



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

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

In Re: 16385138

Date: FEB. 3, 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 the 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), concluding that the Applicant did not demonstrate that he was physically present in the United States on account of trafficking and would suffer extreme hardship involving unusual and severe harm if removed from the United States. The Applicant then filed a motion to reopen and reconsider with the Director, however, the Director affirmed their previous decision. On appeal, the Applicant contests the Director's findings submitting a brief and updated letter from his victim advocate at an anti-trafficking program in Washington.

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). 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 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. The term "severe form of trafficking in persons" is defined, in pertinent part, 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." 8 C.F.R. § 214.11(a).

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, 376 (AAO 2010). Although applicants may submit any relevant, credible evidence for

us to consider, USCIS determines, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

In this case, the Director found that the Applicant, who applied for T-1 nonimmigrant classification in 2018, did not establish that he was physically present in the United States on account of a severe form of trafficking in persons or that he would suffer extreme hardship involving unusual and severe harm if removed from the United States.

In two statements submitted prior to his appeal, the Applicant describes how he experienced labor trafficking from 2007 to 2012 when, under false employment terms connected to an H2B visa, he was recruited and then brought to the United States to work in hotels in Florida, South Carolina, and then in Louisiana. He described how he was told he would earn \$10 per hour, be able to work overtime, and have his food, lodging, and transportation provided for free. The Applicant explained that he had to pay his initial transportation and training costs and then was made to pay back this debt with his earnings. He stated that almost all of his wages during his first five months of work went to paying this debt. He also indicated that food, lodging, and transportation were not provided, and he was only paid \$7.25 per hour. The Applicant explained further that his employers kept his identity documents and whenever he complained about his employment terms not being met, his employers coerced him into working by threatening to report him to immigration authorities to be removed from the United States.

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

In their decision, the Director stated that after the Applicant escaped from his traffickers in 2012, he did not return to the Philippines and did not seek help until 2017. The Director added that the Applicant claimed he remained in the United States after his escape to find another employer and to continue working to provide for his family. The Director also acknowledged the Applicant was connected to a therapist in 2020, who diagnosed him with adjustment disorder, anxiety, and depressed mood. In addition, a psychosocial evaluation indicated the Applicant's victimization had caused traumatic avoidance and fear, including fear of his traffickers in the Philippines, even if this fear seemed unrealistic. The psychosocial evaluation also indicated his victimization had negative impacts on his finances and familial relationships. His therapist recommended mental health treatment, noting that this kind of treatment would be difficult to access in the Philippines. In the decision, the Director also acknowledged the three victim advocate letters in the record and that the Applicant's trafficker was convicted in 2011 of his crimes- including actions taken against the Applicant and others like him.

The Director, recognizing the Applicant suffered emotional trauma from his trafficking, concluded that the record did not establish a direct relationship between his continuing physical presence in the United States and the original trafficking. They stated further that the Applicant's victimization is only one factor for his mental health diagnosis and that other factors, including separation from family, unlawful status in the United States, and supporting family financially in the Philippines, also contributed to the Applicant's mental health concerns. Furthermore, the Director added that although the Applicant stated he fears his traffickers in the Philippines, there seems to be no basis for this fear as his traffickers have not tried to contact him or his family in the Philippines for the past 8 years.

On motion, the Director again acknowledged the Applicant's mental health concerns, but found these concerns were diminished because the Applicant was not seeking the recommended mental health treatment in the United States. They indicated it was not clear that the Applicant needed to remain in the United States to access services and the psychological harm caused by his victimization did not appear to be affecting his daily functioning as he was able to find and keep employment. Finally, the Director found the record did not establish the Applicant was present in the United States to participate in an investigation or judicial process associated with an act of trafficking or perpetrator of trafficking.

On appeal, the Applicant submits a brief and a new letter from his victim advocate at an anti-trafficking program in [redacted] Washington. He contends that he satisfies the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iv), as an individual who was subjected to a severe form of trafficking in the past and whose continuing presence in the United States is directly related to such trafficking, because he suffers ongoing trauma from his trafficking and is now receiving victims' services for such trauma. In his brief, he asserts that the Director erred in finding that for him to meet the physical presence requirement, he must show that his victimization be the primary cause of his presence in the United States. He also indicates, as supported by his psychological evaluation, that from his escape until now he has been suffering traumatic avoidance and shame from his victimization, so it is difficult for him to discuss his experience and was hard for him to come forward about what happened to him. The Applicant's advocate indicates that he is enrolled in their organization's advocacy program for survivors of trafficking and has been connected to legal assistance, financial assistance, advocacy-based counseling, transportation, and health care (both medical and dental). This letter also explains how the advocate is in the process of connecting the Applicant to a culturally relevant mental health therapist. The victim advocate states that the Applicant exhibits signs of sadness, withdrawal, denial, disconnect, and anxiety concerning the impacts of his life experiences.

The physical presence requirement reaches an applicant who at the time of filing: is currently being subjected to trafficking; was liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved; was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or was 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)-(iv). In evaluating the evidence of the physical presence requirement, U.S. Citizenship and Immigration Services (USCIS) may consider when an applicant escaped the trafficker, what activities he or she has since undertaken to deal with the consequences of having been trafficked, and his or her ability to leave the United States. 8 C.F.R. § 214.11(g)(4).

We find the Applicant has established his continuing physical presence in the United States is directly related to his trafficking. Although the Applicant did not seek services from 2012 to 2017, he attests to experiencing traumatic avoidance and shame from his trafficking experience during this entire time, preventing him from speaking out and seeking the treatment he needed. Furthermore, the new evidence, submitted on appeal, establishes that the Applicant is experiencing mental health concerns as a result of his trafficking incident and is accessing services to help him cope with this trauma. Specifically, the Applicant is receiving legal assistance, financial assistance, advocacy-based counseling, transportation, and health care, as a victim of trafficking. In addition, we acknowledge the Director's concern that the Applicant has yet to access the mental health treatment recommended for his recovery, but find that this statement does not fully encompass how the Applicant is utilizing

services in the United States to cope with the impact of his trafficking experiences. For instance, the Applicant is receiving advocacy-based counseling and his victim's advocate attests to currently seeking a culturally relevant therapist for him to access the recommended mental health treatment. Moreover, mental health treatment is not the only service relevant to the Applicant's recovery. The Applicant has also shown he is accessing, legal, financial, and healthcare assistance as part of his recovery from his victimization. Thus, the Applicant has submitted sufficient evidence to establish that he is physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires.

B. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

In their initial decision, the Director also concluded that the Applicant did not demonstrate he would suffer extreme hardship involving unusual and severe harm if removed from the United States.

On motion, the Director acknowledged the country condition reports submitted by the Applicant regarding corruption and violence in the Philippines (the Applicant's home country), but then acknowledged that the Applicant's family had been living in the Philippines since 2007 without reported incidents of violence or corruption. The Director also recognized the psychological evaluation submitted as part of the record and how the Applicant's removal may affect his mental health, but the Director found these concerns were diminished because the Applicant was not seeking mental health treatment in the United States, so it was not clear that he needed to remain in the United States for these reasons.

On appeal, the Applicant asserts that the Director used an incorrect standard in review of the evidence he submitted, finding that he needed to show a likelihood of being subjected to torture to show extreme hardship involving unusual and severe harm. He also explains that his perceived risk of violence in the Philippines, will worsen his diagnosed Adjustment Disorder, Anxiety, and Depressed Mood. The Applicant contends further that he fears retaliation from his recruiter, who travels to and from the Philippines, and is also concerned he could become a victim of another recruiter. Finally, the Applicant asserts that he fears he will not be able to access comparable social and psychological care in the Philippines to be able to continue to recover from the trauma he endures as a result of his trafficking. The letter from the Applicant's advocate indicates that the Applicant has been working for the last seven years as a caretaker for senior citizens and vulnerable adults. She states that his skills are not transferable to the Philippines, he would be stigmatized by his family for becoming a victim of trafficking, and he would be susceptible to predatory and illegal recruiters in the Philippines. As described above, his victim advocate also indicates that as a victim of trafficking in the United States he has been connected to legal assistance, financial assistance, advocacy-based counseling, transportation, and health care. This letter explains further that they are in the process of connecting the Applicant to a culturally relevant mental health therapist. The victim advocate states that the Applicant exhibits signs of sadness, withdrawal, denial, disconnect, and anxiety concerning the impacts of his life experiences.

Extreme hardship involving unusual and severe harm "may not be based solely upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities." 8 C.F.R. § 214.11(i)(1). The extreme hardship required for T-1 nonimmigrant status is a higher standard than the extreme hardship needed for suspension of deportation under former section 244(a)(1) of the Act.

8 C.F.R. § 214.11(i)(1). Unlike the former standard, the regulation for T-1 nonimmigrant status does not list financial impact and family ties as factors to be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm. *See id.*; *see also* 8 C.F.R. § 240.58(b) (2003) (listing factors considered in an evaluation of extreme hardship for former suspension of deportation).

The Applicant has demonstrated that he would suffer extreme hardship under a hardship factor listed in the T-1 nonimmigrant status regulation. His personal circumstances, need for trauma services not reasonably available in the Philippines, and conditions in the Philippines are factors to be considered in this finding. *See* 8 C.F.R. § 214.11(i)(1)(i)-(ii), (vi), and (viii). As summarized above, the victim's advocate letter indicates that the Applicant is experiencing mental health concerns as a result of his trafficking. The advocate letter and psychological evaluation also indicate that the Applicant fears being stigmatized by his family for becoming a victim of trafficking if he were to return to the Philippines. In addition, the Applicant expresses fear over not being able to access appropriate services as a victim of trafficking in the Philippines, including similar services to the legal, financial, transportation, and medical services he is accessing in the United States. Furthermore, the current U.S. Department of State Travel Advisory for the Philippines indicates that travelers to the country should exercise increased caution due to crime, terrorism, civil unrest, and kidnapping. Thus, the Applicant has established his personal circumstances, need for trauma services in the United States, and conditions in the Philippines amounts to extreme hardship if he were removed from the United States. Accordingly, the Applicant has demonstrated that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at 8 C.F.R. § 214.11(i) and as required by section 101(a)(15)(T)(i)(IV) of the Act.

III. CONCLUSION

As a result of this new evidence, the Applicant has addressed the deficiencies noted by the Director and shown his continuing presence is directly related to the original trafficking as 8 C.F.R. § 214.11(g)(1)(iv) requires, and he has satisfied the physical presence requirement under section 101(a)(15)(T)(i)(II) of the Act. The Applicant has also shown he would suffer extreme hardship involving unusual and severe harm upon removal from the United States under the standard and factors prescribed at 8 C.F.R. § 214.11(i) and as required by section 101(a)(15)(T)(i)(IV) of the Act. Therefore, we will remand the matter for the Director to make 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 decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.