



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

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

In Re: 17535677

Date: FEB. 8, 2022

Motion of 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) in addition to a motion to reconsider. The Applicant filed an appeal that we subsequently dismissed. The matter is now before us on a motion to reopen. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we conclude that a remand is warranted in this case.

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) (2018).

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). 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).

The physical presence requirement mandates that an applicant demonstrate they are physically present in the United States, American Samoa, or at a port-of-entry on account of a severe form of trafficking in persons. 8 C.F.R. § 214.11(g). The regulation states that the physical presence provisions require U.S. Citizenship and Immigration Services (USCIS) to consider the foreign national’s presence in the United States when they submit the T application. The requirement may be met by an applicant who, as it relates to this appeal, . . . “[w]as subject to a severe form of trafficking in persons at some point

in the past and whose continuing presence in the United States is directly related to the original trafficking in persons” 8 C.F.R. § 214.11(g)(1)(iv). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

The Applicant is a native and citizen of Mexico and claims that she entered the United States without being admitted, inspected, or paroled in November 2005 with her brother when she was approximately 20 years old. She stated that a man named C-,¹ recruited them for labor through the use of fraud for the purpose of subjecting them to involuntary servitude, peonage, and debt bondage and brought them to the United States. In her statements, she asserted that C- forced them to work 12-hour days as migrant farmworkers and he forced them to give him their paychecks to pay off the fee he charged them for bringing them to the United States, allowing them to keep only \$20 for personal expenses. She recalled that the one time they cashed their checks first and kept an additional \$50, C- assaulted her brother and threatened to harm them if they did so again. The Applicant recalled that C- regularly threatened them and the other victims, telling them that he would find and kill them if they attempted to escape. She indicated that C- told them they had paid off their fee and let them go sometime in 2006 after about six months of working at the farm.

The Applicant filed the T application in July 2017, asserting that she was the victim of labor trafficking by C-. The Director denied the application and a subsequent motion to reconsider, concluding that the Applicant did not establish that she was physically present in the United States on account of having been a victim of trafficking. *See* 8 C.F.R. § 214.11(g)(1). Within the Director’s motion decision, a significant consideration was the timeframe between the victimization and the Applicant seeking counseling. Specifically, the Director stated “[a]s the evidence indicates that [the Applicant] started counseling 11 years after [her] victimization ended it does not establish that [her] continued presence is on account of a severe form of trafficking in persons.”

On appeal, the Applicant described the emotional state that overcomes her when she thinks about the trafficking, she was fearful and depressed, experienced nightmares, suffered from Post-traumatic Stress Disorder (PTSD), she received counseling and therapy to address her trauma, and she feared that C- could reappear and hurt her. Additionally, she was concerned that she could not return to Mexico because of a lack of resources, her responsibility to care for her children, and she feared how her parents would treat the children. In our appellate decision we determined that she did not satisfy the regulatory requirements and we dismissed the appeal.

In determining the physical presence requirement, 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). The physical presence requirement, as it is claimed within this case, may be met by those who at the time of filing were subject to trafficking in the past and “whose continuing presence in the United States is directly related to the original trafficking.” 8 C.F.R. § 214.11(g)(1)(iv). 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). We may also consider other factors as described

¹ Initials are used to protect individuals’ identities.

in agency policy at 3 *USCIS Policy Manual* B.2(C)(1), <https://www.uscis.gov/policymanual>. Moreover, “[d]evelopments in an applicant’s life following the trafficking, including professional and personal milestones (such as . . . managing mental health diagnoses) do not prevent an applicant from establishing ongoing presence on account of trafficking.” 3 *USCIS Policy Manual, supra*, at B.2(C)(1). An applicant can still demonstrate that their continuing presence in the United States is directly related to the initial victimization “by explaining the impact of the trauma the applicant continues to experience as a result of the trafficking.” 3 *USCIS Policy Manual, supra*, at B.2(C)(1).

Within the current motion, the Petitioner addresses the level of impact the trafficking has had on her daily life, a fear of future contact with C-, additional abuse factors and threats that were not previously noted in clinical assessments, her need for continued therapy services, and other facts surrounding her entry into and unlawful presence in the United States. In summary, the Applicant has presented new facts and supported those with additional documentary evidence that addresses the basis in the Director’s denial. As such, we withdraw our prior appellate determination that the Applicant is ineligible for T nonimmigrant status because she did not establish that she was physically present in the United States on account of having been a victim of a severe form of trafficking in persons.

Because the new material submitted within the motion to reopen on the appeal is material to the Director’s ground for denial, we will remand the matter for the Director to consider the evidence in the first instance and redetermine whether the Applicant has met their burden of establishing that her physical presence in the United States was on account of having been a victim of trafficking.

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