



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

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

In Re: 6247193

Date: JUNE 24, 2020

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 Applicant is not physically present in the United States on account of a severe form of trafficking in persons. On appeal, the Applicant submits a brief and reasserts his eligibility. 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). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(T)(i) of the Act provides that an applicant may be classified as a T-1 nonimmigrant if he or she: is or has been a victim of a severe form of trafficking in persons; is physically present in the United States on account of such trafficking; has complied with any reasonable requests for assistance in the investigation or prosecution of the trafficking; and would suffer extreme hardship involving unusual and severe harm upon removal from the United States. The term “severe form of trafficking in persons” 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) (2017).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. 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 of that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant is a citizen of El Salvador who last entered the United States in August 2005. He filed his T application in October 2017. The Director determined that the Applicant was the victim of a

severe form of trafficking in persons but was not physically present in the United States on account of such trafficking.

A. The Applicant's Trafficking Claim

The Applicant's personal statement credibly establishes the following: The Applicant traveled to the United States from El Salvador at 19 years of age and accrued a large debt in smuggling fees. Upon arrival in the United States, he found a job at a landscaping company, L-T-¹ in Pennsylvania. The managers of L-T- arranged for the Applicant to obtain false immigration documents and subjected him to abusive employment practices, including but not limited to paying less than the promised wage, paying for fewer hours than he had worked, not paying overtime, paying in cash or under the name of another person and not providing paystubs, forcing him to work long hours in heat or cold, and not providing breaks. When the Applicant attempted to speak with management or complain about his pay and working conditions, they falsely promised to help him obtain legal immigration status if he followed their instructions, threatened to call immigration agents, told him that he had no rights because he was illegal, and threatened to call all of the other landscaping companies in the area so that he could not find work elsewhere. The Applicant believed the managers' promises and threats and was afraid to refuse their instructions or leave the company. The Applicant began working for L-T- in September 2005. In March 2007, he quit his job at L-T- after finding other work. After leaving, he was afraid that the managers at L-T- would call immigration agents or his new employer.

B. The Applicant is Not Physically Present On Account of Trafficking

Upon *de novo* review, we agree with the Director's conclusion that the Applicant did not submit sufficient evidence to meet his burden of establishing that he is physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires.

The physical presence requirement reaches an applicant who at the time of filing: is currently being subjected to trafficking; was liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved; was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or 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)-(iv). In evaluating the evidence of the physical presence requirement, U.S. Citizenship and Immigration Services (USCIS) may consider when an applicant escaped the trafficker, what activities he or she has since undertaken to deal with the consequences of having been trafficked, and his or her ability to leave the United States. 8 C.F.R. § 214.11(g)(4).

Regarding his presence in the United States since his trafficking situation ended in 2007, the Applicant stated, "My life in the United States is very simple. I work hard, go to the gym, and attend weekly church mass. Aside from that, I do not have much of a social life here." He claimed that he avoids friendships in order to stay out of trouble. He stated that he did not want to return to El Salvador because he believes it would be dangerous there due to gang activity and organized crime, and believes he would be targeted because he had lived in the United States.

¹ We use initials to protect identities.

In response to a request for evidence (RFE) from the Director, the Applicant argued that he falls into the physical presence scenario at 8 C.F.R. §§ 214.11(g)(1)(iii), which applies to victims of trafficking who “[e]scaped a severe form of trafficking in persons before an LEA was involved.” Although the Applicant submitted evidence that he contacted an LEA to report his trafficking claim, the record does not show that an LEA became involved in investigating or prosecuting his alleged trafficking such that his claim would fall within 8 C.F.R. § 214.11(g)(1)(iii). He provided evidence that two managers of L-T- were convicted of fraudulently collecting unemployment compensation and a third was convicted of making false statements relating to nonimmigrant worker petitions, but the evidence does not link those proceedings to the Applicant’s trafficking situation. The evidence the Applicant submitted includes criminal records relating to the chief operating officer and controller of L-T- and their actions at the company between June 2010 and May 2011. Additionally, he submitted criminal records relating to the former vice president of L-T- and charges relating to that person’s actions in January 2010. However, the Applicant was employed at L-T- between 2005 and 2007, and there is no evidence in the record that his period of employment there was at issue in the criminal cases against L-T- management or that law enforcement otherwise became involved in the Applicant’s case. The Applicant also submitted an affidavit from an attorney at a nonprofit legal services organization that represented many L-T- workers in proceedings against the company relating to abusive employment practices, but the letter does not specifically reference the Applicant or indicate that he was involved in such proceedings.

The Applicant also argued in his RFE response that his presence in the United States is directly related to his past trafficking, which is a scenario described at 8 C.F.R. § 214.11(g)(1)(iv). However, the Applicant did not claim in his personal statement that his current presence is related to his trafficking. He stated that since deciding to quit working at L-T- in 2007, he has worked continuously for another employer, and spends the rest of his time going to the gym and attending church. Although he indicated that he felt it would be unsafe to return to El Salvador, he did not claim that he would be at risk due to his trafficking situation, but explained that his fear was due to crime in that country and the fact that he could be a target after having lived and worked in the United States.

On appeal, he argues that the statute and regulations do not require that his presence in the United States be “directly related to [his] original trafficking situation,” and that the Director mistakenly applied such a requirement due to a misreading of the regulation. However, the regulation states at 8 C.F.R. § 214.11(g)(1)(iv) that applicants may meet the physical presence requirement if they were “subject to a severe form of trafficking in persons at some point in the past and [their] continuing presence in the United States *is directly related to the original trafficking in persons.*” (Emphasis added). The Applicant has not provided sufficient evidence or argument² to show that he meets this requirement. Accordingly, the Applicant has not met his burden of establishing that he is physically present in the United States on account of a severe form of trafficking in persons, as section 101(a)(15)(T)(i)(II) of the Act requires.

ORDER: The appeal is dismissed.

² The Applicant’s brief in response to the Director’s RFE claimed that the trafficking “put him in a very vulnerable position which prevented him from being able to return to Mexico,” that he “found comfort in his wife and they had a child for whom he had to care,” and that he had “escaped from his trafficking back in 2009.” However, these details do not appear to pertain to the Applicant’s case, as he is from El Salvador, has not provided any evidence that he has a spouse or child, and left L-T- in 2007.