. 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 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

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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 electronic mails and a letter 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. 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 subsection 101(a)(15)(T)(i)(III) of the Act.

D. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

A de novo review of the record also does not demonstrate 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 could not pay his debts or support his family and because he believes his alleged traffickers in the Philippines would retaliate against him and his family. He asserted that it would be difficult for him to find work in the Philippines because he would be considered old and a failure 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 because of the "protection of the justice system."

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 [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.

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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 W-N-R-*, ID# 14183 (AAO Sept. 17, 2015)