



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 15895772

Date: APR 08, 2022

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), concluding that the record did not establish that the Applicant is physically present in the United States on account of being a victim of a severe form of trafficking in persons. On appeal, the Applicant submits additional evidence and a brief, reasserting his eligibility. We subsequently issued a Notice of Intent to Deny (NOID). In response to our NOID, the Applicant timely submitted another brief and additional evidence. 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; 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).

The term “severe form of trafficking in persons” is defined, in relevant 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. Section 291 of the Act, 8 U.S.C. § 1361; 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 native and citizen of the Philippines, was admitted to the United States as an H-2A temporary agricultural worker in September 2006. In June 2019, the Applicant filed the instant T application, asserting that he was the victim of labor trafficking by [REDACTED], the labor recruitment company that petitioned for him to come to the United States; [REDACTED]'s representative, L-T-¹; and, the U.S. employers that contracted his services, A-S- Farms in California and an affiliated farm in Hawaii.²

A. The Applicant's Trafficking Claim

The Applicant, in his statements below, detailed how he entered the United States and began working for his employers in 2006 after [REDACTED] recruited him in 2004 by fraudulently misrepresenting the salary and benefits he would receive. The Applicant said he was initially promised by L-T- that his housing, food, and transportation would be paid by his U.S. employer and that he would be able to bring his family to the United States later as well. The Applicant said that [REDACTED] charged him 300,000 pesos (approximately \$6,000 U.S.) to cover the cost of getting his visa, and that he had to borrow money from extended family to pay that amount. Upon arrival in the United States in September 2006, he indicated that he started working for his U.S. employer in California and recalled being paid far less than promised and charged for his housing and other services. He stated that he continued to work for his employers because of the promises of L-T- on behalf of [REDACTED] that he would eventually be able to bring his family to the United States. The Applicant described the work as physically and emotionally demanding and stated he was uncomfortable because he and other workers were always being watched over as they worked.

After working for his employers in California for about two months, the Applicant said he accepted his employer's offer of a job at a farm run by their relatives in Hawaii based on assurances that he would be paid a salary of \$7 an hour and that his food, transportation, and housing would be provided. However, after arriving, the Applicant recalled again being underpaid for his labor, having to work 14 to 16 hours a day every day of the week, and being provided poor living conditions. He recalled being afraid because his employers at one point wanted to confiscate his passport when he complained about not being paid. The Applicant further stated that he feared his employer would do something bad to him if he did not do what he was told and that he was afraid to say anything bad about his employers "because everyone around [him] were [his] employer's relatives." When he and other workers decided they wanted to leave Hawaii due to the low pay and poor working conditions, he indicated that they told his employer there that they wanted to leave and that their employer said his feelings were hurt, that he was upset with them, and warned him that if they returned to A-S- Farms in California their passports would be taken away by their employers there. Nevertheless, around the end of December 2006, the Applicant stated that he and the other workers were allowed to leave and taken to the airport by their Hawaiian employer. The Applicant stated that when their employer dropped them off at the

¹ Initials used to protect individuals' identities.

² Hereinafter, we will refer to both entities and their representatives collectively as the Applicant's "employers."

airport in Hawaii, they were given envelopes with what they expected to be their final paychecks. However, he stated that instead of a paycheck he was given a bill for \$37, representing what he allegedly owed after his employer deducted the cost of his housing, water, electricity, and transportation to and from Hawaii from his earnings.

After returning to California, the Applicant stated one of his California employers' relatives was waiting at the airport to take him back to work for them at A-S- Farms, but he refused to return because he was scared that they would take his passport away. He said that he went to another part of California and tried to find another job but, after temporarily working at an elderly home for two weeks, was unable to find further employment so he returned to work for A-S- Farms in January 2007. Thereafter, on or about March 2007, he indicated that he again left A-S- Farms after becoming afraid of being deported because he had been warned by another employee that S-, one of the owners of A-S- Farms, told her "immigration was coming for the workers." He stated that he contacted L-T- regarding what he had been told, and she allowed him to live with her to avoid being caught by immigration and promised to help him obtain work elsewhere. However, he stated that L-T- again did not fulfill her promises, so he felt he had no other choice but to go back to his employers at A-S- Farms in the summer of 2007. He indicated that he returned to A-S- Farms "because [he] held onto [redacted]'s past promises to help him become a permanent resident and bring [his] family to the United States." He said that at first he was paid consistently for his work, however his employers stopped paying him and the other workers completely shortly thereafter. He recalled that, when he confronted them, his employers told him to wait a little longer and assured him that he would be paid. However, the Applicant explained that he became frustrated and, after waiting about 10 weeks to be paid, he finally found the courage to leave his employers.

The Applicant also discussed and, provided evidence of, various trafficking recovery and mental health care services he has accessed since 2018 when he learned about the services from a friend. He explained he wants to remain in the United States in order to be able to continue accessing those services. However, while he indicated his situation has improved, the Applicant noted that he came to the United States with hopes of helping his family and his inability to do so has been very hard on him because he has not seen his family, including his wife and son, since he left the Philippines in 2006.

On appeal, the Applicant submits an updated personal statement and documentation relating to the trafficking recovery and mental health services he has been accessing and hopes to continue accessing, including an updated letter from his therapist. In his appeal statement, the Applicant provides further detail concerning his trafficking claim, related trauma, and recovery efforts which are generally consistent with his statements below. He also describes being interviewed by Homeland Security Investigations (HSI), within Immigration and Customs Enforcement (ICE), in August 2018 regarding his alleged trafficking experience and explains he fears retaliation from the people he reported if he returns to the Philippines.

After reviewing the record below and evidence on appeal, we issued a NOID informing the Applicant that although the Director found that the Applicant had not established the physical presence

requirement, per our review, the evidence did not establish that he was a victim of trafficking, a predicate requirement for establishing physical presence. Specifically, we noted he had not shown that [] or the Applicant's employers had the intent to subject, or had subjected, him to involuntary servitude as he asserts.

In response to our NOID, the Applicant submits another supplemental statement (NOID statement) and a country conditions report for the Philippines. The Applicant's NOID statement contains an account of his alleged trafficking experience generally consistent with his prior statements, reaffirming that he was underpaid and subjected to a variety of abusive working conditions. The Applicant maintains that he felt coerced by his employers to work under these conditions. He explains that one of his employers in California would always carry a pair of the same large scissors that he and the other workers would use to prune trees on the farm. He recalls that the employer would constantly watch the workers closely and yell at them to continue working while holding the scissors, which made him afraid of being physically harmed or stabbed by his employer if he stopped working and made him feel he had no choice but to remain. Likewise, he states that, in Hawaii, his employer there provided the workers with large knives to clean the ginger they harvested and also carried one of these knives himself. The Applicant further states that because his employer always had the knife, including when he watched and yelled at them for not cleaning the harvested ginger and sweet potatoes well enough, he felt intimidated and afraid of his employer whenever he came near him with the knife in his hand. He recalls that on multiple occasions his employer in Hawaii yelled at him while he was taking a break and asked angrily, "is this your break time?" The Applicant says he felt confused by the question because it was in fact his break on those occasions. However, since his employer was carrying the large pruning scissors, the Applicant was afraid of being harmed and went back to work. He also recalls being isolated while working for his employers in both Hawaii and California, but states he did not feel comfortable leaving because of his inability to speak English and lack of money. He states he felt further unable to leave because he did not know anybody and the farm in Hawaii was high on a mountain away from other people and he did not know if it even had neighbors. He states that his employers were also aware of the large debt he owed to his family members in the Philippines because he told them about his debt whenever they refused to pay him for his work. He says he felt his employers took advantage of him because of his debt and that he had no other choice but to continue working for them against his will.

B. The Applicant Is Not the 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. 22 U.S.C. § 7102(11); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons").³

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).

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). 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). 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 Applicant asserts that he meets the definition of a victim of a severe form of trafficking in persons because he was recruited, transported, and obtained for his labor and services through the use of fraud and coercion in order to subject him to a condition of involuntary servitude. In response to our NOID, the Applicant elaborates that his employers coerced him by threatening him with serious nonphysical and physical harm. Specifically, the Applicant asserts that his employers threatened him with nonphysical harm by isolating him from society and by underpaying him resulting in his inability to pay off his large loan and causing him to remain in a trafficking situation with his employer in order to try to pay off the loan. He also explains that he felt he had no choice but to continue to work for his employers because they “constantly kept sharp objects on their person while yelling at” him and he feared they would physically harm him if he refused to provide them with the labor and services they demanded.

Upon review of the entire record, the Applicant has not demonstrated that [redacted] or his employers recruited, transported, or obtained him for the purpose of subjecting him, or that they subjected him, to involuntary servitude, as he claims. There is insufficient evidence to conclude that the Applicant’s alleged traffickers intended to coerce him into a condition of servitude through use (or threatened use) of physical restraint or injury, abuse (or threatened abuse) of the legal process, or any scheme, plan, or pattern intended to make him believe that, if he did not work for them or continue to work for them, he or others would suffer serious harm, physical restraint, or the abuse of the legal process. See 8 C.F.R. § 214.11(a) (defining involuntary servitude).

As an initial matter, the record lacks evidence, and the Applicant did not assert, that he or any of the other workers were or had reason to believe that they would be physically restrained or that they were

threatened with abuse of legal process in order to make them work in a condition of servitude, as contemplated under the definition of involuntary servitude. The record also does not support the Applicant's claim on appeal that his employers threatened him with serious nonphysical harm by intentionally isolating him on the remote farms where he worked in order to coerce him into continuing to work for them, as he asserts. Rather, the Applicant's statements indicate that he "felt isolated" and was scared to leave his employers because he did not speak English, did not know anybody, and was unfamiliar with the areas around the remote work locations. The evidence does not show that his employers ever intentionally used the farms' isolated locations or his lack of English as a means to coerce him into working for them. Moreover, per his statements, he was able to freely leave his employers on several occasions and returned without harm or interference to look for employment elsewhere. For example, despite the remote location of the farm in Hawaii, when he and the other workers requested to leave, his employer there expressed disappointment and was upset but agreed to their request and dropped them off at the airport, albeit without giving the Applicant his last paycheck. Likewise, after leaving Hawaii, he was able to refuse to return to work for his employers in California and received only a warning by his employers' representative at the airport that his employer "might get mad." The Applicant explained that he refused to return to his employers in California because his employer in Hawaii had warned him they would take his and the other workers' passports if they did. Nevertheless, when he later returned to work for his employers after not being able to find other work, although he was "verbally reprimanded for not immediately returning," there is no evidence that his employers otherwise retaliated against him for his initial refusal or attempted to confiscate his passport as he feared they would. Furthermore, the Applicant was again able to leave his employers twice more without harm or interference, the last occasion because he became frustrated with not being paid for an extended period of time. Additionally, per his account, L-T-, who he alleges had recruited him for the purpose of trafficking him, helped him leave his employers the first time by allowing him to live with her and promising to help him find new work when he told her about his deportation fears.

Similarly, while the Applicant states his employers were aware of the debt he incurred to pay [redacted] for help getting his U.S. visa, there is insufficient evidence to conclude that his employers intentionally withheld his pay so that he would be unable to repay his debt and that they used his debt to coerce him into continuing to work for him in a condition of servitude. As an initial matter, the record does not reflect that his employers ever attempted or intended to keep him in their employment against his express wishes. To the contrary, as stated, the evidence shows that the Applicant freely left his employers to pursue other employment opportunities on multiple occasions and does not reflect that his employers ever retaliated or told him that he could not leave. The Applicant's statements also do not show that his employers withheld pay as means to keep him in debt, rather than for other reasons, including because they lacked sufficient financial resources to pay him.⁴ Moreover, instead of compelling him to stay, the record indicates that his employers' failure to pay him for several weeks was the very reason he left on the last two occasions. The Applicant's account further indicates he chose to return to them because he was unable to find other employment and hoped they would fulfill the immigration-related promises made by [redacted] in the past. We recognize that the Applicant's

⁴ We note that the record indicates that the Applicant was offered the opportunity to go work in Hawaii when the California farm's produce (grapes) froze.

difficult financial situation caused him to feel like he had few other choices but to continue working for his employers during the period he was unpaid. However, his personal reasons and motivations for returning and his reliance on his employers' false promises in recruiting him and retaining him in their employ are not sufficient to establish his employers' kept him in debt and used his debt as a means of coercing the Applicant into working for them in a condition of servitude.

The record also does not support the Applicant's assertion on appeal that his employers had threatened him with physical injury if he refused to work for them because they "constantly kept sharp objects on their person *while* yelling" at him. The Applicant's statements below do not show that his employers ever threatened to physically injure or harm him. In his NOID statement on appeal, he states for the first time that he was afraid of his employers harming him if he did not work for them due to their yelling at him while carrying sharp tools, including knives or scissors. He further states that his employers yelled at him and other workers to reprimand them when tasks were completed incorrectly or when they took breaks during their allotted breaktime. However, the Applicant did not assert that his employers ever physically harmed, or attempted or threatened to harm, him or any of the other workers. Additionally, per the Applicant, the tools his employers carried were of the same type that he and the other workers also used on the farms to do perform their work. Beyond the fact that they were always carrying these tools, there is no indication in the record that his employers used the tools in a threatening manner inconsistent with their work-related duties or that they otherwise threatened to harm the workers if they refused to continue working for them.

We acknowledge the unfortunate and abusive conditions the Applicant endured while working for his U.S. employers and that his employers did not comply with the full terms of their employment agreement with him. However, as explained in this decision, a review of the record does not demonstrate that the purpose of [] and the Applicant's employers in recruiting, transporting, and obtaining him, through fraud or coercion, was to subject him to involuntary servitude, as defined at 8 C.F.R. § 214.11(a), as he asserts, and he therefore has not established that he is a victim of a severe form of trafficking in persons.

C. The Applicant Is 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 Given our determination here that the Applicant did not establish that he is a victim of trafficking and therefore necessarily cannot meet the physical presence requirement is dispositive of the Applicant's appeal, we 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

The Applicant has therefore not established that he is the victim of a severe form of trafficking in persons as required by section 101(a)(15)(T)(i) of the Act. Consequently, the Applicant has not demonstrated his eligibility for T-1 nonimmigrant status.

ORDER: The appeal is dismissed.