U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28255822

Date: JUL. 17, 2023

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 Applicant's Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant did not establish that she was the victim of trafficking and that she also did not satisfy the remaining eligibility criteria for the requested T-1 nonimmigrant classification. We dismissed a subsequent appeal, concluding that the Applicant did not establish that she is the victim of a severe form of trafficking. The matter is now before us on a combined motion to reopen and reconsider. The Applicant submits a brief and additional documentation and reasserts her eligibility for the benefit sought. 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). Upon review, we will dismiss the motion.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Upon review, the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

The Applicant, a native and citizen of Honduras, filed a T application in March 2019, based on a claim that her former partner, C-R-,[1] held her against her will and forced her to do labor and sex acts. The

[1] Initials are used throughout this decision to protect the identities of the individuals.

Director denied the T application, concluding although the evidence indicated that the Applicant was the victim of domestic violence perpetrated by C-R-, it was insufficient to establish that C-R-recruited, harbored, transported, obtained, or provided the Applicant for the purpose of subjecting her to a severe form of trafficking.

In our decision to dismiss the Applicant's appeal, which is incorporated here by reference, we determined that she had not met her burden to show by a preponderance of the evidence that she is a victim of a severe form of trafficking under 8 C.F.R. § 214.11 and as section 101(a)(15)(T)(i) of the Act requires. In summary, given the Applicant's prior representations and documentation in the record indicating that she resided with her sister during the period when she claimed C-R- held her against her will, controlled her, and forced her into sex and labor trafficking, we concurred with the Director that the Applicant had not met her burden of proof to establish, as required, that C-R- recruited, harbored, transported, obtained, or provided the Applicant for the purpose of involuntary servitude or commercial sex acts.[2]

On motion, counsel for the Applicant first contends that "there is no indication" that the men involved in the Applicant's claimed trafficking and abuse paid C-R-for "forced sexual acts" or if the Applicant "was just being punished and mistreated." Nevertheless counsel again asserts that the Applicant is a victim of a severe form of trafficking because she was "harbored (locked in the home and not free to leave); and forced to surrender earnings from her employment; forced to work in the home for [C-R-], which amounted to involuntary servitude." Counsel also maintains that the Applicant "relied upon her sister and an agency to submit multiple TPS applications" and "mistakes have been made on dates, but the trauma that has been documented is real and ongoing." Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. In addition to counsel's brief, the Applicant submits "counseling/intake notes" from three organizations in support of her trafficking claims, two non-precedent decisions from this office,[3] and a "power and control wheel."

As we detailed in our decision to dismiss the appeal, we noted that there were discrepancies in the record regarding the timeline of the Applicant's entry into the United States and the timing of her relationship and residence with C-R-. On motion, the Applicant has not submitted a personal statement or any evidence specifically addressing the concerns raised by this office with respect to her claim that she last entered the United States in 1999 and the timing of her relationship with C-R-. As we noted above, assertions of counsel do not constitute evidence. Moreover, while the "counseling/intake notes" submitted on motion detail that the Applicant was in an "extremely abusive relationship," the

[2] As for the Director's finding that the Applicant also did not establish physical presence in the United States on account of trafficking, compliance with reasonable requests for assistance from law enforcement, and extreme hardship involving unusual or severe harm upon removal from the United States, we did not reach those issues and, therefore, reserved them, as there was no constructive purpose to addressing them because the outcome of the appeal could not change. *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).

[3] The two decisions submitted on motion were not published as precedents 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.

documentation does not establish that C-R- intended to subject or actually subjected her to involuntary servitude or commercial sex acts.

In sum, the Applicant has not established on motion that C-R- recruited, harbored, transported, obtained, or provided the Applicant for the purpose of involuntary servitude or commercial sex acts. Accordingly, the Applicant has not overcome our previous determination that she has not established that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.