

2018 Immig. Rptr. LEXIS 8460

Administrative Appeals Office

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OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2018 Immig. Rptr. LEXIS 8460 *

MATTER OF N-O-S-

Core Terms

traffic, servitude, sexual, sex, involuntary servitude, nonimmigrant, prior decision, sex act, transport, coercion, harbor, travel, severe form, redact, domestic violence shelter, incorrect, slavery

Opinion By: [*1] Decision transmittal issued by: Perry Rhew, Chief, Administrative Appeals Office

Opinion

AAO Designation: D1

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

The Applicant, a native and citizen of Mexico, 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 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) and we dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider. Upon review, we will deny the combined motion.

I. LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. [8 C.F.R. § 103.5\(a\)\(2\)](#) [*2] . A motion to reconsider must establish that our decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. [8 C.F.R. § 103.5\(a\)\(3\)](#). Although the Petitioner submits additional evidence and argues that our prior decision was based on an incorrect application of law and fact, she does not establish legal errors in our prior decision and does not ultimately establish that she is the victim of a severe form of trafficking in persons.

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 human trafficking; is 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. §§ 214.11\(b\)\(1\) - \(b\)\(4\)](#).

II. ANALYSIS

The Applicant asserted on appeal that she was "trafficked by fraud for the purpose of involuntary [*3] servitude and slavery as a domestic and sexual servant... [and] retained by the perpetrator by force and coercion."

The term "involuntary servitude" is defined, in pertinent part, as:

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; or a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

[8 C.F.R. § 214.11\(a\)](#).¹

An applicant seeking to demonstrate that he or she was a victim of a severe form of trafficking for labor or services 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 [8 C.F.R. § 214.11\(a\)](#) (defining the term "severe forms of trafficking in persons" for T nonimmigrant classification). Thus, an applicant must show both the particular "means" used (force, fraud, or coercion) and that such means was used for a particular "end" - namely for the purpose of subjecting the applicant to involuntary servitude, peonage, or debt bondage.

In our prior decision we determined that the Applicant has demonstrated that F-² brought her to the United States through the use of fraud by promising to marry her when he was already married [*5] to

¹Footnote 1. 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).

²Footnote 2. Name withheld to protect the individual's identity.

another woman. We concluded, however, that the Applicant had not established that F- transported her to the United States for the purpose of subjecting her to involuntary servitude as defined under [8 C.F.R. § 214.11\(a\)](#). In reaching this conclusion, we found that counsel for the Applicant asserted in the appeal brief that F- forced the Applicant to engage in domestic work, but the Applicant did not describe such a situation in her own statement. In regard to the Applicant's assertion that F- recruited and harbored her for the purpose of subjecting her to involuntary servitude in the form of sexual services, we determined that the evidence showed that F- subjected the Applicant to severe and ongoing domestic violence and sexual abuse, but the Applicant indicated that she voluntarily departed for Mexico in 2014 and the evidence did not establish that the Applicant believed that she must "enter into or continue in [the] condition" in which she lived during her relationship with F-. as defined by the regulation at [8 C.F.R. § 214.11\(a\)](#). We also found that the Applicant did not establish that she was subjected [*6] to slavery as that term is commonly defined because her travel to Mexico in 2014 shows that she was not under F-'s complete control.³ Lastly, we determined that the record does not show that the threats that F- made to call the police on the Applicant and his attempt to seek full custody of their child were done as a means to subject the Applicant to a condition of servitude.

On motion, the Applicant asserts that F- had control over her movement and he frequently had her travel with him to Mexico. She claims that our characterization of her travel in 2014 as an independent and personal decision is incorrect because she did not have any means for traveling independently to Mexico. In the supplemental affidavit the Applicant submits on motion, she writes. "[h]e would force me to go to Mexico ... He would have me leave the country about 6 or 8 times. The last time was June 10, 2015. He would pay for the trips and plan them by himself... he would drive me to and from Mexico." However, this description [*7] is inconsistent with the statement she wrote in her first affidavit. In her first affidavit, the Applicant recounted:

If I ever tried to express myself, he mocked me and told me to shut up. We argued a lot because of this and he often threw me out of the house. When this happened, he paid for me to return to Mexico. Then he would come back to [redacted] and make me go back with him, and again paid for the travel.

In 2014 I left him and returned to [redacted] He followed me there and begged me to come back. He promised that we would have a "dream ranch" and a business together in Mexico. I was convinced that he would change, so I went. After that, he took my border crossing card so I could not leave again.

This statement indicates that the Applicant and F- had a pattern or cycle in their relationship where they argued and F- would pay for her return to Mexico and then he would travel to Mexico to ask her to return. She differentiated her departure to Mexico in 2014 by stating that she "left him and returned to [redacted] and only returned to the United States after F- promised that they would have a ranch and business together. The record, therefore, does not [*8] demonstrate an error in our prior conclusion that the Applicant's decision to voluntarily depart the United States in 2014 shows that she did not believe that she must enter into or continue in the condition in which she lived during her relationship with F- and that she was not under F-'s complete control.

³Footnote 3. Slavery is not defined in the Act or regulations, but is understood as "a situation in which one person has absolute power over the life, fortune, and liberty of another." *Black's Law Dictionary* (B. A. Garner, ed.) (10th ed. 2014).

The Applicant asserts that even if we do not find that she was trafficked because she voluntarily departed the United States, the record shows that she was subjected to trafficking after her 2014 reentry to the United States, which is when F- took her border crossing card. She asserts that she was rescued from the claimed trafficking in [redacted] 2015 after she went to a domestic violence shelter. However, the record contains a copy of the Applicant's Form I-94 card, which shows that she was last admitted to the United States as a B-2 nonimmigrant visitor in June 2015. She does not discuss this departure and reentry in her first affidavit and in her second affidavit she only states that F- had her leave the United States "6 or 8 times" with the June 2015 trip as her last departure. The Applicant does not describe in her affidavits the two months between her June 2015 [*9] reentry into the United States and her [redacted] 2015 stay at a domestic violence shelter to demonstrate that she was subjected to force, fraud, or coercion for the purpose of involuntary servitude during this period.

She further asserts that she believed that she would suffer serious harm or physical restraint if she did not remain in the state of servitude. As discussed in our prior decision, the record shows that F- subjected the Applicant to severe and ongoing domestic violence and sexual abuse, but it does not establish that the Applicant believed that she must "enter into or continue in [the] condition" in which she lived during her relationship with F-, as defined by [8 C.F.R. § 214.11\(a\)](#), because the Applicant voluntarily departed the United States and traveled to Mexico in 2014. Although the Applicant claims that we can consider the trafficking to have started with her last entry into the United States, the Applicant does not provide any specific, probative details on her relationship with F- from [redacted] 2015 until she moved into a domestic violence shelter two months later.

The Applicant also argues that F- abused [*10] the legal process by threatening that she would be arrested if she called the police and violating the restraining order the Applicant had against him. The Applicant submits a copy of a three-year criminal protective order restraining F- from having contact with her, a copy of a subpoena for her to testify in a criminal proceeding, and photographs of her injuries, which she states were used as evidence during the protective order hearing. As we stated in our prior decision, the record does not indicate that F- threatened to falsely report the Applicant to the police or other law enforcement authorities when they resided together in order to induce her into servitude. Although the record shows that F- violated the protective order by contacting the Applicant, these incidents occurred after the Applicant went to the domestic violence shelter and was no longer living with F-. The record does not demonstrate that the Applicant was recruited, harbored, transported, provided, or obtained by F- after she entered the domestic violence shelter. Therefore, the record does not indicate that F- abused the custody or any other legal proceedings to subject her to servitude.

Finally, the Applicant [*11] asserts that she is also a victim of sex trafficking. She previously stated that she was a victim of sexual slavery, which we addressed in our prior decision as a form of trafficking for services. Sex trafficking on the other hand is defined as "the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." [8 C.F.R. § 214.11\(a\)](#). Commercial sex act means "any sex act on account of which anything of value is given to or received by any person." *Id.* The commercial sex act must be "induced by force, fraud, or coercion." *Id.* The Applicant asserts that F- subjected her to forced sex "in exchange for the money he provided her at any time." Although the record shows that F- sexually assaulted the Applicant and had financial control over her as part of the cycle of violence in his attempt to exert his power and control her, it does not show that he recruited, harbored, transported, provided, obtained, patronized, or solicited her for the purpose of a commercial sex act.

The Applicant in her first statement described F-'s sexual abuse and financial control [*12] over her as:

He paid for all the bills and I had no access to money. When he got mad at me, he turned off the internet, television, and phone lines to make me pay for whatever I did that upset him; I had to beg for money for groceries and laundry. I wasn't allowed to drive his car unless he directed me to do so.

He forced me to have sex with him whenever he wanted. ... He forced me to give him oral sex whenever he wanted, or any other kind of sex.

This statement shows that F- subjected the Applicant to an ongoing cycle of violence that involved psychological, physical, and sexual abuse of her, but it does not show that she was forced to perform a sex act in exchange for money or anything else of value.

However, in her new affidavit submitted on motion the Applicant wrote that:

If I ever used the money for myself he would say, "how are you going to pay me back?" and he would always mean I would pay in a sexual way. Whatever he wanted to do to me sexually in order to pay him back. When it came to sex, he never asked me if I wanted to. He would just climb on top of me.

The Applicant claims that she did not previously disclose this information because she suffered [*13] from impaired memory related to her PTSD, depression, and anxiety. However, her new statement does not contain a detailed, probative account of her claim that she was subjected to forced sex in exchange for money. Without such details, the Applicant's description is insufficient as evidence of her new claim that she was a victim of sex trafficking. See [8 C.F.R. § 214.11\(d\)\(5\)](#) (an applicant may submit any credible evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the evidentiary value to give that evidence).

In sum, the record does not establish that F- recruited, harbored, transported, provided, or obtained the Applicant for her labor or services for the purpose of subjecting her to involuntary servitude or slavery. The record also does not show that the Applicant was the victim of sex trafficking through F-'s recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of her for the purpose of a commercial sex act. Consequently, the Applicant has not established that she is the victim of a severe form of trafficking in persons as required by section 101(a)(15)(T)(i)(I) [*14] of the Act.

As the record does not demonstrate that the Applicant was the victim of a severe form of human trafficking, she consequently cannot show that she is physically present in the United States on account of such trafficking and that she complied with any reasonable requests from law enforcement for assistance in the investigation or prosecution of the trafficking, as required by subsections 101(a)(15)(T)(i)(II),(III) of the Act.

III. CONCLUSION

The Petitioner's submission on motion does not provide new facts to establish that the Petitioner meets the requirements for T nonimmigrant classification. The Petitioner also does not establish that our prior decision was based on an incorrect application of law or USCIS policy or that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Her petition remains denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of N-O-S-*, ID# 1202189 (AAO June 6, 2018)

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