



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

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

In Re: 17189731

Date: MAR. 18, 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 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 Applicant did not establish that he was the victim of a severe form of trafficking in persons and therefore necessarily did not establish that he is physically present in the United States on account of such trafficking and had complied with reasonable requests for assistance in the investigation or prosecution of the trafficking. On appeal, the Applicant submits a brief and additional evidence and asserts that the Director's decision was in error. 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 the matter to the Director 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 has 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 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 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." 22 U.S.C. § 7102(11); 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, 18 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

The Applicant is a citizen of Guatemala who last entered the United States without being admitted, inspected, or paroled in April 2019. He filed his T application in December 2019, which the Director denied. On appeal, the Applicant has not overcome the Director's grounds for denial of the T application.

A. The Applicant's Trafficking Claim

The Applicant's declaration submitted with his T application establishes the following claim: He identified as homosexual and had been physically attacked while living in Guatemala. When he tried to report the incident to the police, they laughed and insulted him. After sharing this information with his sister, who lived in the United States, she made smuggling arrangements for him to join her. The agreement was that the smugglers would be paid 30,000 quetzales in Guatemala and an additional \$5,500 U.S. once the Applicant arrived in the United States.

After a difficult journey from Guatemala through Mexico and into the United States, the Applicant arrived at a smuggling house near [REDACTED] Texas, which the Applicant described as rundown and abandoned with no running water except from a hose in the bathroom. The Applicant along with other individuals traveling to the United States were brought inside, and the smugglers took all of their personal property, including the Applicant's birth certificate. One of the smugglers told them to take off their clothes and pose for photos in order to identify them if they ran away or cooperated with the police or Immigration and Customs Enforcement (ICE) agents. The smugglers told them they had to remain in the house until they received payment from their families. They demanded a total of \$12,000 from the Applicant rather than the previously agreed upon \$5,500.

The Applicant never knew the smugglers' names, as they used nicknames that they changed in order to confuse the individuals in the house. The Applicant was "trapped" in the house for 22 days and was too afraid to try to escape. The house was always guarded by a smuggler, one of whom told the Applicant and the others that if they tried to escape, guard dogs would attack them or else the smugglers would find them and "throw them in the river." The smugglers told them they would kill anyone who disobeyed. The Applicant and the others at the house were not allowed to communicate with anyone outside the house or even look out the windows, and their phones were also taken from them.

While he was at the house, one of the smugglers raped the Applicant. The Applicant felt ashamed about what had happened to him, did not speak to anyone, could not sleep, and felt empty. The smuggler who raped the Applicant forced him to work as "the housekeeper" and take care of all the household duties for six hours a day. He was forced to cook for the 13 people in the house and clean the house including the bathroom. Although there were women in the house who were also responsible for house maintenance, one was older and in bad physical shape and another was young and was always crying because she could not cope with the abuse. The Applicant was exhausted from the journey, but the smugglers told him that if he did not cook for everyone, they would starve. He was afraid of the men because of their threats to throw them in the river or abandon them, as well as "because of what they had already done to" the Applicant. He was never paid for the work he did, nor did he receive credit for his work toward the \$12,000 that was being demanded from his sister.

One day, “after being unable to extort money” from family members of the individuals held at the house, the Applicant was “packed” into the back of a trailer one day and were driven towards [REDACTED] Texas. The vehicle was stopped at a checkpoint where he was detained by immigration authorities, which the Applicant knew indicated “hard times ahead,” but he was glad to be free from the traffickers.

In a supplemental declaration submitted in response to the Director’s request for evidence (RFE), the Applicant provided additional details regarding his claim. He stated that the doors and windows in the house in which he was held were kept locked and that he had no freedom to leave the house or go anywhere. The Applicant also stated that the smuggler who raped him, known as E-G-,¹ selected him, along with the only two women traveling with the group, to do “women’s work” because he was gay. E-G- forced the Applicant to work and do what they said by humiliating and embarrassing him. The Applicant believed E-G- raped and sexually abused him because he wanted to control the Applicant. E-G- would mock the Applicant for being gay and would remind the Applicant that he had raped him to make sure the work around the house was completed to E-G-’s satisfaction. E-G- also threatened to kill the Applicant and said that if he did not do the work, the others in the house would starve or live in filth and it would be the Applicant’s fault. As a result, the other held at the house also put pressure on the Applicant to work. E-G- carried a gun, which also made the Applicant take his threats seriously.

He described how the smugglers constantly threatened, physically hurt, and humiliated him and threatened to abandon him to make him work for them and “support the smugglers’ scheme.” E-G- also physically abused the Applicant when he was not satisfied with his work or wanted him to work faster. On one occasion, E-G- threw boiling oil on the Applicant when he wanted the Applicant to cook faster, which resulted in a severe burn and blisters on the Applicant’s arm.

In addition, the Applicant stated that “[E-G-] and the smugglers knew they wanted [the Applicant] to serve as their domestic slave because they collected [his] belongings” including his identity documents. He contended that E-G- did not treat anyone, including the women in the house, the way he treated the Applicant and that “his purpose” was to force the Applicant to work for him. They also kept him in a separate room of the house and did not allow others to help with the cleaning tasks.

The Applicant also stated that the smugglers never released the Applicant and never gave up on trying to collect additional money from his sister. Before ICE encountered them, E-G- told the Applicant that he would be taken to a different house in [REDACTED] where he could expect to receive worse treatment and where he would “continue to work in maintaining [E-G-’s] smuggling operation.”

In addition to his statements in support of his trafficking claim, the Applicant also submitted other relevant evidence, including documents related to reporting the above-noted events to law enforcement, a letter of support from his case manager at the Coalition to Abolish Slavery and Trafficking (CAST), and country of origin information about Guatemala.

¹ Initials used to protect privacy of individuals.

B. The Applicant Is the Victim of a Severe Form of Trafficking in Persons

Upon *de novo* review, we withdraw the Director's determination that the Applicant did not establish that he was the victim of a severe form of trafficking in persons.

As relevant in this case, applicants seeking to demonstrate that they were victims of a severe form of 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. 22 U.S.C. § 7102(11); 8 C.F.R. § 214.11(a) (defining the term "severe forms of trafficking in persons"). Coercion is defined as "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 . . . any person; or the abuse or threatened abuse of the legal process." 8 C.F.R. § 214.11(a).

As an initial matter, the evidence demonstrates that the smugglers recruited, transported, harbored, and obtained him through force and coercion. As the Applicant explains, the smugglers harbored him in the house in Texas using force and coercion when they held him captive in the house by locking all the windows and doors, not allowing him to leave, sexually abusing him, and threatening him with physical and sexual violence. The record also shows that one of the smugglers, E-G-, also carried a firearm and used his physical rape of the Applicant to subsequently control him while the Applicant was at the house. These actions demonstrate that the smugglers harbored the Applicant using force as well as coercion in the form of physical and sexual violence and "threats of serious harm." *See id.* (defining "coercion").

The record also establishes that in harboring the Applicant, the smugglers, particularly E-G-, had the purpose of subjecting him to involuntary servitude. As used in section 101(a)(15)(T)(i) of the Act, involuntary servitude is defined as:

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; or a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude 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, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

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).

The Director acknowledged that the smugglers abused the Applicant and required him to cook and perform other labor while he was held at the house in Texas, but nevertheless concluded that the evidence did not establish that the smugglers acted with the purpose of subjecting the Applicant to involuntary servitude. Instead, the Director determined that the smugglers harbored the Applicant for

the purpose of extorting additional payment for the smuggling operation from the Applicant's family. In making this determination, the Director erroneously found that the smugglers "released" the Applicant after they were unable to obtain the money they were demanding from the Applicant's family. However, the Applicant's statements do not reflect that the smugglers ever released him. To the contrary, they establish that he was liberated from the smugglers when immigration authorities stopped the vehicle in which the smugglers were transporting the Applicant to [redacted] and detained him. Moreover, the Applicant stated that before this encounter, E-G- specifically told him that he was being taken to a "worse" place than the house in which he had been kept where he would be continue "to work in maintaining [E-G-'s] smuggling operation." Consequently, the record does not indicate that smugglers released or ever intended to release the Applicant.

Additionally, as noted, the record reflects that during the time the smugglers harbored the Applicant at the house near [redacted] Texas, they forced him to cook and clean using coercion through physical and sexual abuse and threats of further harm to the Applicant and the others in the house. E-G-, who carried a gun and had raped the Applicant, said that if the Applicant did not cook and clean, the others in the house would starve or live in filth and the Applicant would be responsible. E-G also reminded the Applicant of the rape to ensure that the work was completed to his satisfaction. On one occasion, E-G- threw boiling oil on the Applicant when he wanted him to cook faster. Although some of the work the Applicant was forced to perform may have been a consequence of being smuggled to the United States and in furtherance of that purpose, the evidence establishes that during the course of the smuggling, E-G and the other smugglers also had the purpose of subjecting him to involuntary servitude. As the Applicant noted, the smugglers demanded \$12,000 instead of the \$5,500 that had been the agreed upon fee and told him that he had to remain in the house until his family paid this amount. He was kept locked up in the house for 22 days and forced to work during that period. Additionally, he and two women were the only ones selected from among the 13 people at the house to maintain the house and cook and clean, and E-G- the smugglers isolated him in a separate room from everyone else in the house. As stated, the Applicant's statements indicate that the smugglers were unable to obtain the money they demanded from the Applicant's family, but instead of releasing him, E-G- specifically told him that he was being taken to another house where he would be forced to continue in the same condition. Contrary to the Director's finding, there is no indication that the smugglers intended to release him once they were unable to obtain money from his family, and instead, the record as a whole indicates that the Applicant was and remained in a condition of servitude when he was taken from the house where he had been harbored to Houston and that the smugglers intended that he would continue in such a condition.

The Applicant therefore has established by a preponderance of the evidence that during the course of his smuggling, a trafficking situation arose when the smugglers harbored him through use of force and coercion for the purpose of subjecting him to involuntary servitude as that term is defined in the regulation. Accordingly, the Applicant has demonstrated that he is the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires.

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

The Director further 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 and complied with any reasonable request for

assistance in the investigation or prosecution of trafficking. We will remand to the Director to determine in the first instance whether the Applicant meets the physical presence requirement under the Act, as well as the remaining eligibility requirements for T nonimmigrant status, given our determination here that he is a victim of trafficking in persons.

III. CONCLUSION

The Applicant has demonstrated that he 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.

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