



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 18410680

Date: MAR. 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 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 the 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 as “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; or 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). Sex trafficking means the “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” *Id.*

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 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 46-year-old native and citizen of Mexico, last entered the United States without being inspected, admitted, or paroled on or about February 2004. In November 2019, he filed his T application claiming his smugglers obtained, transported, harbored, and provided him by force, fraud, and coercion for the purpose of subjecting him to involuntary servitude and commercial sex acts in the United States.<sup>1</sup> The Director did not contest the issue of whether the Applicant was a victim of a severe form of trafficking. Rather, the Director denied the T application concluding the Applicant had not demonstrated that he was physically present in the United States on account of a severe form of trafficking. Upon de novo review of the underlying record, we conclude the Applicant has established that he was subject to trafficking in the past and his continued presence in the United States is directly related to such trafficking, pursuant to 8 C.F.R. § 214.11(g)(1)(iv).

### A. The Applicant’s Trafficking Claim

According to his personal statements submitted below, in 2004 the Applicant arranged with a coyote to be smuggled into the United States. He said the coyote told him the trip would take one day and explained it would be costly because the coyote ensured quick and safe arrival. The Applicant stated he had a friend in [REDACTED] California, who agreed to pay the smuggling fee upon the Applicant’s arrival to the United States. The Applicant described being transported in the trunk of a car and that U.S. officials at the border found him. He said he was detained for a day and returned to Mexico. When back in Mexico, the Applicant said his smugglers were waiting for him, told him they had already invested time and money on him, and forced him to go with them again. The Applicant said he was ordered to go into the trunk of a truck that had an altered gas tank with one other man. He stated the other man refused to get into the truck and was beaten so the Applicant complied with the smugglers. He recalled breathing gas fumes and thinking he would die in the trunk. After crossing into the United States, the Applicant said the drivers left the truck and they were stuck in the trunk until a tow truck came hours later, during which time they screamed for help. The Applicant described

---

<sup>1</sup> The Applicant submitted documentation in support of his trafficking claim, including reports regarding Mexico’s country conditions and trafficking indicators, as well as his physical presence claim, such as documents on trauma. While we may not reference each document, we have reviewed and considered the entirety of the record.

being taken to a house where he stayed for three weeks<sup>2</sup> cooking meals and cleaning for the smugglers. He said others were only kept a day or two. He believed he was kept as a cook because his smugglers knew he previously worked in a restaurant. He described how the smugglers usually spent the night drinking and doing drugs and he was forced to serve them food and drinks. He said he was told that if he did not do as he was told he would be killed. He described how one man was dragged away and not seen again when the smugglers learned his contact refused to pay extra for him. He described being verbally abused and stated he tried to escape by climbing a wall. However, there were dogs on the other side and he was caught and beaten. He said he was given food and water once a day and got little sleep. He explained that the coyotes also forced him to perform sexual acts on them and their guests and touched him sexually. He said when he tried to resist, he was threatened with a gun. He said one day he was told there was a risk to being caught and they had to leave the house. The Applicant stated he was taken to his friend who had to pay twice the agreed upon amount for his release.

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

The Director concluded that the Applicant is not physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires. As discussed above, the physical presence requirement, pursuant to 8 C.F.R. § 214.11(g)(1)(iv),<sup>3</sup> reaches an applicant who at the time of filing was subject to trafficking in the past and his or her continuing presence in the United States is directly related to such trafficking. Based on the record below, the Applicant established his physical presence in the United States is on account of his trafficking.

According to the Applicant, he initially was unable to return to Mexico because he did not have money or identity documents and had to begin working to pay his friend the \$6,000 in smuggling fees. He stated it would not have been possible to pay his friend back such a large sum if he had returned to Mexico. After his release from trafficking, he said he suffered severe symptoms and was so traumatized and malnourished, he could not sleep and wanted to die. He said at that time he would not have been physically able to travel back to Mexico. He explained some of his symptoms got better over time, but he began suffering from anxiety, which he states continues to affect him socially. He gave the example of how seeing people partying and drinking makes him anxious because he believes such behavior results in violence. He said loud noises also make him anxious and he has to leave his home when his child is misbehaving. He described how he has difficulty trusting others after his trafficking. He stated he has claustrophobia after being locked up in the trunk and as a result, is unable to be in small spaces. He explained that he cannot enter an elevator, a freezer at work, or small spaces in his home without being terrified or experiencing a “panic attack.” He said he works as a cook and wants to work in a food truck but is unable to because of his fear of small spaces. He said he has flashbacks to the sexual abuse and feels pain and fear when around gay men because of the sexual acts he was forced to perform. He explained that he had trouble maintaining intimate relationships because he was “traumatized” by his trafficking experience and did not meet his wife until 2019. He said his wife is patient with him but his sexual abuse affects his marriage and intimacy with her. He described

---

<sup>2</sup> The Applicant’s declarations differ on the amount of time he was held by the smugglers. In his second declaration, he stated he was held for six weeks.

<sup>3</sup> In the record below, the Applicant also asserted he met the physical presence requirement pursuant to 8 C.F.R. § 214.11(g)(1)(iii) as he escaped from trafficking before an LEA was involved. As we have concluded that the Applicant has established physical presence under 8 C.F.R. § 214.11(g)(1)(iv), we need not reach this issue on appeal.

suicidal thoughts associated with his shame and feelings of vulnerability but states he has not acted on these thoughts because his brother committed suicide and it brought too much suffering on his family. He says he is depressed, which affects his energy levels and he prefers to stay in bed but does not explain how his depression is linked to his trafficking. He also said his anxiety triggers his inability to sleep and rest. He discussed wanting to seek therapy but repeatedly described his sense of shame and embarrassment over his sexual abuse, how culturally “men have to be strong,” and how he makes efforts to forget his experience.

The Applicant has demonstrated by a preponderance of the evidence the impact of the trafficking on his day-to-day life in the underlying record and has thereby established his physical presence in the United States is on account of his trafficking as section 101(a)(15)(T)(i)(II) of the Act requires. He explained how he struggles socially and emotionally and how difficult it was for him to trust and maintain relationships with others because of his abuse. He described how his claustrophobia resulted from his trafficking experience and has created difficulties with his home life and work as he fears small spaces and is unable to work in small spaces, such as food trucks. He discussed the many triggers that remind him of his trafficking, such as, seeing gay men, dark spaces and small spaces, loud noises, and social gatherings. He has described how his trauma limits his activities with his child, his wife, his work, and his future job prospects. He has also described his efforts to stabilize his life, such as continuing to work and creating a home where he feels safe. He also recognized his victimization and stated he wants to seek treatment but described the cultural and emotional hurdles he would need to overcome.<sup>4</sup>

Given our determination here that the Applicant has established his continued presence in the United States is directly related to his trafficking, pursuant to 8 C.F.R. § 214.11(g)(1)(iv), we will remand this matter to the Director to determine in the first instance whether the Applicant has satisfied the other remaining eligibility requirements.

### III. CONCLUSION

The Applicant has demonstrated that he is physically present in the United States on account of his trafficking. The matter will be remanded to the Director for consideration of whether the Applicant meets the remaining statutory eligibility criteria for T-1 nonimmigrant status under section 101(a)(15)(T)(i).

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

---

<sup>4</sup> Further, on appeal, the Applicant includes a mental health evaluation which provides a diagnosis of the Applicant’s mental health and recommendations for treatment and further strengthens the record by explaining how the Applicant’s trauma from his trafficking continues to affect him.