

2015 Immig. Rptr. LEXIS 8499

Administrative Appeals Office

August 10, 2015

FILE: [redacted]--APPLICATION RECEIPT: [redacted]

BIA & AAU Non-Precedent Decisions

Reporter

2015 Immig. Rptr. LEXIS 8499 *

IN RE: Applicant: [redacted]

Core Terms

traffic, cartel, redact, severe form, nonimmigrant, psychological evaluation, uncle, reconsideration motion, physical presence, burden of proof, probative, detain, aunt

Counsel

[*1]

ON BEHALF OF APPLICANT:

[redacted]

Opinion By: Decision transmittal issued by: Ron Rosenberg, Chief, Administrative Appeals Office

Opinion

AAO Designation: D12

APPLICATION: *Application for T Nonimmigrant Status* under section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i)

DISCUSSION: The Director, Vermont Service Center, ("the director") denied the *application for T nonimmigrant status* and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be denied. The AAO's prior decision will be affirmed, and the petition will remain denied.

The applicant seeks nonimmigrant classification under *section 101(a)(15)(T)(i) of the Immigration and Nationality Act* ("the Act"), *8 U.S.C. § 1101(a)(15)(T)(i)*, as a victim of a severe form of trafficking in persons.

The director denied the application on November 19, 2013 because the applicant did not demonstrate that he was a victim of a severe form of trafficking in persons and that he is present in the United States on account [*2] of such trafficking. We dismissed a subsequent appeal on February 6, 2015. On motion, the applicant asserts we failed to consider all of the relevant evidence and focused on inconsistencies without considering the applicant's psychological state of mind.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *8 C.F.R. § 103.5(a)(3)*.

As explained below, we find that the applicant's submission does not meet the requirements for a motion to reconsider. The applicant does not cite binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy, nor does he show that our prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider must be denied. See *8 C.F.R. § 103.5(a)(4)* [*3] (a motion that does not meet the applicable requirements shall be denied).

Applicable Law

Section 101(a)(15)(T)(i) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she:

- (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000;
- (II) is physically present in the United States ... on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
- (III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime ...; and
- (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal

The term "severe forms of trafficking in persons" is defined, in pertinent part, as:

the recruitment, harboring, [*4] 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. ¹

The regulation at [8 C.F.R. § 214.11\(1\)](#) prescribes, in pertinent part, the standard of review and the applicant's burden of proof in these proceedings:

(1) *De novo review*. The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(2) *Burden of proof*. At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

[*5]

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The applicant is a citizen of Ecuador who was born in that country on [redacted] The applicant was apprehended by U.S. border patrol agents near the border with Mexico on April 14, 2012. He filed the instant Form I-914, *Application for T Nonimmigrant Status*, on March 21, 2013 when he was [redacted] years old. In his initial statement, dated May 30, 2012, the applicant provided the following account.

The applicant and his aunt traveled from Ecuador through Peru, Honduras and Guatemala to Mexico via airplane and a bus. They remained in Mexico for three days and then began a journey across a river. While they were crossing the river, the applicant and his aunt were kidnapped by members of the Los Zetas cartel and were taken to a house in Mexico that held other detainees. The cartel contacted the applicant's uncle and asked him to pay a ransom for the applicant and his aunt's release. The cartel eventually smuggled the applicant and his aunt into the United States and detained them at the cartel's ranch in [redacted] Texas. The applicant and [*6] his aunt hid at the ranch until they met with a smuggler who planned to take them to [redacted] Texas. At some point during his travel to Houston the applicant was apprehended by immigration authorities. The applicant in a statement dated March 12, 2013 added that he was told that if the ransom was not paid he would have to work for the cartel or he would be killed. In another statement dated March 12, 2013 the applicant discussed his fear that the Los Zetas cartel would target and harm him and his family members if he returns to Ecuador. ²

In his statements issued in response to a Request for Evidence (RFE), dated August 7, 2013 and September 7, 2013, the applicant reiterated that the Los Zetas cartel told him that if a ransom was not paid for his release he would have to help with smuggling drugs into the United States. He stated that the cartel

¹Footnote 1. This definition comes from section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386 (Oct. 28, 2000), which has been codified at [22 U.S.C. § 7102\(8\)](#) and incorporated into the T nonimmigrant regulation at [8 C.F.R. § 214.11\(a\)](#).

²Footnote 2. In his statements the applicant also expressed his desire to remain in the United States to continue his education. The applicant submitted his school records and supporting letters from his friends and family members regarding his desire to continue his education in the United States.

threatened to kill him if he did not comply and he witnessed the death of his smuggler. The applicant added that he was forced to keep guard over the cartel's [*7] narcotics for two days until his uncle's ransom payment arrived.

Victim of a Severe Form of Trafficking in Persons

The director determined that the applicant was not a victim of a severe form of trafficking in persons because he was smuggled into the United States and was not brought into this country for the purpose of subjection to involuntary servitude, peonage, debt bondage, slavery or commercial sex. On appeal, the applicant asserted that the Los Zetas cartel trafficked him by force and coercion for the purpose of peonage and involuntary servitude. He explained that he was forced to watch over the Los Zetas cartel's drugs and believed that he would be used as a drug mule for the cartel if his ransom was not paid.

In our February 6, 2015 decision, we determined that the applicant's failure to provide consistent, probative accounts of his claim detracts from his statements as credible, reliable evidence that he is a victim of a severe form of trafficking in persons. We found inconsistencies in three fundamental components of the applicant's narrative, summarized herein. First, we found that the applicant did not provide a consistent account of the ransom payments [*8] the Los Zetas cartel allegedly demanded from his uncle. We explained that because of inconsistencies in the amount of ransom demanded and paid, the applicant did not provide a probative account of his claim that the Los Zetas cartel demanded ransom or labor for his release. Second, we found that the applicant failed to provide a consistent account of his alleged detention by the Los Zetas cartel. We explained that the applicant's statements and two psychological evaluations differed in his accounts of where and when he was allegedly detained. Finally, we found that the applicant's overall timeline was undermined by other evidence in the record. For example, the applicant's uncle, [redacted] whom the applicant claimed gave ransom payments to the cartel, discussed a series of events that contradicted the detention period the applicant recounted during his second psychological evaluation. Also, the applicant's claim that he was detained at a ranch in [redacted] Texas for two and a half weeks was contradicted by Department of Homeland Security (DHS) records reflecting the date the applicant entered the United States and his apprehension by U.S. border patrol.

On motion, the [*9] applicant asserts that physical and psychological trauma has affected his ability to remember clearly.³ He contends that we failed to consider the ransom receipts from [redacted] conclusions from his psychological evaluations, and his uncle's statement. In two additional personal statements submitted on motion, the applicant reiterates that he does not remember the details of his kidnapping because he was traumatized. He requests that we consider the totality of his evidence.

An applicant for classification as a T-1 nonimmigrant must first establish that he or she is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the TVPA. *See* section 101(a)(15)(T)(i)(I) of the Act. We acknowledge and give consideration to the fact that the applicant was

³Footnote 3. The applicant also contends that we failed to fully consider his psychological evaluations, which, he claims, discuss his "post-traumatic anxiety." The applicant asserts our decision [*14] is contrary to subsections 101(a)(15)(T)(i)(III)(aa),(bb) of the Act, which, he contends, "exists to prevent this type of injustice." The applicant correctly observes that section 101(a)(15)(T)(i)(III)(bb) of the Act provides an exemption to the section 101(a)(15)(T)(i)(III) of the Act requirement that an applicant comply with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking, if the applicant can demonstrate he is unable to cooperate due physical or psychological trauma. However, the applicant's eligibility under section 101(a)(15)(T)(i)(III) of the Act was not raised in the director's decision below or by us on appeal.

diagnosed with Post-Traumatic Stress Disorder (PTSD) during his psychological evaluation; however, the applicant must nevertheless meet his burden of proof by submitting probative, credible and reliable evidence [*10] of his trafficking claim. See [8 C.F.R. § 214.11\(1\)\(2\)](#) (burden of proof); see also [8 C.F.R. § 214.11\(1\)\(1\)](#) (de novo review and discretionary authority). The applicant submitted below the following relevant evidence: his own personal statements; two psychological evaluations; Western Union money transfer receipts; a letter from his uncle, [redacted] and letters attesting to his good moral character.

As discussed in detail in our February 6, 2015 decision, the applicant's statements, psychological evaluations and Mr. [redacted] statement fail to provide consistent, probative accounts of the amount of ransom demanded and paid, the location and duration of the applicant's detention, and when and how the applicant entered the United States. Contrary to the applicant's assertions on motion, Mr. [redacted] letter was discussed in detail, as evidenced by our findings that the timeline Mr. [redacted] presented contradicts the detention period that the applicant recounted during his second psychological evaluation. We also considered the [redacted] money transfer receipts, which, the [*11] applicant asserts, are "ransom receipts" and are "a crucial piece of evidence" in his case. While we recognize that the applicant presented these receipts as evidence of his uncle's ransom payments, without probative testimony of his kidnapping, detention and the demand for ransom, the receipts only show that money was transferred from Mr. [redacted] to various individuals located in Texas. Accordingly, the totality of the evidence does not establish the applicant's victim status, as required by section 101(a)(15)(T)(i)(I) of the Act.

Physical Presence in the United States on Account of Trafficking

In our February 6, 2015 decision, we agreed with the director's determination that because the applicant failed to establish that he is a victim of a severe form of trafficking in persons, it cannot be found that he is physically present in the United States on account of trafficking. To satisfy the physical presence requirement, the regulation requires, in pertinent part, that an alien demonstrate both that he or she was subjected to trafficking in the past and that his or her continuing presence in the United States is directly related to the original trafficking. [*12] [8 C.F.R. § 214.11\(g\)](#). As discussed in the preceding section, the applicant has still not demonstrated that he a victim of a severe form of trafficking in persons. Consequently, he has not established that his continued presence in the United States is on account of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act.

Conclusion

As in all visa classification proceedings, the applicant bears the burden of proof to establish his eligibility for T nonimmigrant status. Section 291 of the Act, [8 U.S.C. § 1361](#); [8 C.F.R. § 214.11\(1\)\(2\)](#); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) ; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) . Here, that burden has not been met. Accordingly, the motion to reconsider will be denied and our prior decision will be affirmed.

ORDER: The motion to reconsider is denied. The February 6, 2015 decision of the Administrative Appeals Office is affirmed.

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