



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

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

In Re: 5032762

Date: JULY 22, 2020

Appeal of Vermont Service Center Decision

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 Applicant did not establish that he was the victim of a severe form of trafficking in persons, is physically present in the United States on account of such trafficking, and would suffer extreme hardship if removed. On appeal, the Applicant submits a brief and reasserts his eligibility. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. 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 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." 8 C.F.R. § 214.11(a) (2017).

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).

II. ANALYSIS

The Applicant is a citizen of Mexico who last entered the United States in 2013 without inspection, admission, or parole. He filed his T application in June 2016.

A. The Applicant's Trafficking Claim

In his personal statement in support of his T application, the Applicant claimed that he had a difficult childhood in Mexico because his family was poor and he had to work to help support them. When he was 16 years old, he decided to leave Mexico because he wanted a better life. He stated that he unsuccessfully attempted to enter the United States a few times, and began another attempt in [redacted] 2013 with two friends. According to the Applicant, he and his friends traveled from [redacted] Mexico, entered the United States, and then got lost in the desert for several days after fleeing from border patrol officials.

He indicated that two armed men eventually stopped them and asked questions about who they were and where they were going, gave them some water and food, and said they could not leave. The Applicant reported that because the men were armed, he and his friends did not feel free to leave on their own. He stated that the men told the Applicant and his friends to carry large backpacks, the contents of which the men would not disclose, and threatened to kill them if they refused. The Applicant noted that he felt he had no option but to carry the backpack, so he did so while walking for three days without any sleep, food, or water. He recalled that the desert was hot during the day and cold at night, and the armed men insulted and hit the Applicant and his friends.

According to the Applicant, border patrol agents caught him and one of the armed men and took them to a detention center, at which point he learned that the backpack he carried contained marijuana. He recalled that he tried to tell the border patrol agents that he was forced to carry the backpack and did not know what it contained, but they did not believe him because the armed man had reported that the backpack belonged to the Applicant. He feared the armed man would retaliate against him if he told the truth.

The Applicant indicated that while being held in an adult detention center in Arizona, he was the victim of a sexual assault by other inmates, and was severely physically assaulted a few days later. He recalled that he was beaten unconscious and woke up in the hospital, and began to fear that his life was in danger. For his protection, he was placed alone for the remainder of his detention in a segregated jail cell, where he often felt depressed. The Applicant indicated that his public defender told him that he risked being sent to jail for years if he went to trial and lost, so he decided to accept a plea agreement because he feared he would be further assaulted if he spent more time in jail. He therefore accepted a guilty plea in order to serve only one more month in jail. After completing his sentence, he was transferred to multiple shelters and then placed with a foster family. He stated that it has been difficult for him to share his story due to his fear and trauma, and that his therapist and lawyer have helped him. The Applicant apologized for crossing the border without permission, stated that he knows drugs are illegal, and expressed concern that he would be harmed if he returned to Mexico.

In a supplemental statement in response to a request for evidence (RFE) from the Director, the Applicant alleged that he was the victim of trafficking once, in [redacted] 2013, when he was forced to carry a backpack of marijuana across the border. He stated that he did not smuggle or attempt to smuggle drugs, nor was he forced to smuggle drugs, at any other time. He indicated that he previously attempted to enter the United States in [redacted] [redacted] and [redacted] 2013, but was unsuccessful on those occasions. He noted that he hired a guide in [redacted] 2013 and promised to pay him after crossing

the border, and the guide told him to avoid the other people traveling in the group because they were dangerous. He thought the other men in the group were smugglers or worked for smugglers, but was not sure. Although he heard he could cross the border for free if he worked for the men, he did not because he knew it was dangerous and illegal, and he did not want to carry a heavy backpack. The Applicant reported that he and a man were detained together, and he told the immigration officials about his journey. He stated that he told the officials that he only carried a backpack containing his lunch, agreed to pay the guide for help crossing the border, and did not carry drugs, but traveled with the men “because you could not cross the border without getting authorization from drug traffickers.” He did not recall stating that he was a drug mule or that he had smuggled or attempted to smuggle drugs on four prior occasions, and asserted that he has never worked as a drug mule. He claimed that he told the officers that he knew the nicknames of the hills and paths on his route, and the nicknames of the men who forced him to carry the backpack, but did not know the full information and did not work for the men. Further, he stated that he has not used drugs or alcohol while in the United States but focuses on his education, family, and future goals.

In a 2016 psychological evaluation, a licensed clinical social worker described the Applicant’s report of his claimed trafficking. In addition to the information the Applicant provided in his personal statements in support of his T application, the social worker noted that the Applicant reported that he and his friends attempted to resist carrying the backpacks, but the armed men pointed guns at them and told them they would “die of hunger” if they did not comply. Additionally, the Applicant alleged to the social worker that an immigration official intimidated and insulted him, accusing him of drug smuggling despite his attempts to tell her that he was forced to carry the backpack. Further, the Applicant provided additional details to his social worker about the fear he experienced while detained and his reason for accepting a plea deal with the hope of being released and returned to Mexico promptly in order to avoid further harm in jail. The social worker diagnosed the Applicant with Posttraumatic Stress Disorder, In Partial Remission. She noted that because the border patrol officers did not believe the Applicant and he was abused in detention, he felt unsafe and therefore was afraid to tell the truth about his experiences and accepted a plea deal in order to escape the situation.

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

Upon *de novo* review, we agree with the Director that the Applicant did not meet his burden of establishing that he was the victim of a severe form of trafficking in persons.

As relevant in this case, 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. 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term “severe forms of trafficking in persons”). The Director denied the Applicant’s T application based on a finding that the Applicant’s statements regarding his claimed trafficking conflicted with information he provided to officials of U.S. Customs and Border Protection (CBP) when he was apprehended in [REDACTED] and [REDACTED] 2013. The Director indicated that, pursuant to CBP records, the Applicant stated during his [REDACTED] 2013 encounter that he was working as a drug mule and had smuggled or attempted to smuggle drugs on four prior occasions. Additionally, the Director referenced CBP records stating that in [REDACTED] 2013, the Applicant told officers that he was not concerned about prosecution because he was a minor and that he could provide information

about the names and travel routes of the people he worked for. Further, the Director noted that CBP records indicated that the Applicant had encounters with CBP on at least four occasions in [redacted] [redacted] and [redacted] of 2013.

In [redacted] 2013, the Applicant was charged with possession and use of marijuana, possession of marijuana for sale, and transporting and/or selling marijuana. He pled guilty in [redacted] 2014 to possession of marijuana (over 4 ounces) and was sentenced to six months of imprisonment and fines. The remaining charges were dismissed. The Applicant claims that he was arrested with one of the armed men in [redacted] 2013 and that the others in his group escaped. USCIS records indicate that he and four other individuals were arrested together and that all were attempting to smuggle bags of marijuana.

The Applicant's trafficking claim rests on his assertion that he was forced to carry a backpack that he did not realize contained drugs. However, his testimony conflicts with his statements to CBP during two separate apprehensions, when he indicated that he was working as a drug mule, had smuggled or attempted to smuggle drugs several times before, was not concerned about prosecution because he was a minor, and could provide information about the people he worked for. This evidence weighs against a determination that the Applicant was recruited, harbored, transported, provided, or obtained 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, pursuant to the definition of trafficking at 8 C.F.R. § 214.11(a).

Although the Applicant claims that he does not recall making such statements and denies ever having worked as a drug mule, he has not provided sufficient evidence to refute the information in CBP records, which indicate that the Applicant made comments during two separate encounters about his ongoing work. Furthermore, his encounters with CBP in [redacted] and [redacted] 2013 corroborate the record of his [redacted] 2013 statement that he had smuggled or attempted to smuggle drugs multiple times in the past. On appeal, the Applicant contends that his personal statements were consistent with the administrative record because he stated that he attempted to enter "a few times" and he listed on his T application approximate dates for his [redacted], [redacted], [redacted] and [redacted] 2013 attempted entries. However, the fact that the Applicant acknowledged those attempted entries does not overcome the evidence that he told CBP that he had been involved in drug smuggling on those occasions.

He also argues on appeal that he has not received copies of the interviews in which he made the statements. However, the Applicant received the documents available to him through the Freedom of Information Act process, which is a separate process from the adjudication of his appeal. Additionally, the Director notified the Applicant of the derogatory evidence against him, including the content of his statements to CBP, and the Applicant has had the opportunity to respond. If an adverse decision will be based on derogatory information of which an applicant is unaware, USCIS must notify the applicant and provide him the opportunity to rebut that information. 8 C.F.R. § 103.2(b)(16)(i). USCIS is not required to provide an applicant or petitioner with an exhaustive list or documentation of the derogatory information as long as it advises the applicant or petitioner of that information and provides them with an opportunity to respond. *See Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) (concluding 8 C.F.R. § 103.2(b)(16)(i) only requires the government to make a petitioner "aware" of the derogatory information used against him or her); *Mangwiro v. Johnson*, 554 Fed.Appx. 255, 261 (5th Cir. 2014) (concluding 8 C.F.R. § 103.2(b)(16)(i) "does not require USCIS to provide

documentary evidence of the [derogatory] information, but only sufficient information to allow the petitioners to rebut the allegations”).

The Applicant further asserts that he should be given the benefit of the doubt because he was a minor at the time of his apprehension and his age, fear, and traumatic experiences could have affected whether he felt safe to tell the truth to CBP officials. Further, he notes that we should consider the fact that he was detained along with one of his alleged traffickers. Additionally, he contends that the fact that he pled guilty to possession of marijuana does not weigh against his credibility, because his plea was based in fear and a desire to get out of prison as soon as possible in order to avoid further abuse. We recognize that the Applicant was detained with his alleged trafficker in [] 2013 and that he was a minor at that time. We acknowledge his assertions in his personal statements, and the information he provided to his social worker, that he experienced difficult circumstances when he came to the United States in [] 2013 and felt he had no choice but to carry the backpack. However, his statements at that apprehension regarding working as a drug mule were consistent with his prior statements at his [] 2013 apprehension, when he also claimed that he was working as a drug mule and had done so in the past. The Applicant does not allege that his [] 2013 statements were based in trauma or fear of retaliation from the person with whom he was arrested, that he was in a trafficking situation at that time, or that he felt unable to tell the truth to CBP officials. To the contrary, he claimed in his personal statement in response to the RFE that in [] 2013 he hired a smuggler and traveled alongside people he thought were smugglers, but avoided those people and chose not to pursue the “option of working for these men.” Moreover, he indicated that he “thought he would be safer with an adult” with whom he ran through the desert, and that when he and the man were arrested together, the man “said that [he] should talk and not be afraid of talking because the men [they] encountered could have been traffickers.” With regard to his statements to CBP upon apprehension in [] 2013, he indicated that he was afraid and “there might have been some miscommunication or confusion,” but that he told the truth and informed the officer that he only carried a backpack for his lunch and does not “remember stating that [he] was a drug mule or that [he] had smuggled or attempted to smuggle drugs on four occasions previously.”

The Applicant bears the burden of proof in these proceedings. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). His assertions that he does not recall making the statements that appear in CBP records of his [] 2013 apprehension, and did not make the statements in the [] 2013 records, are insufficient to refute the documentation of what occurred during those two encounters. Although the Applicant was a minor and alleges that fear and trauma affected his statements, he has not submitted sufficient evidence to overcome the evidence of his multiple, consistent statements that he was working voluntarily as a drug mule. Furthermore, although we acknowledge that the Applicant suffered severe abuse in jail and that he claims his guilty plea was motivated by a desire to avoid further abuse, the circumstances of his guilty plea do not overcome the evidence of his prior statements to CBP. Furthermore, we lack authority to look behind the Applicant’s conviction to reassess guilt or innocence. *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine guilt or innocence). Accordingly, the Applicant has not shown that he 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. Additional Grounds of Eligibility

Because the Applicant has not established that he was the victim of a severe form of trafficking in persons, he is ineligible for T nonimmigrant status. Since this basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether he is physically present in the United States on account of trafficking and would suffer extreme hardship upon removal. *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).

III. CONCLUSION

A preponderance of the evidence does not establish that the Applicant is the victim of a severe form of trafficking in persons. Accordingly, he is ineligible for T nonimmigrant status.

ORDER: The appeal is dismissed.