



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

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

In Re: 19062659

Date: DEC. 16, 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 the Applicant did not establish that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons. The matter is now before us on appeal. 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); 8 C.F.R. § 214.11(d)(5). Upon *de novo* review, we will remand the matter to the Director for further proceedings.

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 (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) 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.”¹

The Applicant bears the burden of establishing their eligibility, and must do so 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).

¹ The definition of trafficking also includes “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years.” *Id.* The Applicant does not allege nor does the record support that she was a victim of sex trafficking.

II. ANALYSIS

The Applicant is a citizen of the Philippines who first entered the United States in December 2005, and again in November 2007 and October 2009, as an H-2B nonimmigrant to be employed as a housekeeper in a hotel. She filed her T application in September 2019 on the basis that she was the victim of labor trafficking by her U.S. employer.

A. The Applicant's Trafficking Claim

In her written statements before the Director and on appeal, the Applicant explained how D-H-² and the N-P- Agency used fraudulent tactics and made false promises to recruit her and induce her into having her family take out large loans, using their family farm and land, to pay for the recruitment process. She described in detail how, upon her arrival in the United States, D-H- did not provide her with the promised wages, benefits, hours of employment, or room and board. The Applicant also indicated that she was unable to pay back her loans, or her mother's medical bills in the Philippines, based on the wages she received.

The Applicant indicated that during the orientation process at the hotel on her first day, she was told that, as a nonimmigrant worker, she could be deported if she did not comply with the rules of employment. She said that she was also asked for her passport, but she only provided a photocopy instead. The Applicant stated that she was "pushed to do more work in less time" and constantly threatened that she must finish her contract or she would be deported. She recalled that, at each of the hotels she was assigned work, she was threatened on many occasions by hotel employers, D-H-, and the N-P- Agency that if she did not continue to work for them, she would be arrested and deported. She stated that in the fall of 2007, she was told that her visa was expiring, was threatened that if she did not renew her visa and return to the United States to continue working for the employers, she would be deported or jailed, and that she needed to pay an additional \$3,000 renewal fee and \$2,000 return fee to go back to the Philippines to renew her visa. She stated that, while she was in the Philippines, the N-P- Agency communicated with her at least five times to process her renewal paperwork and told her, on at least three occasions, that if she did not complete her revalidation process and return to her employment in the United States, she would never work in the United States again, fully aware that she needed to work in the United States to repay the large loans she acquired for the recruitment fees. She explained that she borrowed \$3,000 from her aunt in exchange for her family farm, home, and land. She stated that she made the trip home, as ordered by the placement agency, and then returned to the United States under the supervision of D-H- and the N-P- Agency, afraid of the consequences if she did not comply. She recalled that she had wanted to remain in the United States during this time, but the N-P- Agency told her that she did not have a choice and would be in big trouble if she did not return to the Philippines to renew her visa, pay the renewal fee, and then pay the placement fee to be placed back at the same hotel in Florida. She stated that, upon her return to the hotel in Florida, she was threatened multiple times that if she did not continue to work for them, she would be deported or jailed. The Applicant further explained that she had to do the same thing in 2009 and was told she would be "blacklisted" from employment in the United States if she did not return to the employment procured by the N-P- Agency in the United States. She stated that she obtained a document from the N-P- Agency in the Philippines, required to renew her visa, but did not

pay for it, and the N-P- Agency then called her multiple times, leaving voicemails that they would hold her at the airport if she did not pay them. She returned to the United States in October 2009 and worked at the hotel in [redacted] Florida until April 2010 when she escaped her trafficking situation because she realized that she could no longer keep paying placement fees and plane tickets.

The Applicant's statements also addressed her claims that she is physically present in the United States on account of her past trafficking and that she would suffer extreme hardship if she returned to the Philippines.

On appeal, the Applicant submits additional evidence, including her supplemental statement. In her new statement, she provides additional details regarding her physical presence in the United States and the circumstances surrounding her departures and reentries in support of her claim that her reentries were the result of her continued victimization by her traffickers.

B. The Applicant Has Established That She Is Physically Present in the United States on Account of Trafficking

The Director determined that the record demonstrates the Applicant is a victim of trafficking but does not establish that her physical presence in the United States is on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires.

An applicant for T nonimmigrant classification must be physically present in the United States on account of trafficking. Section 101(a)(15)(T)(i)(II) of the Act. In determining the physical presence requirement, U.S. Citizenship and Immigration Services (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); *see also Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status* (Interim T Rule), 81 Fed. Reg. 92266, 92273 (Dec. 19, 2016) (noting that the language of the physical presence requirement under the Act is phrased in the present tense and is interpreted as requiring "a consideration of the victim's current situation, and a consideration of whether the victim can establish that [their] current presence in the United States is on account of trafficking"). The physical presence requirement reaches an applicant who at the time of filing: (i) is currently being subjected to trafficking; (ii) was liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved; (iv) was subject to trafficking in the past and their continuing presence in the United States is directly related to such trafficking; or (v) 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)-(v). In evaluating the evidence of the physical presence requirement, USCIS may consider an applicant's statements regarding when they 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).

However, 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: (i) their reentry into the United States was the result of their "continued victimization"; (ii) they are a victim of a new incident of trafficking; or (iii) 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 and subsequently reentered must establish that they are physically present in the United States on account of such trafficking under both 8 C.F.R. § 214.11(g)(1) and (g)(2).

In denying the T application, the Director found that because the Applicant had voluntarily departed from the United States, most recently in 2009, to establish her physical presence was on account of her trafficking, she had to demonstrate that her reentry was the result of continued victimization, a new incident of trafficking, or to allow for participation in the investigation related to the perpetrator of her trafficking. *See* 8 C.F.R. § 214.11(g)(2). The Director concluded that the Applicant had not established any of these criteria. The Director also concluded that the Applicant had not established her physical presence under 8 C.F.R. § 214.11(g)(1) as required, as she did not establish that her continuing presence is directly related to her trafficking. *See* 8 C.F.R. § 214.11(g)(1).

First, the record indicates that the Applicant voluntarily departed the United States in 2007 and 2009 and therefore must satisfy one of the conditions of 8 C.F.R. § 214.11(g)(2) in order to be considered physically present on account of her past trafficking. She asserts on appeal that she meets the physical presence requirement under subsection (i) of 8 C.F.R. § 214.11(g)(2), because her reentries were the result of her continued victimization as her traffickers coerced her into departing and reentering the United States to continue to work for them and remain in their control. In this instance, the record, on appeal, establishes that the Applicant's reentries into the United States in November 2007 and October 2009 were the result of her "continued victimization," as required by 8 C.F.R. § 214.11(g)(2)(i). The Director determined that the Applicant was a victim of trafficking by D-H- and the N-P- Agency, and the record shows that, at the time of each of her departures, she remained in their employment, and when she reentered the United States, she returned to their employment once again. In her statement on appeal, the Applicant explains that she was subjected to constant and repeated threats of imprisonment or deportation by her traffickers in the United States and in the Philippines to coerce her into not only departing the United States in 2007 and 2009, but also returning to the United States both times in their continued employment. She states that she was threatened that she would be in "big trouble" if she did not return to the Philippines to renew her visa and pay the fees to her traffickers to return to work for them in Florida. She also states that, while in the Philippines, the N-P- Agency charged her additional fees, threatened to "blacklist" her from any future overseas employment if she did not return to her trafficking situation in the United States, and even threatened to have her detained at the airport when she failed to pay them the required additional fees. She states that her most recent departure from and return to the United States, in October 2009 was coerced by her traffickers, who used her indebtedness, the threat of economic ruin, and the threat of legal process, to force her to renew her visa and continue to provide them with additional labor. As stated, the Applicant returned to her traffickers' employment in 2009 and did not escape until April 2010.

Accordingly, the Applicant's statements and evidence in the record, such as employment contracts, temporary employment offer letters, and documentation from her traffickers, demonstrate by a preponderance of the evidence that her last reentry into the United States in 2009 was the result of her continued victimization by her traffickers, pursuant to 8 C.F.R. § 214.11(g)(2)(i).

Next, the record, on appeal, also establishes that the Applicant satisfies the physical presence requirement under 8 C.F.R. § 214.11(g)(1), as she has demonstrated that her continuing physical presence in the United States is directly related to her past trafficking, consistent with 8 C.F.R. § 214.11(g)(1)(iv). The evidence in the record shows that the Applicant has been evaluated and

diagnosed with “adjustment disorder with mixed anxiety and depressed mood” stemming from her experience as a victim of human trafficking. A psychological evaluation of the Applicant, dated December 2020, specifically stated that her experience being the victim of human trafficking had severe psychological repercussions and that she is currently suffering from clinically significant levels of anxiety and depressed mood, psychosomatic manifestations of anxiety, such as nausea, headaches, impairments in her occupational functioning, concentration, and ongoing ruminations and excessive worry. In her statement on appeal, the Applicant asserts that she continues to suffer ongoing psychological harm directly related to this past trafficking. She states that the clinical diagnoses due to her victimization have interfered with her ability to sleep and caused her to suffer flashbacks, for which she is still receiving psychological care. She further states that, as of January 2021, she was accepted into a Trafficking Victims Assistance Program (TVAP), which further attests to her continuing physical presence on account of trafficking. The Applicant submits a letter from the [redacted] stating that she was enrolled in their TVAP Program in December 2020, confirming that it determined the Applicant to be a victim of human trafficking and explaining that it provides immediate and long-term needs for participants.

Here, the Applicant’s own statements, psychological evaluation, therapist’s letter, and [redacted] letter, demonstrate by a preponderance of the evidence that she suffered serious psychological harm as a result of her trafficking and that she continues to suffer serious and ongoing psychological consequences of her past trafficking. Therefore, the record as a whole shows that the Applicant’s continuing physical presence is directly related to her past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv).

Accordingly, the Applicant has demonstrated that her physical presence in the United States is on account of having been the victim of a severe form of trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires.

III. CONCLUSION

The Applicant has established, by a preponderance of the evidence, that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons. The matter will be remanded to the Director for consideration of whether the Applicant meets the remaining statutory eligibility criteria for T-1 nonimmigrant status under section 101(a)(15)(T)(i).

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