



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

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

MATTER OF N-K-R-

DATE: JUNE 17, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks "T-1" nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director, Vermont Service Center, denied the application. The Director concluded that the Applicant did not establish that he was a victim of a severe form of trafficking in persons, and therefore could not establish that he is physically present in the United States on account of such trafficking, or that he had complied with reasonable requests for assistance in the investigation or prosecution of severe forms of trafficking, and would suffer extreme hardship involving unusual and severe harm if he were removed from the United States.

The matter is now before us on appeal.<sup>1</sup> The Applicant submits a brief and additional evidence.<sup>2</sup> The Applicant claims that he has submitted sufficient evidence to show he is a victim of a severe form of trafficking and that his application should be approved.

Upon *de novo* review, we will dismiss the appeal.

#### 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:

(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,

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<sup>1</sup> On the Form I-290B, Notice of Appeal or Motion, the Applicant did not indicate whether he was filing an appeal or a motion. The Director declined to treat the filing as a motion and forwarded the Form I-290B to us as an appeal.

<sup>2</sup> Subsequent to filing the appeal, the Applicant filed a motion to reopen and reconsider the Director's decision, and submitted a brief and additional evidence. We will consider these documents on appeal under our *de novo* review authority.

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(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 . . . .

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.<sup>3</sup>

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010); 8 C.F.R. § 214.11(l)(2). An applicant may submit any evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. 8 C.F.R. § 214.11(l)(1).

## II. RELEVANT FACTS

The Applicant is a citizen of the Philippines who entered the United States as an H-2B temporary worker. The Applicant filed the Form I-914, Application for T Nonimmigrant Status, with U.S. Citizenship and Immigration Services (USCIS). In his affidavits, the Applicant provided the following account of his employment with and claimed trafficking by, collectively, [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED]

The Applicant recalled that he learned from a friend that [REDACTED] a recruiting agency in the Philippines, was seeking housekeepers to work for [REDACTED] and [REDACTED] in the United States. The Applicant recounted that he attended an orientation, followed by an employment interview, and was accepted for the job.<sup>4</sup> The Applicant stated that he was excited to learn about the opportunities in the

<sup>3</sup> 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).

<sup>4</sup> The record contains a master contract between [REDACTED] and the Applicant, offering him employment as a housekeeper in [REDACTED] New Jersey for eight months at a basic monthly salary of \$1,200.00 for a maximum of 48 hours per week of work, free food and suitable housing. The record also contains a signed employment offer between [REDACTED] and the Applicant offering work as a hotel cleaner for eight months at [REDACTED] in [REDACTED]

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United States as described by [REDACTED] and that [REDACTED] advised him that for a processing fee of approximately \$750.00, he would be placed to work as a housekeeper at a hotel in the United States.

The Applicant explained that after his interview at the U.S. Embassy, [REDACTED] surprised him by telling him he had to pay additional amounts for expenses, roundtrip airfare, and a placement fee, for a total fee of approximately \$3,500, and that she withheld his passport, visa, and copies of the employment contracts until the entire fee was paid. The Applicant indicated that he borrowed 100,000 Philippine pesos each from his mother and his uncle to pay these fees. On the night prior to departure, the Applicant recounted that [REDACTED] promised that for a minimum period of three years, he would: work 40 hours per week plus overtime; have opportunities for part-time work; receive free food, housing with amenities, transportation, and visa renewals; and that [REDACTED] and [REDACTED] would take care of him in the United States.

The Applicant explained that when he arrived in the United States, [REDACTED] first assigned him to work as a cleaner at the [REDACTED] in Florida earning \$9.25 per hour. He stated that after approximately seven months, [REDACTED] transferred him to [REDACTED] in Florida, where he worked for six months to work as an assistant busser/server for \$8.50 per hour.<sup>5</sup> The Applicant explained that in both locations, [REDACTED] housed him in substandard, crowded, and overpriced housing, and deducted the cost of housing from his paycheck. He recounted that [REDACTED] did not give him full-time work or opportunities for part-time work, that the food was not free, that the housing was neither free nor suitable, and that [REDACTED] required him to pay \$300 to renew his visa. The Applicant stated that [REDACTED] terminated his employment after six months because [REDACTED] burned down, and they had no further placement for him. He indicated that after three months of being homeless and unemployed, he found a new employer in Louisiana who obtained a new temporary worker visa for him, and that this employment terminated after two seasons. As of the date of filing the T application, the Applicant claimed to be working as a care provider through a different employer.

On appeal, the Applicant indicates that in addition to the actions of [REDACTED] and [REDACTED] represented by [REDACTED] exploited him by securing an approved H-2B visa for him to work as a housekeeper in Louisiana but then forced him work as a laundryman, janitor, server assistant, and function crew. The Applicant further states that he had to live in "tiny substandard and crowded housing" for \$250 per month. The Applicant indicates that his former counsel was ineffective and requests that we extend the terms of his visa.<sup>6</sup> He provides

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[REDACTED] New Jersey, with a basic pay of \$7.16 per hour for 40-50 hours per week.

<sup>5</sup> On appeal, the Applicant states he worked at [REDACTED] as a housekeeper, and was forced to perform duties as a runner, construction worker, carpenter, and repairer. No evidence of record explains this discrepancy.

<sup>6</sup> A claim based upon ineffective assistance of counsel requires the affected party to, in part, file a complaint with the appropriate disciplinary authorities or, if no complaint has been filed, to explain why not. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *affd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988). The instant appeal does not address these requirements. The Applicant does not explain the facts surrounding the preparation of the petition or the engagement of the representative. The Applicant does not properly articulate a claim for ineffective assistance of counsel under *Lozada*.

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letters from people for whom he has worked as a home care aide, who provide favorable assessments of the Applicant's character. He states that although he earns money as a caregiver, it is not enough to provide for his family and to pay his debts. He contends that he is a victim of a severe form of trafficking in persons in that he has been subjected to involuntary servitude, forced labor, and debt bondage.

### III. ANALYSIS

#### A. Victim of a Severe Form of Trafficking in Persons

To establish that he is a victim of a severe form of trafficking in persons, the Applicant must show the trafficking 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 subjecting him 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 his traffickers 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.

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.*

The record does not support the Applicant's claim that [REDACTED] or [REDACTED] engaged in coercion for the purpose of subjecting him to involuntary servitude or debt bondage.<sup>7</sup> He voluntarily agreed to pay the recruiter fees before he came to the United States.<sup>8</sup> The Applicant borrowed money from family members, and not from any of the claimed traffickers. [REDACTED] requested that he pay the filing fees relating to the extension of his H-2B status, but the Applicant did not claim that he was in debt over the \$300.00 fee. Although he asserts on appeal that he has been prevented from earning enough money to repay the loan he took for his placement fees,<sup>9</sup> and will have trouble

<sup>7</sup> The record shows that [REDACTED] was convicted of forced labor trafficking, fraud, and identity theft. This conviction does not establish that the Applicant was a victim of a severe form of trafficking in persons.

<sup>8</sup> We acknowledge the Applicant's statement that his U.S. employer violated the H-2B visa regulations prohibiting a U.S. sponsor from requiring the beneficiary of the Form I-129, Petition for Nonimmigrant Worker, to pay the visa processing and recruitment fees. *See* 8 C.F.R. § 214.2(h)(6)(B). The scope of the current decision, however, is limited to whether the Applicant has established that he is a victim of a severe form of labor trafficking.

<sup>9</sup> The record does not establish the amount, if any, of the Applicant's outstanding indebtedness for the loans from his

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finding work in the Philippines due to age discrimination and a poor economy, the record does not indicate that the Applicant was ever indebted to his claimed traffickers or that any of them forced him into indebtedness.

The record also lacks evidence that [REDACTED] or [REDACTED] actually subjected or intended to subject the Applicant to involuntary servitude. According to the Applicant, [REDACTED] employed and compensated him as a housekeeper at [REDACTED] at the rate of \$9.50 per hour for approximately seven months, and for his second assignment at [REDACTED] paid the Applicant to work as a server/busboy at a rate of \$8.50 per hour for the next six months. Although the Applicant initially worked in a different location and job placement and for fewer hours than promised, the rates of pay identified by the Applicant in his declarations exceed the contracted hourly rate on the employment contracts. The Applicant stated that he could not pay for his return transportation to the Philippines because he did not earn enough money and [REDACTED] only paid for a one-way ticket. The evidence shows, however, that in April 2009, [REDACTED] reimbursed the Applicant for the return portion of the round-trip airfare for \$650.00, and that the Applicant did not use the money to return to the Philippines, but instead took a job with another company in Louisiana.

The Applicant contends on appeal that he was subjected to involuntary servitude through the use or threatened use of the legal process through threats of deportation. However, he has not shown that any of the companies were part of a scheme, plan, or pattern intended to cause him to believe that if he did not continue in such a condition that he would suffer abuse of the immigration process. Nor does he provide specific examples of threats made by any of the entities indicating that he was wrongfully threatened with deportation. The Applicant states:

We were threatened to be arrested or deported if we tried to look for a cheaper place to rent or if we escaped. My recruiters/employers created a climate of fear among us. Employees were always warned that we should work hard, not to complain or do not attempt to run away. The hotel staff repeatedly told us that we would be deported, like other workers who escaped, if we didn't follow them.

Although the Applicant is correct that employers cannot use threats of deportation to coerce workers into involuntary servitude, the Applicant has not demonstrated that the hotel staff's comments were intended to instill fear in him or as threats to convince him/to stay in a position of involuntary servitude. The threats of use of the immigration process that the Applicant describes are vague and do not show that [REDACTED] or [REDACTED] used threats of deportation in order to keep him in a condition of involuntary servitude.

Finally, the record does not support the Applicant's claim that his recruiters or employers subjected him to coercion by restricting his movement, forcing him to pay for housing, and preventing him from seeking employment elsewhere. As discussed, the evidence shows that the Applicant worked for [REDACTED] for about one year in Florida, and then chose to remain in the United States when the

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burned and terminated his employment. He moved to Louisiana to work for and then found employment as a caregiver when his job with ended. The record thus does not show that or obtained the Applicant's services through fraud, force, or coercion involving physical restraint or other restriction of his movement.

In summary, although it seems that and failed to keep the terms of their initial offer of employment, the Applicant voluntarily agreed to pay the recruiter fees before he came to the United States and he obtained private loans to do so prior to his entry. The relevant evidence does not show that or 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 or or that these entities forced or coerced him to go into debt. The record further lacks evidence that the Applicant's claimed traffickers attempted to restrict his movement or actually subjected or intended to coerce him into involuntary servitude. 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 in the Investigation or Prosecution of Acts of Trafficking

The Applicant has also 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 stated in his affidavit that he has reached out to the U.S. Department of Justice (DOJ) requesting law enforcement certification (LEA) as a victim of trafficking, and DOJ has not given him the requested LEA. As the record otherwise does not establish that the Applicant was the victim of a severe form of human trafficking in connection with his recruitment by or employment with or 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

Based on our *de novo* review of the record, the Applicant also has not demonstrated that he would suffer extreme hardship involving unusual and severe harm upon removal. In his statements, the Applicant claimed he would suffer extreme hardship if forced to return to the Philippines because he is the sole source of financial support for his family in the Philippines, and fears he could not find work due to negative perceptions from potential employers about his lack of success in the United States, potential repercussions from his traffickers against him and his family because of his cooperation with law enforcement, the devastating effects of the Haiyan typhoon, and widespread age discrimination. He describes his marriage as ruined due to his long absence and his emotional pain over his inability to travel to his father's funeral in the Philippines.

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. 8 C.F.R. § 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. He has not established that difficulty in obtaining employment would cause him extreme hardship involving unusual and severe harm. In addition, the Applicant has also not shown that he would suffer such hardship under the remaining factors, such as his age, personal circumstances, or having a serious physical or mental illness that necessitates medical or psychological attention not reasonably available in the Philippines. 8 C.F.R. § 214.11(i)(1)(i)-(ii). 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). Accordingly, 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

In these proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-K-R-*, ID# 16723 (AAO June 17, 2016)