



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

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

In Re: 19446279

Date: FEB. 11, 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 record did not establish that the Applicant is physically present in the United States on account of a severe form of trafficking in persons. The Director further concluded that the Applicant was inadmissible to the United States, and his Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), seeking a waiver of inadmissibility, had been denied. On appeal, the Applicant reasserts his eligibility and submits a brief and additional evidence. 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 the matter to the Director 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; 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 as “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; or 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. 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, a native and citizen of Mexico, claims to have entered the United States without being inspected, admitted, or paroled on an unknown date in 2004. In September 2019, the Applicant filed the instant T application, asserting that he was the victim of labor trafficking by his employer, J-D-.¹

A. The Applicant's Trafficking Claim

In his statements below, the Applicant described being recruited in 2009 through fraud to work for J-D- at his construction company. He described how J-D- made promises to pay him wages that he never fulfilled, repeatedly made up excuses to withhold his pay while promising to pay him in the future, submitted him to dangerous working conditions, required him to work long hours without breaks or food, and constantly threatened to report him to U.S. Immigration and Customs Enforcement (ICE) and get him deported if he did not obey J-D- and do what he was told. The Applicant stated that there was also a disparity in the wages and treatment of the workers who had lawful status in the United States and those who did not, and that the second group got paid less, were never paid for overtime hours, and were given the more strenuous, physical tasks because they could not complain due to their lack of lawful status. Ultimately, he indicated that although he was supposed to get paid \$400 for working more than 55 hours a week, J-D- did not pay him the full wages. The Applicant stated that it became a vicious cycle in which he continued to work in the hopes that he would eventually receive his unpaid wages and where he faced constant threats of deportation. He stated that when he and the other undocumented workers complained about the working conditions, J-D- threatened to send them all back to Mexico. Likewise, he recalled how J-D- frequently pointed out in a joking manner that if he sent them back to Mexico, they could not get work there that paid as well.

The Applicant also recounted how, while working for J-D-, he suffered two significant workplace injuries. The Applicant stated that J-D- witnessed the second incident in which the Applicant broke two fingers while drilling concrete, but J-D- did nothing to help him. He recalled that his friend who also worked for J-D- told him that J-D- did not want the Applicant back at the job site. The Applicant indicated that J-D- owed him two months of wages by this time but instead of paying the Applicant the approximately \$3,000 in unpaid wages owed to him, J-D- offered to pay him \$300 to keep quiet and threatened that he would otherwise call the police or immigration to get the Applicant deported. The Applicant stated that because of mounting debt caused by his medical expenses and loss of income, he later went to speak with J-D- in person at the job site to ask for work and request his last two months of unpaid wages. He stated that J-D- responded by telling him to get off the property or else he would call ICE. The Applicant indicated that although he never was able to recover his lost wages, he eventually hired an attorney in 2011 who helped him settle a workers compensation claim with J-D-'s company, which helped him cover the cost of some of his medical expenses. He stated that in April 2019, he finally found the courage to file a complaint against J-D- with the [redacted] office of the California Department of Labor. As a result of his report, the Applicant stated that he was interviewed several times regarding J-D- by law enforcement officials from the California Division of Labor Standards and Enforcement.

¹ Initials used to protect individuals' identities.

The Applicant also indicated that he continues to suffer ongoing effects of his trafficking by J-D-. He stated that he has been seeing a hand specialist to attempt to regain full recovery of his hand that he injured while working for J-D-. The Applicant described being forced to learn a new trade after leaving J-D-'s employment because of the injury to his hand which prevented him from working in construction. He also indicated that he was diagnosed with Post Traumatic Stress Disorder (PTSD) and suffers from depression and anxiety caused by the psychological trauma related to his trafficking and compounded by his existing trauma related to his sister having been kidnapped, raped, and disfigured in Mexico. The Applicant stated that even thinking about returning to Mexico triggers thoughts about the trauma he and his family experienced there and exacerbates his PTSD symptoms. He further indicated that he feared losing access to his support system in the United States, including his family, and the ability to access medical and mental health care services available here.

Along with his application, among other evidence, the record before the Director included medical records relating to his hand injury, various support letters, copies of a June 2019 mental health assessment, a December 2020 updated mental health assessment, a December 2020 letter from an attorney with the California State Labor Commissioner's Office (a.k.a. the Division of Labor Standards and Enforcement or "DLSE"), and news articles relating to organized crime in Mexico. The medical records are from December 2010 and confirm that the Applicant's reported hand injury occurred in an incident involving a heavy concrete drill. The records further indicate that although the injury had healed within about six months of the workplace accident, the Applicant still could not lift heavy objects without pain at that time. The letter from the DLSE attorney confirmed that the Applicant reported his alleged trafficking by J-D- to them in April 2019, submitted extensive supporting paperwork to support his report, was interviewed for several hours by the DLSE attorney along with an investigator from their Criminal Investigations Unit, and was cooperative at every point of their investigation.

On appeal, the Applicant submits previously submitted and new evidence, including an updated personal statement, copies of bills related to his medical expenses, and copies of personal identification documents.

B. Physical Presence on Account of Trafficking

The Director determined that the Applicant is not 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. Specifically, the Director found that there was insufficient evidence to demonstrate the Applicant's continuing physical presence in the United States is on account of current financial difficulties and debt caused by his trafficking experience, his need for ongoing medical attention related to recovery from his work-related hand injury, the need to assist with any investigation against J-D- by law enforcement, and the effects of the mental trauma related to his trafficking. Additionally, the Director noted that over ten years had passed since the Applicant escaped his trafficker, there had been no further adverse incidents related to the trafficking scheme, and he had successfully pursued legal action related to his work-related injury. Likewise, the Director found that the evidence indicated that the physical and psychological harm caused by his trafficking experience had not limited his ability to find a job, earn an income, maintain a relationship with his wife and U.S. citizen children, or otherwise

impacted his day-to-day life since escaping his trafficker. The Applicant has overcome the Director's physical presence findings on appeal.

In determining the physical presence requirement, 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). 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; was 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 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).

On appeal, the Applicant contends that the Director erred in concluding that he was not physically present on account of a severe form of trafficking. The Applicant asserts that the record demonstrates that he satisfies the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iv), because his continuing presence in the United States is directly related to his past trafficking. Specifically, the Applicant asserts that his continuing presence in the United States directly relates to the ongoing effects of the emotional and psychological trauma caused by his trafficking experience, his efforts to overcome the financial struggles caused by that experience, his desire to be able to access the trafficking recovery tools and resources available to him here, and his fear of suffering additional mental and emotional harm if he were to return to Mexico where he experienced trauma earlier in his life associated with the kidnapping of his sister. The Applicant asserts, as well, that his continuing presence at the time of filing his application was related to his desire to continue working with law enforcement officials in the investigation of his report against J-D-.²

As an initial matter, while the Director properly considered when the Applicant escaped his trafficker in determining whether he satisfied the physical presence requirement, the length of the period between an applicant's escape or liberation from their trafficker(s) and the filing of their T application is not determinative of whether their physical presence is on account of their past trafficking. *See* 8 C.F.R. § 214.11(g)(4) (discussing the various considerations USCIS will take into account in assessing whether the physical presence requirement is satisfied, including activities applicants have undertaken since escaping trafficking to deal with the consequences of having been trafficked and their ability to leave the United States); *see also* 3 *USCIS Policy Manual* B.2(C)(1), <https://www.uscis.gov/policymanual> (explaining that an applicant is not required to file their application within a specified period of time after their original trafficking). Here, the Director did not sufficiently consider the totality of the evidence in the record of the ongoing impact of the past trafficking on the Applicant. Similarly, although the Director recognized the various milestones the Applicant achieved in his life since escaping his trafficker, the fact that the Applicant achieved such

² The Applicant also asserts that he satisfies the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iii), because he escaped his trafficking situation before an LEA became involved. However, as we have otherwise found that the Applicant has demonstrated his physical presence under 8 C.F.R. § 214.11(g)(1)(iv), we decline to reach the issue of his eligibility under this additional section.

milestones does not negate other probative evidence in the record that his physical presence is directly related to his past trafficking.

The Applicant has demonstrated on appeal that he continues to suffer ongoing psychological harm directly related to his past trafficking. Specifically, as demonstrated by his written statements and the mental health assessments before the Director, the record demonstrates that the Applicant suffers from ongoing mental health symptoms relating to trauma caused by his trafficking experience. The 2019 mental health assessment indicated that the Applicant's mental health has been impacted by two major sources of trauma in his life: first, the violent 2004 and 2007 kidnappings of his sister by criminals which resulted in death threats against his family; and second, the Applicant's physically and psychologically abusive trafficking experience working for J-D- which retraumatized him and compounded the effects of his past trauma. Per the assessment, the Applicant was diagnosed with Major Depressive Disorder and PTSD, and he reported depression symptoms, including crying spells, sadness, low energy, isolation, feeling hopeless and helpless, and insomnia. The assessment also indicated his PTSD symptoms included fear when walking alone at night, a heightened startle response, repeated and disturbing dreams, intrusive memories of trauma, avoidance of thinking about the trauma, trouble trusting people, and physical reactions to traumatic memories. The assessment noted that the Applicant had suicidal thoughts following his trafficking because of mounting medical bills related to his workplace injury while working for his trafficker and difficulties finding employment because of the injury. It also opined that the Applicant's chronic depression, trauma, and anxiety required immediate and long-term treatment, which he has been unable to afford due to the lack of financial resources caused in part by his trafficking experience. Concerning the effects of his PTSD, the assessment added that the Applicant had difficulty remembering events and details. The assessment also stated that he would be very unlikely to be able to access needed treatment in Mexico due to the high cost of such treatment. The assessment further opined that returning to Mexico would exacerbate his trafficking-related trauma symptoms and compromise his psychological well-being because it would trigger and compound the trauma associated with the events surrounding his sister's kidnappings and the subsequent threats made against his family. The updated 2020 assessment again diagnosed the Applicant with depression and PTSD and made similar findings concerning his mental health and his need for ongoing treatment. It also added an additional diagnosis for Generalized Anxiety Disorder. Per the updated assessment, the Applicant's current anxiety symptoms are also tied to his trafficking experience and include excessive worrying which impairs his capacity to act quickly and efficiently at home or at work, increased muscle tension, feeling keyed up or on edge, tiredness, difficulty concentrating, and disturbed sleep.

Additionally, the letter from the DLSE attorney in the record supports the Applicant's assertion that his continuing physical presence is also directly related to his efforts to assist law enforcement in ongoing investigations of J-D- and his company. Per the letter, the attorney and an investigator with DLSE's Criminal Investigations Unit interviewed the Applicant for several hours and the Applicant responded to numerous follow-up questions. The letter further indicates the DLSE investigators are California state peace officers and work with various district attorney offices throughout the state in the investigation and prosecution of matters where there was flagrant mistreatment of workers. Although the letter does not reference the status of the investigation, the record reflects that the Applicant was interviewed by DLSE and assisted in the investigation shortly before or sometime after the filing of this T application in September 2019.

The Applicant's own statements and mental health assessments below demonstrate by a preponderance of the evidence that he suffered serious physical and psychological harm during and after his trafficking and that he continues to suffer serious and ongoing psychological consequences of his past trafficking. Likewise, his statements and the DLSE attorney letter demonstrate his ongoing efforts to cooperate in the investigation of his trafficking by law enforcement officials and his willingness to continue to be helpful. Therefore, the record as a whole shows by a preponderance of the evidence that the Applicant's continuing physical presence is directly related to his past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv). Accordingly, the Applicant has demonstrated that his 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.

III. CONCLUSION

The Applicant has overcome the basis for the Director's denial as he has demonstrated that he is physically present in the United States on account of having been a victim of a severe form of trafficking in persons. We will therefore remand this matter to the Director 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.³

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

³ As previously noted, the Director also denied the T application on the basis that the Applicant was inadmissible to the United States, which the Applicant does not contest, and the applicable grounds of inadmissibility have not been waived. However, the Director denied the Applicant's waiver application, seeking a waiver of his inadmissibility, solely on the basis that his T application has been denied. As his T application is being remanded for further consideration and issuance of a new decision, the Director shall reopen and reconsider the waiver application if the Applicant otherwise demonstrates his eligibility for T nonimmigrant classification.

The Director's decision also identified a discrepancy in the record related to the Applicant's date of birth and found that additional evidence was needed to establish his true identity. On appeal, the Applicant submits information in his personal statement addressing the cause of the discrepancy, a copy of his birth certificate issued in June 2021, a copy of his marriage certificate that reflects his date of birth, and a previously submitted copy of his birth certificate that was issued in 2004. As the decision below did not address the discrepancy relating to the Applicant's identity in detail and there is new and material evidence related to the issue on appeal, the Director shall consider the new evidence on this issue in the first instance on remand.