



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

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

In Re: 21712344

Date: JUN. 29, 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 Applicant did not establish he was a victim of a severe form of trafficking in persons and, as a result of this determination, he also had not established he was physically present in the United States on account of the claimed trafficking and had not complied with reasonable requests for assistance in the investigation or prosecution of the trafficking. On appeal, the Applicant submits a brief and reasserts eligibility for the requested nonimmigrant classification. The Administrative Appeals Office reviews 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, and for the reasons explained below, we will remand the matter to the Director for further proceedings.

I. LAW

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. *See also* 8 C.F.R. § 214.11(b) (reiterating statutory eligibility criteria).

The term “severe form of trafficking in persons” is defined in pertinent part 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 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 is a citizen of El Salvador who last entered the United States without inspection, authorization, or parole with the aid of smugglers in June 2014. He filed his T application in July 2019.

A. The Applicant's Trafficking Claim

In his personal statements in support of his T application, the Applicant stated that he made the decision to come to the United States in June 2014 and he traveled through all of El Salvador on his own. He recounted his intent was to continue the entire journey alone without the aid of a coyote (smuggler) because he knew the way and thought it would be easy. The Applicant stated that he stayed to work in the border area of El Salvador and Guatemala before he was deceived by individuals he believed to be involved in drug trafficking. Per the Applicant, shortly after his arrival at the border area, he was introduced to a man named C-¹ who told him that he could assist the Applicant in leaving El Salvador and also help him find work in Mexico. The Applicant further stated that he told C- that he did not have any money and C- responded by telling him he would help him for free. During the course of further discussion, C- asked the Applicant for a phone number for one of his family members in the United States as a point of contact to call once the Applicant arrived in [] Texas. The Applicant provided his brother's phone number after C- insisted that having this phone number was the only way he would agree to assist him. Per the Applicant, he later realized that C- was a cartel member who had charged his brother \$3,500 without the Applicant's knowledge.

The Applicant recounted that C- soon brought in more coyotes who worked with him as guides and that the group was stopped by patrols on more than one occasion. He stated that C- had to pay money each time in order to secure safe passage. The Applicant stated that, upon reaching southern Mexico, he told the smugglers that he wished to stay and work in Mexico but they responded that he "had to go with them" and continued to pay money on his behalf during each stop on the trip. He expressed fear of disobeying the smugglers because they told him he "will do what [they] tell [him,]" he "saw how they did drugs[,]" and they carried small weapons in their pants and large weapons in their hands.

Ultimately, the group arrived in [] Texas, after crossing the river and, per the Applicant, the cartel members tasked everyone from the group with jobs such as fetching water, carrying backpacks, taking care of people so they would not be approached by anyone, and serving watch during nighttime hours. The Applicant stated that he "couldn't refuse, or leave the group because the coyotes wanted [him] to work for [them]." He recounted that the coyotes sexually abused the women in his group and that he was beaten on one occasion for attempting to intervene, injuring a ligament in his leg. He further recounted that, during the long walk from [] towards [] the cartel members made some members of the group carry heavy backpacks. He stated that the smugglers "told [him] to carry a backpack," but that he "told them [he] couldn't because [his] leg was injured" and he could not walk properly. He further stated that, because he could not carry a backpack, the smugglers told him he had to perform other work. The Applicant stated that he knew the backpacks "were very important" and that they may have contained "illegal things[,]" stating that the smugglers instructed those carrying the backpacks to never look inside and that if they saw someone along their journey they must "run

¹ We use initials to protect identities.

with the backpack.” He further explained that, throughout the journey, the smugglers gave individuals backpacks to carry at different times, and that they “picked up and dropped off the backpacks” at different points during the trip; “[s]ome days, they made the group move three backpacks and some days there were no backpacks to move.” The Applicant last stated that he heard the smugglers refer to the individuals carrying the backpacks as “mules.”

Due to the Applicant’s inability to carry a backpack, he was told that instead he would have to take care of the people in the group, keep watch at night to ensure no one approached the group, and search for and bring back water during the nighttime hours. The Applicant reported that he suffered sleep deprivation, was beaten, and was threatened with death by the cartel members, who were armed with handguns. He stated that, because he feared for his life, he followed their orders.

According to the Applicant, the cartel members tried to recruit him to join the cartel instead of settling in the United States but he told them he did not want to join the cartel; “[t]hey told me to stay and work with them. . . . The members of the cartel told me they could mix me in their group. They told me that I would earn good money if I found people for them to cross into the United States. I told them I didn’t want to stay there.” He recounted that he was forced to make a phone call to his brother, as were others being smuggled, and was told to tell his brother that they needed the money in advance. The Applicant stated that he did not want to make the phone call but he had no other choice because he was threatened with death if he refused, and he and the others were told that there was a pit where they left the bodies of those individuals who did not make the phone calls. The Applicant recalled that when the group was finally apprehended by immigration officials the cartel members “mixed themselves with our group” to pretend that they were “one of us.” The Applicant stated that, when he was interviewed by immigration authorities, he lied by saying that the smugglers were “part of our group” because he was afraid of harm to him or his family. The Applicant stated if the group not been apprehended by authorities he believes he would have been forced to stay with the cartel members and continue working for them because that is what they wanted. He expressed regret for not having told the truth to immigration authorities when he had the chance but stated that he has now reported everything to the National Trafficking Hotline and he feels liberated as a result.

As noted by the Director in her decision, in response to a request for evidence the Applicant also submitted a supplemental personal statement, a psychosocial evaluation², copies of court documents from El Salvador, a copy of a non-precedent decision issued by our office, and articles about trauma, human trafficking, and smuggling. The Director reviewed and considered all of the aforementioned documentation in reaching her decision to deny the T application. Contrary to the Director’s decision, and as explained in detail below, the evidence establishes, by a preponderance of the evidence, that the Applicant is a victim of a severe form of trafficking in persons.

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

As stated above, applicants seeking to demonstrate that they are victims of a severe form of trafficking must show that: (1) they were recruited, harbored, transported, provided, or obtained for their labor or

² The Director noted that the psychosocial evaluation indicated that when the Applicant was attempting to reach the United States he was captured by cartel members and forced to carry a heavy backpack without the benefit of food and water, and that this information differed from the Applicant’s explanation of events in his statements (i.e. the Applicant did not carry a backpack due to his leg injury).

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) and 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).

The Applicant contends that his smuggling arrangement became a trafficking situation when the smugglers recruited, transported, and harbored him, through the use of fraud, force, and coercion, for the purposes of subjection to involuntary servitude. The evidence shows that the smugglers harbored and transported the Applicant through force, fraud, and coercion, as defined at 8 C.F.R. § 214.11(a). The Applicant stated that, upon initial contact with his smugglers, he was told they would help him for free. However, he explained that they later extorted his brother for money. The Applicant further stated that his smugglers required him to continue with them to the United States when his stated preference was to remain in Mexico and work following his successful escape from El Salvador. Per the Applicant’s personal statements, his smugglers were armed with weapons, he was threatened with physical harm or death if he did not remain with the smugglers on the journey to the United States and even after entry while traveling mostly by foot for a period of nine days from [redacted] to [redacted]. The Applicant further stated that he was beaten by the smugglers, and that, because he feared for his life, he complied with their demands. These facts are sufficient to establish that he was harbored and transported by force, fraud, and coercion as contemplated by 8 C.F.R. § 214.11.³

The Applicant has also established, as argued on appeal, that the smugglers recruited and transported him for the purpose of subjecting him to involuntary servitude. Involuntary servitude is defined as, in pertinent part, “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.) (11th ed. 2019).

We acknowledge that a trafficking situation may arise during a smuggling operation. The preponderance of the evidence indicates that such a situation arose here, and that the smugglers acted with the purpose of subjecting the Applicant to involuntary servitude while transporting him into the United States. Per the Applicant’s statements, the smugglers instructed him to carry a backpack filled with unknown contents at some point during his journey from [redacted] to [redacted] but, due to a leg injury sustained from being beaten by the smugglers earlier in the journey, he was unable to. He further explained that numerous other members of the group carried the backpacks, which the Applicant stated he believed contained “important[,]” and “illegal things” based on the smugglers’ instructing those carrying the backpacks to never open them, to avoid detection by anyone outside of the smuggling arrangement while carrying them, and that they would be subjected to harm if they attempted to abscond with them. Additionally, and critically, the Applicant explained that the individuals being smuggled carried different backpacks at different times, unconnected to any

³ In light of this conclusion, we need not address the Applicant’s claim that he was recruited by force, fraud, and coercion.

particular schedule or clear purpose; deposited them at different locations during the journey, never returning for them; and were referred to by the smugglers as “mules.”

The smugglers’ statements to the Applicant regarding his carrying a backpack is indicative of their intent to subject him to such work, and the fact that he ultimately was not able to due to injury is not preclusive of establishing his eligibility. 8 C.F.R. § 214.11(f)(1) (“If a victim has not performed labor . . . , the victim must establish that he or she was recruited, transported, harbored, provided, or obtained *for the purposes of* subjection to . . . involuntary servitude . . .”) (emphasis added); *see also* 3 USCIS Policy Manual B.2(B)(6), <https://www.uscis.gov/policy-manual> (providing, as guidance, that “[i]n determining whether an applicant has been the victim of a severe form of trafficking, it is not necessary for the victim to actually perform the labor . . . to be eligible for T nonimmigrant status. . . . The statutory definitions of trafficking include acts committed “for the purpose of” subjecting someone to a form of trafficking. Therefore, the statute does not require the victim to actually perform the labor or services.”).

Furthermore, the Applicant’s assertion that the backpacks were carried on some days and not others, and were picked up and deposited at various points without ever being opened, indicates that the carrying of the backpacks and their contents were unrelated to the smuggling arrangement, and is further supported by the smugglers’ references to those carrying the backpacks as being “mules.” *See* 3 USCIS Policy Manual, *supra*, at B.2(B)(7) (explaining that “[i]n some smuggling arrangements, conditions may evolve into trafficking . . . if, over the course of the smuggling, the smuggler subjects or intends to subject the person to acts beyond those agreed upon that meet the definition of a severe form of trafficking through the use of force, fraud, or coercion.”). Finally, the Applicant stated his belief that the smugglers’ ultimate intent was to keep him working for them because they stated as much to him, and had he not been apprehended by immigration officials he would likely still be working for them if unable to escape. These facts are sufficient to support a conclusion that the smugglers harbored and transported the Applicant by force, fraud, and coercion at least in part for the purpose of subjecting him to involuntary servitude while they carried out their smuggling operation. *See id.* (providing, as guidance, that “[t]he perpetrator’s motivations can be multifaceted”). The preponderance of the evidence therefore shows that, in the course of the Applicant’s journey to the United States and based on the specific facts as outlined in his statements, he was a victim of severe trafficking in persons, as required under section 101(a)(15)(T)(i) of the Act.

C. Other Eligibility Criteria Raised in the Director’s Decision

The Director determined that because the Applicant had not established that he was the victim of a severe form of trafficking in persons, he necessarily did not establish that he is physically present in the United States on account of such trafficking, pursuant to section 101(a)(15)(T)(i)(II) of the Act, and complied with any reasonable requests for assistance in the investigation or prosecution of trafficking, as required in section 101(a)(15)(T)(i)(III) of the Act. However, as the Applicant has demonstrated that he was in fact a victim of trafficking, we will remand the matter to the Director to determine whether the Applicant has satisfied these and the remaining eligibility requirements for T nonimmigrant status.

III. CONCLUSION

The Applicant has demonstrated by a preponderance of the evidence that he is the victim of a severe form of trafficking in persons. We will therefore remand the matter for the Director to determine whether the Applicant meets the remaining eligibility criteria for T nonimmigrant status under section 101(a)(15)(T)(i) of the Act.

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