



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

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

MATTER OF J-V-C-P-

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.

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 Applicant initially recalled that he was studying to be a welder at the [REDACTED] when [REDACTED] came to recruit welders for employment at an Alabama shipyard. According to the Applicant, [REDACTED] promised that he would be employed as a welder in Alabama, that he would work at least 40 hours per week with plenty of overtime, that his job was immediately available, and that his visa and contract would be renewed over a period of three years. According to the Applicant, [REDACTED] requested a placement fee of PHP 300,000.00 (“\$6,818.18”). The Applicant asserted that he took a loan in that same amount from [REDACTED] with his wife as the co-signor, and took an additional loan from his brother for other expenses related to travel.

After he arrived in the United States, the Applicant explained that he was not given a job as a welder and instead lived in [REDACTED] house for two months without working. He did not list the location of [REDACTED] house, describe his living conditions, or discuss his time in the United States during that period. The Applicant indicated that he was ultimately sent back to the Philippines in September of 2007. When the Applicant threatened to sue [REDACTED] [REDACTED] indicated that he would send the Applicant back to the United States through [REDACTED] to work as a housekeeping attendant, and promised that the Applicant would work 40 hours per week, have plenty of overtime, be able to work additional part-time jobs for extra income, have free housing with complete amenities, and have visa renewals for three years. In response to the RFE, the Applicant elaborated that he was also promised transportation to and from work.

After he arrived in the United States in December of 2007, the Applicant indicated that he was not given employment for two months. He asserted that his first place of employment was in the spring of 2008 at a [REDACTED] Florida and at a [REDACTED] in [REDACTED] Florida. The applicant claimed he was not provided free housing, but was instead housed in a small, two-bedroom, one-bathroom apartment with five other males for which the \$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. Although he was eventually employed full-time at an hourly rate of \$8.00 plus \$.25 per hour for some overtime duties, the Applicant asserted that he was never paid what he was initially promised by [REDACTED] when he thought he would be employed as a welder, and even had to pay \$350.00 whenever he renewed his visa with [REDACTED]. When he found out that [REDACTED] had pocketed an hourly raise that the hotel had intended to give the Applicant, the Applicant claimed that he left [REDACTED] to stay at a friend’s house and then accepted other jobs.

As a result of his situation, the Applicant asserted that he has suffered from constant fear and worry about his ability to support his family, and fear that his traffickers would retaliate against him for talking about his situation. Although the Applicant provided evidence that he repaid his loan from [REDACTED] he indicated that he had trouble repaying an unrelated loan from his brother. In response to the RFE, the Applicant indicated that he “would be devastated to lose the

have been involved with the Applicant’s alleged trafficking. Accordingly, we are unable to address this portion of the Applicant’s claim.

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protection of the justice system here in America,” and suggested the 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 a six-month employment contract for [REDACTED] from [REDACTED] offering the Applicant employment as a welder for [REDACTED] for \$2,915.00 per month for eight hours a day, six days a week. This contract was signed by [REDACTED] in his capacity as President of [REDACTED] and by [REDACTED] the vice-president of [REDACTED]. The Applicant provided documents showing that in 2011, [REDACTED] was convicted of involvement in an employment trafficking scheme. In response to the RFE, the Applicant confirmed that he signed employment contracts with [REDACTED] [REDACTED]” and [REDACTED] prior to beginning each term of employment in the United States, but suggested that he did not understand what he was signing. He did not provide copies of these contracts. The Applicant provided Internal Revenue Service (IRS) tax returns for 2008 and 2009 showing that he lived and worked in California as an “employee” and a janitor. The Applicant also provide two Forms I-797A receipt notices showing that he was the beneficiary of two Form I-129 H-2B nonimmigrant worker petitions allowing him to work for [REDACTED] and [REDACTED] in Missouri during 2008.

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 lists [REDACTED] or [REDACTED] and [REDACTED] “acting through his agencies,” as his alleged traffickers.

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 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 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] trafficked him through fraud or coercion for the purpose of subjecting him to peonage.

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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.

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.

The Applicant has provided no evidence that he worked for [REDACTED] or [REDACTED]. He provided an employment contract showing that he agreed to work for [REDACTED] as a welder, but did not provide contracts for [REDACTED] or any other entity. He provided evidence that he was admitted to the United States in 2007, and although he asserted that he was unemployed but lived in [REDACTED] house while unemployed, he did not list the state or location of the residence or otherwise provide probative details regarding his claimed period of unemployment in the United States. He also provided inconsistent information concerning his employment upon second entry into the United States. The Applicant asserted that upon his return to the United States in 2008 he worked for [REDACTED] in various resorts in Florida and then left for employment in New York; however, the only evidence of his employment and residence in the United States is his 2008 and 2009 IRS tax returns showing that he lived and worked in California. Overall, the record lacks probative evidence to establish that the Applicant was in the United States as an employee, paid or unpaid, of [REDACTED] or [REDACTED].

Even if the Applicant could establish a connection between him and [REDACTED] and [REDACTED], he would be unable to establish that he was trafficked. First, although the Applicant has asserted that he was trafficked by [REDACTED] of [REDACTED], and [REDACTED] of [REDACTED], he confirmed that he voluntarily left his job with [REDACTED] when he found out that [REDACTED] withheld his raise and has since obtained other employment. Consequently, the record shows that the Applicant has voluntarily changed employers and lacks evidence that [REDACTED] of [REDACTED] and [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

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real or alleged indebtedness. According to the Applicant, he borrowed money from a lending company to pay the [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], [REDACTED], or [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 obtain a considerable loan to satisfy the . . . placement and agency fees in exchange for a substantially-paying job in the United States." The Applicant borrowed money from [REDACTED] 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 the lending company.

In summary, the Applicant has not established that [REDACTED] of [REDACTED] ever subjected him to a severe form of trafficking in persons. 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 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. Although [REDACTED] of [REDACTED] appears to have been convicted of offenses related to trafficking in 2011, there is no evidence that his conviction was based on the Applicant's employment for [REDACTED] or any other alleged trafficker. As the record otherwise does not establish any

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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. § 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.

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*

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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 J-V-C-P-*, ID# 14379 (AAO Sept. 21, 2015)