



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

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

MATTER OF A-R-M-R-

DATE: DEC. 28, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under 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 Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the evidence did not establish that the Applicant was the victim of a severe form of trafficking in persons and is physically present in the United States on account of such trafficking. On appeal, the Applicant submits a brief and reasserts her eligibility. Upon *de novo* review, we will dismiss the appeal.

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 the trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

The term “severe form of trafficking in persons” is defined as “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; or 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.” 8 C.F.R. § 214.11(a) (2017).¹

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

¹ Prior to the filing of this application, the Department of Homeland Security (DHS) issued an interim rule, effective January 18, 2017, amending its regulations at 8 C.F.R. § 214.11 for victims of human trafficking who seek T nonimmigrant status. *See Classification for Victims of Severe Forms of Trafficking in Persons: Eligibility for “T” Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92308-09 (Dec. 19, 2016).

II. ANALYSIS

The Applicant, a citizen of El Salvador, last entered the United States in 2007 without inspection, admission, or parole. She filed her T application in February 2017.

A. The Applicant's Trafficking Claim

In her initial personal statement, the Applicant claimed that she had a difficult childhood in El Salvador, having suffered ongoing sexual abuse and rape by her brother and an abusive relationship. She departed El Salvador in order to join her ex-partner, F-², who paid for her trip. She indicated that she traveled from El Salvador to Mexico with a group of people and guides, and eventually crossed the river into the United States. She stated that after crossing, she became lost and separated from her group, but then reunited with three other migrants with whom she walked until reaching a house. The Applicant recalled that a woman allowed them to enter the house and then made a telephone call, and soon after, a young woman arrived and picked them up in a truck. The Applicant indicated that the young woman told them that another person would be responsible for them, and eventually transferred them to another truck driven by a man. According to the Applicant, that man drove to a house where he told the Applicant, who was the only woman in the truck, to get out of the truck. She reported that she became afraid at that moment.

The Applicant claimed that a man opened the door to the house and told her to come in, prepare food for herself, bathe, and change clothes. She added that she observed four men who were "watching over" three or four women in the house, and that after she bathed, the men "looked at [her] differently," told her she was pretty, and said she "would be theirs." She noted that the men told her to sleep in a bedroom, but that soon after she entered the bedroom, a man named C- unlocked the door from the outside, told her she "would be his," and raped her. The Applicant indicated that after she exited the bedroom later, the men in the house "asked if someone would pay for [her] freedom [and] . . . said they had a 'cantina' where they would send [her] to work." She recalled that she gave the men F-'s telephone number and they called him to demand money for her release, but he refused. The Applicant indicated that she did not get a chance to talk to the other women about what would happen to them. She stated that she later overheard the men talking about sending her to "the same place where they had taken" a Brazilian woman and she "knew they were going to make [her] work and [she] didn't know where or how [she] would escape." She recalled that she was at the house for about two or three days.

The Applicant recounted that C- then drove her and the other women to a second house, where they were held for another two or three days. She stated that there were many people in this house but those whose families had paid a fee were permitted to leave. She indicated that she learned that F- had sent some money but it was insufficient. The Applicant stated that C- later led her with a group of other people "through the hills," and she "knew that [she] was on [her] way to the cantina . . . and that [she] would be working there." She recalled that after three days of walking, trucks picked them

² We use initials to protect identities.

up and took them to another house, where she heard C- speaking about her on the telephone and demanding cash. According to the Applicant, C- then drove her to a store parking lot, where she found two of her friends from El Salvador waiting for her. The Applicant emphasized that she fears returning to El Salvador, where the brother who sexually abused her still lives, and she tries to forget that abuse, her abusive relationship with F-, and her experiences during her trip to the United States.

In response to a request for evidence (RFE) from the Director, the Applicant submitted a second personal statement, in which she added details not discussed in her initial statement. She noted that an armed man transported her to the house where she met C-, and that she felt she had no choice but to follow that man's instructions because he carried a gun. Additionally, she stated that C- and the other men in the house with him told her that they would send her to work in a cantina "as a way of paying the debt that [she] had with them because of their help," that "if a girl didn't pay, she would go to [the] cantina," and that "somehow, [she] had to pay" to live in the house, which she was not permitted to leave. The Applicant recalled that the men referred to having sexual relations with other women in the house and mentioned the Brazilian woman they had sent to work at the cantina. Also, she stated that the men "made it seem like [she] would have to work in the cantina and do sexual favors against [her] will to all of the men in there," and she "imagined what it would be like" to work there.

The Applicant also asserted that C- raped her in exchange for her safety. She elaborated that even after she told C- that she had been raped as a child, he told her she "would be his, making it clear [she] did not have a choice and was going to be raped." She stated that she feared "something worse could happen" if she resisted, and she believed the men in the house "knew they controlled [her] through force and knew [she] could not escape their demands for sex." The Applicant also recalled an incident in which another man from the house forced her to accompany him to a store and pretend that she was his wife, holding his hand against her will, and that the man later argued with C- about "who [she] belonged to."

B. The Applicant Has Not Established She Is a Victim of a Severe Form of Trafficking in Persons

The Director concluded that the Applicant had not submitted sufficient evidence to show that she was the victim of a severe form of trafficking in persons. The Applicant has not overcome this finding on appeal.

As an initial matter, the Director erroneously found that the Applicant was not a victim of a severe form of trafficking because her experience involved only "smugglers [who] guided [her] into the United States in exchange for monetary gain." The Applicant notes on appeal that her alleged traffickers, C- and the other men who held her captive in a house after her entry into the United States, were separate from the smugglers who guided her into the country. The record supports the Applicant's assertion. The Applicant indicated in her initial statement that after she entered the United States with her guides, she was separated from her group while running from immigration agents and their dogs. She stated that she and three other migrants later encountered an unknown woman, which began a sequence of events resulting in the Applicant being transferred into the

custody and control of C- and the other men. The Applicant did not state that her initial smugglers abused, mistreated, or trafficked her, and there is no evidence in the record that those smugglers, with whom she had entered into a voluntary agreement, were connected to C- and the other captors. She also never claimed to have entered into a similar agreement with C- and her other captors, voluntary or otherwise, for them to guide her for the remainder of her journey in the United States. However, notwithstanding the Director's error, the record still does not establish that C- or the Applicant's other captors subjected, or intended to subject, her to labor trafficking or commercial sex trafficking, as she claims.

An applicant seeking to demonstrate that he or she was a victim of a severe form of trafficking must show: (1) that he or she was recruited, harbored, transported, provided, or obtained for his or her 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"). An applicant may also establish that he or she is a victim sex trafficking by demonstrating that he or she was induced to engage in a commercial sex act by force, fraud, or coercion. 8 C.F.R. § 214.11(a).

The Applicant claims that her rape by C- was force "employed to subject [her] to the demands of her traffickers as she was transported and harbored on her way to the cantina where they intended for her to engage in labor and sex acts." Additionally, she states she was coerced into remaining with her captors and complying with their demands.

The record reflects that the Applicant's captors used force and coercion in harboring and transporting her. As defined at 8 C.F.R. § 214.11(a), 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" The Applicant felt coerced into entering and remaining in the house with C- and the other captors because an armed man ordered her to do so, and the captors used rape and threatening language to control her and make her believe that she must remain there or risk further harm. The Applicant's captors used force, in the form of rape and other physical demands, and coercion in the form of "threats of serious harm to or physical restraint against" the Applicant, and a pattern of behavior intended to cause her to believe that failure to comply with their instructions "would result in serious harm . . . or physical restraint" consistent with the definition of coercion at 8 C.F.R. § 214.11(a).

However, the record does not support a finding that the Applicant's captors harbored and transported her with the purpose of subjecting her to involuntary servitude or forced labor,³ as she asserts.

³ The Applicant also claims that her captors harbored and transported her for the purpose of forcing her to engage in commercial sex acts. The Applicant confuses two separate portions of the definition of "severe form of trafficking in persons." The definition includes "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion," OR "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

Involuntary servitude is “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” *Id.* 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.) (10th ed. 2014). The Applicant’s captors made threats that she would work in a cantina if she or another person on her behalf did not pay for her release. However, despite the threats, the evidence does not show that they ever took her to the cantina, made concrete plans to do so, or attempted to require her to work there or anywhere else. The record also does not show that the Applicant ever engaged in labor at the cantina or any other location, or that the other captives with her were subjected to forced labor. Rather, the captors’ statements and actions indicated that they expected to be paid a ransom or fee for the Applicant’s release from their house and used the threats as a means to control her and carry out their criminal scheme to obtain money from her, the other captives, or their families. According to the Applicant’s statements, the captors first attempted to obtain payment through F-, but continued to hold her in their control because he only sent some of the money. The captors also clarified that other women were released after they or their families paid a fee, and the Applicant observed that people whose families had paid were released. While the Applicant may have feared she was being transported to the cantina, she was never taken there, nor was she told that she was being taken there when she left the first house where she was held. Instead, she was transported to a different location and released after C- received a payment on her behalf, consistent with what C- and the other men had told her. Accordingly, the record as a whole shows that the captors used threats to coerce the Applicant and obtain money from her, but it does not support her claim that they harbored and transported her for the purpose of subjecting her to involuntary servitude.

Additionally, the record does not support the Applicant’s assertion that her captors intended to force her to engage in commercial sex acts at the cantina, and that she was therefore the victim of sex trafficking as defined by 8 C.F.R. § 214.11(a). The regulation defines a commercial sex act as “any sex act on account of which anything of value is given to or received by any person.” *Id.* It is not necessary for the Applicant to show that she actually performed a commercial sex act in order to meet the definition of a victim of a severe form of trafficking in persons. Interim T Rule, 81 Fed. Reg. at 92270-71. However, the Applicant’s statements do not provide sufficient detail to establish that her captors intended to force or coerce her to engage in commercial sex work at the cantina.

In her initial statement, the Applicant indicated that her captors asked “if someone would pay for [her] freedom” and said they would send her to work in a cantina if no one could pay. The Applicant recalled, “I didn’t know what I would be doing – I hoped it would be as a waitress or

bondage, or slavery.” 8 C.F.R. § 214.11(a). The definition does not require that a victim of sex trafficking be recruited, harbored, transported, provided, or obtained; instead, those requirements apply to involuntary servitude, peonage, debt bondage, and slavery. *Id.* Whether the Applicant was harbored and transported by force or coercion does not affect our analysis of whether her captors acted with the purpose of inducing her to engage in commercial sex acts. We discuss sex trafficking and involuntary servitude separately in this decision.

cleaning, but I feared that it would be much worse, that I would be forced to work as a prostitute.” She did not indicate that her captors stated or implied that she would work as a prostitute, but instead noted that she did not know what to expect and expressed her personal fear that she might engage in such work. Similarly, in her second statement, the Applicant noted that her captors told her she had to pay for her stay in the house “somehow,” and that if she could not pay for her release, she would work at the cantina. Although she stated that her captors “made it seem like [she] would have to work in the cantina and do sexual favors against [her] will” there, she did not provide any specific details about the captors’ statements to establish that they discussed or implied that the work would involve commercial sex work. Instead, she “imagined what it would be like” to work there, and because “a cantina is a place that is full of alcohol . . . [she] imagined [her]self in short-shorts, serving alcohol to drunk men.” Again, the Applicant’s second statement reflects her personal, subjective fears about working at the cantina, rather than any specific statements or actions on the part of the captors indicating that the work would involve commercial sex acts. We recognize that the Applicant feared her captors, was not free to leave their house, and survived rape and severe abuse and mistreatment at their hands. However, the record does not show that her captors ever stated that the Applicant would work as a prostitute, planned or attempted to make her engage in such work, or actually induced other women to work as prostitutes. The Applicant’s fears and subjective interpretation of her captors’ statements and behavior is not sufficient in this case to show that they acted with the purpose of forcing her to engage in commercial sex as that term is defined at 8 C.F.R. § 214.11(a).

The Applicant also indicated in her response to the Director’s RFE that her rape by C- was a commercial sex act because it occurred in exchange for her safety. She explained that she felt she had no choice but to comply with C-’s demands because failure to do so would result in further harm. The Applicant noted that C- used rape and the threat of rape as a means of control over her, and that at least one other man in the house used forcible and coercive intimate contact, including making her hold his hand and pretend to be his wife, in order to exert control over her. The Applicant’s statements demonstrate that C- subjected the Applicant to abhorrent mistreatment by raping her, claiming that she belonged to him, disregarding her past trauma of being raped as a child, and preventing her from leaving the house, and that the other man also mistreated her. However, the captors’ statements and actions show that her rape was another form of abuse used as a means to control her, and do not indicate that C- or the other captors forced the Applicant to engage in sex acts as payment for her stay at the house or in exchange for something else of value. The evidence of record is insufficient to show that C- or any of the other captors forced the Applicant to engage in “any sex act on account of which anything of value is given to or received by any person.” 8 C.F.R. § 214.11(a).

Although actual performance of commercial sex or forced labor is not necessary to meet the requirements for T nonimmigrant status, the record does not show that the Applicant’s captors intended to force her to engage in commercial sex at the cantina, as she claims, or to otherwise subject her to sex trafficking or involuntary servitude. We acknowledge the difficult circumstances the Applicant endured after her entry into the United States, but as the Applicant has not shown that her captors forced or coerced her into performing commercial sex acts or forced labor, or that they

intended, planned, or attempted to do so, she has not established that she was the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(I) of the Act requires for T nonimmigrant classification.

C. The Applicant Is Not Physically Present in the United States on Account of Trafficking

As the record does not establish that the Applicant was the victim of a severe form of trafficking in persons, she consequently cannot show 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.

III. CONCLUSION

The Applicant has not established that she is the victim of a severe form of trafficking in persons and is physically present in the United States on account of such trafficking, as the Act requires. Accordingly, she is ineligible for T nonimmigrant status.

ORDER: The appeal is dismissed.

Cite as *Matter of A-R-M-R-*, ID# 1879191 (AAO Dec. 28, 2018)