



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

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

In Re: 6559292

Date: SEPT. 29, 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 had not established that she was the victim of a severe form of trafficking in persons and is physically present in the United States on account of such trafficking. The Director also noted that the Applicant is inadmissible. On appeal, the Applicant reasserts her eligibility. Upon *de novo* review, we will remand the matter to the Director.

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.”¹ 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).

¹ The definition also includes sex trafficking, which is not at issue in this case.

II. ANALYSIS

The Applicant is a citizen of Mexico who last entered the United States in February 2000. She filed her T application in August 2017.

A. The Applicant's Trafficking Claim

The Applicant submitted a personal statement in which she stated the following: The Applicant's family lived in poverty in Mexico, and her sister went to the United States to work. When the Applicant was 16 years old, she traveled to [redacted] Mexico, with her sister-in-law to visit a relative for three days, and during the visit many people in the city "taunt[ed] her" about going to the United States since she was already close to the border. After many people made the same suggestion, she began to consider the idea of going to the United States in order to escape the poverty in which she lived. She told her relatives in [redacted] that she wanted to go, so they put her in contact with a smuggler. The next day, the smuggler picked up the Applicant and drove her to [redacted]. In [redacted] the smuggler took her to a small storage room, the size of a small garage, behind a house. She joined 23 other people in sitting on the floor of the storage room, which had no windows or light except for one candle. The smuggler told the Applicant that he would contact a smuggler in the United States, who would let them know when to cross the border.

The next morning, the Applicant awoke to a man pushing a gun into her ribs. He told her and the only three other women in the storage room that "it was time to wake up to do [their] chores," and that if they did not comply, they "would be left somewhere dead." The male migrants held in the storage room had to pay the smugglers to have their laundry washed, and the Applicant had to hand-wash the laundry for no pay. If she did not do the work to the smugglers' satisfaction, they would deny her food and point guns at her head, demanding that she redo the work. The smugglers took the men in the storage room away each day and brought them back at night, but the Applicant did not know where they went. Washing the laundry was the Applicant's "main job," but she also had to clean the toilet and shower area that she and the others in the storage room used. Additionally, she and the other women had to clean the separate house where the smugglers lived for about two hours each day. She saw drugs around the house, which the smugglers told her not to touch. She was afraid to leave because the smugglers were always watching her, threatened her at gunpoint if she stopped working even for a moment, said they would "make [her] disappear," and threatened to deprive her of food for days, as they had done before, if she did not obey. While the Applicant was held in the storage room, some people were taken to cross the border, but she and the other women remained. When one of the women asked when she would be able to leave, a smuggler pointed his gun to that woman's head and said "she would leave when he was done with her," preparing his gun to fire as he asked, "Unless there is a problem with that?" The Applicant did not disobey any instructions after that incident.

After the Applicant had been at the storage room for weeks, she awoke one night to one of the smugglers reaching his hands down her pants. She screamed, and the other women hit the smuggler with their shoes until he left. On four occasions, the Applicant and the other women were required to go into town at night to recruit new clients for the smugglers by asking people if they wanted help to cross the border. The smugglers threatened to make the women "disappear" if they did not comply, threatened their families, and displayed the guns in their waistbands. One time, the Applicant and the

other women refused to go, but agreed after the smugglers denied them food and water for two days. While they were in town recruiting, the smugglers monitored them from a distance.

The Applicant remained in the storage room for three months. Each morning, the smugglers woke her up by pressing a gun into her ribs and made her do her chores. She was not permitted to leave the storage room except when she was doing her chores. She did not have access to a phone or any way to contact her family. After three months, a smuggler told her and the other three women that it was their time to cross the border. The smugglers woke them up in the middle of the night and loaded them, along with four men, into a truck. After a 20-minute drive, the truck stopped and they were left alone in the middle of the desert without any belongings. They found a man who was helping others cross and told him that they did not know where they were. He said he could help them but that they had to wait for his ride to arrive. The next morning, a car arrived and they thought it was the man's ride, but it turned out to be immigration agents. They detained everyone, and then released the Applicant back into Mexico after a few hours.

After arriving in Mexico, the Applicant and those she had been traveling with looked for a smuggler to help them cross again. "To [her] horror," the person they encountered ended up being affiliated with the smugglers who had held them before, and he took them back to the storage room and held them for three more nights. On the fourth night, the smuggler's nephew took the Applicant and led her through a tunnel into [redacted] California, and then to his home, where his mother lived. The Applicant lived with the smuggler's mother for six months. The mother was kind to the Applicant, and the nephew told the Applicant that he had helped her because he did not like what his uncle was doing. Eventually, the Applicant decided to move to [redacted] to reunite with her sister, so the nephew's mother bought her a plane ticket.

In November 1999,² the Applicant's sister returned to Mexico and the Applicant accompanied her because she did not have anyone to live with in the United States. After returning to Mexico, she began receiving threatening phone calls saying that if she did not give the callers money, she would be killed. Due to fear she would be murdered, she decided to return to the United States. She reentered the country with the help of smugglers, who detained her and three other people for a week. During that week, the smugglers forced her to cook for them and threatened her with guns if she did not comply. The smugglers also threatened her at gunpoint to force her to carry water bottles and a small backpack across the border. The Applicant did not know what the backpack contained and was not permitted to drink any water. They walked to the house of one of the smugglers in Arizona, where the smugglers instructed her to put her backpack in a van and then go into the house. The next day, the smugglers asked each person where they were going and gave them flights to their destination, releasing them after receiving a money transfer.

In a supplemental statement submitted in response to a request for evidence (RFE) from the Director, the Applicant stated that when she returned to the United States in 2000, she made an agreement with smugglers who promised to bring her over the border easily, after 20 to 30 minutes of walking, and that she would be safe with them. Per the arrangement, the smugglers first took the Applicant to a house in Mexico to await instructions to cross. At the house, they took the Applicant's photo, but she did not know why. After about five hours in the house, the smugglers said it was time to cross, and

² The Applicant would have been 17 years old at this time.

they led her on an hour-long walk through the desert and then waited two hours for a taxi to arrive. The taxi driver, who said he had the “documents ready,” took the Applicant to the border and handed her a document with her photo. The immigration agent at the checkpoint asked her to get out of the taxi, took her documents, and eventually returned her to Mexico. The smugglers were waiting for her and took her back to the house where she had stayed earlier that day. This time, they held her for three days and told her she had to work for them, forcing her to clean the house for three to four hours per day. They required that she clean everything until it was spotless, including scrubbing the tile floor with a toothbrush, and did not feed her if she did not clean to their satisfaction. The smugglers also threatened to call the police and say that she had broken into their house, or to report her to immigration. When she was not working, the smugglers locked her in a room. She was only permitted to use the bathroom sometimes, and had to go outside at other times. She slept on the ground with a small, thin blanket, and the smugglers fed her only small amounts of food or sometimes completely withheld food. The smugglers kept her locked inside the house, did not let her go near the windows, did not give her access to a phone or any means of communication with anyone, and monitored her all the time, including when she used the bathroom.

On the third day at the house, the smugglers told the Applicant it was time to try to cross the border. They left the house at night and walked three to four hours in the desert. Halfway through the journey another man arrived and forced the Applicant at gunpoint to carry a backpack. At this point, the smugglers became aggressive, yelling at her to hurry and pushing her. They told her she would die in the desert if she did not carry the backpack. They pushed their guns into her back and her ribs and said that they would leave her alone if she did not run. She believes that they made her carry the backpack so that she would get in trouble for the contents if they were caught by immigration. The smugglers did not allow her to eat or drink during the journey. Right before crossing into the United States, they were told to leave the backpacks. After arriving in Arizona, they placed her in a garage or storage room and only let her into the main house to clean. They said that if she did not obey, they would call immigration. There was no furniture in the storage room and it was cold but they only gave her a very small blanket. The next morning, she had to wake up early to do chores, including washing dishes and cleaning the house. If she did not clean the way they wanted, they would not feed her. The smugglers told the Applicant that she had to cook and clean in order to pay for her food and housing. They constantly monitored her, did not provide her any contact with her family, threaten to turn her into immigration if she did not listen, threatened that her family would never see her again, and threatened her at gunpoint. She knew she could not escape because she did not know where she was and the smugglers would find her or she would die in the desert.

When the smugglers released her, she was very tired, dirty, in pain, and had lost about 25 pounds. She was dirty due to an inability to maintain her personal hygiene while held in the storage room. She became afraid to leave the house and had dreams about her experience, and began to use eating as a coping mechanism. She was anxious and depressed, thought someone had been sent to look for her, felt paranoid, and cried a lot for four to six months after her arrival. She still feels nervous when she talks or thinks about her experience and sometimes has flashbacks. She fears she would be harmed if she returned to Mexico because of the threats the smugglers made and their connection to others within a network, and she has stayed in the United States to avoid them.

B. The Applicant is a Victim of a Severe Form of Trafficking in Persons

Upon *de novo* review, we disagree with the Director's determination that the Applicant did not establish that she was the victim of a severe form of trafficking in persons. As the Applicant notes on appeal, the Director did not address the Applicant's arguments and supporting evidence that a trafficking situation arose during her smuggling journey. The Applicant also correctly points out that the Director did not discuss the facts of the Applicant's case in any detail. The Director briefly summarized only a small portion of the Applicant's claim and concluded that it was insufficient to show that she was trafficked rather than smuggled, but did not analyze the specifics of her case, including the type of work she was forced to do and the circumstances surrounding that work. The Applicant has established that she was a victim of trafficking during her first entry into the United States, but not during her reentry in 2000.³ As we will discuss below, the fact that the Applicant has established trafficking during her first entry but not during her reentry is relevant to whether she is eligible for T nonimmigrant status.

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. See 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). Coercion is defined in pertinent part as "threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to . . . any person; or the abuse or threatened abuse of the legal process." 8 C.F.R. § 214.11(a).

The Director denied the Applicant's T application based on a finding that she was involved in a smuggling arrangement rather than a trafficking situation. The Director noted that although the smugglers mistreated the Applicant and required her to cook, clean, and carry a backpack during the journey, the evidence was insufficient to establish that a trafficking situation arose during the smuggling operation. However, the Applicant has submitted sufficient evidence to establish that she was trafficked during her first entry into the United States. During that time, when the Applicant was only 16 years old, the smugglers harbored her in a small, windowless, unfurnished room with many other people for three months. They used force and coercion, including threats at gunpoint, constant monitoring, and deprivation of food and basic necessities, in order to harbor her and force her to work. They only let her out of the room in order to do her required "chores." They forced her to hand-wash the laundry of the men held in the room, and although the smugglers earned money from the men for this laundry service, they did not pay the Applicant. The smugglers also forced the Applicant to do several hours of daily cleaning in the house where the smugglers resided, which was separate from the room where the Applicant and other migrants were held. Furthermore, they forced her to work as a recruiter, without pay, to gain additional clients for their business. Although other migrants in the room were taken across the border, the Applicant and the only other three women in the room were held for three months. The smugglers forced the Applicant to do work not directly related to the smuggling operation, including cleaning of the smugglers' separate house and recruitment, and earned

³ The Applicant did not provide the exact date of her reentry in her statements, but indicated in her first statement that she departed the United States in November 1999 and stated in her supplemental statement that she reentered in 2000. In her T application, she listed her date of last entry as February 2000.

money from her work washing laundry but did not pay her. Further, the Applicant was particularly vulnerable due to her young age at the time she was held in a windowless room for three months and forced at gunpoint to do daily work. These facts establish that the smugglers had a purpose, during the course of the smuggling operation, to subject her to involuntary servitude. Accordingly, the Applicant has established that she was the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires, in the course of her first entry into the United States.

However, the evidence does not support the Applicant's claim that she was also the victim of a severe form of trafficking in persons during her reentry into the United States in 2000. The Applicant has not provided sufficient consistent, probative detail regarding her experience reentering the United States after her November 1999 departure to establish that she was a victim of a severe form of trafficking during that period. The evidence establishes that the smugglers transported and harbored the Applicant and used force and coercion to do so, as described at 8 C.F.R. § 214.11(a). However, a preponderance of the evidence does not show that they did so for the purpose of subjecting her to involuntary servitude, as she claims. Although the Applicant correctly notes that a smuggling situation can become a trafficking situation in some circumstances, the Applicant has not demonstrated that the smugglers' actions in harboring her were for the purpose of subjecting her to involuntary servitude. As used in section 101(a)(15)(T)(i) of the Act, involuntary servitude is defined 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). 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.) (11th ed. 2019).

The Applicant's description of her reentry into the United States in 2000 is inconsistent in her first statement versus her supplemental statement. In her first statement, she stated that after returning to Mexico with her sister in November 1999, she traveled back to the United States with smugglers, who detained her for a week in Mexico, forced her to cook, and then made her carry water bottles and a small backpack across the border. She indicated that after arriving at a house in Arizona, they told her to leave the backpack in a van. She recalled that she stayed at the house for one night and was released the next day with a plane ticket to her final destination after a money transfer. By contrast, in her supplemental statement, the Applicant stated that her initial attempt to cross the border with the smugglers' help on this occasion was unsuccessful, so the smugglers then held her in a house in Mexico for three days, forcing her to clean the house for several hours per day. She indicated that the smugglers then forced her to carry a backpack across the border and, upon arrival in Arizona, locked her in a garage or storage room and only let her in the house to wash dishes and clean. She claimed that the smugglers told her that she had to clean in order to pay for her food and stay at the house. She

did not specify in her supplemental statement how long she was held at the house in Arizona, but indicated that due to her experience there, she lost 25 pounds and her personal hygiene was very poor because she was unable to bathe and lacked basic necessities.

Due to the lack of consistent, probative detail regarding the Applicant's reentry into the United States in 2000, she has not met her burden of showing that the smugglers subjected her, or had the purpose of subjecting her, to a condition of servitude, which is the underlying prerequisite to establishing involuntary servitude. 8 C.F.R. § 214.11(a). The Applicant's description of her 2000 reentry in her initial statement was brief and lacked detail, and conflicts with her supplemental statements on key elements. The evidence does not clearly establish for how long and under what conditions she was held, what type of work the smugglers required the Applicant to do, how long she worked and for what purpose, and under what conditions she was released.

On appeal, the Applicant contends that the Director did not consider her argument that because she actually performed forced labor, the smugglers' intent to place her in a condition of servitude is clear. She cites the 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). She argues that the language in the regulation relating to purpose "was intended instead for cases in which a victim *had not yet performed* labor or sex before being rescued or before escaping from a trafficker." However, the plain language of the regulation does not support the Applicant's claim. The definition of a severe form of trafficking in persons states that when a person is recruited, harbored, transported, provided, or obtained for labor or services through force, fraud, or coercion, those actions must be "for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." 8 C.F.R. § 214.11(a). As discussed, the smugglers harbored and transported the Applicant through force and coercion, but she has not provided sufficient consistent detail regarding her claims of being held and forced to work during her 2000 reentry, and therefore has not met her burden of showing that they placed her in a condition of servitude or had the intention of doing so, which is necessary to establish that they acted with the purpose of subjecting her to involuntary servitude.

The Applicant also contends that the smugglers had a "mixed motive" of earning money through the smuggling arrangement and subjecting her to involuntary servitude, and that even if their primary purpose was to smuggle her, the journey also involved trafficking. She cites a fact sheet from the interagency Human Smuggling and Trafficking Center (HSTC), which states that a smuggling situation can turn into trafficking when a person who initially consented to being smuggled is then "exploited for forced labor or commercial sex en route or upon entering the destination country" Human Smuggling and Trafficking Center, Fact Sheet: *Human Smuggling vs. Human Trafficking*, HSTC2013070001, at 3 (July 1, 2013), <https://2009-2017.state.gov/documents/organization/226276.pdf>. We acknowledge that a smuggling arrangement may become trafficking, and the HSTC Fact Sheet describes examples of how that could occur. However, we analyze the specific facts of the Applicant's case under the applicable statute and regulations at section 101(a)(15)(T)(i) of the Act and 8 C.F.R. § 214.11(a). As discussed above, the Applicant has not submitted sufficient evidence to show that she was subjected to involuntary

servitude or that the smugglers had the intention of placing her in such a condition during her reentry in 2000.

Furthermore, the Applicant argues that the Director ignored “analogous case examples” she submitted to “provide examples of the kinds of actions and the kinds of circumstances that constitute human trafficking.” She notes that the cases involved victims of human trafficking who were initially smuggled into the United States, and asserts that those cases were similar to her own. We have considered all of the evidence in our *de novo* review, but we analyze the Applicant’s T application in light of the specific facts of her case, under the requirements of section 101(a)(15)(T)(i) of the Act and 8 C.F.R. § 214.11(a), which were not at issue in the criminal cases the Applicant references. In these proceedings, the Applicant bears the burden to establish that she meets the requirements for T nonimmigrant status by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369 at 375. Moreover, the facts in the Applicant’s case differ from those in the case examples she submitted. In *U.S. v. Soto et al.*, Crim. Case No. M-03-341-S2, Case No 7:03CR00341-S3-008 (S. Dist. Texas July 22, 2003), the defendants were convicted of involuntary servitude and human trafficking after “holding women against their will . . . and forcing them to do work without pay” until their smuggling debts were repaid. U.S. Department of Justice Press Release, *Justice Department Announces Sentencing in South Texas Human Trafficking and Sex Slavery Prosecution*, Jan 29, 2004. Similarly, in *U.S. v. Leon-Aldana, et al.*, Crim. Case No. 07CR0035-L (S.D. Cal. Jan. 2006), the defendants were indicted, in part, for providing and obtaining forced labor. The indictment indicated that the defendants, in part, recruited aliens for a smuggling operation and, after transporting them across the border into the United States, obtained employment for those aliens and ordered them to work under threat of harm. Fees the aliens owed the smugglers were deducted from their earnings. The Applicant has not submitted evidence that she was forced to work to repay a debt or that the smugglers obtained employment for her and took her earnings. Instead, she has provided inconsistent descriptions of her 2000 reentry, with insufficient detail regarding her claims of forced labor in the course of the journey.

Although the Applicant correctly states that a trafficking situation may arise during a smuggling operation, and that domestic work and carrying things can qualify as involuntary servitude in some situations, she has not provided sufficient evidence to show that she was placed in a condition of servitude during her 2000 reentry into the United States. The information in her personal statements is inconsistent and she has not provided sufficient details regarding the circumstances under which she carried a backpack and was held in a house and forced to clean after crossing the border. Accordingly, the Applicant has not met her burden of establishing that she was a victim of a severe form of trafficking in persons during her 2000 reentry. As we will explain in the next section, the fact that the Applicant was a victim of trafficking during her first entry but not during her reentry affects whether she is physically present in the United States on account of a severe form of trafficking in persons.

C. Physical Presence on Account of a Severe Form of Trafficking in Persons

The Director determined that the Applicant had not established that she is physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires. The Director’s conclusion on this issue was based solely on the fact that the Applicant had not established that she was the victim of trafficking. Due to our finding that the Applicant was trafficked in the course of her first entry into the United States when she was 16 years

old, we will remand the matter to the Director to consider whether the Applicant has established that she is physically present in the United States on account of a severe form of trafficking in persons.

Pursuant to 8 C.F.R. § 214.11(g)(2)(i)-(iii), an applicant who has voluntarily departed from or has been removed from the United States at any time after having been trafficked will not be considered physically present on account of such trafficking, unless the record demonstrates that: (1) reentry into the United States was the result of the continued victimization of the applicant; (2) the applicant is a victim of a new incident of a severe form of trafficking in persons; or (3) the applicant was allowed reentry for participation in investigative or judicial processes relating to an act or perpetrator of the trafficking. Although the Applicant was trafficked in the course of her first entry into the United States, she subsequently departed the country in November 1999 based on a decision to accompany her sister to Mexico. After arriving in Mexico, the Applicant decided to return to the United States based on threatening phone calls she received.

As discussed above, the Applicant's reentry into the United States in 2000 was not a new incident of a severe form of trafficking in persons as described at 8 C.F.R. § 214.11(g)(2)(ii). Additionally, there is no evidence in the record that the Applicant was permitted to reenter in order to participate in investigative or judicial processes relating to the trafficking, as described at 8 C.F.R. § 214.11(g)(2)(iii). Accordingly, in order to establish that she is currently physically present in the United States on account of a severe form of trafficking in persons as required under section 101(a)(15)(T)(i)(II) of the Act, she must show that her reentry after her 1999 departure was the result of continued victimization, as described at 8 C.F.R. § 214.11(g)(2)(i). We remand the matter to the Director to consider whether the Applicant has made such a showing, and whether she has otherwise established that she is currently physically present in the United States on account of a severe form of trafficking in persons.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.