



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

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

In Re: 20561442

Date: FEB. 11, 2022

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant status 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 he is the victim of a severe form of trafficking in persons, is physically present in the United States on account of such trafficking, and complied with reasonable requests for assistance from law enforcement. The matter is now before us on appeal. 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 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 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 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) (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 native and citizen of Mexico, last entered the United States in September 2019. He filed his T application in August 2020.

A. The Applicant's Trafficking Claim

In support of his T application, the Applicant submitted a statement indicating in relevant part that he, his spouse, and their two U.S. citizen sons were living in Mexico when his son began to receive threats from gang members at school. After his son was beaten for refusing to pay a fee to gang members and then threatened when the Applicant's spouse reported the incident to the police, the family decided to go to the United States for their sons' safety. The Applicant and his spouse hired a smuggler who promised to take them over the border in a one-day trip for a fee of \$7000 per person. When the Applicant and his spouse reached a town in Mexico where they were instructed to meet the smuggler, they paid the smuggling fee in full and he made them get into a taxi driven by a man with a gun. The smuggler and driver took the Applicant and his spouse to a two-bedroom house where about 30 other migrants were held, supervised by ten guards outside. Upon arrival at the house, the smugglers took their identification documents and cell phones to prevent the Applicant and his spouse from "giv[ing] the location or tell[ing] who [they] are with." The smugglers also wrote down the contact information from their phones to show that "they were not playing around."

The Applicant and his spouse "were coerced into staying in that house" for around two weeks, during which time they each had to pay the smugglers a fee of 200 pesos per day. The Applicant noted that "[t]he men would extort all of us. They told me that if we did not have the money, they had our contacts and something bad would happen to my loved ones." The smugglers dialed the numbers for the Applicant's family members, giving him two minutes to ask them to transfer money for the daily payments. The smugglers did not allow him outside the house except when they escorted him to the bank to withdraw money. The doors and windows of the house were locked and armed guards stood outside. The windows were covered in blankets and the inside of the house was very dark. There was no furniture in the house and everyone slept on the floor, some without blankets. They received one small meal per day at lunchtime, plus a cup of water each morning and evening.

The smugglers required the Applicant to "clean the bathroom, mop the house, and wash dishes every day," using strong cleaning chemicals without any gloves or other protective gear. The Applicant felt he could not object because the smugglers "were armed and threatened [him]." They ridiculed and called him names, and when he tried to speak up on one occasion, a smuggler hit him on the head with a gun. The Applicant stated, "[W]e were kept locked inside of the home as their servants. We waited on the traffickers and tended to their needs. We were forced to cook and clean for them. I was forced to clean every day that I was there." It was hot in the house, and the Applicant felt "weak and frail" due to the small amounts of food and water he received.

After two weeks in the house, the smugglers took the Applicant, his spouse, and four other people on a three-hour car ride into the mountains. There, they were forced to walk for hours and the Applicant "had to carry heavy boxes of food." The Applicant and his spouse doubted at this point that they would ever be reunited with their family, and thought the smugglers would make them work in the United States. They arrived that night to a ranch, where the men slept in one area and the women in another. Early the next morning, they woke up and started walking again, along with two other groups of migrants and a total of 20 to 30 armed guards. They were fed only small amounts of food, and the Applicant was forced to carry boxes again. They stayed at a campsite that night, where they slept on the ground without blankets, and walked again the next day until they arrived at a place with "military

people.” The migrants were separated into groups, apparently in a decision about who would cross first.

The next morning, the smugglers told the Applicant, his spouse, and two other men that they would be crossing the border. They were given coffee but no food, and were forced to run for hours without stopping. The smugglers pushed, kicked, and threatened “to unload the gun on [them]” if they did not keep going, and said that if they were caught and returned to Mexico, they would be forced to repay the money they had caused the smugglers to lose, and would then be killed. Later that afternoon, they arrived at a tree where they waited until a truck picked them up. The driver was doing drugs, driving erratically, and threatening to beat them up if they were caught. About two hours into the drive, immigration officials pulled the truck over and detained them. The Applicant and his spouse reported their experience and agreed to a request from immigration officials to serve as witnesses in a criminal case against the driver of the truck. The Applicant is afraid to return to Mexico because he believes he and his family would be hurt or killed by the smugglers and the others in their network. He continues to suffer ongoing trauma from his experience and wants to be able to stay in the United States with his family.

In support of his application, the Applicant submits an evaluation from a licensed clinical social worker, who summarizes the Applicant’s report of his experiences during his journey into the United States. The evaluation reflects that the Applicant reported being held in a house under armed guard, where “he was forced to do laborious tasks around the house such as cleaning and lifting heavy items without any breaks.” The men at the house “were armed, used physical force, and emotional abuse to get him to comply with their daily demands” and subjected him to poor living conditions in the house. After about two weeks, the Applicant and others “were told that they would be crossing into the United States that evening,” and they traveled under difficult circumstances until they were detained by border patrol officials. The social worker noted that the Applicant continues to suffer mental and physical health effects of the trauma he experienced, and concluded that he meets the diagnostic criteria for post-traumatic stress disorder and generalized anxiety disorder. The social worker expressed concern for the Applicant’s mental and physical health and safety if he were to be forced to return to Mexico, and recommended that he be permitted to remain in the United States.

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

Upon *de novo* review, we agree with the Director that the Applicant did not establish that he was the victim of a severe form of trafficking in persons.

As relevant in this case, applicants seeking to demonstrate that they were victims of a severe form 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(8); 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). 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.* The term peonage is defined as “a status or condition of involuntary servitude based upon real or alleged indebtedness.” *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.) (10th ed. 2014).

The Applicant argues that his smuggling situation became a trafficking situation when the smugglers recruited, transported, harbored, and obtained him for the purpose of involuntary servitude and peonage. He asserts that after the smugglers recruited him through the smuggling agreement, they transported him to the house¹ and subjected him to involuntary servitude and peonage there before “transport[ing] him into the United States meanwhile forcing him to conduct labor for their benefit.” He contends that the smugglers “held him captive and forced him to work until the minute his trafficker was arrested by U.S. law enforcement.”² He states that the smugglers used force, fraud, and coercion to achieve this, as they held him captive and under armed guard, threatened him with physical violence, used physical and sexual violence against others around him, and “created a hostile, exploitative, and abusive environment”

The record establishes that the smugglers transported and harbored the Applicant through the use of force and coercion, as required under the definition of trafficking at 8 C.F.R. § 214.11(a). Upon their first meeting, the smugglers transported the Applicant and his spouse in a taxi driven by a man with a gun and took them to a house where they were held under armed guard. The smugglers confiscated their identity documents and phones, controlling their ability to contact their families. Their movements inside the house were restricted and the Applicant was only permitted to leave the house when escorted to the bank to withdraw money to pay the smugglers. The smugglers also called the Applicant names, yelled at him, and threatened to harm his family members. During the journey from the house into the United States, the smugglers pushed, kicked, yelled at, and threatened the Applicant, and physically and sexually abused others in his presence. Accordingly, the record shows that the Applicant was transported and harbored³ through the use of “threats of serious harm” and “physical restraint,” as required by the definition of coercion at 8 C.F.R. § 214.11(a).

¹ Counsel claims in the brief that the smugglers “first recruited [the Applicant] in Mexico and then transported him to the United States. Then, they harbored him in the house” By contrast, the Applicant’s statement indicates that the house was in Mexico, and the smugglers later transported him across the border into the United States. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. The location of the house is relevant to whether the alleged trafficking occurred in the United States or abroad, and therefore whether the Applicant’s current physical presence in the United States is on account of a severe form of trafficking in persons. However, we need not reach this issue here, because the ground for denial is dispositive.

² Counsel’s claim that the Applicant was forced to work “until the minute his trafficker was arrested” is not supported by the Applicant’s own statement. The Applicant indicated in his statement that he had crossed the border and was riding in a vehicle at the time of his detention. As stated above, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2.

³ The record does not support the Applicant’s assertion that the smugglers also recruited and obtained him through force

However, a preponderance of the evidence does not demonstrate that the Applicant was the victim of trafficking, as the record does not establish that the smugglers transported and harbored him for the purpose of subjecting him to involuntary servitude and peonage, as he asserts. Rather, the Applicant's account shows that the smugglers transported and harbored him for the purpose of carrying out and completing their smuggling agreement. Although the Applicant correctly notes that trafficking can arise during a smuggling operation, the evidence here does not support such a conclusion. The Applicant indicated in his statement that while being harbored at the house in Mexico, the smugglers subjected him to involuntary servitude and peonage by forcing him to clean the house and wash dishes. However, his statement shows that the smugglers required him to perform those tasks while housing him during the course of the ongoing smuggling operation. The Applicant indicated in his statement that he was not the only person who had to participate in the cleaning while being held at the house, as he stated, "We were forced to cook and clean for them." The evidence does not show that the Applicant was selected to perform forced labor or that the smugglers forced him to clean and wash dishes for the purpose of placing him in a condition of servitude rather than to allow for the continuation of the smuggling operation. While the smugglers required the Applicant to pay a daily fee while they held him in the house, the evidence does not show that this was involuntary servitude or peonage rather than extortion. We recognize the Applicant's claim that he "had to carry heavy boxes of food" while walking in the desert, but the evidence does not indicate that the Applicant was forced to carry the boxes as a condition of servitude rather than to assist in carrying basic necessities for himself and the rest of the group during the smuggling operation. The Applicant's account of the smugglers' actions show that they transported and harbored him for the purpose of completing their smuggling arrangement, and that they also may have extorted him during the journey. The evidence does not establish that the smugglers acted with the purpose of placing him in a condition of servitude, the underlying prerequisite for establishing involuntary servitude and peonage under 8 C.F.R. § 214.11(a).

The Applicant contends on appeal that the Director erroneously focused on the existence of a voluntary smuggling agreement and the payment he made to the smugglers in concluding that the smugglers were motivated by monetary gain. The Applicant correctly notes that the existence of an agreement into which he entered voluntarily with his smugglers and the payment of smuggling fees under that agreement does not negate the possibility that the smugglers also acted with the purpose of subjecting him to involuntary servitude. However, as stated, it is the Applicant who bears the burden of demonstrating eligibility for T nonimmigrant classification, which he has not done here. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. at 375. The fact that the smugglers forced the Applicant to perform tasks related to the smuggling operation does not establish that the smugglers acted with the purpose of placing him in a condition of servitude.

Citing the December 2016 Interim T Rule, the Applicant also contends that the federal regulation does not require T applicants to provide evidence that their traffickers' intention of recruiting, harboring, transporting, providing, or obtaining them was "for the purpose of" subjecting them to involuntary servitude if there is evidence of forced labor, because such forced labor necessarily proves the

and coercion, as the evidence shows that the smugglers recruited and obtained him through an agreement into which the Applicant entered voluntarily. However, as discussed, the record does show that the smugglers transported and harbored him through force and coercion.

traffickers' intent or purpose. *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). The preliminary discussion to the Interim T Rule is not binding and we lack the authority to waive the requirements of the statute, as implemented by regulation. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). In this case, the regulatory definition of a "severe form of trafficking in persons" requires that the T applicant have been recruited, harbored, transported, provided, or obtained "for labor or services . . . for the purpose of subjection to involuntary servitude" 8 C.F.R. § 214.11(a). As discussed, the record does not show that the Applicant was transported and harbored for him labor and services or for the purpose of subjecting him to involuntary servitude or peonage.

As additional supporting evidence, the Applicant previously submitted a criminal complaint against E-C-J-⁴ the driver of the truck in which the Applicant was riding when U.S. Customs and Border Protection officials detained him. The complaint shows that E-C-J- was charged in U.S. District Court of violating 8 U.S.C. § 1324(a)(1)(A)(ii), which generally prohibits "bringing in and harboring" foreign nationals. The complaint alleged that E-C-J-:

knowing or in reckless disregard of the fact that Material Witness One and Material Witness Two, had come to, entered, or remained in the United States in violation of law, transport, or move or attempt to transport or move such aliens within the United States by means of transportation or otherwise, in furtherance of such violation of law.

The Applicant also provided an affidavit filed in U.S. District Court listing him as one of the material witnesses in the case against E-C-J-. However, the evidence does not show that E-C-J- was charged with a severe form of trafficking in persons in addition to his charge for transporting or moving foreign nationals. Additionally, the Applicant previously submitted a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Supplement B). A Supplement B is optional evidence and does not lead to automatic approval of a T application. 8 C.F.R. § 214.11(d)(3)(i). USCIS, not a law enforcement officer, determines whether an applicant was the victim of a severe form of trafficking in persons. *Id.* In the Supplement B, the Assistant U.S. Attorney for the District of New Mexico lists the statutory citation for the acts of trafficking being investigated or prosecuted as "8 U.S.C. section 1324(a)(1)(A)(ii) – Transporting," consistent with the charging documents in the case against E-C-J-, but does not provide a citation for any crimes that meet the definition of trafficking at 8 C.F.R. § 214.11(a).

The Applicant also submitted country conditions information addressing trafficking and the interplay between trafficking and smuggling. However, they are not sufficient to establish that the specific individuals who smuggled the Applicant trafficked him during the journey to the United States. The circumstances of the Applicant's case do not show that the smugglers transported or harbored him for the purpose of subjecting him to involuntary servitude or peonage, as described at 8 C.F.R. § 214.11(a). Accordingly, a preponderance of the evidence does not establish that he is a victim of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act.

⁴ We use initials to protect identities.

C. Additional Eligibility Requirements

Since the identified basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether he is physically present on account of a severe form of trafficking in persons and has complied with reasonable requests for assistance from law enforcement. *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).

ORDER: The appeal is dismissed.