



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

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

In Re: 11147354

Date: MAR. 30, 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 Applicant's Form I-914, Application for T Nonimmigrant Status (T application), concluding that the Applicant did not establish he was physically present in the United States on account of having been a victim of a severe form of trafficking in persons. On appeal, the Applicant submits additional evidence and a brief asserting his eligibility. 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 the matter to the Director.

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 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 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 criteria). 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 is a native and citizen of Guatemala who most recently entered the United States without inspection, admission, or parole in 1995. He filed a T application in 2018, claiming that he became a victim of trafficking when he was smuggled into the United States. The Director denied the T application, finding that the Applicant did not establish his physical presence in the United States was directly related to the original trafficking. On appeal, the Applicant contends that he has met the regulatory requirements for physical presence, and that the Director did not fully consider his assertions and evidence. In support of his contention, the Applicant has submitted into the record

declarations and briefs, medical and psychological evaluation documents, and background articles on trafficking and trauma.

A. Applicant's Trafficking Claim

The Applicant's personal statements in the record set forth the following claim: he became the victim of labor trafficking during the course of being smuggled to the United States in 1996, and his continued physical presence in the country after that date is directly due to emotional and physical harm he suffered as a result of his trafficking. Specifically, in 1996, when he was 15 years old, the Applicant left Guatemala out of fear for his safety after being harassed and threatened by criminal gangs. The Applicant paid an individual named J-C-¹ \$3,000 to arrange his travel to the United States, and J-C- took his identification documents, contact information and belongings, and brought him and about 20–25 other minors to Mexico.

Armed men forced the Applicant to stay at a house in Mexico for many weeks, and the armed men forced him and the other minors at gunpoint to deliver heavy backpacks/bags, which he believes contained drugs, across a river every day. He and the others were denied food or were beaten and threatened with harm or death if they did not cooperate, they were forced to take drugs for stamina, and the Applicant's health deteriorated during this time. After a few weeks, he was brought to a heavily guarded ranch across the river in the United States and was forced to stay there for about a month. He and about ten other individuals were forced at gunpoint to perform daily labor at the ranch including cleaning, cooking, and taking care of the ranch, and they were beaten and threatened with death if they did not cooperate.

Because he had very little strength after a month, the Applicant was told to call family or friends to obtain money for his release. His brother, who lived in Texas, subsequently paid the \$3,000, and the traffickers then brought the Applicant to [redacted] and released him to his brother. When the traffickers released the Applicant, they warned him that he was not allowed to tell anyone what had happened to him, and that they could find him if he did because they had his personal information and identification documents. In addition to the Applicant's statements, the record before the Director included medical documents, a non-precedent decision from this office, a referral and an enrollment letter for him to receive services through the Trafficking Victims Assistance Program (TVAP) program, and background articles on trafficking and trauma. On appeal, the Applicant submits an additional personal statement and new materials related to his mental health.

B. Physical Presence Requirement

The Director concluded that the evidence did not establish that the Applicant is currently 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. The Applicant has overcome this finding on appeal.

In determining the physical presence requirement, U.S. Citizenship and Immigration Services (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*;

¹ We use initials to protect the privacy of individuals.

Eligibility for “T” Nonimmigrant Status (Interim T Rule), 81 Fed. Reg. 92266, 92273 (Dec. 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 may be met by 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 the original 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 an applicant’s responses to when they escaped the trafficker, 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).

On appeal, the Applicant contends that after acknowledging his physical injuries and limitations, and psychological trauma that resulted from his trafficking experience, the Director made a legal error by ignoring the effects of those injuries and instead placing a heavy focus on the fact that the trafficking occurred long before the Applicant filed the T application. As the Applicant correctly claims, the length of time between an applicant’s escape or liberation from their traffickers and the filing of their T application is not determinative of whether their physical presence is on account of their past trafficking. *See* 8 C.F.R. § 214.11(g)(4) (discussing the various considerations USCIS will take into account in assessing whether the physical presence requirement is satisfied, including activities applicants have undertaken since escaping trafficking to deal with the consequences of having been trafficked and their ability to leave the United States); *see also* 3 *USCIS Policy Manual* B.2(C)(1), <https://www.uscis.gov/policymanual> (explaining that an applicant is not required to file their T application within a specified period of time after their original trafficking).

The Applicant claims that he felt traumatized and fearful after his traffickers released him and that he experienced persistent nightmares and flashbacks for several years after his release that have gradually lessened in frequency over time, but that he continues to experience them now. He indicates that he also suffers from insomnia as well as daily fear and anxiety due to his trafficking experiences. In addition, he describes experiencing ongoing fear that his traffickers or their associates will find, harm, or possibly kill him if he returns to Guatemala, to keep him from exposing them.

In support of these claims, the Applicant submitted into the record evidence of his enrollment in counseling services through the Catholic Charities-run TVAP. On appeal, the Applicant also provides a psychological evaluation that reflects he is receiving mental health therapy, reports experiencing difficulties sleeping, suffers from recurrent and distressing memories related to his trafficking, has persistent negative beliefs about himself and others (e.g., no one can be trusted), and that he cannot remember feeling happy since his trafficking occurred. In the evaluation, the therapist diagnosed the Applicant with Post-traumatic Stress Disorder (PTSD) related to his trafficking and recommended continued therapy to reduce his symptoms and increase his overall daily functioning.

With the evaluation, the Applicant submitted a treatment plan from his therapist, which recommends additional sessions to assist him in understanding his psychological reactions to stressors and methods

to cope with those anxieties. These coping methods are designed to reduce his PTSD symptoms and increase his overall daily functioning. The Applicant's personal statement submitted on appeal indicates that he continues to attend counseling sessions, which are beneficial to his mental health, and that he does not believe he would be able to obtain quality therapy in Guatemala. He acknowledges that he did not seek counseling previously, but notes that this was due to financial concerns and a lack of knowledge, and he is able to receive the therapy now at no cost because his attorney made him aware of a non-profit organization assistance program.

The Applicant also expresses fear that his traffickers or their associates may discover that he has returned to Guatemala and that they will find, harm, and possibly kill him. Although the Applicant states that the traffickers took his identity and contact information, and that his sister in Guatemala told him several years ago that men went to their house looking for him on several occasions, the Applicant has not submitted evidence that there has been any contact between those parties since approximately the year 2000. The Applicant further states that he was also in physical pain after his trafficking occurred, and that he suffers from sciatic nerve, back, hip, and leg pain, which began during his trafficking incident. He indicates that his physical ailments affect his daily life by making it difficult to get out of bed and to get dressed as well as to stand and sit for long periods of time. The Applicant provides evidence demonstrating that he has received chiropractic treatments to aid with these physical ailments.

The Applicant's statements and the material from his mental health professional submitted on appeal demonstrate by a preponderance of the evidence that he suffered serious psychological and physical harm during and after his trafficking and that he continues to suffer serious and ongoing consequences. Upon *de novo* review, the Applicant has established by a preponderance of the evidence that his trafficking claim falls into the scenario described at 8 C.F.R. § 214.11(g)(1)(iv) in that he was subjected to trafficking in the past and his continued presence in the United States is directly related to such trafficking. Accordingly, the Applicant has demonstrated that his physical presence in the United States is on account of having been the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires.

III. CONCLUSION

The Applicant has overcome the basis for the Director's denial as he has demonstrated that he is physically present in the United States on account of having been a victim of a severe form of trafficking in persons. We will therefore remand this matter to the Director 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 decision consistent with the foregoing analysis.