

Administrative Appeals Office

September 26, 2017

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2017 Immig. Rptr. LEXIS 22751 *

MATTER OF J-J-G-S-

Core Terms

traffic, redact, severe form, nonimmigrant, physical presence, hardship, trauma

Opinion By: [*1] 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, a native and citizen of the Philippines, 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 of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant had not demonstrated that he had complied with any reasonable requests for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, and that he would suffer extreme hardship involving unusual and severe harm if removed from the United States. We dismissed the Applicant's subsequent appeal on the same grounds, and further found that the Applicant had also not established that he was a victim of trafficking [*2] in persons and that he was physically present in the United States on account of such trafficking. The Applicant has now filed a motion to reopen and reconsider.

On motion, the Applicant submits a supplemental statement, providing additional details regarding his trafficking claim and asserting for the first time that he became a victim of trafficking again after escaping the alleged initial trafficking.

Upon *de novo* review, we will deny the motions.

I. LAW

A motion to reopen is based on evidence of new facts. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner submits new evidence, but does not assert any legal errors in our prior decision and has not otherwise established his eligibility. The Applicant bears the burden of establishing eligibility for T-1 nonimmigrant status. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

A. Not a Victim of a Severe Form of Trafficking [*3] in Persons

In our prior decision on appeal, incorporated here by reference, we found the Applicant had not demonstrated that he was a victim of a severe form of trafficking by [redacted] as he maintained. Specifically, we concluded although the Applicant showed he was recruited and obtained for employment with [redacted] he had not established he was recruited or obtained through force, fraud, or coercion and for the purpose of subjecting him to involuntary servitude, peonage, debt bondage, or slavery as required by section 101(a)(15)(T)(i)(I) of the Act and the regulation at 8 C.F.R. § 214.11(a).¹ Our review indicated that despite the Applicant's claim that he was given a position other than the one promised to him in his employment agreement, the agreement itself only identified the employment category in which he was to be employed and did not specify the position. The record also showed that the Applicant was compensated at an hourly rate above the rate set forth in his employment contract [*4] and was given overtime hours at an even higher rate. Accordingly, we held that the Applicant had not established that [redacted] fraudulently obtained and recruited him for his labor services or that [redacted] intended to subject, or had subjected, him to involuntary servitude as he maintained below. We further concluded that the Applicant had not shown that [redacted] used coercion in recruiting or obtaining his labor services. We noted that the Applicant provided no probative details to support his assertion that [redacted] agent, D-Z-,² threatened him should he leave [redacted] and did not establish that [redacted] otherwise physically restricted or monitored his movements, harmed him, or used threats of harm, physical restraint, or legal process to retain his labor services.

On motion, the Applicant submits a supplemental statement and an unsigned copy of his affidavit that is nearly identical to one previously proffered below. The Applicant provides no additional or

¹ Footnote 1. The Department of Homeland Security issued an interim rule, effective January 18, 2017, amending its regulations at 8 C.F.R. § 214.11 for victims of human trafficking who seek T nonimmigrant status. *See Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), [81 Fed. Reg. 92266](#), 92308-09 (Dec. 19, 2016). Accordingly, we cite to the pertinent T regulations, as amended by the Interim T Rule, throughout this decision here.

² [*12] Footnote 2. Initials are used to protect individuals' identities.

substantive [*5] information with respect to his claim of trafficking by [redacted] and makes no assertions of legal or factual error in our prior decision. Instead, the Applicant indicates that after leaving [redacted] employment in May 2008 and finishing another H-2B employment in December 2008, he fell victim to another labor trafficking scheme by [redacted] headed by N-Y-, through whom he requested an extension of his H-2B visa. He indicated that something went wrong and his H-2B visa extension request by [redacted] was not granted. The Applicant stated that he learned from a friend years later that N-Y- had been operating [redacted] illegally and providing fake FI-2B documents to clients, including the Applicant. He submits emails with N-Y- discussing the fees and other matters related to his H-2B extension.

The facts asserted on motion indicate that the Applicant may have been a victim of a fraud scheme by [redacted] and N-Y-. However, they do not establish that the Applicant was a victim of trafficking, as the record does not show that [redacted] or N-Y- recruited or obtained him for labor services and that they did so with the intention of subjecting him to involuntary [*6] servitude. Although the Applicant makes a general assertion that N-Y- "did some recruitment and coercion" by threatening not to process his application if the Applicant did not work for him, he provided no probative details about any proffered employment or any specific incidents in which the alleged threats were made, and he does not allege that N-Y- successfully recruited or obtained him for labor services. To the contrary, emails between the Applicant and N-Y- proffered on motion confirm that the Applicant retained N-Y-'s services solely for the purpose of filing an H-2B extension request on his behalf and that [redacted] and N-Y- were not tasked with obtaining employment for the Applicant, because the Applicant intended to find his own H-2B employer. The record therefore does not establish that [redacted] and N-Y- recruited, harbored, transported, provided, or obtained the Applicant for labor or services, and that they did so for the purpose of subjecting him to involuntary servitude. Consequently, the Applicant is not a victim of a severe form of trafficking by [redacted] and N-Y-, as that term is defined at 8 C.F.R. § 214.11(a).

B. Physical Presence in the [*7] United States on Account of Trafficking

In our previous decision, we also found that because the Applicant had not established that he is the victim of a severe form of human trafficking, he consequently could not 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. We further found that even if he had established his victimization, the record still did not demonstrate his physical presence in the United States was on account of such trafficking, as he escaped the claimed trafficking many years before in 2008 and has not shown that his "continuing presence in the United States is directly related to the original trafficking." 8 C.F.R. § 214.11(g)(1)(i), (iii), and (iv).

On appeal, the Applicant reasserts his same claim that he did not return to the Philippines after leaving his trafficking situation because of a large outstanding loan his family borrowed from a bank and friends. He also adds that the low wages in the Philippines would make it difficult for him to pay the loan off if he returned there. We previously addressed this claim on appeal, and the Applicant has not provided any [*8] new factual or legal assertions to overcome our prior findings and he has not cited any pertinent authority to demonstrate that we incorrectly applied the law in our prior decision. 8 C.F.R. § 103.5(a)(3). We note also that the Applicant has not provided any corroborating evidence of his loans, including bank loan papers, to support his assertion, nor has he explained why such evidence is unavailable. Accordingly, the Applicant has not demonstrated that he is physically present in the United States on account of a severe form of trafficking persons.

C. Assistance in the Investigation or Prosecution of Acts of Trafficking

On appeal, we also concluded that the Applicant not established his compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or the investigation of associated crime, as he had not contacted a law enforcement agency regarding acts of a severe form of trafficking in persons and was not otherwise exempted from this requirement due to any physical or psychological trauma he suffered or because he is under 18 years of age. Section 101(a)(15)(T)(i)(III) of the Act; 8 C.F.R. §§ 214.11(h)(1), (h)(4).

[*9] On motion, the Applicant again acknowledges that he has never contacted law enforcement officials regarding his claim of trafficking by [redacted] and by [redacted]. He reiterates the same general claims he previously made that shame, trauma, and fear of arrest and deportation prevented him from reporting his trafficking to authorities. He alleges that the trauma of his trafficking situation had led to anxiety disorders, depression, and suicidal tendencies, and that his traffickers made him mistrust the authorities by threatening him with arrest, deportation, and other harm. However, as with his prior statements, the Applicant provides no substantive information regarding his claim of trauma and emotional harm and makes no reference to the nature and impact of the claimed trauma on his daily life. Further, as we previously noted, his general assertions of trauma are unsupported in the record and are in contrast to his assertions below that he established close community and personal ties and successfully maintained long term employment in the United States in the years after escaping the alleged trafficking.

D. Extreme Hardship Involving Unusual and Severe Harm upon Removal [*10]

On motion, the Applicant has also not overcome our prior determination that he has not demonstrated that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States. He makes the same general claims of social, religious, and economic hardships and asserts again that it would be difficult to rebuild his life and that he would be in danger as a Judeo-Christian in the Philippines given ongoing conflict between Muslims and Christians there. We have fully addressed these claims in our previous decision and the Applicant makes no new legal or factual assertions in support of his hardship claim.

III. CONCLUSION

On motion, the Applicant has not overcome the grounds for denial, as he has not established that he was a victim of a severe form of trafficking. He therefore necessarily has not demonstrated that he is physically present in the United States on account of such trafficking and has complied with any reasonable requests for assistance in the investigation or prosecution of the trafficking. Section 101 (a)(15)(T)(i)(II) and (III) of the Act (demonstrating victim of severe forms of trafficking in persons as a requisite of each [*11] criteria). Lastly, the Applicant has not established that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of J-J-G-S-*, ID# 572740 (AAO Sept. 26, 2017)

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