U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21983039

Date: JUNE 7, 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 the Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 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, in part, that the Applicant did not establish she was a victim of a severe form of trafficking in persons. We dismissed the Applicant's subsequent appeal, and the matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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; 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. 8 C.F.R. § 214.11(b)(1)-(4). The term "severe form of trafficking in persons" is defined, in 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." 8 C.F.R. § 214.11(a). It is the applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible, relevant evidence for us to consider; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

In this case, the record shows that the Applicant, her husband, and their two children, paid $6,000 to be transported across the border from Mexico into the United States. Once across the border, the Applicant was taken to a house in Arizona where she was instructed to cook and clean, and was held for 15 days until her friend was able to pay the demand for $1,500 per person.[1] The Director denied the T application after finding that the Applicant did not establish by a preponderance of the evidence that she was the victim of a severe form of trafficking in persons.[2] On appeal, we also concluded that the Applicant had not shown that she was the victim of a severe form of trafficking in persons, finding that the details in her statement demonstrated that she was harbored for the purpose of performing tasks to further the smuggling enterprise while her captors waited for her friend to make an additional payment, rather than for the purpose of subjecting her to involuntary servitude.

On motion, the Applicant contends that our prior decision misinterpreted the regulations and ignored the evidence in the record. She argues:

> [B]eing forced to perform tasks (or labor) and being made to cook and clean are synonymous with a condition of involuntary servitude. . . . [I]t does not matter *why* the [smugglers][3] forced her to perform tasks, whether those tasks furthered the smuggling enterprise, or what else they were doing while they were forcing her to perform tasks. What matters is that they forced her to perform tasks. In performing tasks for them – such as cooking and cleaning – she served them. Because she did not choose to serve them voluntarily and because she had no choice in serving them or not, her situation was involuntary. Therefore, . . . [they] harbored [the Applicant] for the purpose of subjecting her to involuntary servitude. . . . Forced labor is what transforms smuggling into trafficking.

Referring to the USCIS Policy Manual which breaks down the definition of "severe form of trafficking in persons" into "action," "end," and "means," the Applicant argues that we confused the "end" of involuntary servitude with the "purpose" or "reason" for the labor. She claims that "the *reason* why an applicant is forced into servitude . . . is irrelevant for T nonimmigrant eligibility."

In addition, the Applicant concedes that it is true that the smugglers did harbor her so they could extort her family for additional money; however, she states that what is also true, simultaneously, is that she was forced to work. She contends that this "mixed motive" or "dual motive" argument has not been properly addressed and that she must only show that, at some point, the smugglers/traffickers had the

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[1] The Applicant does not contest any of the specific facts described in either the Director's decision or our prior decision, asserting that "[t]he only issue on appeal and in this motion is whether [the Applicant] was a victim of a severe form of trafficking, or, more specifically, whether the alleged traffickers had the purpose of subjecting [her] to involuntary servitude." We therefore incorporate the uncontested underlying facts here, while recognizing the Applicant disagrees with our interpretation of those facts to the law.

[2] The Director also concluded that the Applicant did not establish she was physically present in the United States on account of the alleged trafficking, that she complied with reasonable requests for assistance in the investigation or prosecution of trafficking, and that she remained inadmissible to the United States. We did not reach these issues and reserved them on appeal, and we again reserve them on motion.

[3] The Applicant refers to her smugglers as traffickers, which we do not find is accurate considering our holding that she was not a victim of trafficking.

purpose of subjecting her to involuntary servitude. According to the Applicant, "the AAO seems to be confused about what actually constitutes involuntary servitude" and contends she established the statutory requirements for T nonimmigrant status.

We disagree with the Applicant's contentions. The plain language of the Act and implementing regulations expressly require a "purpose" for the labor. Section 101(a)(15)(T)(i) of the Act provides that an applicant must establish they are or have been "a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 [TVPA]." As relevant here, section 103 of TVPA defines "severe forms of trafficking in persons" as the "harboring . . . 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.A. § 7102(11)(B) (emphasis added). The implementing regulation at 8 C.F.R. § 214.11(a) uses the identical definition. Therefore, the reason why an applicant is forced into involuntary servitude is integral to determining whether an applicant has demonstrated the required purpose. In comparison, the definition of involuntary servitude does not include the element of purpose or reason.[4] However, in order to establish eligibility for T nonimmigrant status, the Applicant must establish not only that she meets the definition for involuntary servitude, but that she was harbored "for the purpose of" subjecting her to such servitude.

The USCIS Policy Manual specifically addresses the difference between trafficking and smuggling. 3 *USCIS Policy Manual* B.2(B)(7), https://www.uscis.gov/policymanual. It specifies that although *some* smuggling arrangements *may* evolve into trafficking, "officers should look to whether the smuggler's intent may have shifted over time into that of a trafficker and whether the initial consent has been invalidated by the coercive, deceptive, or abusive exploitation of the smuggler-turned-trafficker. . . ." *Id.* It further states:

> The perpetrator's motivations can be multifaceted. For example, a smuggler who intends to extort a person for financial payments during a smuggling arrangement may also have a dual intent or shifting intent to compel forced labor or services that place the person into a condition of servitude, even where the forced labor or services end upon completion of the smuggling arrangement.
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> Short periods of victimization may qualify as a condition of servitude depending on the victim's credible statements. Conversely, a person may be forced to perform certain labor within a smuggling arrangement outside of a condition of servitude that does not rise to trafficking, such as facilitating the smuggling operation or avoiding detection at the border. *USCIS makes an individualized determination of whether trafficking has been established based on the evidence in each particular case.*

Id. (emphasis added).

[4] Involuntary servitude is defined, in 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 threated abuse of legal process." 8 C.F.R. § 214.11(a).

As we explained in our prior decision and we now reiterate, the details provided in the Applicant's initial statement as well as in her supplemental statement submitted in response to a Request for Evidence (RFE) indicate that she and her family were harbored to further the smuggling enterprise. For instance, in her initial statement, the Applicant attested that L-C-[5] "told us to . . . come out of the room and start cleaning so that people would think that we were her family." In her supplemental statement, she further explained that after L-C-'s house, they crossed the border and were taken to L-N-'s house where she had to "clean up the mess that the traffickers left from the night before," cooked, and cleaned. She stated that L-N- "told [her] to do the work, she said that I must pay for my keep and for my food. She also told me that I had to pay more because I had my children and she supposedly did not allow children in her house." The Applicant claimed that "[e]ven if I had paid [L-N-] the additional money she demanded as soon as I arrived at her house, I think she still would have kept us there and made us work for several days," asserting that others had purportedly been forced to stay after their payments had been made.

We find that the Applicant's statements demonstrate that she cooked and cleaned to facilitate the smuggling operation. She was told to clean so that others would think they were part of the family and not raise suspicions during the smuggling journey. She was also told she had to clean up after the traffickers and that she had to work to "pay for [her] keep" while awaiting for her friend to pay the smugglers additional money. The evidence does not establish that the smugglers intended to place, or actually placed, the Applicant in a condition of servitude. Although there may be a dual or mixed motive in some cases, here, the record does not contain sufficient evidence to show by a preponderance of the evidence that the smugglers had a dual or shifting intent to subject the Applicant to involuntary servitude, as claimed. Although she feared she would not be released after payment was made, the record does not show that any smuggler made any such indication and she was, in fact, released. Considering the evidence in its entirety, we do not find that the Applicant met her burden of establishing that forcing her to cook and clean in the places where she and her family were housed while the smugglers awaited additional payment was for the purpose of subjecting her to involuntary servitude. The circumstances of the Applicant's case indicate that although she was forced to perform certain labor within the smuggling operation, it was not for the purpose of placing her in a condition of servitude and did not rise to trafficking.

To the extent the Applicant discusses cases from the Sixth and Eighth Circuit Courts of Appeals as well as U.S. District Court cases,[6] we note that the cases cited are criminal cases and not T nonimmigrant applications. They are not applicable or binding on us[7] and, as described above, we

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[5] We use initials to protect the identities of the individuals in this case.

[6] The Applicant cites to: *United States v. Farrell*, 563 F.3d 364 (8th Cir. 2009), which upheld the appellant's conviction for four counts of peonage in violation of 18 U.S.C. § 1581, one count of conspiracy to commit peonage in violation of 18 U.S.C. § 371, two counts of making false statements in violation of 18 U.S.C. § 1001, one count of visa fraud in violation of 18 U.S.C. § 1546, and one count of document servitude in violation of 18 U.S.C. § 1592; *United States v. Djoumessi*, 538 F.3d 547 (6th Cir. 2008), which affirmed the appellant's conviction for holding a person in involuntary servitude in violation of 18 U.S.C. § 1584, conspiring to hold a person in involuntary servitude in violation of 18 U.S.C. § 1584, and harboring a noncitizen for private financial gain in violation of 8 U.S.C. § 1324, and found that the charges did not violate the appellant's rights under the Double Jeopardy Clause; *U.S. v. Soto et al.*, Crim. Case No. M-03-341-S2, Case No. 7:03CR00341-S3-008 (S.D. Tex. July 22, 2003); and *U.S. v. Leon-Aldana et al.*, Crim. Case No. 3:07CR00035-L (S.D. Cal. 2007).

[7] The Applicant does not reside within the jurisdiction of the Sixth or Eighth Circuit Courts of Appeals. In addition, like

must make an individualized determination of the T application based on the specific facts of the Applicant's case and the relevant immigration laws and regulations.

In sum, we find that the preponderance of the evidence shows that the Applicant's smugglers harbored her for the purpose of smuggling her and her family into the United States in exchange for payment for their smuggling services. Upon receiving payment, the smugglers released them. It is the Applicant's burden to show by a preponderance of the evidence that, at some point, the smugglers had the purpose of subjecting her to involuntary servitude and she has not met that burden. The Applicant has therefore not established that she is a victim of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act. Her arguments on motion do not establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision, as required to meet the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). The T application will remain denied.

ORDER: The motion to reconsider is dismissed.

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the Board of Immigration Appeals, we are not bound to follow the decisions of a U.S. district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).