



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

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

In Re: 18408198

Date: FEB. 24, 2023

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification 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), as a victim of human trafficking. The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding the Applicant did not establish she was a victim of a severe form of trafficking in persons (trafficking), she is physically present in the United States on account of trafficking, or that she has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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 a T-1 nonimmigrant if they: are or have been a victim of a 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.”

II. ANALYSIS

The Applicant, a native and citizen of Mexico, last entered the United States without inspection in December 2001 and filed her T application in March 2019. The issues before us are whether the

Applicant was a victim of trafficking, is physically present in the United States on account of trafficking, and has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking.

A. The Applicant's Trafficking Claim

The Applicant explained that in 1994 she and her spouse wanted to go to the United States for a better life, they used coyotes to help them, they were kept in a house for two weeks where she was subjected to crude comments by the coyotes, they subsequently crossed through the desert with the coyotes, and they arrived at another house for a week. The Applicant stated that she was forced to cook and clean under the threat of physical harm or death by the armed coyotes, they increased their original fee which took her brother extra time to gather and resulted in her working longer, and she was released after that week to her brother who paid the smuggling fee. The Applicant, spouse, and their children returned to Mexico in December 2000, but they decided to return to the United States in November 2001 due to their overall difficult living situation in Mexico. Their children flew to the United States, and the Applicant and her spouse used a coyote who took them to a fence on the U.S. border. The coyote told them to run until they reached another individual, but they were caught by U.S. immigration officials and released into Mexico. They were confronted by the coyote upon their return, and he took them to a trailer with another man inside. The two men were furious with the Applicant and her spouse for ruining the smuggling plan. They were locked in the trailer for three days, were taken back to the desert, and walked through the desert for ten hours with two coyotes. The two coyotes told them they would leave them for dead if they tried to get away or could not keep up. They were then hidden in a car until they reached a house in California, where the Applicant was placed in a room with another woman. She wanted to escape but armed guards were outside her room. For three weeks, the Applicant stated that she was a prisoner with barely any food or water, and she was forced to clean the bathrooms, bedrooms, kitchen and living area under gunpoint. She also mentioned she cooked meals for the coyotes. The coyotes charged her family \$6,000 for her release, half the money was wired to the coyotes, the Applicant and her spouse were driven to the State of Washington, and they were released upon payment of the other half of the fee.

B. The Applicant Has Not Established She Is a Victim of Trafficking

In denying the T application, the Director determined the Applicant did not establish she was a victim of trafficking. The Director reviewed the Applicant's trafficking claim, as described above, and acknowledged the evidence submitted by the Applicant with her T application and in response to a request for evidence. We incorporate that list of evidence into our decision. The Director acknowledged the Applicant's difficult journey to the United States in 1994 with smugglers, and that her smugglers in 2001 kidnapped her, guided her into the United States, detained her in a house in California, directed her to cook and clean against her will, extorted money from her family, and released her upon receipt of the money. However, the Director determined that the Applicant was not obtained, recruited, harbored, transported, or provided, through the use of force, fraud, or coercion, for the purpose of subjecting her to involuntary servitude or commercial sex trafficking.

On appeal, the Applicant asserts that her smugglers had a dual motive of smuggling and trafficking, and she was subjected to involuntary servitude as she cooked and cleaned under the threat of violence and force in both 1994 and 2001. She further claims that the Director failed to apply the legal

definition of involuntary servitude and slavery and did not consider academic articles and government statements on human smuggling in the trafficking context. The Applicant states that she submitted Department of State publications establishing how smugglers are trafficking migrants under similar circumstances as the Applicant, the Department of Justice has prosecuted similar migrant trafficking, and prior AAO decisions with similar fact patterns have made findings of trafficking. The Applicant claims that by failing to consider or give weight to this evidence, her due process rights were violated.

Upon de novo review, we agree with the Director that the Applicant did not establish that she was the victim of trafficking. Applicants seeking to demonstrate that they were victims 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 in pertinent part 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 . . . any person; or the abuse or threatened abuse of the legal process.” 8 C.F.R. § 214.11(a).

In this case, the record reflects that the Applicant was harbored in safehouses in 1994 and 2001, she was forced to work while awaiting payment of her smuggling fee, and she was threatened with harm if she failed to work. The evidence reflects that the Applicant’s smugglers harbored her in safehouses in the United States through coercion, as defined at 8 C.F.R. § 214.11(a), in that they used threatening words and behavior to cause her to believe that any attempt to escape or failure to comply with their instructions would result in serious harm to her. However, the Applicant has not demonstrated that the smugglers’ actions in harboring her were for the purpose of subjecting her to involuntary servitude or slavery, as she claims on appeal.¹

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 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).

First, the Applicant has not demonstrated, by a preponderance of the evidence, that her smugglers harbored her *for the purpose* of subjecting her to involuntary servitude. Rather, her accounts of her

¹ We note that the Applicant did not make a claim of being subjected to peonage or debt bondage.

experiences show that the smugglers harbored her for the purpose of carrying out and completing their smuggling arrangements, which included transporting her to the United States and keeping her in housing until payment of the smuggling fees. The Applicant's statements reflect that she was forced to cook and clean for others without pay at the safehouses in 1994 and 2001 for a week and three weeks respectively. The Applicant's experience at both safehouses, and while being transported between locations, was very difficult. However, upon payment of the smuggling fees, she was released. The Applicant's evidence therefore shows that she was harbored solely until the smuggling agreements could be completed, and the smugglers' intentions were to complete the smuggling operations and that their actions during the operations, although harsh and abusive, were for the purpose of reaching that goal. While we acknowledge that the Applicant may not have expected to cook and clean during her two journeys, the record shows that the labor she performed at the safehouses was for the purpose of maintaining them until the smuggling arrangements could be completed, and not part of a simultaneous scheme by her smugglers to subject her to involuntary servitude. There is insufficient evidence in the record establishing that she was singled out to perform labor due to her gender or other reasons. The record is not sufficient to show that their purpose was to place her in a condition of involuntary servitude at any point during the trip, rather than to further the goals of the smuggling operations. Second, the Applicant has not demonstrated that the smugglers' actions in harboring her were for the purpose of subjecting her to slavery, which is defined as "a situation in which one person has absolute power over the life, fortune, or liberty of another." *Black's Law Dictionary* (B.A. Garner, ed.) (11th ed. 2019). Again, the record reflects that the Applicant was harbored for the purpose of carrying out and completing the smuggling arrangements.

In making these findings, we acknowledge the articles, government publications, and prior AAO non-precedent decisions submitted by the Applicant. While this evidence provides general information on the issues before us, we are evaluating the Applicant's case based on her specific facts and whether she meets the definition of trafficking, as defined in the relevant law cited above. We note that the AAO decisions submitted were not published as precedent decisions and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

As the Applicant has not established, by a preponderance of the evidence, that her smugglers harbored her for the purpose of subjecting her to involuntary servitude or slavery during the course of her smuggling in 1994 or 2001, she has not established that she was a victim of trafficking.

C. Additional Grounds of Eligibility

As the Applicant has not established that she is the victim of trafficking, we decline to reach and hereby reserve the Applicant's appellate arguments regarding whether she is physically present in the United States on account of trafficking and has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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

The Applicant has not established, by a preponderance of the evidence, that she was the victim of trafficking. Accordingly, she is ineligible for T nonimmigrant status.

ORDER: The appeal is dismissed.