



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 24626163

Date: MAR. 06, 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), concluding that the Applicant had not demonstrated that he was physically present in the United States on account of a severe form of trafficking. The matter is now before us on appeal.

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 dismiss the appeal.

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) 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.”

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 37-year-old native and citizen of Zambia, first entered the United States in the late 1990s on a culturally unique artist (P3) visa. In September 2006, the Applicant left the United States

and reentered on a P3 visa, which was valid until March 2007. In April 2012, the Applicant's spouse filed Form I-130, Petition for Alien Relative, on his behalf and the Applicant concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). The I-130 petition and adjustment application were denied in 2014, later reopened, and again denied in 2016 for abandonment. In 2018, the Applicant was arrested in the State of Texas on a domestic violence assault charge and outstanding warrants related to motor vehicle violations. He was subsequently placed in removal proceedings. He applied for cancellation of removal, which were denied by the Immigration Judge. The Applicant appealed to the Board of Immigration Appeals and his case was remanded for the Immigration Judge to assess claims of asylum, withholding of removal, and protection under the Convention against Torture. The Applicant was ordered removed in [redacted] 2020 but was later granted a stay of removal in April 2021.

In March 2019, the Applicant filed his T application claiming he was a victim of labor trafficking and is physically present in the United States on account of the trafficking. The Director issued a request for evidence (RFE) with a November 2020 deadline. While the RFE did not contest the issue of whether the Applicant was a victim of a severe form of trafficking, it requested information on the other eligibility requirements for T-1 nonimmigrant classification. The Applicant sent a letter in response to the RFE requesting additional time to respond. In June 2021, after the Applicant did not provide a further response to the RFE, the Director denied the T application on the grounds that the Applicant did not establish he is physically present in the United States on account of trafficking; has complied with any reasonable requests for assistance in the investigation or prosecution of trafficking; would suffer extreme hardship involving unusual and severe harm upon removal from the United States; and that he is admissible to the United States. In the decision, the Director reviewed the record and incorporated the statements the Applicant submitted to the Department of Justice during his removal proceedings, which described the harm he faced in Zambia in 2005 as a result of his singing and noted that the Applicant did not raise these details in his T visa application. On appeal, the Applicant asserts he was not given an opportunity to properly respond to the RFE and submitted additional documents, including photographs of the Applicant performing with a group of boys. The photographs are hand-dated 1997 to 2000. In addition, the Applicant submits a police report by the Zambian police dated [redacted] 2005, placing him in Zambia at that time.

Upon de novo review,¹ we conclude the Applicant is a victim of a severe form of trafficking but has not established that his reentry into the United States in 2006 was the result of his continued victimization or that the Applicant is a victim of a new incident of a severe form of trafficking in persons. As this issue is dispositive of his appeal, we decline to reach the other grounds of dismissal raised by the Director. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

¹ In July 2021, after the Director issued the decision on his T visa application, but before he filed his appeal, the Applicant submitted additional documents to USCIS, including photographs, personal statements, and police records, which we have reviewed on appeal but do not discuss as they are not relevant to our analysis of his physical presence in the United States.

A. The Applicant's Trafficking Claim

The Applicant's declarations submitted with his T application and in response to the RFE explained that K-G-,² came to Zambia and brought to the United States members of the Zambian [redacted] Choir (Choir). The Applicant, with other boys ranging from 8 to 15 years, began singing for the Choir to replace the members that left for the United States. K-G- returned and held several meetings with the Applicant and other boys from the Choir, as well as their parents. K-G- promised to arrange for the boys' education, salaries, and stipends for the boys' parents if the parents agreed to have the boys perform in the United States. K-G-, arranged for the Choir to perform at a number of functions where there was an American audience in Zambia. The Applicant does not state whether they were compensated for these performances and who arranged for the P3 visas. He continued on to say that he and others from the Choir agreed to travel with K-G- and they arrived in the United States in August 1996. The Choir traveled around the United States performing in mostly churches, schools, and prisons, but also opened for sporting events and performed for state officials and the U.S. military. They performed so many shows daily that they would often lose their voices and spit blood because their throats were sore. K-G- raised money by telling attendees the proceeds would fund the building of a school in Zambia. He had a donation table, sold paraphernalia, and had the Choir inform the attendees of the performances about Zambia. If an individual from the Choir was gifted money, it was taken away by K-G-. When asked if they were treated well the boys would say yes for fear of being sent back to Zambia. They stayed with host families when traveling, who would buy them clothes. On one occasion K-G- slapped the Applicant for falling asleep when he should have been performing. The Choir was transported by a school bus which did not have heat or air conditioning and the Choir would be on the bus for long trips, even overnight. Eventually the bus broke down and they began traveling in vans, which were better. When they were off tour, the 26 of them would stay in a four-bedroom mobile home. The Choir traveled like this for four years and never received an education or financial compensation. Nor was a school built in Zambia. Some members of the Choir were forcefully sent home at the end of the tour around the year 2000.

The Applicant has established he was fraudulently recruited by K-G- for the purpose of subjection to involuntary servitude when he was offered a position singing for a group in the United States in exchange for an education, salary, and for money to be sent to his parents in Zambia, and when he was not paid or educated and was forced to perform or be returned to Zambia. The Applicant is therefore a victim of labor trafficking.

B. The Applicant Is Not Physically Present in the United States on Account of Trafficking

The Applicant has not established his 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 his or her 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). 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

² We use initials to protect the privacy of individuals.

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).

Based on the Applicant’s statements, he endured labor trafficking from approximately 1996 to 2000. The Applicant stated, and the record supports, that the Applicant left the United States and returned in 2006. The Applicant has provided very little context for why he left the United States or why he returned. While we acknowledge the Applicant’s statements of harm submitted during his removal proceedings, we note that the Applicant does not claim or provide evidence that this harm was the result of his continued victimization.³ Similarly, he does not allege or provide evidence that he is a victim of a new incident of trafficking or was allowed reentry for participation in investigative or judicial processes relating to an act or perpetrator of the trafficking.

Accordingly, the Applicant, who bears the burden of proof in these proceedings, has not demonstrated that he is physically present in the United States on account of a severe form of trafficking under 8 C.F.R. § 214.11(g)(2) and as required by section 101(a)(15)(T)(i)(II) of the Act. The Applicant has therefore not established his eligibility for T-1 nonimmigrant classification.

ORDER: The appeal is dismissed.

³ The regulation defines “victim of a severe form of trafficking in persons (victim)” as “an [individual] who is or has been subject to a severe form of trafficking in persons.” 8 C.F.R. § 214.11(a). The use of the term “continued victimization,” rather than “victim of a severe form of trafficking in persons,” at 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. 8 C.F.R. § 214.11(g)(2) similarly 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 physical presence in the United States on account of such trafficking in limited situations, implying that an interruption or end to trafficking 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.