



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 16302087

MARCH 1, 2022

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification 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), as a victim of human trafficking. 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, as required that she is physically present in the United States on account of a severe form of trafficking in persons. The matter is now before us on appeal. We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015); 8 C.F.R. § 214.11(d)(5). Upon de novo review, we will dismiss the appeal.

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 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 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) 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.”

In these proceedings, it is the applicant’s burden to establish eligibility for the requested benefit 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 citizen of Mexico, most recently entered the United States without inspection, admission, or parole in 1999. In November 2018, the Applicant filed the instant T application, asserting that she was the victim of labor trafficking. The Director denied the T application concluding that the record did not establish that she was physically present in the United States on account of having been a victim of a severe form of trafficking.

While the appeal was pending, we issued the Applicant a notice of intent to dismiss (NOID). In the NOID, we first noted that the Director's decision determined that the Applicant did not meet the physical presence requirement without first determining that she met the definition of a victim of a severe form of trafficking. We explained that considering the record as a whole, a preponderance of the evidence did not demonstrate that her claimed trafficker, [REDACTED] — or any of its representatives — intended to subject her, or actually subjected her, to involuntary servitude. We noted that the Applicant therefore did not establish that she was a victim of a severe form of trafficking as defined in the Act or regulations and provided her the opportunity to submit evidence establishing that she was such a victim. The Applicant responded to the NOID, arguing that [REDACTED] coerced and forced her and other undocumented workers into involuntary servitude through a pattern of lies, manipulation, and verbal and emotional abuse, including threats to deport them.

A. The Applicant's Trafficking Claim

The Applicant indicated in her statements that in 2009, upon a recommendation from a friend, she began working at [REDACTED]. A few months into her employment, the Applicant's paychecks were delayed, returned for insufficient funds, or if she received payment, she was paid half of her monthly wages. After she did not receive several months' pay, she complained to [REDACTED] owner who initially assured her that he would resolve the problem. When she complained a second time, [REDACTED] management told her that she "needed to work more hours a day to help the company make money." She recounted that [REDACTED] owed her between \$12,000 and \$15,000, and she incurred debt, including the accumulation of late payment mortgage fees. She further indicated that because her husband lost his job with [REDACTED] because of problems she had with the owner, their financial situation became very desperate. In addition, she stated that, "while I was not directly threatened with deportation or police involvement, I believe that the owner of [REDACTED] [name omitted], knew that I did not have legal immigration status . . . [s]o even the indirect threat of deportation was enough to cause me great distress." In 2011, [REDACTED] was sold, and she was let go by the new owner because she was not authorized to work in the United States. The Applicant explained that [REDACTED] failure to pay her caused her to experience emotional trauma, including distress from being unable to provide necessities for her family and having to witness the hardships endured by her young children. The record also indicates that the Applicant underwent a mental health evaluation with a licensed marriage and family therapist in August 2018. During the evaluation, the Applicant indicated that she continues to feel distress, sadness, and guilt for not being able to provide for her family during her employment at [REDACTED]. The therapist diagnosed the Applicant with adjustment disorder with depressed mood. The record also contains a March 2020 psychological evaluation indicating that the Applicant has continued receiving psychological services.

The record also contains a Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Supplement B), signed and certified by an Acting Regional Administrator (certifying official) of the U.S. Department of Labor Wage and Hour Division. The Supplement B was accompanied by an attachment providing a description of the conditions under which the Applicant worked while at [REDACTED]. The certifying official noted that during the last three years of the Applicant's employment, she was not paid for all hours worked and worked six days a week, often for 12-hour shifts. The certifying official indicated that in several instances, when the employees were paid, only the first few people who reached the bank would be able to cash their paycheck due to insufficient funds in [REDACTED] bank account. Local banks and stores eventually refused to cash the checks from [REDACTED] because they were known to be returned for insufficient funds. [REDACTED] assured its employees that things would improve as long as they kept working and producing, so the company could make money, thereby enabling them to pay the wages the employees were owed. The certifying official also indicated that the Applicant cooperated with their agency and complied with requests for assistance in detecting the trafficking activity.

B. The Applicant Is Not the Victim of a Severe Form of Trafficking in Persons

As noted above, applicants seeking to demonstrate that they are victims of a severe form of trafficking must show in pertinent part: (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).

In response to the NOID, the Applicant submits a brief, a personal affidavit, and declarations from former coworkers who also contend that they were trafficked by [REDACTED]. In her affidavit, the Applicant argues that she felt trapped as [REDACTED] owed her back wages, and [REDACTED] coerced her into continuing to work by promising to pay her in the future and taking advantage of her and her fellow employees' undocumented status by instilling fear of arrest and deportation by immigration authorities. We acknowledge these assertions as well as the Applicant's claims that [REDACTED] emotionally and psychologically manipulated her, and she believed she needed to continue working in hopes of receiving back pay. However, assuming arguendo that [REDACTED] obtained the Applicant through the use of force, fraud, or coercion, a preponderance of the evidence does not establish that [REDACTED] did so for the purpose of subjecting her 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).

We acknowledge that serious harm can include psychological or financial harm and that the Applicant suffered financial harm as a result of [redacted] practice of not paying her wages, while promising payment of back wages if she and her colleagues continued to work. We also acknowledge that the Applicant’s financial obligations, resulting from her personal debts and having to provide for her family, placed considerable financial and psychological pressure on her to keep working. Lastly, we acknowledge that the certifying official concluded that [redacted] was coercive when it told its workers that they needed to keep working in order for the company to make money and pay the workers’ back wages. Nonetheless, a preponderance of the evidence does not establish that [redacted] actions induced the Applicant to enter into a “condition of servitude,” a prerequisite for establishing involuntary servitude, because the record does not reflect that [redacted] coerced or forced her into “the condition of being a servant or slave,” or a prisoner sentenced to forced labor. 8 C.F.R. § 214.11(a); *Black’s Law Dictionary*, supra. In this regard, the Applicant does not assert and the record does not support that [redacted] or any of its representatives were aware of her debts and other financial obligations or intended to use those obligations to coerce her into a condition of servitude. Furthermore, the record reflects that the Applicant remained free to obtain employment elsewhere and that [redacted] and its representatives did not force her to work or continue working for the company, tell her she was prohibited from quitting, or threaten her in order to compel her to stay.

The Applicant also claims that [redacted] subjected her to involuntary servitude by threatening abuse of legal process with respect to her immigration status. In support, the Applicant notes that she heard rumors of [redacted] knowing the immigration status of its workers and threatening some with arrest and deportation. As a result, the Applicant felt distressed and that she could not complain about or report the nonpayment of her wages without risking deportation. While we acknowledge these claims, the Applicant bears the burden to establish eligibility for the requested benefit by a preponderance of the evidence, *Matter of Chawathe*, 25 I&N Dec. at 375, and there is no evidence in the record, including the Applicant’s statements, indicating that [redacted] specifically knew of or mentioned her immigration status, or directly threatened her with deportation or police involvement as a means to coerce or force her to work in a condition of servitude. As a result, the Applicant has not established by a preponderance of the evidence that [redacted] intended to subject her, or in fact subjected her, to involuntary servitude by threatening abuse of the legal process. Similarly, no evidence in the record, including the Applicant’s statements, indicates that [redacted] ever used or threatened to use physical restraint or injury in order to coerce or force her to work in a condition of servitude, as described under 8 C.F.R. § 214.11(a).

In the end, while we agree that the evidence demonstrates that [redacted] mistreated and manipulated the Applicant, the record as a whole indicates that [redacted] actions were not for the intended purpose of placing her in a condition of servitude, and thus subjecting her to involuntary servitude as that term is defined at 8 C.F.R. § 214.11(a).

Based on the foregoing, the Applicant has not established by a preponderance of the evidence that [redacted] or any of its representatives obtained her for labor and services through the use of force, fraud, or coercion for the purpose of subjecting her to involuntary servitude as required by section

101(a)(15)(T)(i)(I) of the Act. The Applicant has therefore not established that she is the victim of a severe form of trafficking in persons as required by section 101(a)(15)(T)(i) of the Act.

ORDER: The appeal is dismissed.