U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-E-D-

DATE: MAY 2, 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 provide sufficient evidence to 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 that he had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant claims that he relied on his prior counsel to present his evidence but now believes that "her actions did not serve" him, and asks that his new statement "supersede" his prior statements.

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, 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 . . . .

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

The Applicant is a citizen of the Philippines who entered the United States as an H-2B nonimmigrant to be employed as hotel worker. The Applicant filed the instant Form I-914, Application for T Nonimmigrant Status, with U.S. Citizenship and Immigration Services (USCIS) on May 28, 2014. In his initial affidavits, the Applicant provided an account of his employment with and claimed trafficking by, collectively, and

The Applicant initially recalled that a co-worker told him about a recruiting agency in the Philippines that was looking for housekeeping attendants to send to the United States. The Applicant visited , and claimed that during his visit a man named whom the Applicant asserted owned and another entity named promised him employment in hotels and resorts in the United States. The Applicant asserted that promised him that he would work as hotel staff for the Florida, that he would have many other job opportunities in the United States, "a very high" salary, 40 hours of work per week plus overtime, "adequate and comfortable housing," and three years of free visa renewals. The Applicant stated that asked him to pay close to $7,000.00 to cover its placement fee and various other costs, including his plane ticket, medical exam, and visa. In his initial statement, the Applicant advised that he borrowed PHP 180,000 ($3,600.00) from
In his response to the Director's request for evidence (RFE), the Applicant added that he had

---

[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).

[2] On appeal, the Applicant explains that subsequently changed its name to

borrowed PHP 415,000 ($8,300.00) from his mother-in-law in order to repay the loan from and that during his application process he also had been promised free housing, free visa renewals, and three years of work while in the United States.

After he arrived in the United States, the Applicant indicated that he was sent to work at the rather than the Approximately two weeks later, he stated he was transferred to work in New Jersey. The Applicant explained that in New Jersey, he was only periodically employed for 40 hours per week, and yet was forced to work even when sick. In response to the RFE, the Applicant asserted that he had a 10 P.M. curfew but that he was able to go out on his days off. Although the housing he was provided was unsatisfactory, the Applicant explained that he was not allowed to look for alternate housing and was told that if he "did not follow rules, they would get [him] deported." The Applicant asserted that he left his employment with "[a]fter could no longer renew [his] visa." In response to the Director's notice of intent to deny (NOID), the Applicant asserted that he actually "escaped" because of the lack of work and working conditions, and that he is now living and working as a nursing assistant and caregiver. As a result of his former situation with the Applicant asserted that he has suffered from constant worry about his ability to support his family, and fear that his traffickers would retaliate against him and his family for talking about his situation. He indicated that he had trouble repaying the loan to and that his mother-in-law had to sell her land "so that [sic] lending will stop going after" his wife in the Philippines. According to the Applicant, he is now indebted to his mother-in-law and has been threatened with litigation by his brother-in-law because the Applicant has had trouble repaying her loan. 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 letter from of which offered the Applicant work cleaning and housekeeping at the at an hourly rate of $7.15 for 40 to 50 hours per week, housing at a weekly rate of $60.00, and approximately five months of employment from January 2, 2008, to May 31, 2008. The Applicant indicated in response to the RFE that he signed the offer without understanding it. The Applicant also provided a 2008 receipt from indicating that the Applicant had paid fees relating to processing and ' and noting that he would be paid a monthly salary of $1,200.00 in the United States from March 6, 2008, to June 5, 2008. In a letter that the Applicant provided, the and verified that the Applicant worked for a third party, which had placed the Applicant at the resort from April 10, 2008, to January 20, 2009. The information in the letter specifically confirms that the Applicant was working at the resort as of January 20, 2009, the date of the letter. The Applicant also provided documents showing that in 2011, was convicted of involvement in an employment trafficking scheme.

In response to the RFE, the Applicant also provided one bi-weekly pay statement from showing that he was hired on March 9, 2008, immediately after his entry into the United States, and that he was working in New Jersey as of December 2008. The pay statement shows that he was paid an

hourly rate of $7.59 for 52.00 hours of work (*i.e.*, a work week of approximately 26 hours), plus a bonus of $104.90 for the period ending on January 2, 2009. Other than federal and state withholdings, the pay statement does not reflect any additional deductions such as housing, transportation, or visa renewal fees. The Applicant also reiterated his initial claims, and added that he signed an employment contract prior to beginning his employment and expected to work at a hotel in Florida, but stated that he did not understand what he was signing. The Applicant provided evidence that he paid off his entire loan from in the spring of 2009. He also provided copies of money transfers from within the Philippines which he says are evidence that he took a loan from his mother-in-law in order to pay off including a promissory note to his mother-in-law for a ten-year loan in the amount of PHP 41,000.00.

On appeal, the Applicant indicates that he was not served well by his former attorney and asks that his appellate statement "supersede" his prior statements, although he essentially provides the same information contained in the prior statements.[3] The Applicant emphasizes that once in New Jersey, he was housed with 50 people in a large duplex that he shared a bedroom with five other people, and that 26 people were required to share 1½ bath rooms. The Applicant advises that he did not have access to his passport, and was not permitted to leave the duplex to shop for groceries or for any other reason. According to the Applicant, the duplex was a considerable distance from the hotel, and he relied on for transportation to work. The Applicant explains that he rarely was given enough work for a 40-hour week, and instead "most of the times [sic] . . . only worked a few hours per day" or not at all. Regardless, the Applicant explained that continued to make deductions from his pay check, including monthly deductions of $340.00 for rent, $96.00 for transportation, $16.00 for gas, and $350.00 for renewal of his H-2B status. The Applicant claims that he does not have any additional pay stubs beyond the one for December 2008 because the agency retained all of them, but does not explain why released one pay stub to him and no others. The Applicant attests that he became friends with a man who encouraged him to "escape" and the Applicant asserts that he did this around December 2008. According to the Applicant, this same friend retrieved the Applicant's passport from and helped him to find employment. The Applicant advises he is unable to provide additional evidence that would be reflected in payroll records because kept all documentation and did not provide copies to the Applicant.

The Applicant asserts on appeal that 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 and of and as his alleged traffickers. He provides letters from people for whom he works as a home care aide, all of whom provide favorable assessments of the Applicant's character.

[3] On appeal, the Applicant appears to be suggesting that he has had ineffective assistance of counsel from his former attorney, and asks that we "take this [appellate] statement to supersede all others." However, as the Applicant's statement does not meet the three prongs required to establish ineffective assistance of counsel, we cannot disregard his prior statements as evidence. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Regardless, as discussed, the Applicant's new statement varies little from his previous statements.

III. ANALYSIS

A. Victim of a Severe Form of Trafficking in Persons

The Applicant claims he was a victim of labor trafficking by and which he states forced him into involuntary servitude and peonage. On appeal, the Applicant further asserts that and lured him to the United States with false promises of "beneficial employment opportunities that never materialized." The Applicant has not established by a preponderance of the evidence that and trafficked him through fraud or coercion for the purpose of subjecting him to peonage or involuntary servitude. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons").

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* 1492 (9th ed. 2009). 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.

1. Force, Fraud, or Coercion

The record does not support the Applicant's claim that or of engaged in coercion through false promises of favorable working conditions that "never materialized" and which subsequently forced him into debt peonage. The Applicant borrowed money from a lending agency named for the payment to a foreign recruiter in the Philippines, and not to Moreover, he voluntarily agreed to pay the recruiter fees before he came to the United States, and appears to have had the means to do so within the scheduled time. The actions outlined by the Applicant do not establish that he was forced to borrow money from Further, as discussed, the evidence is not sufficient to establish that the Applicant was subsequently forced to borrow money from his family in order to pay and that he remains in debt to his mother-in-law as a result. Once in the United States, it appears that although he was not always provided full-time employment, paid him more than the hourly rate he was initially proffered and that he had the financial means to repay his debts to within the scheduled time. Although the receipt from indicated that the Applicant would have a monthly salary of $1,200.00, was never the Applicant's intended U.S. employer and was not in a position of authority to set the terms of an employment offer. Instead, the evidence of record

reflects that the Applicant was offered employment by and that he worked only for this entity. The Applicant asserts that he was underemployed and that his employer took deductions for housing, transportation, visa renewal fees, and gasoline thus preventing him from repaying a loan and supporting his family; however, the single pay stub that the Applicant provided does not reflect these deductions and he appears to have timely repaid his loan to in the spring of 2009. Moreover, the pay stub reflects that paid the Applicant a rate higher than initially proffered.

Moreover, the record does not support the Applicant's claim that or of trafficked him through force or coercion by restricting his movement, forcing him to pay for housing, and preventing him from seeking employment elsewhere. First, the record does not establish that had any contact with the Applicant once he arrived in the United States. To the extent that the Applicant claims his movement was restricted after arrival in the United States, he has provided conflicting information. The Applicant first claimed that he took additional part-time jobs to earn extra money while in Florida and that once he was in New Jersey, he sometimes went with the landscapers to earn money for food, and he was able to go around on days off or before a 10 P.M. curfew. The Applicant's subsequent statements are not consistent with the prior claims, as he asserted that he was never permitted to leave the apartment in New Jersey and had to remain on call for housekeeping duties. The Applicant does not explain how he was coerced into remaining in the apartment. Although the Applicant asserts that he finally "escaped" around December 2008, the employment verification letter from explained that he was still working there under assignment from as of January 20, 2009. Therefore, the Applicant's evidence contradicts his claim to have "escaped" . The Applicant confirmed that he has remained in the United States and has been employed in various jobs as a home health care aide and nursing home assistant. The record thus does not show that or or obtained the Applicant's services through fraud, force, or coercion involving physical restraint or other restriction of his movement.

2. Involuntary Servitude or Peonage

The record does not show that or of intended to subject the Applicant to peonage through involuntary servitude based on real or alleged indebtedness. According to the Applicant, he borrowed money from to pay the recruiter fees shortly before travelling to his employment in the United States; however, the record does not reflect that he was ever indebted to or of or that they forced him into indebtedness. Moreover, the Applicant asserts that he had to borrow money from his mother-in-law to pay his loan to However, as the Applicant, his wife, and his mother-in-law signed the promissory note on dated October 26, 2010, which post-dates the final loan payment to by more than one year, it does not appear to have been contracted in order to pay that loan, as the Applicant has claimed. Moreover, the Applicant provided three wire transfers as evidence of repayment of the loan to his mother-in-law; however, the transfers were from 2009 and predate the 2010 loan. The wire transfers also reflect that his wife sent the money to the mother-in-law for "food" and "allowance" rather than payment of a loan to Accordingly, the Applicant's assertions to have

remained indebted to either [redacted] or his mother-in-law are not consistent with the evidence that he provided. The information he has given is not sufficient to establish that he was underpaid by his employer to the extent that he was unable to repay his loan to [redacted] and that he borrowed money from a family member in order to pay the loan fee.

In summary, the Applicant has not established that [redacted] or [redacted] of [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] or [redacted] of [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 insufficient evidence that the Applicant was ever indebted to [redacted] or [redacted] of [redacted] or that they forced or coerced the Applicant to go into debt. Finally, the record is insufficient to establish that the Applicant was ever subjected to involuntary servitude or peonage or that [redacted] or [redacted] of [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 stub the Applicant provided shows that although [redacted] did not provide him with full-time employment during the two-week period reflected on the pay stub, it employed him at an hourly rate that was higher than the one listed in his offer of employment and did not make deductions other than those required by federal and state law. Moreover, the Applicant has pursued other employment in New Jersey since his authorized period of employment with [redacted] ended. 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 the U.S. Department of Justice (DOJ) on his behalf requesting law enforcement certification for the Applicant as a victim of

trafficking. These communications evidence the Applicant's attempts to notify DOJ of the claimed trafficking by [redacted] and [redacted] 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, the Applicant has not established that Dougherty's actions subjected him to labor trafficking as that term is defined in 8 C.F.R. § 214.11. The record does not establish that his conviction was based on the Applicant's employment for [redacted] 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 stated 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 insufficient 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 insufficient evidence that DOJ or any other U.S. government agency initiated an investigation or prosecution of [redacted] or [redacted] 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

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 R-E-D-*, ID# 16172 (AAO May 2, 2016)