2019 Immig. Rptr. LEXIS 6139

Administrative Appeals Office

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OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter
2019 Immig. Rptr. LEXIS 6139 *

MATTER OF B-J-T-G-

Core Terms

sex act, sexual assault, perpetrator, traffic, perpetrators, patronize, transport, solicit, harbor, rape, reconsideration motion, sex, preponderance of evidence, act

[*1] AAO Designation: D12

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

Opinion

The Applicant seeks T-l 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 Applicant's Form I-914, ***Application for T Nonimmigrant Status*** (T application), and we dismissed her subsequent appeal. The matter is now before us on a motion to reconsider. On motion, the Applicant submits a brief. Upon review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. *8 C.F.R. § 103.5(a)(3)*. Although the Applicant presents new legal arguments on motion, they are ultimately insufficient to establish her eligibility.

II. ANALYSIS

The Applicant, a native and citizen of Guatemala, entered the United States without inspection, admission, or parole with her mother in August 2015, **[*2]** when she was one year of age. In her statements in the record before the Director, the Applicant's mother explained that she and the Applicant travelled to the United States with the assistance of smugglers, who ultimately stopped in the desert and told them that they would not accompany them any further and that they should continue walking until they reached a city. The Applicant's mother stated that, as she and the Applicant continued to walk, they encountered a group of four men who told them that they would have to pay to pass by them. The Applicant's mother explained that she gave the men all the money that she had in her possession but, believing that she had more money, the men forced the Applicant's mother and the Applicant to remove their clothing. In their search for more money, the men sexually assaulted the Applicant and subsequently raped the Applicant's mother. The Applicant's mother last stated that, after raping her, the men showed them a path they could follow to reach immigration authorities. The Applicant filed the instant T application in January 2017.

An applicant may be classified as a T-l nonimmigrant if she: is or has been a victim of a severe form of trafficking **[*3]** 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 trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. Section 101(a)(15)(T)(i) of the Act; 8 C.F.R. § 214.1l(b)(1)-(4). "Severe form of trafficking in persons" is defined as, most relevantly, "sex trafficking in which a commercial sex act is induced" and "the person induced to perform such act is under the age of 18 years[.]" *8 C.F.R. § 214.11(a)*. In turn, "sex trafficking" means "the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act," *id.*, and "commercial sex act" is defined as "any sex act on account of which anything or value is given to or received by any person." *22 U.S.C. § 7102(4)*; *8 C.F.R. § 214.11(a)*.

The burden of proof is on the 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; **[*4]** however, we determine, in our sole discretion, the evidentiary value given to it. *8 C.F.R. § 214.11(d)(5)*.

In our prior decision on appeal, incorporated here by reference, we acknowledged that the Applicant was the unfortunate victim of a sexual assault, but found that the record did not establish that she was subjected to a severe form of trafficking in persons, as required by the Act and relevant regulations. Specifically, we found that the evidence did not show that the Applicant was recruited, harbored, transported, provided, obtained, patronized, or solicited for the purpose of a commercial sex act, as the record indicated that the sexual assault of the Applicant was not on account of or in exchange for anything of value; rather, the record indicated that the perpetrators robbed the Applicant's mother, sexually assaulted the Applicant in their search for more money, raped the Applicant's mother, and then provided the Applicant's mother with directions. Relatedly, we noted that, although the record indicated a possible shift in the perpetrators' purpose from a robbery to the rape of the Applicant's mother, it did not indicate that the perpetrators at any time recruited, harbored, **[*5]** transported, provisioned, obtained, patronized, or solicited the Applicant for the purpose of a commercial sex act. We last concluded that, because the record did not establish that the Applicant was a victim of a severe form of trafficking in persons, she necessarily could not establish that she was present in the United States on account of such trafficking, likewise required by the Act and relevant regulations.

On motion to reconsider, the Applicant argues that the record establishes that a commercial sex act occurred as contemplated by 8 C.F.R. § 214.11(a). She asserts that our prior decision "improperly distorted [the] Applicant's claim by finding that nothing of value was exchanged for the sex act" when, "in reality, the [perpetrators] chose to pay for the commission of their forced sex act through an intangible payment of the giving of directions."

As a preliminary matter, we acknowledge that our prior decision on appeal somewhat conflated the requirements of the regulation defining commercial sex act, requiring both an underlying exchange in value and that the exchange in value have occurred "on account of' the sex act. *See*8 C.F.R. § 214.11(a) (defining "commercial sex act" as **[*6]** "any sex act on account of which anything or value is given to or received by any person."). In this case, we do not dispute the Applicant's assertion that the perpetrators' giving of directions was of value to her and her mother; instead, and as discussed in detail below, we find that the record does not establish, by a preponderance of the evidence, that the perpetrators' giving of directions was on account of the sexual assault of the Applicant.

In her initial personal statement submitted with the Applicant's T application, the Applicant's mother recounted the perpetrators robbing her of money, "touching [the Applicant] … to see if they could feel any money[,]" and subsequently raping her. The Applicant's mother's updated statement submitted in response to a request for evidence (RFE) from the Director clarified that, as the perpetrators sexually assaulted the Applicant, they "were asking [the Applicant's mother] if [she] had hid money on [the Applicant]." The Applicant's mother additionally explained that the perpetrators "told [her] that if [she] did not have more money they would still show [her] the way but they would do what they wanted to [her]." She last stated that, after **[*7]** the Applicant was sexually assaulted and she was raped, the perpetrators "told [her] where to go" and "were satisfied with their payment and so … decided to let [her and the Applicant] pass."

While the Applicant's mother's statements may indicate some connection between the perpetrators' having raped her and their having subsequently provided her with directions, the relevant inquiry in this case concerns whether the perpetrators provided the Applicant's mother with directions on account of the sexual assault of the Applicant herself. The Applicant's mother's statements, however, directly tie the sexual assault of the Applicant to the perpetrators' search for money and indicate only her subjective belief as to what transpired in their minds after her rape—they do not establish, by a preponderance of the evidence, that the perpetrators' gave the Applicant's mother directions on account of, or the Applicant's mother received directions as a result of, the Applicant's sexual assault. *See*8 C.F.R. § 214.11(a) (defining "commercial sex act" as "any sex act on account of which anything of value is given to or received by any person"). Instead, and as stated in our decision on appeal, the record **[*8]** indicates that the Applicant was the unfortunate victim of a sexual assault during, and in furtherance of, a robbery.

The Applicant additionally asserts that our decision "erred by stating that the Applicant need[ed] to show that the [perpetrators'] conscious object was to engage in commercial sex acts" and "purposely gave directions … as a thing of value to be exchanged for the sex act[,]" stating that the perpetrators' mental state is inconsequential because the definition of a commercial sex act pays no regard to one's intent or motive for acting. The Applicant similarly asserts that our decision "incorrectly analyzed whether the [perpetrator]'s purpose was to *subject* the Applicant to a commercial sex act" when we "should have analyzed whether the *obtaining, harboring, transporting, providing, patronizing, or soliciting of [the] Applicant* was for the purpose of *a commercial sexual act."* However, this argument mischaracterizes our findings. Our decision on appeal did not imply any required mental state of the perpetrators, as the mental

state of acting "purposely" for criminal purposes is irrelevant to, and distinct from, the eligibility criteria at issue here; instead, it required—consistent **[*9]** with the plain language of the relevant regulations—that the record establish, by the preponderance of the evidence, that the Applicant was recruited, harbored, transported, provisioned, obtained, patronized, or solicited "for the purpose of a commercial sex act." *8 C.F.R. § 214.11(a)*. Borrowing from the analysis above, however, the record did not establish, by a preponderance of the evidence, that a commercial sex act occurred, nor did it indicate that the perpetrators recruited, harbored, transported, provisioned, obtained, patronized, or solicited the Applicant for the purpose of one.[1]

III. CONCLUSION

The Applicant was the unfortunate victim of a sexual assault as she traveled to the United States with her mother. However, **[*10]** the Applicant's evidence and assertions on motion do not overcome our prior determination or establish error in that decision. Consequently, her motion to reconsider is dismissed.

ORDER: The motion to reconsider is dismissed.

Cite as *Matter of B-J-T-G-*, ID# 5017713 (AAO Sept. 25, 2019)

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[1] Because the record does not demonstrate that a commercial sex act occurred, or that the Applicant was recruited, harbored, transported, provisioned, obtained, patronized, or solicited for the purpose of one, she necessary cannot establish that she was the victim of a severe form of trafficking in persons. Based on this finding, we need not address the Applicant's additional assertions on motion that she is present in the United States on account of such trafficking.