



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

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

In Re: 20946517

Date: MAR. 15, 2022

Motion on Administrative Appeals Office 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) and we dismissed the Applicant's subsequent appeal. She now files motions to reopen and to reconsider, asserting that she has established eligibility for T-1 nonimmigrant classification. Upon review, we will grant the motion to reopen and remand the matter to the Director for the issuance of a new decision. The motion to reconsider is moot.

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 physical presence requirement requires U.S. Citizenship and Immigration Services (USCIS) to consider the applicant's presence in the United States at the time of application. 8 C.F.R. § 214.11(g)(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, 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).

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 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 42-year-old native and citizen of Mexico, filed her T application in October 2018. The Director denied the T application, concluding that the Applicant had not demonstrated that she was a victim of a severe form of trafficking in persons, and as a result, had not established that she complied with any reasonable requests for assistance in the investigation or prosecution of trafficking. The Director further determined that the Applicant's "statements and supporting evidence [did] not demonstrate" she was physically present in the United States on account of a severe form of trafficking. In our decision dismissing the appeal, hereby incorporated by reference, we concluded that the Applicant had established she was a victim of a severe form of trafficking but she had not established she was physically present in the United States on account of a severe form of trafficking. On appeal, the Applicant asserted she was subjected to trafficking in the past and her continued presence in the United States is directly related to her trafficking, pursuant to 8 C.F.R. § 214.11(g)(1)(iv).¹ More specifically, she claimed her continued presence was due to her fear of her former trafficker harming her and the trauma the trafficking has caused her. In our analysis on appeal, we noted that the Applicant had not explained why or how her trafficker would be incentivized to locate and harm her. We also explained that, according to the record, she suffered years of abuse by her ex-boyfriend and that the documents submitted did not provide sufficient details or analysis of her symptoms and trauma as they relate to her trafficking, or how these symptoms and trauma affect her day-to-day life.

On motion, the Applicant again asserts her physical presence, pursuant to 8 C.F.R. § 214.11(g)(1)(iv), and includes a psychological evaluation, adding details surrounding her claim that her continued presence in the United States is directly related to her trafficking. She also provides a declaration by her attorney to addresses whether the Applicant has complied with reasonable requests for assistance in the investigation or prosecution of trafficking. As the documents submitted on motion are relevant to the Director's grounds for denial, we withdraw our prior decision and will remand the matter for the Director to consider the evidence in the first instance and redetermine whether the Petitioner has met her burden of establishing that her continued presence in the United States is directly related to

¹ On appeal the Applicant also claimed she met the physical presence requirement because she escaped from trafficking before an LEA was involved, pursuant to 8 C.F.R. § 214.11(g)(1)(iii). However, we concluded in our decision on appeal that the record was inconsistent on whether and when an LEA was involved in the Applicant's trafficking. On motion, the Applicant does not assert her eligibility pursuant to 8 C.F.R. § 214.11(g)(1)(iii) but submits a declaration by her attorney, dated November 19, 2021, to address whether she complied with reasonable requests for assistance in the investigation or prosecution of trafficking. While the attorney states that the Applicant reported her trafficker to an LEA before retaining legal representation, she does not provide additional details regarding this prior interaction with law enforcement. The declaration adds that the Applicant's attorney in January 2018 contacted Department of Homeland Security (DHS) Homeland Security Investigations (HSI) to report the Applicant's trafficking prior to the filing of the Applicant's T application. The declaration further details that "[t]o date, HSI has not requested assistance from [the Applicant] regarding an investigation into her trafficking victimization by [her trafficker]."

her trafficking, and that she has otherwise satisfied the remaining eligibility criteria for T-1 nonimmigrant classification.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.