



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 20596765

Date: MAR. 9, 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. 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: 1) she was a victim of a severe form of trafficking in persons; 2) she was physically present in the United States on account of the claimed trafficking; 3) she had complied with reasonable requests for assistance in the investigation or prosecution of the trafficking; and 4) she would suffer extreme hardship involving unusual and severe harm if she were removed from the United States. The Director further noted that the Applicant was inadmissible to the United States, and the record indicates that the applicable grounds of inadmissibility against her were not waived. The Director also dismissed the Petitioner's subsequent motion,<sup>1</sup> and the Petitioner submitted a timely appeal of that decision. On appeal, the Applicant submits a brief and asserts 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 dismiss the appeal.

## 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.

The term "severe form of trafficking in persons" is defined in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a), and includes "the recruitment, harboring, transportation, provision, or obtaining of a

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<sup>1</sup> The Applicant filed the Form I-290B, Notice of Appeal or Motion, appealing the Director's denial of her T application, in March 2021; however, the AAO rejected the appeal for untimely filing and forwarded the Form I-290B to the Director for consideration as a motion. The Director's subsequent decision dismissing the motion is before us now on appeal.

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.”<sup>2</sup>

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 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, last entered the United States in December 2016 without inspection, admission, or parole.<sup>3</sup> In June 2019, the Applicant filed the instant T application asserting that she was the victim of trafficking by the smugglers who facilitated her unlawful reentry into the United States.

### A. The Applicant’s Trafficking Claim

In her initial written statement before the Director, the Applicant explained that her husband contacted a coyote (smuggler) to help her cross into the United States in [REDACTED] 2016. She stated that when she got to the border in [REDACTED] Mexico, there was a van waiting for her and six others in the group. She stated that she jumped over the fence and got in a van that was waiting for them on the other side. She stated that once they were on the road, they noticed they were being followed by a border patrol car. She stated that the driver of the van started to speed, crashing into other vehicles but when they got on the highway, they had to slow down due to heavy traffic. She stated that the driver told them that “the plan was ruined” and that they were going to get caught. According to the Applicant, the driver told them to get out of the van and “just run away.” The Applicant stated that while she was running away, she tripped and hurt her ankle and hip and could not walk. She explained that she hid under a bush near a house and waited until the border patrol agent found her. She indicated that after being processed by an immigration officer, she was taken to a hospital to receive treatment for her injuries and brought back to the station afterwards where she was further questioned by the authorities about the smuggling operation. She stated that the next day she appeared before the judge and agreed to be a material witness for the investigation. She indicated that thereafter, she was taken to a hotel where she stayed until she was released.

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<sup>2</sup> 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.* The Applicant does not claim that she is a victim of sex trafficking.

<sup>3</sup> The record indicates that the Applicant had entered the United States prior to December 2016. She was previously apprehended by the border patrol agents in [REDACTED] 2005 and was granted voluntary return to Mexico. However, the record contains U.S. birth certificates of the Applicant’s two eldest children who were born in 2006 and 2007, which indicates that the Applicant reentered the United States subsequent to voluntarily returning to Mexico in 2005. The Applicant was again apprehended by the border patrol agents in [REDACTED] 2016 while attempting to reenter the United States without inspection, admission, or parole, and was expeditiously removed from the United States. The Applicant last entered the United States in [REDACTED] 2016 without inspection, admission, or parole, and was granted deferred action in order for her to testify as a material witness in an alien smuggling investigation.

In response to the Director's subsequent request for evidence (RFE), the Applicant submitted a supplemental statement in which she provided additional details of her smuggling journey. She indicated that before crossing into the United States, she stayed in a house with five other women where she was not provided any food, water, or other essentials and was told she had to find and pay for food herself. She stated that no one was allowed to leave the house and that the smugglers told them that it needed to appear "as if no one was staying in the house." She stated that since they were not given food, water, and essentials, they had to find a way to pay for it themselves, but they had to ask and receive permission to leave the house to go to a small store nearby. She stated she was accompanied by a woman if she got permission to leave the house and was always being watched. She stated that while she was in this house, she was not allowed to contact her family because the smugglers told her she would get discovered if she did. She indicated that she stayed in this house about a month, and then was moved to a different house. She also explained that the smugglers took her to a bank to pick up money that was sent and make it look as though the money was sent to her. The Applicant stated she gave the money to the woman who was "taking care" of her. She also stated that the smugglers took her photographs and that she was told that they would send these photographs to "the organized crime to identify who [they] are . . . so no harm could be done to [them]." She continued her statement with an account of the rest of her smuggling journey consistent with the statements she initially provided.

The record before the Director also included a criminal complaint against the driver of the van containing the Applicant's statement regarding the smuggling operation, which is consistent with the information she provided in her statements submitted in this proceeding. The record below also contains a 2017 psychological evaluation indicating that the Petitioner was diagnosed with posttraumatic stress disorder (PTSD), also has symptoms of depression, and anxiety, and could benefit from therapeutic support. The remaining relevant evidence below include, among other evidence, a statement from the Applicant's parents explaining that the reason the Applicant came to the United States is to be able to economically support them; documents related to her court appearance and the conditional release; medical records of her daughter; and articles on depression, human trafficking, and information on country conditions for Mexico. On appeal, the Applicant submits a brief and asserts that she qualifies for T nonimmigrant status because she is a victim of trafficking.

#### **B. The Applicant Has Not Established She Is a Victim of a Severe Form of Trafficking in Persons**

Upon de novo review, the Applicant has not overcome the Director's determination that the record did not establish that she was the victim of a severe form of trafficking in persons.

Applicants seeking to demonstrate that they were victims of a severe form of trafficking must show: (1) that they were recruited, harbored, transported, provided, or obtained for their labor or services, (2) through the use of force, fraud, or coercion, (3) for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102(11); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). Coercion is defined as "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." 8 C.F.R. § 214.11(a).

On appeal, the Applicant asserts that she is a victim of trafficking because she was housed with five other women during the smuggling operation and did not have the freedom to leave, was forced to relocate to another house without an explanation, had to hide her passport<sup>4</sup> for fear of it being confiscated by the smugglers, was not allowed to contact her family, was forced to go to a bank to pick up money from unknown sources, was photographed by the smugglers, and was told that she would not be released to her family as originally planned but rather would be taken to a hotel.

As an initial matter, the record does not show that the smugglers recruited the Applicant by force, fraud, or coercion as the Applicant testified that her husband entered into a voluntary agreement with the smuggler on her behalf and paid the smuggler approximately \$5000 to carry out the agreement. The Applicant's statements also do not indicate that the smugglers transported and harbored her in the house(s) in Mexico through force, fraud, or coercion, as defined at 8 C.F.R. § 214.11(a), during the course of the smuggling. Specifically, although the Applicant stated that the smugglers did not allow her to leave the house without permission and that even when she got the permission to leave, she was still accompanied by a woman who watched her all the time, she did not allege that the smugglers used force, fraud, or coercion to harbor her at the houses. We acknowledge that she further stated that she was not allowed to talk to her family while she stayed in the house(s) for about a month. However, her own statements indicate that smugglers accompanied her when she left the house and restricted her calls to minimize the possible detection of their illegal smuggling operation, rather than as coercive measures to harbor her. For instance, she stated that the smugglers explained they were restricting her calls to family in order to avoid discovery. Similarly, although the Applicant stated that the smugglers took photographs of her, she stated that she was told the photographs were to ensure that "the organized crime" would be able to identify them "so no harm could be done" to her. The Applicant's statements do not show that the smugglers ever used the photographs as a means to force or coerce her. Regardless, as stated, the Applicant did not state, nor do her statements indicate, that the smugglers used threats of serious harm or physical restraint; abuse or threatened abuse of legal process; or through a scheme, plan, or pattern intended to make her believe that failure to perform an act would result in serious harm to or physical restraint, consistent with the regulatory definition of coercion, to transport or harbor her during the course of smuggling her to the United States.

Moreover, even if the Applicant showed that the smugglers transported and harbored her in the house(s) in Mexico through force, fraud, or coercion, she has not demonstrated that the smugglers' actions in transporting and harboring her were for the purpose of subjecting her to involuntary servitude, as she alleges on appeal. As used in section 101(a)(15)(T)(i) of the Act, involuntary servitude is defined 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 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. This definition

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<sup>4</sup> In her statement in response to the Director's RFE, the Applicant referred to the document she was hiding as her "Mexican identification card."

encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

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). Slavery is defined as a “situation in which one person has absolute power over the life, fortune, and liberty of another.” *Id.*

We acknowledge the Applicant’s statements that she did not have the freedom to leave the house in which she was housed with five other women, was forced to relocate to another house without an explanation, was not allowed to contact her family to avoid detection, was photographed by the smugglers, and was told after she crossed the border that she was being taken to a hotel rather than to her family. However, contrary to the Applicant assertions on appeal that the facts of her case demonstrate that a trafficking situation occurred during her smuggling, the record does not support the smugglers subjected or intended to subject her to involuntary servitude. Instead, the Applicant’s testimony and other evidence indicate that the smugglers transported and harbored her to further and fulfill the smuggling agreement, which included facilitating her entry into the United States. The Applicant asserted in her RFE statement that once she entered the United States, against her understanding of the agreement, the driver of the van told that they were going to be taken to a hotel rather than being taken to their families. She stated that she thought “trafficking” or “extortion” could have been the reason. However, the Applicant’s speculation about what may have been the reason for taking her to a hotel is not sufficient to establish that a trafficking situation arose during her smuggling where the record lacks any probative evidence that the smugglers induced or intended to induce her into a condition of servitude by using force, threats of physical restraint or injury, or abuse of legal process, as required to establish involuntary servitude. 8 C.F.R. § 214.11(a). Here, the Applicant did not provide the specifics of the smuggling agreement into which her husband entered with the smuggler on her behalf, including where she was to be taken ultimately once she arrived in the United States. The record reflects only that after crossing the border, the driver told the Applicant and the others that they were being taken to a hotel. Nothing in the record, including the Applicant’s own statements and her accounts of the smuggling set forth in the criminal complaint against the driver of the van and in her 2017 psychological evaluation, indicates that the driver informed them, or otherwise indicated, that the hotel was to be their final destination rather than a temporary stop, much like the houses in Mexico where the Applicant stayed during the journey, before continuing to their actual destinations in the United States. Instead, the record as whole reflects that the smugglers transported and harbored the Applicant at the houses in Mexico to further the smuggling agreement, and consistent with that agreement, they transported her from those houses and across the border into the United States before U.S. immigration officials encountered them.

We acknowledge the remaining evidence in the record, including the supporting letter from her parents, the psychological evaluation, and the country conditions articles which the Applicant asserts support her claim of trafficking. However, they are insufficient to satisfy the Applicant’s burden in these proceedings in the absence of probative evidence and testimony from her demonstrating that she was the victim of trafficking by her smugglers during the course of being smuggled to the United States.

As discussed, the record does not demonstrate the smugglers transported and harbored the Applicant using force, fraud, or coercion, nor does it demonstrate that they did so with the purpose of subjecting her to involuntary servitude. Rather, the preponderance of the evidence indicates that her smugglers transported and harbored her for the purpose of smuggling her into the United States, albeit the smuggling operation was not fully completed as the Applicant was apprehended soon after she entered the United States before reaching her final destination. Accordingly, the preponderance of the evidence does not establish that the Applicant is a victim of a severe trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires. Consequently, the Applicant has not established her eligibility for T-1 nonimmigrant status.

### C. Additional Grounds of Eligibility

Because the Applicant has not established that she is the victim of a severe form of trafficking in persons, she is ineligible for T nonimmigrant status. As this basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Applicant's appellate arguments regarding the remaining eligibility criteria for T nonimmigrant classification. 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).

### III. CONCLUSION

A preponderance of the evidence does not establish that the Applicant is the victim of a severe form of trafficking in persons. Accordingly, she is ineligible for T nonimmigrant status.

ORDER: The appeal is dismissed.