



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

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

In Re: 19161465

Date: MAY 23, 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 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), concluding that although the record established that the Applicant was a victim of a severe form of trafficking in persons, it did not establish that he was physically present in the United States on account of having been a victim of such trafficking. The Applicant appealed this decision to us and submitted a brief and additional evidence.¹ We then issued a notice of intent to dismiss (NOID) based upon our review of the record, and the Applicant timely filed a response accompanied by additional evidence. 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). Upon *de novo* review, we will withdraw the Director's decision and remand the matter to the Director for the entrance of a new decision consistent with the following analysis.

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).

The term "severe form of trafficking in persons" is defined, in pertinent part, 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."² 8 C.F.R. § 214.11(a) (2018). Involuntary servitude is defined, in pertinent part, as "a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to

¹ The Applicant filed a second appeal, receipt number [REDACTED] of the Director's decision with an identical brief and the same evidence submitted with the instant appeal. In a separate decision, we dismissed the second appeal as moot.

² The definition of a severe form of trafficking also includes commercial sex trafficking, which does not apply in this case. 8 C.F.R. § 214.11(a).

believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint.” *Id.*

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 is a citizen and resident of the Philippines who entered the United States in September 2006 on an H-2A nonimmigrant visa. In June 2019, the Applicant filed his T application on the basis that he was the victim of trafficking by his former U.S. employer, [REDACTED]

[REDACTED] The Director subsequently denied this T application, concluding that the Applicant did not establish that he is physically present in the United States on account of this trafficking, as required by section 101(a)(15)(T)(i)(II) of the Act.³ The Applicant appealed this decision to us, contending that he had established that he was physically present on account of this trafficking.

We later issued the Applicant a NOID, advising the Applicant that our *de novo* review of the record on appeal indicated he had not demonstrated by a preponderance of the evidence that he was a victim of a severe form of trafficking in persons. Specifically, we determined that the Applicant had not established that his U.S. employers had subjected him to or intended to subject him to involuntary servitude, consistent with the definition of a severe form of trafficking in persons. In his timely response to our NOID, the Applicant supplements the record on appeal, in relevant part, with an additional statement and asserts that he was subjected by his U.S. employer to involuntary servitude and that he is present in the United States on account of having been a victim of a severe form of trafficking.

A. The Victim’s Trafficking Claim

The record as supplemented on appeal includes, in pertinent part, the Applicant’s personal statements, an employment contract between the Petitioner and [REDACTED] and documentation related to the approval of the Petitioner’s H-2A nonimmigrant visa. The relevant evidence, including the Applicant’s statements before the Director and on appeal, reflects that the Applicant was recruited by [REDACTED] as a farm laborer, that he signed a contract with [REDACTED] to provide labor at an agreed upon rate and with the understanding that he would receive free food and suitable housing, and that [REDACTED] secured an H-2A visa for him. In a statement in the record below, the Applicant explained that the [REDACTED] employee who recruited him falsely promised him that after three years of employment he would be able to bring his family to the United States, and that he accepted the employment offer because he thought it would be a great opportunity for himself and his family.

³ The Director also determined that the Applicant had complied with reasonable requests for assistance in the investigation or prosecution of trafficking and that he would suffer extreme hardship involving unusual and severe harm upon removal from the United States, as required to establish eligibility under section 101(a)(15)(T)(i) of the Act. The Director further noted that “there was no evidence in the record at the time that [the Applicant] was inadmissible” to the United States.

In this statement, the Applicant relayed that when he arrived in the United States in, A-⁴, an employee of [REDACTED] in California where he first worked picking grapes, told him that he would be paid at a lower rate than that in his contract and required him to work harvesting vegetables on the weekend. Although he was promised payment for this work, the Applicant stated that he did not receive it. The Applicant recounted that in November 2006, A- told him of an opportunity in Hawaii picking ginger at a specified hourly rate, and that free transportation and lodging would be included. The Applicant explained that A- told him that he had to take this opportunity because there was not enough work in California.

Once in Hawaii, the Applicant relayed that the work was very difficult, and he was required to work longer hours than he was first told by A- and was not paid for some of those hours. He explained that P-, his employer in Hawaii, did not allow him to have many breaks, that the weather was bad, and that there was no shelter in the fields where he was working. The Petitioner recounted that they were not allowed to use tools when picking ginger and yams in the ground, and that his hands would become swollen and he would be in great pain from picking by hand. The Petitioner stated that when he told P- about the pain in his hands, he was told that he had to keep working.

In the supplemental statement provided with his NOID response, the Petitioner explains that P- would laugh at him and tell him to work faster whenever he got injured pruning the ginger and yams from the ground, and that on one occasion when he cut himself while he was working, P- did nothing to help him. In addition, he states that he felt threatened and feared P- would report him to immigration and have him deported because P- knew he lacked immigration status and told him about how A- had reported a worker to immigration when the worker complained. The Petitioner explains that in December 2006, he was sent back to [REDACTED] in California, and after being sent briefly back to Hawaii to work, returned to [REDACTED] and to picking grapes for A- again in approximately January 2007 because A- threatened to call immigration on him and others if the Petitioner did not work for him and continued to make false promises. The Petitioner states that his work conditions were even harder than before, that he was very tired all the time and that he endured pain in his feet because of the difficult working conditions, but that he continued to work at [REDACTED] because he feared that A- would call immigration as threatened, and because of the promise that he would be able to bring his family over. He also explains that although A- paid him from April through September 2007, but that beginning in October 2007 A- stopped paying him consistently. The Applicant recounts that in March 2008, after working for [REDACTED] for about eight months, and having not been paid for approximately seven months, he found the courage to leave [REDACTED]. He explains that after he escaped, he feared that if he reported his experience at [REDACTED] that A- would contact immigration as he had threatened to do and that "immigration would take my visa away and have me deported." The Applicant explains that it was not until 2016 that he felt comfortable enough to discuss his experiences at [REDACTED] with a coworker, who suggested he attend a local meeting of trafficking survivors. In 2018, he relays that he became connected with The Salvation Army-Anti-Trafficking Services program (TSA-ATS) and the Public Law Center. Since that time, the Petitioner states that he has been receiving services from TSA-ATS and attends support group meetings to help lower his stress and anxiety about his trafficking. He explains that at the time he filed the instant appeal, he had also been receiving therapy twice a month for symptoms of posttraumatic stress disorder (PTSD) related to his trafficking for several months, and that even though he is no longer doing so, he has not overcome the emotional

⁴ Initials are used to protect the privacy of individuals.

trauma of this trafficking. The Petitioner states that he remains, and needs to remain, in the United States to access the support services he receives from TSA-ATS and to have access to additional mental health services in the future.

B. Physical Presence Directly Related to a Severe Form 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. The Applicant has overcome this finding on appeal.

The physical presence requirement reaches 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 such 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 applicants' responses to when they 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 Director acknowledged that the Applicant experienced trauma related to his trafficking, and evidence in the record, such as letters of support in the record attesting to the Applicant's continued need to participate in therapy and verification of the Applicant's request to the California Victim Compensation Board for compensation for wages lost when he was trafficked. However, the Director nevertheless concluded that the totality of the evidence did not demonstrate that his continuing physical presence in the United States is directly related to his trafficking consistent with 8 C.F.R. § 214.11(g)(1)(iv). The Director determined rather that his continued physical presence "appears to be a result of [his] desired to bring [his] family to the United States." The Director also noted that the Applicant had escaped from his traffickers in 2007, filed his T application approximately 12 years after escaping, had not been in contact with them since his escape, and had an immigrant petition by an employer approved on his behalf in 2017, in reaching the conclusion that the Applicant was not physically present in the United States on account of his past trafficking.

On appeal the Applicant contends that the Director erred in determining that his continuing physical presence in the United States is not directly related to his past trafficking in part because the Director failed to consider his pursuit of mental health services and other services related to his trafficking. He asserts that he remains in the United States because he needs to retain access to mental health care and other services in order to address the ongoing trauma from being trafficked. The Applicant submits additional evidence on appeal to support these assertions, including in relevant part, two personal statements, a statement from his TSA-ATS case manager, and a letter dated June 2021 from a licensed marital and family therapist indicating that the Applicant began therapy in March 2021 for the treatment of PTSD symptoms related to his trafficking.

Based on our review of the record, as supplemented on appeal, the Applicant has demonstrated by a preponderance of the evidence that his continuing presence in the United States is directly related to his past trafficking. In the record below, the Applicant provided statements explaining that he suffered

nightmares due to his trafficking and was working with his TSA-ATS case manager to find mental health care services to help him deal with the trauma of his trafficking. In the July 2021 supplemental personal statement submitted on appeal, the Applicant clarifies that he was having recurring nightmares about three times per week as a result of his trafficking. His TSA-ATS case manager's letter, provided on appeal, states that the Applicant was assessed and it was determined that he would benefit from mental health therapy due to these recurring nightmares. It indicates that the Applicant was referred to a licensed therapist, and the therapist's letter in the record confirms that the Applicant has been participating in therapy since March 2021 for treatment of PTSD related to trafficking.⁵ The Applicant explains that he attends therapy approximately twice a month to deal with the trauma from his trafficking and that his therapist also provides him with breathing exercises to use when he feels anxious about his situation. The Applicant articulates that this treatment has been helpful and that without it he will not be able to heal from the emotional trauma caused by his trafficking. The Applicant also recounts in his July 2021 statement that he attends support group meetings for victims of trafficking consistently and that his attendance has helped to lower the stress and anxiety he still feels due to having been trafficked. In a second statement, submitted with his March 2022 NOID response, the Applicant states that he has not overcome the emotional trauma as a result of his trafficking. He explains that he continues to attend support group meetings to discuss his trafficking and address the ongoing anxiety and stress he still feels as a result, even though he no longer attends therapy. The Applicant explains in both of his statements on appeal that he would not have access to the support services he receives from TSA-ATS and to mental health care, if he were to be removed from the United States and that without these services it will be difficult for him to heal from and overcome his trafficking.

As to the Director's reliance on the length of time that passed between the Applicant's escape from trafficking and his filing of the T application, the Applicant reiterates on appeal that his traffickers threatened to report him to immigration and to have him deported if he reported this trafficking. He explains that it was not until 2016, when he spoke to a trafficking survivor and attended a support group for victims of trafficking, that he learned he was a trafficking victim and felt safe enough to report his trafficking to law enforcement. We note that while USCIS may properly consider when an applicant escaped their trafficker in determining whether they satisfied the physical presence requirement, the length of the period between an applicant's escape or liberation from their trafficker(s) 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).

In this case, although the Applicant's trafficking situation ended in 2007, the Applicant's statements and the letters from his therapist and his case manager demonstrate by a preponderance of the evidence that he suffers ongoing psychological harm as a result of his original trafficking that continues to adversely impact his daily life and that he requires the support services he is presently accessing to assist in his recovery. Therefore, the record as a whole shows that the Applicant's continuous physical

⁵ The therapist does not provide a formal diagnosis of PTSD in this correspondence.

presence is directly related to his past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv). Accordingly, the Applicant's physical presence in the United States is on account of his having been the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires.

III. CONCLUSION

The Applicant has established by a preponderance of the evidence that he is physically present in the United States on account of a severe trafficking as required by the Act. As the Applicant has overcome the Director's sole ground for denial of his T application, the matter is remanded to the Director to determine whether he meets the remaining eligibility criteria for T nonimmigrant classification.

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