



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

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

MATTER OF B-J-T-G-

DATE: JAN. 7, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: 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. sections 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 she was a victim of a severe form of trafficking in persons and was not physically present in the United States on account of such trafficking. On appeal, the Applicant submits a brief and reasserts her eligibility. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Under section 101(a)(15)(T)(i) of the Act, 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.

The term “severe forms of trafficking in persons” is defined as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or 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).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 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 evidentiary value to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant is a five-year old native of Guatemala who entered the United States without inspection, admission, or parole in August 2015. She filed the instant T application in January 2017.

A. The Applicant's Trafficking Claim

According to an initial written statement by the Applicant's mother, she and the Applicant encountered four armed men as they were crossing into the United States on foot in August 2015. The men demanded money in order to let them pass. After the Applicant's mother gave all of her money to the men, they patted down the Applicant and her mother and removed their clothing. The men then sexually assaulted the Applicant and raped her mother. The Applicant's mother stated that the men threatened to harm her and the Applicant and if she told anyone what had happened. They also took photographs of the Applicant's birth certificate and of her mother's identification document. In a written statement submitted in response to a request for evidence (RFE) below, the Applicant's mother stated that after the men finished raping and threatening her, they showed her a direction and told her to continue walking straight for another ten minutes to reach the place where mothers with children get picked up by immigration authorities.

The Applicant's mother also provided a December 2016 psychological evaluation in which she disclosed that the smuggler responsible for her and the Applicant's travel to the United States left their group at an unknown location after stating that they were in the United States. However, in hindsight, she believed that the smuggler had intentionally delivered them to the men, to be victimized for their own personal gain. In a January 2018 addendum, the psychologist diagnosed the Applicant's mother with severe post-traumatic stress disorder (PTSD) and addressed her challenges in discussing the events.

In her decision below, the Director determined that while the record established that the men intended to rob the Applicant and her mother for monetary gain and that they subjected her to sexual abuse, it did not establish that the Applicant was obtained by force, fraud, or coercion for the purpose of forced labor or commercial sex trafficking.

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

On appeal, the Applicant claims that she was a victim of trafficking because she was obtained, harbored, solicited, and patronized for the purpose of a commercial sex act when the men forced a sexual act upon her as payment for her continued passage. Upon review of the entire record, the Applicant has not established her eligibility.

To demonstrate that he or she was a victim of a severe form of trafficking based on sex trafficking, a T applicant must show: (1) that he or she was recruited, harbored, transported, provided, obtained, patronized, or solicited, (2) for the purpose of a commercial sex act, (3) through the use of force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. *See* 22 U.S.C. §§ (9)-(10)(defining the terms "severe form of trafficking in persons" and "sex trafficking"); 8 C.F.R. § 214.11(a)(same).

The Applicant first claims that the Director erred in determining that she was required to demonstrate force, fraud, or coercion because she is under the age of 18 and the requirement does

not apply to her. As the trafficking definition plainly states that an applicant under the age of 18 need not demonstrate force, fraud, or coercion, the Director's determination is withdrawn.

However, the evidence does not show that the men subjected the Applicant to a severe form of trafficking, as she has not shown that they recruited, harbored, transported, provided, obtained, patronized, or solicited her for the purpose of a commercial sex act. The term "commercial sex act" is defined as "any sex act on account of which anything of value is given to or received by any person." 22 U.S.C. § 7102(4); 8 C.F.R. § 214.11(a). The Applicant claims that a commercial sex act occurred because there was an exchange of something of value—her freedom and continued passage to the United States—in exchange for the forced sexual acts. In support of her assertion, the Applicant cites to *U.S. v. Petrovic*, 701 F.3d 849, 858 (8th Cir. 2012), for the notion that "value" is a subjective term that can include both tangibles, such as money, as well as intangibles, including freedom or safety. Although the trafficking definition does not explicitly require that something tangible be given or received to show that a commercial sex act occurred, here the record does not indicate that the Applicant was subjected to a commercial sex act. While the Applicant claims that the men's decision to provide directions was valuable to her, the record does not establish that the sex acts occurred on account of or in exchange for the giving of directions. Rather, the record reflects that the men robbed her and her mother, engaged in forced sexual acts against them, and then provided her mother with directions.

The Applicant next argues that even if the men's original intent was to rob her mother, their intent shifted to sex trafficking when they realized that she did not have much money. As such, she asserts that the men ultimately approached her for the purpose of subjecting her to a commercial sex act, as a trafficker's intent may shift and even the Department of Homeland Security (DHS) has acknowledged that smuggling can turn into trafficking, in satisfaction of the trafficking definition. Here, however, while the record indicates a shift in the men's purpose from robbery to forced sexual acts, it does not indicate that they had the intent—either originally or at a later time—to subject her to a commercial sex act. The preponderance of the evidence does not, therefore, demonstrate that the men intended to subject her to a commercial sex act.

Finally, the Applicant claims that the Director erred in addressing only whether she had been obtained for the purpose of a commercial sex act, as an applicant may also establish that he or she is a victim of trafficking by having been recruited, harbored, transported, provided, patronized, or solicited. The Applicant references the plain meaning of several of these terms and claims that she was "obtained" because she was gained and attained, "harbored" because she was taken and concealed, and "solicited" and "patronized," as she was procured or taken—for the purpose of commercial sex trafficking, through the exchange of her body for continued passage. However, as previously stated, the record does not reflect that a commercial sex act occurred or that the men's purpose was to subject the Applicant to a commercial sex act. As such, even if the men obtained, harbored, solicited, or patronized the Applicant, as she has not shown that their purpose was to subject her to a commercial sex act, she has not established that she was a victim of trafficking, as required under section 101(a)(15)(T)(i)(I) of the Act.

C. The Applicant is not Physically Present in the United States on Account of Trafficking

The Director further determined that, because the Applicant did not establish that she was a victim of trafficking, she did not establish that she was physically present in the United States on account of trafficking. As the Applicant has not established that she was a victim of trafficking, on appeal she has not overcome this ground for denial.

III. CONCLUSION

We acknowledge that the Applicant encountered difficult and violent circumstances when she was subjected to forced sexual acts at a young age as she traveled to the United States. However, the Applicant has not demonstrated that she was recruited, harbored, transported, provided, obtained, patronized, or solicited for the purpose of a commercial sex act. Consequently, she has not established that she was a victim of a severe form of trafficking in persons.

ORDER: The appeal is dismissed.

Cite as *Matter of B-J-T-G-*, ID# 1810655 (AAO Jan. 7, 2019)