



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

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

MATTER OF R-M-M-

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, had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, and 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), 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 entered the United States on April 14, 2009, as an H-2B nonimmigrant to be employed as a waiter for ██████████ in Colorado. The Applicant filed the instant Application for T Nonimmigrant Status (Form I-914) with U.S. Citizenship and Immigration Services (USCIS) on December 16, 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 November 23, 2013 and October 9, 2014 affidavits, the Applicant provided the following account of his employment with and claimed trafficking by ██████████ and his recruiters in the Philippines.

The Applicant initially recalled that he learned about a recruiting agency in the Philippines named ██████████ through a friend. During his orientation with ██████████ the Applicant was interviewed by ██████████ for a job in the United States. The Applicant explained that ██████████ screened him and that ██████████ interviewed him. The Applicant asserted that during his orientation he was advised that he was qualified for a position as a food server and would work for ██████████ that he would work at least 40 hours per week, be paid \$8.00 per hour plus \$10.76 per hour in overtime, that his housing would be really nice, that he would have free transportation to and from work, and that he would be given a new employer once his contract with

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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_____ expired. According to the Applicant, _____ asked him to pay PHP 250,000 as a placement fee. The Applicant then took out a loan from _____ which he agreed to pay off in 12 months. According to the Applicant, his mother co-signed the loan.

When he arrived in the United States, the Applicant stated that he was placed in free housing. The Applicant described the accommodations as an uninsulated two-bed room similar to a “tool house,” that was hot in the summer and cold in the winter. The facility lacked a bathroom and he and his roommate had to walk a quarter mile to the public bathroom. Despite this, the Applicant said the housing was “decent.” The Applicant stated that he was also provided free transportation to and from work, but was tied to the driver’s schedule and often had to get to work very early or stay very late in order to secure a ride.

After starting his job, the Applicant found out that he would not be given a permanent job, would only be given two to four days of work per week, and would have no overtime. The Applicant also asserted that he initially was promised that he would be able to keep his tips as a waiter, but was instead assigned to work as a dishwasher without tips, and also as a “busboy” in a department called the “terrace,” where he moved garbage and cleaned bathrooms for six months. Finally, the Applicant indicated that the owners of _____ ordered him to go to New York where they promised that they would extend or renew his visa, but when he arrived he found that he was jobless for a few months. According to the Applicant, _____ subsequently contacted him and asked for \$500.00 to renew the Applicant’s H-2B visa. Although the Applicant paid _____ \$300.00, a week before his visa expired, _____ told the Applicant that he could not file the visa extension because the potential new employer backed out of the contract. The Applicant indicated that he was defrauded from a second visa extension fee by _____ whom he believed to be related to _____

As a result of his situation, the Applicant asserted that he continuously searches for decent work and now suffers from constant stress and worry because he is afraid for his family. He advised that he has only worked sporadically, needs to earn enough money to take care of his parents “for a long time,” and that he is the only source of income for his entire family, including his diabetic father. He stated that his mother and his aunt in the Philippines had been harassed by _____ because his mother co-signed his loan, and that _____ has threatened to sue his family. In response to the RFE, the Applicant reiterated his initial claims, adding that because he never signed a contract with _____ all their promises were oral. He advised that he signed an employment contract with _____ prior to beginning his employment, but did not understand what he was signing. The Applicant provided a copy of his signed contract, in which he agreed to an hourly rate of \$7.28 for 32-40 hours per week during a six-month period, housing consisting of a double occupancy, one-room cabin, and a free shuttle to and from work. He also provided pay stubs showing that he was paid at a higher hourly rate of \$8.00 for work weeks that ranged from 22.20 hours per week to 40 hours per week from April 2009 to October of 2009.

On appeal, the Applicant again asserts he suffered financial 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 in the form of interest and penalties, and

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claims that he was forced to pay his visa extension fees. He also describes suffering from anxiety during and after his period of employment, and worrying about how he would support his family members in the Philippines and repay his debts. The Applicant includes more recent tax records from 2013, which post-date his employment with [REDACTED]

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 was not a victim of a severe form of trafficking in persons because the record showed that he appeared to have entered into a voluntary employment agreement to work in the United States and appeared to have been compensated.

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 [REDACTED] 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 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.* On appeal, the Applicant asserts that [REDACTED] indirectly coerced him because he "was fraudulently induced to borrow huge amounts of money in order to 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 service to them, including forcing him to pay 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 explained that he ultimately left [REDACTED] and provided evidence that he has worked as a cook in New York since 2010. Consequently, the record shows that the Applicant has moved to at least one unrelated employer 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. In his February 21, 2014 affidavit, the Applicant explained that he took a 12-month loan of PHP 200,000 from [REDACTED] plus interest, and that his mother was the co-signor. According to the Applicant, his relatives and friends provided him with an additional amount of PHP 50,000 to pay the remaining recruiter fee to [REDACTED]. The Applicant provided evidence of the final amount of the loan from [REDACTED] as being PHP 195,000. The applicant provided correspondence from [REDACTED] indicating that he closed his account and failed to provide it with any loan payments beginning in August of 2009. The Applicant asserted that he still has substantial interest and penalties to pay to [REDACTED] but there is no evidence of this in the record. Moreover, although the Applicant claims on appeal that he was also forced to pay [REDACTED] for visa renewals, the record does not show that [REDACTED] required him to pay any visa petition extension fees. 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 that it 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 borrow huge amounts of money in order to work in the United States with promises of a better life and the prospect of at least three years of steady, full-time employment." First, the loan he agreed to was with a foreign lender in order to pay the placement fee to a foreign recruiter in the Philippines. Although the Applicant asserted that he would face hardship in the Philippines and perhaps debtor's prison, 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 appears to have worked for [REDACTED] for the six-month period reflected in its initial offer of employment. The Applicant explained that when [REDACTED] failed to secure an extension of his status, he found new employment in New York, and provided tax returns showing that he has been working there as a cook since 2010. 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 to support his family and experienced stress and anxiety, the relevant

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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 a loan 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 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 the Applicant as an H-2B nonimmigrant worker, that although [REDACTED] did not always provide him with full-time employment, they employed him at an hourly rate that was higher than the one listed in his signed offer of employment. Moreover, when [REDACTED] failed to secure an extension of his status, he pursued other employment in 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.

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 his 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

The Applicant also has not established that he would suffer extreme hardship involving unusual and severe harm upon removal. In his affidavits, the Applicant claimed he would suffer extreme

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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. He expressed fear of debtor's prison upon return to the Philippines because his debts have continued to increase while in the United States. In his October 9, 2014 statement, 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, although he had previously provided evidence that [REDACTED] was convicted of visa fraud in 2012.

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 his 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(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 R-M-M-*, ID# 14283 (AAO Sept. 21, 2015)