U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19271161

Date: DEC. 09, 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. sections 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. After granting a subsequent motion to reopen, the Director reaffirmed the denial on the same basis. 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. 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).

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). 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).

II. ANALYSIS

The record reflects that the Applicant, a native and citizen of the Philippines, entered the United States in 2007 as an H-2B temporary worker after being recruited by [redacted], a recruitment agency in the Philippines, and its affiliate in the United States, D-H-,[1] to work in a hotel in Florida. In March 2018, the Applicant filed the instant T application, asserting that he was the victim of labor trafficking by [redacted] and its associates.

A. The Applicant's Trafficking Claim

In his statements before the Director, the Applicant claimed that D-H- recruited him for a position in the hospitality industry in the United States and assured him that he would make enough money to pay back the private loans he took to pay recruitment service fees totaling more than $3500. He said that D-H- promised him free room and board and guaranteed that his U.S. visa would be renewed when it expired. However, he indicated that when he arrived in the United States in November 2007, he was taken to a three bedroom apartment that he had to share with seven individuals and was required to pay rent of $100 a week, which was automatically deducted from his paychecks. He also stated he found out that he would not receive free transportation to work and instead had to walk thirty minutes each way.

The Applicant stated he was placed as a dishwasher at a [redacted] hotel in Florida but did not earn enough income to buy food and resorted to eating food from the trash. He recalled that at an orientation meeting he was told that if he did not comply with the work conditions he would be deported. He said that the work was very fast paced, and he was not given appropriate safety equipment, even after he asked for gloves, which led to him getting rashes on his hands from the hot water and chemicals. He indicated that he was constantly worried about not being able to pay back the private loans he took out to pay the recruitment and placement fees, and he was especially worried because his parents' land was used as collateral for the loans. The Applicant said that [redacted] was aware that he and his co-workers had borrowed money to pay for the recruitment fees and were indebted because several of his co-workers begged for more work hours or for permission to work part-time somewhere else to pay back their debts. He indicated that management, however, did not care, did not provide extra work hours, and did not allow him and his co-workers to work elsewhere. He said management would exert control over him and described one occasion when a housemate asked D-H- if they could rent a cheaper apartment but was told they were not allowed to live anywhere else until their contract was completed. He also recounted not being permitted to have any overnight guests. The Applicant said he left his job after his girlfriend's uncle loaned them money for a bus ticket to California. He explained he was scared that D-H- would report him to immigration but felt that his only choice was to leave to look for better employment so that he could make payments on his loan so his family would not lose their land.

In support of his T application, among other evidence, the Applicant also submitted statements from his girlfriend and one of his relatives, a pay stub, two psychological evaluations, copies of correspondence with law enforcement reporting his trafficking claim, country conditions articles for the Philippines, and background reports addressing trafficking.

[1] Initials used to protect individuals' identities.

The Director initially denied the T application in December 2019 after determining that the Applicant had not demonstrated that he was physically present on account of being a victim of trafficking. After granting a subsequent motion to reopen, the Director issued a request for additional evidence (RFE) to establish that the Applicant was a victim of trafficking and to demonstrate he was physically present on account of such trafficking. After considering the Applicant's RFE response, the Director again denied the petition in April 2021, finding again he had not shown that he is physically present on account of his trafficking.

On appeal, the Applicant submits a declaration of support from the [redacted] that indicates he is being provided case management and recovery services for victims of trafficking. After reviewing the record as supplemented on appeal, we subsequently issued a NOID informing the Applicant that our *de novo* review of the evidence did not establish that he was a 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.

In the NOID, we noted that the evidence, including the Applicant's statements describing his trafficking claim, demonstrated that he was the victim of labor exploitation, but did not establish that [redacted] D-H-, or their associates used (or threatened use of) physical restraint or physical injury or abused (or threatened abuse of) the legal process in order to subject him to a condition of servitude, or that they had a "scheme, plan, or pattern intended to cause [him] to believe" that he or someone else "would suffer serious harm or physical restraint" if he did not enter into or continue in such a condition. *See* 8 C.F.R. § 214.11(a) (defining "involuntary servitude"). We informed the Applicant that he, therefore, had not established that his alleged traffickers recruited him "for the purpose of subjection to involuntary servitude" or actually subjected him to involuntary servitude, as he claimed. *See id.* (defining "severe forms of trafficking in persons"). We also noted the record lacked evidence demonstrating that he was recruited for the purpose of subjection to "peonage, debt bondage, or slavery." *See id.*

B. The Applicant Is Not the Victim of a Severe Form of Trafficking in Persons

As the Applicant points out on appeal, the Director determined below that the Applicant is a victim of labor trafficking. However, as explained in our NOID, our *de novo* review of the record indicates that this requirement has not been established by a preponderance of the evidence. Applicants seeking to demonstrate they are victims of labor trafficking must show: (1) 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 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 Applicant has submitted a brief, but no additional evidence in response to our NOID to overcome our finding that he has not established that he is a victim of labor trafficking.

The Applicant asserts that he meets the definition of a victim of a severe form of trafficking in persons because he was recruited for his labor and services through the use of fraud and coercion in order to subject him to a condition of involuntary servitude and debt bondage. Specifically, he claims he was subjected to involuntary servitude through the use of threats of deportation and a scheme, plan, and pattern intended to coerce him to believe that if he did not continue to work for his U.S. employer for whom he was recruited, he would suffer serious harm, namely being unable to pay off the debt he incurred as a result of the recruitment process.

1. Involuntary Servitude

The Applicant has not demonstrated that his alleged traffickers recruited him for the purpose of subjecting him, or that they subjected him, to involuntary servitude as described in 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).

Here, the record does not indicate the Applicant's alleged traffickers ever used physical force or otherwise coerced him through threats of physical restraint or injury, serious harm, or abuse of the legal process to make him work for them or place him in a condition of servitude. Rather, the Applicant's account indicates he continued working for his alleged traffickers because he was being paid for his work, although earning less than expected, and feared returning to his country and being unable to repay the loans he and his family had taken out so that he could come to the United States. Moreover, his statements indicate he was able to later leave his employment through [redacted] and with his H-2B employer to seek better employment elsewhere after he determined that he was not earning enough to repay his loans.

We acknowledge the poor physical conditions under which the Applicant described working for his H-2B employer and that, contrary to the promises made by [redacted] and D-H-, he was charged for his housing, not provided free transportation to work, and his income relative to his expenses was much lower than expected. However, the record does not reflect that his employers' actions were part of a scheme, pattern, or plan intended to prevent him from paying off his debts and using his debts to coerce him into continuing to work for them. The Applicant claims that his income level made it very difficult to repay his debts and fulfill his financial obligations to his family in the Philippines, which placed considerable stress on him to continue working for his H-2B employer despite the difficult

working conditions. Nevertheless, the Applicant's statements show he voluntarily incurred his debts to third parties in the Philippines in order to pay [redacted] the fees related to his H-2B employment application process. Although he did not borrow money from [redacted] or its affiliates, the Applicant reasons they were aware of his debt because they were generally aware that all of the Filipino workers had borrowed money to pay their recruitment fees. He stated that his employers were aware of the workers' debts because several of his coworkers had begged for more hours and permission to seek outside employment to pay off their debts. He reasoned that his employers' refusal to grant those requests indicated they intended to trap him and his coworkers at their jobs by limiting their ability to repay their debts. Nevertheless, although his employers may have been aware that some of his co-workers had outside debts, the Applicant's account lacks sufficient substantive detail to support his conclusion that they also were aware of his debt and used such knowledge to coerce him into working for them. While the record shows that his employers did not fully comply with the terms of their employment agreement with him and engaged in exploitative employment practices, it does not show that [redacted] D-H-, his H-2B employer, or any of their associates encouraged him to incur, or specifically knew of, his personal debts and used, or intended to use, his financial obligations to threaten or otherwise coerce him into a condition of servitude.

The Applicant also asserts that we did not properly consider in our NOID the alleged threats of deportation by his employer and that his employers' statements regarding deportation establish he was subjected to involuntary servitude through threatened abuse of the legal process, and he cites *Martinez-Rodriguez v. Giles*, 31 F.4th 1139, 1143 (9th Cir. 2022), in support of his claim. We first note that *Martinez-Rodriguez* is not applicable here in determining the Applicant's eligibility for T nonimmigrant status under the Act, as that case involved forced labor complaints brought by Mexican employees against their U.S. employers under the civil liability provisions of the Trafficking Victims Protection Reauthorization Act (TVPRA). *Id.* Further, *Martinez-Rodriguez* is distinguishable, as the facts leading to a finding of forced labor there are not analogous to those presented here regarding the Petitioner's trafficking claim. There, in addition to being recruited based on false promises concerning the conditions of their employment, the *Martinez-Rodriguez* plaintiffs provided detailed accounts of their employer making numerous and repeated references to the possibility of their deportation throughout their employment to foster a belief that they would in fact be deported if they did not go along with what their employer wanted, specifically their labor. *Id.* at 1142-47, 50-55. Here, in contrast, the Applicant only generally asserts that his H-2B employer told him and other new H-2B workers during their orientation that they would be deported if they did not finish their contracts and that, after he left his employers, a former coworker warned him not to return because his employers allegedly wanted to have him deported. Counsel asserts in response to the NOID that the Applicant was threatened with deportation if he stopped working as a dishwasher and that his alleged traffickers threatened to have him deported if they left their employ. However, the Applicant's statements do not reflect that he claimed that his employers actually threatened with deportation. Although the Applicant characterizes his employer's statements at his orientation as a threat, he did not provide any substantive details regarding his employers' statements or actions that would support the conclusion that the statements were threats intended to coerce him into entering or continuing in a condition of servitude, as opposed to his employer informing the Applicant and other employees of their mandatory notification requirements when employees leave their H-2B employment. *See* 29 C.F.R. § 503.16(y) (requiring that H-2B employers to notify the Department of Homeland Security when an H-2B separates from employment prior to the end date of the H-2B employment period). Additionally, the Applicant also did not indicate that D-H- or his employers

engaged in any subsequent retaliation against him or other employees who left, tried to leave, or otherwise broke their contracts. And, he does not allege any other instances in which [redacted] D-H-, his H-2B employer, or any of their associates threatened him with arrest, deportation, or any other abuse of the legal process.

Based on the foregoing analysis, the Applicant has not met his burden to show that his alleged traffickers subjected or intended to subject him to involuntary servitude, as described under 8 C.F.R. § 214.11(a).

2. Debt Bondage

The Applicant has also not demonstrated that his claimed traffickers actually subjected, or intended to subject, him to debt bondage, as he claims. As used in section 101(a)(15)(T)(i) of the Act, the term "debt bondage" is defined, in pertinent part, as "the status or condition of a debtor arising from a pledge by the debtor of his or her personal services . . . as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. 8 C.F.R. § 214.11(a). To satisfy this definition, the Applicant must demonstrate that his personal services were a security for debt, and either (1) the value of those services was not applied toward the liquidation of debt, or (2) the length and nature of those services were not limited and defined. *Id*; *see, e.g.*, *U.S. v. Farrell*, 563 F.3d 364, 374 n. 4 (8th Cir. 2009) (discussing a finding of debt bondage when "[g]iven the continually mounting expenses, at no point was the value of the workers' labor sufficient to liquidate the debt and there was, in effect, no limit to the length of the services required to satisfy the obligation or even a limit on the amount owed.").

Here, the record does not show that the Applicant was indebted to his alleged traffickers, or that he pledged his labor or services to them as security for such a debt. Instead, as discussed, he voluntarily secured loans from third-parties to pay [redacted] recruitment fees in order to obtain H-2B employment in the United States. The record does not show that [redacted] his U.S. employer, or their associates forced or tricked him into incurring his financial obligations, or that the Applicant pledged his labor and services as a security to them to ensure payment of his debts to his lenders, as contemplated by 8 C.F.R. § 214.11(a).

We acknowledge the Applicant's assertion that we did not consider in our NOID the letter from [redacted] submitted on appeal finding him qualified to receive case management and support services as a victim of trafficking. However, although not specifically referenced in our NOID, we considered that letter and issued the NOID to afford the applicant an opportunity to establish his eligibility after our review of the record as a whole, including the letter from [redacted] did not establish that he is a victim of trafficking. The letter from [redacted] indicates that the Applicant was determined to be a victim of labor trafficking rather than labor exploitation and asserts that the alleged traffickers used threats of deportation to obtain the Applicant's labor. However, the letter did not provide any further substantive details regarding the Applicant's trafficking claim to establish his eligibility.

As a final matter, the Applicant also asserts our reversal of the Director's prior finding that he was subjected to involuntary servitude amounts to an arbitrary and capricious application of the law because we failed in our NOID to adequately explain why the Director's finding was erroneous and

did not properly take into consideration all the evidence. He further argues we are precluded from withdrawing the Director's determination that he was subjected to involuntary servitude and reasserts his eligibility based on evidence indicating that he has met the physical presence requirement.

As stated, we exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016); *Matter of Christo's Inc.*, 26 I&N Dec. at 537 n.2. Consequently, we are not required to defer to findings made in prior decisions. Moreover, the burden of proof is on the 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.at 375. Here, contrary to the Applicant's assertions, our NOID properly explained the deficiencies in the record relating to his trafficking claim and afforded him an opportunity to respond with additional arguments and evidence. We have considered the record, including his NOID response, and are sympathetic to the difficult circumstances the Applicant describes experiencing which caused him to fear deportation and inability to pay off his debts. However, as discussed, a preponderance of the evidence does not show that [redacted] D-H-, or his U.S. H-2B employer recruited him for labor and services through the use of fraud or coercion for the purpose of subjecting him to involuntary servitude or debt bondage, as he claims. 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. The Applicant Is Not Physically Present on Account of Trafficking in Persons

As the Applicant has not shown that he is 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.[2]

III. CONCLUSION

As the Applicant has not established that he is a victim of a severe form of trafficking in persons, he is ineligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.

[2] 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).