2020 Immig. Rptr. LEXIS 5878

Administrative Appeals Office

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OFFICE: Motion on Administrative Appeals Office Decision

Reporter
2020 Immig. Rptr. LEXIS 5878 *

In Re: 05372031

Core Terms

traffic, was, reentry, has, physical presence, severe form, ambiguity, reenter, nonimmigrant, section, reconsideration motion, voluntary departure

[*1] AAO Designation: D12

Form I-914, *Application for T Nonimmigrant Status*

Opinion

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 demonstrated that she was physically present in the United States on account of a severe form of trafficking in persons. The Director subsequently granted the Applicant's motion to reconsider but affirmed the denial of the T application. We dismissed the Applicant's subsequent appeal, and the matter is now before us on a motion to reconsider. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *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)*. Upon review, we will dismiss the motion to reconsider. **[*2]**

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or 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)*.

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 "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)*.

Pursuant to *8 C.F.R. § 214.11(g)(2)(i)-(iii)*, an applicant who has voluntarily departed from or has been removed from **[*3]** 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.

II. ANALYSIS

As discussed in our decision on appeal, which is incorporated here by reference, the Applicant first entered the United States from Mexico in 1998. In 2001 she began a relationship with A-R-D-[1], who was abusive soon after the relationship began. From approximately September 2001 to September 2002, he subjected her to a severe form of trafficking in persons when he forced her to work as a servant in Oklahoma. The trafficking ended in 2002 when A-R-D- forced the Applicant to go with him to Mexico. The Applicant reentered the United States in **[redacted]** 2006 and was removed to Mexico that same month. She entered the **[*4]** United States again in October 2014.

In our decision on appeal, we affirmed the Director's finding that the Applicant had not established that she is physically present in in the United States on account of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act. We found that the Applicant had demonstrated that her current presence in the United States is directly related to her past trafficking, as described at *8 C.F.R. § 214.11(g)(1)(iv)*. However, we explained that because she had reentered the United States in 2014 after having been removed, she must meet an additional requirement under *8 C.F.R. § 214.11(g)(2)(i)-(iii)* to establish either that her reentry was the result of continued victimization, she was the victim of a new incident of a severe form of trafficking in persons, or she was allowed reentry for participation in investigative or judicial processes relating to an act or perpetrator of the trafficking. We concluded that the Applicant had not met her burden to establish that she meets this requirement.

On motion, the Applicant contends that we erred in finding that the Applicant did not establish that her reentry was the result of **[*5]** continued victimization under *8 C.F.R. § 214.11(g)(2)(i)-(iii)*. As an initial matter, she contends that *8 C.F.R. § 214.11(g)(2)*[2] does not apply to her case because A-R-D- trafficked

[1] We use initials in this decision to protect identities.

her out of the United States in 2002. She repeats the claim she made on appeal that her subsequent reentries in 2006 and 2014 were to escape him rather than to seek employment or for "frivolous" reasons. She alleges that "to categorize those attempted entries as voluntary departures or removals is woefully unfair and unjust." First, our analysis under *8 C.F.R. § 214.11(g)(2)* considers whether her departures from the United States, not her entries or attempted entries into the country, were voluntary departures or removals. The Applicant does not provide any legal support for her assertion that the reason for her entries should govern whether her subsequent departures qualified as voluntary departures or removals. Additionally, as we explained in our decision on appeal, although the Applicant's departure to Mexico in 2002 was not **[*6]** a voluntary departure or removal because it occurred under A-R-D-'s control, she was removed pursuant to a final removal order in 2006. It is not within our authority to determine or categorize the manner of her departure in 2006, as the record reflects that she was subject to a final removal order from an Immigration Judge based on a finding that she was removable under section 212(a)(6)(A)(i) of the Act. Accordingly, based on the requirements of the regulation, the Applicant is subject to *8 C.F.R. § 214.11(g)(2)* because she was removed in 2006 and subsequently reentered in 2014.

Additionally, the Applicant again argues that A-R-D- subjected her to involuntary servitude after forcing her to return to Mexico in 2002, when he imprisoned her in a small room and denied her access to food, water, and a toilet. She alleges that we erred in finding on appeal that such maltreatment did not amount to a severe form of trafficking in persons. The record shows that A-R-D- harbored the Applicant in the small room through force, and that he subjected her to terrible conditions and extreme maltreatment there. However, the Applicant still does not claim, and the evidence of record does not show, that **[*7]** A-R-D- held the Applicant in the room *for the purpose of* subjecting her to involuntary servitude, peonage, debt bondage, or slavery. Such a purpose is required to meet the definition of trafficking at *8 C.F.R. § 214.11(a)*. The Applicant has not claimed that A-R-D- subjected her to, or attempted or planned to subject her to, involuntary servitude, peonage, debt bondage, or slavery while he harbored her in the room. Furthermore, whether this incident qualifies as trafficking does not change our determination that the Applicant's reentry into the United States in 2014 was not the result of continued victimization from trafficking.

The Applicant also contends that our denial of her appeal violated the policy of the T visa program, which is to protect victims of human trafficking. However, to qualify for T nonimmigrant status, an applicant must meet all of the statutory requirements. In addition to being a victim of a severe form of trafficking in persons, an applicant must establish, among other requirements, that she is physically present in the United States on account of such trafficking. Section 101(a)(15)(T)(i) of the Act. The Applicant has not met that requirement and therefore does **[*8]** not qualify for T nonimmigrant status.

Moreover, the Applicant asserts that because we found that her current presence is directly related to her past trafficking as described at *8 C.F.R. § 214.11(g)(1)(iv)*, our finding that she did not meet the physical presence requirement at section 101(a)(15)(T)(i) of the Act was inconsistent. She argues that our finding demonstrates an ambiguity between the statute and the regulation, and that pursuant to the rule of lenity the ambiguity should be resolved in her favor. The rule of lenity generally applies only to criminal or deportation provisions, which are not at issue in this case. *See, e.g.*, *INS v. St. Cyr, 533 U.S. 289, 320 (2001)* (noting the "longstanding principle of construing any lingering ambiguities in deportation statutes

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[2] The Applicant cites the former *8 C.F.R. § 214.11(g)(3)* in this portion of her brief. Under the amended regulations, the applicable section on this issue is *8 C.F.R. § 214.11(g)(2)*.

in favor of the alien"); *see also* *I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 449 (1987)* (same); *I.N.S. v. Errico, 385 U.S. 214, 225 (1966)* (explaining that courts should resolve doubts in favor of an alien "because deportation is a drastic measure and at times the equivalent of banishment or exile"); *United States v. Gonzalez-Mendez, 150 F.3d 1058, 1061 (9th Cir. 1998)* (stating that the court "construe[s] ambiguities **[*9]** in criminal statutes in favor of defendants"). Additionally, the rule of lenity, "which provides that ambiguities in statutes must be construed in an alien's favor, is a doctrine of 'last resort' to be employed only after traditional means of statutory interpretation have failed to resolve any ambiguities." *Matter of Rocco Oppedisano, 26 I&N Dec. 202, 206-7 (BIA 2013)* citing *Patel v. Ashcroft, 294 F.3d 465, 473 n.9* (stating that the "rule [of lenity] only applies if there is a 'grievous ambiguity or uncertainty in the statute'") (quoting *Muscarello v. United States*, 542 U.S. 125, 138 (1998)) (additional citations omitted).

We disagree that there is an ambiguity between the statute and regulation here. Where, as in this case, an applicant has voluntarily departed or been removed from the United States at any time after having been trafficked and then reentered the country, the applicable regulations list two separate requirements for an applicant to establish physical presence under section 101(a)(15)(T)(i) of the Act. First, the applicant must show that she falls into one of the scenarios at *8 C.F.R. § 214.11(g)(1)*. Second, as a result of her voluntary departure or removal and subsequent **[*10]** reentry, the applicant will not be considered physically present on account of trafficking, despite establishing one of the scenarios at *8 C.F.R. § 214.11(g)(1)*, unless she meets one of the exceptions listed at *8 C.F.R. § 214.11(g)(2)*. In the present case, although the Applicant has submitted sufficient evidence to show that she falls within the scenario at *8 C.F.R. § 214.11(g)(1)(iv)*, she has not established that she meets any of the exceptions at *8 C.F.R. § 214.11(g)(2)*.

Accordingly, whether the Applicant's current physical presence is directly related to past trafficking under *8 C.F.R. § 214.11(g)(1)(iv)* is a separate issue from whether her reentry after removal was the result of continued victimization under *8 C.F.R. § 214.11(g)(2)(i)*. The phrase "directly related" at *8 C.F.R. § 214.11(g)(1)(iv)* indicates that the Applicant's physical presence must be connected to trafficking that happened in the past. By contrast, the requirement at *8 C.F.R. § 214.11(g)(2)(i)* that the Applicant's reentry be "the result of continued victimization" indicates that the reentry was not simply related to, but was the consequence of trafficking victimization. As we discussed in our decision on appeal, **[*11]** when we evaluate the evidence of the physical presence requirement, relevant factors we may consider include when an applicant escaped the trafficker, what activities he or she has since undertaken to deal with the consequences of having been trafficked, and his or her ability to leave the United States. *8 C.F.R. § 214.11(g)(4)*. The Interim T Rule explains that this "require[s] a consideration of the victim's current situation …." *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status (Interim T Rule), 81 Fed. Reg. 92266, 92273 (Dec. 19, 2016)*. As we explained, the Applicant has submitted sufficient evidence to show that, although her trafficking ended in 2002, she continues to suffer post-traumatic stress disorder, and the effects of the trauma have had a lasting impact on her daily life. For these reasons, we found on appeal that the preponderance of the evidence is sufficient to show that the Applicant's current physical presence is directly related to her past trafficking, as described at *8 C.F.R. § 214.11(g)(1)(iv)*.

However, the consideration of whether the Applicant meets the requirement at *8 C.F.R. § 214.11(g)(2)* is distinct. **[*12]** The issue is not whether the Applicant's physical presence today is directly related to her past trafficking but whether, at the time she reentered the United States in 2014, she did so as the result of

a situation of ongoing victimization from trafficking. The regulation defines "victim of a severe form of trafficking in persons (victim)" as "an alien who is or has been subject to a severe form of trafficking in persons." *8 C.F.R. § 214.11(a)*. Although the regulation does not limit the phrase "continued victimization" only to applicants who are currently being subjected to trafficking at the time of reentry, its definition of "victim" indicates that the term refers to victimization from trafficking rather than from other types of harm. Although the record shows that the Applicant was afraid of A- R-D- at the time she reentered the United States, the evidence is insufficient to show that the reason for her reentry was continued victimization from trafficking rather than other types of harm.

On motion, the Applicant also contends that we mistakenly interpreted "continued victimization" under *8 C.F.R. § 214.11(g)(2)(i)* to require a physical harm component. She also claims that we minimized **[*13]** A-R-D-'s actions toward her and failed to recognize that he used threats and fear to maintain his control over her throughout the time she was in Mexico. We did not find in our prior decision that the Applicant must show that A-R-D- was subjecting her to physical harm at the time she reentered the United States. We stated that although the Applicant remained fearful of A-R-D-, the evidence did not show that her reasons for reentering the United States were due to continued victimization from trafficking. Although we mentioned that the evidence did not show that A-R-D- subjected the Applicant to physical harm between 2002 and 2014, we did so within a broader discussion of how the Applicant's contact with A-R-D- during that period amounted to an ongoing abusive situation involving types of harm other than continued victimization from trafficking. We noted that the Applicant's period of trafficking ended in 2002, and that she remained living independently in Mexico for many years with only occasional contact with A-R-D-. Although she claims on motion that A-R-D- maintained control over her by threatening her and instilling fear, she indicated in her statement that she "would go years **[*14]** without hearing of him," that she knew he was in hiding from other drug cartels, and that when he tried to enter her house, she did not let him. The evidence does not establish that his actions at that time occurred within the context of a trafficking situation.

The record reflects that the Petitioner became involved with A-R-D- in 2001, and that he subjected her to trafficking when he forced her labor as a servant from 2001 until 2002. The record further shows that, after that time, A-R-D- continued to subject the Petitioner to varying forms of abuse, including harboring her in a locked room, making threats against her and her children, attempting to harm her children, and causing her to fear him through unpredictable and violent behaviors, and that these abusive actions continued until 2014, when she fled Mexico and entered the United States. Despite the severity of the abuse, however, which is not in dispute, the record does not establish that the Applicant's 2014 entry was due to her continued victimization within the meaning of *8 C.F.R. § 214.11(g)(2)*, given the passage of approximately 12 years between the conclusion of the trafficking and her reentry, A-R-D-'s subsequent use **[*15]** of additional tactics which, while serious, do not fall within the definition of severe form of trafficking in persons, and the regulatory requirement that her reentry be *the result of* rather than simply related to, her continued victimization as a trafficking victim. Accordingly, the Applicant has not established error in our prior finding that she does not meet the exception at *8 C.F.R. § 214.11(g)(2)(i)*. Therefore, she has not demonstrated that she is physically present in 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.

III. CONCLUSION

The Applicant has not established that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

ORDER: The motion to reconsider is dismissed.

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