U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6288405

Date: SEPT. 17, 2020

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under sections 101(a)(15)(T) and 214(o) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application). On appeal, the Applicant submits a brief and additional evidence, asserting his eligibility. We subsequently issued a notice of intent to dismiss (NOID), and the Applicant timely responded with additional evidence.

We review the questions in this matter de novo. See Matter of Christo's Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as a T-1 nonimmigrant if they: are or have been a victim of a severe form of trafficking in persons (trafficking); are physically present in the United States on account of such trafficking; have complied with any reasonable requests for assistance in the investigation or prosecution of trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. See also 8 C.F.R. §§ 214.11(b)(1)-(4) (2018).

The term "severe form 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." 8 C.F.R. § 214.11(a).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our de novo review; however, we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a 57-year-old native and citizen of the Philippines, entered the United States in January 2008 as an H-2B temporary worker to be employed in a housekeeping position at a Florida resort. He stated that he was recruited by [redacted] Placement Agency [redacted], a licensed recruitment agency in the Philippines.

In November 2017, the Applicant filed the instant T application, asserting that he was the victim of labor trafficking by [redacted] its affiliate in the United States, [redacted], and his H-2B employer, [redacted] resort [redacted]. The Director denied the application, concluding that the record did not establish that the Applicant was physically present in the United States on account of having been a victim of a severe form of trafficking in persons. On appeal, we issued a NOID, notifying the Applicant that the record also did not demonstrate that he was the victim of trafficking, a predicate requirement to establishing the remaining eligibility criteria for T nonimmigrant classification under section 101(a)(15)(T)(i) of the Act, including the physical presence requirement. The Applicant's timely response is incorporated into the record on appeal.

A. The Applicant's Trafficking Claim

In his initial statement before the Director, the Applicant stated that he approached [redacted] in the Philippines in November 2007 after learning that the agency was hiring for hotel worker positions in the United States. He indicated that J-R-,[1] one of the owners of [redacted], informed him that [redacted] was hiring for a Florida hotel offering a salary higher than what the Applicant was making at the time. The Applicant indicated that [redacted] and [redacted] told him that he would be paid $8.00 per hour and given 40 hours of work per week, in addition to tips that would greater than his hourly pay. He stated that he was also told that he would reside near the resort and receive a free uniform, as well as free transportation to and from work. The Applicant calculated that he would earn approximately $16,000 per year, not including any tips, which was four times his income in the Philippines and sufficient to pay for his siblings' college fees. He indicated that he was hired as a housekeeper for [redacted] in Florida in December 2007. The Applicant stated that he borrowed $4,000 from relatives[2] to be paid back monthly at 15% interest and paid [redacted] more than $3,000 in fees. The Applicant stated that he believed he would have no problem paying back his loans based on what [redacted] told him. He recollected that he was granted a work visa after he went to the U.S. Embassy for an interview and subsequently paid [redacted] over $2,000 for airfare and other expenses.

The Applicant recalled that he arrived in [redacted] Florida in January 2008 with other Filipino nationals also recruited to work at [redacted]. He recalled that a [redacted] staff member informed the workers their first week that they must inform whenever they left the apartment provided to them and not doing so would be violating their orders for which they could be deported. The Applicant stated that if the workers did not do as told, their work conditions would worsen, and they would get deported. He stated that on his days off, he stayed at the apartment as instructed and told [redacted] staff if he had to go

[1] Initials used to protect individuals' privacy.

[2] The Applicant also added that he "even borrowed 100,000 pesos (more than $2,000)" from his brother-in-law. His statement is unclear whether he borrowed a total of $4,000, including the $2,000 from his brother-in-law, or if the $2,000 is in addition to the $4,000 he borrowed from relatives.

to the grocery store. He recalled that a [redacted] staff member would do random weekly checks to make sure they were still there.

The Applicant stated that he was not paid for the first two days he spent at [redacted] attending work seminars. He indicated that his duties at the resort included cleaning 14 to 16 villas each day, and at times, he had to skip lunch and stay beyond his eight-hour work schedule to complete his work. The Applicant recalled that he was not given work the next day when he went over eight hours. He stated that the supervisor would scream and yell when he missed even the smallest spot and on at least three made him reclean a room that he was sure he had left thoroughly cleaned. In addition, he asserted that the supervisor took most of the tips left by customers. The Applicant also indicated that he earned far less than he had been promised due to deductions for housing and taxes taken out of his pay. He recalled that his paycheck the first week was only $100 and his second one $300 for two weeks of work. He stated that [redacted] also overcharged him for his housing, charging his five housemates and him $470 monthly each even though the monthly rent was only $1200. The Applicant stated that the workers could not move elsewhere because they would be deported. He indicated that he would not have accepted [redacted]'s recruitment offer had he known about the deductions and that he felt that he had no choice but to keep working for [redacted] because the workers had been threatened that they would be reported and deported.

The Applicant stated that he was constantly stressed as he was not making enough money to send back to his family or pay back his loans, and [redacted] declined to give him additional hours of work. The Applicant stated that he escaped in February 2008, one month after his arrival at the resort. He indicated that he called a cab to the airport to fly to California using a plane ticket paid by his relatives. He stated that he went to California to find work to pay off the loan he incurred because of the promises [redacted] made, and eventually found work as a caregiver for senior citizens there. He indicated that he never returned to the Philippines as he did not have the money to pay for a plane ticket. The Applicant stated that in 2016 he learned of the Pilipino workers Center of Southern California (PWC), which provided him with information about help trafficking victims like himself could obtain. He indicated that he obtained a lawyer who helped him report his trafficking to law enforcement and pursue a T nonimmigrant visa based on his experiences. The Applicant further detailed the hardships he would face if he had to return to the Philippines, including fear of retaliation by the owners of [redacted]

The Applicant's statement in response to the Director's request for evidence (RFE) provided additional information regarding his claim that he is physically present in the United States on account of his claimed trafficking, primarily focusing on his life in the United States after he left his H-2B employer in 2008. On appeal, the Applicant submits a supplemental statement in response to our NOID, providing more details regarding his underlying trafficking claim. He asserts that [redacted] encouraged him to borrow money to pay their placement fee and expenses and recalls that during his orientation at the Florida resort, he and the other H-2B workers told the Human Resources (HR) manager at [redacted] about the recruitment process at his request, including about the loans they had taken to pay [redacted]'s fees and the related travel expenses. He states that the HR manager told them repeatedly that the resort had the right to cancel their employment contracts and return them to their respective countries if the workers did not follow the resort and their supervisors' rules. He states that a [redacted] representative told them the same, as well as that they would be able to pay off their debts back home if they worked hard. He asserts that when the workers later complained about the housing

deduction and asked to find other housing, [redacted] staff told they would be violating their employment contract if they moved. The Applicant recalls that he worked in very abusive conditions at [redacted] and he worried that the difficult work and skipping lunch was affecting his health, as he was not supposed to be doing heavy work due to a past medical procedure. The Applicant states that he realized that he had no hope of paying off his debt any time soon if he continued to work at the resort and escaped to protect his health and find a better way to pay off his debt.

The remaining relevant documentary evidence below included various documents related to the Applicant's H-2B recruitment process, job offer, and related expenses; an affidavit from the Applicant's counsel affirming that the Applicant's trafficking claim had been reported to law enforcement; letters from the Executive Director of PWC and the Applicant's PWC case manager; letter from Executive Director of Filipino American Service Group, Inc. (FASGI), a nonprofit serving the socio-economic needs of Filipino Americans, including mental health; a psychological evaluation; a PWC certificate of completion of a self-care workshop by the Applicant; and supporting background country conditions report. The Applicant's evidence on appeal includes, among others, an affidavit from his current counsel providing background information on the [redacted] and [redacted] and his reporting of both agencies to the Regional Anti-Human Trafficking Coordinator with the U.S. Department of Labor. In response to our NOID on appeal, the Applicant submits: a supplemental statement from counsel regarding [redacted]'s continuing operation and his attempts to report the agency to law enforcement; a copy of a criminal information charging the son of J-R- and C-R- (the owners of [redacted]) with false statement on an immigration document; a case management report of a study of U.S. Department of Health and human Services' programs serving trafficking victims; and background materials and news articles regarding trafficking.

B. Victim of a Severe Form of Trafficking in Persons

Applicants seeking to demonstrate that they are victims of trafficking must show: (1) that they were recruited, harbored, transported, provided, or obtained for their labor or services, (2) through the use of force, fraud, or coercion, (3) for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons").[3] Coercion is defined in pertinent part 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 . . . any person; or the abuse or threatened abuse of the legal process." 8 C.F.R. § 214.11(a).

The record shows that [redacted] and [redacted] recruited and obtained the Applicant for his labor and services through use of fraud. The Applicant explained that [redacted] recruited him with false promises that he would make significantly more money working for them than he was then making and did not fully disclose the expenses and deductions that he would be made from his wages. He indicated that instead of the $320 weekly salary he had been promised, not including tips, his pay was only about $100 the first week and his second paycheck for two weeks of work was $300 after deductions for housing and taxes. He also stated that he had been told that the rent would be $400, which he believed would be split with his roommate. However, the Applicant stated that he and the

[3] The definition of a severe form of trafficking also includes commercial sex trafficking, which does not apply in this case. 8 C.F.R. § 214.11(a).

six other workers in the apartment were each charged $470 per month for housing, even though the monthly rent for the apartment was only $1,200. The Applicant indicated that [redacted] misled the Applicant about the terms of his H-2B employment and his future earnings in order to recruit him. The record therefore shows that [redacted], [redacted] and [redacted] engaged in fraudulent tactics in recruiting and obtaining the Applicant for his labor and services.

However, the Applicant has not demonstrated that the alleged traffickers obtained and recruited him for the purpose of subjecting him to involuntary servitude or peonage, as he maintains. As used in section 101(a)(15)(T)(i) of the Act, involuntary servitude is defined 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 or another person would suffer serious harm or physical restraint; or a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

8 C.F.R. § 214.11(a). The term peonage is defined as "a status or condition of involuntary servitude based upon real or alleged indebtedness." 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. Black's Law Dictionary (B.A. Garner, ed.) (11th ed. 2019).

The record on appeal does not demonstrate that the Applicant's claimed traffickers intended to subject or subjected him to a condition of servitude, the underlying prerequisite to establishing involuntary servitude. Although the Applicant's salary at the resort was lower than promised by [redacted] due to high deductions for housing and taxes that were not fully disclosed and he did not receive the number of hours each week he was promised, the record shows that he was employed in a housekeeping position and was compensated for his labor and services at the salary of $8 per hour, as per the terms of his employment contract. The Applicant's statements also indicate that the Applicant was not required to work beyond the eight-hour workday authorized under his employment contract, and in fact, was reprimanded for doing so and warned that his contract would be canceled if he did so again.

The record also does not show, and the Applicant does not allege, that [redacted], [redacted] or [redacted] ever used, or threatened to use, physical restraint or injury, to coerce or force the Applicant to work in a condition of servitude, as described under 8 C.F.R. § 214.11(a) (defining involuntary servitude). The Applicant contends, however, that [redacted] and [redacted] abused and threatened abuse of legal process by threatening him with deportation multiple times in order to restrict his movements and "coerce him to endure exploitative working conditions," including forcing him to work an unreasonable amount of work within eight hours without breaks and to pay excessive rent. The Applicants' statements below asserted that a [redacted] staff member told workers their first week that if they did not report whenever they left their apartment, they would be violating orders and would be deported. He stated that they were also told that they would get deported if they changed their housing. In his supplemental statement responding to our NOID, the Applicant adds that [redacted] and [redacted] staff repeatedly told

them during their orientation that their contracts could be canceled if they did not follow the rules and their supervisors' orders. He also reiterates that when he and other workers asked about changing housing, a [redacted] staff member told them that they would be in violation of their employment contracts and would be reported to immigration for deportation.

We recognize the Applicant's claim that he was subjected to abusive working conditions at [redacted] However, the preponderance of the evidence does not show that [redacted] or [redacted] abused or threatened to abuse legal process to coerce him into a condition of servitude. H-2B employers are required by law to notify DHS in writing of the separation from employment of any H-2B employees. 29 C.F.R. § 503.16(y) (setting forth H-2B employer assurances and obligations). The Applicant's statements show that the [redacted] and [redacted] staff warned the Applicant and the other workers to ensure they understood the consequences of abandoning their H-2B employment and the resulting legal obligation imposed on the employer. Although the Applicant characterizes the [redacted] and [redacted] staff as using this reporting requirement as a "threat" to coerce him into servitude, he provides no substantive information regarding any of the incidents he references to support his characterization. Further, his supplemental statement on appeal states that his supervisor threatened to have him sent back to the Philippines for working beyond the contractual eight-hour workday, which conflicts with his claim that they used threats of deportation as a means to coerce him into working against his will.

Citing various federal cases, the Applicant asserts that indirect threats and vague warnings by [redacted] and [redacted] staff are sufficient to constitute an abuse of legal process, and they induced him into a condition of servitude using threats of a deportation as part of a "scheme, plan, or pattern" intended to make him believe that, if he did not enter into or continue in such a condition, he would suffer serious harm or physical restraint. 8 C.F.R. § 214.11(a) (defining involuntary servitude). [4] Additionally, he asserts that his trafficking claim is supported by the fact that numerous other Filipino H-2B workers have been victims of [redacted] and [redacted]'s coercive trafficking schemes. As stated, the Applicant, who bears the burden to establish eligibility, must establish by a preponderance of the evidence that

[4] While the federal cases on which the Applicant primarily relies involve issues regarding forced labor and involuntary servitude, they do not specifically involve applications under section 101(a)(T)(i) of the Act and are not binding on USCIS in these proceedings. Regardless, the facts of those cases are distinguishable from the Applicant's case. Unlike the present matter, the cited federal cases included records containing detailed, probative information regarding the conditions of servitude that the victims endured, as well as the threats (indirect and direct) of abuse of legal process and the coercive schemes used to force them into or keep them in such a condition. See, e.g., U.S. v. Kozminski, 487 U.S. 931 (1988) (victims were two mentally challenged older men, who were found in "squalid conditions" on a farm laboring seven days week for often 17 hours a day with no pay and inadequate nutrition, housing, clothing, or medical care; were discouraged from talking to others or contacting their family; and escaped only with the assistance of another employee who reported the situation to law enforcement); U.S. v. Farrell, 563 F.3d 364 (8th Cir. 2009) (affirming conviction of hotel owners convicted of peonage of hotel workers, where the owners engaged in numerous coercive tactics, including: requiring workers to surrender their passports and immigration documents; keeping the only keys to the workers' apartments and entering and searching the workers' apartments without permission; adding charges not included in the workers' employment contracts thereby increasing their debt to the owners; arranging for the workers to take outside employment to pay back the supposed debt; threatening to report and reporting the worker's outside employment as unauthorized employment in the United States to control the workers; forcing workers to sign contracts guaranteeing repayment and later using the contracts and debt to force workers to return to United States to work for the owners again for fear of imprisonment in the Philippines); U.S. v. Calimlim, 538 F.3d 706 (7th Cir. 2008) (upholding a conviction for obtaining forced labor of a Filipino live-in housekeeper over a 19-year period, where her employers, amongst other measures: confiscated her passport; had her work from 6 am to 10 pm seven days a week and during most vacations; severely restricted her movements and contact with the outside world; did not allow her to seek medical care outside the house; and sent her meager earnings directly to her family in the Philippines during the course of a decade).

[redacted] and [redacted] issued such threats of deportation as part of scheme, plan, or pattern in order to coerce him into a condition of servitude. Here, as discussed, the Applicant has not met this burden where the record indicates that [redacted] and [redacted] warned him of the serious legal and immigration consequences of his noncompliance with H-2B employment requirements, but does not show that they did so as a means to induce him into a condition of servitude. Evidence indicating other individuals were identified as victims of trafficking by [redacted], [redacted] or [redacted] is not sufficient to demonstrate that they also subjected to trafficking by them, particularly in the absence of probative testimony.

The record also does not show that the Applicant's claimed traffickers actually subjected or intended to subject him to peonage through involuntary servitude based on real or alleged indebtedness. The Applicant's statements indicate that he voluntarily incurred a debt in order to pay [redacted] for various fees related to his H-2B employment and show that his outstanding debt and financial obligations in the Philippines placed considerable financial and psychological pressure on him to keep working for [redacted] for an additional month despite the abusive conditions he experienced there. However, the Applicant did not assert below that [redacted], [redacted] or [redacted] used or intended to use the Applicant's debt to coerce him into peonage. On appeal, the Applicant's statement asserts that [redacted] actively encouraged him to incur debt to pay for the H-2B process, that he informed [redacted]'s HR manager about the debt during his orientation at the resort, and that [redacted] told them during orientation that they would not able to pay off their debts if they did not work hard and finish their contracts. Nevertheless, this general assertion is not sufficient to show by a preponderance of the evidence that [redacted], [redacted] or [redacted] used their knowledge of the Applicant's debt to coerce him into a condition of servitude.

Accordingly, the preponderance of the evidence does not establish that [redacted] [redacted] or [redacted] recruited and obtained the Applicant for his labor and services through the use of fraud for the purpose of subjecting him to involuntary servitude or peonage, as he maintains. He, therefore, has not established that he is a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.

C. Not Physically Present on Account of Trafficking in Persons

As the Applicant has not shown that he was the victim of trafficking, he necessarily cannot establish 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.[5]

[5] The Director denied the T application solely on the basis that the evidence did not establish that the Applicant was physical present in the United States on account of his claimed trafficking. In our NOID, we notified the Applicant that he also did not establish that he was the victim of trafficking as defined by regulation, and he timely responded. Given our determination here that he did not establish that he is a victim of trafficking and therefore necessarily cannot meet the physical presence requirement, our finding is dispositive of the Applicant's appeal, and we therefore decline to reach and hereby reserve the Applicant's arguments regarding physical presence. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Accordingly, the Applicant has not established that he was a victim of a severe form of trafficking and is physically present in the United States on account of such trafficking. He therefore is not eligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.