



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

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

In Re: 19993535

Date: MAR. 03, 2022

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), concluding that the Applicant did not establish that she was physically present in the United States on account of having been a victim of a severe form of trafficking in persons (trafficking). 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.

## I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigrations Services (USCIS) 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 benefit sought.

## II. ANALYSIS

The Applicant is a native and citizen of Brazil who last entered the United States in 2005, and filed her T application in January 2018, which was denied. In our decision to dismiss the appeal, 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 during the time that had passed since the Applicant's trafficking ended, a period of approximately fifteen years, the Applicant had built a life in the United States that was no longer directly related to her trafficking; the record established that she was a wife and stay-at-home

mom with two children. Moreover, although the Applicant stated that she was afraid to return to Brazil in part due to her trafficking experience, other evidence in the record established that her trafficker was no longer a threat to her as he was killed in 2018. We also determined that the Applicant's remaining reasons for being afraid to return to Brazil were unrelated to her trafficking experience.

On motion, the Applicant does not address any of the deficiencies raised in our decision to dismiss the appeal. Rather, counsel asserts that "the statutory and regulatory language are in direct conflict with each other" because the statutory language does not "specify that the applicant's continuing presence in the United States be directly related to the original trafficking. The statute only requires that the applicant be in the United States because of or due to being trafficked." However, 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). Accordingly, 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.

**ORDER:** The motion to reconsider is dismissed.