U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22718019

Date: NOV. 28, 2022

Motion on Administrative Appeals Office Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant status 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 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 noted that the Applicant is inadmissible and her Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application), was denied.[1] We dismissed the Applicant's subsequent appeal on the same basis.

The matter is now before us on motion to reconsider. The Applicant submits a brief and reasserts her eligibility for the benefit sought. In these proceedings, 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). Upon review, we will dismiss the motion to reconsider.

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The Applicant is a native and citizen of Haiti who last entered the United States in 1985 or 1986 and filed her T application in 2019, which was denied. In our decision to dismiss the Applicant's appeal of that denial, which is incorporated here by reference, we determined that the Applicant had not established by a preponderance of the evidence that her physical presence in the United States is on account of having been a victim of trafficking as section 101(a)(15)(T)(i)(II) of the Act requires. In summary, we found that the evidence indicated that while the Applicant's initial presence in the United States shortly after her escape was due to her trafficking, she had since built a life that was no longer directly related to her trafficking, and the factors that would make life difficult for her in Haiti were not clearly connected to her status as a trafficking victim.

[1] The AAO has no jurisdiction over the denial of a waiver application, and the matter of the Applicant's admissibility is not at issue here. 8 C.F.R. § 212.16(c).

We again recognize the harm the Applicant has endured as a result of her trafficking experience. Nevertheless, on motion, the Applicant has not overcome our previous determination that she has not shown that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act, such that our previous decision was incorrect.

In considering the evidence of the physical presence requirement, USCIS must consider whether a T applicant's continued presence in the United States at the time of the application is directly related to the original trafficking in persons. *See* 8 C.F.R. § 214.11(g)(1); 8 C.F.R. § 214.11(g)(1)(iv). We will consider an applicant's statements regarding 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 motion, the Applicant asserts that she has provided evidence to meet her burden to establish that she is physically present in the United States on account of having been a victim of human trafficking. She states that her lack of social ties in Haiti, which are the result of her trafficking experience, would exacerbate other hardships she would face if she returns to Haiti. The Applicant contends that our decision dismissing her appeal improperly weighed the evidence she submitted of difficult country conditions and her own statement about her concerns regarding repatriation. In doing so, the Applicant claims that we failed to consider the evidence in her case through a victim-centered approach according to the USCIS Policy Manual. 3 *USCIS Policy Manual* B.2(C)(1), https://www.uscis.gov/policymanual. She additionally states that our decision only considered country conditions information as relevant to the determination of whether she would face extreme hardship if returned to Haiti, but asserts that it is also relevant to the determination of whether she is physically present in the United States on account of trafficking.

The Applicant is correct that evidence submitted may be used to support more than one requirement for T nonimmigrant status. We acknowledge the Applicant's statements below that she was isolated in Haiti over 30 years ago, had no communication with family or friends, and does not have anyone that can help her if she returns. We also acknowledge the Applicant's claim that these circumstances resulted from her past trafficking experience and that she does not know how to live in Haiti. However, as discussed in our previous decision, the Applicant's statements regarding her desire to remain in the United States and do not further elaborate this claim. They instead focus mainly on her concerns unrelated to her trafficking experience and lack of social ties, including violence, natural disasters, financial difficulty, personal health needs, unavailability of services in Haiti, as well as her ties to the United States. Although the counsel-authored brief on motion identifies the Applicant's lack of social ties in Haiti as a primary impediment in her ability to leave the United States, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Therefore, we find no error in our previous decision that the Applicant has not provided sufficient evidence to connect her repatriation concerns directly to her trafficking such that her current continued presence in the United States is directly related to her trafficking experience as required by 8 C.F.R. § 214.11(g)(1)(iv).

The Applicant additionally argues that our decision appeared to require a more onerous burden of proof than the preponderance of the evidence standard, such as the "clear and convincing" standard. Although the Applicant provides one example of our use of the word "clearly," she has not explained how our decision applied an incorrect burden of proof.

Furthermore, the Applicant argues that our decision only considered some of the factors outlined in the USCIS Policy Manual in evaluating whether a T applicant's continuing presence in the United States is directly related to the original trafficking in persons, and appeared to only consider whether she remains at risk of harm by her traffickers or whether her trafficking experience still affects her daily life. However, the Applicant has still not demonstrated how the evidence she provided satisfies the physical presence requirement according to the other factors set forth in the USCIS Policy Manual or those required by the above-cited regulations. While the Applicant contends that the Policy Manual's broad list of factors that may be considered indicates that the "direct connection" requirement that is not a rigid one, she cites no legal authority for this interpretation. The regulation at 8 C.F.R. § 214.11(g)(1)(iv) plainly requires that a T applicant's continuing presence in the United States be "directly related to the original trafficking in persons". We lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials).

Accordingly, the Applicant has not shown that our previous decision on appeal was based on an incorrect application of law or USCIS policy or that it was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). As the Applicant has not met the requirements for a motion to reconsider, we will dismiss the motion.

ORDER: The motion to reconsider is dismissed.