



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

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

In Re: 15264235

Date: MAR. 08, 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) and reaffirmed the denial on a subsequent motion to reopen and reconsider, concluding that the Applicant had not established that she was a victim of a severe form of trafficking in persons and therefore, had not established she is physically present in the United States on account of such trafficking and complied with any reasonable request for assistance in the investigation or prosecution of such trafficking. On appeal, the Applicant submits a brief and additional evidence. 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 for further proceedings consistent with this decision.

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; 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 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). The definition of trafficking also includes “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.” *Id.* 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, a native and citizen of Mexico, claims to have entered the United States without being inspected, admitted, or paroled, first in 1997 and most recently in 2001. In March 2018, the Applicant filed the instant T application, asserting that she was subjected to trafficking by her uncle, A-N-G-, and later by her former employer, G-G-.¹ Additionally, the Applicant asserted that she was also trafficked by the smugglers who transported her to the United States in 2001. On appeal, we conclude the Applicant has overcome the Director's determination that she did not establish she was a victim of a severe form of trafficking in persons.

A. The Applicant's Trafficking Claim

The Applicant submitted three personal statements below: an initial 2018 statement, an August 2019 statement in response to the Director's request for additional evidence (RFE), and a December 2019 statement in support of her motion to reopen and reconsider.

Per the Applicant's statements, she first left Mexico when she was 17 years old to escape sexual and physical abuse and forced labor by her stepfather, which she asserted constituted labor and sex trafficking. Upon arriving in the United States in 1997, the Applicant stated she moved in with her uncle A-N-G-, various family members, and A-N-G-'s tenants. The Applicant stated that A-N-G- was abusive and forced her to work for him against her will during the period she lived with him. However, she indicated that she was later able to escape him by returning to Mexico in 1999 with A-, who she met in the United States, and marrying him. The Applicant indicated that she then stayed in Mexico and lived with A-'s mother, M-, and brother while A- returned to the United States to work. She stated that M- was also verbally abusive and treated her like a servant, and she was unable to return to her own home as she continued to fear her stepfather.

The Applicant stated that around September 2001, after multiple earlier unsuccessful attempts, she reentered the United States without inspection with her 15-month-old daughter, hoping to escape her family members' abuse and forced labor in Mexico. The Applicant described arranging for "coyotes" (smugglers) to help her cross the border. She said when they reached a town close to the border, the smugglers charged her a total of \$3,000 to transport her and her daughter to her destination in Virginia, where her spouse was living, but they required her to only pay them \$500 prior to crossing the border. The Applicant stated that the smugglers were armed and beat two men who did not have the initial \$500 to pay them. She stated that she told the smugglers that she did not have money to pay the balance of the fees, but they assured her that was fine as long as somebody paid the remaining \$2,500 after they got to the United States. The Applicant also recalled that before leaving Mexico, the smugglers pointed their guns at some of the male migrants and threatened her and the other migrants

¹ Initials used to protect individuals' identities.

to never identify them or give the authorities any information about them if they were caught while crossing the border.

The Applicant stated that after arriving at the smugglers' safehouse in [] Arizona and contacting her spouse to arrange payment, she learned that A- was only able to obtain enough money to pay a portion of her outstanding debt. She indicated that despite the previous assurances given to her regarding payment of the fees, the smuggler who helped her call A- became angry. She stated the smuggler told her, "[Y]ou are a woman, so you know what you are going to have to do," and that she was going to have to work "as a woman" to pay off what she still owed. She recalled that he told her she can "work it off" with "these men," pointing to all the other men there, including the smugglers and the migrants. She stated that she understood this to mean she would have to work for them as a prostitute or engage in sex acts with the smugglers to work off her debt. The Applicant stated that she learned that the smugglers really did prostitute women in her situation who could not pay their fees. She indicated that the men who could not pay were beaten and sent to a farm in Georgia to work off their debt, but she was not expected to work at the farm and was instead to work the debt off in a different way because she was a woman. However, she relayed that she was able to contact a friend who agreed to pay the smugglers the rest of the money she owed.

The Applicant also indicated that when the smugglers told her she would have to work for them "as a woman," they also started to touch her sexually whenever they wanted and made comments about her having a nice body and face. Additionally, she stated that in the Arizona safehouse, the smugglers only allowed her and another girl, who also still owed them money, to enter the kitchen to get food for themselves and other migrants, but in order to enter, they had to allow the smugglers to touch them. She stated that the other women in the safehouse who did not have outstanding debts were not treated in this way. The Applicant explained that the first time she went into the kitchen, it was because she desired to get food for men who the smugglers had beaten badly earlier in their journey for not being able to pay their initial crossing fees. The Applicant stated that when the smugglers saw her cooking for the injured migrants, they demanded she also cook to feed them too that day and the next morning. She said that she let the smugglers touch her and cooked large meals for them out of fear because they had threatened to kill her and the other migrants if they did not obey their rules when they first arrived at the safehouse.

After her remaining debt to the smugglers was paid by her friend, the Applicant described being transported along with other migrants in dangerous conditions to Virginia, with stops in Texas and Georgia. She described the trip to Texas as terrible and stated that she and the other migrants were unable to "get out." She said that, although she was allowed to ride in the front of the truck where conditions were better than those in the back, when her daughter began crying at one point, one of the migrants clamped his hand over her mouth, threatening her, and forced Tylenol down her throat to quiet her. The Applicant further stated that even though her debt was paid off, the smugglers told her that she had to pay for additional things and continued to touch her, threaten her with prostitution, and tell her that they could "take [her] as payment" for the debt they claimed she still owed them. She stated they were not specific about what else she owed them for, but she believed that they were talking about the costs associated with her transportation. The Applicant indicated that when they arrived at a ranch in Georgia, the men who were unable to pay their smuggling fees were taken to work off their debt with the assistance of "recruiters" who helped arrange for work to pay off their debts. She stated she realized then that the smugglers had meant it when they said they would make her work as a

prostitute to work off her fees. During the single night she spent in Georgia, she stated that the smugglers, who were intoxicated, attempted to break into the room she and another woman were staying in for the night while shouting and jeering. However, she indicated the men were unsuccessful because she and the other woman were able to barricade the door with a sofa. The Applicant stated that she “knew” the men wanted to rape them and thought that night may have become her first night of prostitution. She reasoned that the smugglers may have meant for her to work as a prostitute at the ranch in Georgia because it was where they took the male migrants to work to pay off their debts. Nevertheless, she stated that the next day, one of the smugglers drove her and a few other migrants to Virginia and dropped her off at an address provided by her husband.

The Applicant indicated that when she was reunited with A-, she discovered to her dismay that he was living with her abusive uncle A-N-G-. She stated that although she did not want to return to live with A-N-G- because of his past abuse, she returned to live with him because A- was living with him. She described A-N-G- again engaging in a pattern of abusive behavior towards her and her family while demanding she work for him by cooking and cleaning the home he shared with them.

In 2015, several years after moving out of A-N-G-’s home, the Applicant stated she heard about an employment opportunity with a [] company owned by G-G- where they did not ask for employment eligibility documentation and paid immigrants in cash. Desiring to help support her family after her husband was diagnosed with cancer, the Applicant stated she applied for a job and started working for G-G-’s company. However, she asserted that G-G- also engaged in a pattern of abusive labor practices that included underpaying workers such as herself who did not have lawful status in the United States and demanding that she and other female workers like herself allow him to sexually assault and harass them as a condition of their employment. She stated G-G- threatened to report the workers to immigration so they would be jailed and deported if they complained about their pay or the work conditions. The Applicant asserted she was only able to leave the job because she was fired for leaving work to go to the doctor after being injured during an accident involving another employee. After leaving G-G-’s [] company, the Applicant described working with a social worker to overcome trauma caused by the experience and to report G-G-’s behavior to law enforcement. She also affirmed that she was afraid to return to Mexico because of her lack of ties and the bad things that had happened to her there.

In her statement on appeal, the Applicant gives an additional account of her smuggling experience that is consistent with her prior statements and provides additional details. The Applicant indicates that after she paid \$500 of the total smuggling fees prior to crossing the border into the United States, the smugglers acted like it was not a big deal when she told them she did not have enough money to pay them the balance, and they encouraged her to continue the journey and figure out how to pay the balance later after arriving in the United States. The Applicant reaffirms, however, that she saw the smugglers beat other people who could not pay the initial \$500 fee. She also recalls speaking with one of the guides who informed her that he had been forced to work as a guide by the smugglers because he could not pay them and warned her that the smugglers would make her work for them also if she did not have the money they required, but that they would make her “pay as a woman.”

The Applicant also affirms that even after she paid her smuggling debt and she was moved from the safehouse in Arizona, the smugglers continued to threaten her with prostitution. She adds that at the safehouse in Texas, people who could not pay the smugglers’ fees were tortured. She recalls that

when she asked one of the smugglers in charge for food or milk for her sick daughter, the smuggler told her that if she did not get out of the kitchen and follow orders they would call immigration on her, which scared her because she feared returning to Mexico. The Applicant states that, even after she had paid them the agreed upon fee, the smugglers kept telling her during the journey that there were more things that she would have to pay for, pointing out the long distance they had to transport her and her daughter. She states that the smugglers continued to touch her sexually and would tell her “that they would take [her] as payment.” The Applicant emphasizes that she did not want them to touch her and “just wanted it to stop.”

Additionally, the Applicant submitted a letter from a licensed clinical social worker with the nonprofit organization, Ayuda, regarding their intake screening of the Applicant and the services they provided her; a psychological evaluation from a mental health counselor indicating that the Applicant suffered symptoms of posttraumatic stress disorder (PTSD) and depression relating to the experiences described above; copies of reports the Applicant made to law enforcement concerning her experience with G-G-; and, various publications relating to human smuggling and trafficking. On appeal, the Applicant also submits additional evidence including copies of documents relating to her pending Form I-918, Petition for U nonimmigrant status.

B. The Applicant Has Established She Is a Victim of a Severe Form of Trafficking in Persons

To show they are victims of a severe form of trafficking in persons (trafficking) in the form of sex trafficking, applicants must show: (1) that they were recruited, harbored, transported, provided, obtained, patronized, or solicited, (2) for the purpose of a commercial sex act, (3) induced by force, fraud, or coercion, or alternatively, that the person induced to perform such an act is under 18 years of age. *See* 22 U.S.C. § 7102(11), (12); 8 C.F.R. § 214.11(a) (defining “severe forms of trafficking in persons” and “sex trafficking”). Commercial sex act is defined as “any sex act on account of which anything of value is given to or received by any person.” *Id.*

In concluding that the Applicant did not establish that she is a victim of trafficking by the individuals who smuggled her to the United States in 2001, the Director concluded that the smugglers’ actions while transporting the Applicant were directly related to furthering their illegal smuggling operation and their desire for monetary gain. The Director further concluded that although the Applicant was victimized by her smugglers during her journey, the evidence did not demonstrate that the smugglers’ purpose was to subject the Applicant to forced labor. Additionally, although the Director’s decision on motion² did not specifically address whether the smugglers’ actions were for the purpose of sex trafficking, it found that the Applicant did not establish that she was a victim of trafficking in the form of labor or sex trafficking.

Upon *de novo* review, we find that the record shows the smugglers solicited the Applicant during the course of smuggling her for the purpose of commercial sex acts induced by force and coercion, as

² The Director’s initial decision denying the T application did not address the Applicant’s claim that she was the victim of trafficking by the smugglers who transported her to the United States and instead, only addressed her claim that her former U.S. employer, G-G-, trafficked her.

required to establish sex trafficking.³ The record reflects that the Applicant initially entered a voluntary smuggling arrangement to cross the border into the United States and afterwards be transported to Virginia. However, the record also shows that, after arriving at a safehouse in Arizona and learning that the Applicant's spouse was unable to completely pay her outstanding debt, one of the smugglers solicited sex acts from her when he informed her that if she could not pay off her smuggling debt, then she would have to work for them "as a woman." Her statements further reflect that the smuggler specifically told the Applicant, "[Y]ou are a woman, so you know what you are going to have to do" and that she was going to have to work "as a woman" to pay off her debt. Afterwards, the smuggler specifically pointed at all the men present, including other smugglers and the migrant men, and referring to the debt she still owed, told her that she could "work it off" with those men. The Applicant explained that she therefore understood working "as a woman" to mean they intended to prostitute her. The sexual nature of the solicitation was also evidenced by the smugglers concurrently commenting on her "having a good body and a nice face," stating that they liked that she was young, and starting to touch her sexually thereafter "whenever they wanted" without seeking or obtaining her consent. Additionally, according to her statements, even after the Applicant paid off her smuggling debt, the smugglers continued to touch her sexually and tell her that they "could take [her] as payment" for additional unspecified fees she purportedly owed them. The record therefore sufficiently shows that the smugglers solicited the Applicant for the purpose of sex acts.

The evidence also reflects the commercial nature of the sex acts the smugglers solicited from the Applicant. *See* 8 C.F.R. § 214.11(a) (defining "sex trafficking" as recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting "for the purpose of a commercial sex act," which is "any sex act on account of which anything of value is given to or received by any person"). As discussed, the smugglers solicited sex acts, telling her she would have to work for them "as a woman," as a means to pay off her smuggling debt to them, a prerequisite to continuing her journey to her destination in the United States. Likewise, even after she paid off her smuggling fees, they specifically told her that they could "take her" as payment to pay additional, unspecified costs, as they continued to touch her sexually. The Applicant also explained that while she was held at the safehouse in Arizona, the smugglers only allowed her to enter the kitchen to obtain food for herself and others in her group who were injured so long as she allowed them to touch her sexually. Consequently, the record sufficiently shows that the smugglers solicited the Applicant for sex acts that were commercial in nature in that the sex acts were solicited in return for something of value to her, including having her debt paid off, continuing her journey to the United States, and being allowed to access food for herself and others in need at the safehouse.

Lastly, as noted, in order to establish that the Applicant was a victim of trafficking under 8 C.F.R. § 214.11(a) in the form of sex trafficking, the record must also show that the solicited commercial sex acts were "induced by force, fraud, or coercion." Coercion means, in relevant part, "threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process." *Id.* Here, the smugglers used force to induce the Applicant to provide solicited sex acts by repeatedly touching her sexually

³ As we have found that the Applicant was the victim of sex trafficking because the record shows that the smugglers solicited the Applicant for commercial sex acts through force and coercion, we do not reach her assertions on appeal that the smugglers transported, harbored, provided, and obtained her for the purpose of commercial sex acts induced by fraud and that she was also a victim of labor trafficking by the smugglers, A-N-G-, and G-G- in separate incidents.

without seeking or obtaining her consent. The Applicant also indicated she allowed this because they had explicitly warned her and other migrants being smuggled that they would be killed if they did not obey the smugglers' rules. Additionally, per her statements, the smugglers were armed with guns when they asked for payments, and she saw them take men who could not pay their smuggling fees and beat and "torture[]" them. The Applicant also indicated that one of the guides told her the smugglers had forced him to work as a guide in the desert when he could not pay them by threatening to kill his family. Her statements likewise indicate that, while men could pay off their smuggling debts through physical labor, the smugglers explicitly informed her that if a woman like herself could not pay then she would have to pay off her debt in other ways "as a woman." At one point, per the Applicant's account, one of the smugglers, angry that she could not pay the full amount of her smuggling debt, pointed at the other smugglers and migrant men present and specifically told her that if she could not pay then she could work off her debt with them. Further, the Applicant indicated that other women who were unable to pay their smuggling fees were in fact prostituted by the smugglers. The preponderance of the evidence therefore sufficiently demonstrates that the smugglers used coercion to induce the Applicant, and other female migrants who were unable to pay their smuggling fees, to perform commercial sex acts through a "scheme, plan, or pattern intended" to make them believe that they or others would "suffer serious harm or physical restraint" (physical harm and death) if they refused. *See id.* (defining coercion).

Accordingly, the Applicant has established that she is the victim of sex trafficking in which she was solicited for the purpose of commercial sex acts induced by force, fraud, or coercion during the course of smuggling her to the United States. *See* 8 C.F.R. § 214.11(a) (defining "severe forms of trafficking in persons" and "sex trafficking").

C. Physical Presence and Reasonable Requests for Assistance

The Director also 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: 1) she is physically present in the United States on account of such trafficking, or 2) her compliance with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, as sections 101(a)(15)(T)(i)(II) and (III) of the Act require. We will remand this matter to the Director to determine whether the Applicant meets these additional eligibility requirements under the Act, given our determination here that she was a victim of trafficking in persons.

III. CONCLUSION

The Applicant has demonstrated that she is 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 under section 101(a)(15)(T)(i), including whether she is physically present on account of her trafficking.

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