U.S. Citizenship and Immigration Services

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

In Re: 25385332

Date: MAY 4, 2023

Motion of 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 Applicant's Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant did not establish that she is the victim of a severe form of trafficking, is physically present in the United States on account of such trafficking, and complied with reasonable requests for assistance from law enforcement. We dismissed a subsequent appeal, finding that the Applicant did not establish that she is the victim of a severe form of trafficking, and the matter is now before us on a motion to reconsider. The Applicant submits a brief and reasserts her eligibility for the benefit sought. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our decision was based on an incorrect application of law or 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 cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Applicant has established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and was incorrect based on the evidence in the record at the time of the decision. We find that the Applicant has not established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

The Applicant, a native and citizen of Mexico, last entered the United States in September 2019. In August 2020, the Applicant filed a T application, wherein she asserted that she is a victim of a severe form of trafficking in persons. The Director determined that the record demonstrated that smugglers transported and harbored the Applicant for the purpose of financial extortion and while doing so, the smugglers also forced her to assist in furthering and maintaining their illegal smuggling operation. However, the Director did not find that the Applicant was recruited, harbored, transported, or obtained by means of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage,

debt bondage, or slavery, as required for T applicants to establish that they are victims of labor trafficking. The T application was denied accordingly.

In our decision to dismiss the Applicant's appeal, which is incorporated here by reference, we determined that she had not met her burden to show by a preponderance of the evidence that she is a victim of a severe form of trafficking under 8 C.F.R. § 214.11 and as section 101(a)(15)(T)(i) of the Act requires. In summary, we found that a preponderance of the evidence did not demonstrate that the Applicant was the victim of trafficking as the record did not establish that the smugglers transported and harbored her for the purpose of subjecting her to involuntary servitude and peonage, as she asserted. Rather, the Applicant's account of the smugglers' actions established that they transported and harbored her for the purpose of completing their smuggling arrangement, and that they also may have extorted her during the journey. Although the Applicant correctly noted that trafficking can arise during a smuggling operation, the evidence did not support such a conclusion.[1]

On motion, the Applicant contends that USCIS committed legal error and misapplied the facts to find that the smugglers did not transport the Applicant with the purpose of placing her in involuntary servitude. The Applicant maintains that her situation turned into a case of human trafficking because it involved the transporting, harboring, and obtaining of the Applicant for labor through the use of force, fraud, and coercion. She further asserts that the "traffickers exploited [the Applicant] to obtain a particular end—labor—that was not contemplated in the original smuggling agreement." The Applicant also states that the goal of the smuggling arrangement and the purposes of involuntary servitude overlapped and that the "one facilitated and enabled the other" and while "the traffickers may have harbored Applicant in order to obtain a monetary gain, the evidence shows that they also harbored [the Applicant] for involuntary servitude since they held [the Applicant] captive and forced [the Applicant] to work." The key element in the analysis, the Applicant maintains, is "choice, or lack thereof" and as the Applicant had no choice over whether to work or not, the labor became forced and thus, involuntary servitude.

On motion to reconsider, the Applicant has not overcome the reasons for our dismissal of her appeal. Although the Applicant again argues that the smugglers had a dual intent of subjecting her to forced labor and smuggling her, the evidence is not sufficient to show that their purpose was to place her in a condition of involuntary servitude at any point during the trip, rather than to further the goals of the smuggling operation. As we previously detailed, the Applicant correctly notes that a noncitizen is not precluded from showing trafficking simply because there was also an initial smuggling agreement or because the traffickers had a monetary gain. However, as stated, it is the Applicant who bears the burden of demonstrating eligibility for T nonimmigrant classification, which he has not done here. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. at 375. The evidence does not show that the Applicant was specifically selected to perform forced labor or that the smugglers forced her to cook and clean for the purpose of placing her in a condition of servitude rather than to allow for the continuation of the smuggling operation. While the smugglers required the Applicant to pay a daily

[1] As for the Director's finding that the Applicant also did not establish that she is physically present in the United States on account of trafficking and complied with reasonable requests for assistance from law enforcement, we did not reach those issues and, therefore, reserved them, as there was no constructive purpose to addressing them because the outcome of the appeal could not change. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).

fee while they held her in the house, the evidence does not show that this was involuntary servitude or peonage rather than extortion. As such, the instant record does not establish that the Applicant's smuggling situation evolved into trafficking, as she has not demonstrated on appeal that her captors ever intended to subject or actually subjected her to involuntary servitude, or that they had any purpose beyond extorting her family for money. Consequently, regardless of whether there were mixed motives or the situation began as smuggling, the Applicant has not established that her situation evolved into trafficking or that she is a victim of trafficking.

Here, the Applicant has not established that our prior decision incorrectly applied the pertinent law or agency policy, or established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). In sum, although the captors forced the Applicant to cook and clean and carry heavy boxes with water and food, the record does not indicate that they transported, harbored, or obtained her in order to subject her to involuntary servitude, as the record does not show that they intended to place or actually placed the Applicant in a "condition of servitude." Accordingly, the Applicant has not overcome our previous determination that she has not established that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act.

**ORDER:** The motion to reconsider is dismissed.