



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

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

In Re: 24545669

Date: FEB. 14, 2023

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 dismissed a motion to reopen and reconsider, 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. We dismissed a subsequent appeal, and the matter is now before us on a motion to reopen and reconsider. On motion, the Applicant submits new evidence and reasserts his eligibility. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

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. See also 8 C.F.R. § 214.11(b)(1)-(4) (reiterating the statutory eligibility criteria). 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 and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* at § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

II. ANALYSIS

In January 2008, the Applicant was admitted to the United States as an H-2B temporary non-agricultural worker. In November 2017, he filed a T application, wherein he asserted that upon his arrival into the United States, he became a victim of a trafficking scheme and managed to escape his traffickers in March 2008. The Director determined that the Applicant established that he was subjected to trafficking in persons; however, he did not establish that he is physically present in the United States on account of such trafficking.

In our prior decision, incorporated here by reference, we concluded that the record did not sufficiently establish that the Applicant's trafficking experience continues to impact his daily life such that his current physical presence is directly related to his trafficking, as 8 C.F.R. § 214.11(g)(1)(iv) requires. Specifically, we noted that while the record contained documentation indicating that the Applicant had been diagnosed with persistent depressive disorder and generalized anxiety disorder, it did not establish the severity of the Applicant's disorders, the frequency of his symptoms, or how his symptoms continue to impact his daily life 13 years after his trafficking situation ended. We also highlighted that the record contained inconsistent documentation regarding the Applicant's mental health treatment.

On motion, the Applicant contends that our prior decision was based on a misapplication of policy and inconsistent with legislative intent with respect to requiring the establishment of a direct link between the initial trafficking and physical presence. He further contends that we put too much emphasis on the passage of time since his trafficking rather than his current circumstances. He also submits a declaration from his caseworker to address the inconsistencies we noted regarding his mental health treatment.

Contrary to the Applicant's contentions, 8 C.F.R. § 214.11(g)(1)(iv) clearly provides that the physical presence requirement reaches an applicant "whose continued presence in the United States is directly related to the original trafficking in persons." While the Applicant correctly notes that the length of the period between an applicant's escape or liberation from their trafficker(s) and the filing of their T application is not determinative of whether their physical presence is on account of their past trafficking, in evaluating the evidence of the physical presence requirement, U.S. Citizenship and Immigration Services 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).

We acknowledge the documentation submitted on motion clarifying the timeline of the Applicant's participation in mental health service programs.¹ However, the record continues to lack evidence that provides sufficient details or establishes the ongoing effects of the trafficking upon the Applicant's current mental health status, his daily life activities, or his presence in the United States. Here, the Applicant's trafficking situation ended approximately 14 years ago and since then, he has built a life

¹ In his declaration, the Applicant's case worker provides a case management timeline to address the inconsistencies noted in our previous decision. The case worker asserts that in 2016, the Applicant started attending meetings and workshops but did not enroll in the Trafficking Victim Assistance Program (TVAP) until March 2017, and through the TVAP, he received additional services.

in the United States that is no longer directly related to his trafficking. Further, as we noted in our prior decision, the Applicant has not submitted any evidence demonstrating that he has been subject to any other adverse incidents related to the trafficking scheme.

Here, the Applicant has not presented new facts, cited any binding precedent decisions or other legal authority establishing that our prior decisions incorrectly applied the pertinent law or agency policy, or established that our prior decisions were incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). Accordingly, the Applicant has not overcome our previous determination that he has not established that he is physically present in the United States on account of having been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.