



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

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

In Re: 11029177

Date: FEB. 14, 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 acknowledged that the Applicant had been subjected to physical and sexual abuse and required to cook and clean, but denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that because the Applicant had not shown that her smugglers guided her into the United States for the purpose of subjecting her to involuntary servitude and forced labor and therefore she had not shown that she was the victim of a severe form of trafficking in persons. As a consequence, the Director also concluded that the Applicant had not shown that she was physically present in the United States on account of a severe form of trafficking, that she had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, and that she was admissible to the United States. The matter is before us on appeal.

On appeal, the Applicant resubmits previously provided evidence, including her two personal statements, the initial 2018 psychosocial evaluation, and the updated November 2018 therapist's report. She also submits a brief in which she reasserts her eligibility, specifying that she has shown that she was a victim of a severe form of labor trafficking because she was harbored and obtained for involuntary servitude and labor through the use of force and coercion. The Applicant contends that the Director incorrectly found that smuggling and trafficking do not coexist and misapplied the law to the facts of her case. She also claims to have otherwise satisfied the remaining eligibility requirements for this classification.

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 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; 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) (2018).¹

An applicant seeking to demonstrate that he or she was a victim of a severe form of trafficking must show: (1) that he or she was recruited, harbored, transported, provided or obtained for his or her 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 form of trafficking in persons”). Thus, an applicant must show not only the particular “means” used (force, fraud, or coercion), but also that such means was used for a particular “end” – namely for the purpose of subjecting the applicant to involuntary servitude, peonage, or debt bondage.

The term “severe form of trafficking in persons” includes “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). Sex trafficking means the “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” *Id.*

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 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, a 45 year-old native and citizen of Mexico, claims to have first entered the United States without inspection, admission, or parole when she was approximately 20 years old.² The Applicant filed her T application in May 2018 on the basis that she was the victim of labor trafficking by the individuals who smuggled her from Mexico into the United States and forced her to work for them in house in Mexico and then a hotel in California.

A. The Applicant’s Trafficking Claim

In her statements, the Applicant indicated that when she was 20 years old, she became pregnant and made arrangements to have herself smuggled to the United States. According to the Applicant, she traveled with a group of people to [REDACTED] where she was taken by taxi to a house in [REDACTED]. A smuggler at the house stated that he would take the Applicant to the United States the following day

¹ The Department of Homeland Security issued an interim rule, effective January 18, 2017, amending its regulations at 8 C.F.R. § 214.11 for victims of human trafficking who seek T nonimmigrant status. *See Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92308-09 (Dec. 19, 2016). This Form I-914 was filed in May 2018, after the effective date of the Interim T Rule.

² According to her Form I-914, she last entered the United States in 1999.

for \$2,000; however, the next day she was told that the trip would take longer, at which point she claims to have realized something was wrong. The Applicant stated that she was kept locked in the [] house, the smugglers told her she was their property and had to do whatever they told her, and that she was forced to perform work, although she did not specify the nature of the work. After approximately two weeks in [] the Applicant stated that she was driven across the border to a hotel in California.

Although her smugglers had promised to release the Applicant directly to her family once she arrived in the United States, they instead told her that they “had plans” for her and immediately ordered her to work for them in the hotel in California. The Applicant stated that she was housed in a single room with four other men and three women, and that other females being smuggled were also forced to work. She claims that her smugglers called her a “whore” and “their prostitute,” and that they told her that the labor she was being forced to perform in the United States “was to pay for the additional cost.” Although the Applicant’s chores were primarily cooking three meals a day for her smugglers, she also was forced to mop floors, clean bathrooms, sweep floors, clean the kitchen, vacuum, do dishes, dust, clean three to four hotel rooms (some of which housed other people being smuggled, others of which were empty) each day, and respond to other work-related demands from approximately 8 am until 10 pm.

According to the Applicant, while she was held in California, the smugglers pinched her to get her attention, beat her, and repeatedly and aggressively touched her breasts, buttocks, and vagina while she was cleaning, threatening to rape her if she did not work quickly enough or to their standards. She specifically recounted that one smuggler sexually assaulted her in a bathroom, forcing her to perform oral sex on him. She indicated that the smugglers said that if she did not perform all requested labor, they would not allow her to eat or would kill her and her unborn baby. They also stated that if she attempted to escape, she had better pray that immigration found her or the smugglers would find her and kill her. The Applicant stated that she became weak and was struggling with her pregnancy such that she could not easily work, and speculated that her smugglers decided that they wanted money for her release instead of labor. The Applicant indicated that she was not sure how long that she was held in the hotel, but thought it was a couple of days. She claimed that the smugglers eventually drove her to a gas station, where they demanded the telephone number of a family member. After she provided her brother’s telephone number, the smugglers called him to demand money and then exchanged the Applicant for the money when he arrived at the gas station.

The Applicant indicated that she continues to suffer emotional stress and depression from the trauma she experienced during her trafficking. She explained that she is receiving counseling, and fears either returning to the poverty and violence in Mexico. The Applicant stated that she is very uncomfortable discussing what happened to her during her journey to the United States, and that her husband still does not know all the details that she had provided in her supporting statements. The Applicant also described her fears about returning to Mexico because of her violent father. She included, among other documents, a statement from her husband who said that only recently had he learned of the abuse to which the Applicant had been subjected when she was smuggled and stated that she had previously told him she had made it without any issues. She also provided a psychosocial evaluation from a therapist, who recounted the Applicant’s smuggling claims and advised, among other things, that it would benefit the Applicant to remain in the United States near her family in order to provide her with ongoing stability and support. She also included a second evaluation from a mental health therapist,

who stated that, among other things, the Applicant continues to experience post-traumatic stress disorder based on her treatment at the hand of her smugglers, and fears being returned to Mexico.

On appeal, the Applicant submits a brief and refers to previously submitted evidence, including her prior statements and evaluations from her counselors.

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

The Director's decision acknowledged that the individuals hired to smuggle the Applicant into the United States required her and the other females in her group to cook and clean and subjected her to physical and sexual assaults. However, the Director concluded that the totality of the evidence did not establish that the Petitioner was harbored or obtained through fraud or coercion for the purpose of forced labor, as the Applicant alleged. The Director concluded that the Applicant did not establish her eligibility because her experiences were part of the alien smuggling to which she had agreed, and the smugglers had held her for the purpose of monetary gain. Based on this, the Director found that the Applicant's smuggling experience did not equate to a severe form of trafficking in persons under the Act.

On appeal, the Applicant contends that her smuggling situation became a trafficking situation when the smugglers harbored and obtained her for labor and services through the use of force and coercion for the purposes of involuntary servitude. We agree with the Applicant that the evidence shows that the smugglers held the Applicant in a house in Mexico and a hotel in the United States through coercion, as defined at 8 C.F.R. § 214.11(a), in that they used threats to cause her to believe that any attempt to escape or failure to comply with their instructions would result in serious harm to her or her unborn baby.³

However, the Applicant has not demonstrated that the smugglers' actions in holding her were *for the purpose* of subjecting her to involuntary servitude, as claimed. 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.

³ 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).

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).

First, the Applicant stated she entered into a smuggling agreement in Mexico. Then, the Applicant indicated in her statements that during the course of her smuggling, she was held at a house near the border in Mexico for approximately two weeks, where she was told to perform unspecified labor and held guard. She indicated that one of her smugglers told her it was not time to cross the border on the day that she had expected to travel and that she was at the house in Mexico for approximately two weeks until they traveled to the United States. Although she claimed that she was required to perform unspecified labor during the time she was in the house in Mexico, she has not shown that the work she performed was for the purpose of a condition of servitude, rather than for the convenience of the group or helping to meet the needs of the smuggling operation before they were able to cross the border into the United States.

Similarly, although the Applicant was held at, and asked to perform services in, a hotel in the United States for a couple of days and her family ultimately was contacted to pay the “additional costs” associated with her smuggling, the evidence does not show the smugglers’ intent changed from that of completing the smuggling agreement to forcing her to work as a servant in the hotel. The Applicant stated that she and seven other people shared a single room and that other people being smuggled were similarly housed in the other hotel rooms. She described the chores that she was forced to perform, including cooking, laundry, and cleaning rooms. However, the Applicant’s statements did not show that she was required to perform these chores for purposes other than out of necessity to cook and clean for herself and on behalf of her similarly smuggled companions and the smuggled occupants of the other rooms during the time they waited in the hotel.

On appeal, the Applicant contends that any forced labor is involuntary servitude. This assertion is unavailing, as 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.

The Applicant additionally argues that the fact that she actually performed forced labor is sufficient evidence of the smugglers’ purpose. She cites the 2016 Interim T Rule, which states that it is not necessary for an applicant to actually perform work in order to establish that a trafficker acted “for the purpose of” subjecting the victim to trafficking, and that “[t]he clearest evidence of this purpose would be that the victim did in fact perform labor, services, or commercial sex acts.” *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 the Applicant performed work, the plain language of the regulation states that when a person is recruited, harbored, transported, provided, or obtained for labor or services through force, fraud, or coercion, those actions must be “for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 8 C.F.R. § 214.11(a). The smugglers held the Applicant through force and coercion, threatening to kill her and her unborn child if she were to try to escape. Moreover, they forced her to cook, clean, and perform other chores while they held her at the hotel in California through the use of physical and sexual abuse, and threats. However, as discussed above, the record does not show that she was placed in a condition of servitude or that the smugglers acted with the purpose of subjecting the Applicant to involuntary servitude rather than to meet the needs of the smuggling operation.

The Applicant argues on appeal that the Director ignored “analogous case examples” she previously submitted to show “that U.S. courts recognized and found trafficking in situations that are very similar to [the Applicant’s] situation.” We analyze the Applicant’s T application based on 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. *Chawathe*, 25 I&N Dec. at 375.

We acknowledge that the Applicant’s experience at the hotel in California was very difficult. She was subjected to physical and sexual abuse, verbal abuse and threats, and threats against her unborn child. However, she has not shown that her smugglers’ intent changed from carrying out the smuggling operation to holding her for the *purpose* of involuntary servitude. Their purpose is demonstrated by their actions - after the Applicant entered into the smuggling agreement, she was held at the house in Mexico for about two weeks, she was transported across the border, and after being held at the hotel in the United States for a couple of days, she was safely delivered to her family in exchange for money. This is evidence that the smugglers’ intent was to complete the smuggling operation and that their general actions during the course of the operation were for the purpose of reaching that goal rather than for the purpose of subjecting her to involuntary servitude.⁴

Here, the Applicant has not established that her smugglers obtained or harbored her for the purpose of subjecting her to involuntary servitude. Thus, she necessarily cannot demonstrate that she was the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(I) of the Act requires for T nonimmigrant classification.

C. Additional Issues

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 her appeal, we decline to reach and hereby reserve the Applicant’s appellate arguments regarding whether she is physically present in the United States on account of such trafficking, whether she complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of tracking in persons, whether she would suffer extreme hardship involving unusual and severe harm upon removal from the United States, and whether she is admissible to the United States under sections 212(a)(6)(A)(i) and (C)(i), as section 101(a)(15)(T)(i)(II) of the Act requires.⁵ *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-*,

⁴ On appeal, the Applicant cites reports from the U.S. Department of State Human Smuggling and Trafficking Center and the Office to Monitor and Combat Trafficking in Persons and alleges that the Director failed to address this evidence or explain how the Applicant’s situation is different than the examples discussed in those reports. We have considered the evidence in the record. However, we evaluate the Applicant’s claim under the applicable statute and regulations, the requirements of which the Applicant has not met.

⁵ 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 Petitioner’s ineligibility on another ground, this evidence is not pertinent to our decision and we will not consider it.

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

The Applicant has not shown by a preponderance of the evidence that she is the victim of a severe form of trafficking in persons. Accordingly, she is ineligible for T nonimmigrant status.

ORDER: The appeal is dismissed.