

Administrative Appeals Office

May 10, 2016

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

*BIA & AAU Non-Precedent Decisions*

**Reporter**

2016 Immig. Rptr. LEXIS 4485 \*

## **MATTER OF P-F-V-**

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### **Core Terms**

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redact, traffic, reconsider, nonimmigrant, reopen

### **Counsel**

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[\*1]

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

### **Opinion**

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**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) 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 Form I-914. *Application for T Nonimmigrant Status*. The Director concluded that the Applicant did not establish that he was a victim of a severe form of trafficking, that he was physically present in the United States on account of a severe form of trafficking, and that he had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking. We dismissed the Applicant's subsequent appeal, upholding the Director's findings and also determining [\*2] that the Applicant had not established extreme hardship involving unusual and severe harm upon removal. We also denied the Applicant's subsequent motion to reopen and reconsider. We are reopening the matter on our own motion for a new decision on the 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 the essence of [his] victimization." and that he was trafficked by [redacted] in addition to [redacted] and [redacted] and [redacted]. He includes additional payroll statements and an affidavit from a friend.

Upon review, we will deny the motions.

## **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 [\*3] 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. ANALYSIS**

### **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 indicates 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 states that his [\*4] 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 he "just trusted that what [his] lawyer asked [him] to sign reflected the true account of what happened." However, the Applicant does not explain, for example, instances in which his own claims and evidence differed from documents that he asserted his former attorney had prepared, and his statement is not sufficient to establish an ineffective assistance of counsel claim. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd* 857 F.2d 10 (1st Cir. 1988) .

## **B. Claims in Support of the Motions to Reopen and Reconsider**

We previously considered on appeal whether the Applicant was trafficked by [redacted] We determined that although the record indicated that the Applicant was under considerable financial pressure to support his family and experienced stress and anxiety, the relevant evidence did not show that [redacted] obtained his labor through force, fraud, or coercion for the purpose of subjecting him to involuntary servitude, peonage, [\*5] debt bondage, or slavery. We acknowledged the Applicant's submission of evidence relating to loans he claimed to have taken out with respect to his initial H-2B petition; however, the record did not establish that he was ever indebted to [redacted] or that these entities forced or coerced him to go into debt. Finally, we found the record did not contain sufficient evidence that the Applicant was ever subjected to involuntary servitude or peonage or that [redacted] or [redacted] ever intended to subject him to such conditions. To the contrary, we indicated that [redacted] petitioned for the Applicant as an H-2B nonimmigrant worker, and that although the Applicant asserted he was not always provided with full-time employment, it appeared that [redacted] employed him close to 40 hours per week and paid him a higher hourly rate than it initially proffered. Moreover, since his employment with [redacted] terminated, the Applicant was able to pursue employment in Virginia.

On motion, the Applicant asserts that our prior decision erroneously referred to an individual who is not a party to the Applicant's case and to employment with [redacted] an entity for which [\*6] he never worked; however, we find no mention of this individual or this employment in our prior decision. The Applicant submits two new payroll records, and recounts his alleged trafficking claims by [redacted] The Applicant attempts to clarify the nature of his debt to his family members, and continues to emphasize on motion that he was trafficked, including by another placement agency in the United States named [redacted] which he claims arranged for extensions of his H-2B status only to send him to work at [redacted] each time. However, the Applicant has not provided additional or new evidence to show that the loan he voluntarily took out to pay [redacted] 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 on motion that he reported his traffickers [\*7] to the U.S. Department of Justice (DOJ); however, 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 [redacted] or his 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. § 214.11\(i\)\(1\)](#), and as required 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 specifically about the Applicant's own alleged trafficking. The Applicant includes statements from a friend named A-R-- <sup>1</sup> A-R- indicates that he and the Applicant had been recruited by [redacted] and had both worked for [redacted] under the same working conditions while in the United

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<sup>1</sup> Footnote 1. Name withheld to protect individual's identity.

States. A-R- advises that he believes that he and the Applicant had been trafficked, and generally recounts the same information that the Applicant provided in his affidavits, but does 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 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\(a\)\(3\)](#).

[\*9]

### III. CONCLUSION

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](#); *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 P-F-V-*, ID# 15919 (AAO May 10, 2016)

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