U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26739761

Date: MAY 15, 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. *See* Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

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 she is a victim of a severe form of trafficking in persons and that, as a result of this determination, she necessarily did not demonstrate that she was physically present in the United States on account of the claimed trafficking or that she complied with any reasonable request for assistance in the investigation or prosecution of the trafficking. On appeal, we determined that the Applicant had not demonstrated that she is a victim of trafficking, as required, and because the identified basis for dismissal was dispositive of the Applicant's appeal, we reserved the Petitioner's appellate arguments on the issues of physical presence on account of a severe form of trafficking in persons and compliance with any reasonable request for assistance in the investigation or prosecution of the trafficking. The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will dismiss the motions.

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." 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.* Sex trafficking means the "recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." 22 U.S.C. § 7102(12); 8 C.F.R. § 214.11(a).

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).

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). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Applicant, a native of Afghanistan and a citizen of Germany, was last admitted into the United States in February 2018 as an F-1 nonimmigrant student. In January 2020, the Applicant filed the instant T application, asserting that she was the victim of labor and sex trafficking by her domestic partner, V-P-.[1]

In our prior decision dismissing the Applicant's appeal, incorporated here by reference, we concluded that V-P- engaged in abusive behavior against the Applicant that included forcing the Applicant to do the household work in their home over a period of 10 years. We determined, however, that the preponderance of the evidence did not establish that a trafficking situation in fact arose during the Applicant's relationship with V-P- as the record did not show that he engaged in the listed abusive tactics for the purpose of making her work or place her into a condition of servitude. We further determined that the evidence indicated that the Applicant had freedom of movement and the ability to communicate with her family and other individuals from the medical community, her school, and the police department, which she did when she spoke to her family, her doctors, and her school advisor about her abusive relationship with V-P-. In fact, we noted that, according to the Applicant, V-P- once told her to leave after an argument, but she did not use the opportunity to leave, and V-P- later even helped the Applicant carry her belongings out when she finally made the decision to leave him and did not prevent her from leaving. Furthermore, we concluded that the record did not establish that V-P- used physical force or threats of physical restraint, physical injury, or abuse of the legal process in order to force the Applicant to perform labor or to otherwise place her into a condition of servitude, consistent with the definition of involuntary servitude. While we agreed that the evidence showed that V-P- mistreated the Applicant and physically and psychologically abused her during their domestic relationship, the record as a whole indicated that V-P-'s mistreatment and abuse of the Applicant 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.

[1] We use initials to protect individuals' identities.

In addition, we concluded that the evidence did not demonstrate that the Applicant was recruited, harbored, transported, provided, obtained, patronized, or solicited by V-P- for the purpose of a commercial sex act. We determined that the record did not show that V-P- used force, fraud, or coercion to induce the Applicant to engage in sexual acts in exchange for food, shelter, or other things of value. We further determined that the record did not demonstrate that V-P- used force or coercion through threats of physical restraint, physical injury or serious harm, or deportation or other abuse of legal process to compel the Applicant to engage in a commercial sex act, nor did it show that V-P- demanded sex acts from the Applicant or forced her to engage in such acts, as required to establish sex trafficking. 8 C.F.R. § 214.11(a).

On motion, the Applicant makes similar arguments to those on appeal and does not submit sufficient new evidence or establish legal error to overcome our determinations on appeal. On motion to reopen, the Applicant submits a brief from counsel and a new statement. The Applicant states that V-P- committed the act of recruiting, transporting, obtaining, providing, and harboring her, through the particular means of force, fraud, and coercion, for the purpose of subjecting her to involuntary servitude and commercial sex acts, such as cooking, cleaning, and sex. She claims that V-P- took advantage of her religion, social status, and financial instability, along with his status as a priest, to convince her to serve him in his home and do his bidding. She recalls that V-P- took her to Canada to marry her in a traditional wedding at the temple after she moved to Washington with him and told her that she was his wife (though not lawfully recognized) to coerce her into thinking the marriage was real and legitimate. She then indicates that V-P-'s romantic feelings for her were not clear and his intentions were only to replace his legal wife and have the Applicant act as a servant in his home. She claims that V-P- used his status as a religious leader, as well as her immigration and social status, in order to lure her into isolation for the purposes of exploiting her labor. She explains that she never anticipated, nor was told, that she would be required to do daily domestic work, such as cooking, cleaning , and laundry for V-P- and his parents, or provide sexual services without receiving any pay for herself. She further states that she never expected not to have control over the amount of food she was allowed to eat, or that her movements and communications would be restricted, as V-P- limited her movements, communications, and access to money and food with the help of his parents. She claims that V-P- forced her into domestic and sexual servitude by means of physical and psychological coercion. The Applicant further indicates that, upon moving to Washington with V-P-, she was unfamiliar with the area and, with very limited communication with the outside world, had no means of escaping during this time and had to plan her escape as V-P- became more and more abusive.

The record shows that V-P- subjected the Applicant to domestic violence throughout their relationship in the form of physical and verbal abuse. However, as discussed in our previous decision, the preponderance of the evidence does not establish that a trafficking situation in fact arose during the Applicant's relationship with V-P- and the evidence does not demonstrate that V-P- obtained the Applicant through force, fraud, or coercion for the purpose of subjecting the Applicant to involuntary servitude or a commercial sex act. The Applicant contends that V-P- pretended to marry her (in traditional marriage ceremonies that were not recognized as lawful) and presented her to his congregation as his wife in order to subject her to involuntary servitude and a commercial sex act, that she was just an object for him to sleep with, and that V-P-'s abuse was mainly focused on his desire to have her as his servant and do his bidding. The Applicant further contends that V-P-'s mother threatened her that she would "finish [her] whole family starting with [her] brother" if the Applicant

ever did anything against V-P-. However, the record in this case lacks probative evidence from the Applicant demonstrating that V-P-'s intention was to subject the Applicant to a condition of servitude. Further, the Applicant does not specifically address our conclusions concerning her freedom of movement and communication with others about her domestic situation in the United States. Again, 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. As stated in our prior decision, we recognize that the evidence shows V-P- 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 or a commercial sex act as those terms are defined at 8 C.F.R. § 214.11(a).

On motion to reconsider, the Applicant's brief asserts that we failed to consider the credible evidence establishing that she is the victim of a severe form of trafficking in persons and therefore, based our decision on "mistakes of facts" and erroneous conclusions of law and policy. She contends that we failed to follow Congressional intent in enacting the Trafficking Victims Protection Act of 2000 (TVPA) and misapplied current regulations and U.S. Citizenship and Immigration Services (USCIS) policy and training protocols. However, the Applicant does not elaborate on this contention and does not provide any explanations in support of this argument. The Applicant also submits two of our unpublished decisions to demonstrate that physical restraint is not a requirement for a domestic violence relationship to rise to the level of trafficking. However, the cited decisions are distinguishable in their application of law and policy to the specific facts, issues, evidence, and records of the individual cases, and are not analogous to the Applicant's stated situation. Regardless, the cited decisions were not published as precedent and, accordingly, do not bind USCIS in future adjudications. *See* 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act"). 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.

Here, the Applicant has not presented new facts, cited any binding precedent decisions or other legal authority establishing that our prior decisions incorrectly applied the pertinent law or agency policy, or established that our prior decisions were incorrect based on the evidence of record at the time of the initial decision, as required under 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, 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.