

**2018 Immig. Rptr. LEXIS 1015**

Administrative Appeals Office

February 02, 2018

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

***BIA & AAU Non-Precedent Decisions***

**Reporter**

2018 Immig. Rptr. LEXIS 1015 \*

**MATTER OF O-F-C-C-**

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**Core Terms**

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traffic, smuggler, backpack, smuggle, involuntary servitude, extreme hardship, severe form, transport, nonimmigrant, journey, harbor, physical presence, classification, discrepancy, cousin

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

**Opinion**

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**AAO Designation: D12**

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

The Applicant a native and citizen of Guatemala, seeks T-1 nonimmigrant classification as a victim of human trafficking. *See* 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 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), concluding that the Applicant had not demonstrated that he was a victim of trafficking in persons, was physically present in the United States on account of such trafficking, and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. We dismissed the Applicant's subsequent appeal, finding that the Applicant had not established that he was a victim of trafficking [\*2] and therefore could not establish that he was physically present on

account of such trafficking. We further determined that the Applicant had not established that he had complied with any reasonable requests from law enforcement for assistance in the investigation or prosecution the trafficking. We also affirmed the Director's conclusion that the Applicant had not established the extreme hardship requirement. The Applicant now files a motion to reopen and reconsider.

On motion, the Applicant submits a brief and additional evidence and asserts that the record demonstrates that he was trafficked in persons because he was subjected to involuntary servitude during the course of being smuggled into the United States. He further contends that he is physically present in the United States on account of the trafficking to which he was subjected and that he would suffer the requisite extreme hardship should he be removed from the United States.

Upon *de novo* review, we will deny the motions.

## **I. LAW**

A motion to reopen is based on evidence of new facts. [8 C.F.R. § 103.5\(a\)\(2\)](#). A motion to reconsider must establish that our decision [\*3] was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. [8 C.F.R. § 103.5\(a\)\(3\)](#). On motion, the Applicant submits new evidence and asserts factual and legal errors in our prior decision. Upon review, the new evidence submitted does not overcome the grounds for denial of the instant application, and the Applicant has not demonstrated any legal or factual errors in our prior decision and has not otherwise established his eligibility.

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 evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the evidentiary value to give that evidence. [8 C.F.R. § 214.11\(d\)\(5\)](#).

## **II. ANALYSIS**

### **A. Not a Victim of a Severe Form of Trafficking in [\*4] Persons**

The record indicates that Applicant obtained entry into the United States with the assistance of smugglers. He maintains that he is eligible for T classification because at some point during the course of the smuggling scheme after his entry, a trafficking situation arose when his smugglers subjected him to involuntary servitude by coercing him into carrying and transporting backpacks purportedly containing drugs. In our prior decision on appeal, we concluded that the Applicant's suspicions were not sufficient to establish that the backpacks contained illegal drugs and his claim that he was forced to carry the backpacks for a few days for the last part of their journey did not establish that a trafficking situation arose during the smuggling operation. We also found that the record did not establish that the smugglers actually used or threatened to use physical restraint or injury, or that they abused or threatened abuse of legal process, to coerce the Applicant into carrying the backpacks. In addition, we noted a discrepancy in the Applicant's statement to U.S. Customs and Border Protection (CBP) officers who encountered him after the smugglers left him. and his statement [\*5] in these proceedings regarding the duration of his travels from his native Guatemala to the time of his U.S. entry.

On motion, the Applicant asserts that we erred by not considering the totality of the evidence and by requiring him to establish with certainty that he was forced to carry backpacks that actually contained illegal drugs. Contrary to the Applicant's assertion, we considered all the relevant evidence in the record, of which the primary evidence of the Applicant's trafficking claim was his statements below. However, absent probative testimony demonstrating that the smugglers transported or harbored the Applicant through the use of fraud, force, or coercion for the purpose of involuntary servitude, the Applicant's claim that he was forced to carry backpacks, which may or may not have contained illegal drugs, was insufficient to establish that a trafficking situation arose. See [8 C.F.R. § 214.11\(a\)](#)<sup>1</sup> (defining the term severe form of trafficking [\*6] in persons).

The Applicant contends, however, that his statements specifically stated that the smugglers were armed and threatened to abandon him and others in the middle of nowhere if they did not carry the backpacks. The Applicant contends that these actions and threats by the smugglers demonstrated that they used or threatened to use physical restraint or injury to coerce him into carrying the backpacks. In his brief on motion, counsel for the Applicant adds that the smugglers threatened him with injury.

The record indicates that the Applicant did state that the smugglers threatened to abandon him if he did not carry the backpacks, and that he complied because he feared being left behind. However, notwithstanding counsel's assertion that the smugglers threatened the Applicant with injury, the Applicant's multiple statements did not allege that the smugglers actually threatened to use physical restraint or to harm him to force his compliance when they ordered him to carry the backpacks. In our decision, we acknowledged the Applicant's assertion that there was an implied threat because the smugglers' were armed and displayed weapons, as well as his recollection of an incident [\*7] during the journey where the smugglers beat his cousin "for getting to[sic] close to the road" and putting the group at risk to exposure. We further acknowledge that the smugglers' actions constituted coercion, as that term is defined at [8 C.F.R. § 214.11\(a\)](#), because they used "threats of serious harm" to the Applicant and engaged in behavior that was intended to cause him to believe that failure to comply with their orders would result in serious harm to him.

However, the record does not demonstrate that the smugglers transported and harbored him, during the smuggling operation, for the *purpose of* subjecting him to involuntary servitude. Rather, as we previously found, the Applicant's account of his claimed trafficking indicated that the smugglers' purpose in engaging in these abusive tactics was to avoid detection from immigration authorities in the area near the border as they carried out their illegal smuggling operation. His statements indicated that although the smugglers facilitated his entry into the United States, they had not yet reached their final destination at the time the smugglers demanded that he and others carry backpacks [\*8] during the next part of the journey. Thus, although the smugglers forced the Applicant to perform some labor, the record indicates that the smugglers transported and harbored him for the purpose of taking him to the United States as per the conditions of their agreement with the Applicant. The Applicant's claim that he never agreed to perform such labor when he entered into an agreement with the smugglers beforehand is not sufficient to establish that the smugglers transported or harbored him for the purpose of subjecting him to involuntary servitude. Although we recognize that smugglers may have multiple criminal motives during a smuggling operation.

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<sup>1</sup>Footnote 1. The Department of Homeland Security issued an interim rule, effective January 18, 2017, amending its regulations at [8 C.F.R. § 214.11](#) for victims of human trafficking who seek T nonimmigrant status. See *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), [81 Fed. Reg. 92266, 92308-09](#) (Dec. 19, 2016) .

including trafficking of individuals they agreed to smuggle, the present record does not establish that individuals who smuggled the Applicant into the United States transported or harbored him for the purpose of involuntary servitude.

On motion, the Applicant also submits a brief letter from his cousin, W-C-, <sup>2</sup> who asserted that he was smuggled with [\*9] the Applicant and was also forced to carry the backpacks. The one-page letter is not dated or notarized, and is not accompanied by any identity documents. <sup>3</sup> Additionally, although the Applicant's statements below indicated that two of his cousins were smuggled with him, he never identified either of them by name. W-C- briefly indicates that the smugglers selected the Applicant and him, as well as some others, to carry backpacks that supposedly contained medicine and energy drinks, but which he believed contained drugs. However, although W-C- indicates that the smugglers threatened to leave them behind if they opened the backpacks, he did not state that they threatened the Applicant and him with physical restraint or harm to force or coerce them to carry the backpacks. Additionally, while the Applicant specifically recalled that the smugglers beat one of his cousins while carrying the backpacks, W-C- did not reference the incident.

The Applicant further asserts we erred in finding that a discrepancy [\*10] in his statement to the CBP officers with his statement in these proceedings below undermined his overall trafficking claim. The Applicant's statements to CBP indicated that he began his journey from Guatemala to the United States in [redacted] 2013 and that it took approximately 13 days. With his T application, however, the Applicant claimed that he left his home and started his journey several months before in March 2013. On motion, counsel for the Applicant notes that the Applicant was only 15 years of age at the time of his encounter with CBP and identified other factors, including inadvertent error on the part of the Applicant or the interviewing officer, all of which he maintains could account for the inconsistency in the Applicant's statement to CBP. In addition, counsel submits part of an article discussing unaccompanied minors and concluding that CBP officers who interview such minors generally received inadequate training to work with children and identify indicators that a child was a victim of trafficking. In light of this background, counsel maintains we should have considered that the interviewing CBP officer failed to document the Applicant's account of his claim [\*11] accurately, particularly as he has been consistent in these proceedings. However, the assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, although we recognize that there are a number of reasons that may account for discrepancies in an individual's statements, the Applicant has not himself identified which of his statements regarding the timeline of his journey is accurate nor has he provided his own explanation on motion for the discrepancy raised in our previous decision. The Applicant, who bears the burden of proof in these proceedings, therefore has not overcome this referenced discrepancy. Regardless, as discussed, the Applicant has not otherwise established that the smugglers who transported and harbored him did so for the purpose of subjecting him to involuntary servitude. He therefore has not established that he is a victim of a severe form of trafficking in persons.

## **B. Extreme Hardship Involving [\*12] Unusual and Severe Harm upon Removal**

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<sup>2</sup>Footnote 2. Initials used to protect individual's privacy.

<sup>3</sup>Footnote 3. According [\*16] to the Applicant, following the CBP encounter, officials separated him from his cousins and the rest of the group because the Applicant was under 18 years of age.

The Applicant also has not overcome our determination that he had not established that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at [8 C.F.R. § 214.11\(i\)](#) and as required by section 101(a)(15)(T)(i)(IV) of the Act. In our previous decision, we determined that although the Applicant asserted generally that he is fearful of gangs in Guatemala and of gang recruitment and submitted background country conditions articles addressing the subject, his statements lacked any probative testimony regarding his claimed fear and did not establish how the background materials related to his own personal circumstances.

On motion, counsel, citing background material submitted on appeal and on motion, again discusses the country conditions in Guatemala and how such conditions motivated the Applicant's decision to come to the United States, in addition to economic and educational factors. Counsel also asserts new facts and contends that the Applicant suffered trauma as a result of trafficking, in addition to other [\*13] trauma from other experiences in his personal and family life. Counsel maintains that the Applicant is now enrolled in school in the United States, has the support of his family and community, and is slowly healing. Counsel asserts that returning to Guatemala would hinder the Applicant's recovery, as well as deprive him of many basic rights, including access to medical care, education, and social services. However, as stated, unsubstantiated assertions of counsel do not constitute evidence. *Obaigkena*, 19 I&N Dec. at 534 n.2 . As set forth in our previous decision, the Applicant's statements below lacked probative testimony regarding the personal circumstances of his life in Guatemala, the trauma he claims to have suffered there and during his travel to the United States, and hardship he would face were he to depart the United States. Absent such probative testimony, the record does not establish that the Applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

### **C. Remaining Eligibility Criteria**

An applicant for T classification must establish that he or she is present in the United States on account of having been [\*14] a victim of a severe form of trafficking and that he or she complied with any reasonable requests from law enforcement for assistance in the investigation or prosecution of such trafficking, as required by sections 101(a)(15)(T)(i)(II) and (III) of the Act. As the Applicant here has not demonstrated that he is a victim of a severe form of trafficking as required, the Applicant necessarily did not establish that he was physically present in the United States on account of trafficking and that he complied with LEA requests for assistance as the Act requires.

### **III. CONCLUSION**

On motion, the Applicant has not overcome the grounds for denial, as he has not established that he was a victim of a severe form of trafficking. He therefore necessarily has not demonstrated that he is physically present in the United States on account of such trafficking and has complied with any reasonable requests for assistance in the investigation or prosecution of the trafficking. Lastly, the Applicant has not established that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER** [\*15] : The motion to reconsider is denied.

Cite as *Matter of O-F-C-C-*, ID# 832626 (AAO Feb. 2, 2018)

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