



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

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

In Re: 19903506

Date: JAN. 31, 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 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 he was physically present in the United States on account of a severe form of trafficking. The matter is now before us on appeal. 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); 8 C.F.R. § 214.11(d)(5). Upon de novo review, we will dismiss the appeal.

I. LAW

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) 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."¹

The physical presence requirement reaches applicants who at the time of filing: are currently being subjected to trafficking; were liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved, subject to 8 C.F.R. § 214.11(g)(2); were subject to trafficking in the past and "whose continuing presence in the United States is directly related to the original trafficking"; or were 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 of the physical presence requirement, USCIS may consider when applicants escaped their traffickers,

¹ The definition of trafficking also includes "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." *Id.* The Applicant does not allege nor does the record support that he was a victim of sex trafficking.

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, 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 weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a 36-year-old native and citizen of El Salvador, last entered the United States without being inspected, admitted, or paroled on or about August 2005. In August 2018, he filed his T application claiming he was recruited by his employer through fraud and coercion for the purpose of subjecting him to involuntary servitude. The Director denied the T application explaining that the Applicant had not established his physical presence in the United States is on account of his trafficking. On appeal, the Applicant asserts the Director failed to consider his eligibility under 8 C.F.R. § 214.11(g)(1)(iii), as he escaped his trafficker before an LEA became involved. However, the Applicant has not established by a preponderance of the evidence his eligibility under 8 C.F.R. § 214.11(g)(1) and as required by section 101(a)(15)(T)(i)(II) of the Act.

A. The Applicant's Trafficking Claim

According to his personal statement submitted below, the Applicant's father was working in the United States for [REDACTED] and his father asked a supervisor, B-,² if the Applicant could also have a job. The Applicant said he was promised a job if he came to the United States but did not state who promised him a job. In August 2005, he stated he traveled to the United States from El Salvador. He stated he had heard that the work at [REDACTED] would be hard but thought he would earn enough money to support his family in El Salvador and repay his debt for traveling to the United States. When he arrived, he stated he was surprised to discover how small his living arrangements were but he went to B- and filled out an application for employment. He said he started working in September 2005 laying grass and then took on additional duties, such as shoveling snow and cleaning up trash. He said he was paid \$8.50 per hour and received raises until he was earning \$10 per hour in 2007. He described working between 50-70 hours per week, but said he was often paid for 40 hours of regular pay and five hours overtime. He also stated he would often work weekends and not receive pay for it, despite B-'s assurances that the pay would be forthcoming. He said he worked under "tough" and "dangerous" work conditions and said he hurt his back. He explained he did not file a complaint against his employer because he heard that other workers who had filed complaints ended up in more debt because [REDACTED] would not pay medical costs or fired an employee for taking sick time. He described being shouted at, humiliated, and constantly pressured to work faster. He stated that in 2008, he learned from a friend that another company was hiring and so he left [REDACTED]. He said when he left [REDACTED] he was still in debt from his trip to the United States and could not afford to return. He described currently working in construction, building foundations for houses. He said he takes an over-the-counter pain medication for his back and

² Initials are used to protect the identities of the individuals.

provided medical documentation stating he has a “mild DDD” with “a small central disc bulge.” An explanation for the diagnosis and how this affects the Applicant’s daily life was not provided. He further stated he is in a serious relationship and does not want to return to El Salvador because of current country conditions.

The Applicant submitted an affidavit dated April 2015 by a supervising attorney of a nonprofit legal services organization representing former [redacted] employees in civil litigation. The attorney stated that as a result of the information provided by former [redacted] employees, the Department of Labor (DOL) opened a criminal investigation into [redacted] on suspicion of visa fraud, unemployment fraud, and other criminal activity. The attorney did not specify what other criminal activity was investigated. The attorney further stated that a number of [redacted]’s senior management officials pled guilty to charges relating to immigration fraud and unemployment compensation fraud. The author further stated that the civil cases brought by her organization have been settled. In a letter submitted in response to the Director’s request for evidence, the Applicant stated that after he learned about the DOL’s investigation of [redacted] he offered his name and facts about his experience to the DOL’s Office of the Inspector General in October 2015. He adds that his information was forwarded to the U.S. Attorney’s Office but no requests for additional information or further follow up was requested from him.³

B. The Applicant Is Not Physically Present in the United States on Account of Trafficking

The Applicant, who bears the burden of proof in these proceedings, has not demonstrated that he is physically present in the United States on account of a severe form of trafficking under 8 C.F.R. § 214.11(g)(1).⁴

The Applicant asserts on appeal that he meets the physical presence requirement as an applicant who escaped trafficking before an LEA became involved, pursuant to 8 C.F.R. § 214.11(g)(1)(iii). Although the term “involved” is not defined in the regulations, it requires more than passive receipt by law enforcement of a report of trafficking. 3 USCIS Policy Manual B.2(C)(1), <https://www.uscis.gov/policymanual>. This requirement “can be satisfied by demonstrating that an LEA interviewed the applicant or otherwise became involved in detecting, investigating, or prosecuting the trafficking after the applicant escaped.” Id. The Applicant states he contacted a special agent in the DOL’s Office of the Inspector General. He included an email by another attorney working for the non-profit legal services organization representing former [redacted] employees. The attorney’s email stated, in relevant part, that additional [redacted] workers have contacted their organization and are willing to participate in an investigation and speak to how [redacted] treated Salvadoran workers. The attorney requested to be contacted if the recipient wished to speak to the

³ The Applicant submitted documentation, including evidence supporting his trafficking claim, such as articles discussing claims brought against his former employer. While we may not discuss every document submitted, we have reviewed and considered the entirety of the record.

⁴ In the record below, the Applicant claimed that he met the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iv) because his continued presence in the United States is directly related to his trafficking. The Director determined that the Applicant had not established his physical presence under 8 C.F.R. § 214.11(g)(1)(iv). The Applicant does not assert his eligibility pursuant to 8 C.F.R. § 214.11(g)(1)(iv) on appeal and the issue is deemed waived. The Applicant also does not assert his eligibility under 8 C.F.R. § 214.11(g)(1)(i), (ii), or (v), so we solely limit our review to whether the Applicant has met the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iii).

workers. The Applicant also submitted a table which may have been attached to the email sent to the special agent. The table contained the Applicant's name, as well as the name of other individuals, and included their dates of birth and a summary of the "type of information [the] worker can provide." The attorney received a response by the special agent which stated, "thank you for the information and I will send it on to the [U.S. Attorney's Office] to see if they want to address any additional conduct." The Applicant does not claim he was subsequently contacted by law enforcement for an interview to further investigate his claim or that an LEA became actively involved in detecting, investigating, or prosecuting acts of trafficking after receiving the Applicant's tip. Rather, the Applicant describes how the non-profit legal services organization brought [redacted] to the attention of law enforcement, and that law enforcement brought charges against the company's officials for unemployment and immigration fraud after the Applicant stopped working for the company. However, the Applicant has not established that law enforcement previously detected, investigated, or prosecuted trafficking by [redacted]

Accordingly, the preponderance of the evidence does not establish that the Applicant escaped trafficking before an LEA became involved as 8 C.F.R. § 214.11(g)(1)(iv) requires. The Applicant therefore does not qualify for T nonimmigrant classification.

III. CONCLUSION

The Applicant has not established his eligibility for T-1 classification because he has not demonstrated he is physically present in the United States on account of a severe form of trafficking.

ORDER: The appeal is dismissed.