U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21736507

Date: JUN 14, 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 he was the victim of a severe form of trafficking in persons, that he was physically present in the United States on account of such trafficking, or that he had complied with reasonable requests for assistance in the investigation or prosecution of such trafficking. The Director also determined that the Applicant is inadmissible to the United States under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), for being present without admission or parole. We dismissed the Applicant's subsequent appeal, again determining that he did not meet his burden of establishing that he was the victim of a severe form of trafficking in persons.[1]

The matter is now before us on a motion to reconsider. On motion, the Applicant submits a brief and reasserts his eligibility. In these proceedings, 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). Upon review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

[1] As our determination that the Petitioner had not established he was the victim of a severe form of trafficking in persons was dispositive of his appeal, we declined to reach and reserved his appellate arguments regarding the remaining eligibility issues raised by the Director. *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-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as a T-1 nonimmigrant if they: were 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) (reiterating the statutory eligibility criteria). The term "severe form of trafficking in persons" is defined, in relevant 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). Involuntary servitude is "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 . . . [and] 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 . . . [and] encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury . . . ." *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). Slavery is defined as a "situation in which one person has absolute power over the life, fortune, and liberty of another." *Id.*

II. ANALYSIS

The Applicant, a native and citizen of Mexico, claims to have last entered the United States in 2003 without inspection, admission, or parole. In June 2018, the Applicant filed the instant T application, asserting that he was the victim of labor trafficking by smugglers who subjected him to involuntary servitude after transporting him into the United States. The Director denied the application finding, in part, the Applicant had not demonstrated he was the victim of a severe form of trafficking in persons.

In our decision on appeal, which is incorporated here by reference, we reviewed the facts of the Applicant's trafficking claim and also found that he had not established by a preponderance of the evidence that he was the victim of a severe form of human trafficking in the form of labor trafficking, as he asserted. Specifically, we determined that the record did not show the smugglers' purpose in transporting and harboring him was to subject him to involuntary servitude, as he claimed. We acknowledged the Applicant's assertion on appeal that the smugglers had mixed motives, one of which was to subject him to trafficking during the course of the smuggling, as evidenced by the fact that they forced him to perform labor. However, we determined that the record did not establish that such a trafficking situation arose during the smuggling. Specifically, we concluded that although the Applicant was made to perform domestic labor, the preponderance of the evidence showed his smugglers did so to maintain and house the Applicant and others who were also being smuggled with him and that they transported and harbored him in order to complete their smuggling arrangement with him and facilitate the extortion of his family members for additional money prior to his release. Consistent with this determination, we noted that the smugglers released and transported the Applicant to complete the smuggling arrangement once his family paid the additional fees the smugglers extorted. Additionally, we acknowledged the Applicant's assertion that the Director erred in focusing on the smugglers' intent because the "for the purpose of" language in the regulatory trafficking

definition is primarily intended for those cases in which a T applicant escaped their trafficker prior to actually performing labor or services and not where applicants like himself actually performed forced labor; however, we noted again that the regulatory definition of a "severe form of trafficking in persons" at 8 C.F.R. § 214.11(a) requires that applicants demonstrate that they have been recruited, harbored, transported, provided or obtained "for the purpose of subjection to involuntary servitude . . . ," a requirement we lacked authority to waive.

On motion, the Applicant again asserts that he was the victim of trafficking by his smugglers because they transported and harbored him with the purpose of subjecting him to involuntary servitude. He maintains that the labor he was forced to provide during his smuggling was itself evidence of this purpose on the part of his smugglers and went beyond furthering and facilitating the scope of the smuggling and extortion operations because the smugglers held him an additional week after his smuggling fees were paid during which time he was the only person being held by the smugglers who was forced to work. The Applicant further argues that we erroneously focused on the reasons why the smugglers forced him to perform labor even though the required purpose or "end" under the trafficking definition, namely "subjection to involuntary servitude," had already been accomplished. In support of his arguments, he cites to and highlights language from the 2016 Interim T Rule, agency guidance which he asserts we disregarded. *See* Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status (Interim T Rule), 81 Fed. Reg. 92,266, 92,272 (Dec. 19, 2016) (stating that while 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, the "[t]he clearest evidence of this purpose would be that the victim did in fact perform labor, services, or commercial sex acts").

As stated in our previous decision, we acknowledge the explanatory language in the T interim rule and that the Applicant's performance of domestic labor and related work under threat of violence may be sufficient to meet the definition of involuntary servitude. *See id.* However, the preliminary explanatory discussion to the Interim 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). Critically, the regulatory definition of a "severe form of trafficking in persons" at 8 C.F.R. § 214.11(a) requires T applicants demonstrate they have been recruited, harbored, transported, provided or obtained "for labor or services . . . *for the purpose of* subjection to involuntary servitude, peonage, debt bondage, or slavery." 8 C.F.R. § 214.11(a) (emphasis added). The preamble to the Interim T Rule further reiterates the operative nature of this language, highlighting the Merriam-Webster definition of purpose as "something set up as an object or an end to be attained" and stating that "the concept of 'for the purpose of' speaks to the *process of attaining* an object or end or the *intention to attain* something, but not the end result." Interim T Rule, 81 Fed. Reg. at 92,271 (emphasis added). As highlighted on appeal, the record does not sufficiently establish the Applicant was transported or harbored by the smugglers for the purpose of subjecting him to involuntary servitude. He describes performing work connected to the maintenance and housing of himself and others also being smuggled and extorted along with him, in furtherance of the smuggling arrangement and the smuggler's extortion scheme. Consequently, the record as a whole indicated that the smugglers transported and harbored him for the purpose of completing the smuggling arrangement, and later to extort additional money from his family, and does not otherwise reflect an intent on their part to place him in a condition of servitude, as the Applicant maintains.

The Applicant also asserts that the record reflects that the smugglers had a dual or shifting intent and mixed motives which included subjecting him to a condition of involuntary servitude and that our decision to the contrary was in error. He highlights language from the USCIS Policy Manual providing guidance that "[i]n cases involving smugglers, officers should look to whether the smuggler's intent may have shifted over time into that of a trafficker" and that smugglers "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 forced labor or services end upon completion of the smuggling arrangement." 3 *USCIS Policy Manual* B.2(b)(4) and (7), https://www.uscis.gov/policy-manual. We acknowledge this guidance; however, the record before us does not contain sufficient evidence to support the Applicant's assertion by a preponderance of the evidence of a dual or shifting intent on the part of his smugglers to subject him to involuntary servitude. *See* 8 C.F.R. § 214.11(d)(5) (stating that the applicant bears the burden of establishing eligibility and that USCIS determines, in its sole discretion, the weight to give the evidence submitted); *Matter of Chawathe*, 25 I&N. Dec. at 375 (laying out the preponderance of evidence standard); s*ee also* 3 *USCIS Policy Manual*, *supra*, at B.2(b)(7) (providing, as guidance, that "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" and "USCIS makes an individualized determination of whether trafficking has been established based on the evidence in each particular case").

In this case, the Applicant asserts that he was harbored for an extra week in a trailer even though he had paid the agreed upon smuggling fees, and he described being forced to perform domestic labor and tend to the injuries of others also being held during that time. However, while he did perform labor, his statements reflect that the smugglers harbored him for the extra week for the purpose of extorting additional money from his family and to complete the smuggling arrangement, as evidenced by the fact that they released him upon being paid the additional funds. We recognize the Applicant's assertion that the smugglers used threats to force him to perform labor, including telling him, "you belong to us right now." Nevertheless, the Applicant's account provides insufficient information about the threats to give them context and establish the smugglers' intent in harboring him was to subject him to involuntary servitude, particularly as they released him upon being paid the additional fees they had extorted from his family. *See* 3 *USCIS Policy Manual*, *supra*, at B.2(b)(7) (explaining that individuals may be forced to perform labor within a smuggling arrangement outside of a condition of servitude that does not rise to trafficking). Although the Applicant highlights the fact that he was the only one held at the trailer park who was forced to work during that week, his statements indicate that he was made to do the work because the others were physically injured and unable to perform the work and not because the smugglers intended to place him a condition of servitude. The Applicant stated: "I don't know why they put me to work but think it was because the [majority of the] others were injured . . . [or] dehydrated and lacking strength[,] while others were older . . . I think they made me work because I was the one that was more capable of doing the work." These statements are not a sufficient basis upon which to determine, by a preponderance of the evidence, that the Applicant was harbored by force and coercion *for the purpose of* subjection to involuntary servitude, as opposed to the purpose of the furtherance of the smuggling and extortion of him and other immigrants, and the upkeep and maintenance of the property in which the smugglers temporarily housed those being smuggled and extorted.

Accordingly, the Applicant has not shown that our previous decision on appeal was based on an incorrect application of law or USCIS policy or that it was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Applicant has not overcome our previous determination that he has not shown that he is a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i) of the Act and 8 C.F.R. § 214.11.

ORDER: The motion to reconsider is dismissed.