



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 23152073

Date: JAN 12, 2023

Motion on Administrative Appeals Office 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) and a subsequent motion to reconsider, 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 a motion to reconsider.¹ On motion, the Applicant reasserts her eligibility. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. We review the questions raised 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 dismiss the motion.

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. 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 in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) as "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."

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. 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

¹ We dismissed a subsequent appeal as moot because the Applicant simultaneously filed an appeal to us and a motion to reconsider before the Director.

II. ANALYSIS

The Applicant, a citizen of Mexico, last entered the United States in 2002, when she was 17 years old. She filed her T application in 2018.

A. The Applicant's Trafficking Claim

The Applicant's personal statements set forth the following claim: In November 2001, an individual offered her employment in the United States. The individual told the Applicant that a restaurant owner would pay for her travel, and she could repay the restaurant owner from her earnings. Upon entering the United States in January 2002, the Applicant resided with J-M.² J-M- told the Applicant that the restaurant where she was supposed to report for work was a "place of damnation where women dance at night." She resolved to return to Mexico; however, the restaurant owner contacted J-M- and told him that if he did not bring the Applicant to the restaurant, he would kill J-M- and the Applicant's family in Mexico. At the restaurant, the Applicant learned that she was expected to dance for "clients" and encourage the clients to buy drinks. She indicated that "clients paid us \$5 per song for dancing. And the beers we drank costs \$10, which we would be splitting – \$5 for the bar and \$5 for us." The restaurant owner did not credit the time she worked towards her debt but instead expected her to repay him from the money she received from clients. In February 2002, she discovered that she was pregnant. Around the same time, she befriended, and confided in, a customer named C-T-. She told C-T- that she could not stop working because she needed to look out for her sister who also worked at the restaurant. In May 2002, her sister returned to Mexico. Following her sister's departure, the Applicant and C-T- confronted the restaurant owner, and the Applicant told him that she would no longer work at the restaurant. In [] 2002, she gave birth to her first child. The Applicant and C-T- were married in 2018, and they have three children, born in 2005, 2008, and 2016.

B. The Applicant is Not Physically Present on Account of a Severe Form of Trafficking in Persons

The physical presence requirement reaches an applicant who at the time of filing: is currently being subjected to trafficking; was liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved; was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or was 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)-(iv). In evaluating the evidence of the physical presence requirement, U.S. Citizenship and Immigration Services may consider when an applicant 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).

The Director determined that the Applicant did not establish that her continuing presence in the United States is directly related to her original trafficking. The Director highlighted that the Applicant escaped her trafficker 20 years ago, found employment, and started a family with her spouse. The Director also noted that although the Applicant submitted a psychological evaluation which indicates that she experienced severe childhood trauma as well as depression and anxiety, the record did not

² Initials are used in this decision to protect the identities of individuals.

demonstrate that she suffered from any psychological conditions as a direct result of her trafficking or the impact that the trafficking had on her daily life.

On motion, the Applicant asserts that she was trafficked as a minor and her continued physical presence in the United States is directly related to her original trafficking because her trafficker arranged for her travel to the United States, harbored and trafficked her upon her entry, and she has not left the United States since her initial entry. She also asserts that after escaping her trafficker, she was reluctant to return to Mexico because her trafficker had previously threatened her family in Mexico in order to ensure her compliance.

We acknowledge the Applicant's statements regarding the emotional and financial harm she suffered as a result of her trafficking. We also acknowledge the findings in the psychological evaluation indicating that the Applicant is a survivor of child sexual abuse and human trafficking, and experiencing these kinds of trauma "has caused [the Applicant] difficulty with intimacy in her marriage, depression, anxiety, fear, guilt and shame." However, the Applicant has not provided evidence detailing the ongoing effects of the trafficking upon her current mental health status, her daily life activities, or her presence in the United States. We also note that while the Applicant contends that the inception of her relationship with her spouse is a direct result of her trafficking, her spouse actually assisted her in escaping her trafficker.³ Here, the Applicant's trafficking situation ended approximately 20 years ago and since then, she has built a life in the United States that is no longer directly related to her trafficking; she has maintained employment, got married, and raised a family. Further, the Applicant has not submitted any evidence demonstrating that her trafficker retaliated against her and her spouse after they confronted him or that the trafficker threatened the Applicant's family in Mexico.

In the end, the Applicant has not established by a preponderance of the evidence that her past trafficking continues to impact her daily life such that her current physical presence is directly related to it, as 8 C.F.R. § 214.11(g)(1)(iv) requires. Accordingly, the Applicant has not established 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, and therefore is not eligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.

³ In her declaration, the Applicant indicates that her spouse did not dance at the restaurant where she was trafficked, and when she confided in him, he assisted her in escaping her trafficker by confronting her trafficker and providing her and her sister with accommodation.