



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

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

In Re: 17007044

Date: AUG. 22, 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 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). 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 remand this matter for further proceedings consistent with this decision.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that applicants may be classified as a T-1 nonimmigrant 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).

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 is a native and citizen of Mexico who entered the United States without inspection in March 2007 and filed her T application in August 2019. With the application she submitted personal affidavits, a psychological evaluation, a letter from her daughter's medical doctor, a Form I-918 Supplement B, U Nonimmigrant Status Certification, a police report, country condition reports for Mexico, and civil documents. The Director denied the application, concluding that the evidence did not establish the Applicant was physically present in the United States on account of a severe form of trafficking in persons and demonstrate that she had complied with reasonable requests for assistance

in the investigation or prosecution of acts of severe forms of trafficking. On appeal the Applicant argues that the Director failed to use the correct standard of proof. With the appeal she submits a brief and supplements the record with a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, and a letter from a human services organization.

A. The Applicant's Trafficking Claim

In affidavits below, the Applicant stated that when she was 16 years old, her cousin, G-A-¹ and cousin's husband, J-G-, arranged to bring her to the United States to work. She explained that J-G- took her to [] where a *coyote* attempted to bring her into the United States, but U.S. Border Patrol agents returned them to Mexico, so she then entered the United States on her own. The Applicant claimed that G-A- and J-G- forced her to assemble accessories and clean their home 16 hours a day, did not allow her to leave the home alone, and closely monitored her calls with a brother who lived in [] California. The Applicant stated she was paid \$100 a week but J-G- told her he took money to pay for bringing her to the United States and she could never pay it all. She stated that J-G- sexually assaulted her multiple times, told her that was how she would repay him, and threatened her not to tell of her situation. The Applicant claimed that J-G- sometimes traveled to get money from others he had brought to the United States, and that when he took her along with him to [] in October 2007, she called her brother there, was able to explain her situation, and he picked her up. She states she never again had contact with the couple, and the last she knew they split up and G-A- was in Mexico.

The Applicant stated that she had a daughter in 2010 and married in 2011 but was not brave enough to contact the police until 2017. She stated that after filing a police report she spoke with a victim witness advocate, who referred her to a community organization where she was put on a waiting list and referred to another service. The Applicant maintained that she could not return to Mexico because J-G- knew her family and threatened to hurt them and kidnap her and her sisters and turn them over to gangs in [] and that she believed he would follow through. She contended that everything J-G- did changed her as a person, that she was traumatized, and that he created stress that prevented her return to Mexico because she lived in fear. She states that it affected her marriage and made her overprotective of her daughter, but her husband has been supportive, while speaking to therapists has helped her understand her flashbacks, nightmares, panic, and guilt.

The psychological evaluation indicates that the Applicant was diagnosed with major depressive disorder, anxiety disorder, and PTSD, for which psychiatric treatment was recommended. According to the evaluation, the Applicant reported abuse and threats that resulted in a decline in her mental health while causing flashbacks, nightmares, depression, crying spells, and panic that affected her quality of life. The evaluation identifies the Applicant's spouse as a stabilizing force and source of financial and emotional support and explains that the Applicant fears being deported and separated from her family and worries about her daughter, who suffers from a significant medical condition. A letter from the daughter's medical doctor indicated she was diagnosed with a genetic metabolic disorder that can be treated but where complications can be life threatening.

¹ We use initials to protect individual identities.

B. The Applicant Is Physically Present in the United States on Account of Trafficking

The physical presence requirement reaches applicants who at the time of filing: (i) are currently being subjected to trafficking; (ii) were liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved; (iv) were subject to trafficking in the past and their continuing presence in the United States is directly related to such trafficking; or (v) 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).

In denying the application, the Director determined that the Applicant was subjected to trafficking for six months in 2007 until she escaped but was required to show she was physically present in the United States on account of the trafficking at the time of filing her T application. The Director found that evidence did not sufficiently demonstrate the Applicant's continued presence in the United States was directly related to her original trafficking as she escaped more than 13 years ago and created a life with her husband and daughter, and there was no evidence that her trafficker continued to control her or has interacted with her since her escape. The Director acknowledged that the psychological evaluation noted the Applicant showed signs of anxiety about her trafficking, but it did not indicate she receives ongoing counseling due to her trafficking. The Director further found that the record did not show a direct relation between her continued physical presence in the United States and the original trafficking, but rather described her struggles related to being in the United States illegally and her fear of being deported and separated from her family. The Director concluded the Applicant feared deportation not because she was the victim of trafficking but because she would be separated from her family.

On appeal, the Applicant asserts, through counsel, that she 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). She argues that she described her fear of retaliation in Mexico and that the psychological evaluation showed ongoing PTSD and that she depends on her U.S. citizen spouse for support. The Applicant contends that the Director required that trafficking be the sole reason she remains present in the United States and suggested that other reasons nullify those directly related to trafficking. The Applicant asserts that there is no requirement in the Act that she be present solely on account of trafficking but rather that trafficking must be one central reason for her presence. The Applicant contends that her fear of retaliation from traffickers who abused her and threatened to turn her over to gangs in [REDACTED] is one central reason she chose to remain in the United States. The Applicant also contends that the psychological evaluation showed she reported being permanently affected by trauma and maintains that showing that she is receiving ongoing services is not a requirement to establish her presence is related to her mental health and fear of returning to Mexico. She further argues that her mental health issues related to her trafficking would be exacerbated by separation from her family.

The Applicant has demonstrated on appeal that she continues to suffer ongoing psychological harm directly related to her past trafficking such that her continuing presence in the United States is directly related to the trafficking, consistent with 8 C.F.R. § 214.11(g)(1)(iv). In her affidavits before the

Director, the Applicant described being 16 years old when she entered her trafficking situation and recalled J-G-'s threats to harm her and her family in Mexico, and she explained that she was traumatized and changed as a person and that therapists helped her understand her feelings. In the psychological evaluation the psychologist described the Applicant as having difficulty discussing the events that caused a decline in her mental health, and that she was emotionally overwhelmed, with only her spouse as her primary source of support. The evaluation states she reported experiencing chronic anxiety since 2007 and identifies the Applicant's stressors as the threat of deportation and separation from her family, her daughter's medical condition, and continuing difficulty dealing with her past trauma. The psychologist concluded that the Applicant's mental health will decline without support of family and that in Mexico she would lose access to resources she has in the United States, such as mental health services. With the appeal the Applicant submits a December 2020 letter from [REDACTED] an organization that provides services to victims of sexual assault and human trafficking, confirming that since November 2020, the Applicant was receiving counseling and other services.

The record, including the affidavits from the Applicant and the psychological evaluation, demonstrates by a preponderance of the evidence that the Applicant suffered and continues to suffer psychological harm as a result of her trafficking experience and faces a loss of mental health services and family support if she returns to Mexico. Therefore, the record as a whole shows that the Applicant's continuing physical presence is directly related to her past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv). Accordingly, the Applicant has demonstrated that her physical presence in the United States is on account of having been the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires.

C. Assistance to Law Enforcement in the Investigation and Prosecution of Trafficking

To establish compliance with reasonable LEA requests for assistance, applicants must have had, at a minimum, contact with an LEA regarding the acts of a severe form of trafficking in persons. 8 C.F.R. § 214.11(h)(1). Applicants who have had no contact with an LEA regarding the trafficking are not eligible for T nonimmigrant status, unless they fall within the exemptions to the requirement because they either established physical or psychological trauma or are under 18 years of age. Section 101(a)(15)(T)(i)(III)(bb), (cc); 8 C.F.R. §§ 214.11(h)(1), (h)(4).

An applicant is exempt from the requirement to comply with reasonable law enforcement requests if the applicant was under 18 years of age at the time at least one of the acts of trafficking occurred. 3 *USCIS Policy Manual* B.2(D)(5), <https://www.uscis.gov/policymanual>. The record shows the Applicant's date of birth as [REDACTED] 1990, and indicates she entered the United States in March 2007 and escaped her trafficking situation in October 2007 when she was under 18 years of age. The Applicant thus falls within the age exception at 8 C.F.R. § 214.11(h)(4)(ii). Although our review indicates that the Applicant is exempt from the requirement that she establish compliance with reasonable LEA requests for assistance, the record indicates that she has otherwise satisfied the requirement under section 101(a)(15)(T)(i)(III) of the Act and 8 C.F.R. § 214.11(h)(1) of compliance with requests for assistance in the investigation or prosecution of acts of trafficking or of a crime where acts of trafficking are at least one central reason for the commission of that crime.

In her affidavits, the Applicant stated that while interviewing her, police did not ask about labor, but only about sexual assault, and that she was later told the case was closed pending more leads. With her application, the Applicant submitted Form I-918 Supplement B from the [] California, Police Department, dated [] 2017, that identifies the detected criminal activity as sexual assault that occurred in 2007, when the Applicant was a minor. An accompanying narrative states that the Applicant went to police in [] 2017 and reported that in 2007, a cousin and her husband arranged to bring the Applicant, 16 years old at time, from Mexico to work making trinkets, but then did not allow her out of the apartment, and that the husband sexually abused her about 20 times over six months.

In denying the application, the Director indicated that the Applicant must show she complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons but surmised that the record did not contain satisfactory evidence that she complied as it did not indicate she reported trafficking in persons to police, but rather that she reported working conditions and sexual assault to police.

On appeal the Applicant reiterates a prior contention that she reported her victimization to police and was willing to comply with any requests from law enforcement for assistance, despite their failure to recognize human trafficking as one of the crimes committed. With the appeal, the Applicant submits a Form I-914 Supplement B from the California Department of Fair Employment and Housing identifying a violation under California Civil Code section 52.5(a), which allows a victim of human trafficking to bring a civil action for actual damages. The Supplement B indicates that the Applicant expressed a fear of retaliation if she is removed from the United States and that although no investigation into allegations was opened, it was believed the Applicant would be cooperative.

Although the Form I-918 Supplement B indicates the sexual assault was detected, the accompanying narrative shows that the interviewing officer recorded that the Applicant's cousin and her husband arranged for the Applicant to enter the United States when she was a minor, forced her to work and prevented her from leaving the home, and subjected her to threats and sexual assault during the time she was held there. Moreover, the Form I-914 Supplement B submitted on appeal identifies the Applicant as reporting her trafficking situation. There is no evidence that the Applicant failed to comply with any reasonable requests for assistance in any investigation or prosecution of the trafficking against her. Consequently, the record demonstrates that the Applicant, "at a minimum," contacted an LEA regarding trafficking, as required by 8 C.F.R. § 214.11(h)(1), and has demonstrated compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or of a crime where acts of trafficking are at least one central reason for the commission of that crime for purposes of section 101(a)(15)(T)(i)(III) of the Act.

The Applicant has established that her continued presence in the United States was directly related to her original trafficking and that she falls within the age exception at 8 C.F.R. § 214.11(h)(4)(ii) and has otherwise demonstrated compliance with reasonable LEA requests for assistance. She has thus overcome the bases for the Director's denial, and 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.