U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21402285

Date: MAY 17, 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), concluding that the evidence did not establish that the Applicant is a victim of a severe form of trafficking in persons, 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 the acts of trafficking. We dismissed the Applicant's subsequent appeal, again determining that he did not meet his burden of establishing that he was the victim of a severe form of trafficking in persons and, as a result, necessarily could not demonstrate that he is physically present in the United States on account of such trafficking and complied with any reasonable requests for assistance in the investigation or prosecution of the trafficking.

The matter is now before us on motion to reconsider. The Applicant submits a brief and reasserts his eligibility for the benefit sought. In these proceedings, 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). Upon review, we will dismiss the motion to reconsider.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as T-1 nonimmigrants 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 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). 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). 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 . . . [and] 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 . . . [and] encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury . . . ." *Id.* 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).

A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates the Applicant's eligibility for the benefit sought.

II. ANALYSIS

The Applicant, a native and citizen of Mexico, entered the United States in June 1998 without inspection, admission, or parole. In June 2018, the Applicant filed the instant T application, asserting that he was the victim of labor trafficking by smugglers who subjected him to involuntary servitude before and after his travel and entry into the United States. In our decision dismissing the appeal, which is incorporated here by reference, we determined that the Applicant had not established by a preponderance of the evidence that he was the victim of a severe form of trafficking in persons. In summary, we acknowledged that the smugglers both harbored and transported the Applicant through force and coercion but determined that the evidence was not sufficient to show that the smugglers' actions in harboring and transporting him by force and coercion were for the purpose of subjecting him to involuntary servitude. We highlighted that the record indicated that the smugglers' purpose in forcing the Applicant to perform household and yard work for two days while in Mexico and one week while held in a safehouse in the United States was for the purpose of furthering, supporting, and completing the smuggling operation, as opposed to for the purpose of placing him in a condition of servitude. We further highlighted that, although the Applicant reported having left the safehouse and built a fence on a separate property prior to being released from the smugglers' control, the record did not contain sufficient evidence to establish that he was forced or coerced into performing this labor or that the smugglers' intent in doing so was to subject him to involuntary servitude or place him in a condition of servitude.

On motion, the Applicant continues to assert that he was a victim of a severe form of trafficking as his smugglers had the purpose of subjecting him to involuntary servitude when they forced him to perform household and yard work while he was held in the safehouse in the United States[1] and that our decision to the contrary was in error. Specifically, the Applicant states that our decision acknowledged that he

[1] The Applicant does not raise or make further claims regarding his having built a fence on a separate property after leaving the safehouse on motion.

was forced to work, that forced work is involuntary servitude, and that his "labor and servitude – the forced cleaning, yard work and maintenance work – is [likewise sufficient] evidence of the traffickers' *intent* or *purpose* to harbor him and subject him to involuntary servitude." He states that it "does not matter *why* the traffickers forced [him] to perform tasks, whether those tasks furthered the smuggling enterprise, or . . . [were] for other reasons not related to labor. What matters is that the traffickers forced [him] to perform labor." He cites to and highlights language from the 2016 Interim T Rule in support of this interpretation. *See* Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status (Interim T Rule), 81 Fed. Reg. 92,266, 92,272 (Dec. 19, 2016) (stating that while it is not necessary for an applicant to actually perform work in order to establish that a trafficker acted "for the purpose of" subjecting the victim to trafficking, the "[t]he clearest evidence of this purpose would be that the victim did in fact perform labor, services, or commercial sex acts").

We acknowledge the explanatory language in the T interim rule and that the Applicant's performance of household and yard work at gunpoint and threat of violence may be sufficient to meet the definition of involuntary servitude. *See* 8 C.F.R. § 214.11(a) (defining "involuntary servitude" to include situations in which the victim "is forced to work for the defendant by the use or threat of physical restraint or physical injury"). Critically, however, the definition of a "severe form of trafficking in persons" at 8 C.F.R. § 214.11(a) requires that T applicants demonstrate that they have been recruited, harbored, transported, provided or obtained "for labor or services . . . *for the purpose of* subjection to involuntary servitude, peonage, debt bondage, or slavery." 8 C.F.R. § 214.11(a) (emphasis added). The preamble to the Interim T Rule further reiterates the operative nature of this language, highlighting the Merriam-Webster definition of purpose as "something set up as an object or an end to be attained" and stating that "the concept of 'for the purpose of' speaks to the *process of attaining* an object or end or the *intention to attain* something, but not the end result." Interim T Rule, 81 Fed. Reg. at 92,271 (emphasis added). As highlighted on appeal, the record does not sufficiently establish that the Applicant was obtained or harbored by the smugglers for the purpose of subjecting him to involuntary servitude. Instead, he describes forced work connected to furtherance of the smuggling arrangement and upkeep and maintenance of the properties in which the smugglers temporarily housed him, his sisters, and others being smuggled.

The Applicant asserts that his smugglers "*simultaneously* . . . [intended] to subject him to involuntary servitude" or, alternatively, that his smugglers "shifted their intent and subjected him" to the same once they arrived in the United States and forced him to work. He highlights language from the USCIS Policy Manual providing guidance that "[i]n cases involving smugglers, officers should look to whether the smuggler's intent may have shifted over time into that of a trafficker" and that smugglers "may also have a dual intent or shifting intent to . . . place the person into a condition of servitude, even where forced labor or services end upon completion of the smuggling arrangement." 3 *USCIS Policy Manual* B.2(b)(4) and (7), https://www.uscis.gov/policy-manual/. We again acknowledge this guidance; however, the record before us does not contain sufficient evidence to support the Applicant's assertion by a preponderance of the evidence of a dual or shifting intent on the part of his smugglers to subject him to involuntary servitude. *See* 8 C.F.R. § 214.11(d)(5) (stating that the applicant bears the burden of establishing eligibility and that USCIS determines, in its sole discretion, the weight to give the evidence submitted); *Matter of Chawathe*, 25 I&N. Dec. at 375 (laying out the preponderance of evidence standard). *See also* 3 *USCIS Policy Manual*, *supra*, at B.2(b)(7) (providing, as guidance, that "USCIS makes an individualized determination of whether trafficking has been established based on

the evidence in each particular case"). In his statement, and as highlighted on appeal, the Applicant describes his work in the safehouse as "maintenance around the house" and states that he did not know why they put him to work; "[t]hey had me doing things around their house, fixing their fence and doing other chores but I don't know why they had to force me to do the work . . . ." These statements are not a sufficient basis upon which to determine, by a preponderance of the evidence, that the Applicant was harbored and transported by force and coercion *for the purpose of* subjection to involuntary servitude, as opposed to for the purpose of the furtherance of smuggling agreement and upkeep and maintenance of the properties in which the smugglers temporarily housed those being smuggled.

Accordingly, the Applicant has not shown that our previous decision on appeal was based on an incorrect application of law or USCIS policy or that it was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Applicant has not overcome our previous determination that he has not shown that he is a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i) of the Act and 8 C.F.R. § 214.11.

ORDER: The motion to reconsider is dismissed.