



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

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

In Re: 24247009

Date: FEB. 16, 2023

Motion on Administrative Appeals Office Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification 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), as a victim of human trafficking. The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), finding that the Applicant had not shown that she was physically present in the United States on account of a severe form of trafficking in persons (trafficking). We agreed with the Director and dismissed the Applicant's appeal. The matter is now before us on a motion to reopen and reconsider. 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 grant the motion to reopen and remand the matter to the Director for the entry of a new decision.¹

I. LAW

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. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

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. C.F.R. § 214.11(b)(1)-(4) (reiterating the statutory eligibility criteria).

In determining the physical presence requirement, U.S. Citizenship and Immigration Service (USCIS) must consider a T applicant's presence in the United States at the time the application is filed. 8 C.F.R. § 214.11(g)(1); *see also* Classification for Victims of Severe Forms of Trafficking in Persons;

¹ As we are granting the motion to reopen and remanding the matter to the Director, we will not address the Applicant's motion to reconsider.

Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92266, 92273 (December 19, 2016) (noting that the language of the physical presence requirement under the Act is phrased in the present tense and is interpreted as requiring “a consideration of the victim’s current situation, and a consideration of whether the victim can establish that his or her current presence in the United States is on account of trafficking”). 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; were subject to trafficking in the past and their continuing presence in the United States is directly related to such 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 considering the evidence of the physical presence requirement, USCIS may consider applicants’ responses to when they 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).

II. ANALYSIS

The Applicant, a native and citizen of the Philippines, entered the United States without inspection in June 2001 and filed the instant T application in February 2019. The Applicant’s trafficking claim involved her aunt in California requesting her to visit in 2001, and then subjecting her to childcare and personal and commercial maid work under threat of removal from the United States and withholding of her passport. The Applicant provided details regarding the years of forced labor, harmful living conditions, and abuse to which her aunt subjected her from 2001 until 2009, when the Applicant escaped. The Applicant stated that since escaping, she has moved nearly every year due to fear of her aunt finding her. Her aunt found the Applicant on several occasions and demanded she repay the cost of bringing her to the United States, despite the Applicant’s contention that she never intended to come here to work for her aunt. The Applicant claimed her aunt has threatened other family members and asked that they not help the Applicant, and she sent a message to the Applicant through her personal media. The Applicant explained that she has nightmares about the abuse she suffered and fears returning to the Philippines because she is scared that her aunt would harm her and her family members. The Director determined that the record did not establish the Applicant’s physical presence in the United States is on account of trafficking.

We agreed with the Director’s determination and dismissed her appeal. We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant’s claims on motion. On appeal, the Applicant asserted that 8 C.F.R. § 214.11(g)(1)(iii) and (iv) apply to her because she escaped her trafficking situation before an LEA was involved, and she was subjected to trafficking and her continuing presence is directly related to the trafficking. In relation to the latter claim, we acknowledged her statements that she could not return to the Philippines as her aunt has extensive connections there, law enforcement and the government are not trustworthy there, she would not be able to protect her U.S. citizen child from her aunt, and her aunt may harm her family in the Philippines as they do not have the power or resources to protect themselves. However, we noted that the Applicant did not explain why she believed returning to the Philippines would cause her aunt to retaliate against her and her family whereas continuing to live near her aunt in California would not.

We referenced the Applicant's mental health evaluation, being on a waitlist for a counselor who is familiar with the Applicant's native language of Tagalog, and claim that counseling would not be readily available or affordable in the Philippines. The Applicant submitted a psychosocial evaluation from a licensed social worker who stated she met with the Applicant on one occasion to assess her mental health status. The licensed social worker diagnosed the Applicant with posttraumatic stress disorder and major depressive disorder. While we acknowledged the Applicant suffered emotional and psychological trauma from her aunt's abuse, she did not describe any direct relationship between her continuing physical presence in the United States and her trafficking. The Applicant indicated that her aunt controlled her ability to leave because she withheld her passport. However, we mentioned that she obtained a new passport in 2015; therefore, the initial withholding of her passport was not the basis for her inability to leave and continuing presence in the United States.

The Applicant claimed her aunt contacted her in 2018 through social media asking for repayment of money which the Applicant stated she had never agreed to repay. She provided a printed copy of an undated electronic message in which the aunt appeared to have requested the Applicant repay \$10,000 the aunt allegedly paid to bring the Applicant to the United States, and \$40,000 dollars that the aunt allegedly paid to "help take [the Applicant's sister] out of prostitution" and pay for the sister's tuition. However, the message did not include threats or requests for the Applicant to work for her aunt again. Moreover, the message did not reflect the aunt knew where the Applicant lives or is physically located. Consequently, we determined it did not show that the aunt had recently contacted the Applicant for the purpose of re-trafficking her or threatening her, as claimed, or that she found the Applicant's location. Lastly, while the Applicant suggested that her T application was denied solely because she was victimized many years ago, we noted the Director did not deny the application based solely on the number of years that have passed since the Applicant's trafficking.

On motion, the Applicant states that under the regulations and guidance in the USCIS Policy Manual, she meets the physical presence requirement, again asserting that she escaped from trafficking before an LEA was involved, and her continuing presence in the United States is directly related to her trafficking. In support of the Applicant's motion, she has submitted a brief, a letter from her social services advocate, articles on healthcare and government issues in the Philippines, medical records, and previously submitted evidence, including her statement, mental health evaluation, and social services advocate letter.

The Applicant states that she was brought to the United States by her trafficker, she continues to suffer from emotional trauma, mental health issues, and medical issues arising from her trafficking, and she continues to receive various services in the United States as a result. The psychotherapist who evaluated the Applicant states that she was a victim of her aunt's abuse, she is still suffering due to the past abuse, and she is experiencing severe psychological distress, inability to concentrate, and lack of energy. The psychotherapist diagnosed her with major depressive disorder and adjustment disorder with anxiety. Her initial social services advocate from the [redacted] stated in September 2020 that the Applicant is a high-needs client in need of ongoing social services, she has worked with her to obtain health insurance, she has provided her with supportive peer counseling, and case management services have helped alleviate her symptoms of stress. In her prior statement, the Applicant mentioned that she was seeing a Tagalog speaking therapist. Her new [redacted] social services advocate mentions that the Applicant remains traumatized by the trafficking she endured, and she has helped the Applicant get connected to basic needs resources such as food assistance and financial help.

The Applicant contends that all of her efforts to rehabilitate, stabilize, and acclimate would be undermined if she returned to the Philippines, as there are not comparable services to what the [] provides. The record includes an article detailing the stigma of mental health in the Philippines and the resulting lack of attention given to it by the government and public sector. Next, the Applicant asserts that she was denied treatment for diabetes while being trafficked by her aunt, her unregulated diabetes while being trafficked has affected her health, and she is currently receiving medical treatment for diabetes. Her medical records reflect that she has a history of diabetes. Upon review of previously submitted evidence along with updated evidence submitted on motion, the record reflects that the Applicant is experiencing emotional trauma, psychological hardship, and medical issues arising from her trafficking, and she has developed a long-term relationship with [] for various, ongoing services in the United States as a result. Although the Applicant has not addressed every evidentiary issue from our prior decision, she has now established by a preponderance of the evidence that her physical presence in the United States is directly related to the trafficking she endured.²

As the Applicant has demonstrated that she is physically present in the United States on account of having been the victim of trafficking, we will remand this matter to the Director for the entry of a new decision for a determination in the first instance of whether the Applicant meets the remaining eligibility criteria for T nonimmigrant classification under section 101(a)(15)(T) of the Act.

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

² As such, we will not address the Applicant's claim that she escaped her trafficking situation before an LEA was involved.