



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

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

In Re: 17873004

Date: FEB. 28, 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 had not demonstrated that she was a victim of a severe form of trafficking in persons and was physically present in the United States on account of the claimed trafficking.¹ The matter is now before us on appeal. On appeal, the Applicant submits a brief and asserts her eligibility. The Administrative Appeals Office (AAO) reviews 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 remand the matter to the Director for the issuance of a new 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 he or she: is or has been a victim of a severe form of trafficking in persons; is physically present in the United States on account of such trafficking; has 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 eligibility criteria). The term "severe form of trafficking in persons" includes "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).²

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

¹ The Director additionally determined, based solely on the Applicant not having established that she was the victim of a severe form of trafficking in persons, that she likewise had not met her burden of establishing compliance with reasonable requests for assistance in the investigation or prosecution of trafficking.

² The definition of a severe form of trafficking in persons also includes commercial sex trafficking, which is not relevant in this case.

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 45-year-old native and citizen of Mexico, filed her T application in July 2019. She bases her eligibility for T classification on her claim that S-C-S-³ her ex-partner and the father of one of her children, subjected her to trafficking in the United States.

A. The Applicant's Trafficking Claim

In her statement from July 2019, the Applicant indicated that she first got together with S-C-S- in Mexico where they lived until he brought her to the United States in 2001. The Applicant stated that she suffered mental, physical, emotional, and sexual abuse throughout her relationship with him. At first, the Applicant described S-C-S- as very demanding. She stated that he wanted her to do things for him at the exact moment he requested them and if she did not do them he would scream at her. She further stated that if she contradicted him or talked back he would attack her. The Applicant stated that the physical abuse started with S-C-S- pulling her hair and then progressed to him kicking her and then got more and more violent and worse with time. She recounted that S-C-S- would often beat her for no reason at all, he repeatedly threatened to kill her throughout their relationship, and his abuse and control was so extreme that one time she smiled at a woman while at his sister's house and S-C-S- got so mad that he punched her in the face. From that point forward, the Applicant stated that she always kept her head down while walking in public to avoid him getting mad and she lived in constant fear of him. The Applicant further stated that S-C-S- would threaten to deform her face or cut off one of her legs. She stated that several times she tried to leave him, but that S-C-S- would always come and find her and bring her back with him. The Applicant recollected another instance where S-C-S- kidnapped their four-month-old son, and she made a police report but the police never did anything about it. The Applicant recounted that once they got to the United States things got even worse with S-C-S- being violent, abusive, and controlling of everything she did. She reported being forced to wear baggy clothes that did not show her body. She stated that S-C-S- would not let her leave their apartment unless she was with him, and when she was able to leave she did not interact with anyone for fear of angering S-C-S- and being beaten up by him once they got home. The Applicant stated she was not working at the time and S-C-S- would leave her and their son in the apartment alone with no money and they would have to wait for him to get home in order to get food. The Applicant recalled that S-C-S- had control over everything, she had no way to get food on her own, and she was so afraid she did not dare go against him. She further stated that she could never go out alone to get food or anything else, and when she needed clothes he would go shopping with her and pick out everything.

The Applicant stated that around 2005 she found a job in a restaurant. She recalled that S-C-S- did not want her working there and he told her so, but she was tired of never having money so she disobeyed him. She further stated that once she started working, S-C-S- made her pay for everything including rent, bills, and food so he essentially controlled all the money by forcing her to spend it all on bills and rent so she had "no money left over." She recalled that S-C-S- knew how much her

³ Initials are used in this decision to protect the identities of individuals.

paychecks were, and he made her spend all the money she earned so even though she was making her own money she could still not go to the store or buy anything on her own. The Applicant stated that S-C-S- made things so difficult for her while she was employed that she eventually quit working at the restaurant.

The Applicant recalled that, on one occasion, S-C-S- came home drunk and hit her so badly that she lost consciousness, and once she regained consciousness S-C-S- stood by the door to the apartment all night watching her so she could not leave. This incident caused a change in her thinking because the next day she sought help from a neighbor who went with the Applicant to court to seek protection and succeeded in getting a restraining order issued against S-C-S- after explaining the abuse she suffered. The Applicant recalled that after the order was issued S-C-S- came to the apartment and tried to pull her away with him, but a neighbor saw what was happening and called the police and S-C-S- was arrested. The Applicant stated that once the police realized she had no phone they provided her with a cell phone so that the Applicant could contact them if S-C-S- came after her again, which gave her more confidence that the police would help her if she was in danger. The Applicant recalled that the help her neighbor gave her—and especially the help provided by the police—were the reasons she realized she could leave S-C-S-. Although there was a restraining order in place and S-C-S- knew it, the Applicant stated he violated the order when he came to the Applicant's apartment, disguised his voice when knocking on her door, and then forced his way in and attempted to rape her. She stated that once S-C-S- realized that the police had been called, he grabbed some items from the apartment and left but was shortly thereafter arrested by police.

The Applicant indicated that after S-C-S- was arrested for violating the restraining order she no longer heard from him and she is glad for that because she no longer lives in fear and feels safe. She stated that she has heard through family members that S-C-S- is back in Mexico, and that is a big reason why she is afraid to go back to Mexico because she knows that there are not consequences there for his abuse. The Applicant stated that she was never protected in Mexico before but in the United States S-C-S- left her alone once he knew that police would continue to arrest him.

In a 2020 supplemental statement responding to the Director's request for evidence (RFE), the Applicant asserted that from the very beginning of her relationship with S-C-S- in Mexico she was basically his slave, living with him and his relatives and working in the house cooking and tending to the animals on the ranch. She stated that her workdays began at 5:00 am and lasted until 9:00 or 10:00 pm. When S-C-S- announced that they would be going to the United States she told him she did not want to go but he threatened to take their son away so she did not feel she had a choice. Once they arrived in the United States, the Applicant stated that S-C-S- would go out and work but he made her stay home with their son and cook and clean. She recounted that S-C-S- told her that she "was illegal" and if she went out she would be arrested and deported. She further stated that S-C-S- did not "lock her in" because he did not need to as she was both afraid of him taking her son away or being apprehended by immigration or the police. The Applicant reiterated her previous statement that S-C-S- controlled all the money in the household even though for a time she was making her own money while working at the restaurant. She stated that she was forced to sign over her paychecks to S-C-S- after initially trying to keep some of the wages she earned for herself and being beaten badly as punishment. The Applicant further asserted that sometimes S-C-S- would take their son and leave the house without letting her know and not return until very late, which made her worry that she might never see her son again. The applicant also stated that "[l]ooking back now I realized that he tried to

control me psychologically, and it worked like a charm for him for years.” Additionally, the Applicant stated that she still wonders why she did not have the courage to escape with her son, but after “so many years of living in a twisted world where I was worthless as a woman, as a mother, and even as a person, [S-C-S-] had me in a trance.” Finally, the Applicant asserted her belief that if she and her son had to return to Mexico, S-C-S- would certainly find her, harm her, and force her to return to the same master and servant situation.

As acknowledged by the Director, the record also included public source documents regarding mental health services and stigmas in Mexico, a non-precedent AAO decision, a letter from a social worker, a statement from the Applicant’s attorney, a letter from a counseling case manager, and an email printout from a police official.

B. The Applicant Has Established She Is a Victim of a Severe Form of Trafficking in Persons

The Director determined that the Applicant did not establish that she was a victim of a severe form of trafficking in persons. The Applicant has overcome this ground for denial of her application on appeal.

An applicant seeking to demonstrate that he or she was a victim of a severe form of trafficking must show, in pertinent part: (1) that he or she was recruited, harbored, transported, provided, or obtained for his or her labor or services, (2) through the use of force, fraud, or coercion, (3) for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102(11); 8 C.F.R. § 214.11(a) (defining the term “severe forms of trafficking in persons”). As defined at 8 C.F.R. § 214.11(a), coercion means “threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.”

On appeal, the Applicant maintains that her ex-partner, S-C-S-, obtained, harbored, and transported her through force and coercion for the purpose of subjecting her to involuntary servitude or slavery from 1997 to 2005, using a pattern of physical violence and controlling behavior that made her believe that she or her son would suffer serious harm and physical restraint if she did not remain in a condition of servitude.

The record establishes that S-C-S- harbored the Applicant through coercion, as required under the definition of “severe form of trafficking” at 8 C.F.R. § 214.11(a). The evidence shows that S-C-S- harbored the Applicant by controlling her movements and demanding that she remain either at work or at home, under a schedule that he established and enforced. S-C-S- isolated her from family and friends and prevented her from developing new relationships. The Applicant described S-C-S- taking her entire salary during the time she was employed. The record further shows that S-C-S- harbored her through coercion by subjecting the Applicant to prolonged and severe physical, verbal, sexual, and emotional abuse, as well as through intimidation to force her to stay with him, threatening her with harm or death, threatening that she would be deported, and threatening to take away her son. Accordingly, the record shows that S-C-S- harbored the Applicant through a “scheme, plan, or pattern

... caus[ing]" the Applicant to believe that failure to comply with his demands "would result in serious harm . . . ," as described in the definition of coercion under 8 C.F.R. § 214.11(a).⁴

Nevertheless, in denying the T application, the Director determined that the record did not demonstrate that S-C-S- recruited, harbored, transported, provided, or obtained the Applicant for the purpose of subjecting her to involuntary servitude during the course of their domestic relationship. We disagree and will withdraw the Director's determination.

The term "involuntary servitude" is defined as:

a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

8 C.F.R. § 214.11(a). Servitude is not defined in the Act or the regulations, but is commonly understood as "the condition of being a servant or slave," or a prisoner sentenced to forced labor. *Black's Law Dictionary* (B.A. Garner, ed.) (11th ed. 2019). Slavery is defined as "a situation in which one person has absolute power over the life, fortune, and liberty of another." *Id.*

The record reflects that S-C-S- subjected the Applicant to domestic violence in the form of verbal, emotional, sexual, and physical abuse during their relationship. However, as the Director acknowledged, human trafficking and domestic violence are not mutually exclusive, and a trafficking situation may arise in the context of a personal relationship where there is domestic violence. Here, contrary to the Director's finding, a preponderance of the evidence indicates that a trafficking situation arose during the course of the domestic relationship when S-C-S- harbored the Applicant for the purpose of subjecting her to involuntary servitude, and in fact subjected her to involuntary servitude. According to the Applicant's statements, her relationship with S-C-S- was abusive from its onset and he controlled and treated her like a slave, and that, beginning in 1997 until his arrests in 2005, S-C-S- coerced her into involuntary servitude. The Applicant stated that S-C-S- took all her wages during the time she was working at the restaurant, kept her isolated from family and friends, and allowed her only to work and take care of their son. She maintained that he forced her to complete all household and childcare tasks by threatening to beat her and take her child from her, or actually doing so, and she asserted that she believed that he was capable of harming and killing her if she did not work because of his past abuse of her. She also described numerous instances whereby C-S-C- would threaten her with deportation by immigration authorities as a vehicle by which to continue to exercise control over her. The Applicant indicated that she only escaped the trafficking situation when, with the help of others, she sought and obtained a court restraining order against S-C-S- which he subsequently

⁴ In light of this determination, we need not consider the Applicant's claim that she was obtained and transported through force and coercion.

violated on at least two occasions and for which he was arrested. The Applicant's statements demonstrate that S-C-S- harbored her for the purpose of subjecting her to involuntary servitude and that he actually subjected her to a condition of servitude by forcing her to perform labor by "means of [a] scheme, plan, or pattern intended to cause [her] to believe that" if she did not enter into or continue in such condition, she "would suffer serious harm," as well as through "the use or threat of physical restraint or physical injury" or "the abuse or threatened abuse of legal process," as required by the definition of involuntary servitude at 8 C.F.R. § 214.11(a).⁵

As stated, the record indicates that S-C-S- subjected the Applicant to domestic violence throughout their eight year relationship, and she suffered serious physical and emotional harm at his hands as a result. The record also establishes that during the course of that relationship, a trafficking situation arose in which S-C-S- used the controlling and abusive nature of their relationship to harbor the Applicant through coercion for the purpose of subjecting her to involuntary servitude. Accordingly, the Applicant has established that she is the victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(I) of the Act and as defined in the regulation at 8 C.F.R. § 214.11(a).

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

The Director additionally denied the application by determining that the Applicant did not submit sufficient evidence to establish that she was physically present in the United States on account of a severe form of trafficking in persons. The Applicant has likewise overcome this ground for denial of her application on 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); *see also* Interim T Rule, *New Classification for Victims of Severe Forms of Trafficking in Persons: Eligibility for "T" Nonimmigrant Status*, 81 Fed. Reg. 92266, 92273 (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 his or her 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 an applicant's responses to when he or she 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).

On appeal, the Applicant states, through counsel, that she satisfies the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(ii), as an individual who was liberated from trafficking by an LEA, and that her continuous physical presence is directly related to her past trafficking under 8 C.F.R.

⁵ In light of this determination, we need not analyze the Applicant's claims regarding slavery.

§ 214.11(g)(1)(iv). She notes that she escaped S-C-S- only with the help of law enforcement, that she believes S-C-S- was deported to Mexico because she reported his crime against her, and that she fears he would be able to find her if she returns there because he knows where her family resides. The Applicant contends that police in Mexico would not protect her. The Applicant also states that she is receiving crucial services as a victim of trafficking to help her deal with the severe post-traumatic stress disorder she developed as a result of the trafficking, services for which she would not be eligible if she were not in the United States.

As stated above, the physical presence requirement reaches an applicant who, in pertinent part, “was liberated from a severe form of trafficking in persons by an LEA.” 8 C.F.R. § 214.11(g)(1)(ii). The definition of LEA includes “a . . . local law enforcement agency . . .” 8 C.F.R. § 214.11(a). On appeal, counsel further references relevant agency guidance, providing the following:

To establish physical presence under this provision, applicants must demonstrate that law enforcement assisted in liberating them from the trafficking situation. The applicant can satisfy physical presence under this provision regardless of the timeline between the liberation from original trafficking and the filing of the T visa application. While applicants must demonstrate physical presence at the time of the application, the phrase “at the time of application” does not impose a limitation on the specific amount of time between the original trafficking and the filing of the application. The victim may file the application at any time. There is no requirement that the victim be in an ongoing trafficking situation, be in continuous contact with the trafficker, interact with the trafficker, or be under the control of the trafficker to qualify under this standard.

3 *USCIS Policy Manual* B.2(C)(1), <https://www.uscis.gov/policy-manual>. The Applicant credits the police with helping her to escape the trafficking situation and indicates that their assistance and reassurance that she would be protected from her trafficker was critical. This assertion is supported by the evidence in the record. As noted, the Applicant provided in her statements that she reported S-C-S-’s conduct to the police and sought and successfully obtained a restraining order from the court against him. The police provided her with a cellphone, with which she later reported his violation of the protection order on at least two occasions and for which he was later arrested. He was thereafter deported from the United States. These facts are corroborated by documentation in the record from the [redacted] Sheriff’s Office, the relevant entity and an LEA as contemplated by the regulations. Based on our *de novo* review, we conclude that the assistance the Applicant received from the police provided critical assistance in her being liberated from her trafficker, and she has therefore established her physical presence in the United States under 8 C.F.R. § 214.11(g)(1)(ii).

III. CONCLUSION

The Applicant has demonstrated that she is the victim of a severe form of trafficking in persons and is physically present in the United States on account of the same. We will remand this matter to the Director for a redetermination 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.