U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19979272

Date: JAN. 31, 2022

Motion on Administrative Appeals Office 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), concluding that the Applicant had not demonstrated that she was a victim of a severe form of trafficking in persons, and that, as a result of this determination, she had not established she was physically present in the United States on account of the claimed trafficking, and had not complied with reasonable requests for assistance in the investigation or prosecution of the trafficking. The Applicant submitted motions to reopen and reconsider, which were dismissed by the Director. We also dismissed the Applicant's subsequent appeal. She now files motions to reopen and reconsider, asserting that she was a victim of a severe form of human trafficking and has established eligibility for T-1 nonimmigrant classification. Upon review, we will dismiss the motions.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as T-1 nonimmigrants 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) (reiterating the statutory eligibility criteria).

The term "severe form of trafficking in persons" is defined 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;[1] 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.

[1] The Applicant did not assert and the record does not establish that she was under 18 years of age at the time of her claimed trafficking.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

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 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 30-year-old native and citizen of El Salvador, last entered the United States without being inspected, admitted, or paroled on or about May 2016. In May 2017, she filed her T application claiming her uncle's roommate, F-M-,[2] obtained and harbored her through force, fraud, and coercion for the purpose of subjecting her to involuntary servitude and commercial sex. In October 2018, the Director denied the T application finding that the Applicant had not established she was a victim of a severe form of trafficking. On motions to reopen and reconsider, the Applicant added that F-M-'s acts were also for the purpose of subjecting her to peonage. In June 2019, the Director dismissed the motions finding that the Applicant added some detail to her claims but did not meet her burden establishing her eligibility for T nonimmigrant status, and that she did not demonstrate that the underlying decision was based on an incorrect application of law or policy. In our decision dismissing the appeal, hereby incorporated by reference, we similarly concluded that the Applicant did not establish she was a victim of a severe form of trafficking. On motions to reopen and to reconsider, the Applicant includes a psychosocial evaluation and asserts that it raises new and relevant facts. The Applicant also argues that our decision on appeal omitted important facts, did not apply relevant facts, improperly focused on her relationship with F-M-, and that we diverged from a similar case we decided in the past.[3] We have reviewed the Applicant's arguments on motion and determine they are unsupported by the record.

We review the following relevant facts from the record to address the Applicant's assertions in her motions. According to the affidavits provided by the Applicant with her T application, she was living with her mother and son in El Salvador when she was first contacted via the internet by F-M-, the roommate of her uncle living in the United States. She stated she would respond politely to F-M-, but when he began sending romantic messages, the Applicant stated she ignored him. She also stated that she accepted money he sent her, even though she did not want it or need it. She does not state when she began accepting money from him but said "I know this was a mistake." She did not add context

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

[3] The Applicant includes two of our non-precedent decisions where we concluded that the applicants had established they were victims of a severe form of trafficking. These decisions were not published as precedent and therefore do not bind U.S. Citizenship and Immigration Services (USCIS)'s officers in future adjudications. See 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act"). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

explaining why she believed it was a mistake. A few months after he initiated contact, the Applicant stated that F-M- requested nude photographs of her and asked her humiliating questions. She stated he also offered to bring her to the United States and she declined his offers. The Applicant then explained that in March 2016, gang members threatened to kill her and her son and she "told [F-M-] that she changed [her] mind" and he arranged for her to cross the border. She said she was detained by United States border officials and did not arrive in New York until the end of May. She said she contacted F-M- to pick her up and he took her to the apartment he shared with her uncle. She stated F-M- expected her to sleep with him that night and she stayed awake fearing he would try to sexually assault her. However, she does not provide detail explaining what was said or done, if anything, that led her to believe that F-M- would sexually assault her or otherwise provide context surrounding her fear of F-M-, or explain why she did not tell her uncle of her fear. The Applicant then stated that, the next day, F-M- moved her things to another apartment but did not explain why she went with him if she feared him. She stated the new apartment's door would lock behind her when she left but did not allege that she was locked in the apartment. The Applicant also stated she refused to sleep with F-M- that night again and was too afraid to tell her uncle what was happening, but again did not explain or provide details regarding F-M-'s specific statements or actions. She described spending the next several days at the new apartment but also described going back to her uncle's apartment. She stated she spent her time in the new apartment cooking and cleaning because she was told a "wife needed to do those things." She also described avoiding F-M-'s sexual advances, such as pulling away from him or "slapping him" when he tried to pull her. She described that, about a week after her arrival, she was at her uncle's apartment when F-M- came in and tried to rape her, leaving her with red marks on her arms. She stated she managed to escape and called her uncle, who sent F-M- away. She stated F-M- was angry and wanted her to pay him back the money he used to bring her to the United States since she was not going to be his wife. She stated that, a week after the assault, F-M- left a rose on her bed. But she also stated that he threatened something bad would happen to her if she did not sign a notarized document saying she owed him $5,000. Based on the record, the Applicant spent about a week living with F-M- before seeking help. She said she asked her uncle to move in with her, which he did sometime in June 2016. She also stated her uncle provides for her son and she still lives with her uncle. In response to the Director's request for evidence, the Applicant provided a declaration adding that it was F-M-'s insistence that made her leave El Salvador, but she agreed to follow his plan. She adds that she was prevented from leaving the new apartment without F-M-'s permission, and that he threatened to leave her on the street if she did not perform services a wife would, such as "free sex, homemaking, and so on." During that time span, she said he would not let her see anyone, but she also stated he permitted her to see her uncle and that she did not know anyone else.

In support of her motions requesting that the Director reopen and reconsider the denial, she included another declaration dated November 2018. This declaration, however, raised discrepancies with the Applicant's previous statements. She stated she cooked, washed laundry, and cleaned F-M-'s apartment out of fear she would be hurt "again like he did when he grabbed me and tried to force me to have sex with him." According to her prior statements, however, the Applicant did not return to live with F-M- after he attempted to rape her and she did not describe prior episodes of F-M- hurting her. She also said she worked for F-M- because she thought he would bring a "case" against her for the money he spent bringing her to the United States but previously said he did not demand money from her until she left him. She also stated her uncle paid F-M- $3,000 in cash because F-M- said he would tell the police the Applicant robbed him. The Applicant does not explain when in the timeline this threat occurred but the three checks included in the record are dated July, August, and September

2016. She described F-M- getting a lawyer to draft an agreement to have her pay him back the money he spent on her. The agreement was included in the record and dated July 2016, which was after she had left F-M-.

In her motions to reopen and reconsider our decision on appeal, the Applicant includes a psychosocial assessment, dated June 2021, which provides new details. The assessment states, in relevant part, that the Applicant began contact with F-M- in the winter of 2015/2016. The assessment, like her declaration dated November 2018, also raises discrepancies with her previous statements. According to the assessment, F-M- told her that she had to cook, clean, and wash his cloths as payment for him bringing her to the United States. The assessment further states that before he tried to rape her, F-M- told her she needed to cook, clean, and have sex with him as payment for bringing her into the country. These statements made by F-M- demanding labor and sex as payment during her week stay with him are absent from her personal statements.

In her motions, the Applicant describes how she meets some parts of the definition of a severe form of trafficking in persons and argues that we erred by not providing enough analysis establishing that she did not meet those elements. However, to establish she is a victim of a severe form of trafficking, it is the Applicant's burden to establish that she has met all the elements of a severe form of trafficking as defined in 8 C.F.R. § 214.11(a). As we explained in our decision on appeal, the Applicant's statements and evidence did not establish she was obtained or harbored by F-M- for the purpose of subjecting her to sex or labor trafficking. The Applicant does not claim that we erred in our analysis with respect to her being obtained nor does she assert new facts to establish that she was obtained by F-M-. The underlying record indicated that the Applicant approached F-M- to arrange for her travel to the United States and that she freely "agreed," despite her statements that F-M-'s "insistence" made her leave sooner than she wanted. She noted that she was in a desperate situation, but it was not a situation created by F-M- to induce her to leave El Salvador. On motion, the Applicant re-asserts that she was harbored by F-M-, claiming she was isolated and imprisoned by him. However, according to the record, the Applicant was with her son, was permitted to see her uncle, spent time in her uncle's apartment, did not know anyone else that first week after coming to the United States, and could leave the new apartment; however, she was unable to return without a key. In her motions, the Applicant does not present new facts to establish that she was harbored or forced to stay in F-M-'s apartment. Nor does the Applicant establish there was error in our previous analysis. The Applicant also does not present arguments on motion that her alleged trafficker recruited, transported, provided, or for the purposes of sex trafficking, patronized or solicited her. As a result, she has not demonstrated she was a victim of a severe form of trafficking as defined in 8 C.F.R. § 214.11(a).

Even assuming arguendo that the Applicant demonstrated by a preponderance of the evidence that she was obtained or harbored, she likewise has not met her burden of establishing that F-M-'s purpose was to subject her to involuntary servitude, peonage, debt bondage, slavery, or a commercial sex act. In her motions, the Applicant asserts she was subjected to sex trafficking and peonage.

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness. 8 C.F.R. § 214.11(a). Involuntary servitude is defined, in relevant part, as:

> [A] condition of servitude induced by means of any scheme, plan, or pattern[4] 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.

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 Applicant's arguments in her motions revolve around indebtedness to F-M-, which is only part of the analysis of whether she was subjected to peonage. The Applicant, however, does not present substantive new details, nor does she assert that we erred in our analysis, with respect to whether she was subjected to involuntary servitude. She does not explain how her labor amounted to being a servant, or slave, or prisoner sentenced to forced labor. For example, the record does not detail how often the Applicant was expected to cook or clean, or what the circumstances were around her performing these duties. Because the Applicant did not provide sufficient details to establish that she was in a condition of servitude, she has not demonstrated she was subjected to involuntary servitude or, thereby, peonage.

The Applicant also did not establish that she performed labor for F-M- on account of fraud, force, or coercion. She does not disclose details on what representations, if any, were made by her or F-M- when she asked him to arrange her travel to the United States. She said F-M- made numerous romantic advances toward her and that he tried to get her to send him nude photographs of herself. The record therefore does not establish that the Applicant was defrauded by F-M- or was otherwise unaware of his intentions. The record also does not establish that F-M- used force against the Applicant to induce her to work for him. Rather, she described slapping him and pulling away. She further claimed that F-M- threatened to leave her on the street but does not explain how this would amount to a threat of serious harm, i.e., she did not explain why she would have been unable to live with her uncle. She asserted that she was coerced to work for F-M- because she feared he would take legal action against her for the money she owed him, but she does not describe him threatening the use of the legal process to induce her to work for him. In addition, she described that F-M- did not take steps to get or otherwise demand his money back until after she had moved out, which is substantiated in the record with an agreement to repay him dated July 2016 and copies of checks to F-M- dated July to August 2016. She asserts on motion that F-M- threatened he would want his money back if she did not work for him but she does explain why this was not stated in her previous

[4] The Applicant includes in her statements in the underlying record that she was aware that F-M- was trying to bring another woman to the United States to be his wife. She argues on motion that this evidences both a scheme, plan, or pattern by F-M- to bring women to the United States and his intent to submit women to trafficking, and that we erred in overlooking this detail. The record does not provide sufficient information to establish a scheme, plan, or pattern by F-M- or to demonstrate his intent. Furthermore, the Applicant became aware of these details after she had stopped living with F-M- and she does not explain how this knowledge would have coerced her into working for F-M- during the time they lived together.

statements, nor does she explain how his demands would amount to serious harm when her previous statements described her ability to go to her uncle for financial support and protection.

The Applicant also asserts on motion that our analysis of her sex trafficking claim miscategorized and misapplied facts. However, she does not explain how the facts in the record establish her sex trafficking claim. In our decision dismissing the appeal, we acknowledged that under current regulations, the Applicant is not required to actually engage in a commercial sex act to establish this requirement. See 8 C.F.R. § 214.11(f)(1) (stating that an applicant need not perform labor, services, or a commercial sex act to meet the definition of a victim of a severe form of trafficking in persons, so long as the applicant establishes that "he or she was recruited, transported, harbored, provided, or obtained for the purposes of subjection to sex trafficking, involuntary servitude, peonage, debt bondage, or slavery, or patronized or solicited for the purposes of subjection to sex trafficking.") As discussed above, however, the Applicant did not establish that she was recruited, harbored, transported, provided, obtained, or, for the purposes of sex trafficking, that she was patronized or solicited. Furthermore, the Applicant has not established by a preponderance of the evidence that F-M-'s intent was to subject her to sex trafficking. In her previous statements submitted in the underlying record, the Applicant stated that F-M- did not demand repayment from her until after he attempted to rape her and she left him. When previously describing F-M-'s statements intended to induce her to work, she stated, "he told me his wife needed to be able to do those things" or he stated he would leave her on the street if she did not comply. In previously describing the assault, she quoted F-M- as telling the Applicant that she was "going to have sex with him." The Applicant's previous statements did not contain details establishing F-M-'s intent to obtain sex and labor from her as repayment for paying for her travel. Moreover, we specifically stated in our analysis dismissing the appeal that F-M-'s decision to demand repayment only after "he realized his relationship . . . would not be as he envisioned [was] insufficient to demonstrate that he expected . . . sex acts in exchange for her travel expenses." We have reviewed the psychosocial assessment provided on motion and have considered the assessment's statements that, before assaulting her, F-M- stated that she had to have sex with him as re-payment. However, the Applicant does not explain why these details are provided for the first time in a psychosocial assessment dated after the decision on appeal highlighting that she had not established F-M-'s purpose was to induce a sex act as repayment for her travel. We also note that her 2018 declaration also raised discrepancies with the timeline of her story and why the Applicant believed she was induced to work. We therefore conclude that the Applicant's statements recollecting F-M-'s statements in an assessment dated several years after she left F-M-, and raising details not present in her previous statements, lack sufficient probative value to establish error in our previous analysis.

The Applicant did not present new facts determinative to the elements of her trafficking claim, i.e., that she was obtained or harbored by force, fraud, and coercion for the purpose of subjecting her to peonage and a commercial sex act, as required under 8 C.F.R. § 103.5(a)(2). Further, the Applicant has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3).

III. CONCLUSION

The Applicant, who bears the burden of proof in these proceedings, has not presented new facts sufficient to establish eligibility or demonstrated that our prior decision was incorrect based on the evidence of record at the time of the initial decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.