



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

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

In Re: 3113029

Date: JULY 30, 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 sections 101(a)(15)(T) and 214(o) of the Immigration and Nationality Act (the Act), 8 U.S.C. sections 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 record did not establish that the Applicant is a victim of a severe form of trafficking in persons and therefore did not establish that she is physically present in the United States on account of such trafficking. In addition, the Director concluded that the Applicant was inadmissible to the United States and the applicable ground of inadmissibility had not been waived. The Applicant thereafter filed this appeal and simultaneously filed a motion to reconsider and a second motion to reopen and reconsider with the Director, who dismissed the motions.¹ On appeal, the Applicant submits a brief, additional evidence, and copies of previously submitted evidence, asserting her eligibility.

We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as T-1 nonimmigrants if they: are or have been a victim of a severe form of trafficking in persons (trafficking); are physically present in the United States on account of such trafficking; have 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. See also 8 C.F.R. §§ 214.11(b)(1)-(4) (2018).

The term “severe form of trafficking in persons” is defined 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.” 8 C.F.R. § 214.11(a). The definition of trafficking also includes “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years.” *Id.* Sex trafficking means the “recruitment, harboring,

¹ Our review on appeal includes review of the Director’s decisions on the Applicant’s motions.

transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” *Id.*

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 weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a citizen of Guatemala, last entered the United States without admission, inspection, or parole in September 2016 when she was approximately 18 years old. She filed this T application in March 2017 based on her claim that the individuals who smuggled her into the United States subjected her to trafficking.

A. The Applicant’s Trafficking Claim

The Applicant in her initial statement below indicated that she came to the United States to reunite with her parents and brother here because she was unhappy living with her grandmother in Guatemala who mistreated her. She indicated that she left in August 2016 with the assistance of a coyote (smuggler) paid by her uncle and traveled in a group of about 10 people, including some other girls. The Applicant recalled that they traveled for three days through Mexico, during which time, one of the smugglers attempted to rape her on two occasions. She indicated that after they reached the border, she was forced to stay with about seven people at a small safehouse with only one bathroom and two bedrooms for 15 days. The Applicant stated that she was forced to cook and clean for everyone during that period and recalled that many people came and went from the house while she was there. She recalled that she was exhausted from working all the time and having little sleep. The Applicant indicated that the smugglers used her for free labor and never paid her and she feared they would never let her go as they did not tell her that she would be released. She recalled that a smuggler eventually told her it was her time to cross the border into the United States. The Applicant stated that shortly after crossing the border to Texas, U.S. immigration officials encountered the group and detained her.

In a subsequent statement responding to the Director’s request for evidence (RFE), the Applicant restated her trafficking claim and asserted that she was never actually released from the safehouse in the Mexico and only escaped her traffickers because immigration officials encountered the group and the smugglers ran away. She indicated that she felt safer with the officials and was unsure what the smugglers would have done with her and the others once they crossed into the United States. In response to questions raised the RFE, the Applicant also explained why she did not inform the immigration officials who encountered her after her entry that she had been harbored and forced to work against her will by her smugglers.

On appeal, the Applicant submits a supplemental statement providing a more detailed account of her trafficking claim. She asserts that her mother informed her that her uncle would be bringing her to the United States and that she would not have agreed had she known she would be actually traveling alone.

She recalls that her uncle brought her to a smuggler called C-² who assured her that he would bring her safely to the United States. She indicates that C- was supposed to take her to the border but not cross with her. The Applicant states that she does not know if her uncle paid C- as she did not see them exchange money. The Applicant describes the harsh conditions of her journey, traveling nonstop in a group led by C- from Guatemala to Mexico. She states that they eventually arrived at a safehouse in Mexico where they stayed for 15 days “because the plan was to take two people at a time to cross the border.” She indicates that she and other girls in the house were told to cook and clean and those who refused eventually cooked when C- became angry at them. The Applicant recalls that she did as the smugglers instructed because one of the girls told her that the men would rape her if she refused and she witnessed the smugglers being verbally abusive and threaten to beat the women who stood up for themselves. She states that the doors and windows in the safehouse were locked and they were told they could not leave. She recounts feeling as though she was never going to be able to leave. The Applicant also recalls being afraid to sleep at night because one of the smugglers would lie with her and touch her body sexually while she was asleep, stopping only if she woke up. She indicates that after 15 days, C- explained that other people would be bringing her and the others across the border. She states that after resting, she and another girl walked about 20 minutes to meet up with a group of 13 people. She recalls that another smuggler led that group across the border and river into the United States, but after about 15 minutes of walking, they ran into U.S. border patrol officers. She asserts that the smugglers never released her and that she only escaped because the border patrol found them.

The remaining relevant documentary evidence submitted below include a letter to the Federal Bureau of Investigation by the Applicant’s counsel reporting her trafficking and notes and assessment by the Applicant’s therapist. On appeal, in addition to her supplemental statements, she submits background articles and reports on human trafficking and victims of sexual violence, as well as copies of various statutory provisions, cases law, and USCIS policy memorandum.

B. The Applicant Has Not Established She Is a Victim of a Severe Form of Trafficking in Persons

The Director concluded that the evidence did not establish that the Applicant was the victim of trafficking by C- or his associates during the course of a smuggling scheme. The Applicant has not overcome this finding on appeal.

1. Labor Trafficking

Applicants seeking to demonstrate that they are victims of labor 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 means, in relevant part, “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 or physical restraint against any person . . .” 8 C.F.R. § 214.11(a). Involuntary servitude is “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

² Initials are used to protect the identity of the individual.

restraint . . . [and] 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 . . . [and] encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury” *Id.* 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). Slavery is defined as a “situation in which one person has absolute power over the life, fortune, and liberty of another.” *Id.*

The Applicant contends that her smugglers harbored, transported, obtained, and provided her for labor and services through the use of force, fraud, and coercion for the purpose of subjecting her to involuntary servitude.

As an initial matter, the record does not show that the smugglers harbored, transported, obtained, or provided her for labor and services through fraud. The Applicant asserts that she “may have decided” not to go to the United States but for C-’s “fraudulent promises.” However, in her statements before the Director, she did not allege that C- or any other smuggler made any promises to her, and to the contrary, she stated that she “decided” to come to the United States to reunite with her family because she missed them and was unhappy living with her abusive grandmother in Guatemala. In her supplemental statement on appeal, she contends that she was upset and afraid when she learned that her uncle was not going to be traveling with her as she had expected and that C-, seeing her upset, told her not to worry and that he would bring her safely to the United States. However, the Applicant does not allege on appeal that C- or his associates made any false promises to obtain her consent to the smuggling arrangement, and C’s general assurance to keep her safe during the journey is insufficient to establish that he engaged in fraudulent or deceitful tactics to obtain her cooperation with the arrangement. In fact, her appeal statement indicates that C- never explained anything about the journey, and there is no indication that the Applicant enquired about the journey before continuing with the arrangement. Consequently, contrary to her assertion, the record does not show that she continued with the smuggling arrangement because of any false promises from C-.

The record on appeal does show, however, that C- and the other smugglers used coercion to harbor³ the Applicant at the safehouse in Mexico. Her statement on appeal indicates that the smugglers told her and the others being smuggled they were not allowed to leave; that the doors and windows to the house were locked; and that the smugglers shouted at, threatened to beat, and verbally abused the other women at the safehouse when they stood up to the smugglers. The Applicant, who was 18 years old at the time, indicated that she was intimidated by such behavior which she felt personally as being directed towards herself and felt trapped, believing that she may never get out of the house. Accordingly, the record shows that the Applicant was harbored at the safehouse through the use of “threats of serious harm against any person,” as required by the definition of coercion at 8 C.F.R. § 214.11(a).

Nevertheless, a preponderance of the evidence does not demonstrate that the Applicant was the victim of trafficking, as the record does not establish that the smugglers harbored her for the purpose of subjecting her to involuntary servitude, as she asserts. Rather, her accounts of her experiences show

³ As the record demonstrates that the smugglers used coercion to harbor the Applicant, we do not address her assertion on appeal that they also used coercion to transport, obtain, and provide her.

that the smugglers harbored her for the purpose of carrying out and completing their smuggling arrangement with her uncle, which included transporting her to the United States and maintaining and housing her in the interim. The Applicant's statements below and on appeal generally assert that she and other women in the safehouse were forced to cook and clean for others without pay at the safehouse for 15 days before it was her turn to across the border, which she did with the smugglers' assistance. On appeal, she further explains that she and the others being smuggled stayed at the house "because the plan was to take two people at a time to cross the border," and consistent with that plan, the smugglers started moving people, including the Applicant, out of the house in groups of two. The Applicant indicates that when it was her turn to leave, she and another girl left the house and met with another smuggler who helped them cross the border, thereby completing the smuggling arrangement. The Applicant's evidence therefore shows that she was harbored solely until the smuggling agreement could be continued and completed. While we acknowledge that the Applicant may not have expected to cook and clean during her journey, the record shows that the labor she and the others performed at the safehouse was for the purpose of maintaining and housing them until the smuggling arrangement could be completed, and not part of a simultaneous scheme by C- or the other smugglers to subject the Applicant to involuntary servitude.

The Applicant asserts on appeal that the evidence demonstrates that C- and his associates harbored her for the purpose of subjecting her to involuntary servitude because they actually kept her in a condition of servitude through a scheme intended to make her believe she could not leave by verbally abusing and threatening other women in the safehouse such that she believed she would never be able to leave. *See* 8 C.F.R. § 214.11(a) (defining "involuntary servitude"). However, the Applicant's statement on appeal expressly states that the plan when C- brought her to the safehouse was to wait there until arrangements could be made for everyone to cross the border two at a time. She makes no assertion that C- or any of the other smugglers ever threatened to change this plan or otherwise informed her that she would be forced to remain and work and would not be taken to the United States as per the smuggling arrangement with her uncle. To the contrary, as stated, after a 15-day waiting period at the safehouse, C- gave her instructions to leave the safehouse and meet with another smuggler who helped her cross the border.

The Applicant further contends that the definition of involuntary servitude at 8 C.F.R. § 214.11(a) does not require or even reference a specific intent on the part of trafficker to place a victim into a condition of servitude. Notwithstanding the Applicant's assertion, the definition of trafficking under 8 C.F.R. § 214.11(a) requires her to show that the alleged traffickers recruited, harbored, transported, obtained, or provided for her "labor or services . . . *for the purpose of* subjection to involuntary servitude . . ." (Emphasis added). As discussed, although C- and his associates harbored her at the safehouse, the preponderance of the evidence here does not show that they did so for her labor and services or for the purpose of subjecting her to involuntary servitude.

On appeal, the Applicant also maintains that she did not voluntarily make an agreement with C-, did not pay or agree to pay the smugglers, and did not agree to have them make unwanted sexual advances against her as a form of payment. Moreover, she asserts that even if she had entered into the smuggling agreement voluntarily, the Director erroneously assumed that the existence of an arrangement to smuggle a person in exchange for money precluded a finding that the smuggler also had an intention to subject the person being smuggled to trafficking.

An applicant's voluntary consent to or participation in an smuggling arrangement is not determinative in assessing whether a trafficking situation arose during the course of the smuggling.⁴ Contrary to the Applicant's assertion, the Director's decision noted the distinction between trafficking and smuggling under federal law and correctly recognized that a trafficking situation may arise during the course of smuggling, but ultimately determined that the record did not show that such situation arose during the Applicant's smuggling.

As the Applicant has not established that her smugglers harbored her for the purpose of subjecting her to involuntary servitude during the course of her smuggling, as she asserts, she has not established that she is a victim of a severe form of trafficking, in the form of labor trafficking, as defined at 8 C.F.R. § 214.11(a).⁵

2. Commercial Sex Trafficking

As noted, the definition of trafficking also includes sex trafficking, which requires an applicant to show: (1) that they were recruited, harbored, transported, provided, obtained, patronized, or solicited, (2) for the purpose of a commercial sex act, (3) induced by force, fraud, or coercion, or alternatively, the person induced to perform such an act is under 18 years of age. *See* 22 U.S.C. § 7102(8); 8 C.F.R. § 214.11(a) (defining "severe forms of trafficking in persons" and "sex trafficking"). Commercial sex act is defined as "any sex act on account of which anything of value is given to or received by any person." *Id.* The Director here concluded that the Applicant had not established that her smugglers obtained her for the purpose of sex trafficking.

In her initial statement below, the Applicant indicated that she was the victim of attempted rape on two separate occasions during her smuggling prior to reaching the safehouse in Mexico, where she was forced to stay for 15 days before continuing to the United States. She provided no further information regarding these incidents, and her RFE statement only briefly asserted that she had been a victim of sexual assault while being smuggled to the United States. However, the Applicant submitted a psychological assessment and notes from her therapist, which discloses that she inconsistently reported the sexual assault as having occurred later on while she was at the safehouse in Mexico, where she reported being "held for about thirty [30] days," rather than 15 days as she indicates in these proceedings. Given these inconsistencies and the lack of probative information from the Applicant regarding the incidents of sexual assault she experienced during her smuggling, the record below is insufficient to credibly establish that C- or his associates subjected the Applicant to sex trafficking. Her statement on appeal does not explain or overcome these inconsistencies and raises additional discrepancies as it makes no reference to the two attempted rapes on her journey to the safehouse referenced in her initial statement. Instead, on appeal, the Applicant asserts she was sexually

⁴ Although the Applicant may not have made the smuggling arrangements with C- or paid him herself, she has not shown that she was forced or coerced into consenting to the arrangements that her uncle made on her behalf and her actions demonstrate that she voluntarily continued with them.

⁵ We find no merit to the Applicant's assertion that the Director abused discretion by finding that the Applicant had assumed the risk of attempted rape given the inherent risk of engaging smugglers. The Director made no such finding. Rather, the decision below recognized that the Applicant's claim that she had been sexually abused by one of the smugglers, was held at the safehouse against her will, and told to cook and clean during the course of the smuggling, but found that these assertions were not sufficient to establish that she became a victim of trafficking, as defined by regulation, during her smuggling.

assaulted at the safehouse by one of the smugglers, approximately 40 years old, who took advantage of her and sexually assaulted her whenever she was sleeping. Her assertion on appeal that a single smuggler sexually assaulted her at the safehouse further conflicts with her psychological assessment, which indicates that the Applicant reported being held at the safehouse “by three men who attempted to rape her at night . . .” and that she could not sleep because “they” often attempted to rape her. The referenced discrepancies further undermine the credibility of the Applicant’s claim that she was the victim of sex trafficking by the men who smuggled her.

Regardless of these discrepancies, the Applicant’s account of her experiences are insufficient to establish her eligibility because she has not shown that C- or one of his associates recruited, harbored, transported, provided, obtained, patronized, or solicited her for the purpose of a commercial sex act, as required. *See* 8 C.F.R. § 214.11(a) (defining “sex trafficking”). In her statement on appeal, the Applicant indicates that at the safehouse, one of the smugglers made unwanted sexual advances towards her whenever she appeared to be sleeping, but would stop if she woke up, at which point, the Applicant indicated she would get up and walk away. She also described one occasion when she woke up and screamed when she found him lying down next to her and touching her body. The Applicant’s account of these incidents indicates that one of the smugglers took advantage of an opportunity to assault her, but it does not show that the attempted sex act was given or received in exchange for “anything of value” by either party. *See id.* (defining “commercial sex act”).

On appeal, counsel for the Applicant asserts that the Applicant was a victim of commercial sex trafficking by the individuals who smuggled her because smugglers generally enjoy the “fringe benefits” of their illegal enterprise, including making unwanted sexual advances against their victims as a form of payment for the smuggling. We acknowledge that individuals being smuggled are vulnerable and may often be sexually exploited by their smugglers who have control over them. However, in order to establish that the Applicant herself was the victim of sex trafficking during her smuggling, she must show that the C- or his associates recruited, harbored, transported, provided, obtained, patronized, or solicited her specifically for the purpose of a commercial sex act. The Applicant’s statements only briefly reference two attempted rapes and her statement on appeal shows that one of the smugglers made unwanted advances. Nothing in her statements indicate that the smuggler or the Applicant stated or perceived these sexual advances as “fringe benefits” to pay for the smuggling or something else of value. As the Applicant notes on appeal, the smuggler immediately stopped touching her whenever she woke up or someone else was made aware of his actions, contradicting counsel’s assertion that the smuggler believed his ability to sexually assault the Applicant or any of his charges as payment for the smuggling.

Accordingly, the Applicant has not established that she is the victim of sex trafficking, as she has not demonstrated that she was recruited, harbored, transported, provided, obtained, patronized, or solicited for the purpose of a commercial sex act. *See* 8 C.F.R. § 214.11(a) (defining “severe forms of trafficking in persons” and “sex trafficking”).

C. Not Physically Present on Account of Trafficking in Persons

As the Applicant has not shown that she was the victim of trafficking, the Director correctly concluded that she necessarily cannot establish that she is physically present in the United States on account of such trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.

D. The Applicant Is Inadmissible and Her Waiver of Inadmissibility Was Denied

The Director also correctly concluded that the Applicant was ineligible for T nonimmigrant classification because the record demonstrated that the Applicant was inadmissible to the United States under sections 212(a)(6)(A)(i) (present without admission, inspection, or parole) and 212(a)(7)(B)(i)(I) (no valid passport) of the Act, and she did not have an approved Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (T waiver application) to waive the inadmissibility ground.

When adjudicating a T application, U.S. Citizenship and Immigration Services (USCIS) is required to determine whether any grounds of inadmissibility exist and may waive certain grounds of inadmissibility as a matter of discretion. Section 212(d)(13) of the Act. The Applicant bears the burden of establishing that he or she is admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For individuals seeking T nonimmigrant status who are inadmissible to the United States, a T waiver application must be filed in conjunction with the T application in order to waive any ground of inadmissibility. 8 C.F.R. §§ 212.16, 214.11(d)(2)(iii). There is no appeal of a decision to deny a waiver. 8 C.F.R. § 212.16(c). Although the regulations do not provide for appellate review of the Director's discretionary denial of a waiver application filed in T proceedings, we may still consider whether the Director was correct in finding the Applicant inadmissible to the United States and, therefore, requiring an approved waiver application.

On appeal, the Applicant does not contest the Director's determination of inadmissibility, and our review of the record confirms that she is inadmissible. The Applicant therefore requires a waiver of inadmissibility to establish eligibility. 8 C.F.R. §§ 212.16, 214.11(d)(2)(iii). Although the Applicant filed the requisite T waiver application, the Director denied that application after denying this T application. As the evidence demonstrates the Applicant's inadmissibility, and we have no appellate jurisdiction over the Director's denial of the Applicant's T waiver application, she has not established her eligibility. 8 C.F.R. § 212.16(c).

III. CONCLUSION

We recognize the Applicant's claim that she suffered terrible conditions and sexual abuse while being smuggled into the United States. Nevertheless, she has not established that she was a victim of a severe form of trafficking during the course of her smuggling, and she therefore necessarily did not establish that she is physically present in the United States on account of such trafficking. In addition, she is admissible to the United States and was not granted a waiver of inadmissibility. Accordingly, the Applicant is not eligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.