



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

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

In Re: 20347439

Date: FEB. 10, 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 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 evidence did not establish that the Applicant was a victim of a severe form of trafficking in persons, is physically present in the United States on account of a severe form of trafficking in persons, and complied with reasonable requests for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. On appeal, the Applicant submits a brief and no 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 an applicant may be classified as a T-1 nonimmigrant if he or she: is or has been a victim of a severe form of trafficking in persons; is physically present in the United States on account of such trafficking; has complied with any reasonable requests for assistance in the investigation or prosecution of the trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

The term “severe form of trafficking in persons” is defined as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or 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) (2017).

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, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a 37-year-old native and citizen of El Salvador, entered the United States without being inspected, admitted, or paroled in October 2015. In February 2020, the Applicant filed the instant T application, asserting that she was the victim of a severe form of trafficking in persons by her smugglers.

A. The Applicant's Trafficking Claim

The Applicant submitted two affidavits in support of her T application. In the 2021 affidavit, submitted in response to the Director's request for evidence (RFE), the Applicant indicated that she came to the United States after being threatened by gangs who extorted her and kidnapped and assaulted her son. In the 2019 affidavit, submitted with her T application, the Applicant specified that she left El Salvador in September 2015 with the assistance of a coyote (smuggler) named [REDACTED]. She traveled in a group that included her son, sister-in-law and friend. The Applicant recalled that they traveled for two days through Guatemala, before crossing to Mexico. In Mexico they stayed in various cities over several weeks. The Applicant described staying in one 'safe house' in [REDACTED] Mexico for 10 days. While she was there, she was forced to cook several times a day for everyone in the group. In her 2019 affidavit, the Applicant also recalled [REDACTED] being kicked off the truck she was traveling in by a group of men near [REDACTED] Mexico, and never saw him again. The new driver told the group that they belonged to him now, and that they had to do everything that he told them, or they would get put in an ice box that was in the back of the truck. She also detailed the driver's attempt to sexually assault her while on the bus. She describes being able to fight him off her, but he threatened to try again later. The Applicant does not describe any further attempted sexual assaults while being smuggled.

In her 2019 affidavit, the Applicant stated that she travelled to a safe house in [REDACTED] Mexico, that was guarded by men with guns. In [REDACTED] she met a smuggler named [REDACTED] who was the head smuggler of the group. She found out that [REDACTED] and his men were members of the [REDACTED] gang in Mexico, and saw drugs being moved around. Her new smugglers called her father to demand additional payment for the smuggling of herself and her son, sister-in-law, and friend. They stayed in the [REDACTED] safe house for 15 days. While the smugglers waited for payment from the Applicant's father, they forced her to cook and clean for everyone in the safe house. They told her that if she wanted to survive, she must do everything they asked of her. The Applicant was not compensated for her work at the safe house. She then describes being moved to another safe house in [REDACTED] that was owned by [REDACTED]'s daughter. There, she was also forced to cook and clean, and was told she would be killed if she did not follow the orders. Her 2019 affidavit also explains that after her father paid the smugglers the additional financial demand, she crossed the United States border by walking for three nights and crossing the Rio Grande River. She arrived at a safe house in [REDACTED] Texas but the smugglers again called her father to demand more money from him before they would release her. In [REDACTED] the Applicant stated that she again had to cook and clean for everyone. Eventually, the Applicant's father paid the smugglers and they released her and her son, sister-in-law, and friend.

The remaining relevant documentary evidence submitted in support of her T application include a copy of a letter from the National Human Trafficking Hotline indicating that the Applicant reported

her alleged labor trafficking. In addition to her affidavits, she also submitted copies of background articles and reports on human trafficking and victims of sexual violence, other country condition reports. On appeal, the Applicant submits a brief and no additional evidence.

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

The Director concluded that the evidence did not establish that the Applicant was the victim of trafficking during the course of a smuggling scheme. The Applicant has not overcome this finding on appeal.

Applicants seeking to demonstrate that they are victims of labor 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 means, in relevant part, “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 or physical restraint against any person” 8 C.F.R. § 214.11(a). Involuntary servitude is “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 . . . [and] 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 . . . [and] encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury” *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). Slavery is defined as a “situation in which one person has absolute power over the life, fortune, and liberty of another.” *Id.*

The Applicant, through counsel, contends that her smugglers harbored, transported, obtained, and provided her for labor and services through the use of force, fraud, and coercion for the purpose of subjecting her to involuntary servitude.

As an initial matter, the record does not show that the smugglers harbored, transported, obtained, or provided her for labor and services through fraud. In her statements before the Director, she did not allege that her smugglers made any promises to her, and to the contrary, she stated that she “hired” her smugglers to take her to the United States. The Applicant does not allege on appeal that her smugglers or their associates made any false promises to obtain her consent to the smuggling arrangement. In fact, her appeal statement indicates that her smugglers never explained anything about the journey, and there is no indication that the Applicant inquired about the journey before continuing with the arrangement. Consequently, the record does not show that she continued with the smuggling arrangement because of any false promises from her smugglers.

We need not reach whether the smugglers used coercion to harbor or transport the Petitioner for labor and services because a preponderance of the evidence does not demonstrate that the smugglers harbored or transported her for the purpose of subjecting her to involuntary servitude, as she asserts. Rather, her accounts of her experiences show that the smugglers harbored her for the purpose of

carrying out and completing their smuggling arrangement, which included transporting her to the United States and maintaining and housing her in the interim. The Applicant's affidavits generally assert that she was forced to cook and clean for others without pay at the safehouses in Mexico, and then again at the safe house in [] while waiting for her father to pay the additional financial demands required by the smugglers before they would release her. The Applicant's affidavits explained that the smugglers brought her across the border after her father made a payment to them. The Applicant indicated that after she was brought to the United States by the smugglers, she was again kept in a safe house and was required to cook and clean while the smugglers waited for an additional payment from her father. After her father paid the last financial demand, the smugglers released the Applicant, thereby completed her smuggling arrangement. The Applicant's evidence therefore shows that she was harbored solely until the smuggling agreement could be completed. While we acknowledge that the Applicant may not have expected to cook and clean during her journey, the record shows that the labor she performed at the safehouses was for the purpose of maintaining and housing her and the others being smuggled until the smuggling arrangement could be completed, and not part of a simultaneous scheme by her smugglers to subject the Applicant to involuntary servitude.

The Applicant asserts on appeal that the evidence demonstrates that her smugglers harbored her for the purpose of subjecting her to involuntary servitude because they actually kept her in a condition of servitude through a scheme intended to make her believe she could not leave by threatening her and keeping her in a safehouse under armed guard such that she believed she would never be able to leave. *See* 8 C.F.R. § 214.11(a) (defining "involuntary servitude"). However, the Applicant's affidavits expressly state that the plan when her smugglers brought her to the safehouse was to wait there until her father paid additional money for the smuggling. She makes no assertion that any of the smugglers ever threatened to change this plan or otherwise informed her that she would be forced to remain and work and would not be taken to the United States as per the smuggling arrangement. To the contrary, as stated, after several waiting periods at safehouses, her smugglers helped her cross the border after they were paid for doing so.

An applicant's voluntary consent to or participation in a smuggling arrangement is not determinative in assessing whether a trafficking situation arose during the course of the smuggling. Contrary to the Applicant's assertions in her brief submitted on appeal, the Director's decision noted the distinction between trafficking and smuggling under federal law and correctly recognized that a trafficking situation may arise during the course of smuggling, but ultimately determined that the record did not show that such situation arose during the Applicant's smuggling.

As the Applicant has not established that her smugglers harbored her for the purpose of subjecting her to involuntary servitude during the course of her smuggling, as she asserts, she has not established that she is a victim of a severe form of trafficking, in the form of labor trafficking, as defined at 8 C.F.R. § 214.11(a).

C. The Remaining Grounds for Denial

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

decline to reach and hereby reserve the Applicant's arguments regarding these issues. *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 applicant is otherwise ineligible).

III. CONCLUSION

We recognize the Applicant's claim that she suffered terrible conditions while being smuggled into the United States. Nevertheless, she has not established that she was a victim of a severe form of trafficking during the course of her smuggling, and she therefore necessarily did not establish that she is physically present in the United States on account of such trafficking or complied with a reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. Accordingly, the Applicant is not eligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.