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 Form I-914, Application for T Nonimmigrant Status (T application). On appeal, the Applicant submits a brief asserting her eligibility.

We review the questions in this matter de novo. See 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 severe form of trafficking in persons; 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) (2018).

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). Sex trafficking is defined as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” Id.

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 evidence for us to consider in our de novo review; however, we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5).
II. ANALYSIS

The Applicant, a native and citizen of El Salvador, claims to have last entered the United States in 2005. In May 2018, the Applicant filed the T application on the basis that she was solicited through force and coercion for commercial sex exploitation. The Director denied the T application concluding that the record did not establish that the Applicant was a victim of a severe form of trafficking in persons, that she is physically present in the United States on account of such trafficking, and that she complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking. The Director also noted that the Applicant is ineligible for T nonimmigrant status because she was inadmissible to the United States, and the record showed that the grounds of inadmissibility had not been waived. On appeal, the Applicant has not overcome the Director’s determination that she did not establish she was a victim of a severe form of trafficking in persons.1

A. The Applicant’s Trafficking Claim

In her initial written statement below, the Applicant indicated that after entering the United States in 2005, she worked at various jobs where she was paid less than minimum wage, which was not enough to support her family. She stated that in 2014, she commenced her employment at a restaurant in the position of dishwasher and was paid minimum wage. The restaurant had a manager but when he was not present, the cook of the kitchen was in charge and supervised the Applicant. When she started her employment, the Applicant stated that the cook, her immediate supervisor, began making “sexually aggressive remarks” towards her and made it clear to her that he could “make [her] work life miserable, and even get [her] fired, if [she] did not react in the way he wanted.” She indicated the cook told her he wanted to have sex with her but at first, he treated his desire to have sex with her as a joke and made suggestive jokes towards her. She indicated that he also joked with male coworkers about very explicit sexual topics, often targeting her. The Applicant stated that she was a little uncomfortable, but she did not say anything because she finally had a job paying minimum wage and could not afford to lose it.

After a few months, the Applicant stated the cook became more aggressive and repeatedly asked for sex, again making it clear that the Applicant would suffer and likely lose her job if she did not have sex with him. She indicated that she also saw that the cook had “power” over their coworkers who would do what he said, and she feared him because he had the power to make her work life very difficult. The Applicant stated that around this time, the cook started doing things that made her uncomfortable, like lifting his apron and exposing his sexual arousal to her. She recalled that the cook became more and more frustrated with her refusal to have sex, and she stated that he retaliated by increasing her workload, making her work more difficult, and telling the manager that she was not doing her work. Although the Applicant complained to the manager, she stated he did not take it seriously, treated it like a joke, and told her he thought the cook was in love with her, even after she showed him crude texts the cook sent her.

1 Because our finding here that the Applicant did not establish that she is a victim of trafficking is dispositive of her appeal, we decline to reach and hereby reserve the Applicant’s appellate arguments regarding the other grounds for the Director’s denial. 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) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).
The Applicant also stated that she feared the cook because when he was angry, he acted violently and threw things in the kitchen and she was afraid of his temper. The Applicant stated that since she had no legal status in the United States, she was also scared she could not find another job that paid minimum wage which was critical to support herself and her family. She stated she eventually “gave in” and had sex with the cook because she felt she had no choice for fear that he would hurt her and that she would lose her job. After that, the cook expected sex every time he asked and if she refused, he would become angry and assign her more work and make her job “miserable.”

The Applicant indicated that one time when she left work, the cook told her he wanted sex but when she refused, he grabbed her arm and took her to his apartment where she was able to escape. She stated that after that moment, the Applicant was determined to never sleep with him again, and she went to the manager to complain about the cook’s behavior. She stated that the manager did nothing and only told her that she was an adult and that the cook was a good worker. Shortly after the Applicant made this complaint to the manager, she was fired from the restaurant.

In her subsequent statement in response to the Director’s request for evidence (RFE), the Applicant reiterated these assertions and further addressed the claim that she believed that the cook’s request for sex was an obligation and not a request. She repeated that when she rejected him, he would become angry and give her additional work, and reported her to her boss. She also said she feared losing her job because she needed to support her family. She stated that he knew she had no legal status and that it would be very difficult to find another job that paid minimum wage if she lost this job.

The record before the Director also included, among other evidence: a mental health evaluation from the Health Center; a Form I-918, Supplement B, U Nonimmigrant Status Certification (Supplement B), signed and certified by the Deputy Director of Executive Programs (certifying official) of the Department of Fair Employment and Housing that provides a narrative consistent with the account in the Applicant’s statement; and, a letter from a co-worker that stated he was a witness of how the cook tried to humiliate the Applicant.

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

Upon de novo review, the Applicant has not overcome the Director’s determination that the record did not establish that she was the victim of a severe form of trafficking in persons.

The Applicant asserted she was a victim of a severe form of trafficking in persons, specifically sex trafficking, and therefore must establish that she was (1) recruited, harbored, transported, provided, obtained, patronized, or solicited (2) for the purpose of a commercial sex act (3) induced by force, fraud, or coercion, or alternatively, she was under 18 years of age when she was induced to perform such an act. See 8 C.F.R. § 214.11(a) (defining a “severe form of trafficking in persons” and “sex trafficking”). Coercion means “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; or the abuse or threatened abuse of the legal process.” Id. “Commercial sex act” is defined as “any sex act on account of which anything of value is given to or received by any person.” Id.
The Director determined that the Applicant was a victim of sexual harassment, abusive sexual contact, and sexual assault, but that she did not establish that she was a victim of a severe form of trafficking in persons in the form of sex trafficking. On appeal, the Applicant states that record contains sufficient, credible evidence that the cook at her place of employment, who was also her direct supervisor, solicited her for the purpose of a "commercial sex act," as required to establish sex trafficking. See 8 C.F.R. § 214.11(a) (defining "sex trafficking" to include the soliciting of a person for the purpose of a commercial sex).

The record on appeal demonstrates that the cook solicited the Applicant for sex during her employment at a restaurant, as she asserts. According to the Applicant's statements, the cook explicitly asked her for sex, made suggestive remarks to her, often exposed himself to her, and repeatedly told her that he wanted to have sex with her. Thus, the evidence sufficiently demonstrates that the Applicant was solicited by the cook for sex acts during her employment at the restaurant until she was fired and left that job.

However, at issue here is whether the record demonstrates that the cook's intended purpose in soliciting the Applicant was for the purpose of a "commercial sex act," as described under 8 C.F.R. § 214.11(a). We find that the Applicant has not made such a showing. The record reflects that the cook solicited the Applicant and induced her to engage in sex acts using force and coercion. However, the evidence, including the Applicant's own statements, do not establish that something of value was given or received by anyone in exchange for the Applicant engaging in such sex acts. The Applicant stated that the cook repeatedly told her he wanted to have sex with her and that he made it "clear" that she would suffer and likely lose her job if she did not have sex with him. She indicated that he knew she did not have legal status in the United States and would have a hard time finding a new job that paid minimum wage. However, she did not indicate that the cook specifically threatened her job if she did not engage in sex acts with him, and she did not provide any other substantive information showing how the cook made it clear to her that this was his intention. We acknowledge the Applicant's assertions that she feared the cook's power over his employees and her, that she felt like she had no choice but to ultimately engage in sex acts with him for fear of his anger, and that he could have her fired, leaving her unable to support her family. However, as stated, while this demonstrates that the Applicant felt compelled and was coerced to engage in sex acts, absent probative evidence from the Applicant, her belief that he could or would have her fired if she did not comply with his requests for sex is insufficient to establish that the cook solicited her to engage in sex acts in exchange for something of value, namely not using his power and authority to get her fired as she asserts. The Applicant also stated that after she entered into a sexual relationship with the cook, whenever she refused to have sex with him, he retaliated against her by increasing her workload, making her job more difficult, and reporting her to the boss when she could not finish all the work he assigned. We also acknowledge that the Applicant was ultimately fired from her position some time after she complained about the cook's behavior. However, apart from her general assertions, she did not discuss any statements he made or provide any probative details regarding the circumstances of her termination or any specific incident showing that his actions at the work place were intended to induce her to engage in sex acts again or otherwise indicating that he viewed her continued employment as contingent on her engaging in sex acts with him. The Applicant's own statements reflected the cook had a bad temper and often acted violently at work by pacing and throwing things in the kitchen, frightening her. She stated that this reminded her of the domestic abuse she experienced and she "knew to be frightened of displays of anger", and that for this reason, she was afraid to continue
refusing his sexual overtures. Consequently, the record as a whole demonstrates that the Applicant was forced and coerced to engage in sex acts with the cook who supervised her at her place of employment. However, the evidence, including the Applicant’s own statements, do not establish that her alleged trafficker induced or intended to induce her to perform sex acts in exchange for something of value.

We acknowledge the Applicant was the unfortunate victim of sexual assault and harassment at her place of employment and suffered serious sexual, physical, and psychological abuse at the hands of her supervisor there. However, the record lacks sufficient probative evidence showing her alleged trafficker solicited her for the purpose of a commercial sex act. Accordingly, the Applicant has not established based on a preponderance of the evidence that she is a victim of a severe form of trafficking in the form of sex trafficking, and she therefore necessarily did not establish that she is physically present in the United States on account of such trafficking and complied with any reasonable request for assistance in the investigation or prosecution of the trafficking. Consequently, she is ineligible for nonimmigrant classification under section 101(a)(15)(T) of the Act.

ORDER: The appeal is dismissed.