U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21319860

Date: APR. 11, 2022

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 sections 101(a)(15)(T) and 214(o) of the Immigration and Nationality Act (the Act), 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), and also denied the Applicant's subsequent motion to reopen and reconsider. We dismissed the Applicant's subsequent appeal and the matter is now before us on a motion to reconsider. On motion, the Applicant submits a brief and asserts her eligibility. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

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 as "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; or 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 burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 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).

II. ANALYSIS

In our decision on appeal, which is incorporated here by reference, we acknowledged the facts of the Applicant's trafficking claim, and her explanation regarding her having both filed and testified to a false asylum claim, as articulated in her statements submitted below. We further acknowledged the statements submitted below and on appeal from other women who attested to knowing and working for the same employer as the Applicant, as well as the psychological evaluation and report submitted below and on appeal that summarized the Applicant's trafficking claim and further spoke to her having been instructed by her alleged traffickers to "invent a case for asylum." Nonetheless, we agreed with the Director that the Applicant had not met her burden of establishing that she was a victim of a severe form of trafficking in persons as contemplated by the Act and implementing regulations, highlighting a series of unresolved discrepancies between her trafficking and asylum claims.

We first noted that one of the Applicant's claimed traffickers, M-D-,[1] was listed as the Applicant's sister-in-law on the June 2006 credible fear interview report associated with her asylum application and evidence submitted in support of her asylum application showed that the Applicant's deceased spouse and two of her children in Nicaragua share the surname of M-D-.

We next noted that the Applicant stated that M-D- hired an attorney to secure her release from immigration detention in Texas and arranged for her transportation by bus to California, but that M-D- later permitted her to hire her own attorney to assist her in her asylum hearing. This, despite her statements providing that M-D- otherwise completely supervised and controlled her movements and whereabouts on a daily basis by forcing her to use the housing and transportation M-D- provided, warning her not to leave the house alone, go to the store alone, or go to the doctor when she was too sick to work.

Finally, we highlighted that the Applicant's claim that M-D- coerced and controlled her even after she stopped working at the bar through ongoing debt payments, and that her continued pursuit of her false asylum application, was largely premised on the fact that M-D- held the deed to her mother's house in Nicaragua and that her children would become homeless if the deed was not returned. However, we noted that the Applicant stated in her asylum application that by the time she fled Nicaragua her mother had already emigrated to Costa Rica, so she left her "children in another town . . . . with other relatives."

Because the record contained unresolved discrepancies regarding the Applicant's relationship with her alleged traffickers, ability to leave the situation and seek legal counsel without her traffickers supervision or knowledge, and her need to repay her debt and follow their instructions about her asylum claim, we concluded that the Applicant had not met her burden of establishing, by a preponderance of the evidence, that she was a victim of a severe form of trafficking in persons, as required.

[1] Initials are used to protect the identities of the individuals.

On motion, the Applicant does not resolve, nor meaningfully address, the outlined discrepancies.[2] Instead, she asserts, through counsel, that we incorrectly applied the relevant evidentiary standard in concluding that she was not a victim of a severe form of trafficking in persons despite submission of a substantial amount of credible evidence indicating otherwise. Counsel states that although we acknowledged the affidavits and evaluations in the record that corroborate the Applicant's claim, our analysis and the final disposition shows that such evidence was ultimately "afforded . . . no value." Counsel similarly asserts that we executed our analysis as if "bound by certain information related to an asylum application [we] already know[] to have been false because it was filed under coercion from [the Applicant's] traffickers." Contrary to the arguments of counsel, however, our previous decision dismissing the appeal summarized the Applicant's statements, as well as the affidavits and evaluations, in detail and afforded them evidentiary weight, but ultimately determined that, based on the unresolved discrepancies surrounding her asylum and T applications, the Applicant had not met her burden of establishing, by a preponderance of the evidence, that she was a victim of a severe form of trafficking in persons. Our decision was not "bound" by any documentation or information in the Applicant's administrative record, but was instead based on our sole discretion over T applications and the value of evidence submitted, as well as the applicable statutory and regulatory requirements which provide that the Applicant bears the burden of establishing eligibility for T nonimmigrant status by a preponderance of the evidence, including that she was the victim of a severe form of trafficking in persons as defined by section 101(a)(15)(T)(i) of the Act and 8 C.F.R. 214.11(a). Section 291 of the Act; 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. at 375. The Applicant has not established that our previous decision was based on an incorrect application of law or policy or that it was incorrect based on the evidence of record at the time of the initial decision.

ORDER: The motion to reconsider is dismissed.

[2] The Applicant's counsel briefly asserts that the Applicant is not related to M-D-, her claimed trafficker, and that her personal statements' lack of mention of any relation to M-D- is sufficient to establish the same. As a preliminary matter, the assertions of counsel are not evidence and must be supported by independent documentation. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) ("We note statements or assertions by counsel are not evidence"). We further acknowledge that the Applicant's statements do not indicate any prior relationship with M-D-; however, this lack of indication of any relationship does not expressly confront or explain why she indicated on her asylum application that an individual by the same name was her sister-in-law or why her deceased spouse and children share the same surname.