



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 23981595

Date: JAN. 26, 2023

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), concluding that the Applicant did not establish that she is the victim of a severe form of trafficking in persons or that she is physically present in the United States on account of such trafficking. The matter is now before us on appeal. We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015); 8 C.F.R. § 214.11(d)(5). 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 an applicant may be classified as a T-1 nonimmigrant if he or she: is or has been a victim of a severe form of trafficking in persons; is physically present in the United States on account of such trafficking; has 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.”

In these proceedings, it is the applicant’s burden to establish eligibility for the requested benefit 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).

II. ANALYSIS

The Applicant, a citizen of Honduras, last entered the United States in 2005 without inspection, admission, or parole. In 2019, the Applicant filed the instant T application.

A. The Applicant's Trafficking Claim

The Applicant's declarations in the record set forth the following claim: In 2005, she paid a smuggler to arrange her travel to the United States. While on route to the United States, she realized that the smugglers worked for a gang – they forced her to carry backpacks, referred to her and other individuals carrying the backpacks as “mules,” and they threatened to kill her if she did not comply or if she looked inside the backpacks. During the journey, the smugglers stopped at a safehouse in Mexico for eight days, and during this time, she was forced to cook, drink alcohol, and threatened with sexual violence.¹ The smugglers left the Applicant on the U.S. border and told her that someone would meet her on the other side. She stated that the smugglers’ “plan was for someone to find her on the path and take me to [redacted] to keep using me for their labor.” Shortly after crossing the border, she was apprehended by immigration officials. After being released from immigration custody, she travelled by bus to [redacted] Texas, expecting to be met by a friend. She stated that upon her arrival at the bus station, “there were two men waiting for me. . . and all of a sudden a man pulled my blouse and told me that he knew me. The coyotes threatened me and said if I did not go with them, they were going to call immigration for them to send me back to Mexico. They pulled my blouse again and said that my family was going to pick me up at their house.” Upon arriving at a crowded apartment, the smugglers told her to clean the apartment, and she was allowed to leave after cleaning the apartment.

B. The Applicant has Established She is a Victim of a Severe Form of Trafficking in Persons

An applicant seeking to demonstrate that they were a victim 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. See 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term “severe forms of trafficking in persons”). Thus, an applicant must show both the particular “means” used (force, fraud, or coercion) and that such means was used for a particular “end” — namely for the purpose of subjecting the applicant to involuntary servitude, peonage, or debt bondage. 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 . . .” 8 C.F.R. § 214.11(a).

The Director denied the T application, finding that the Applicant had not established that she was a victim of a severe form of trafficking in persons. Specifically, the Director acknowledged the hardships described by the Applicant and the fact that she did not agree or know in advance that during the smuggling, she would be required to perform various tasks or be subject to threats of sexual violence. However, the Director determined that she did not establish that she was recruited, harbored, transported, provided, or obtained for labor or services, through the use of fraud, force or coercion, for the purpose of subjection to involuntary servitude.

On appeal, the Applicant asserts that the Director erred by concluding that she was not a victim of trafficking without an analysis of the specific facts of her case or discussion of whether she was

¹ Specifically, the Applicant stated that a smuggler “started touching my arms and leg there, but he did not go any further because I kept saying no,” and on another occasion, a smuggler “tried to force me to have sex with him. . . [t]hat night the coyote got sick and he was rushed to the clinic. Nothing happened but I’m sure that if he had not gotten sick, he would have raped me.”

recruited, harbored, transported, provided, or obtained for labor or services, and therefore, subject to involuntary servitude. She also contends that the Director erred by failing to recognize that smuggling and trafficking are not exclusive, and smugglers and traffickers can have two co-existing purposes for their actions. Further, she contends that by focusing on the smuggling to the exclusion of trafficking, the Director ignored the fact that being forced to perform labor is an indicator of the traffickers' purpose to subject an applicant to involuntary servitude.

Here, the record shows that while the Applicant entered into a voluntary agreement under which the smugglers she hired would transport her to the United States, the smuggling arrangement became a trafficking situation as the smugglers harbored and transported her through force, fraud, and coercion, as defined at 8 C.F.R. § 214.11(a). Specifically, the evidence indicates that during the journey to the United States, the smugglers threatened the Applicant with physical violence in order to compel her to perform tasks, including carrying backpacks with undisclosed contents. Accordingly, the record shows that the Applicant was transported and harbored through the use of "threats of serious harm" and "physical restraint," as required by the definition of coercion at 8 C.F.R. § 214.11(a).

The record also reflects that the smugglers transported and harbored the Applicant for the purpose of subjecting her to involuntary servitude. Involuntary servitude is defined as, in pertinent part, "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." 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). Per the Applicant's statements, the smugglers forced her, with threats of violence, to carry backpacks with unknown contents, which she believed were illegal as she was instructed to never open them. Additionally, she and the other individuals carrying the backpacks were referred to by the smugglers as "mules." These facts are sufficient to support a conclusion that the smugglers harbored and transported the Applicant for the purpose of subjecting her to involuntary servitude while they carried out an operation unrelated to the smuggling arrangement agreed to by the Applicant.

Based upon the foregoing, the Applicant has established by a preponderance of the evidence that her smuggling arrangement became a trafficking situation as the smugglers harbored and transported her through force, fraud, and coercion, for the purpose of subjecting her to involuntary servitude. As the Applicant has overcome the Director's determination and established that she is a victim of a severe form of trafficking in persons, as required section 101(a)(15)(T)(i) of the Act, we will remand this matter to the Director to determine whether she meets the remaining eligibility criteria for T nonimmigrant classification.

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