



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

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

In Re: 17189509

Date: JAN. 28, 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. sections 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 additional evidence, asserting her eligibility.

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 remand this matter to the Director for further proceedings consistent with our decision here.

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 (trafficking); 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).

The term “severe form of trafficking in persons” is defined in relevant part 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.” 8 C.F.R. § 214.11(a) (2018). 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. Section 291 of the Act, 18 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 34-year-old citizen of Guatemala who claims to have last entered the United States without being admitted or paroled around October 2002. She filed her T application in December 2019 on the basis that she was the victim of labor and sex trafficking by the individuals who smuggled her to the United States. The Director denied the T application, finding that the Applicant had not established that she was a victim of a severe form of trafficking in persons (trafficking). The Director also concluded that the record therefore necessarily did not establish that she was physically present in the United States on account of such trafficking and had complied with reasonable requests for assistance in the investigation or prosecution of the trafficking. Finally, the Director noted that the Applicant was inadmissible to the United States.

A. The Applicant's Trafficking Claim

The Applicant's initial personal statement establishes the following claim: She left her home in Guatemala in October 2002 when she was 15 years old. There were eight children in her family and her father found someone named J-¹ to bring the Applicant to the United States so she "could study and reach [her] dreams." J- brought the Applicant and several other individuals into the United States without inspection. The Applicant was the only child and only member of her family traveling with the group. J-, who carried a gun, and two other people helped the Applicant cross the border. After crossing the border, the Applicant, along with the others she traveled with, was brought to a safe house in a car with tinted windows and was told to hurry inside the house so no one would see them because if anyone did, they could be deported.

Inside the house, there were 20 people in the living room, including the Applicant and the group with whom she had traveled. The first night, the Applicant was fed and went to rest in a bedroom on the floor with a few other people. The next morning, J- asked for the people's identity documents and asked if they had money to pay for food. J- made the Applicant give him her birth certificate and family photos; she was not allowed to keep anything.

The Applicant's father had already paid the smugglers, but the Applicant was told that she still owed \$2500 as well as another \$800 in order to be taken to her family in Arizona and additional money to pay for food. The Applicant, along with two other girls who could not pay, were told that they had "to cook for everyone to pay off [their] debt." She was only allowed to eat one meal a day and was made to prepare food for everyone in order to pay her debt. After a few days, the smugglers called the Applicant's father about how much she owed, but her parents were unable to gather such a large amount of money in a short time period so the Applicant had to remain at the safe house for a longer period than others. The smugglers had guns, so the Applicant and the other girls were afraid to disobey them. They instructed the Applicant and the others not to get close to the windows to avoid being seen by the authorities and being deported. Some of the other people staying in the house began leaving, and although the Applicant did not know the reason they were leaving, one girl told the Applicant she was leaving because her family had paid the money they owed. The Applicant and the remaining girl left still owed money and were made to work.

¹ Initials used to protect privacy.

One day, one of the smugglers made her talk to her father and told her that she could not leave the house unless she “paid in full”. Her father told her she had to wait another week so he could come up with the rest of the money. When the Applicant told the smugglers that she had to stay longer, they became “very upset”. One smuggler, who had a gun like all the others, was “really upset walking back and forth”, and the Applicant felt very scared.

The Applicant stated that J- “removed” another girl who was staying in the Applicant’s bedroom and told the Applicant that she had to “start paying” what she owed. He then took out his gun, told the Applicant to take off her clothes, and closed the door. The Applicant did not know what to do and considered running or yelling but she could not. J- again told the Applicant to remove her clothes, pointed the gun at her, and told her, “You are going to pay what your family can’t pay.” He then sexually abused the Applicant. He also threatened to go to Guatemala and kill her family if she ever told anyone about the abuse. He told her that he knew where they lived, and she believed him. Afterwards, she cried and felt disgusted and scared. J- returned to sexually abuse her a second time the same night after she went to bed.

After this incident, she did not remember what happened, but she got very sick. Two days later, a different smuggler brought the Applicant some pills and told her to take them. She did not know what the pills were. He told her that she was sick and when she asked him what had happened, he told her that she had a fever and to look at her leg. Her leg was swollen from when she had been poked by a cactus spine while crossing the desert. She also noticed her body was bruised. She became very sick but was not taken to a hospital, and instead, the smugglers injected her with something the Applicant thought could have been antibiotics, but she was not sure. She did not remember what had happened, but she “knew something had happened to [her] because she didn’t get these bruises while crossing the desert” and did not remember if other people had abused her or just J-.

The Applicant stayed in the house with the smugglers about a month, longer than anyone else who came with her. The smugglers made everyone pay extra money, but not everyone was forced to cook like the Applicant was. She did not know if they raped anyone else but thought they did that to her to control her or scare her. Eventually, one of the smugglers told the Applicant that her father paid \$2500 on her behalf and that she had to leave. They took her to Arizona, where her cousins gave the smugglers more money.

The Applicant did not tell her cousins about her rape because she was young and scared and thought the smugglers would kill her family if she told anyone. She also believed that it was her fault or that it was normal and did not understand that it was a crime until later. The experience had been painful, and she convinced herself it had been a dream. She also did not go to the hospital after she reunited with her cousins because she thought that by doing so, immigration authorities would take her away. The Applicant did not enroll in school when she arrived in the United States, but rather began working to pay her parents back for what they had paid the smugglers. She also did not know how to enroll in school and feared she could be deported if she did.

She was later in an abusive relationship with the man who became the father of her children. She looked for psychological help after she separated from him because she was crying all the time and was always felt afraid. The experience, along with an incident in 2018 when she was attacked

after leaving work, helped her realize that she was a victim, that she needed more help, and that she could report the trafficking crime she experienced.

With her T application, the Applicant submitted additional evidence, including a copy of her birth certificate, a copy of her passport, documents relating to the Applicant reporting of her trafficking to law enforcement agencies, the Applicant's psychological and medical documents, U.S. Department of State reports related to trafficking in persons and country conditions in Guatemala, copies of AAO non-precedent decisions. The Director issued a request for evidence (RFE) in June 2020, and, in response, the Applicant submitted an additional personal statement addressing her physical presence in the United States, additional background reports relating to trafficking, supporting letters, and documents related to her children, employment, and education.

On appeal, the Applicant submits a new letter from a licensed clinical social worker asserting the need for the Applicant's "continued presence to recover from trauma caused by trafficking," informational documents regarding human trafficking, and two AAO non-precedent decisions.

B. Victim of a Severe Form of Trafficking in Persons

The record does not support the Director's determination that the Applicant did not demonstrate that she is a victim of a severe form of trafficking in persons in the form of sex trafficking.²

Applicants seeking to demonstrate that they are victims of a severe form of trafficking, specifically sex trafficking, must show that they were: (1) recruited, harbored, transported, provided, obtained, patronized, or solicited (2) for the purpose of commercial sex acts (3) that were either induced by force, fraud, or coercion, or alternatively, that they were under 18 years of age when they were induced to perform such acts. *See* 22 U.S.C. § 7102(11)-(12) (defining the terms "severe forms of trafficking in persons" and "sex trafficking"); 8 C.F.R. § 214.11(a) (same).

The Director concluded that the Applicant did not establish her eligibility, finding that her experiences while being smuggled into the United States did not equate to a severe form of trafficking in persons under the Act. The Director's decision acknowledged that the individual hired to smuggle the Applicant into the United States subjected her to sexual assault but concluded that this by itself was insufficient to establish that the Applicant was obtained, recruited, or harbored for the purpose of commercial sex trafficking as she alleged. Instead, the Director concluded that the evidence demonstrated that the smugglers transported the Applicant for monetary gain. The Director's findings on this issue are not supported by the record and are withdrawn.

Although the Director correctly noted that the Applicant's family arranged for her to be smuggled to the United States, our review indicates that the smugglers "harbored" her during the course of the smuggling for the purpose of commercial sex acts. The Applicant's statement reflects that J- and the other smugglers, who were all armed, confined the Applicant in a safe house through coercion by taking possession of her identity documents, telling her she had to remain in the house until her family paid the fees they demanded, and taking advantage of her fear of deportation. J- further isolated and

² The Director also concluded that the Applicant was not the victim of labor trafficking. As we have found that the Applicant is a victim of sex trafficking, we do not reach her claim on appeal that she was also a victim of labor trafficking.

harbored the Applicant in her bedroom at the safe house by sending her roommate away, closing the door, pointing a gun at her, and forcing her to remain there before raping her.

We now turn to whether J- harbored the Applicant “for the purpose” of having her perform sex acts that were “commercial” in nature. “Commercial sex act” is defined as “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(4); 8 C.F.R. § 214.11(a). The evidence in the record indicates that J- induced the Applicant to engage in sex acts with him as payment towards the debt that he believed and maintained she owed for her smuggling fees. According to the Applicant’s statements, J- and the other men who had smuggled her to the United States informed her that she still owed money for her journey and continued to hold her at the safe house rather than taking her to her family per the terms of the smuggling arrangement with them. After learning that the Applicant’s family did not have the money to pay the smugglers, they became upset. J- then isolated her in her room and told her she had to “start paying” what she owed, while holding a gun, and instructed her to take off her clothes. According to the Applicant, he then closed the door, again told her to remove her clothes, pointed a gun at her, and told her she was going to pay what her family could not pay before proceeding to rape her. J’s statements to the Applicant demonstrate that he viewed and intended the sex acts he induced the Applicant to perform as a form of payment for the money he believed she owed. The preponderance of the evidence therefore demonstrates that J- harbored the Applicant “for the purpose” of a commercial act, as he induced her to engage in sex acts as payment for the smuggling debt he believed the Applicant owed.

Finally, the evidence in the record demonstrates that the Applicant was induced by force and coercion to perform these commercial sex acts per 8 C.F.R. § 214.11(a) (defining “severe form of trafficking in persons” in relevant part as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion”). As noted above, J- pointed a gun at the Applicant in order to force her to perform the commercial sex acts. Moreover, the Applicant is not required to establish that the commercial sex acts she performed were induced by force, fraud, or coercion. Because the Applicant was under 18 years of age at the time of the trafficking, she need only establish that she was harbored “for the purpose of a commercial sex act” and was induced to perform such acts in order to establish that she is a victim of a severe form of trafficking in persons, which she has demonstrated.³ *Id.*

As the record establishes that the Applicant was harbored for the purpose of a commercial sex act that she was induced to perform when she was a minor, she has established that she is a victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(I) of the Act requires.

C. Other Eligibility Criteria Raised in the Director's Decision

The Director further determined that because the Applicant had not established that she was the victim of a severe form of trafficking in persons, she necessarily did not establish that she is physically present in the United States on account of such trafficking and had complied with any reasonable request for assistance in the investigation or prosecution of the trafficking. We will remand to the Director to determine in the first instance whether the Applicant meets these and the remaining eligibility

³ The Applicant’s birth certificate, passport, and personal statement all indicate that her birthdate is [redacted] 1987. The record therefore reflects that Applicant was approximately 15 years old in 2002 and under the age of 18 at the time of her claimed trafficking, which the record indicates took place in 2002.

requirements for T nonimmigrant status, given our determination here that she was a victim of trafficking in persons.⁴

III. CONCLUSION

The Applicant has demonstrated that she was the victim of a severe form of trafficking in persons. The matter will be remanded to the Director for consideration of whether the Applicant meets the remaining statutory eligibility criteria for T nonimmigrant classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new a decision consistent with foregoing analysis.

⁴ As previously noted, the Director noted that the Applicant was inadmissible to the United States and the applicable grounds of inadmissibility had not been waived. However, the Director denied the Applicant's Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), seeking a waiver of her inadmissibility, solely on the basis that her T application has been denied. As her T application is being remanded for further consideration and issuance of a new decision, the Director shall reopen and reconsider the waiver application if the Applicant otherwise demonstrates her eligibility for T nonimmigrant classification.