

Administrative Appeals Office

March 29, 2016

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2016 Immig. Rptr. LEXIS 4482 *

MATTER OF N-P-C-

Core Terms

redact, traffic, reconsider, nonimmigrant

Counsel

[*1]

Opinion By: Decision transmittal issued by: Perry Rhew, Chief, Administrative Appeals Office

Opinion

AAO Designation: D12

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) §§ 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 was physically present in the United States on account of such trafficking. We dismissed a subsequent appeal.

The matter is now before us on a motion to reopen and reconsider. On motion, the Applicant submits a brief and additional evidence. The Applicant claims that his prior statements "were prepared by the paralegal of [his] previous counsel and failed to articulate [*2] the essence of [his] victimization," and that his new documents, including statements from his friends, "clarify and straighten up" any errors in the record.

Upon review, we will deny the motion.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. [8 C.F.R. § 103.5\(a\)\(2\)](#). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. [8 C.F.R. § 103.5\(a\)\(3\)](#).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Applicant is a citizen of the Philippines who first entered the United States on October 15, 2008, as an H-2B nonimmigrant to be employed as a steward/kitchen worker at the [redacted] Arizona, a position that [redacted] secured for him. After working for the [redacted] he worked [*3] for [redacted] South Carolina, and the [redacted] in Pennsylvania. The Applicant filed the instant Form I-914, Application for T Nonimmigrant Status, with U.S. Citizenship and Immigration Services on March 11, 2014. The Director denied the Applicant's Form I-914, and we subsequently dismissed his appeal. In our decision, we concluded that the Applicant had not established that he was subjected to involuntary servitude because he had engaged in other employment both during and after his authorized period of employment with [redacted] and after he ceased employment with [redacted] We also concluded that the Applicant was not subjected to peonage or involuntary servitude through indebtedness because he voluntarily took a loan from a family member prior to traveling to the United States but was not personally indebted to any of the entities he claimed had trafficked him. Moreover, we determined that the Applicant did not establish that his recruiter or any of his employers forced him to take on a huge amount of debt, or that they trafficked him through force or coercion by restricting his movement and preventing him from seeking employment elsewhere.

III. ANALYSIS [*4]

A. Claims Regarding Former Counsel

On motion, the Applicant states that he is no longer represented by his former attorney because he cannot afford her legal fees and "[d]ue to ineffective assistance of counsel." The Applicant suggests that he needs to "confer ... with [his] counsel or representative so that they can amply research the legal case precedents on this matter, address the issues that need to be addressed, and [obtain] the required documentation

needed." The Applicant does not provide a new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, reflecting that he obtained a new attorney or accredited representative.

Regarding his claims to have had ineffective assistance of counsel, the Applicant also submits a separate statement in which he attributes numerous errors and discrepancies in his previously provided evidence to his former attorney and his former attorney's paralegal. The Applicant suggests that his former attorney and paralegal had him sign documents "in haste, without ... the opportunity to read [the] contents and being properly apprised of the legal implications of their actions." The Applicant contends that [*5] he "just trusted that what [his] lawyer asked [him] to sign reflected the true account of what happened," and indicated that he believed that, as a result, his "integrity was sacrificed." The Applicant lists the instances in which his own claims and evidence differed from documents that he asserted his former attorney had prepared, but does not explain how these new claims would have had any impact on our prior decision. Further, his statements are not sufficient to establish an ineffective assistance of counsel claim. Specifically, the Applicant's assertion does not include: (1) an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the Applicant in this regard; (2) evidence that counsel whose integrity or competence is being impugned has been informed of the allegations leveled against her and given an opportunity to respond; and (3) evidence as to whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *See Matter of Lozada*, [*6] 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) .

B. Claims in Support of the Motion to Reopen and Reconsider

We previously considered on appeal whether the Applicant was trafficked by [redacted] Our prior decision discussed [redacted] role in the Applicant's recruitment and the loan the Applicant secured in order to pay [redacted] placement fee. On motion, the Applicant resubmits previously provided payroll records, and recounts his alleged trafficking by [redacted] Although his payroll records from [redacted] reflected a Florida address, the Applicant clarifies that he never worked in Florida. He states that the conditions at [redacted] were "similar[ly] awful" to those he experienced at the [redacted] and that he was never fully employed as a cook, but was instead assigned various unrelated jobs, including steward/kitchen worker, carpenter, and laundryman. The Applicant attempts to clarify the nature of his debt and continues to emphasize on motion that he was trafficked, including by [redacted]. However, he has not provided additional or new evidence to show that the loans he voluntarily took out to pay [redacted] [*7] before he departed the Philippines, or the employment conditions he described once in the United States were such that the Applicant has established that he was trafficked by [redacted] or any other entity, as required by section 101 (a)(15)(T)(i)(I) of the Act. Consequently, he also has not shown 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.

The Applicant further stresses that he reported [redacted] and [redacted] but the record does not reflect a response from DOJ with respect to any reported entity or individual beyond acknowledgement of receipt of the information. As the record does not otherwise establish any severe form of human trafficking in connection with the Applicant's recruitment by [redacted] or employment with [redacted] the Applicant has not met the assistance requirement of section 101 (a)(15)(T)(i)(III) of the Act, or established that he would suffer extreme hardship involving unusual severe harm upon removal from the United States under the standard and factors prescribed at [8 C.F.R. § 214.1](#) l(i)(1), and as required [*8] by section

101(a)(15)(T)(i)(IV) of the Act. The Applicant also provides a letter of support from an organization named [redacted] that generally describes the alleged trafficking of a group of H-2B workers from the Philippines, but does not provide additional information about the Applicant's own alleged trafficking. The Applicant includes statements from two friends named J-C- and P-A-. ¹ J-C- indicates that she and the Applicant had been recruited by [redacted] and had both worked for [redacted] under the same working conditions while in the United States. P-A- also advises that he worked with the Applicant at the [redacted] under the same working conditions. J-C- and P-A- explain that they believed that they and the Applicant had been trafficked but, after recounting their own alleged trafficking circumstances, do not include additional information or insight into the Applicant's alleged trafficking.

Although the Applicant has submitted new evidence on motion, his statement and supplemental [*9] evidence do not provide any additional facts that overcome our prior determination. Further, the Applicant has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required for a motion to reconsider. See [8 C.F.R. § 103.5\(a\)\(3\)](#). Consequently, the motions must be denied.

IV. CONCLUSION

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of N-P-C-*, ID# 15918 (AAO Mar. 29, 2016)

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¹ [*10] Footnote 1. Names withheld to protect individuals' identities.