U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10468365

Date: FEBRUARY 25, 2022

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification 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 T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking. The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant had not demonstrated that she was a victim of trafficking in persons, was physically present in the United States on account of such trafficking, or had complied with any reasonable requests for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons.[1] The matter is now before us on appeal. We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015); 8 C.F.R. § 214.11(d)(5). 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 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 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) 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."

In these proceedings, it is the applicant's burden to establish eligibility for the requested benefit 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).

[1] The Director also determined that the Applicant is inadmissible to the United States on multiple grounds. However, as the Applicant did not raise the issue of her inadmissibility on appeal, we need not reach this issue.

II. ANALYSIS

The Applicant, a 44-year-old native and citizen of Mexico, first entered the United States in 1995. She filed her T application in May 2018 and bases her eligibility for T classification on her claim that F-L-,[2] her former spouse and the father of two of her four children, subjected her to trafficking in the United States.

A. The Applicant's Trafficking Claim

The Applicant's declarations in the record set forth the following claim: The Applicant had a difficult childhood marked by an alcoholic father who physically abused her, her mother, and her siblings. She met F-L- while in high school, and they began a relationship when she was 14 years old. She became pregnant when she was 17 years old, and she and F-L- married in [redacted] 1995. Soon after their marriage, F-L- began drinking more and became aggressive. F-L- demanded sex on a daily basis and would curse at her if she expressed unwillingness. F-L- forced her to do the all the housework, and if she did not complete tasks to his satisfaction, he would get angry and violent. Three months after they were married, she and F-L- travelled to the United States. Shortly after arriving in the United States, F-L- arranged for the Applicant to begin employment as a babysitter even though she did not want to work outside the home due to her pregnancy. She explained that F-L- did not allow her to use her earnings "without his explicit permission. He was the one who decided if I could buy clothes, shoes, or anything. He would bring me to pick out clothes and tell me what clothes I was allowed and not allowed to use, or sometimes he would bring home clothes for me." Following the birth of their first child in [redacted] 1995, F-L- forced the Applicant to work at a pizzeria, and although the Applicant was often exhausted and wanted to quit, she could not. She stated that F-L- also isolated her, and in 1997, she decided to return to Mexico. While she was in Mexico, F-L- called the Applicant daily, telling her that he loved her, promising her that he would change, and ultimately convincing her that she was not a good mother if she continued to separate him from their daughter. F-L- also contacted the Applicant's family and friends, reassuring them that things would be different if she returned to the United States. However, upon her return, the Applicant discovered that F-L- had not changed – he forced her to have sex with him whenever he demanded, and if she was unwilling, he raped her. In addition, F-L- forced her to do all the housework and demanded that she support him using her earnings through the use of regular violence, threats, and emotional abuse.[3] In 2004, she reported F-L-'s abuse to the local police and later left him with the assistance of [redacted] Counseling and Referral Service, an organization that assists domestic violence victims.

The record before the Director also included, among other evidence: documentation related to the Applicant's 2004 order for protection against F-L-, a letter from [redacted] Counseling and Referral Service indicating that the Applicant received mental health services from September 2004 to

[2] Initials are used in this decision to protect the identities of individuals.

[3] Specifically, in her 2018 declaration, the Applicant stated that during their marriage, she and F-L- "struggled more financially. Eventually he permitted me to work at a factory. He closely monitored me with work and would make sure he knew where I was at all times. I had to pay everything when I started this job. He said he was done paying for things for me and that I had to do it. He would scream at me and say that I had to finally make myself worth something to him. He said that he had paid for so many things for me and that it was my time to pay for him and support him."

September 2006, a 2018 psychological evaluation, and research on battered women and domestic servitude.

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

The Director determined that the Applicant did not establish that she was a victim of a severe form of trafficking in persons because the incidents that she described stem from a relationship which became abusive over time and the evidence was not sufficient to establish that she was recruited, harbored, transported, provided, or obtained through the use of force, fraud, or coercion for the purpose of forced labor or commercial sex. The Applicant has not overcome this determination on appeal.

An applicant seeking to demonstrate that they were a victim 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. See 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). Thus, an applicant must show both the particular "means" used (force, fraud, or coercion) and that such means was used for a particular "end"—namely for the purpose of subjecting the applicant to involuntary servitude, peonage, or debt bondage.

On appeal, the Applicant asserts that the Director erred by concluding that she was not a victim trafficking without an analysis of the specific facts of her case or discussion of whether she was recruited, harbored, transported, provided, or obtained for her labor or services, through the use of force, fraud, or coercion, or whether she was subject to involuntary servitude. She contends that in describing her situation as domestic violence, the Director failed to recognize that the abuse in her relationship with F-L-, when viewed in the context of forced labor, constitutes the force and coercion necessary to prove that she was a victim of trafficking.

The Applicant has not established her eligibility as she has not established that she was recruited or obtained for her labor or services through the use force, fraud, or coercion. In this regard, the record reflects that the Applicant and F-L- dated in high school, "decided to create their own family," and soon after they were married, F-L- told the Applicant "about the better opportunities in the United States." In addition, the record reflects that the Applicant willingly came to the United States with F-L-, and later separated from him and returned to Mexico. After time apart, the Applicant chose to return to the United States and reunite with F-L- because he promised to change his abusive behavior. Although we recognize that F-L- engaged in abusive behavior against the Applicant that included forcing her to do the household work as well as work outside the home, the preponderance of the evidence shows that the Applicant entered into a relationship with F-L- and travelled to the United States with him in search of "better opportunities" for their family. We also acknowledge the Applicant's claim that F-L- harbored her by regularly abusing her and isolating her; however, the Applicant's statements also indicate that she chose to and was able to work outside the home and accompanied F-L- to "get-togethers or parties." Further, as stated above, the record indicates that the Applicant previously escaped F-L-'s abusive behavior when she returned to Mexico and returned to the relationship on her own accord.

Moreover, even if F-L- obtained and harbored the Applicant for labor and services through the use of force and coercion, the evidence does not establish that he did so for the purpose of subjecting her to

involuntary servitude, as the Applicant asserts on appeal. As used in section 101(a)(15)(T)(i) of the Act, the term "involuntary servitude" is defined, in pertinent part, 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). The term "peonage," as used in section 101(a)(15)(T)(i) of the Act, means "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.) (11th ed. 2019).

Although the record reflects that F-L- subjected the Applicant to mistreatment in the relationship, the evidence does not establish that he intended to place her in a condition of servitude or peonage as those terms are defined at 8 C.F.R. § 214.11(a). Instead, as noted above, the evidence shows that the Applicant travelled to the United States with F-L- in search of better opportunities for their family, and after leaving F-L- due to mistreatment, she returned to the marriage based upon F-L's promise to change his abusive behavior. We acknowledge that a personal relationship involving domestic violence may evolve into human trafficking in certain cases. However, the evidence in the record does not indicate that such an evolution occurred here, as the evidence indicates that while the F-L- may have exerted some degree of control over the Applicant's employment options and finances, the Applicant's earnings were used to support their family. Further, although F-L-'s threats and abuse were elements of his domestic violence and the Applicant felt she had no other choice but to comply with his demands in order to avoid harm, the evidence does not show that F-L-'s actions were for the purpose of subjecting her to forced labor or treating her as a servant or slave.

Citing the December 2016 Interim T Rule, the Applicant also contends that the Director failed to properly recognize the evidence of F-L-'s purpose or intent to subject her to forced labor, noting 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 traffickers' intent or purpose. Interim Rule, 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 preamble 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). Upon

de novo review, the Applicant has not established by a preponderance of the evidence that F-L- recruited, harbored, transported, provided, or obtained the Applicant for her labor or services for the purpose of subjecting her to involuntary servitude or peonage. Accordingly, the Applicant has not established that she is the victim of a severe form of trafficking in persons as required by section 101(a)(15)(T)(i) of the Act.

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.

III. CONCLUSION

We recognize that the Applicant has endured terrible hardship in her relationship with F-L-. Nevertheless, she has not established by a preponderance of the evidence that she was a victim of a severe form of trafficking during the course of the relationship. Accordingly, the Applicant is not eligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.