



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

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

In Re: 18389376

Date: OCT. 11, 2023

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 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 record did not establish that the Applicant is physically present in the United States on account of a severe form of trafficking in persons. Additionally, the Director found the Applicant inadmissible and noted that her Form I-192, Application for Advance Permission to Enter as Nonimmigrant, had been denied.¹ The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions 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 withdraw the Director's decision and remand the matter for entry 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 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 term "severe form of trafficking in persons" is defined in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a), in relevant part, as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion"

¹ In her brief on appeal, the Applicant requests that the denials of her Form I-192 and the Form I-914 Supplement A, Application for Family Member of T-1 Recipient that she filed on her family member's behalf be withdrawn. However, this decision relates only to the Form I-290B, Notice of Appeal or Motion (appeal notice) that the Applicant filed in relation to her T application. Each separate appeal requires that its own appeal notice be filed, and the record does not reflect that the Applicant has filed appeals relating to her Form I-192 or Form I-914 Supplement A.

An applicant may meet the physical presence requirement if they: (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 continued 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 evaluating the evidence of the physical presence requirement, USCIS may consider when an applicant escaped their 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 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, a native and citizen of Honduras, last entered the United States without inspection, admission, or parole in August 2001. She filed her T application in November 2019 on the basis that she was the victim of commercial sex trafficking. The Director determined that the record established the Applicant was the victim of a severe form of trafficking in persons, but denied the T application based on a conclusion that she had not established that she is physically present in the United States on account of such trafficking.

A. The Applicant's Trafficking Claim

The facts surrounding the Applicant's claim of trafficking are not in dispute. The Director determined, and we agree, that the Applicant was the victim of commercial sex trafficking in 2001. In summary, the Applicant's personal statements indicate that she met a man named W-R-G-² during her journey from Honduras to the United States and he offered to help her cross the border. After accepting his help, she realized W-R-G- was a gang member traveling in the company of his associates and that she was not free to leave. The Applicant witnessed W-R-G- and his armed associates kill people on a daily basis while they traveled by train. W-R-G- repeatedly raped the Applicant during the journey and threatened to kill her if she did not comply with his sexual demands. After they crossed the border and walked through the desert for several days, W-R-G- forced the Applicant and two other women into the trunk of a car and transported them for hours until they arrived at an apartment. There, W-R-G- permitted her to drink water and take a shower and then raped her again, during which he said she "owed him and that [she] would be his forever." A few days later, W-R-G- moved the Applicant to a different apartment, where he held her as a prisoner and sex slave for approximately a month from August to September 2001. He said she belonged to him because he brought her to the United States. He kept her locked in a room and only allowed her to eat, drink, or shower when he wanted sex. In addition to frequent and brutal rapes, he physically beat her, tried to throw her out a second story window for resisting his demands, held a gun to her head and threatened her with death, hit her with

² We use initials to protect identities.

his handgun, and caused her serious physical injuries. Whenever he left the apartment, W-R-G- locked her inside and tied her hands and feet, leaving her restrained for hours without access to food, water, or a bathroom.

In late September of 2001, the Applicant was able to call her father in Honduras while W-R-G- was away from the apartment. She did not know how to contact the authorities in the United States but told her father she was being held captive. After W-R-G- returned to the apartment, the police arrived. W-R-G- ran out through the fire escape and the police entered and rescued the Applicant. She reported what had happened to her and they took photographs of her injuries before she was transported to the hospital, where she was evaluated for rape and treated for a bruised knee, a cracked rib, and lacerations to her mouth and elbow. While at the hospital, the Applicant became anxious to leave because she believed W-R-G- or his fellow gang members would find and kill her. After a short stay, she left the hospital and stayed with someone while she continued to recuperate from her injuries. She was unaware that she was a trafficking victim or that services were available to help her manage her trauma, lacked legal status in the United States, and has continued to live in fear of W-R-G-. Over time, the Applicant worked, met her partner, and had three U.S. citizen children.

As supporting documentation, the Applicant submitted the police report and rape investigation from the [] Police Department after she was rescued in September 2001 and a Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, both of which are consistent with her statements. In support of her T application and in response to a request for evidence from the Director, the Applicant also provided two psychosocial evaluations from a licensed clinical social worker. The evaluations indicate that the Applicant meets the diagnostic criteria for post-traumatic stress disorder with panic attacks, has been unable to overcome the psychological trauma and accompanying physical and social effects of her trafficking, and continues to experience the impacts of that trauma on her daily life.

B. Physical Presence on Account of Trafficking in Persons

The record on appeal demonstrates that the Applicant 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.

In denying the T application, the Director indicated that the evidence was insufficient to show that the Applicant's physical presence in the United States was "directly related" to her past trafficking because she filed her T application 18 years³ after escaping her trafficker. The Director also determined that neither the Applicant's personal statements nor the psychosocial evaluations provided sufficient detail about the severity of her mental health diagnoses and their impact on her daily life or the frequency of her psychological care. Further, the Director highlighted milestones in the Applicant's life, such as getting a job, having a relationship with her partner, and having children, and stated that the evidence does not show how her trafficking prevents her from working or caring for her family. The Director

³ The Director emphasized that 19 years had passed between the trafficking and the filing of the application, but the Applicant was liberated from her trafficking situation in September 2001 and filed her application 18 years later, in November 2019. However, the error is immaterial.

also noted that the Applicant did not claim to “have been subjected to any other adverse incidents related to the trafficking scheme” in the time between her escape and the filing of her T application.

On appeal, the Applicant contends that she satisfied the physical requirement under 8 C.F.R. § 214.11(g)(1) because she suffers ongoing trauma from her trafficking and is now receiving victims’ services. She argues on appeal that the Director erred by giving insufficient weight to her personal statements and the psychosocial evaluations, requiring a specific level of detail, and focusing incorrectly on the amount of time that had passed between her escape from trafficking and the filing of her T application.

Upon de novo review, as the Director correctly determined, the Applicant has established by a preponderance of the evidence that the police liberated her from a severe form of trafficking in persons when they responded to the apartment where she was being held. The related police reports indicate that they responded to a report of domestic violence at the apartment and spoke with the Applicant at the scene before she was transported for medical treatment for the injuries relating to her trafficking.

In evaluating the physical presence requirement, USCIS must consider a T applicant’s presence in the United States at the time the application is filed. 8 C.F.R. § 214.11(g)(1). However, as the guidance in the USCIS Policy Manual clarifies, an applicant does not need to file their T application within a certain amount of time after the trafficking and there is no requirement that they be in ongoing contact with, or under the control of, the trafficker. *See generally 3 USCIS Policy Manual B.2(C)(1)*, <https://www.uscis.gov/policy-manual>. As relevant in this case, to establish physical presence under 8 C.F.R. § 214.11(g)(1)(ii) as a person who was liberated from trafficking by an LEA, an applicant need only demonstrate that law enforcement assisted in liberating them from their trafficking situation and they are present in the United States, regardless of the amount of time that has passed between their liberation and the filing of the T visa application. *See generally 3 USCIS Policy Manual, supra* (explaining, as guidance, that if an applicant establishes that they were liberated from a trafficking situation by an LEA, they can establish physical presence regardless of the timeline between the liberation and the filing of their T application). The Director stated that under 8 C.F.R. § 214.11(g)(1), the Applicant was required to demonstrate that her physical presence in the United States was directly related to the original trafficking situation. We withdraw this determination, as the “directly related” requirement is only applicable to those who seek to establish physical presence under 8 C.F.R. § 214.11(g)(1)(iv).

As the Applicant has shown that she meets the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(ii) as someone who was liberated from trafficking by an LEA, we will remand the matter to the Director to consider whether she is otherwise eligible for T nonimmigrant status.

III. CONCLUSION

The Applicant has overcome the basis for the Director’s denial as she has established by a preponderance of the evidence that she was liberated from a trafficking situation by an LEA and is physically present in the United States on account of trafficking as required under 8 C.F.R. § 214.11(g)(1)(ii). We will therefore remand this matter to the Director to determine in the first instance whether the Applicant meets the remaining eligibility criteria for T nonimmigrant classification under section 101(a)(15)(T) of the Act.

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