



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

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

In Re: 18149747

Date: FEB. 11, 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. §§ 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). The matter is now before us on appeal. On appeal, the Applicant submits a brief and asserts her eligibility. The Administrative Appeals Office reviews 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 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. *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.” 22 U.S.C. § 7102(11); 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). 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 citizen of Mexico who last entered the United States without inspection, authorization, or parole with the aid of smugglers in July 1997. She filed her T application in December 2019.

A. The Applicant's Trafficking Claim

In her personal statement in support of her T application, the Applicant stated that she grew up in Mexico watching her mother be verbally and physically abused by both her father and then a subsequent boyfriend. The Applicant stated that her mother's boyfriend kept a firearm in the home and discharged it on at least two separate occasions during arguments with her mother, and although the police responded to each incident they never did anything. She recounted that she and her mother were ultimately able to escape the boyfriend one day while he was at work. The Applicant reported that she had a cousin living in North Carolina who was able to help them escape to the United States. They were instructed to travel by bus to a hotel within walking distance of the border and to wait to be contacted by a coyote (smuggler) named J-C-¹. J-C- never appeared, then another man named R- also failed to appear, but finally a group of people sent by R- arrived at the hotel to meet the Applicant and her mother. The Applicant reported that she, her mother, and approximately thirty other people attempted to enter the United States a total of eight times but each time she and her mother were caught and returned to Mexico. They were finally able to successfully enter the country with a guide and they walked until they reached the city of [REDACTED] Arizona. The Applicant recounted that shortly after their arrival in [REDACTED] the guide left them for a brief period before returning in a car driven by an American lady they referred to as [REDACTED], who drove them to a spacious home where nearly three dozen individuals were also present. She stated that the people present in the home were desperate and frustrated to get out, and they were supposed to be picked up by R- but he never showed up. Shortly thereafter, the Applicant, her mother, and the other individuals being smuggled were intercepted by a man called E-N-, who transported them in a van to a trailer in the middle of the desert in a junkyard with nothing around for miles. Following some discussion, E-N- became angry when he realized that other men involved in the smuggling operation, J-C- and R-, had not performed their assigned duties. Per the Applicant, E-N- then stated that J-C- and R- owed him money and he "was not letting [the Applicant, her mother, and the other individuals being smuggled] go until he received money from them." E-N- left three men armed with guns to operate in shifts watching over the group being smuggled, and the Applicant reported that these men were always cleaning their guns to threaten, scare, and intimidate them. The Applicant further stated that the three men said they would be eaten by dogs or killed if they tried to open a window or went outside the storage container trailer. She also reported that the men showed them the fence surrounding the junkyard as well as Doberman dogs—too many to count per the Applicant—roaming the yard, and that the men said the dogs "were trained to eat humans" and would attack them if they tried to escape. The Applicant recounted the trailer was so hot that they were "desperate for air" and tried opening a window slightly at one point but the dogs were able to reach the window and they were scared of being attacked or that the armed men would harm them for trying to escape.

¹ Initials are used to protect individuals' identities.

The Applicant stated she and the others were held in these conditions for a week when E-N- brought even more people to cram into the trailer. She further reported that the trailer had no toilet so they all had to use the bathroom outside, there was no food kept inside the trailer, but water and raw meat was provided, and they used a hot plate inside the trailer to cook the meat. The Applicant stated there was never enough food to go around for everyone, and sometimes fistfights broke out over the distribution of food. She recounted that after a period of two additional days, she and her mother were forced to do all the cooking and food distribution for everyone. Because they heard that the smugglers showed other people being smuggled dead bodies which had been thrown in an empty well within the junkyard, they feared for their lives if they refused orders. The Applicant stated that E-N'-s men continued to hold them while awaiting money from R- and J-C-, and they were told that they would not be let go until the money was paid. As reported by the Applicant, ultimately the money was paid to E-N- by the other smugglers after a period of two weeks spent in the hot and cramped trailer, and over thirty individuals were transported in a single van, eventually reaching North Carolina where the Applicant and her mother were united with their family.

The Applicant stated that she encountered R- at a store in 1999, stating the following:

I spoke to him that day and he told me he was actually not a coyote. [R-] owed [J-C-] a large amount of money and [J-C-] told him that if he got us all to North Carolina that his debt would be cleared, so he agreed. [E-N-] was never supposed to pick us up from [redacted]'s house in Arizona; R- was. E-N- was holding us to force us to work for him while he was extorting other coyotes and doing other crimes too.

Additionally, the Applicant stated that she has not returned to her hometown because the coyote, J-C-, has family members that live in her hometown and she fears that she would be harmed by J-C- or E-N- if she were found there. She explained that when people in Mexico know that someone has just come from the United States they are at risk of being kidnapped or trafficked, and this is due to the vast network of organized crime in which all criminals are connected, and that if she were to return she fears she would immediately be targeted since J-C- and E-N- know her. The Applicant asserted that she was lied to, tricked, and forced to work by her traffickers, she feels lucky to be alive as she suffered extreme abuse and threats as a victim of human trafficking, and she does not know what would have happened to her if J-C- had not paid the ransom. She further stated that because of the culture in Mexico, she does not think that she would have the same support that she has in the United States with regard to family members and mental health services. Per the Applicant, she still has trouble sleeping and has nightmares of being trapped in the trailer packed with people in the middle of the desert and gets sick when she recalls boiling the meat for the smuggled individuals to eat. Finally, the Applicant stated that she is still traumatized by what her traffickers did to her and she is now receiving mental health services and therapy after not processing what happened to her for many years and—with the help of her attorney—she has been able to report what happened to authorities and is willing to cooperate in any investigation.

In a supplemental statement submitted in response to a request for evidence (RFE) from the Director, the Applicant recounted the same details as those provided in her initial statement but also claimed that in 2003 she married a man who was abusive.

As noted by the Director in her decision, the Applicant also submitted additional evidence including the following: a legal brief from her attorney; an expert opinion letter; a psychological evaluation prepared by the Applicant's therapist; documentation of the Applicant's enrollment in the Trafficking Victims Assistance Program; copies of emails from her attorney's office reporting the Applicant's experiences to the Federal Bureau of Investigation (FBI) field offices in both [redacted] North Carolina, and [redacted] Arizona, and the [redacted] Police Department; an affidavit from her attorney's office regarding the Applicant reporting her experiences to law enforcement; copies of non-precedent decisions from our office; and copies of articles on servitude and on trauma. The Director reviewed and considered all of the aforementioned documentation in reaching her decision to deny the T application. As we agree with the Director's review and analysis of the evidence, we will not repeat further the determinations reached regarding the aforementioned evidence provided by the Applicant. Rather, we will affirm the Director's determination that the evidence does not establish that the Applicant is a victim of a severe form of trafficking in persons.

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

Upon *de novo* review, and as noted in the previous section, we agree with the Director that the Applicant did not establish that she was the victim of a severe form of trafficking in persons.

Applicants seeking to demonstrate that they were victims of a severe form of trafficking must show, in pertinent part: (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 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 contends that her smuggling situation became a trafficking situation when the smugglers recruited, transported, and harbored her for labor and services through the use of force and coercion for the purposes of involuntary servitude. Although the Applicant correctly notes that trafficking can arise during a smuggling operation, the evidence here does not support such a conclusion. The evidence shows that the smugglers harbored and transported the Applicant through force and coercion, as defined at 8 C.F.R. § 214.11(a). The Applicant stated her smugglers transported her to and held her in a trailer for over a week with thirty other individuals, and she and her mother were forced to cook and clean for the entire group during that time. She stated that she feared for her life as the smugglers were armed and threatened those being held with harm or death, allegedly by showing them nearby dead bodies, if they tried to escape and/or did not follow their instructions.

However, the Applicant has not demonstrated that the alleged traffickers' actions in harboring and transporting her were for the purpose of subjecting her to involuntary servitude. 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).

The evidence does not show that the smugglers harbored or transported the Applicant for the purpose of subjecting her, or that they subjected her, to a condition of servitude, the underlying prerequisite to establishing involuntary servitude. The Applicant indicated in her statements that during the course of her smuggling journey, she was forced to cook for other individuals being held in the trailer while they awaited further transport within the United States. The Applicant did not provide substantive details in her statements about this part of her experience to establish that she was in a condition of servitude, as opposed to performing necessary tasks to further the smuggling operation in which she was participating, i.e., prevent those being smuggled from escaping and disclosing the location of the trailer, ensure that the smugglers were paid for the smuggling, and keep the trailer habitable to smuggle more people. The Applicant has not submitted sufficient evidence to establish that the cooking she performed was part of a condition of servitude, rather than for the convenience of the group or helping to meet the needs of the smuggling operation. As evidence that the smugglers’ purpose was to have her serve them in a condition of servitude, the Applicant also asserted that her cooking benefitted the smugglers. However, having the Applicant contribute so that the smugglers could focus on their enterprise was further evidence of their intent to use the Applicant to keep their operation going rather than evidence of an intent to place her in a condition of servitude or hold her as a prisoner sentenced to forced labor. *See Black’s Law Dictionary* (defining servitude). Furthermore, the Applicant stated the smugglers upheld their end of the smuggling contract by effectuating her entry into the United States without detection by United States officials.² We acknowledge the Applicant’s statement that, during a conversation with R- several years later, he informed her that her captors were “forc[ing her] to work” while they extorted other smugglers for money; however, as explained above, the record does not establish by a preponderance of the evidence that the work was for the purpose of subjecting her to involuntary servitude, as opposed to effectuating other goals, i.e. his aim to extort other smugglers for money or to effectuate the Applicant’s entry into the United States. As a result, the

² On appeal, the Applicant asserts that smugglers often have mixed motives, similar to persecutors in asylum cases, and that a standard that recognizes that a perpetrator could have more than one motive, similar to section 208 of the Act, should be applied in the trafficking context. To the extent the Applicant asserts that we should use different requirements to analyze a trafficking claim, we emphasize that we must 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). To the extent the Applicant asserts that smugglers’ motivations can be multifaceted, we agree. However, it is the Applicant’s burden to establish her claim by a preponderance of the evidence. Section 291 of the Act; 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Applicant asserts the smugglers’ mixed purpose was to smuggle her and subject her to involuntary servitude. However, the preponderance of the evidence does not demonstrate that the Applicant was subjected to involuntary servitude but shows that the smugglers harbored the Applicant for purposes of furthering and completing their smuggling agreement by ensuring that the individuals they were transporting were brought to the United States and obtaining payment for doing so.

Applicant has not established the smugglers' purpose in transporting and harboring her was to subject her to involuntary servitude.

On appeal, the Applicant appears to argue, through counsel, that the reason for the work she performed is irrelevant because any forced labor is involuntary servitude. However, as it applies in this case, the definition of a severe form of trafficking in persons at 8 C.F.R. § 214.11(a) requires that traffickers have the purpose of subjecting a victim to involuntary servitude. Here, the Applicant was a participant in the smuggling scheme and performed labor during the course of that operation. She has not provided sufficient evidence to show that she was selected to work as a servant or slave, as opposed to helping to meet the needs of herself and others in the smuggling operation in which she participated. Per the Applicant, her experience while being smuggled to the United States was very difficult. She was subjected to poor and unsanitary conditions with insufficient food and basic necessities, as well as verbal abuse and threats. However, the Applicant being forced to cook for other individuals does not show that the smugglers intent was to subject her to involuntary servitude but rather to provide support for the ongoing smuggling operation. After the Applicant was held at the trailer for over a week, she was ultimately transported—albeit in difficult conditions in an overcrowded vehicle—to her cousin's home in North Carolina. This is evidence that the smugglers' intent was to complete the smuggling operation and that their actions during the course of the operation, although harsh or abusive, were for the purpose of reaching that goal.

Counsel further argues on appeal that the Director did not give sufficient weight to the expert opinion letter submitted in response to the RFE. The author of this letter identified herself as an attorney in Maryland who has practiced immigration law since 2006, specializing in human trafficking issues. She reiterated the issues of fact as stated by the Applicant, and described the criminal trafficking and conspiracy to traffic charges that could have been brought against the Applicant's smugglers as "the facts as presented amount to a violation of federal anti-trafficking laws" However, the author also stated, "it is unlikely that any criminal charges either at the federal or state level will ever be filed. . . ." While we acknowledge the opinion letter, we note that the criminal elements necessary to prosecuting a trafficking claim are different from the regulatory definition of a "severe form of trafficking in persons" which 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 the purpose of subjecting her to involuntary servitude or slavery. As a result, the Applicant has not established she was a victim of a severe form of trafficking under 101(a)(15)(T)(i)(I).

C. Additional Grounds of Eligibility

Because the Applicant has not established that she is the victim of a severe form of trafficking in persons, she is ineligible for T nonimmigrant status. Since this basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether she is physically present in the United States on account of trafficking.³ See *INS v.*

³ The Applicant submits new evidence on appeal relating to whether she is physically present in the United States on account of a severe form of trafficking in persons. Because we will not reach this issue due to the Applicant's ineligibility on another ground, this evidence is not pertinent to our decision and we need not address it.

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).

III. CONCLUSION

A preponderance of the evidence does not establish that the Applicant is the victim of a severe form of trafficking in persons. Accordingly, she is ineligible for T nonimmigrant status.

ORDER: The appeal is dismissed.