



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

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

In Re: 14280188

Date: SEP. 9, 2021

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 summarily dismissed the Applicant's appeal. The Applicant has filed a motion to reopen and reconsider our decision.¹ Upon review, we will remand the matter to the Director for the entry of a new decision.

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 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).

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). An applicant may submit any credible, relevant evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the value and weight given to that evidence. 8 C.F.R. § 214.11(d)(5).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought. On motion, the Applicant has submitted new facts sufficient to meet the motion to reopen requirements, and as discussed further

¹ On motion, the Applicant has overcome the ground for which we summarily dismissed her appeal.

below, the motion to reopen will be granted and the matter remanded to the Director for the issuance of a new decision.

II. ANALYSIS

The Applicant is a native and citizen of El Salvador who last entered the United States without inspection in January 2009 and filed her T application in January 2018. The issue before us is whether the Applicant has established that her physical presence in the United States is on account of trafficking.

A. The Applicant's Trafficking Claim

In her multiple statements in the record, the Applicant explained that her friend in El Salvador told her about a man named O-M-² who would provide her employment as a waitress in the United States. She described a 20-day trip to the United States and her arrival in [redacted] Texas in May 2004, where she met O-M- in person. She stated that O-M- brought her to a bar to work and she was forced to drink with the male patrons in order to pay O-M- back for the cost of her trip to the United States. While working at the bar, the Applicant began speaking to B-M and she began a relationship with him. She later found out he was a coyote and worked with O-M- as part of the trafficking ring.

The Applicant further explained that O-M- forced her to fight other girls at the bar without clothing and would charge her \$4,000 if she did not want to fight. She was not allowed to leave the bar, and she feared for her family, as she was told that another woman tried to escape and her family was killed.

The Applicant described how the Federal Bureau of Investigation (FBI) investigated the bar and subsequently raided it in [redacted] 2005. She was then detained by the FBI for six months. B-M- told her not to talk to the FBI about what happened, and she was therefore afraid to tell the FBI about B-M- when they asked about him. Subsequent to her detention, the Applicant began living with B-M-, he physically and emotionally abused her, and she told him she knew he was a coyote and worked with O-M-. The Applicant explained that he threatened her and forced her to stay with him, and she missed her removal hearing as he forced her to move to a different state with him. She eventually escaped from B-M- in 2008, but was stopped by an immigration officer while traveling to California and removed to El Salvador in [redacted] 2008. The Applicant stated that she was in El Salvador for a couple of weeks when B-M- arrived at her home armed and with his cousins. He told her that she had three days to pack her bags and say goodbye to her family. She was not given an option and was forced to return to the United States with B-M- in [redacted] 2009. Once the Applicant arrived in [redacted] B-M- would not let her depart his home, he locked her in a closet, and he raped her. Fearing for herself and her family, the Applicant attempted to escape several times, but B-M- would find her and make her return to him. Eventually, in 2010, the Applicant was able to escape B-M- and move to [redacted] Texas. In March 2010, B-M- arrived at her residence in [redacted] grabbed her hair and threatened to kill her family if she did not move with him to [redacted]. The Applicant called the police and B-M- left the scene. The record includes a police report detailing the March 2010 incident and it is consistent with the Applicant's statements in the record.

² Initials are used to protect the identity of individuals.

B. Physical Presence on Account of Trafficking in Persons

The Director determined that the Applicant did not establish that her physical presence in the United States was on account of trafficking. Specifically, the Director determined that the Applicant departed the United States in [REDACTED] 2008 after she was trafficked and the record did not demonstrate that her reentry was on account of continued trafficking victimization or a new incident of trafficking. Rather, the Director found that the Applicant returned to the United States due to her involvement in her abusive relationship with B-M-. On appeal, the Applicant asserts that her reentry into the United States was due to her continued victimization and her physical presence in the United States is due to her past trafficking. Upon review, we withdraw the Director's determination that the Applicant did not establish that she is physically present in the United States on account of her past trafficking, as section 101(a)(15)(T)(i)(II) of the Act requires.

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, U.S. Citizenship and Immigration Services 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).

Additionally, applicants who have voluntarily departed from or have been removed from the United States at any time after having been trafficked will not be considered physically present on account of such trafficking, unless they demonstrate that: their reentry into the United States was the result of their “continued victimization”; they are a victim of a new incident of trafficking; or they were allowed reentry for participation in investigative or judicial processes relating to an act or perpetrator of the trafficking. 8 C.F.R. § 214.11(g)(2)(i)-(iii). Applicants who departed the United States after having been trafficked must establish that they meet the requirements of both 8 C.F.R. § 214.11(g)(1) and (2).

In this case, as the Applicant departed the United States in December 2008, she is required to establish that she falls within one of the exceptions at 8 C.F.R. § 214.11(g)(2). The Applicant contends that she falls under an exception to 8 C.F.R. § 214.11(g)(2), because her forced reentry was the result of her continued victimization by B-M-, a person who was part of her trafficking ring. The term “continued victimization” at 8 C.F.R. § 214.11(g)(2)(i) is not defined in the Act or regulation. The word “victimization” is commonly understood as the noun of the verb “victimize,” which means “to make a victim of.” *Victimize, Merriam-Webster Dictionary* (Aug. 30, 2021), <http://www.merriam-webster.com/dictionary/victimize>. The regulation defines “victim of a severe form of trafficking in persons (victim)” as “an alien who is or has been subject to a severe form of trafficking in persons.” 8 C.F.R. § 214.11(a). This language indicates that a person who has been the victim of trafficking in the past meets the definition of a “victim” under 8 C.F.R. § 214.11(a). However, in regard to physical presence on account of trafficking, the regulation differentiates between a victim of past trafficking who reenters the United States due to “continued victimization,” as described in 8 C.F.R.

§ 214.11(g)(2)(i), and one who reenters because he or she “is a victim of a new incident of a severe form of trafficking in persons” per 8 C.F.R. § 214.11(g)(2)(ii).

Similarly, the physical presence provision at 8 C.F.R. § 214.11(g)(1) repeatedly uses the phrase “severe form of trafficking in persons,” not “victimization,” in describing the scenarios in which an applicant may demonstrate current physical presence on account of a severe form of trafficking in persons. The use of the term “continued victimization,” rather than “victim of a severe form of trafficking in persons,” in 8 C.F.R. § 214.11(g)(2)(i) indicates that “continued victimization” is not limited to applicants who are currently being subjected to trafficking at the time of reentry, but may include ongoing victimization that directly results from past trafficking. Furthermore, 8 C.F.R. § 214.11(g)(2) specifies that a person who departs or is removed from the United States “at any time after the act of a severe form of trafficking in persons” may still establish current physical presence in the United States on account of such trafficking in limited situations. Therefore, an interruption or end to a severe form of trafficking in persons prior to departure and reentry does not necessarily prevent an applicant from establishing physical presence under 8 C.F.R. § 214.11(g), if, in pertinent part, the reentry was due to ongoing victimization from that trafficking. Additionally, while 8 C.F.R. § 214.11(g)(2)(ii) requires an applicant to show that he or she was the victim of “a new incident” of trafficking, 8 C.F.R. § 214.11(g)(2)(i) allows for a showing of “continued victimization” from past trafficking.

Accordingly, the term “continued victimization” at 8 C.F.R. § 214.11(g)(2)(i) may encompass an applicant who suffers ongoing victimization as a direct result of having been the victim of a severe form of trafficking in the past. Our *de novo* review of the evidence in the record establishes that the Applicant’s reentry into the United States was due to her continued victimization pursuant to 8 C.F.R. § 214.11(g)(2)(i). Prior to departing the United States, B-M- told the Applicant to not speak to law enforcement about his involvement in the trafficking ring and threatened to harm her if she did so. After departing the United States, the Applicant was in El Salvador for a couple of weeks when B-M- arrived at her home armed and with his cousins. B-M- told her that she had three days to pack her bags and say goodbye to her family. B-M- did not give the Applicant a choice; he forced her to return to the United States with him in [redacted] 2009. The Applicant maintained contact with B-M- after arrival in the United States via her forced residence with him. B-M- raped her and controlled her movement, by preventing her from leaving the house and locking her in a closet. The Applicant feared for herself and her family while residing with B-M-. Considering the foregoing circumstances, the Applicant’s reentry into the United States was the result of her continued victimization under 8 C.F.R. § 214.11(g)(2)(i) in the form of forced reentry, controlling behavior, rape, and fear of B-M-, who was part of the trafficking ring.³

As mentioned, the Applicant also must establish that she is physically present in the United States under 8 C.F.R. § 214.11(g)(1). In her statements, the Applicant described how she remained in the United States due to her previous experience being trafficked. She stated that she feels safe in [redacted] Texas as B-M- and O-M- do not know her location and she has tried to isolate herself. She explained that she feels protected from danger in the United States as B-M- stopped contacting her after she

³ The Applicant does not assert, and the record does not show, that she falls within 8 C.F.R. § 214.11(g)(2)(ii) (as the victim of a new incident of trafficking) or 8 C.F.R. § 214.11(g)(2)(iii) (allowed reentry into the United States to participate in the investigation and prosecution of her claimed traffickers).

called the police, and she does not believe O-M- would approach her due to his issues with the FBI. The Applicant noted that she would not have these same protections in El Salvador due to the lack of police protection there; B-M- found her in El Salvador once before and forced her to return to the United States. She further mentioned that B-M- and O-M- have many contacts in El Salvador who would notify them if she returned. In further support of her claims, the Applicant submitted into the record articles related to gender violence in El Salvador, lack of protection for women, and the lack of prosecution for these crimes. Based on the foregoing, the Applicant has established by a preponderance of the evidence that her “continuing presence in the United States is directly related to the original trafficking,” as contemplated under 8 C.F.R. § 214.11(g)(1)(iv).

III. CONCLUSION

The Director concluded that the Applicant had not established that she was physically present in the United States on account of trafficking as section 101(a)(15)(T)(i)(II) of the Act requires but did not analyze the remaining statutory eligibility requirements under section 101(a)(15)(T)(i) of the Act. Because the Applicant has established by a preponderance of the evidence that she is physically present in the United States on account of trafficking, we will remand this matter to the Director to determine in the first instance whether the Applicant has satisfied the remaining eligibility requirements.

ORDER: The motion to reopen is granted, and the matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse to the Applicant, shall be certified to us for review.