



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

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

In Re: 17748576

Date: JAN. 28, 2022

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. §§ 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 the victim of a severe form of trafficking in persons and, based on that determination, that she was not physically present in the United States on account of such trafficking. In addition, the Director determined that the Applicant was inadmissible to the United States and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application), had not been granted. The denial of her T application is now before us on appeal. On appeal, the Applicant submits a brief 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 remand this matter for further proceedings consistent with this 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 (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) (reiterating the statutory criteria). The term “severe form of trafficking in persons” is defined in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) 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.” 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, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(12); 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 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 native and citizen of Mexico, entered the United States without being inspected, admitted, or paroled in July 2013. In May 2019, the Applicant filed the instant T application, asserting that she was the victim of labor or sex trafficking in Mexico after her deportation from the United States.

### A. The Applicant's Trafficking Claim

In her initial written statement in the record, the Applicant stated that, after her removal from the United States in 2013, she returned to [redacted] Mexico, and intended to stay with her stepfather's cousin until she returned to the United States. She stated that she arrived by bus in [redacted] around 2:00am and used her phone to call the cousin of her stepfather to get directions to her home as she left the bus terminal. The Applicant stated that when she got into the taxi, she gave the phone to the driver of the taxi so that the family member could explain to the driver where to take the Applicant. Shortly thereafter, however, the taxi stopped at a traffic light and a man jumped in the taxi and took the phone from the driver and said something to her stepfather's cousin. The Applicant recalled that she was not able to make out what the man told her stepfather's cousin, but she does know that her family never heard from the cousin again. Per the Applicant, the man who jumped in the taxi told the driver to take her to the Hotel O- and it was apparent that the taxi driver knew the man who jumped in the taxi as he referred to him as C-.<sup>1</sup> The Applicant recounted that she told the driver that she "wanted to get [out]" of the taxi but C- turned around to look at her and told her to shut her mouth. She stated that she was able to open the door to the taxi but then C- got out and pushed her back into the taxi and sat next to her while flashing his gun at her. The Applicant stated that she was terrified and was screaming and crying and the taxi driver told her to please cooperate. After four blocks, C- got out of the car and the driver took the Applicant to the Hotel O- and told her that if she wanted everything to be okay she needed to calm down and do everything she was told. The Applicant stated that she was eventually taken to another hotel that was ugly and dirty and had bars on the windows, and there were prostitutes in the room. The Applicant recalled that as soon as C- walked into the room he signaled to the women to leave because she and another woman known as A- were going to stay there. Another man known as E-C- watched over the Applicant and A- and followed them everywhere including when they needed to use the bathroom. After receiving a phone call, the Applicant stated that E-C- took them to a house where there were six armed men waiting outside, and they took off her and A-'s clothes and left them in their underwear while they searched and touched them all over. Per the Applicant, they were then tied to a bed in the house by their hands and feet and they remained tied up all night and day without eating while the men drank and got high, and when their requests to go the bathroom were refused they urinated on themselves. The Applicant stated that later another man arrived and was so

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<sup>1</sup> Initials are used to protect individuals' identities.

angry when he saw the women had urinated on themselves that he began to beat them. This man began licking the Applicant and calling her names and stating that she was going to stay there and live with him. The Applicant stated that the man then took her outside to a field and continued to lick her while running his gun all over her body and putting it between her legs. She stated that the man then bit her and she began to cry when two other men showed up and told the man to leave her alone. The two men then told the other man that yet another man, referred to as E-P-, had called and said that he wanted “his merchandise in good conditions” and she was then taken back into the house and again tied to the bed. The Applicant stated that about two hours later the armed men showed up with two other hostages, one of whom was trying to fight back when he was shot in the head. Per the Applicant, more men showed up and took her to another house where there were many people being held, and she overheard two men saying that the “merchandise” was really good, he could “cross the merchandise that night and put them to work[,]” and “he would get good money.” The Applicant stated that she overheard E-C- tell E-P- that “he was going to pay whatever he wanted for him to keep [the Applicant].”

In her statement responding to the Director’s request for evidence, the Applicant further described being forced by her kidnappers to take off her clothes before being chained to the bed. She explained that they took pictures of her after forcing her to remove her clothes, and that the pictures were being taken “to send to the boss.” The Applicant recounted that there were three men armed with guns who watched over them every day and while she was being held naked the men would rub their guns on her breasts and between her legs. The Applicant stated that one night she overheard one of the men speaking on the phone and stating that she “was already paid for and was being saved for ‘the boss’.” The Applicant stated that she heard the man say her name and saying that she was paid for and would be with the boss for two weeks, since she had “the right legs and buttocks for the boss. He said that they would cross me and the boss would be waiting for me.” Additionally, the Applicant stated that the only reason they were not raping her was because she was “already sold” and that, on one occasion, E-C- said they needed to hurry up and cross her over because “the man who paid a lot of money for [her] was waiting for [her] already.”

The Applicant stated that she eventually left the hotel and was forced on a bus with one of the kidnappers. She explained that, when he fell asleep, she was able to get off the bus and escape. She later entered the United States without inspection, authorization, or parole with the help of a smuggler.

#### B. Victim of a Severe Form of Trafficking in Persons

Contrary to the decision of the Director, and as argued by the Applicant on appeal, the record demonstrates that the Applicant is a victim of a severe form of trafficking in persons in the form of sex trafficking.

Applicants seeking to demonstrate that they are victims of trafficking, specifically sex trafficking, must 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. 22 U.S.C. § 7102(11); 8 C.F.R. § 214.11(a) (defining the terms “severe forms of trafficking in persons” and “sex trafficking”). As defined at 8 C.F.R. § 214.11(a), coercion means “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; or the abuse or threatened abuse of the legal process.” 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.* If a victim has not performed a commercial sex act, the victim must establish that he or she was recruited, harbored, transported, provided, obtained, patronized, or solicited for the purposes of subjection to the same. 8 C.F.R. § 214.11(f)(1).

The Director concluded, in pertinent part, that the record did not establish that the kidnappers obtained, transported, or harbored the Applicant, by force, fraud, or coercion, for the purpose of a commercial sex act. We withdraw this determination, as the record demonstrates that the Applicant was harbored against her will, through coercion and force, for the purpose of a commercial sex act, as required to establish sex trafficking. The Applicant’s statements show that, upon her arrival in Mexico, she was kidnapped and held against her will in a hotel or various houses without freedom of movement, meeting the definition of harboring as contemplated by 8 C.F.R. § 214.11(a). Her statements further indicate that she was watched over, chained to a bed on at least one occasion, and repeatedly touched or otherwise sexually abused by men armed with guns, sufficient to establish that the Applicant’s kidnappers harbored her through a “scheme, plan, or pattern . . . caus[ing]” the Applicant to believe that failure to comply with their demands “would result in serious harm . . . ,” as described in the definition of coercion under 8 C.F.R. § 214.11(a). Finally, the Applicant’s statements indicate that she repeatedly overheard her captors referring to her as “merchandise” and discussing or informing her that she had been “sold” or “saved” for “the boss” of the kidnapping operation. The Applicant further described being forcibly photographed nude and told that the photographs were being sent to “the boss” in anticipation of her being sold to, saved for, or delivered to him in the United States. Although she was able to escape her traffickers prior to reaching the United States, this is sufficient evidence to establish, by a preponderance of the evidence, the intent to subject the Applicant to a commercial sex act, as contemplated by 8 C.F.R. §§ 214.11(a) and (f)(1).

Based on these facts, the preponderance of the evidence demonstrates that the Applicant’s kidnappers harbored her, by coercion, for the purpose of performing commercial sex acts, thereby establishing that she was a victim of a severe form of trafficking under section 101(a)(15)(T)(i) of the Act and 8 C.F.R. § 214.11(a).

#### C. Physically Present in the United States on Account of Trafficking

The Director determined that because the Applicant had not established that she was the victim of a severe form of trafficking in persons, she necessarily did not establish that she is physically present in the United States on account of such trafficking, as section 101(a)(15)(T)(i)(II) of the Act requires. Given our determination here that Applicant was a victim of trafficking, we will remand this matter to the Director to determine in the first instance whether she meets the physical presence requirement under 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 she is inadmissible to the United States under

multiple grounds of section 212(a) of the Act, 8 U.S.C. § 1182(a), and did not have an approved T waiver application to waive the ground of inadmissibility.

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 a 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 her 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 the application on the basis of the denial of the 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

The Applicant has demonstrated that she is 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), including whether she is physically present on account of her trafficking.<sup>2</sup>

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

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<sup>2</sup> In the event the Director determines that the Applicant established the statutory criteria for T nonimmigrant classification under section 101(a)(15)(T)(i) of the Act, her T waiver application shall be reopened and re-adjudicated to determine whether any applicable grounds of inadmissibility should be waived as a matter of discretion.