



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

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

In Re: 18370173

Date: JUN. 22, 2022

Appeal of Vermont Service Center Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification 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), as a victim of human trafficking. 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 he was physically present in the United States on account of having been a victim of a severe form of trafficking in persons (trafficking). The Director dismissed a subsequent motion to reopen and reconsider. On appeal, the Applicant submits a brief and evidence asserting his eligibility for T nonimmigrant status. We review 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 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 a T-1 nonimmigrant if they: are or have been a victim of a 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).

In these proceedings, 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 the Philippines, entered the United States with an H-2B nonimmigrant visa in March 2008 and he filed his T application in September 2017. The issue before us is whether the Applicant is physically present in the United States on account of trafficking. We find that he has established by a preponderance of the evidence the physical presence requirement.

A. The Applicant's Trafficking Claim

In his multiple statements in the record, the Applicant explained that he was recruited by [redacted] in the Philippines to work as a housekeeper at the [redacted] in [redacted] Florida via another company, [redacted].¹ The [redacted] hiring officer told him he would make \$8 to \$10 an hour plus tips, and his housing and transportation costs would be covered. The Applicant was required to make a non-refundable placement fee of approximately \$4,000 to [redacted] along with payments for interview fees, a plane ticket, attorney fees, and a pre-departure orientation seminar. [redacted] directed him to a lender in order to pay his placement fee, and he took out a loan along with several co-signers who used their property as collateral. Upon arriving in Florida, the Applicant was transferred to work at a hotel in New Jersey by [redacted] for a \$500 fee. His passport and important documents were confiscated by [redacted] \$340 was deducted from his paycheck each month for rent, and he was placed in a house with terrible living conditions. Specifically, there were approximately 50 people living in the house with only eight rooms and two and one-half bathrooms. A van shuttled the Applicant to and from the worksite, it was the only way he could leave the house, he was not allowed to leave the house without permission of his employer, and he was prevented from attending religious services.

The Applicant further explained that the house windows and doors were locked at 10 P.M. and his employer threatened him with removal if he did not follow the relevant house rules. The Applicant was not granted sick leave, the threats of removal left him fearful, he suffered from severe anxiety, and [redacted] told him seeing a doctor for his anxiety would be too expensive. The Applicant was only given enough work hours to make \$200 to \$300 a week, and he did not have enough money for food. Furthermore, the Applicant was unable to pay back his loan and eventually his mother-in-law had to sell her land to pay off his debt. The Applicant summarized that he was effectively locked in the housing complex, he had no freedom of movement, he feared disobeying [redacted] rules, and he was in a constant state of anxiety due to the threat of removal and lack of income to pay off his debt to the lender in the Philippines. The Applicant eventually confided his situation to a friend who lived near the hotel, he stopped attending work in December 2008, and his friend demanded that [redacted] return his passport and documents, which they did in January 2009. The Applicant has remained in the United States, obtained a job as a caregiver at a hospital, filed his T application, and received mental health services related to his trafficking.

B. Physical Presence on Account of Trafficking in Persons

In determining the physical presence requirement, U.S. Citizenship and Immigration Service (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, 81 Fed. Reg. 92266, 92273 (December 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 applicants who at the time of filing: are currently being subjected to trafficking; were liberated from trafficking by a law enforcement agency

¹ The Applicant states that [redacted] subsequently changed its name to [redacted]

(LEA); escaped from trafficking before an LEA was involved; were 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 considering the evidence of the physical presence requirement, USCIS may consider applicants' responses to when they 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).

In denying the T application, the Director addressed the Applicant's statements, a statement from the director of the [] Anti-Trafficking Program [] and a letter from a [] University licensed clinical social worker. The Director acknowledged the details of trafficking in the Applicant's statements, the symptoms referenced by the [] director and licensed clinical social worker including anxiety, difficulty sleeping, fatigue, depression, and difficulty concentrating, and the diagnosis of major depressive disorder by the licensed clinical social worker. However, the Director determined that none of these documents addressed the frequency or severity of the Applicant's symptoms; described how the diagnosis and symptoms have affected his presence in the United States throughout the 10 years since his trafficking ended; or sufficiently described any ongoing physical or emotional harm as a result of the trafficking that limited his ability to work or adversely impacted his life. The Director noted that the statements did not describe a direct relationship between the Applicant's physical presence and his trafficking, and he did not allege that in the 10 years since escaping his trafficking that he was subject to any adverse incidents related to his trafficking, or that he or his family has interacted with his trafficker which would indicate their control over him. Based on the above review, the Director determined that the Applicant did not establish that he is physically present in the United States on account of trafficking. On motion, the Applicant submitted an updated statement, another statement from the [] director, and previously submitted evidence. The Director concluded that the updated statements were similar to the previous ones and, in combination with the previously submitted licensed clinical social worker's statement, were insufficient to establish eligibility for relief for the reasons detailed in the initial decision.

On appeal, the Applicant asserts that he is physically present in the United States on account of trafficking and that the Director erred in determining otherwise. Specifically, the Applicant claims he would lose access to critical trafficking-specific services, including mental health treatment, that have assisted him with addressing the trafficking-related trauma that currently impacts his life.

A T applicant must demonstrate their eligibility by a preponderance of the evidence. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Applicant has established by a preponderance of the evidence that his continued physical presence in the United States is directly related to his original trafficking pursuant to 8 C.F.R. § 214.11(g)(1)(iv). In his personal statements, the Applicant states that he had severe anxiety while being trafficked; he experienced feelings of distrust, fear, and anxiety as a result of his trafficking for a long time after he escaped; and he did not come forward earlier to seek help due to various obstacles that prevented him from doing so, including his trauma, lack of awareness of services and of his victimization, and fear of immigration enforcement. To help him recover from his victimization, the Applicant sought out and is receiving mental health services. The [] director states that the Applicant has ongoing trauma as a result of the abuse he suffered, he has not regained his mental and physical health, and his trauma continues to negatively affect his ability to move forward in life. The [] director also

mentions that the Applicant needs continued support and assistance to recover from the effects of being trafficked and it would be extremely detrimental to his well-being if he returned to the Philippines. The licensed clinical social worker provides further corroboration of the Applicant's trauma and need for continuing services, including his diagnosis of major depressive disorder, individual therapy, and symptoms including feelings of depression, fatigue, and trouble concentrating. Lastly, the Applicant now submits a statement from the [redacted] University Anxiety Disorders Clinic providing that he was referred to them by [redacted] he began treatment in November 2020 at the clinic, he has completed 23 individual therapy sessions, he meets the criteria for generalized anxiety disorder, his ongoing symptoms are interfering with his daily activities, and continued treatment at the clinic is strongly recommended.

Upon *de novo* review, the record reflects that the Applicant has experienced, and is currently experiencing, mental health issues related to his trafficking. He has remained in the United States to obtain treatment, and the record reflects that his daily life has been affected by his trafficking. While the Applicant's trafficking ended in or around 2009, he has established by a preponderance of the evidence that his physical presence in the United States is directly related to the trafficking he endured.

III. CONCLUSION

As the Applicant has demonstrated that he is physically present in the United States on account of having been the victim of trafficking, we will remand this matter to the Director for the entry of a new decision 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.

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