



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

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

MATTER OF C-D-R-D-C-

DATE: JUNE 22, 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, and therefore could not establish that he is physically present on account of a severe form of trafficking or that he had complied with reasonable requests for assistance in the investigation or prosecution of severe forms of trafficking in persons.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and copies of previously submitted evidence. 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,
- (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

(b)(6)

Matter of C-D-R-D-C-

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.¹

The burden of proof is on an applicant 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 AND PROCEDURAL HISTORY

The Applicant is a citizen of the Philippines who last entered the United States as an H-2B nonimmigrant. The Applicant subsequently filed the Form I-914, Application for T Nonimmigrant Status (T application), with U.S. Citizenship and Immigration Services (USCIS).

In his statements, the Applicant provided the following account of his claimed victimization. He recalled that after he returned to the Philippines from working abroad, he went to [REDACTED] where he met with a representative, [REDACTED] who described a job opportunity in the United States to the Applicant. [REDACTED] indicated that he needed people to come to the United States to work in hotels and that the Applicant could work part-time in addition to his job through [REDACTED] to make extra money. [REDACTED] told the Applicant that [REDACTED] would help him renew his H2B visa, and that after three years the Applicant could apply for a green card. [REDACTED] said that housing in the United States would not be expensive, and that in order to apply for the positions, the Applicant would have to pay a fee of 230,000 pesos. He advised the Applicant to take out a loan to pay the fee, but assured him that after six to eight months of working in the United States, he would be able to pay the loan back. Later, a representative from [REDACTED] the company that represents [REDACTED] in the United States, told the Applicant that they would help him with his visa renewal in the United States.

The Applicant reported that he had an interview with a representative from [REDACTED] in the [REDACTED] the representative from [REDACTED] offered the Applicant a job and

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(8) and incorporated into the T nonimmigrant regulation at 8 C.F.R. § 214.11(a).

(b)(6)

Matter of C-D-R-D-C-

said he would earn \$7.50 – 7.75 per hour for 40 hours a week with the possibility of overtime. The Applicant borrowed the money necessary from a businessman, and promised him the family's home as a guarantee for the loan.

Prior to leaving the Philippines, a representative from [REDACTED] again told him not to worry about visa renewal, that his apartment in the United States would not be expensive, and that he could work another part-time job while working at [REDACTED]. A representative from [REDACTED] also confirmed they would help with visa renewal in the United States.

Once the Applicant arrived in Florida he was taken to an apartment. The following morning a [REDACTED] representative had him sign the paperwork for housing which cost \$125 per week, and told him that there would be a cleaning/security deposit of \$375. The Applicant signed the paper without complaining because he did not want to be sent back to the Philippines. That same day, his co-workers told the Applicant that there was a training period of 40 days and that if he did not pass, [REDACTED] would report him to immigration.² The Applicant's working conditions were stressful and tiring, and the Applicant felt that his commute to and from the work location was unsafe.

The Applicant was not given the hours that he had been promised; he worked part-time instead of full-time, and never more than 35 hours a week.³ This combined with the housing deductions meant he was sending less money home to the Philippines than anticipated, and soon the businessman from whom he borrowed money told the Applicant's family that if he did not pay back the money he owed, the businessman would go to the police and take him to court. The Applicant asked co-workers if he could get another part-time job to earn more money, and his co-workers told him that if he worked outside of [REDACTED] the hotel would call immigration to deport him. His afternoon shift supervisor also told him that if he worked elsewhere, he would be deported back to the Philippines. However, the Applicant really needed the money to pay back his loan, so he took another part-time job at a gas station for approximately two months.

After about 7 months of working at [REDACTED] the Applicant was told that they would not renew his visa when the contract finished, and that neither [REDACTED] nor [REDACTED] would help with visa renewal. The Applicant then left [REDACTED] and took a job in Louisiana. The Applicant reported his situation to the [REDACTED] and the [REDACTED] but has not been asked to provide any cooperation. The Applicant is afraid to go back to the Philippines because he would not be able to cooperate with law enforcement from there,⁴ he does not want to lose access to social and medical services, and he does not want to take his U.S. citizen son with him to the Philippines. He also still owes approximately \$3000 of the loan he took from the

² In his first affidavit, the Applicant indicated that other employees told him about the 40 day training. In his later affidavits, the Applicant indicated that an [REDACTED] supervisor also told him that there was a 40 day training period and that as long as he passed the probationary period, there wouldn't "be any problems."

³ Per the regulations, full time employment is considered to be at least 30 hours per week. *See* 20 C.F.R. 655.4.

⁴ There is no indication that any federal or local law enforcement agency is seeking or plans to seek the Applicant's cooperation in any investigation or prosecution related to these events.

Matter of C-D-R-D-C-

businessman that he would not be able to pay back if he returns because jobs there are low-paying, and he is concerned his family's house will be taken if he does not pay back his debts.

III. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Applicant has not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

A. Victim of a Severe Form of Trafficking in Persons

The Applicant claims he was a victim of labor trafficking. On appeal, he asserts that [REDACTED] subjected him to "[t]he recruitment, transportation, or obtaining of a person for labor purposes through the use of fraud." To establish that he was a victim of a severe form of trafficking, the Applicant must show that these companies 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"). The Applicant asserts that [REDACTED] used fraud, coercion, and threatened abuse of the immigration laws in order to subject him to involuntary servitude. However, to establish a severe form of human trafficking, the applicant must demonstrate not only a means (force, fraud or coercion), but also an end (involuntary servitude, peonage, debt bondage or slavery). Upon review of the evidence submitted below and on appeal, 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 involuntary servitude.

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). "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] used fraud and coercion for the purpose of involuntary servitude because they promised him a position in which he would quickly be able to pay off his debt, and that they would renew his visa and help him obtain lawful permanent resident status, and then they threatened him with deportation after he arrived in the United States.

According to the Applicant, he willingly entered into an employment agreement with [REDACTED] for a proffered salary of \$7.50 - \$7.75 an hour for 40 hours a week. Although the Applicant did not receive the compensation package as promised, as he worked fewer hours and felt that too much money was deducted from his paycheck for housing, he was paid for the hours he worked in the laundry room and the record lacks evidence that [REDACTED]

(b)(6)

Matter of C-D-R-D-C-

█ actually subjected or intended to subject the Applicant to involuntary servitude. Further, while there is evidence in the record that █ used fraud when recruiting people to work in the United States, and had its license cancelled in 2012 for charging excessive recruiting fees, the Applicant has not shown that the said fraud was used for the purpose of subjecting him to involuntary servitude.

The Applicant contends 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. The Applicant asserts that he was told that if he did not complete a 40 day training period he would “be reported to immigration.” However, in petitioning for an H-2B nonimmigrant worker, an employer agrees to report a change in the employment status of an H-2B nonimmigrant worker, to the Department of Homeland Security. See 8 C.F.R §§ 214.2(h)(6)(i)(F), (h)(11)(i). The Applicant further stated that his afternoon shift supervisor told him that if he worked somewhere else he would be deported. Similarly, an H2B nonimmigrant visa holder is prohibited from working for another employer unless the other employer has an approved petition on behalf of the worker. See section 237(a)(1)(C) of the Act, 8 U.S.C. § 1227(a)(1)(C); see also USCIS Help Center, <https://my.uscis.gov/helpcenter/article/can-an-h-2b-visa-holder-work-for-more-than-one-employer> (last visited May 25, 2016) (stating that an H-2B worker may work for multiple employers at the same time only if each has an approved Form I-129, Petition for a Nonimmigrant Worker, for the work and the employee).

On appeal, the Applicant asserts that █ employees’ statements about deportation constitute an abuse of the legal process because they were outside the scope of their authority and that “telling an individual that he will have to return to his home country legally is different that telling an individual he will have to return to his home country after arrest.” Similarly, the Applicant contends that threats of deportation can be considered abuse of the legal process when the objective is to coerce workers into forced labor, and that a victim’s particular vulnerabilities must be taken into consideration when considering whether an abuse of the legal process has taken place.⁵ Although the Applicant is correct that employers cannot use threats of deportation to coerce workers into involuntary servitude, an employer does not abuse the legal process simply by acknowledging the adverse immigration consequences that may befall an employee; the employer’s statements or actions must be “viewed in the light of all the surrounding circumstances.” See *Elat* at 524 (internal citations omitted). The Applicant here has not demonstrated that the █ employees’ comments were intended as threats to convince him to stay in his position of involuntary servitude, or that they threatened him with return to his home country after arrest. In fact, the Applicant stated in his May 22, 2015, affidavit that the █ laundry area supervisor did not in fact threaten

⁵ See Applicant’s Brief on Appeal at 9-10. The Applicant cites to various non-precedential cases including *Elat v. Ngoubene*, 993 F. Supp. 2d 497, 523 (D. Md. 2014); *U.S. v. Garcia*, No. 02-CR-110S-01, 2003 WL 22956917, 4 (W.D.N.Y. Dec. 2, 2003), *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 115 (D.D.C. 2012); *U.S. v. Calimlim*, 538 F.3d 706 (7th Cir. 2008); *U.S. v. Farrell*, 563 F.3d 364, 373 (8th Cir. 2009).

(b)(6)

Matter of C-D-R-D-C-

him with deportation, but instead told him that if he completed the probationary period, there “won’t be any problems.” It was the Applicant’s co-workers who told him that failing the probationary period would result in deportation. Similarly, although his shift supervisor indicated that if the Applicant worked a second job and [REDACTED] found out, he could be deported, the Applicant also indicated that the same shift supervisor was surprised when the Applicant shared with him how little he was making. These statements do not support the conclusion that his two supervisors were participating in a scheme, plan, or pattern to cause him to believe that he would suffer abuse of the legal process if he did not continue working for them.

In addition, the record does not show that [REDACTED] engaged in coercion through threats of serious harm to or physical restraint against the Applicant or any scheme, plan, or pattern intended to cause him to believe that failure to perform an act would result in serious harm to or physical restraint against him; or the abuse or threatened abuse of the legal process. The Applicant does not claim that anyone threatened to restrain him. The Applicant did not provide evidence that the companies restricted his movement or prevented him from seeking employment elsewhere. After finding out that his visa would not be renewed and wanting more money to repay his loan, the Applicant left [REDACTED] and traveled to Louisiana to work. Although the Applicant claims that “serious harm” may include financial harm, he has not shown that any [REDACTED] employee threatened him with bankruptcy or any other financial harm.

Nor did he provide any evidence of a scheme, plan, or pattern intended to keep him working or risk the abuse of the legal process. In his brief, the Applicant asserts that there was a scheme to keep him in a forced labor situation. Unlike in the cases he cites, *United States v. Dunn* and *David v. Signal Int’l, LLC*,⁶ however, here the Applicant has not shown that the [REDACTED] employees continually threatened him with deportation or that they were aware of the Applicant’s limited financial resources and intentionally leveraged them to their advantage. See *U.S. v. Dunn*, 652 F.3d 1160, 1172 (9th Cir. 2011); *David v. Signal Int’l, LLC*, No. CIV.A. 08-1220, 2015 WL 75276, at *2 (E.D. La. Jan. 6.2015). As stated above, the Applicant did not show that the employees of [REDACTED] were doing anything but informing him of the immigration laws when they mentioned deportation on two occasions. Nor has he provided any evidence that the [REDACTED] employees were aware of the Applicant’s large debt in the Philippines or in any way used that against him.

Ultimately, although it seems that [REDACTED] failed to keep the terms of their initial offer of employment in that they did not offer the Applicant overtime or as much work as he expected and they deducted more than he anticipated from his pay for housing, the Applicant 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 Applicant do not establish that he was forced by [REDACTED] to take on his debt. The record also shows that the Applicant moved to another state before his authorized period of employment ended and lacks evidence that [REDACTED] attempted to restrict his movement or actually subjected or intended to coerce him into involuntary servitude.

⁶ We note that *David* is not a precedential case and, as an unpublished opinion, holds very little persuasive authority.

(b)(6)

Matter of C-D-R-D-C-

The Applicant further contends that because the Petitioner submitted credible evidence and USCIS failed to assess the credibility of his statements, did not discuss all of the evidence in the RFE, and then denied the Form I-914,⁷ the Applicant's due process rights have been violated. First, while the regulation at 8 C.F.R. § 214.11(f) requires credible evidence, whether primary or secondary, be submitted, this evidentiary standard is not equivalent to the Applicant's burden of proof. When determining whether or not an applicant has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, USCIS will determine, in its sole discretion, the evidentiary value of any evidence that is submitted. 8 C.F.R. § 204.11(l)(1). Accordingly, the mere submission of evidence that is credible and relevant may not always suffice to establish the applicant's eligibility or meet his or her burden of proof. Second, there are no due process rights implicated in the adjudication of a benefits application. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9th Cir. 2008). The Applicant has not cited to any legal precedent establishing that due process rights can be implicated in the adjudication of a Form I-914, nor that USCIS is required to address each and every piece of evidence in an RFE.⁸

In summary, the Applicant has not established that [REDACTED] ever subjected him to a severe form of trafficking in persons. The record suggests that the Applicant was under considerable financial pressure to pay back a private loan he incurred in the Philippines, that he earned less and did not have his visa extended as was promised, and experienced poor working conditions, stress, and anxiety. In addition, the Applicant feared deportation, largely as a result of his co-workers telling him that if he didn't pass the probationary period or he obtained another job, [REDACTED] would deport him. However, 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. Although the Applicant submitted evidence relating to loans he took 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 sufficient evidence that the Applicant was ever subjected to involuntary servitude or that [REDACTED] or [REDACTED] ever intended to subject him to such conditions. 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.

⁷ The Applicant also notes and submits evidence that twelve other similar cases have been approved. However, each application may have different facts and circumstances, and each case is reviewed on its own merits.

⁸ In fact, USCIS is not required to issue an RFE at all. 8 C.F.R. § 103.2(b)(8)(iii) (if all initial evidence has been submitted but that evidence does not establish eligibility, USCIS may deny the benefit request for ineligibility *or* request more evidence or information from the applicant).

(b)(6)

Matter of C-D-R-D-C-

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.⁹ 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 [REDACTED] requesting law enforcement certification for the Applicant as victim of trafficking. The record does not reflect a response from [REDACTED]. 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 [REDACTED] or [REDACTED] the Applicant has not met the assistance requirement of subsection 101(a)(15)(T)(i)(III) 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 C-D-R-D-C-*, ID# 16783 (AAO June 22, 2016)

⁹ In his brief on appeal, the Applicant claims that the Director incorrectly indicated that fraud alone is not sufficient to establish a trafficking scheme. Although the Applicant is correct that a person need not show force, fraud, *and* coercion, and though it was not stated clearly, the Director is correct as "fraud alone" does not meet the requirement; the fraud must be 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).