



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

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

In Re: 22457207

Date: SEP. 12, 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), and we dismissed the Applicant's subsequent appeal, 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. The Applicant filed a motion to reopen and motion to reconsider, which we dismissed as untimely. The matter is now before us on a motion to reopen. Upon review, we will dismiss the motion.

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 (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 in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) 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."¹

The Applicant bears the burden of establishing their eligibility, and must do so 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).

¹ 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 allege nor does the record support that she was a victim of sex trafficking.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Applicant is a citizen of Guatemala who indicated that she entered the United States without being inspected, admitted, or paroled. In December 2017, she filed the instant T application, asserting that she was the victim of labor trafficking by her sister in Guatemala and in the United States.

In our prior decision dismissing the Applicant's appeal, incorporated here by reference, we determined that between 2003 and 2009 M-G- engaged in abusive behavior against the Applicant and her children that included forcing the Applicant to do the household work in their home, and the preponderance of the evidence showed that M-G- obtained the Applicant through fraud, not for her "labor and services," but instead, to convince the Applicant to bring M-G- to the United States and give her a place to stay. We further determined that the evidence indicated that the Applicant was free to leave M-G-, and had done so previously without retaliation, and the record lacked an explanation as to why she was not free to leave, thus she had not demonstrated that M-G- harbored her in her own home. While we agreed that the evidence showed that M-G- mistreated the Applicant and used physical force and coercion to make her perform household tasks, the record as a whole indicated that M-G-'s mistreatment of the Applicant, through force and coercion, was not for the intended purpose of subjecting the Applicant to involuntary servitude as that term is defined at 8 C.F.R. § 214.11(a), but rather, was an element of the abuse the Applicant endured in a relationship characterized by domestic violence. Furthermore, we concluded that the record did not establish that M-G- abused or threatened abuse of the legal process to place the Applicant into a condition of servitude, particularly in the absence of testimony from the Applicant and her daughter stating that M-G- used threats of deportation to force them to perform labor. Finally, we concluded that as the record did not establish that the Applicant was the victim of trafficking, she had not demonstrated that she is physically present in the United States on account of such trafficking. The Applicant has not submitted sufficient new evidence to overcome these determinations on motion.

On motion to reopen, the Applicant submits a brief from counsel, a new statement, a copy of a police report from the [redacted] Police Bureau, and a copy of an Issue Paper on *The Role of 'Consent' in the Trafficking in Persons Protocol* from the United Nations Office on Drugs and Crime. The Applicant states, through counsel, that the record includes "substantial, credible testimony and corroborating evidence that establishes she was harbored and obtained for her labor or services through the use of force and coercion for the purpose of subjection to involuntary servitude." She states that the evidence "was clear that the vast majority of the time M-G- abused her was when M-G- was upset with [her] housework or cooking" and she "reasonably believed that when M-G- used physical abuse outside the context of labor or services, she did so as a tactic to maintain power and control over [her] to subject her to involuntary servitude."

Further, the Applicant specifically addresses our conclusions concerning her freedom of movement in the United States and her lack of an explanation as to why she was not free to leave and get away from M-G-. The Applicant states that "M-G- manipulated and lied to [her] to convince her to allow M-G- to accompany her daughter to the U.S., and soon after arriving, M-G- began forcing [the Applicant] to

perform labor and services.” She states that she “only temporarily escaped M-G- and M-G- pursued her both times.” She maintains that “there was nothing free about [her] movement” as she “did not freely leave the home, and in fact only rarely left the home when she was given permission” by M-G-, who “kept close tabs on her” if she did “allow” her to leave the house.² The Applicant also states she “could not leave with her husband or have M-G- move out of the apartment because her husband was actively participating in the trafficking and was physically abusive.” The Applicant further indicates that the “evidence in the record suggests that M-G- left the U.S. due to fear of legal repercussions for her trafficking of [the Applicant] versus “on her own accord.””

In a new statement on motion, the Applicant states that she believes M-G- was abusing the Applicant’s daughter, while she remained in Guatemala, because she knew the Applicant would find out and either return to Guatemala or arrange for her daughter to come to the U.S. She states that she believes when M-G- volunteered to assist with her daughter’s travel to the U.S., M-G- saw it as an opportunity to regain access to the Applicant in the U.S. “and resume forcing [her] to perform household labor for her.” The Applicant states that while “it’s possible [M-G-] may have had more than one reason for coming to the [U.S., like] she may have wanted to move to this country, [she] believe[s] the main reason [M-G-] came [to the U.S.] was to have access to [her] again so that she could continue to force [the Applicant] to perform work for her like she had done since [the Applicant] was a young child.” The Applicant did not provide information about what led to this belief.

The Applicant adds that M-G- “mainly physically harmed [her] due [to] not performing household tasks or because she felt [the Applicant] had not done a task up to her standards” and that “most of [M-G-’s] violence towards [the Applicant] related to the household work she ordered [her] to perform.” The Applicant then states that M-G- knew she was terrified of being deported to Guatemala and that on one occasion, M-G- “warned [her]” that if she didn’t cook a demanded Guatemalan meal perfectly, M-G- “would call immigration and they would deport [her] back to Guatemala.” She recalls another instance where she informed M-G- that it hurt her to mop the floor because her hand was injured but M-G- told her that if she didn’t mop, M-G- “would call immigration and they would send [her] back to Guatemala.” However, the police report and the affidavit the Applicant provided on motion indicate that M-G- also physically abused her when the Applicant discovered that her husband and M-G- were having an affair.

The Applicant also states that she was sometimes allowed to leave the house to go sell her tamales and visit her doctor for her diabetes but was threatened by M-G- that if she told her doctor about the abuse, M-G- would kill her. She later recalls that M-G- “threatened to call immigration if she found out [the Applicant] had told anyone at the diabetes clinic about the abuse going on at home.” She states that M-G- “only allowed [her] to leave the apartment without her very rarely,” would know exactly where she was, and would tell her when she needed to be home. She states that M-G- made her believe that she “had no other option than to stay in the situation by physically abusing [her], not allowing [her] to freely leave the home when [she] wanted, and by monitoring [her] closely the limited times she did allow [her] to go somewhere.” She also states that she was not allowed to have friends and M-G- monitored her communication with her family.

² The Applicant also cited a federal circuit and a district court case in which an individual’s freedom of movement did not undermine their trafficking claim. However, those cases are not binding on U.S. Citizenship and Immigration Services (USCIS) in these proceedings. Further, as stated, the Applicant bears the burden of proof in these proceedings to establish by a preponderance of the evidence that she herself was the victim of trafficking, which she has not done.

Furthermore, the Applicant states that while living in Guatemala, her husband also became abusive and teamed up with M-G- to order her to do things around the house, screamed, and physically abused her if she did not obey him. She states that M-G- would manipulate her husband and tell him to force her to work and he started to change. She states that her husband and M-G- teamed up and were constantly ordering her around and abusing her together. She states that, after leaving Guatemala and moving in with her husband in the U. S., everything was okay at first as, though he would get angry and yell, he was not physically abusive with her. However, she states that once M-G- moved into their home in the U.S., her husband became physically abusive with her again. She indicates that the abuse escalated when she caught her husband and M-G- in bed together. She recalls that when she confronted them, both her husband and M-G- started pushing and punching her, saying that “it didn’t matter what they did to [her].” The Applicant explains that she did not include this information about her husband’s abuse previously because she was afraid of him, and her daughters were afraid he would be deported for his actions. She states that although she “ha[s] focused more on what [M-G-] has done to [her], . . . [her] husband was very abusive and caused [her] a lot of physical and emotional harm.” She states that her husband “was a huge reason why [she] couldn’t escape [M-G-]” and because he was having an affair with M-G-, she couldn’t ask her sister to move out of the apartment or move herself away from M-G- with her husband.

The police report submitted on motion indicates that the Applicant had an altercation with her husband when she told him that she wanted a separation in September 2016. It states that the Applicant advised police that “many years ago [she] was beaten by her husband and her sister after she confronted them about an affair they had.” The police report states that the officer provided the Applicant with information about obtaining a restraining order and no arrests were made.

The record shows that the Applicant was a victim of M-G-’s domestic abuse in Guatemala and the United States.³ However, as discussed in our previous decision, the preponderance of the evidence does not demonstrate that M-G- obtained the Applicant through fraud or coercion in order to subject the Applicant to involuntary servitude. The Applicant contends that M-G- came to the U.S. in order to subject her to involuntary servitude, that M-G-’s abuse was mainly focused on the household work M-G- ordered her to perform, and that any abuse not directly related to the household tasks was meant to reinforce M-G-’s control of her labor and services. The Applicant further contends that M-G- threatened to call immigration officials on the Applicant in order to force her to work and to keep her from telling anyone about the abuse. However, the record in this case lacks probative evidence from the Applicant demonstrating that M-G-’s intention was to subject the Applicant to a condition of servitude. As stated in our prior decision, the Applicant was fully aware that M-G- was also unlawfully present in the United States and equally vulnerable to possible deportation as the Applicant if immigration officials were called. Again, we acknowledge that the evidence shows that M-G- mistreated the Applicant and used physical force and coercion to make her perform household tasks, however, the record does not indicate that it was for the intended purpose of subjecting the Applicant to involuntary servitude as that term is defined at 8 C.F.R. § 214.11(a).

Additionally, on motion the Applicant states that she previously escaped from M-G- temporarily on two occasions, but that M-G- pursued her both times. However, the Applicant does not explain how M-G- pursued her when she previously stated that she escaped M-G-’s abuse when she moved out of

³ On motion, the Applicant also asserts that she is the victim of her husband’s domestic abuse in combination with M-G-.

her parents' home after her marriage in Guatemala and again when she followed her spouse to the United States. On motion, she again does not assert that M-G- attempted to follow her and bring her back under her control or retaliated against her for leaving on either occasion. The Applicant's statements throughout the record indicate that M-G- only sought to come to the United States after she learned that the Applicant was bringing her daughter in 2003, and she promised to change her abusive behavior in order to accompany her.

Furthermore, the Applicant addresses our conclusions concerning her freedom of movement in the United States and states that she was not free to leave the house or get away from M-G- because she was only rarely given permission by M-G- and M-G- kept close tabs on her and always knew where she was and when she would be back home. The Applicant further explains that she was not able to escape with her husband because he was also involved in the abuse and was having an affair with M-G-. However, the record indicates that the Applicant was able to leave the home routinely and, while she states that M-G- kept tabs on her when she left, she does not explain how M-G- made her stay in the home or return to the home when she left. Additionally, while the Applicant explains that her husband had a relationship with M-G- and that was why they were unable to leave, she further does not explain why she, herself, did not leave without her husband. The record shows that M-G- subjected the Applicant to domestic violence throughout their lives in the form of physical and verbal abuse. We acknowledge that human trafficking and domestic violence are not mutually exclusive, and a trafficking situation may arise in the context of a personal relationship where there is domestic violence. However, the preponderance of the evidence in this case does not establish that a trafficking situation in fact arose during the Applicant's relationship with M-G- or the Applicant's husband. We agree that the evidence shows that M-G- and the Applicant's husband mistreated the Applicant and used physical force and coercion to make her perform household tasks, but the record as a whole does not demonstrate that their mistreatment was for the intended purpose of subjecting the Applicant to involuntary servitude.

Here, the Applicant has not submitted sufficient new evidence to demonstrate 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). Accordingly, the Applicant has not overcome our previous determination that she has not shown that she is the victim of a severe form of trafficking in persons and that she is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

ORDER: The motion to reopen is dismissed.