



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

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

In Re: 22376374

Date: SEPT. 09, 2022

Motion on Administrative Appeals Office 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 had not demonstrated that he was physically present in the United States on account of trafficking. We dismissed the Applicant's subsequent appeal. He now files a motion to reconsider, asserting that he has established eligibility for T-1 nonimmigrant classification. Upon review, we will dismiss the motion.

**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 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).

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

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 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 52-year-old native and citizen of Mexico, claims to have last entered the United States on or about October 1996, without being inspected, admitted, or paroled. In April 2018, he filed his T application. The Director denied the T application finding that, while the Applicant had established that he is a victim of a severe form of trafficking in persons, he did not establish that he is physically present in the United States on account of such trafficking. In our decision dismissing the appeal, which we incorporate herein by reference, we concluded that the Applicant had not established by a preponderance of the evidence that his physical presence in the United States was on account of having been a victim of trafficking as section 101(a)(15)(T)(i)(II) of the Act requires. In his motion for reconsideration, the Applicant asserts he meets the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iv) because his continued presence in the United States is directly related to his trafficking and that we erred in our analysis by disregarding and misinterpreting evidence with respect to his continued “physical” and “psychological” harm. He also asserts that we did not apply the “any credible evidence” standard when reviewing the evidence. We have reviewed the Applicant’s arguments on motion and determine they are unsupported by the record.

We summarize the relevant facts in the record to address the Applicant’s assertions regarding his physical and psychological harm. The affidavits submitted by the Applicant with his T application provided the following: he arranged to travel from Mexico to the United States with his wife and two children, who were two and four years old. He carried his son during the journey but his smugglers insisted that he also carry a package, which was 10 to 15 pounds. He slept on the hard floor, and believes it is the cause of his back pain. He said his journey was traumatic and his children lost their innocence, sense of security, and feelings of being protected. He described feeling stressed, depressed, and fearful of the police when he was released. He believed the police would report him to immigration officials. He described fearing the traffickers if he and his wife were returned to Mexico. He said, “remembering what I endured and what my family had to endure is sometimes too much for me to bear.” On appeal, the Applicant added the following to the record: he fell while trapped with the traffickers and has had back pain since then. The pain was in his waist and hip area and required seeing a massage therapist a couple times a year, treatment by a chiropractor, and taking over-the-counter medication daily. The Applicant submitted a letter by his massage therapist, dated April 2020, which read, “[the Applicant] stated that his discomfort started immediately after a slip and fall due to carrying heavy loads on his back.” The Applicant also included notes from four massage visits spanning 2019 and 2020, which indicate the “nature of the injury” as a sprain and strain. According to the medical documentation submitted, the Applicant sought treatment by a chiropractor in 2020. The chiropractor’s notes, dated February 2020, included a treatment plan lasting four weeks. The notes described the Applicant as having “discomfort” in the “buttocks,” which included muscle spasms. Under “postural analysis” the notes indicated that the Applicant has a short right leg. The notes also described an “exacerbation,” which are “episodic marked deterioration of the patient’s

condition due to acute flareups of the presenting conditions.” Under assessment, the chiropractor noted:

[the Applicant] is of good health and is expected to make good progress and recovery with few residuals. He has no issue reported as complicating factor(s) and nothing noted as contraindications to chiropractic treatment. Based on his history and examination, it is reasonable to believe that his recovery may take about the same length of time as an average patient with an uncomplicated case.

Two weeks into treatment, the notes reflect that the Applicant showed improvement. The notes from the final treatment were not included and the record did not evidence that the Applicant sought further treatment for his back. With respect to his psychological harm, the Applicant added on appeal: he received therapy from April 2018 until February 2020, and that his therapist has helped him find ways to overcome his insomnia and fears. He said he has come a long way and needs to continue therapy to completely heal. Included in the record were therapy notes, a treatment summary, and a “diagnostic assessment” from 2018. The Applicant was diagnosed with post-traumatic stress disorder, uncomplicated bereavement, and problems related to other legal circumstances. The notes described the Applicant’s trauma, which included being smuggled, the loss of his mother the year before, the violent murder of his brother five years before, the domestic abuse he faced by his father as a young child, and the difficult relationship he has with his daughter. In the August 2018 notes, the author reported the Applicant’s progress as including, “no symptoms of anxiety.” In the discharge paperwork dated December 2018, the notes stated the Applicant “reports his depression, trauma, anxiety levels to have decreased and is more manageable and is having less depressive symptoms.” The record did not contain a recommendation for continued treatment. Notes from the Applicant’s 2019 and 2020 visits were not included and the record did not indicate whether the Applicant has had therapy since February 2020 or what his current diagnosis and treatment plan require.

We first address the Applicant’s assertion that he suffers ongoing backpain because of his trafficking experience. The Applicant’s counsel asserts that the Applicant’s discomfort started “immediately after a slip and fall due to carrying heavy loads on his back which occurred during the trafficking victimization.” However, assertions of counsel are not evidence and must be supported by independent documentation. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (“We note statements or assertions by counsel are not evidence”). Here, counsel’s assertions are not substantiated by the Applicant’s statements or other documentation in the record. The Applicant’s statements first indicate that his back pain stemmed from sleeping on a hard floor but then, on appeal, attribute his back pain to falling while being trafficked. However, the Applicant’s statements do not provide the circumstances surrounding his fall or the nature of his injury. His statements mention being forced to carry a package weighing 10 to 15 pounds, while simultaneously carrying his four-year-old son, but the Applicant does not explain how long he carried the package, whether it was days or hours, or whether he fell while carrying the package. Turning to the supporting documents, the Applicant provided documents by his massage therapist and chiropractor. Neither author indicated that the Applicant’s back pain originated with his trafficking in 1996. His massage therapist stated he has been treating the Applicant since 2000 and noted that the Applicant “claimed” his back pain stemmed from lifting heavy loads on his back. However, the therapist does not explain when the heavy lifting occurred or what heavy things the Applicant was lifting. The chiropractor’s notes described the Applicant’s discomfort but did not indicate a fall, rather he mentions the Applicant’s

short leg as a factor. The chiropractor also recommended four weeks of treatment and indicated that the Applicant was making progress. There was not a final report by the chiropractor in the record, nor was there an indication that further treatment was necessary. Counsel asserts that the chiropractor's description of the Applicant's condition as an "exacerbation" indicated that the Applicant has dealt with the back issues for some time prior to the examination in 2020. However, the record does not contain a sufficient explanation of the chiropractor's assessment of an "exacerbation" to support counsel's assertion. Furthermore, the chiropractor's notes do not attribute the back pain to a fall or carrying heavy loads. The chiropractor's notes indicated "no complicating factors" and an uncomplicated recovery. For these reasons, the Applicant did not meet his evidentiary burden of establishing by a preponderance of the evidence that his back pain is directly related to his trafficking and that we erred in our analysis on appeal concluding the same.

The record similarly does not support the Applicant's assertion that he suffers from ongoing psychological harm directly related to his trafficking. While we recognize the Applicant faced trauma during his trafficking, his statements do not sufficiently detail how his trafficking experience affects his daily psychological wellbeing. The Applicant described how recounting his trafficking experience was "too much for [him] to bear," but did not explain how frequently he thinks about his trafficking. He described feeling stressed and depressed, and stated he suffered from insomnia, but did not explain how these issues are linked to his trafficking. He outlined his fears about the police reporting him to immigration officials but stated his therapist has helped him find ways to overcome his insomnia and fears. He described fearing the traffickers if he and his wife were returned to Mexico but did not explain why the smugglers would be incentivized to harm him decades after releasing him. We acknowledge that the Applicant was diagnosed with post-traumatic stress disorder, uncomplicated bereavement, and problems related to other legal circumstances. The therapist's notes from 2018 described the Applicant's trauma as stemming from many painful events, of which his trafficking was listed as one, but his fear of his traffickers was not mentioned. On motion, counsel highlights the Applicant's symptoms listed in the therapist's notes and asserts that the Applicant established how his symptoms affect his day-to-day life. However, as discussed above, the therapist links the Applicant's trauma to many factors. Neither the Applicant nor his therapist identified how specifically the trauma he suffered during his trafficking affects him directly today. Towards the end of his sessions, the therapists' notes did not describe his trafficking but focused on his relationship with his daughter and described him as improving, with no anxiety and reduced symptoms of depression. The Applicant stated that he continued with therapy after 2018 but there were no notes or records from any follow up visits submitted as evidence and the record did not indicate whether the Applicant is currently in therapy or what his current diagnosis and treatment plan require. For these reasons, the Applicant did not meet his evidentiary burden of establishing by a preponderance of the evidence that he suffers from psychological harm directly related to his trafficking and that our analysis on appeal was in error.

The Applicant also asserts on motion that based on regulatory guidance, we should accept any credible evidence and that the regulations do not require anything more than a statement by the Applicant describing his ongoing physical and psychological harm. The Applicant argues that we erred on appeal by mentioning supporting documentation that was not provided. As explained above, the Applicant's statements did not provide sufficient and consistent details explaining how his back pain was directly related to his trafficking and did not provide enough detail on how the trauma he faced during his trafficking continues to affect him on a daily basis. For these reasons, we looked to the supporting documentation, which also did not support the Applicant's claims by a preponderance of the evidence.

While an applicant may submit any credible evidence, we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5). The Applicant has not established that we weighed or analyzed the supporting documentation in error.

Further, the Applicant has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3).

### III. CONCLUSION

The Applicant, who bears the burden of proof in these proceedings, has not demonstrated that our prior decision was incorrect based on the evidence of record at the time of the decision.

ORDER: The motion to reconsider is dismissed.