



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

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

In Re: 11297656

Date: OCT. 07, 2021

Appeal of Vermont Service Center Decision

Application: Form I-914 T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under the 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).

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.¹

The term “severe form of trafficking in persons” is defined in pertinent part 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.”² 8 C.F.R. § 214.11(a) (2017).

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 established she was the victim of a severe form of trafficking in persons.³ More specifically, the Director found that although the Applicant was coerced to perform domestic labor, it was for the purpose of monetary gain during a smuggling operation and not for the purpose of subjection to involuntary servitude.

¹ The Department of Homeland Security 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). This application was filed after the issuance of the Interim T Rule.

² The definition also includes commercial sex trafficking, which is not relevant in this case.

³ The Director also added that because the Applicant had not established she was the victim of a severe form of trafficking in persons, she could not establish the other requirements for a T application, such as physical presence on account of such trafficking or compliance with reasonable requests for assistance in the investigation or prosecution of severe forms of trafficking. Furthermore, the Director found the Applicant inadmissible under section 212(a)(6)(A)(i) of the Act as a foreign national present without admission or parole.

On appeal, the Applicant asserts that the Director misinterpreted both the law and facts in finding that she was not a victim of a severe form of trafficking in persons because despite the existence of an initial smuggling operation and subsequent extortion, her captors also had the purpose of subjecting her to involuntary servitude. She resubmits evidence and provides a new statement, in support.

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).

A. The Applicant's Trafficking Claim

The Applicant is a citizen of Mexico who last entered the United States without inspection in 1996. She filed her T application in 2018. Through her statements, including her new statement on appeal, the Applicant indicates that she and her family (her husband, 2-year-old daughter, and 4-year-old son) left Mexico in search of better economic opportunities. She states that the family arranged for transport to [redacted] Mexico, which entailed difficult conditions and harsh treatment, including not being provided enough food, having to sleep on a cold dirt floor, and being forced to clean the woman's property where they stayed. The Applicant asserts that the people who transported the family asked for \$6,000 in payment. She also describes how when preparing to cross the border into the United States they were forced to leave all their belongings with a woman involved in the smuggling operation, including all their money. The Applicant adds that the woman made them clean to her satisfaction before they could move on. Next, the Applicant and her family were briefly brought to a second home in Mexico before being brought by bus to the border. She describes her family's experience crossing the border where they were separated for part of the time and where she experienced continued harsh treatment from armed smugglers, including a physical altercation, causing her to have vaginal bleeding. Notably, the Applicant recalls being six months pregnant during this journey. The Applicant also indicates that in different parts of their journey the men were made to carry bundles with unknown contents.

Once across the border, the Applicant describes being transported from a convenience store to a home and then to another home in [redacted] Arizona. She indicates that once at this home, she started asking about when her family could leave the house and the woman in charge stated they still owed \$1,500 per person and could not leave until this payment was made. The Applicant describes how her husband protested because he believed the full payment for the transport was \$6,000, but the smugglers, one with a gun, again indicated that they must pay, or they could not leave. The Applicant recalls that they had to wait at this house for 15 days while a friend gathered the money to pay the demand. The Applicant then describes the conditions in the home as being very restrictive. For example, they had to pay extra money for blankets or to watch television. In addition, she states that they were only fed once a day and could only use the bathroom once per day. She describes being forced to clean and cook for the other immigrants, as well as the family who owned the home and other men who were there as part of the smuggling operation. The Applicant states she had to work about six hours each day; never for pay. She also describes the atmosphere in the house as tense, violent, and unpredictable. She asserts that she and her children were physically abused during their 15 days in the house, recalls being not free to leave, and even seeing a man who had promptly paid the demand being held hostage for a week. On the day the Applicant was released, she indicates she and her family were taken to a

bus stop and travelled to Florida. The Applicant omits details regarding whether the money her friend was gathering was actually paid and in what amount.

B. The Applicant Has Not Established she is a Victim of a Severe Form of Trafficking in Persons

Applicants seeking to demonstrate that they were victims 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”).

The Applicant contends that her smuggling situation became a trafficking situation when the smugglers forced her to perform labor and the Director misapplied the definition of trafficking by finding she had to establish the sole purpose of her alleged traffickers was subjecting her to this forced labor, ignoring that there could be co-existing purposes.

The Director acknowledged that the Applicant endured difficulties while being smuggled into the United States, which included being harbored in a home in [redacted] Arizona for 15 days through the use of force or coercion, in that she was not free to leave the home and faced physical abuse in the home, as well as threats of violence or notification of immigration authorities if she attempted to leave. In addition, the Director indicated that there can be co-existing purposes to a smuggling operation, such as smuggling and trafficking; however, the Director emphasized that the Applicant had not established that the smuggling operation she was a part of was also (even partially) a trafficking situation- for the purpose of subjection to involuntary servitude.

We will affirm the Director’s finding because the Applicant has not demonstrated that the alleged traffickers’ actions in harboring her were, at any point, for the purpose of subjecting her to involuntary servitude.⁴ Instead, the Applicant provided details in her statement indicating they harbored her for the purpose of performing tasks to further the smuggling enterprise while her captors waited for her friend to make an additional payment. The Applicant asserted that at the end of her smuggling journey, she arrived at a home in Arizona where her smugglers demanded an additional payment for her release. She was then held at this home for approximately 15 days, where she was made to clean and cook for six hours each day for the other people living in the house including other migrants, the alleged traffickers, and the family that owned the home. The Applicant stated that they had to wait at the house while her friend gathered the money needed for the payment and then she reported being brought to the bus stop for her travel on to Florida. Although we do not mean to diminish the trauma the Applicant experienced during the smuggling operation, the smuggler’s stated expectations of payment in exchange for her and her family’s release, and her safe transportation from the home to the bus stop after a period of time in which her friend attempted to gathered payment, is evidence that the

⁴ 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 . . .” 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.) (10th ed. 2014).

smugglers' intent was to enrich their smuggling enterprise and attempt to collect an additional payment.⁵

The Applicant also argues that her performance of forced labor is sufficient evidence of the smugglers' purpose. She cites the 2016 Interim T Rule, which states that it is not necessary for an applicant to actually perform work in order to establish that a trafficker acted "for the purpose of" subjecting the victim to trafficking, and that "[t]he clearest evidence of this purpose would be that the victim did in fact perform labor, services, or commercial sex acts." *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92272 (Dec. 19, 2016). The preliminary discussion to the Interim T Rule is not binding and we lack the authority to waive the requirements of the statute, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). In this case, the regulatory definition of a "severe form of trafficking in persons" requires that the T applicant have been recruited, harbored, transported, provided, or obtained "for labor or services . . . for the purpose of subjection to involuntary servitude. . ." 8 C.F.R. § 214.11(a). The smugglers harbored the Applicant through force or coercion, and the Applicant was made to cook and clean, but the record does not show that the smugglers acted with the purpose of subjecting the Applicant to involuntary servitude. Accordingly, a preponderance of the evidence does not establish the Applicant has shown she is 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. Additional Grounds of Eligibility

Because the Applicant has not established that she is the victim of a severe form of trafficking in persons, she is ineligible for T nonimmigrant status. Although the Director also found the Applicant ineligible for T nonimmigrant status on other grounds, they all relate back to her not establishing she is the victim of a severe form of trafficking and her failure to demonstrate this fact is, by itself, a basis for denial of the application and dismissal of the appeal. Thus, we need not reach the other eligibility criteria for classification as a T nonimmigrant and, therefore, reserve it. Our reservation of this issue is not a stipulation that the Applicant overcame these alternate grounds of denial or has established the other eligibility criteria. Rather, there is no constructive purpose to addressing these eligibility criteria because it cannot change the outcome of the appeal.

Accordingly, she is ineligible for T nonimmigrant status, the Director's decision will be affirmed, and the application will remain denied.

ORDER: The appeal is dismissed.

⁵ On appeal, the Applicant cites a report from the U.S. Department of State Human Smuggling and Trafficking Center and alleges that the Director failed to explain how the Applicant's situation is different than the examples discussed in the report. We have considered the evidence in the record. However, we evaluate the Applicant's claim under the applicable statute and regulations, the requirements of which the Applicant has not met.