



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

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

In Re: 20083391

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 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), concluding that the Applicant did not establish that she is physically present in the United States on account of being a victim of a severe form of trafficking in persons (trafficking). On appeal, the Applicant submits a brief asserting her eligibility for T nonimmigrant status. We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**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; 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 criteria).<sup>1</sup>

The term “severe form of trafficking in persons” is defined in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) 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.” The definition of trafficking also includes “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years.” *Id.* Sex trafficking means the “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(12); 8 C.F.R. § 214.11(a).

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<sup>1</sup> The Department of Homeland Security issued an interim rule, effective January 18, 2017, amending its regulations at 8 C.F.R. § 214.11 for victims of human trafficking who seek T nonimmigrant status. *See Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92308-09 (Dec. 19, 2016). This application was filed after the issuance of the Interim T Rule.

U.S. Citizenship and Immigration Services (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). This 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 their 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, USCIS 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).

An applicant who has voluntarily departed from or has been removed from the United States at any time after having been trafficked will not be considered physically present on account of such trafficking, unless the record demonstrates that: (1) their reentry into the United States was the result of the continued victimization; (2) they are a victim of a new incident of a severe form of trafficking in persons; or (3) they were allowed reentry for participation in investigative or judicial processes relating to an act or perpetrator of the trafficking. 8 C.F.R. § 214.11(g)(2)(i)-(iii).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 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 last entered the United States without inspection in July 2000 and filed her T application in April 2019. The issue before us is whether the Applicant has established that her physical presence in the United States is on account of trafficking.

### A. The Applicant's Trafficking Claim

In her statements in the record, the Applicant explained that in or around July 1985, when she was 13 years old, she moved to the United States using her cousin's passport to live with her aunt and her family in [REDACTED]. Shortly after her arrival, she was required to care for her aunt's young granddaughters every day, clean the house, and cook for everyone in the house without pay. Furthermore, the Applicant was not allowed to attend school. In [REDACTED] 1985, the Applicant's uncle raped her and continued to sexually abuse her for over a year, and he told her that nobody would believe her if she spoke out about the abuse. The Applicant told her aunt about the abuse, but she did not believe her or take any action to stop it. The Applicant stated that she called her mother in Mexico, requesting to return home, but was told not to waste the opportunity to live in the United States. In [REDACTED] 1987, the Applicant's cousin saw her being sexually abused and informed the Applicant's aunt, who then blamed the Applicant and accused her of stealing her husband. The Applicant's aunt sent her back to Mexico in January 1987 and told her that her parents would not believe her about what happened.

While in Mexico, the Applicant met her ex-spouse, they married in [ ] 1989, and they had three children together. She explained that he was physically and emotionally abusive and they eventually separated. The Applicant stated that her ex-spouse came to the United States in 1998 and he asked her to join him to have a better life where he would provide for her and their children. In 2000, she came to the United States with one child and the other children joined afterwards. The Applicant experienced abuse again in the United States and left her ex-spouse in 2003, she began to heal and started a new relationship, and she reported her uncle's abuse to the local police in [ ] 2012. The Applicant wants to recover from the trauma she has experienced and continue to support her children, and she does not believe she can live a safe and healthy life in Mexico as her entire support system is in the United States.

#### B. The Applicant Is Not Physically Present in the United States on Account of Trafficking

On appeal, the Applicant asserts that she is physically present in the United States on account of trafficking as she was subject to trafficking in the past and her continuing presence in the United States is directly related to her original trafficking. She states that she has accessed medical and psychological services due to her trafficking victimization, it is recommended that she continue to access these services, she has reported her traffickers to the authorities, and she has made herself available for further investigation of her trafficking. The Applicant states that she has provided credible evidence of physical presence, including, but is not limited to, her statements, a letter from the [ ] Sexual Assault Resource Center showing receipt of trauma specific services in 2012 and 2013, a psychological evaluation from October 2018 detailing her history of abuse and diagnoses of post-traumatic stress disorder and major depressive disorder, an [ ] 2012 incident report from the [ ] Washington Police Department, and a Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Supplement B), certified in December 2018. The Applicant contends that the Director unjustly and arbitrarily applied an overly stringent evidentiary standard in finding that the evidence submitted is insufficient to establish physical presence. Furthermore, the Applicant asserts that the Director ignored the intended goals of the Trafficking Victims Protection Act of 2000.

Upon review of the record, we find that the Applicant has not established that she is physically present in the United States on account of her past trafficking, as section 101(a)(15)(T)(i)(II) of the Act requires. The record establishes that the Applicant voluntarily departed the United States in January 1987 after she was subjected to trafficking by her aunt and uncle.<sup>2</sup> Thus, she cannot be considered physically present on account of that trafficking unless she demonstrates that: (1) her reentry into the United States was the result of her "continued victimization;" (2) she was a victim of a new incident of trafficking; or (3) she was allowed reentry for participation in investigative or judicial processes relating to an act or perpetrator of the trafficking. 8 C.F.R. § 214.11(g)(2)(i)-(iii).

The Applicant has not established that she meets any of the exceptions. First, the Applicant's reentry into the United States was not the result of her continued victimization. The term "continued victimization" at 8 C.F.R. § 214.11(g)(2)(i) is not defined in the Act or regulation. The word

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<sup>2</sup> The Director addressed the Applicant's trafficking claim and concluded that she was a victim of trafficking based on her involuntary servitude from July 1985 until January 1987. In the physical presence section of the decision, the Director mistakenly mentioned that the Applicant did not establish that she was the victim of trafficking.

“victimization” is commonly understood as the noun of the verb “victimize,” which means “to make a victim of.” *Merriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/victimize>. The regulation defines “victim of a severe form of trafficking in persons” as “an alien who is or has been subject to a severe form of trafficking in persons.” 8 C.F.R. § 214.11(a). This language indicates that a person who has been the victim of trafficking in the past still meets the definition of a “victim” under 8 C.F.R. § 214.11(a). However, in regard to physical presence on account of trafficking, the regulation differentiates between a victim of past trafficking who reenters the United States due to “continued victimization,” as described in 8 C.F.R. § 214.11(g)(2)(i), and one who reenters because he or she “is a victim of a new incident of a severe form of trafficking in persons” per 8 C.F.R. § 214.11(g)(2)(ii). Similarly, the physical presence provision at 8 C.F.R. § 214.11(g)(1) repeatedly uses the phrase “severe form of trafficking in persons,” not “victimization,” in describing the scenarios in which an applicant may demonstrate current physical presence on account of a severe form of trafficking in persons. The use of the term “continued victimization,” rather than “victim of a severe form of trafficking in persons,” only at 8 C.F.R. § 214.11(g)(2)(i) indicates that “continued victimization” is not limited to applicants who are currently being subjected to trafficking at the time of reentry but may include ongoing victimization that directly results from past trafficking.

Furthermore, 8 C.F.R. § 214.11(g)(2) specifies that a person who departs or is removed from the United States “at any time after the act of a severe form of trafficking in persons” may still establish current physical presence in the United States on account of such trafficking in limited situations. Therefore, an interruption or end to a severe form of trafficking in persons prior to departure and reentry does not necessarily prevent an applicant from establishing physical presence under 8 C.F.R. § 214.11(g), if, in pertinent part, the reentry was due to ongoing victimization from that trafficking. Additionally, while 8 C.F.R. § 214.11(g)(2)(ii) requires an applicant to show that they were the victim of “a new incident” of trafficking, 8 C.F.R. § 214.11(g)(2)(i) allows for a showing of “continued victimization” from past trafficking. Accordingly, the term “continued victimization” at 8 C.F.R. § 214.11(g)(2)(i) may encompass an applicant who suffers ongoing victimization as a direct result of having been the victim of a severe form of trafficking in the past.

The Applicant has not established that her 2000 reentry into the United States was the result of her continued victimization by her traffickers. The record shows that after returning to Mexico in 1987, the Applicant met her ex-spouse with whom she had three children, and she did not return to the United States until 2000. She stated that the purpose of her return to the United States was to reside with her ex-spouse. There is no evidence indicating that her traffickers victimized, threatened, retaliated against, or even attempted to contact her again after she stopped living with them in 1987, including during the approximately 13 years she spent in Mexico from 1987 through 2000 and at the time of her reentry in 2000. Accordingly, the Applicant has not established that her reentry in 2000 was the result of continued victimization by her traffickers, as 8 C.F.R. § 214.11(g)(2)(i) requires.

Second, while the Applicant’s ex-spouse was abusive, the record does not establish that he engaged in trafficking the Applicant. The Applicant does not assert nor does the record include evidence that her ex-spouse recruited, harbored, transported, provided, or obtained her 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, or that he subjected her to sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Therefore, the Applicant has not established that she is a victim of a new incident of trafficking, as 8 C.F.R. § 214.11(g)(2)(ii) requires. Lastly, the record reflects that

the Applicant was not allowed reentry into the United States in 2000, rather she entered without inspection. Furthermore, while she reported her uncle sexual assaulting to the police in [REDACTED] 2012 and received a Supplement B in December 2018, these actions are not related to the purpose of her reentry in 2000, which was to reside with her ex-spouse. As such, the record does not establish that the Applicant was allowed reentry into the United States for participation in investigative or judicial processes relating to her trafficking, as 8 C.F.R. § 214.11(g)(2)(iii) requires.

As the Applicant departed the United States after her trafficking, she must meet the requirements for physical presence under both 8 C.F.R. § 214.11(g)(1) and (2). As the Applicant did not establish her physical presence under any of the requirements of 8 C.F.R. § 214.11(g)(2), and this finding is dispositive of the appeal, we decline to reach and hereby reserve the Applicant's arguments regarding whether she meets the requirements of 8 C.F.R. § 214.11(g)(1)(iv). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Accordingly, the Applicant has not established that she is physically present in the United States on account of having been a victim of trafficking as section 101(a)(15)(T)(i)(II) of the Act requires, and she therefore is not eligible for T nonimmigrant classification.

**ORDER:** The appeal is dismissed.