U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18295456

Date: JUN. 30, 2022

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification 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), as a victim of human trafficking. The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant did not establish that he was the victim of a severe form of trafficking in persons (trafficking), is physically present in the United States on account of such trafficking, or complied with reasonable requests for assistance from law enforcement. On appeal, the Applicant submits a brief asserting his eligibility for T nonimmigrant status. We review the questions in this matter *de novo*. *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 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) (reiterating the statutory eligibility criteria).

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).

In these proceedings, 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 is a native and citizen of Mexico who entered the United States in or around 1994, received an H-2B visa in 2000, and has departed and returned many times in H-2B status. The Applicant filed his T application in February 2020.

A. The Applicant's Trafficking Claim

The Applicant explained in his personal statements that he started working in the [redacted] Area for [redacted] which owned the [redacted] Center, in 1994, they sponsored him for an H-2B visa in 2000, and he renewed his visa many times. The Applicant's job description was to feed the horses and clean the stables and surroundings. However, he was forced to perform other work, including painting, construction, carpentry, repairs, and welding; the owners would take him to do construction work at their homes or friends' homes; and he was not paid for this extra work. The Applicant's usual workday started around 6 A.M., he worked 10 to 12 hours a day including weekends, and he was never paid overtime. The Applicant described a project where he worked 18 hours a day for 9 months and lived with 15 men in a small trailer house. During his employment, the Applicant made less than the minimum wage, he did not receive health insurance, his housing did not meet required health and safety standards, he did not receive paid vacations or holidays, and he was subjected to constant verbal abuse. The Applicant was trained by employer attorneys regarding questions he would be asked at his H-2B visa interviews at the U.S. consulate and was instructed to inaccurately state he received health insurance, meals, paid vacations, and travel expenses.

The Applicant was threatened with termination of his visa, cancellation of his social security number, and threats of contacting immigration authorities if he did not accept his employer's conditions. The Applicant never failed to follow orders as he feared their threats, and he did not want to lose his visa as it allowed him to visit his family in Mexico and return legally. The Applicant's employer dismissed him when he presented them workers' rights pamphlets provided to him by the U.S. consulate upon visa renewal. In July 2018, the Applicant and other workers reported the abuses they experienced to representatives who visited the ranch from the U.S. Department of Labor (DOL), a complaint was filed by DOL against the Applicant's employer, and he received financial compensation as part of a settlement agreement. Subsequently, his employer evicted him from the property in retaliation.

B. The Applicant Has Not Established He Is a Victim of a Severe Form of Trafficking in Persons

In regard to the Applicant's trafficking claim, the Director acknowledged the evidence submitted by the Applicant with his T application including his brief, statement describing his victimization, court records related to his employer's labor violations, and information on the labor market and crime in Mexico. The Director reviewed the details of his statement and determined that while he appeared to be subjected to labor exploitation and visa fraud, he did not establish that he was subjected to trafficking. The Director issued a request for evidence (RFE) that the Applicant had been trafficked. In response, the Applicant provided a letter from counsel, an updated statement, and a mental health evaluation. The Director reviewed the details of the Applicant's updated statement and acknowledged that his employer treated him unlawfully. However, the Director determined that the unlawful actions did not rise to the level of trafficking. Specifically, the record did not establish the Applicant was

subjected to a condition of servitude induced by a scheme, plan, or pattern intended to cause him to believe that if he did not enter into or continue such condition, he or another person would suffer serious harm, physical restraint, or the abuse or threatened abuse of a legal process. The Director determined while the Applicant was the victim of labor exploitation, visa fraud, and unlawful activity, the actions of his employer did not rise to the level of trafficking.

On appeal, the Applicant contends that he was a victim of trafficking as he was recruited and harbored for labor by fraud, force, and coercion for the purpose of involuntary servitude and peonage. The Applicant asserts that his employer recruited him by promising to hire him as a ranch-hand and secure an H-2B visa for him and harbored him in a house for the purpose of performing labor for the employer's benefit. The Applicant states that he was subjected to fraud as the employer said they would comply with the H-2B visa requirements, but he was forced to pay associated fees for his visa renewals, which is against the law, and he was paid below minimum wage to work extremely long hours. The Applicant mentions the numerous unlawful working and living conditions, and states that he was threatened with not having his visa renewed, cancellation of his social security number, and contacting immigration authorities when he inquired about having to repay these costs, issues with living and working conditions, and issues with benefits. The Applicant states that his employer's actions resulted in a finding that they violated provisions of the Fair Labor and Standards Act relating to minimum wage, record keeping requirements, and unpaid wages.

As relevant in this case, applicants seeking to demonstrate that they were 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"). Coercion is defined 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).

In addressing these three requirements, the record reflects that the Applicant worked for his employer starting in 1994, and he was then recruited to work for them as a ranch hand under the H-2B visa program in 2000. However, the Applicant ended up performing additional work outside of the parameters of his H-2B visa, he was not paid under the terms of his H-2B visa, and he was given unlawful work and living conditions as described in his trafficking claim above. As such, the Applicant's employer recruited him through fraud. However, the Applicant has not established that the actions were taken for the purpose of subjecting him to involuntary servitude or peonage. 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.

While the Applicant details threats made by his employer if he did not comply with his work conditions, the record does not establish he was forced to work for them, rather it reflects that he voluntarily agreed to work for them. The Applicant knowingly misrepresented information at his H-2B visa renewal interviews and voluntarily renewed his visa many times per his statement. The record shows that the Applicant did not want to lose his H-2B visa as it allowed him to visit his family in Mexico and return legally. While the conditions the Applicant worked in were unlawful, he was not forced to work for his employer 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. While there were threats to his legal status made, this did not result in involuntary action by the Applicant. Furthermore, the record does not reflect that the Applicant's employer forced him to continue working for the company or told him he was prohibited from quitting; the record reflects that the Applicant voluntarily worked in these conditions in order to be able to travel to and from the United States. Therefore, the Applicant has not established that he was subjected to involuntary servitude.

In addition, the Applicant has not established that he was subjected to peonage. Peonage means "a status or condition of involuntary servitude based upon real or alleged indebtedness." 8 C.F.R. § 214.11(a). In this case, the Applicant has not established that he was in a condition of involuntary servitude, as discussed above, and he has not provided evidence of real or alleged indebtedness.

Accordingly, upon *de novo* review of the foregoing, the Applicant has not established by a preponderance of the evidence that he is the victim of trafficking as section 101(a)(15)(T)(i) of the Act requires.

C. The Remaining Grounds for Denial

As the Applicant has not established that he was the victim of trafficking, he cannot establish that he is physically present in the United States on account of such trafficking or complied with reasonable requests for assistance in the investigation or prosecution of trafficking.

III. CONCLUSION

We recognize that the Applicant endured unlawful conditions while working in the United States. Nevertheless, he has not established by a preponderance of the evidence that he was a victim of trafficking, and he therefore has not established that he is physically present in the United States on account of such trafficking or that he has complied with reasonable requests for assistance from law enforcement. Accordingly, the Applicant is not eligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.