



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

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

In Re: 16854280

Date: APR. 22, 2022

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 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 did not establish that he is physically present in the United States on account of such trafficking. A subsequent motion to reopen and reconsider was then dismissed because the Applicant did not present new facts or establish that the prior decision was in error. On appeal, the Applicant submits an updated statement and a new letter from his trafficking survivor advocate. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Upon *de novo* review, we will remand this matter for further proceedings consistent with this decision.

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 the trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. The term "severe form of trafficking in persons" is defined 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." 8 C.F.R. § 214.11(a) (2017).

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, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

In his updated statement submitted on appeal, the Applicant describes how he was brought to the United States around 2001 by one of his three uncles, who arranged to have him smuggled into the United States and who falsely promised him stability once he arrived. The Applicant explains how, when the Applicant was 16 years old his father, who was an alcoholic and abused him, was murdered. After his father's murder, his uncle offered to bring him to California. Once in California, his uncle arranged for him to work construction, but he states that this only lasted 2-3 weeks when he was fired because he was only 17 years old. He indicates that he never saw any pay from his boss or his uncle during this employment.

The Applicant then relates that when his uncle was unsuccessful in attempting to find him more work, he started to work for his uncle selling drugs. He describes how his uncle would have him take small amounts of drugs to a person's home and collect payment from them. His uncle told him he would be paid for his work, but he never received any payment. Instead, his uncle asserted that the Applicant needed to work to pay him back for the cost of transporting him to the United States. The uncle later indicated that the Applicant also had to start paying for rent and a portion of the bills. The Applicant describes being intimidated after he learned that his other uncle was also involved in selling drugs and after observing how many people were colluding in the drug enterprise. He states that he never felt comfortable helping his uncle in his drug business, but, as a 17-year-old, with no other family or home, he felt he had no choice. The Applicant indicates that he contemplated not doing what his uncle asked, but was afraid of being beaten, starved, and moved around from home to home. He also states that he feared his uncle would no longer allow him to live with him or would call the police on him. The Applicant relates that he is and was very scared to return to Mexico. For these reasons, the Applicant states, he complied with whatever his uncle asked him to do and did not question his uncle when he was never given any payment for his work. The Applicant describes further how, although his uncle was supposedly taking his pay and putting it toward his debt, he never knew what exactly the debt amount was and it seemed to only increase, not decrease.

In less than two months, the Applicant and his uncle were arrested for selling drugs. The Applicant describes how police arrived while his uncle was out running errands and that before his uncle left, he gave him all of the drugs he had, in small balloons, and told the Applicant to put them in his own pocket. While in jail, the Applicant states that he was searched and the drugs in his pocket were discovered. He then spent eight months in juvenile detention before being transported to Arizona, where he spent time in a detention center before being removed to Mexico.

The Applicant reports being removed to [REDACTED] Mexico and how upon his arrival, with no other family or support system, he resorted to contacting his uncle again. The Applicant indicates that his uncle told him that he needed him to come back and finish working off the debt that he owed him. The Applicant claims that his uncle demanded he come back to the United States, stated he had made all of the arrangements, and referred to him as "his property," because he allegedly still owed the uncle money. He explains that he was overwhelmed and scared, so he followed his uncle's order, crossing the border in a taxi with a small group of people. He states that his uncle was in California waiting for him and they then drove together to Washington. Shortly after his arrival in Washington, the Applicant describes working with his uncle to install siding from 6AM to 7PM or 8PM. He states that they worked like this for a few months, but he never saw any wages for his work because his uncle

took them. The Applicant describes that his next job was as a landscaper and that this employment was the first time his uncle would allow him to keep some of his pay. He explains how he would work 12 hours per day, but his uncle would only give him \$80 to \$100 per week. After a few months of working in this job, he states that his uncle was again arrested. However, the Applicant explains that he was not free because his aunt and other uncle began taking his pay, reportedly forcing him to pay for the debt he supposedly owed them. He states that he was able to save very little and the rest would go to them.

Then, in early 2005, the Applicant described being able to find his own employment for the first time and feeling more in control of his own life, but also reports continuing to pay his aunt and uncles in an effort to pay off the alleged debt he owed them. In 2006, he states he met his wife, moved in with her, and was able to eventually have the courage to stop paying his aunt and uncles. He states that his other uncle was also arrested and then removed from the United States in 2010. In 2019, the Applicant filed his T application and the Director found him to be a victim of a severe form of trafficking.

A. Physical Presence in the United States on Account of Trafficking

The physical presence requirement reaches an applicant who at the time of filing: is currently being subjected to trafficking; was liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved; was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or 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)-(iv). In evaluating the evidence of the physical presence requirement, U.S. Citizenship and Immigration Services (USCIS) may consider when an applicant escaped the trafficker, what activities he or she has since undertaken to deal with the consequences of having been trafficked, and his or her ability to leave the United States. 8 C.F.R. § 214.11(g)(4).

However, applicants who have voluntarily departed from or have been removed from the United States at any time after having been trafficked will not be considered physically present on account of such trafficking, unless they demonstrate that: (1) their reentry into the United States was the result of their “continued victimization”; (2) they are a victim of a new incident of trafficking; or (3) they were allowed reentry for participation in investigative or judicial processes relating to an act or perpetrator of the trafficking. 8 C.F.R. § 214.11(g)(2)(i)-(iii). Applicants who departed the United States after having been trafficked and subsequently reentered must establish that they are physically present in the United States on account of such trafficking under both 8 C.F.R. § 214.11(g)(1) and (g)(2).

In their initial decision, the Director concluded that the Applicant had not submitted sufficient evidence to establish that he was physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires. The Director found that because the Applicant had been removed from the United States, to establish his physical presence was on account of his trafficking, he had to demonstrate that his reentry was the result of continued victimization, a new incident of trafficking, or to allow for participation in the investigation related to the perpetrator of his trafficking. See 8 C.F.R. § 214.11(g)(2). The Director concluded that the Applicant had not established any of these criteria. The Director also concluded that the Applicant had not established his physical presence was directly related to his trafficking because of ongoing trauma directly related to his trafficking which requires his physical presence in the United States.

In the brief submitted with his motion to reopen and reconsider, the Applicant asserts that his reentry was a result of his continued victimization and on appeal, provides new facts regarding this reentry. The term “continued victimization” at 8 C.F.R. § 214.11(g)(2)(i) is not defined in the regulation, but the Act and regulation require T victims of severe forms of trafficking in persons to establish that they are “physically present in the United States... on account of such trafficking.” Section 101(a)(15)(T)(i)(II) of the Act; 8 C.F.R. § 214.11(b)(2), (g). As stated in detail above, the Applicant was removed to Mexico after spending eight months in juvenile detention for selling drugs for his trafficker, his uncle. The Applicant, having been previously isolated from other family members by his trafficker, reports having no other family support to rely on except his uncle. The Applicant indicated that when he contacted his uncle, the uncle told him that he needed him to come back and finish working off the debt that he owed him. The Applicant explains that he was overwhelmed and scared, so he followed his uncle’s order, crossing the border in a taxi with a small group of people. The Applicant also relates that when he did return to his uncle, he was again made to work to pay off his alleged debt. Here, given the Applicant’s personal circumstances as a result of his trafficking as well as the fear and influence his trafficker had over him, we find, the Applicant has established that his reentry was the result of continued victimization by his trafficker, as 8 C.F.R. § 214.11(g)(2) requires. When the Applicant’s victimization continued, he was in a vulnerable situation. He had just recently turned 18 years old, and he had spent the previous eight months in juvenile detention. His uncle was his sole source of support and the only family member who had previously cared for him, while unfortunately simultaneously victimizing him. When he called on his uncle for help, the Applicant admits being overwhelmed and scared, so he followed his uncle’s orders to return to the United States. Thus, considering these factors together, we find the Applicant’s reentry was the result of continued victimization by his trafficker.

In addition, we find the Applicant has now shown, with new evidence on appeal, that his physical presence in the United States is on account of his trafficking because the record establishes he is experiencing ongoing persistent emotional trauma directly related to his trafficking which requires his physical presence in the United States. For instance, the Applicant describes, in his updated personal statement submitted on appeal, that he has suffered ongoing mental health concerns because of his past trafficking, including anxiety, insomnia, depression, feelings of being overwhelmed, and stress. He also reports having difficulty seeking help and speaking out about his feelings because of his upbringing. In 2017, a therapist diagnosed him with post-traumatic stress disorder (PTSD), depression, and anxiety and in 2019 the Applicant attended six individual therapy sessions from May through July. Notably, these therapy sessions addressed the Applicant’s trafficking victimization. In addition, a letter from the Applicant’s trafficking survivor advocate, also submitted on appeal, indicate she is accessing services related to his victimization. Thus, the Applicant has shown he began accessing trafficking-related services in the United States to help heal from his trauma before he filed his T application in 2019.

The Applicant has addressed the deficiencies in the record as found by the Director and shown his continuing presence is directly related to the original trafficking as 8 C.F.R. § 214.11(g)(1) requires and that his reentry into the United States was the result of their “continued victimization” as 8 C.F.R. § 214.11(g)(2) requires. Thus, he has satisfied the physical presence requirement under section 101(a)(15)(T)(i)(II) of the Act. We will remand the matter for the Director to make a determination

of 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.