



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 17007366

Date: JAN. 31, 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 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 evidence did not establish that the Applicant is physically present in the United States on account of a severe form of trafficking in persons. 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); 8 C.F.R. § 214.11(d)(5). Upon de novo review, we will remand this matter 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 T-1 nonimmigrants if they: are or have been a victim of a severe form of trafficking in persons (trafficking); 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 eligibility criteria). 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.”¹

The physical presence requirement requires U.S. Citizenship and Immigration Services (USCIS) to consider the applicant’s presence in the United States at the time of application. 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, subject to 8 C.F.R. § 214.11(g)(2); were subject to trafficking in the past and “whose continuing presence in the United States is directly related to the original trafficking”; or were allowed to enter the United States to participate in investigative or

¹ 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.* The Applicant does not allege nor does the record support that he was a victim of sex trafficking.

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 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).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 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 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 34-year-old native and citizen of Panama, last entered the United States in 2006 on a visitor's visa. In January 2020, he filed his T application claiming he was a victim of labor trafficking. While the Director did not contest that the Applicant was a victim of a severe form of trafficking, the Director denied the T application stating the Applicant did not establish he is physically present in the United States on account of the trafficking. On appeal, the Applicant asserts he meets the physical presence pursuant to 8 C.F.R. § 214.11(g)(1)(iii), as an applicant who escaped trafficking before an LEA became involved, and pursuant to 8 C.F.R. § 214.11(g)(1)(iv), as his continuing presence in the United States is directly related to the original trafficking.

A. The Applicant's Trafficking Claim

In the record below, the Applicant provided two statements and a psychosocial assessment report, authored by a licensed mental health counselor with a master's degree in social work, who interviewed the Applicant and summarized his testimony.² According to the information contained in his statements and the psychosocial assessment, the Applicant received an invitation in January 2006 to attend a religious conference for a church in [REDACTED] which was within the same religious organization as the church he attended in Panama. The Applicant was granted a visa and traveled to [REDACTED] Florida, in April 2006. According to the Applicant, the pastor of the church in [REDACTED] N-K-³, and his wife picked him up from the airport and took him to their home. The Applicant stated that N-K- kept the Applicant's travel documents for "safe keeping." The Applicant explained that a conference did not happen but that he was put to work in the church facilities. He stated he was tasked with performing duties, such as, cleaning, distributing church advertising, and loading sound equipment. On the day the Applicant was to leave, he stated that N-K- did not take him to the airport and refused to return the Applicant's travel documents to him. According to the Applicant, N-K- offered to pay him and said he would help the Applicant obtain legal status to continue doing "God's work" if the Applicant stayed. The Applicant described working daily at the church and its radio station, beginning at seven in the morning. He said he did whatever was asked of him during the day, such as maintaining and cleaning the church, helping with gathering food, moving heavy items, and stated that he then he had to stay up editing videos and audio for N-K-, who preached late at night into the early morning hours.

² The Applicant submitted additional documentation to support his T application, including a number of letters documenting his victimization. While we may not discuss every document submitted, we have reviewed and considered the entirety of the record.

³ Initials are used to protect the identities of the individuals.

He stated he ate what was given to him, which was usually once a day and sometimes expired food. He said the work left him exhausted, with vision problems and headaches. The Applicant stated the church moved four times during the time he worked for them. Each time the church moved, the Applicant said he had to take on additional duties, such as, painting, breaking and putting up walls, cleaning debris, and setting up carpeting. The Applicant also described being forced to raise money for the church's radio station, often taking money from the elderly, knowing it would not be returned. When N-K- was unable to pay his debts to keep the radio station going, N-K- made the Applicant deal with the angry parishioners and lenders. The Applicant said N-K- told him one of the lenders for the radio station threatened to harm N-K- with a gun, which caused the Applicant to fear for his own life. The Applicant noted that this was when he began having panic attacks. The Applicant also described that in 2007, N-K- sent him to preach in different cities in multiple states. He said N-K- did not make accommodations for him to sleep or provide for his meals when he traveled, so he often slept in the churches. He said N-K- took any donations provided by the different churches for his services. He stated he was never paid for his work and was told by N-K- that if he left their home he would run into problems with immigration. He said he was not allowed to go anywhere and he felt imprisoned. The Applicant stated in March 2008 he was thrown out of N-K-'s home when he refused to leave his then girlfriend and now wife. He explained that N-K- told him he was still indebted to him and had to continue working for him and assured the Applicant that he would still assist with the Applicant's immigration paperwork. The Applicant stated that for the next year he spent all his time either traveling, working at the church's radio station, or calling people for donations, all without pay. In October 2009, the Applicant stated he left N-K-'s congregation and N-K- called other pastors and told them that the Applicant had been kicked out of his congregation and that they should not invite the Applicant to preach. Within his statements, the Applicant described feeling manipulated, dominated, controlled, enslaved, and apprehensive and said he suffered psychological, emotional, and physical pressure working for N-K-. The Applicant stated he was able to break free of his ties to N-K- in 2011 but did not clearly explain how he ended his ties to N-K-. He described having symptoms of anxiety and depression starting in 2006. He stated he suffered from headaches, nose bleeds, weight loss and anxiety attacks but N-K- never took him to the doctor. He explained that in 2014 he went to a doctor and learned he had leukemia and is currently under medication that he will need for the rest of his life. He stated he still continues to preach and lives with his wife and two United States citizen children.

B. Presence in the United States on Account of Trafficking

On appeal, the Applicant asserts that he meets the regulatory factors of both 8 C.F.R. § 214.11(g)(1)(iii) and (iv)⁴ and provides new evidence to support his assertions. As the new evidence is material to the Director's grounds for denial, we will remand for the Director to consider this evidence in the first instance.

To meet physical presence under 8 C.F.R. § 214.11(g)(1)(iii), applicants must establish that they escaped trafficking "before an LEA was involved." The term "involved," within the meaning of 8 C.F.R. § 214.11(g)(1)(iii), requires more than passive receipt by law enforcement of a trafficking report. In the underlying decision, the Director acknowledged that the Applicant had reported the actions of N-K- to the [REDACTED] Police Department but concluded that there is no evidence of an ongoing

⁴ The Applicant does not allege and the record does not support that the Applicant meets physical presence under 8 C.F.R. § 214.11(g)(1)(i)-(ii) or (v).

investigation. In support of his assertions on appeal that he meets the elements of 8 C.F.R. § 214.11(g)(1)(iii), the Applicant provides a document authored by himself and another by his mother-in-law stating he was interviewed by a “detective” after reporting to the police. The Applicant also included phone records that he states evidences the dates law enforcement spoke to him.

With respect to physical presence under 8 C.F.R. § 214.11(g)(1)(iv), T applicants subjected to trafficking in the past are required to show that their continuing presence in the United States is directly related to such trafficking. In the underlying record, the Applicant stated he often is unable to avoid the memories of his time with N-K- which triggers his anxiety. The Applicant described his symptoms to include, for example, nervousness, palpitations, cold sweats, shortness of breath, and an inability to concentrate. However, he did not describe, for instance, the frequency and severity of these symptoms or how they impact his day-to-day life. The author of the psychosocial assessment diagnosed the Applicant with moderate depression, persistent depressive disorder, post-traumatic stress disorder, and generalized anxiety disorder, which she attributed to a number of causes, including his illness and possible relapse, his lack of lawful status in the United States, and the trauma he endured while working for N-K-. She noted his “marked anxious affect and behavior” when he described his time working for N-K- but, like the Applicant, did not describe how his symptoms impact his daily life, e.g., the frequency of the Applicant’s symptoms, how he treats his symptoms, or how they have affected his relationships or work. The Director acknowledged the psychosocial assessment but noted that the Applicant had “established [his] life independent and separate from [his] trafficking situation.” The Director further explained that the record did not contain evidence that the Applicant was participating in therapy or other psychological support since escaping his trafficker, which would support his assertions that his ongoing treatment is the basis for his continuous presence in the United States. On appeal, the Applicant provided additional documents describing how his trafficking affects him and has affected him since 2006, including statements authored by himself, his mother-in-law, and an individual who considers himself the Applicant’s “therapist, counsel and spiritual guide.”

As the Applicant’s submissions on appeal provide new, material details in support of his assertions that he is physically present in the United States on account of a severe form of trafficking in persons, we remand to the Director to consider whether the Applicant has met his evidentiary burden with respect to 8 C.F.R. § 214.11(g)(1)(iii) or (iv) and for consideration of whether the Applicant meets the remaining statutory eligibility criteria for T-1 nonimmigrant status under section 101(a)(15)(T)(i).

III. CONCLUSION

As the Director did not have the opportunity to consider the evidence that is before us on appeal, and the evidence is material to the Director’s grounds for denial, the matter is remanded to the Director to consider this evidence and issue a new decision.

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