U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20152729

Date: MAR. 09, 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 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 dismissed the Applicant's subsequent motion to reconsider and then a motion to reopen. The matter before us is an appeal of the Director's dismissal of his motion to reopen.

On appeal, the Applicant submits a brief and asserts that the Director's decision was in error. 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 an applicant 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 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a), and 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."

The physical presence requirement reaches applicants who at the time of filing: (i) are currently being subjected to trafficking; (ii) were liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved; (iv) were subject to trafficking in the past and their continuing presence in the United States is directly related to such trafficking; or (v) 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).

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, 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).

II. ANALYSIS

The Applicant, a native and citizen of the Philippines, filed a T application in June 2018.[1] The Director denied this T application in January 2020, finding that the Applicant had not established his physical presence in the United States is directly related to a severe form of trafficking and determining that records indicate that the Applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Act (controlled substance conviction (or conspiracy or attempt)). The Applicant filed a motion to reconsider the Director's decision which was subsequently dismissed.[2] The Applicant then filed a motion to reopen in November 2020. The Director dismissed this motion to reopen in July 2021. The matter before us now is an appeal of the Director's July 2021 decision. In her decision, the Director reviewed the brief submitted as evidence on motion, noted that it had been submitted previously, and determined that it was insufficient to show that the Applicant is physically present in the United States as a result of a severe form of trafficking.

On appeal, the Applicant contends that the Director did not fully address each of the arguments presented in this brief in denying his T application; that she did not discuss them in dismissing his motion to reconsider; and that she did not address them when dismissing the instant motion to reopen. The Applicant contends that the Director violated his right to due process in failing to address all of the arguments in her denial or in either dismissal; in so doing the Applicant contends that the Director reached an erroneous conclusion regarding the physical presence requirement.

For the following reasons, we disagree. As we note above, the matter before us is an appeal of the Director's decision dismissing the Applicant's motion to reopen. We therefore will address the Applicant's arguments as they relate to whether the Director properly dismissed this motion, and will not address the Applicant's arguments relating to the Director's denial of the T application or to the Director's dismissal of the Applicant's motion to reconsider.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies this requirement and demonstrates eligibility for the requested immigration benefit.

In evidence submitted with his motion to reopen, a brief previously submitted as part of his T application, the Applicant argues that his physical presence in the United States is directly related to

[1] The record reflects that the Applicant previously filed a T application, that this application was denied, that we denied a subsequent appeal, and that the Director also dismissed motions to reopen and motions to reconsider filed by the Applicant. These motions were not appealed to us.

[2] The record shows that the Applicant did not appeal the Director's dismissal of his motion to reconsider to us.

his trafficking because he requires access to mental health care that he would not be able to receive outside of the United States. However, the Applicant submits no new evidence to support this assertion, and a review of the record shows that the Director considered evidence of his participation in counseling, including the psychological evaluation diagnosing him with Unspecified Trauma and Stressor Related Disorder, when determining that he had not established that his physical presence is related to his trafficking.

The Applicant also asserts that his physical presence in the United States is directly related to a severe form of trafficking because he would be in extreme danger upon his return to the Philippines. Specifically, he contends that a drug conviction on his record may result in a threat to him as "the President of the Philippines has recently directed citizens to "go ahead and kill drug users."" He contends that this drug conviction is directly related to his trafficking. In the evidence submitted with his motion, the Applicant states that he used methamphetamine as a way of "self-medicating" to treat the trauma from his trafficking, that he was subsequently convicted of attempted illegal possession/use of a controlled substance;[3] and that this was "*a direct result of the psychological consequences of his trafficking*" (emphasis in original.) Although we are sympathetic to this fear, we do not find this argument persuasive. First, we note in denying his T application, the Director determined that the Applicant may be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act (controlled substance conviction (or conspiracy or attempt)). Upon *de novo* review of the record below, the Applicant has not contested this ground for denying his T application. Second, the Applicant does not provide new evidence on motion to show how a conviction which may render him inadmissible may also demonstrate his eligibility for T-1 nonimmigrant status.

Finally, the Applicant contends that were he to leave the United States his life would be in danger due to the "retaliatory nature of his trafficker." The Applicant references court documentation of lawsuits pursued by his trafficker against other employees, and asserts that this demonstrates the likelihood that she would pursue him legally once he returned to the Philippines. However, the record shows that the Director addressed this other documentation in denying his T application, noting that the documentation of others' experiences with his trafficker are not sufficient to establish that he is likely experience similar persecution upon his return to the Philippines. The Applicant provides no new evidence on motion of retaliatory action perpetrated against him by his trafficker or otherwise demonstrating the dangers posed to him by his trafficker should he return to the Philippines.

In summary, as the Applicant acknowledges on appeal, the legal brief submitted on motion to reopen, had previously been submitted as part of the denied T application. The Applicant offers no new evidence to support the arguments in this brief or otherwise show that it by itself is sufficient to demonstrate his eligibility for T-1 nonimmigrant status. Finally, the Applicant does not contest the Director's determination that he may be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act (controlled substance conviction (or conspiracy or attempt)). For these reasons, the Applicant has not shown on appeal that the Director erred in dismissing his motion to reopen nor has he demonstrated his eligibility for T-1 nonimmigrant status.

[3] Court documents in the record show that in [redacted] 2003, the Applicant pled guilty and was convicted of this charge following his arrest for felony possession of a controlled substance, misdemeanor simple assault, misdemeanor destruction of private property, and misdemeanor possession of paraphernalia.

ORDER: The appeal is dismissed.