U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15857120

Date: APR. 7, 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 Applicant's Form I-914, Application for T Nonimmigrant Status (T application), concluding that although the Applicant sufficiently demonstrated that a law enforcement agency (LEA)[1] liberated him from a trafficking situation in [redacted] 2010, he did not sufficiently establish that his continued physical presence in the United States since then, and when he filed his T application in July 2018, was directly related to his original trafficking. On appeal, the Applicant submits a brief and additional evidence and asserts that the Director's decision was in error. We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as a T-1 nonimmigrant 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) 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."

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). An applicant may submit any credible evidence for us to consider in our

[1] The term "LEA" refers to "a Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons." 8 C.F.R. § 214.11(a).

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

A. Procedural History

The Applicant is a citizen of Honduras who last entered the United States without inspection, admission, or parole in 2004, when he was 19 years old. He filed this T application in November 2018, claiming he was a victim of labor trafficking for approximately six years from 2004 through 2010.

The Director denied the T application, finding that although the Applicant sufficiently demonstrated that an LEA, specifically Immigration and Customs Enforcement (ICE), liberated him from his trafficking situation in [redacted] 2010, as required by 8 C.F.R. § 214.11(g)(1)(ii), he did not establish that his continuing physical presence in the United States since 2010 was "directly related to [his] original trafficking situation." The Director further found that the Applicant did not establish that he was physically present on account of a severe form of trafficking in persons. As a result, the Director concluded that the Applicant did not establish eligibility for T-1 nonimmigrant classification under section 101(a)(15)(T)(i) of the Act.

On appeal, the Applicant asserts that he is only required to establish the LEA liberation from severe trafficking requirements under 8 C.F.R. § 214.11(g)(1)(ii), and that the Director erred in requiring him to also establish that his continued physical presence in the United States after liberation by ICE was directly related to his original trafficking. In the alternative, the Applicant contends that he has established that his continued physical presence in the United States, both since his trafficking situation ended in [redacted] 2010, and when he filed his T application in July 2018, is directly related to his original trafficking situation. To support his assertions, the Applicant has submitted into the record personal declarations, a psychological evaluation, victim assistance and medical information, a police report and court documents, and articles on trafficking and country conditions.

B. The Applicant's Trafficking Claim

The Applicant's personal declarations in the record set forth the following claim: he entered the United States illegally in July 2004, at the age of 19, and began working at a restaurant in Connecticut in August 2004. The restaurant owner, A-S-,[2] knew he was in the country illegally, and the Applicant worked at A-S-'s restaurant until 2010, when ICE raided the restaurant, arrested A-S-, and the restaurant was closed.

The Applicant worked at the restaurant 6 days a week from 10:30 am to 10:30 pm, he was paid only around $1,200 a month, and he was always busy and tired. The Applicant also lived at A-S-'s home; his lodging was in a crowded basement room; he was not allowed visitors and had no privacy; and A-S- drove him and other similarly situated workers to and from work and never allowed them to be on their own. In addition, A-S- forced the Applicant to repair things at the home for free, and to give

[2] We use initials to protect individual's identity.

him massages while A-S- was not dressed, which made the Applicant feel embarrassed and uncomfortable.

The Applicant borrowed $10,000 from A-S- in 2006, and afterwards he was required to work at the restaurant all day, every day, in order to pay back the loan. After 2006, A-S- only paid him $100–$200 per paycheck, and when he asked A-S- how much he still owed, the amount of the loan never decreased. A-S- yelled at him and threatened to have the police arrest and deport him if he did not repay his loan. Because of this, the Applicant was afraid to complain or report his situation to the police and he felt like he was owned and had no choice but to remain in his situation.

The Applicant was freed from his situation in [redacted] 2010 after ICE raided A-S-'s restaurant. The Applicant stayed with friends after that and found another job about two weeks later. The Applicant also cooperated with ICE officers by answering their questions and offering to be a witness against A-S-, although he was never asked to do so.

C. Liberated from a Severe Form of Trafficking in Persons by an LEA

In addition to establishing they are, or have been, a victim of a severe form of trafficking in persons, an applicant for T nonimmigrant classification must be physically present in the United States on account of trafficking. Section 101(a)(15)(T)(i)(II) of the Act. In determining the physical presence requirement, U.S. Citizenship and Immigration Services (USCIS) must consider a T applicant's presence in the United States at the time the application is filed. 8 C.F.R. § 214.11(g)(1); *see also Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92273 (Dec. 19, 2016) (noting that the language of the physical presence requirement under the Act is phrased in the present tense and is interpreted as requiring "a consideration of the victim's current situation, and a consideration of whether the victim can establish that his or her current presence in the United States is on account of trafficking").

The physical presence requirement may be met by an applicant who at the time of filing: (i) is currently being subjected to trafficking; (ii) was liberated from trafficking by an LEA; (iii) escaped from trafficking before an LEA was involved; (iv) was subject to trafficking in the past and their continuing presence in the United States is directly related to such trafficking; or (v) was allowed to enter the United States to participate in investigative or judicial processes related to the trafficking. 8 C.F.R. § 214.11(g)(1)(i)-(v). To establish physical presence under (ii), applicants need only demonstrate that law enforcement assisted in liberating them from their trafficking situation and that they are present in the United States at the time of filing, regardless of the amount of time that has passed between their and the filing of the T visa application. *See* 3 *USCIS Policy Manual* C.1, https://www.uscis.gov/policy-manual (explaining, as guidance, that if an applicant establishes that they were liberated from a trafficking situation by an LEA, they can establish physical presence regardless of the timeline between the liberation and the filing of their T application).

Upon *de novo* review, as the Director correctly determined, the Applicant has established by a preponderance of the evidence that ICE liberated him from a situation of a severe form of trafficking in [redacted] 2010. The record contains immigration documentation showing that ICE raided the Applicant's worksite around [redacted] 2010 [redacted] for operating an international smuggling ring and depriving employees of basic rights and freedoms. A Department of Justice article

dated in [redacted] 2010 also reflects this, and court documents demonstrate further that A-S- was charged in district court with recruiting and hiring workers with no authorization to work. Additionally, the immigration documents reflect that ICE encountered the Applicant during their raid and that they subsequently interviewed him about his working conditions. Immigration documents show further that the Applicant consistently told immigration officers in 2010 that: he worked at A-S-'s restaurant for several years; he worked about 68 hours a week; he lived with A-S- and other employees during that time; and A-S- always drove him to and from work. Overall, the Applicant has established that he was liberated from a trafficking situation by ICE, an LEA, in 2010. Evidence in the record also establishes that the Applicant was physically present in the United States when he filed his T application. Therefore, the Applicant has established by a preponderance of the evidence his physical presence on account of trafficking under 8 C.F.R.§ 214.11(g)(1)(ii).

The Director also determined that, under 8 C.F.R. § 214.11(g)(1), the Applicant was required to demonstrate that his continued presence in the country, both after ICE liberated him from a severe trafficking situation in [redacted] 2010, and when he filed his T application in July 2018, was directly related to the original trafficking situation. We withdraw from this determination, as the "directly related" requirement is only applicable to those who seek to establish physical presence under 8 C.F.R. § 214.11(g)(1)(iv).

III. CONCLUSION

The Applicant has overcome the basis for the Director's denial as he has established by a preponderance of the evidence that he was liberated from a trafficking situation by an LEA and is physically present in the United States as a result of trafficking as required under 8 C.F.R. § 214.11(g)(1)(ii). We will therefore remand this matter to the Director to determine in the first instance whether the Applicant meets the remaining eligibility criteria for T nonimmigrant classification under section 101(a)(15)(T) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.