



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

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

MATTER OF E-S-D-

DATE: SEPT. 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.

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 November 1, 2006, 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 January 13, 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 December 26, 2013 affidavit and the undated statement he provided in response to the RFE, the Applicant provided the following account of his employment with and claimed trafficking by, collectively, [REDACTED] and [REDACTED].

The Applicant initially recalled that a friend told him about a job vacancy with [REDACTED] a recruiting agency in the Philippines. The Applicant visited [REDACTED] and ultimately was interviewed by [REDACTED] which the Applicant described as the U.S. counterpart to [REDACTED]. During his orientation with [REDACTED] the Applicant initially claimed he was promised that he would work for eight hours a day or 40 hours per week for ten months, and that he would be paid approximately PHP 20,000 per month. In

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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response to the RFE, he elaborated that [REDACTED] of [REDACTED] also promised him overtime, "very discounted housing," frequent free meals at work and at home, and three years of employment with automatic renewals of his visa. The Applicant stated that [REDACTED] asked him to pay \$2,160.00 to cover their placement fee and a one-way ticket to the United States. In his second statement, the Applicant stated that he paid [REDACTED] over \$3,000.00 for his recruitment fees. According to the Applicant, he borrowed \$2,500.00 from his aunt and agreed to pay her a monthly interest rate of 10 percent.

When he arrived in [REDACTED] Florida, the Applicant indicated that he was placed in a three-bedroom, two-bath apartment with five other males. After the first week of occupancy, the free groceries were gone and the Applicant explained that he had to pay for his own food. He also found that he did not have free transportation to and from work or free medical care, and that a weekly fee of \$102.00 was deducted from his pay checks for rent. In response to the RFE, the Applicant asserted that he was charged \$118.00 for weekly rent. Although the Applicant asserted that he was paid, he also explained that he was often forced to clock out early but remain at work in order to complete his tasks, or was otherwise not given a full schedule during the "lean months." He indicated that he experienced physical hardship because he lived two miles away from his bus stop, and had to wake up early to catch the bus. The Applicant advised that he left in July of 2007, and stayed in Florida to look for another employer. He indicated that he currently lives and works in New York. As a result of his situation, 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 two conditional offers of temporary employment from [REDACTED] which offered the Applicant \$7.00 per hour for ten months of employment from October 2006 through July of 2007. He also provided a second offer of conditional employment from [REDACTED] however, he confirmed that he left [REDACTED] before that term of employment would have started. The record does not contain contracts or other conditional offers reflecting that the Applicant would be provided free meals. The Applicant included pay stubs from December 2006 to July of 2007 showing that [REDACTED] paid him at an hourly rate of \$7.50 for work weeks that ranged from 35 to 40 hours. 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.

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.

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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 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 [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 "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 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 high placement and housing fees, restriction of movement, and segregation. The record does not support the Applicant's claims to have been trafficked for three principal reasons.

First, although the Applicant has asserted that he was trafficked by [REDACTED] and [REDACTED] he left [REDACTED] to seek other employment in Florida 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 [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, he

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borrowed money from his aunt to pay the recruiter fees shortly before travelling to his employment in the United States and that he repaid her in 2008; however, the record does not reflect that he was ever indebted to [REDACTED] or that these entities 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 promises of a better life and the prospect of at least three years of steady, full-time employment." The Applicant borrowed money from his aunt for the payment to [REDACTED] a foreign recruiter in the Philippines, and not to [REDACTED] or [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 his aunt. Once in the United States, he was paid more than the hourly rate he was initially proffered. Although the Applicant asserted on appeal that "most weeks he worked only two or three days per week," the pay stubs he provided are for work weeks that ranged between 35 and 40 hours. The conditional offer of employment from [REDACTED] does not suggest that it promised him free meals, and the evidence of record reflects that [REDACTED] conformed to the terms of its offer of employment and even paid the Applicant more than the proffered rate.

Finally, the record does not support the Applicant's claim that [REDACTED] or [REDACTED] trafficked him through force or coercion by restricting his movement, forcing him to pay for housing, and preventing him from seeking employment elsewhere. [REDACTED] the entity which actually paid the Applicant for work, does not appear to have made a guarantee of free housing in its employment offer, and the applicant confirmed that he was only promised "discounted" housing. 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. 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 and the pay stubs the Applicant provided show that [REDACTED] employed him at an hourly rate that was higher than the one listed in his conditional offer of employment. Although the Applicant claimed that the resort sometimes provided him with less than full-time work, the pay stubs he provided show that he was provided with full-time employment. Moreover, the Applicant voluntarily left [REDACTED] and [REDACTED] to pursue other employment in Florida 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.

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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] 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

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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.

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(i)(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-S-D-*, ID# 14186 (AAO Sept. 21, 2015)