U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19865979

Date: FEB. 8, 2022

Motion on Administrative Appeals Office Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under 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 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 she was the victim of a severe form of trafficking in persons. We dismissed the Applicant's subsequent appeal, and the matter is now before us on a motion to reconsider. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible, relevant evidence for us to consider; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5). Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or 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).

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as T-1 nonimmigrants 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. 8 C.F.R. §§ 214.11(b)(1)-(4). The term "severe form of trafficking in persons" is defined, in 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).

II. ANALYSIS

As discussed in our decision on appeal, the Applicant last entered the United States without inspection, admission, or parole in 2008 and filed her T application in June 2018. The Director denied the T

application based on a determination that the Applicant had not provided sufficient evidence to meet her burden of establishing by a preponderance of the evidence that she was the victim of a severe form of trafficking in persons. On appeal, we agreed with the Director, concluding that the Applicant had not shown that she was trafficked after being smuggled into the United States, as she claimed. We noted that although the Applicant performed work in the form of cooking and cleaning while her smugglers held her in a house after crossing the border into the United States, the evidence did not establish that the smugglers intended to place, or actually placed, the Applicant in a condition of servitude, as required to establish that she was subjected to involuntary servitude. 8 C.F.R. § 214.11(a).

On motion, the Applicant asserts that we erred by relying on a definition of involuntary servitude from *U.S. v. Kozminski*, 487 U.S. 931, 953 (1988), which she contends is inapplicable to T applications under section 101(a)(15)(T) of the Act. In our decision, we cited *Kozminski* when discussing our determination that the Applicant had not established that she was in a condition of being compelled to provide labor or services for her smugglers, noting that the Court in *Kozminski* found that "involuntary servitude" requires compulsion of services and that not all situations in which labor is compelled by physical coercion violate the Thirteenth Amendment. The Applicant contends that our reference to *Kozminski* was in error because the U.S. Supreme Court issued that decision years before Congress created T nonimmigrant status, so the Court could not have contemplated the definition of involuntary servitude in the T context. Further, she notes that *Kozminski* relates only to the definition of involuntary servitude "for purposes of criminal prosecution under [18 U.S.C.] § 241 or § 1584" and violation of the Thirteenth Amendment, 487 U.S. at 952, and therefore contends that "many of the Court's statements in *Kozminski* are not relevant or binding in the context of T nonimmigrant status." Additionally, the Applicant states that the definition of involuntary servitude for the purposes of T nonimmigrant status is "more expansive" than the definition in 18 U.S.C. § 241 and § 1584. She correctly states that in the preamble to the 2016 Interim T Rule, the Department of Homeland Security (DHS) noted the removal of the citation to *Kozminski* in the regulation "to avoid the potential for confusion," because "DHS did not intend to exclude psychological coercion from the definition of involuntary servitude," and the definition of "forced labor" in the Trafficking Victims Protection Act of 2000 "was meant to 'expand[] the definition of involuntary servitude contained in *Kozminski*." *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92272 (Dec. 19, 2016).

Although we cited *Kozminski* in our decision, the evidence does not establish that we applied an incorrect definition of involuntary servitude, as the Applicant alleges. As discussed above, the citation to *Kozminski* was removed from the regulation in order to clarify that psychological coercion, in addition to physical coercion, is included in the definition of involuntary servitude in the T nonimmigrant status context. 81 Fed. Reg. 92266 at 92272. In our decision on appeal, we did not state that psychological coercion cannot be considered or otherwise cite *Kozminski* to "constrain" the meaning of involuntary servitude, as the Applicant asserts, but instead referenced the case only in relation to our determination that although the Applicant performed labor, the evidence did not establish that she was placed in a condition of servitude. Moreover, we expressly relied on the definition of involuntary servitude from the applicable regulation at 8 C.F.R. § 214.11(a), which defines the term 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 . . . ." We explained that

the Applicant did not establish that the smugglers placed or intended to place the Applicant in a "condition of servitude," as the definition of involuntary servitude at 8 C.F.R. § 214.11(a) requires, because the evidence indicated that she participated in occasional chores related to the upkeep of the house in which she and the other migrants waited before being transported to their final destinations.

On motion, the Applicant states that we did not justify our conclusion that she was not placed in a condition of servitude, and failed to consider evidence that she was subjected to physical coercion and therefore compelled to provide labor and services for her smugglers. She states that she "had no choice but to work . . . no freedom of movement and no ability to make decisions for herself," and the fact that the smugglers had previously raped her during the smuggling journey amounted to "physical coercion" which caused her to "obey their orders to work and serve them" to avoid being harmed again. She also cites *Kozminski* herself, asserting that she was in a situation of slavery or servitude in that the smugglers "had 'complete domination' over her and that she had a 'lack of personal liberty resembling the conditions in which slaves were held prior to the Civil War.'" However, she does not address on motion the portion of our decision in which we discussed that her work was occasional and related to the upkeep of the house and contributed to the ongoing smuggling operation, rather than a condition of involuntary servitude.

Furthermore, contrary to the Applicant's assertion that she was forced to work and therefore subjected to involuntary servitude "*after* the smuggling arrangement was complete" (emphasis in original), the Applicant's statement indicates that she was held in the house and contributed to her stay there while awaiting transport to her final destination in Florida. After she and other migrants remained at the house for approximately two weeks, during which time she had to serve meals to the smugglers and clean the house once every day or two for about two to three hours each time, the smugglers completed the smuggling agreement by taking her to Florida. She also indicated in her statement that the smugglers told her she was being held in the house while they attempted to contact her cousin to determine where to drop her off, and that there was a delay because the smugglers claimed difficulty contacting her cousin. The evidence does not establish that the Applicant was held and placed into a condition of involuntary servitude after the smuggling operation was completed, but instead that she waited at the house and participated in its upkeep while the operation was still ongoing.

The Applicant also alleges that we failed to consider evidence she submitted of cases similar to her own. She discusses *U.S. v. Soto et al.*, Crim. Case No. M-03-341-S2, Case No 7:03CR00341-S3-008 (S. Dist. Texas July 22, 2003), in which the defendants were convicted of involuntary servitude and human trafficking after "holding women against their will . . . and forcing them to do work without pay" until their smuggling debts were repaid. U.S. Department of Justice Press Release, *Justice Department Announces Sentencing in South Texas Human Trafficking and Sex Slavery Prosecution*, Jan 29, 2004. The Applicant states that the victims in *U.S. v. Soto* were in a situation similar to hers in that they were held in "safe houses" after being smuggled into the United States and forced to work until their debts to the smugglers were paid. Additionally, she cites *U.S. v. Leon-Aldana, et al.*, Crim. Case No. 07CR0035-L (S.D. Cal. Jan. 2006), in which the defendants were indicted, in part, for providing and obtaining forced labor. The indictment noted that the defendants, in part, recruited aliens for a smuggling operation and, after transporting them across the border into the United States, obtained employment for those aliens and ordered them to work under threat of harm. Fees the aliens owed the smugglers were deducted from their earnings. The Applicant contends that "there are no significant distinctions between" *U.S. v. Soto* and *U.S. v. Leon-Aldana* and her own case "in terms of

the way the captivity arose (through a smuggling arrangement), why the victims were held (for repayment of a debt owed for smuggling fees), and what the victims were forced to do while held captive (work for free)." However, the facts in the Applicant's case differ from those in the case examples she submitted. Unlike the victims in *U.S. v. Soto* and *U.S. v. Leon-Aldana*, the Applicant has not submitted evidence that she was forced to work to repay a debt or that the smugglers obtained employment for her and took her earnings. We analyze the Applicant's T application in light of the specific facts of her case, under the requirements of section 101(a)(15)(T)(i) of the Act and 8 C.F.R. § 214.11(a), which were not at issue in the criminal cases the Applicant references. In these proceedings, the Applicant bears the burden to establish that she meets the requirements for T nonimmigrant status by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369 at 375.

The Applicant's arguments on motion do not establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision, as required to meet the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). Accordingly, she remains ineligible for T nonimmigrant status under section 101(a)(15)(T) of the Act.

ORDER: The motion to reconsider is dismissed.