



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

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

In Re: 22022429

Date: APR. 13, 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 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), and a subsequent motion to reconsider the adverse decision, concluding that the Applicant did not establish, as required that she was physically present in the United States on account of trafficking. On appeal, the Applicant submits a brief and reasserts eligibility.

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) (2018).

The term "severe form of trafficking in persons" (trafficking) is defined in relevant 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." 8 C.F.R. § 214.11(a).

## II. ANALYSIS

### A. The Applicant's Trafficking Claim

The Applicant, a citizen of Mexico asserted that a man she met in [redacted] Mexico in early 2011, B-C-N-<sup>1</sup> paid the “coyotes” she hired to bring her to the United States to obtain her for the purpose of involuntary servitude, including work in his migrant smuggling enterprise in Mexico and in the United States from July 2012 until [redacted] 2013. The Applicant reported that her work for B-C-N- included bookkeeping, making smuggling arrangements, collecting money from migrants, speaking to guides, attending all of the business meetings, and balancing the budget. The Applicant stated that although she worked 12 hours a day she was not paid; she was not allowed to go anywhere by herself and there was always someone watching her. She further stated that B-C-N- beat her and raped her ever since she started working as a cook at his hotel in [redacted] in 2011, and that she had two children with him as a result—a son born in Mexico in [redacted] 2012, and a daughter born in California in [redacted] 2014, whom she registered as a child born to her and her spouse, A-G-C-. The Applicant reported that B-C-N- forced her to use his own U.S.-born citizen daughter's birth certificate to enter the United States in July 2012 and to apply for a U.S. passport under the daughter's name; he thereafter forced her to cross the Arizona border multiple times each month using that U.S. passport to make bank deposits, buy cell phones for resale in Mexico, rent cars, and deliver individuals to different locations. The Applicant testified that she obeyed B-C-N-'s orders because he threatened that she would never see their son again if she tried to run away and talk to law enforcement, and he would sometimes send another person with her to make sure she returned to Mexico. She reported that this continued until [redacted] 2013, when she applied for admission to the United States with the U.S. passport and was detained by U.S. Customs and Border Protection (CBP). In her sworn statement before a CBP officer, the Applicant testified, in part that she bought cell phones in the United States to resell them in Mexico to people who wanted to cross the border to the United States and that B-C-N- coordinated with other persons to smuggle undocumented aliens into the United States. The record reflects that in [redacted] 2014 the Applicant pled guilty and was convicted in a U.S. District Court in Arizona of felony conspiracy to transport illegal aliens for profit, false statements in an application and use of passport, and fraud and misuse of visas, permits, and other documentation.

The Applicant stated that following her release from the custody of U.S. Immigration and Customs Enforcement (ICE) on [redacted] 2014,<sup>2</sup> she moved to California, where in [redacted] 2014 she gave birth to B-C-N-'s second child—a daughter. The Applicant related that shortly thereafter B-C-N- somehow got her phone number and constantly called her threatening that her son “would disappear and [she] would never see him again.” She stated that as soon as she physically recovered from childbirth, she departed from the United States with her newborn and returned to Mexico where she was able to rescue her son and take him to a safe place. The record shows that in [redacted] 2014 she reentered the United States without inspection and was apprehended and arrested by CBP near [redacted] Arizona.<sup>3</sup>

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<sup>1</sup> We use initials to protect individuals' privacy.

<sup>2</sup> The record shows that the Applicant was released from custody and paroled into the United States for humanitarian reasons to live with her sponsor in Arizona because she was eight months pregnant at the time; a related note indicates that the Applicant would be subject to administrative removal from the United States as an aggravated felon, pending a decision on her claim of fear of returning to Mexico.

<sup>3</sup> A year later, she filed Form I-589, Application for Asylum and for Withholding of Removal, which remains pending.

In December 2018, the Applicant filed the instant T application based on her claim that she had been a victim of labor trafficking perpetrated by B-C-N- who forced her to work without pay in various capacities in his criminal enterprise in Mexico and the United States. The Applicant stated that although her trafficking ended in 2013, her son remained in Mexico under B-C-N-'s control. She reported that following her release from jail in [redacted] 2014, she was forced to move to California because B-C-N- found her in Arizona and threatened that their son would disappear if she did not return to Mexico. The Applicant further stated that the reason she returned to Mexico in the summer of 2014 was to try and rescue her son and, although she succeeded and moved to her and her spouse's home, B-C-N- started calling her again and threatening her family. She reported that because around the same time she noticed police vehicles patrolling the neighborhood, she suspected that B-C-N- whom she previously observed bribing government officials likely sent the police to intimidate her and to force her into working for him again. She stated that she returned to the United States in 2014 because she feared that B-C-N- would recapture her if she remained in Mexico. The Applicant further stated that she has been living in the United States since [redacted] 2014 under an assumed name to hide from B-C-N- and to recover from the trauma of past trafficking. She explained that she was receiving social and legal services from the [redacted] was enrolled in therapy, English language and cosmetology classes, and was hoping to bring her son and her spouse into the safety of the United States.<sup>4</sup>

The evidence in support of those statements included declarations from an emergency response case manager (case manager) and a program manager at [redacted]

#### B. Physical Presence in the United States on Account of Trafficking

In denying the application, the Director determined that the above testimony and evidence did not demonstrate that the Applicant is physically present in the United States on account of past trafficking, as required under section 101(a)(15)(T)(i)(II) of the Act, because it indicated that although the Applicant's [redacted] 2014 reentry into the United States was related to her fear of B-C-N-, she has since moved on and has been able to develop a career and provide safe and stable environment for her children. The Director further found that the Applicant did not show that her reentry was the result of continued victimization, a new incident of trafficking, or that it was for the purpose of participation in an investigative or judicial process related to the trafficking. The Applicant has overcome these determinations on appeal.

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 (USCIS) 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).

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<sup>4</sup> The Applicant indicated that both her U.S.-born citizen daughters are currently residing with her in the United States.

The preponderance of the evidence in the record indicates that the Applicant's current presence in the United States is directly related to her past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iii).

The Applicant indicated that since 2015 she has been receiving psychological and therapeutic treatment to help her manage the effects of the trafficking-related trauma, which include feelings of guilt and responsibility for her own victimization, as well as her continued fear of B-C-N-. The program manager at [redacted] confirms in a 2017 clinical observations letter that the Applicant received services provided by [redacted] from September through November 2016. She explains that the Applicant met criteria for Post-Traumatic Stress Disorder (PTSD); she presented with functional impairments resulting from being a victim of human trafficking, and collaborated with her clinician to develop treatment goals to help improve symptomology. The [redacted] case manager confirms in his 2018 declaration that the Applicant has continued to carry her fears and psycho-emotional trauma with her since fleeing Mexico and "is in need of intensive support services and would benefit from continued residence in the United States." The case manager further states that the Applicant reported symptoms consistent with traumatic stress, including trouble sleeping, hyper-alertness, intense feelings of self-doubt, isolation, depressed mood, inability to concentrate, trouble breathing, and avoidance of past memories. He adds that the Applicant lives with physical injuries as well, such as limited jaw movement directly related to violent assaults she endured at the hands of her trafficker. The case manager states that he has personally reviewed the evidence of B-C-N-'s ongoing efforts to manipulate and intimidate the Applicant into certain ways of thinking: in particular, to uphold a level of secrecy about her past, to not report him to law enforcement, and to return to Mexico where she would remain under his control. The case manager explains that B-C-N- articulates this through implicit intimidation in the form of text messages, phone calls, and voicemails, often using the safety and whereabouts of their son as leverage, and that the wellbeing of her child is the primary reason the Applicant has felt as yet unable to break contact with B-C-N-, even though "[his] efforts to coerce [the Applicant] to work for him like this continue to this day." Lastly the case manager states that the Applicant has proactively sought out mental health and primary care services from partner agencies, including [redacted]

This evidence is sufficient to show that since her last entry into the United States the Applicant has been experiencing ongoing mental and physical health effects as a result of having been trafficked by B-C-N-, and that her current presence in the United States is therefore directly related to her past trafficking.

In addition, 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: (1) their reentry into the United States was the result of their "continued victimization"; (2) they are a victim of a new incident of trafficking; or (3) 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).

There is no dispute that after her trafficking situation ended in [redacted] 2013 the Applicant voluntarily departed from the United States sometime after [redacted] 2014 and returned to Mexico. She then reentered

the United States without inspection in [redacted] 2014. Consequently, to meet the physical presence requirement the Applicant must establish that she meets one of the three exceptions described above.

The Applicant asserts that she satisfies the exception in 8 C.F.R. § 214.11(g)(2)(i) because her [redacted] 2014 reentry was the result of her continued victimization by B-C-N-.<sup>5</sup> Specifically, the Applicant states that even though she escaped the trafficking in [redacted] 2013 when she was apprehended while crossing the border into Arizona on B-C-N-'s orders, B-C-N- never ceased his efforts to draw her back to Mexico in order to traffic her again. She reiterates that although she was able to rescue her son, she could not remain in Mexico because B-C-N- threatened to harm her family and she knew she would not be safe there and would also put her family at risk if she stayed.

When evaluating whether the applicant's reentry resulted from continuing victimization we may consider factors including: the extent of the applicant's continued fear of and connection to the trafficker; the threats and risk of harm the trafficker poses to the applicant and the applicant's family; and the nature and severity of the victimization arising out of the impacts of trafficking on the applicant's life at the time of reentry. *See generally 3 USCIS Policy Manual B.2(C)(2)*, <https://www.uscis.gov/policy-manual>.

Applying the above criteria, we conclude that the preponderance of the evidence is sufficient to establish that the Applicant's 2014 reentry into the United States was due to her continued victimization pursuant to 8 C.F.R. § 214.11(g)(2)(i).

The Applicant's testimony indicates that although her trafficking ended in 2013, and she was no longer under physical control of B-C-N- when she left for Mexico and reentered the United States, she continued to fear B-C-N- because he threatened to harm her son, who remained with him in Mexico, as well as her family living in Mexico. Specifically, the Applicant stated that she returned to Mexico to rescue her son, and although she was able to move him to where she thought he would be safe, B-C-N- discovered where she was staying and repeatedly called her threatening he would "disappear" her family to coerce her into working for him again. The Applicant reported that after placing her son with her aunts she decided to flee to the United States, because she personally witnessed B-C-N- bribing police and local government authorities, and felt that she could never be safe from B-C-N- in Mexico as he might use his financial resources and influence to locate her. The evidence also points to a connection between the Applicant's trafficking-related psychological trauma and her reentry into the United States. As stated, the Applicant testified she decided to leave Mexico because B-C-N- threatened her and her family, and because she felt guilty for having been trafficked and for putting her family at risk of harm as a result. The [redacted] case manager and the [redacted] program manager confirm in their declarations that the Applicant developed PTSD due to trafficking and violent assaults by B-C-N-, has been experiencing psycho-emotional and physical symptoms since that time, and is unable to cut off her ties to B-C-N- completely because B-C-N- is the biological father of her two children.

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<sup>5</sup> The Applicant does not claim, and the record does not show that she falls within the exceptions described in 8 C.F.R. § 214.11(g)(2)(ii) (as the victim of a new incident of trafficking) or in 8 C.F.R. § 214.11(g)(2)(iii) (allowed reentry to participate in the investigation and prosecution of her trafficker).

Based on the above, we conclude that the evidence considered in the aggregate shows a clear connection between the Applicant's continued victimization by B-C-N- and her reentry into the United States. The Applicant therefore has met her burden of proof to establish that her reentry into the United States resulted from her continued victimization, and that she therefore qualifies for the exception described in 8 C.F.R. § 214.11(g)(2)(i).

Consequently, the Applicant has overcome the Director's adverse finding concerning her current physical presence in the United States.

### C. Admissibility

Section 212(d)(13) of the Act, 8 U.S.C § 1182(d)(3), requires USCIS to determine whether any grounds of inadmissibility exist when adjudicating a T application and provides USCIS with the authority to waive certain grounds of inadmissibility as a matter of discretion. Applicants bear the burden of establishing that they are admissible to the United States or that any grounds of inadmissibility have been waived. 8 C.F.R. § 214.1(a)(3)(i). For individuals seeking T nonimmigrant status who are inadmissible to the United States, a T waiver application must be filed in conjunction with a T application in order to waive any ground of inadmissibility. 8 C.F.R. §§ 212.16, 214.11(d)(2)(iii).

The Director concluded that the Applicant was inadmissible under sections 212(a)(6)(A)(i) (present without admission or parole), 212(a)(6)(E) (alien smuggling), 212(a)(6)(C)(i) (fraud or misrepresentation), 212(a)(6)(C)(ii) (false claim to U.S. citizenship), 212(a)(9)(B)(i)(II) (unlawful presence), and 212(a)(9)(C)(i)(I)<sup>6</sup> (entry or attempted entry without admission after being unlawfully present in the United States for one year or more) of the Act. The Director denied the waiver request based on the denial of the Applicant's T application and did not consider her eligibility for a waiver in the exercise of discretion. Because the Applicant has overcome the sole ground for the Director's denial of her T application, we will remand this matter to the Director for reconsideration of the Applicant's waiver request.

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

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<sup>6</sup> The Applicant testified that before her 2013 attempted entry with the U.S. passport she unlawfully resided in the United States from March 2007 until sometime in 2010 with her spouse and older son (who was born in Mexico in 2005). The Applicant's older daughter was born in California in 2008.