



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

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

In Re: 16389339

Date: APR. 19, 2022

Appeal of Vermont Service Center Decision

Application: Form I-914 T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under the 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 record did not establish that the Applicant was a victim of a severe form of trafficking in persons. The Director also added that because the Applicant had not established he was the victim of a severe form of trafficking in persons, he could not establish the other requirements for a T application, such as physical presence on account of such trafficking or compliance with reasonable requests for assistance in the investigation or prosecution of severe forms of trafficking. Furthermore, the Director found the Applicant inadmissible under section 212(a)(6)(A)(i) of the Act as a foreign national present without admission or parole and 212(a)(7)(B)(i)(I) of the Act as a nonimmigrant without a valid passport. On appeal, the Applicant submits a brief, asserting his eligibility.

We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand this matter to the Director for further proceedings consistent with our decision.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as a T-1 nonimmigrant if they: are or have been a victim of a severe form of trafficking in persons; 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) (reiterating the statutory criteria).¹

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). This application was filed after the issuance of the Interim T Rule.

Applicants seeking to demonstrate that they are victims of a severe form of trafficking, specifically sex trafficking, must show that they were: (1) recruited, harbored, transported, provided, obtained, patronized, or solicited (2) for the purpose of commercial sex acts (3) that were either induced by force, fraud, or coercion, or alternatively, that they were under 18 years of age when they were induced to perform such acts. *See* 22 U.S.C. § 7102(11)-(12) (defining the terms “severe forms of trafficking in persons” and “sex trafficking”); 8 C.F.R. § 214.11(a) (same). “Commercial sex act” is defined as “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(4); 8 C.F.R. § 214.11(a).

Applicants seeking to demonstrate that they were victims of a severe form of trafficking, specifically 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”). 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 restraint” 8 C.F.R. § 214.11(a). 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.) (10th ed. 2014). Slavery is defined as “a situation in which one person has absolute power over the life, fortune, and liberty of another.” *Id.*

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 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 23-year-old native and citizen of Guatemala, entered the United States without inspection, admission, or parole in April 2016 when he was 17 years old. The Applicant filed his T application in January 2019 on the basis that he was the victim of child sex and labor trafficking by individuals who, shortly after he and others illegally entered the United States, forcibly harbored him, subjecting him to sexual abuse and unpaid labor.

A. The Applicant’s Trafficking Claim

In his statements, the Applicant describes entering the United States without inspection at the age of 17 years old. He reports that shortly after entering the United States, the group he was traveling with was approached by armed men who they did not know. These men ordered them into a truck and took them to a rural area outside of [REDACTED] Texas. The Applicant describes this incident as a kidnapping, explaining that he only hired someone to help him across the border and did not pay for someone to transport him within the United States. He also asserts that these armed men took his belongings

(including his phone and wallet), did not allow him to communicate with family, and locked him in a trailer with 30 other individuals. He states that this trailer had an armed guard. He then describes how he was made to clean and cook for his captors, while being verbally abused, physically abused, and threatened with guns. After about two weeks, the Applicant describes being lined up by the guards, who then asked everyone their ages. The Applicant indicated he was 17 years old, and his friend indicated he was 16 years old. The Applicant states that he and his friend were taken out of the line, ordered on a truck by armed men, and taken to a “nicely-cared for” house about 15 minutes away.

After the Applicant arrived at the house, he reports being ordered inside where a middle-aged, light skinned man, told him if he was “good,” and “did what he was told, everything would be okay.” This same man held a knife to his throat, took him to a bed in a bedroom, ordered him to undress, kissed his neck, and groped his genitals. He told the Applicant he would cut him if he resisted. This man then ordered the Applicant to face away from him, which is when the Applicant describes fearing that he would be raped, crying, and attempting to resist the man, only to have his hand and wrist badly cut by the knife the man was holding by his throat. The Applicant indicates that his blood was everywhere, and it angered the man who shouted for him to leave the house. He reports being dragged out of the bedroom and then out of the house by two other men. The Applicant states that the guards arrived about 10 minutes later. When they approached, he relates how they became extremely angry and told him if he told anyone about what happened they would leave him with the man in the house. The Applicant states that he feared this threat from the guards meant he would be raped and then murdered. They stated that if anyone asked about his injury, he should say he hurt himself while working. The Applicant also describes seeing the 16-year-old boy who came to the house with him back at the trailer. He indicates that this boy was extremely upset and cried a lot in the night. The Applicant also stated that he never saw money exchanged but believed what happened to him was part of a pre-planned business arrangement and he and his friend were selected because of their young age. The Applicant then describes how he and this boy resolved to escape after this incident and soon after they did manage to escape the compound late one night when the guards were drunk and passed out.

B. The Applicant Has Established He Is a Victim of a Severe Form of Trafficking in Persons

The Director found that although the Applicant was harbored in a trailer for approximately 15 days, made to perform labor, and sexually assaulted, this abuse was not for the purpose of subjection to involuntary servitude or for the purposes of sex trafficking. Instead, the Director found the abuse the Applicant suffered was unfortunately part of what many foreign nationals entering the United States through smuggling experienced and, although the Applicant was harbored by force, it was not for the purpose of subjection to forced labor or commercial sex trafficking.

Our review affirms the Director’s finding that the men who took the Applicant harbored him in that they concealed and retained him when they held him in a trailer in Texas for almost two weeks by force using armed guards, so he would not escape. To reiterate the force involved, the Applicant attested to armed guards taking his belongings, refusing to allow him to communicate with family, and locking him in a trailer guarded by a person with a gun. However, we find further, as discussed below, that although the Applicant has not established this harboring was for the purpose of a commercial sex act, he has established it was for the purpose of involuntary servitude and thus, the Applicant has shown he is a victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(I) of the Act requires.

1. For the Purpose of a Commercial Sex Act

The Applicant has not shown he was harbored for the purposes of a commercial sex act. According to the Applicant's statement, he was sexually assaulted at knifepoint and under threat of his life (the knife was held to his throat). He was then told by armed guards to stay silent about what occurred, or he would be left with the man who sexually assaulted him. He stated that he feared this threat from the guards meant he would be raped and then murdered by the man inside the house. He also stated that he never saw money exchanged but believed what happened to him was part of a pre-planned business arrangement and he and his friend were selected because of their young age. Given these facts, the traffickers intent and whether the Applicant was harbored for the specific purpose of a commercial sex act, remains unclear. The Applicant does not provide information that would indicate he was harbored for a commercial sex act. Instead, he states that he never saw money exchange hands and could only conjecture that what happened to him was part of a business arrangement. Therefore, although we do not mean to diminish the trauma the Applicant has suffered, the evidence does not currently indicate that the guards and transporters harbored the Applicant for the purpose of a commercial sex act. Accordingly, the record does not establish that the Applicant was subjected to sex trafficking. However, as discussed below, the record does establish the Applicant was a victim of labor trafficking and is therefore a victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(I) of the Act requires.

2. Labor Trafficking

Again, our review indicates that the men who took the Applicant harbored him in that they concealed and retained him when they held him in a trailer in Texas by force using armed guards, threats, and violence. Thus, to meet the definition of labor trafficking, the Applicant must also show that he was harbored 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).

As stated above, 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 restraint" 8 C.F.R. § 214.11(a). 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.) (10th ed. 2014). Slavery is defined as "a situation in which one person has absolute power over the life, fortune, and liberty of another." *Id.*

Here, the Applicant was subjected to servitude in that his captors had absolute power over his life and liberty. With this power they forced him to cook, clean, and subjected him to sexual assault. This servitude was also involuntary in that the Applicant was kidnapped and harbored by armed men and the actions of these men, which included verbal abuse, physical abuse, threats to his life, and subjection to sexual assault, led the Applicant to believe if he did not follow their orders, he would suffer additional serious harm. Notably, as the Applicant contends on appeal, his kidnapping and servitude was not in furtherance of his smuggling. His statements reflect that the smuggling operation, which brought him to the United States, had ended. The men who kidnapped him after he came into the United States were not the same people involved in his smuggling. Furthermore, after his kidnapping

there was no indication that he would be released, and there was no attempts to contact his family members for payments or ransom. Instead, his captivity appeared to be indefinite, and the Applicant had to escape the situation on his own. Therefore, we find the record establishes the Applicant was harbored for the purposes of subjection to involuntary servitude and is a victim of labor trafficking. The Applicant has shown he is a victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(I) of the Act requires.

C. Other Statutory Eligibility Criteria for T Nonimmigrant Classification

The Director determined that because the Applicant had not established that he was the victim of a severe form of trafficking in persons, he did not establish that he is physically present in the United States on account of such trafficking, as section 101(a)(15)(T)(i)(II) of the Act requires. The Director also determined that because the Applicant had not established that he was the victim of a severe form of trafficking in persons, he did not establish that he complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or the investigation of associated crime, as required by section 101(a)(15)(T)(i)(III) of the Act.

Given our determination here that the Applicant was a victim of trafficking in persons, we will remand this matter to the Director to determine whether the Applicant meets the physical presence requirement under the Act, and whether he complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or the investigation of associated crime.

D. Admissibility

Section 212(d)(13) of the Act requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a T application and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. 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 a T application in order to waive any ground of inadmissibility. 8 C.F.R. §§ 212.16, 214.11(d)(2)(iii).

The Director concluded that the Applicant was inadmissible under sections 212(a)(6)(A)(i) (entry without inspection) and 212(a)(7)(B)(i)(I) (nonimmigrant without a valid passport) of the Act. The Director denied the waiver application based on the denial of the Applicant's T application and did not consider his eligibility for a waiver in the exercise of discretion. Because the Applicant has overcome the grounds for the Director's denial of his T application, we will remand this matter to the Director for consideration of the Applicant's waiver application.

III. CONCLUSION

The Applicant has demonstrated that he was the victim of a severe form of trafficking in persons. The matter will be remanded to the Director for consideration of whether the Applicant meets the remaining statutory eligibility criteria for T nonimmigrant classification under section 101(a)(15)(T)(i). If the Applicant is found to have met the remaining eligibility criteria, then we

request the Director consider the Applicant's waiver application as well as the waiver denial was based on the denial of the Applicant's T application.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new a decision consistent with foregoing analysis.