



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

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

In Re: 18954925

Date: FEB. 3, 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 the 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 evidence did not establish that the Applicant is physically present in the United States on account of a severe form of trafficking in persons. The Director then dismissed the Applicant's subsequent motion to reopen and reconsider, affirming their previous finding. The matter is now before us on appeal. The Applicant submits a supporting brief, five non-precedent decisions issued by this office, and previously submitted evidence asserting her eligibility.

We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 they: are or have been a victim of a severe form of trafficking in persons; 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 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).

The requirement that an applicant be physically present in the United States on account of such trafficking reaches an applicant who at the time of filing: (i) is currently being subjected to trafficking; (ii) was liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved, subject to 8 C.F.R. § 214.11(g)(2); (iv) was subject to trafficking in the past and their continued 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). In evaluating the evidence for the physical presence requirement, U.S. Citizenship and Immigration Services (USCIS) may consider when an applicant escaped the trafficker, what activities they have since undertaken to deal with the consequences of having been trafficked, and their ability to leave the United States. 8 C.F.R. § 214.11(g)(4).

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, 376 (AAO 2010). Although applicants may submit any relevant, credible evidence for us to consider, USCIS determines, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

In this case, the Director found that the Applicant, who applied for T-1 nonimmigrant classification in September 2018, did not establish that she was physically present in the United States on account of a severe form of trafficking in persons, as required.

A. The Applicant's Trafficking Experience

The Applicant describes how she experienced labor trafficking for approximately one month in November 2005. She states that in Mexico her family, including three small children, were suffering as she was not able to find work. The Applicant asserts that a woman in [REDACTED] Ms. V-, offered to bring her to the United States where she could find work to support her family. She agreed to go with Ms. V-, being under the impression that she would be free to work and send money back to her family. Then, the Applicant describes being smuggled into the United States and brought to a home in New Mexico.

She states that the morning after her arrival she began working at a shopping mall as a janitor and dish washer. She explains how she soon realized that she was working under the identity documents of Ms. V-, who would receive her paycheck and keep her earnings. The Applicant states that she did not know how much money she was being paid and was told she had to work off her smuggling debt but was unaware of how much her smuggling cost. She asserts further that she worked every day, from 5AM to 10PM, for over a month, with the exception of one day off and never received any compensation. Ms. V- told the Applicant that she was sending money to her family and children in Mexico but was later told by her family that no money was sent. The Applicant describes not being allowed to have her own money and everything she needed had to be purchased through Ms. V-. She also states that she was not allowed to speak with her family, until her mother's birthday on November 26th when Ms. V- allowed her to call her mother. The Applicant explains that during this phone call she found out the Ms. V- was not sending any money to her family. After this phone call, the Applicant confronted Ms. V- about not sending money to her family, Ms. V- become aggressive and defensive. The Applicant contends that Ms. V- told her if she did not do exactly as she said, she would be deported or something bad would happen to her or her family. The Applicant states that she was terrified of Ms. V-.

She then relates how one afternoon Ms. V- came to the mall where she was working and told her they were leaving for [redacted] New Mexico to clean offices. She was then told to drink a “shake,” because she needed to eat as it would be a long drive to [redacted]. The Applicant indicates that she believed this shake contained drugs to make her sleep because during the car ride she felt paralyzed and was semi-conscious. When she woke up, the Applicant asserts that she was at a bus station in [redacted] Texas and one of the men living with Ms. V- gave her a bus ticket back to [redacted]. However, the Applicant explains that she could not use the bus ticket because Ms. V- had kept all of her identity documents. She states that she was able to cash in the ticket for some money and then called a relative who lived in [redacted] to pick her up.

The Applicant explains further that she does not want to return to Mexico because she fears Ms. V-, who travels back and forth from the United States to [redacted]. The Applicant has been in the United States since 2005 and, in her statement, she relates that from her escape until 2018, she was struggling emotionally, but could not return to Mexico because she feared her trafficker’s family in Mexico, who lived close to her family and had a reputation for violence. She states she was also frightened to report the trafficking to police. The Applicant emphasizes how her trafficker threatened that something bad would happen to her or her family if she disobeyed and that Ms. V- drugged her. She also explains that she was not able to process her emotions or find access to services to help her with her emotional well-being until 2018 and is concerned she will be unable to access services in Mexico.

B. Physical Presence

In their decisions, the Director found the Applicant did not show her physical presence in the United States was on account of her trafficking, as required under 8 C.F.R. § 214.11(g)(1)(iv). In the initial decision, the Director acknowledged that the Applicant claimed to fear her trafficker in Mexico, so she did not return home, but the record did not show she had any contact with her trafficker since shortly after her escape in late 2005/early 2006 and thus, her current situation did not appear to include being fearful of her trafficker. In their motion decision, the Director denied the Applicant’s motion to reopen because she had not presented new material facts. In addition, the Director also denied the motion to reconsider, finding that although the Applicant previously submitted evidence of receiving services to help her recover from her victimization, the record demonstrated she was present in the United States to find employment and send money back to her children.

On appeal, the Applicant re-submits evidence of the emotional health services she is receiving in New Mexico because of her trafficking; statements explaining the gap in time between her 2005/2006 escape and 2018 accessing of services; and documentation of her inability to leave the United States. This evidence includes, but is not limited to, three personal statements, a letter from the Applicant’s case manager at the [redacted] Crisis Treatment Center, evidence the Applicant has been prescribed an anti-depressant, a 2019 Trafficking in Person Report for Mexico; and an updated psychological assessment from a psychotherapist. In her brief, she contends that she satisfies the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iv), as an individual who was subjected to a severe form of trafficking in the past and whose continuing presence in the United States is directly related to such trafficking, because she suffers ongoing trauma from her trafficking and is now receiving the support necessary to process and overcome this trauma. She contends further that the Director’s decisions are in error because they apply a heightened evidentiary standard to the physical presence requirement.

Our review indicates that the Applicant has shown that she has met the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iv). For instance, although the Applicant did not seek services from 2005/2006 to 2018, she does attest to experiencing trauma symptoms stemming from her trafficking experience during this entire time, including anxiety, hyperarousal, inability to trust, problems concentrating, and insomnia. In addition, she also describes how, as a victim of trafficking and person unlawfully residing in the United States, she was fearful, and it was difficult for her to trust people or to access services and receive help for her trauma. She relates how she was ignorant about laws and victim protection in the United States, which prevented her from coming forward about her experience. Regarding the services she began accessing in 2018, her psychological evaluation reflects she has been diagnosed with Post-Traumatic Stress Disorder and was prescribed 10 individual therapy sessions. Evidence in the record also includes a current prescription for Amitriptylin, an anti-depressant medication.

Finally, the Applicant throughout her statements attests to her inability to leave the United States and return to Mexico over fears of her trafficker's family and her lack of access to mental health services in Mexico. On appeal, she acknowledges the Director's observation that her trafficker has not tried to contact her or her family since her escape but indicates that she still remains fearful because although she escaped in 2005/2006, she reported her trafficker to authorities in 2018. She reiterates that her trafficker threatened to harm her if she ever told anyone about the trafficking. She also repeats that her trafficker's family lives close to hers in Mexico and they are a family known for violence. Moreover, she explains that her fears are heightened by her perceptions of the Mexican judicial system- criminals are not held accountable and retaliate against victims for reporting their activities. Furthermore, the Applicant also attests to her inability to return to Mexico because she believes she will not be able to access the services she needs to cope with the trauma that resulted from her trafficking experience. The record does contain a report on the availability of specialized services for trafficking victims, which are described as being limited and unavailable in most parts of the country. In sum, the Applicant has shown that in the time from her escape in 2006 to 2018 she has experienced numerous symptoms of trauma, was largely unable to access treatment due to these symptoms and was fearful of leaving the United States to return to Mexico. In addition, the Applicant has shown she began accessing services in the United States to help her heal from her trauma before she filed her T application in 2018.

The Applicant has addressed the deficiencies in the record as found by the Director and shown her continuing presence is directly related to the original trafficking as 8 C.F.R. § 214.11(g)(1)(iv) requires. Thus, she 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.