



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

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

In Re: 22836200

Date: DEC. 13, 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 Applicant had not demonstrated that she was physically present in the United States on account of a severe form of trafficking. The Applicant appealed the matter to us and we dismissed it. The matter is now before us on a motion to reconsider.

Upon review, we will dismiss the motion to reconsider.

I. LAW

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).

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 (trafficking); 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 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.”

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).

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).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, last entered the United States in 1994 without admission, inspection or parole. In September 2018, she filed the instant T petition, 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. She then appealed the matter to us. While her appeal was pending, we issued a notice of intent to deny (NOID) advising the Applicant that upon de novo review of the record, she had not established that [REDACTED], whom she identified as her trafficker, had obtained her for the purpose of involuntary servitude, as she claimed. Upon review of her response we issued a decision, incorporated here by reference, dismissing the Applicant's appeal on the ground that she had not established that she was a victim of a severe form of trafficking, as required at section 101(a)(15)(T)(i) of the Act.

On motion, the Applicant disagrees with the analysis in our prior decision and requests that we use the definition of involuntary servitude as set forth in *United States v. Kozminksi*, 487 U.S. 931, 952 (1988). However, we are not bound by the definition set forth by the *Kozminksi* court. Rather, we are bound by the regulation at 8 C.F.R. § 214.11(a), which defines involuntary servitude as used in section 101(a)(15)(T)(i) of the Act. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials). We lack the authority to waive the requirements of the statute, as implemented by the regulations and the Applicant has not identified, and we are unaware of, any authority that would permit the AAO or USCIS to disregard the definition provided in its own regulations for involuntary servitude. Accordingly, we will use the definition of involuntary servitude as provided at 8 C.F.R. § 214.11(a) in our analysis.

The Applicant contends on motion that [REDACTED] subjected her to a condition of involuntary servitude because she suffered serious psychological and financial harm when [REDACTED] took advantage of her and of other employees "who were undocumented and manipulated them to continue working for the company without compensation."¹ We acknowledge, as we did in our prior decision, that serious

¹ In support of this contention, the Applicant cites to *United States v. Bradley*, 390 F.3d 145, 154 (1st Cir. 2004) in which the First Circuit Court of Appeals "stated that '[f]or the purpose of showing involuntary servitude ... 'serious harm' is

harm can include psychological or financial harm. Further, we are sympathetic to the psychological and financial pressure placed on the Applicant by her personal financial obligations. However, as we noted in our prior decision, the Applicant did not offer evidence to demonstrate that [] was aware of these personal financial obligations and does not identify any such evidence in the record below on motion. Absent this evidence, the Applicant has not satisfied her burden to demonstrate, by a preponderance of the evidence, that [] used its knowledge of these financial obligations to induce her into a condition of servitude based upon the belief that she would suffer serious harm if she did not continue to work for the company.

The Applicant further argues on motion that she was subject to a condition of servitude induced by the abuse or threatened abuse of legal process when [] threatened her indirectly with deportation because the company “knew that all of the employees were undocumented” and that she and her colleagues continued to work for the company because they “believed that they had no recourses [sic] given their undocumented backgrounds.” However, as we also explained in our decision, the Applicant did not demonstrate by a preponderance of the evidence that [] specifically knew of or mentioned her immigration status, or threatened her with deportation, and does not identify such evidence in the record below on motion. She therefore has not satisfied her burden to establish that the company used this knowledge in order to induce her into a condition of servitude by the use or threat of coercion through the law or the legal process.

The Applicant bears the burden of establishing, by a preponderance of the evidence, her eligibility for T-1 classification. *Matter of Chawathe* 25 I&N Dec. 369 at 375. As discussed above, the Petitioner did not meet her burden to demonstrate, by a preponderance of the evidence that [] was aware of her financial obligations or of her immigration status and used or intended to use, this knowledge to coerce her into a condition of servitude,² a necessary condition of involuntary servitude. She therefore has not shown, by a preponderance of the evidence, that [] or any of its representatives obtained her for labor and services through the use of force, fraud, or coercion for the purpose of involuntary servitude as required by section 101(a)(15)(T)(i)(I) of the Act.

Accordingly, the Applicant has not demonstrated on motion that our prior decision, in which we determined that she had not established that she was a victim of a severe form of trafficking, was incorrect based on the evidence in the record of proceedings at the time of our decision, or that our decision was based on an incorrect application of law or policy. We will dismiss the motion as the Applicant has not satisfied the requirements of a motion to reconsider found at 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.

broadly defined as any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious under all surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring harm.”

² 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).