



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

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

In Re: 20564409

Date: FEB. 22, 2022

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant status 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), concluding that the Applicant did not establish that she is physically present in the United States on account of a severe form of trafficking in persons. The Director also noted that the Applicant is inadmissible and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application), was denied.¹ The matter is now before us on appeal. 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 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 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, 18 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, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5).

¹ The AAO has no jurisdiction over the denial of a waiver application, and the matter of the Applicant’s admissibility is not at issue here. 8 C.F.R. § 212.16(c).

II. ANALYSIS

The Applicant is a citizen of Haiti who entered the United States in 1985 or 1986. She filed her T application in February 2019. The Director denied the T application based on a conclusion that the Applicant had not established that she is physically present in the United States on account of a severe form of trafficking in persons.

A. The Applicant's Trafficking Claim

In her initial statement, the Applicant claimed that her family in Haiti was very poor. When she was about seven years old, her godmother, A-J-,² came to visit and was upset that the Applicant lacked basic necessities. A-J- asked the Applicant's parents for permission to take the Applicant to live with her in the city so she could have a better life, and they agreed. The Applicant never saw her parents again after leaving their home. She lived with A-J-, who was very kind to her, for several years in a rented room and attended school. When the Applicant was 12 or 13 years old, A-J- got married and there was not enough space in the rented room for the Applicant to stay with A-J- and her new spouse, so A-J- asked the Applicant's uncle, J-D-, to let the Applicant live with him. J-D- was a law enforcement officer who worked for the Haitian government and lived in a large house with his wife and two young children. J-D- agreed to let the Applicant live with his family, and promised to keep the Applicant enrolled in school. However, when the Applicant arrived at J-D-'s home, her aunt, M-, told her that she would be their servant and would no longer attend school. The Applicant was very upset, but had nowhere else to live.

As the family's servant, the Applicant did all of the cooking, served and attended to the family during their meals, washed the dishes, cleaned the house, washed the laundry by hand, got the children ready for school each morning, and shopped for food at the market. She worked seven days per week without pay, but received free housing and food. She had a good relationship with the children, but was not allowed to socialize with J-D- and M-. She could not join the family for meals, but instead ate alone in the kitchen while cooking for them. After the family went to bed, she stayed up to clean after them. The Applicant did not have a bedroom, but slept on the living room floor on a mat made from banana leaves, with a sheet and pillow.

After a couple of years, J-D- became violent, beating her if she did anything he did not like. More than once per week, he hit, kicked, or whipped the Applicant with a belt. He also yelled at her and called her names. J-D- also physically abused his spouse, M-, in the Applicant's presence. Additionally, M- sometimes made the Applicant kneel on the floor for 30 minutes and then whipped her with a belt or rope on her hands or back. J-D- also raped the Applicant many times and threatened her not to tell M-. She felt she had no choice but to do what J-D- and M- told her to do because she was afraid of them and would be homeless if she did not stay with them. The Applicant did not consider going to the police because J-D- was a police officer himself, and because she did not think "that having servants and being physically abusive to them was even a crime in Haiti."

J-D- took the Applicant to New Jersey with his family two or three times. He obtained a passport for her and kept it in his possession. During their stays with relatives in New Jersey, the Applicant

² We use initials to protect identities.

continued to work as a servant, cooking, cleaning, and doing all of the other tasks that she typically did in Haiti. In 1985 or 1986, when the Applicant was 19 years old, the family brought her to New Jersey for a visit with relatives and ended up staying permanently because the president of Haiti was overthrown during their trip. J-D- was afraid to return to Haiti because he had worked for the prior government and feared he would be in danger. J-D- rented a house in New Jersey and the Applicant worked as the family's servant there. She woke up at 5:00 a.m. to make breakfast for the family, got the children ready for school and walked them to the bus stop, and then cleaned the house, washed the dishes, and prepared dinner for the family. In the evening, she waited on them during dinner, then cleaned up after their meal. Once a week, she pushed the family's laundry to a nearby laundromat in a grocery cart. She also accompanied M- on weekly trips to the grocery store and rode a bicycle to the store at other times for needed items. As she had in Haiti, she slept in the living room.

During the first year in New Jersey, J-D- was not as physically abusive as he had been, but he yelled and cursed at her and eventually became physically abusive again. He also raped her many times and threatened to send her back to Haiti if she told anyone. The Applicant did not yet speak English and did not know that she could call the police. She once tried to run away by hiding in a neighbor's basement, but the neighbor made her go home. After about a year, J-D- told her that she needed to get a job to earn money. He took her to McDonald's, where he filled out an application for her. She was hired as a cleaner, and J-D- deposited her paychecks into a joint account he opened with her. The Applicant did not know how to access the money in the account. After she started working at McDonald's, the Applicant continued doing her regular duties at home.

When the Applicant was approximately 21 years old, she left J-D- and M-'s house and did not return. A woman she had met who spoke French offered to let the Applicant live in her apartment for \$150 per month after hearing about what the Applicant had endured. The Applicant continued working at McDonald's but opened her own bank account in order to keep her earnings. She had very little money and struggled to afford her basic expenses. She never saw her aunt and uncle again, and believes they were ready for her to leave because she had overheard them saying that they should let her go because she had gotten older. She does not think they bothered to look for her. The Applicant still did not contact the police because she did not initially realize that what her aunt and uncle had done to her was a punishable offense. Even when she later learned that she could contact the police, she was afraid that J-D- would harm her if he learned that she did so. She has since heard from a family member that J-D- died years ago.

The Applicant lived in her friend's apartment for less than a year and then rented her own apartment. Shortly thereafter, she gave birth to her first child, and then moved with her child's father to Florida. After having a second child together, she and the father separated. The Applicant has continued to live in Florida and married her spouse in 2007. She has been a home health aide since 1998 and has worked for an elderly couple for the past several years. The Applicant notes that she was diagnosed with HIV in the early 1990s and has stayed in good health with medication, regular visits with an infectious disease doctor, and counseling and education with a case manager. She was also diagnosed with lymphoma in 2008, went through surgery and chemotherapy, and has been in remission since 2009 with a risk of recurrence. Additionally, the Applicant has asthma and high blood pressure. She does not want to return to Haiti because she has lived in the United States for over 30 years and fears she would be at risk due to the violence and natural disasters there. Additionally, she believes she would be unable to find work to support herself because unemployment rates in Haiti are very high.

Further, she worries she would be unable to access necessary healthcare and medication, and would not survive if her lymphoma were to recur.

In a supplemental statement, the Applicant notes that it was not her choice to come to the United States. She reiterates her fears regarding access to healthcare and medications, difficulty supporting herself, and the generalized lack of security in Haiti. In an additional statement in response to a request for evidence (RFE) from the Director, she states that she never returned to Haiti after escaping because her uncle had taken her passport and visa, and her “first concern was just trying to find a way to survive on [her] own and [she] was hoping that they wouldn’t try to find [her].” She did not have anywhere to live in Haiti and would have been unable to support herself there, and she knew she could earn money at her job in the United States. After she had children, she did not consider returning to Haiti with them because she would have struggled to support them there, and they qualified for public assistance programs here. Subsequently, things became more difficult when she was diagnosed with HIV and lymphoma, and she does not believe she would have survived those medical conditions in Haiti. After she went into remission from lymphoma, a large earthquake struck Haiti. She states that although she “never made an effort to return to Haiti after [she] escaped from [her] aunt and uncle in the late 1980s,” she would have been unable to do so “due to [her] personal circumstances since [her] escape such as limited money, giving birth to and raising [her] children, living with HIV, [her] struggle to survive lymphoma and continuous problems of violence and natural disasters in Haiti.”

The Applicant further states, in a June 2020 supplemental statement, that she lived in fear of J-D- for nearly 10 years when she was the servant for his family because he was a big, angry, and violent person who hurt and threatened her. J-D- had been a law enforcement officer in Haiti and had bragged about having someone killed here, so when the Applicant escaped, she feared that he “would feel better if he knew that [she] was dead” so that she would not report his rapes. She therefore believed that she would be unsafe in Haiti because J-D- could arrange to have her killed there. After escaping, she had trouble sleeping and nightmares about what J-D- had done to her. Additionally, the Applicant notes that even if she thought she could return safely to Haiti, she did not have any money to travel or anywhere to live. She explains that her aunt and uncle had completely isolated her from her family and friends while they kept her as a servant beginning when she was 12 or 13 years old, so she had no contacts who could help her in Haiti. Furthermore, she did not have a passport or any identification because J-D- had kept those documents. She was unaware of the Haitian Embassy or Consulate, but would have been afraid to contact them anyway because of the risk that they would notify J-D-. She continues to have nightmares about what J-D- and M- did to her and becomes very upset at the thought of returning to Haiti.

B. Physical Presence on Account of a Severe Form of Trafficking in Persons

On appeal, the Applicant has not overcome the Director’s determination that she is not physically present in the United States on account of having been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act.

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); *see also Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92273 (Dec. 19, 2016) (noting that the language of the physical

presence requirement under the Act is phrased in the present tense and is interpreted as requiring “a consideration of the victim’s current situation, and a consideration of whether the victim can establish that his or her current presence in the United States is on account of trafficking”). The physical presence requirement reaches an applicant who at the time of filing: (i) is currently being subjected to trafficking; (ii) was liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved; (iv) was subject to trafficking in the past and their continued presence in the United States is directly related to such trafficking; or (v) 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)-(v). In considering the evidence of the physical presence requirement, USCIS may consider applicants’ responses to when they escaped their 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 she 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. She alleges that the Director did not properly consider her statement in response to the RFE in which she provided further explanation for her physical presence in the United States and its relation to her trafficking. She states that she described factors in that statement, including that she feared retaliation by her uncle if she returned to Haiti because he worked in law enforcement there and had bragged about having someone killed; and that she lacked ties, resources, and the ability to live independently in Haiti due to the isolation her aunt and uncle subjected her to since age 12 or 13. She notes that although her trafficking situation ended in 1988 or 1989 and she has not seen her traffickers since that time, the Act and regulations do not require a determination that her continuing presence is therefore unrelated to her trafficking. She asserts that “the fear of retaliation from her trafficker or individuals associated with him” and “the total disintegration of ties in Haiti which could have assisted her with repatriation” establish that her physical presence in the United States is directly related to her past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv). Further, she claims that the Director’s denial was in conflict with the humanitarian goals of the T visa program, and that “[f]ulfilling the stated congressional intent of protecting and aiding victims requires a flexible application of the physical presence requirement.”

We acknowledge that the Applicant suffered physical, emotional, social, and financial harm as a result of being trafficked as her aunt and uncle’s servant. The Applicant’s aunt and uncle subjected her to abhorrent conditions from the time she was 12 or 13 years old until she was 21. However, the Applicant’s statements and supporting evidence do not demonstrate that her current presence in the United States is directly related to her past trafficking. The Applicant’s trafficking situation ended in 1989 or 1990, which was 32 or 33 years ago, when she decided to leave her aunt and uncle’s home and not return. As the Applicant correctly asserts, the length of time between an applicant’s escape or liberation from their traffickers 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 applicant 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/policy-manual> (explaining that an applicant is not required to file their T application within a specified period of time after their original trafficking).

Nevertheless, in this case the evidence does not establish that the Applicant's physical presence at this time remains directly connected to her trafficking. The Applicant has not seen or heard from her aunt and uncle since her escape, and she indicated in her own statement that she believed they were ready for her to leave and did not bother to look for her. The Applicant remained living in the same town, and working at the same job her uncle had obtained for her, after leaving her trafficking situation, apparently without any ongoing risk from her traffickers. The evidence shows that the Applicant's initial presence in the United States shortly after her escape was due to her trafficking, as she spoke little English, lacked financial resources, did not have a passport or any other type of identification, was unaware of any resources that could provide her with support, and had no remaining ties in Haiti. However, the evidence indicates that during the time that has passed since her trafficking ended, the Applicant's situation has changed. She has built a life in the United States that is no longer directly related to her trafficking, and the factors that would make life difficult for her in Haiti are not clearly connected to her status as a trafficking victim. The Applicant explained in her statements that she fears returning to Haiti because of generalized violence there, natural disasters, her anticipated difficulty finding a job, and limited access to necessary medical care for her HIV, lymphoma, asthma, and high blood pressure. By contrast, in the United States she has a steady job, family ties, and access to needed services.

Although the Applicant explained that she feared retaliation from her uncle when she first escaped, believing that he could have her killed in Haiti, her uncle did not seek to retaliate against or even contact her after she left his house, even while she continued working at the same McDonald's where he had arranged a job for her. Since her escape, the Applicant has learned that her uncle has died, and her aunt remains living in New Jersey. In her statements, the Applicant does not express an ongoing fear of her uncle, aunt, or their associates, except to say that she still has nightmares about things that happened to her in Haiti. Counsel claims on appeal that "it is not unreasonable to believe that an individual who was subjected to several years of physical and sexual abuse by a former employee of the Haitian government would continue to have some degree of fear of retaliation if returned to that country," but the Applicant does not make such a claim in her own statements. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

Additionally, we acknowledge the Applicant's assertions that when she escaped, she did not have any money, identification, or ties in Haiti that would have allowed her to return there. However, she states in her June 2020 supplemental statement, "These days I know how to get a passport and I have money to buy a plane ticket." She explains that she still does not "know anything about where to go or how to survive in Haiti" because she lacks contacts there due to the isolation she experienced due to her trafficking. However, while the fact that she does not have social ties in Haiti after over 30 years away is a factor demonstrating that she would experience hardship if she were to return there, it is insufficient to establish that her physical presence is directly related to her past trafficking. Although the Applicant experienced difficulties immediately after leaving her traffickers that impacted her daily activities and prevented her from returning to Haiti at that time, she developed a more independent life in the years that followed. She has not provided evidence that she remains at risk of harm by her traffickers or continues to experience lasting impacts of her trafficking that affect her daily life. Her statements focus mainly on her concerns about violence, natural disasters, financial difficulty, personal health needs, unavailability of services in Haiti, and ties to the United States. She has not provided

sufficient testimony or other evidence to connect these issues directly to her trafficking. There is no evidence that her medical conditions are related to her trafficking experience, and she does not describe in her statement any ongoing physical or mental health effects of her trafficking.

Accordingly, while we recognize the difficult circumstances the Applicant has endured, the preponderance of the evidence does not establish that her current physical presence in the United States is directly related to her past trafficking, as described under 8 C.F.R. § 214.11(g)(1)(iv), as she claims. The Applicant has not shown that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act, and therefore does not qualify for T nonimmigrant classification.

ORDER: The appeal is dismissed.