U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8361007

Date: JUNE 1, 2020

Motion on Administrative Appeals Office 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 Applicant's Form I-914, Application for T Nonimmigrant Status (T application). We dismissed the Applicant's appeal, and dismissed a subsequent motion to reconsider as untimely filed.[1] The matter is now before us on a second motion to reconsider. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of the law or USCIS policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Although the Applicant presents new legal arguments on motion, they are ultimately insufficient to establish her eligibility.

The burden of proof is on the 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; however, we determine, in our sole discretion, the evidentiary value given to it. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a native and citizen of Guatemala, entered the United States without inspection, admission, or parole in August 2015. In her statements in the record before the Director, the Applicant explained that she and her one-year old daughter traveled to the United States with the assistance of smugglers, who ultimately stopped in the desert and told them that they would not accompany them any further and that they should continue walking until they reached a city. The Applicant stated that,

[1] The record reflects that U.S. Citizenship and Immigration Services (USCIS) rejected the Applicant's initial motion to reconsider due to her ineligibility for a fee waiver, and that the Applicant subsequently re-filed the motion outside of the 33-day filing period, asserting that USCIS erred in determining that she did not qualify for the fee waiver. The record further shows that although USCIS granted the fee waiver request and accepted the newly filed motion, the Administrative Appeals Office (AAO) dismissed the motion as untimely. On present motion, we will consider the merits of the Applicant's initial motion to reconsider.

as she and her daughter continued to walk, they encountered a group of four men who told them that they would have to pay to pass by them. The Applicant explained that she gave the men all the money that she had in her possession but, believing that she had more money, the men forced the Applicant to remove her clothing and stripped off her daughter's clothing. In their search for more money, the men raped the Applicant and sexually assaulted her daughter. The Applicant stated that after raping her, the men showed them a path they could follow to reach immigration authorities. The Applicant filed the instant T application in August 2016.

An applicant may be classified as a T-1 nonimmigrant if 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 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)-(4). "Severe form of trafficking in persons" is defined as, most relevantly, "sex trafficking in which a commercial sex act is induced" and "the person induced to perform such act is under the age of 18 years[.]" 8 C.F.R. § 214.11(a). In turn, "sex trafficking" means "the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act," *id.*, and "commercial sex act" is defined as "any sex act on account of which anything or value is given to or received by any person." 22 U.S.C. § 7102(4); 8 C.F.R. § 214.11(a).

In our prior decision on appeal, incorporated here by reference, we acknowledged that the Applicant was the unfortunate victim of rape, but found that the record did not establish that she was subjected to a severe form of trafficking in persons, as required by the Act and relevant regulations. Specifically, we found that the evidence did not show that the Applicant was recruited, harbored, transported, provided, obtained, patronized, or solicited for the purpose of a commercial sex act, as the record indicated that the rape of the Applicant was not on account of or in exchange for anything of value; rather, the record indicated that the perpetrators robbed the Applicant, sexually assaulted her daughter in their search for more money, raped the Applicant, and then provided the Applicant with directions. Relatedly, we noted that, although the record indicated a possible shift in the perpetrators' purpose from a robbery to the rape of the Applicant, it did not indicate that the perpetrators at any time recruited, harbored, transported, provisioned, obtained, patronized, or solicited the Applicant for the purpose of a commercial sex act. We last concluded that, because the record did not establish that the Applicant was a victim of a severe form of trafficking in persons, she necessarily could not establish that she was present in the United States on account of such trafficking, as required by the Act and relevant regulations.

On motion to reconsider, the Applicant argues that the record establishes that a commercial sex act occurred as contemplated by 8 C.F.R. § 214.11(a). She asserts that our prior decision "improperly distorted [the] Applicant's claim by finding that nothing of value was exchanged for the sex act" when, "in reality, the [perpetrators] chose to pay for the commission of their forced sex act through an intangible payment of the giving of directions."

As a preliminary matter, we acknowledge that our prior decision on appeal somewhat conflated the requirements of the regulation defining commercial sex act, requiring both an underlying exchange in value and that the exchange in value have occurred "on account of" the sex act. *See* 8 C.F.R. § 214.11(a) (defining "commercial sex act" as "any sex act on account of which anything or value is

given to or received by any person."). In this case, we do not dispute the Applicant's assertion that the perpetrators' giving of directions was of value to her; instead, and as discussed in detail below, we find that the record does not establish, by a preponderance of the evidence, that the perpetrators' giving of directions was on account of the rape of the Applicant.

In the Applicant's initial personal statement submitted with her T application, the Applicant recounted that when the perpetrators were unable to find any money on her, they forced her to remove her clothing and undergarments "so that they could confirm that [she] wasn't hiding any money on [her] body," and subsequently raped her. The Applicant's updated statement submitted in response to a request for evidence (RFE) from the Director clarified that, as the perpetrators sexually assaulted her daughter, they "were asking [the Applicant] if [she] had hid money on [her daughter]." The Applicant additionally explained that the perpetrators "told [her] that if [she] did not have more money they would still show [her] the way but they would do what they wanted to [her]." She last stated that, after the rape and sexual assault, the perpetrators "told [her] where to go" and "were satisfied with their payment and so . . . decided to let [her and her daughter] pass."

Although the Applicant's statements may indicate some connection between the perpetrators' having raped her and their having subsequently provided her with directions, the relevant inquiry in this case concerns whether the perpetrators provided the Applicant with directions on account of the rape of the Applicant herself. The Applicant's statements, however, directly tie the rape of the Applicant to the perpetrators' search for money and indicate only her subjective belief as to what transpired in their minds after her rape—they do not establish, by a preponderance of the evidence, that the perpetrators gave the Applicant directions on account of, or that she received directions as a result of, the rape. *See* 8 C.F.R. § 214.11(a) (defining "commercial sex act" as "any sex act on account of which anything of value is given to or received by any person"). Instead, and as stated in our decision on appeal, the record indicates that the Applicant was the unfortunate victim of a rape during, and in furtherance of, a robbery.

The Applicant additionally asserts that our decision "erred by stating that the Applicant need[ed] to show that the [perpetrators'] conscious object [*sic*] was to engage in commercial sex acts" and "purposely gave directions . . . as a thing of value to be exchanged for the sex act[,]" stating that the perpetrators' mental state is inconsequential because the definition of a commercial sex act pays no regard to one's intent or motive for acting. The Applicant similarly asserts that our decision "incorrectly analyzed whether the [perpetrator]'s purpose was to *subject* the Applicant to a commercial sex act" when we "should have analyzed whether the *obtaining, harboring, transporting, providing, patronizing, or soliciting of [the] Applicant* was for the purpose of *a commercial sexual act*." However, this argument mischaracterizes our findings. Our decision on appeal did not imply any required mental state of the perpetrators, as the mental state of acting "purposely" for criminal purposes is irrelevant to, and distinct from, the eligibility criteria at issue here; instead, it required—consistent with the plain language of the relevant regulations—that the record establish, by the preponderance of the evidence, that the Applicant was recruited, harbored, transported, provisioned, obtained, patronized, or solicited "for the purpose of a commercial sex act." 8 C.F.R. § 214.11(a). Borrowing from the analysis above, however, the record did not establish, by a preponderance of the evidence, that a commercial sex act occurred, nor did it indicate that the perpetrators recruited,

harbored, transported, provisioned, obtained, patronized, or solicited the Applicant for the purpose of one.[2]

III. CONCLUSION

The Applicant was the unfortunate victim of a rape as she traveled to the United States. However, the Applicant's evidence and assertions on motion do not overcome our prior determination or establish error in that decision. Consequently, her motion to reconsider is dismissed.

ORDER: The motion to reconsider is dismissed.

[2] Because the record does not demonstrate that a commercial sex act occurred, or that the Applicant was recruited, harbored, transported, provisioned, obtained, patronized, or solicited for the purpose of one, she necessarily cannot establish that she was the victim of a severe form of trafficking in persons. As such, we do not address the Applicant's additional assertions on motion that she is present in the United States on account of such trafficking.