



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

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

In Re: 9435010

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 did not establish that she is physically present in the United States on account of a severe form of trafficking in persons. The Director also concluded that the Applicant is inadmissible. On appeal, the Applicant submits a brief and alleges that the Director's decision was in error. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Upon *de novo* review, we will remand the matter to the Director.

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 as "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; or 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 Mexico who last entered the United States in May 1995. She filed her T application in December 2017.

A. The Applicant's Trafficking Claim

The Applicant submitted a personal statement in which she provided the following credible claim: The Applicant grew up in poverty in Mexico. She was the 13th of 19 children, 14 of whom survived, and her mother cared for all of the children after the Applicant's father left the family when the Applicant was seven years old. When the Applicant was a young child, one of her brothers sexually abused her, but she was afraid to tell her mother. As a teenager, she began working as a babysitter for an important, wealthier family in town. The family had an adult son, M-A-R-,¹ who lived in the United States with his wife and three children. M-A-R- became unable to work and care for his children due to a disability, and wanted to hire the Applicant as a housekeeper and childcare provider. M-A-R- arranged with the Applicant's mother to send the Applicant, then 19 years old, to work for his family in the United States, with the promise that she would receive housing, food, clothing, personal necessities, and a monthly payment that would be sent to her mother. In May 1995, M-A-R- paid for the Applicant to be smuggled to the United States and he and his wife, M-P-, picked her up at a hotel in California. They took her to their one-bedroom apartment, where she lived with them and their three young children. M-A-R- and M-P- told the Applicant to sleep on the sofa in the living room, but setting up the sofa each night was difficult so she often slept on the floor. She kept her belongings in a small wardrobe in the living room. Although she had access to the food in the apartment, M-A-R- and M-P- shamed her about her food consumption habits, causing her to restrict what she ate.

During the first year of her employment, the Applicant began work at 7:00 a.m. and spent her day cooking for the children and M-A-R-, cleaning the house, doing laundry, caring for the children, getting the children ready for school and helping M-A-R- or M-P- drop them off, taking M-A-R- to appointments, and helping with cooking and cleanup at dinner time. She worked every day, including on weekends, when she cared for her employer's children, helped the family host guests in the apartment, prepared meals, and accompanied the family to church. She received a small monthly stipend, which reached \$250 per month by the time she ended her work there in 1999, the majority of which was sent to her mother. She did not have enough money of her own for necessities or savings.

M-A-R- and M-P- were lawful permanent residents when the Applicant arrived and later became U.S. citizens, and she felt dependent upon them because she had come to the United States illegally and did not have any identification with her. She was unable to go out alone, except to English classes. M-A-R- and M-P- made sure that either an adult or a child accompanied the Applicant when she left the house, and she felt the children would report her to the adults if she did anything unusual. In an effort to scare her, M-A-R- and M-P- told the Applicant that there were "bad people" who would report her to immigration if they found out she was there illegally, and that immigration enforcement agents searched for undocumented immigrants at public places. She believed this information and feared being deported. She followed instructions from M-A-R- and M-P- not to talk to other people and to introduce herself to members of their family as M-A-R-'s niece. At family gatherings, M-A-R- and

¹ We use initials to protect identities.

M-P- monitored her conversations or asked what she had talked about with other people, and they prevented her contact with a relative who had suggested that she seek other work. They instructed her not to socialize with other people in her English class, and she complied because she believed their stories about bad people who would harm her. When she had to go to the doctor, they told her not to use their address or other personal information on the medical forms. These restrictions were stressful and prevented her from meeting other people.

The Applicant witnessed M-A-R- verbally and emotionally abusing M-P-. Also, the Applicant and M-A-R- argued about how he treated her, and he accused her “of being crazy or hysterical.” After her first year in the apartment, the Applicant confided in M-A-R- about the sexual abuse she had experienced as a child, and he soon began sexually assaulting her. On multiple occasions, he went to her sleeping area in the living room and raped her, telling her to be quiet and that he was not doing anything wrong because she was “a grown woman.” The Applicant was afraid to cry out because M-P- might blame her and report it to the Applicant’s mother, who may not believe the Applicant. Also, she felt that M-A-R- had power over her as her employer and an important person in her hometown. To prevent the abuse, she began sleeping at the foot of M-A-R- and M-P-’s bed or bringing one of the children to sleep with her, because he did not sexually assault her in front of others. However, he then began raping her during the day when they were alone in the apartment. The Applicant began to develop stomach problems and vomiting due to severe anxiety about when he would rape her next. She also developed infections and injuries due to his sexual abuse. Eventually, the Applicant became pregnant with M-A-R-’s child and he took her to a clinic and forced her to get an abortion. She was afraid of getting an abortion but was also afraid to resist and to face the consequences of being pregnant with M-A-R-’s baby, so she had the abortion and cried the rest of the day.

The Applicant wanted to leave the apartment but was afraid to do so because of the stories M-A-R- and M-P- had told her, and did not know enough about the United States to find work. She also feared that she could be sexually assaulted at any new employment. Further, she feared that M-A-R- would retaliate against her for leaving by telling people that she had been sexually involved with him. M-A-R- had given her the impression that she was “obligated to him” by reminding her that he had “paid her passage here” whenever she tried to resist him.

M-A-R- introduced the Applicant to several men that he wanted her to date. He encouraged her to date his nephew, who was married, and she believes it was so that if she became pregnant again, he could blame someone else. In 1996, M-A-R- introduced her to a man named E-S-, and she began going out to dinner and for walks with him but did not have a sexual relationship with him. In 1999, after M-P- was laid off and M-A-R-’s health began to improve, the Applicant confronted M-P- about not paying her minimum wage, and M-P- told her to get another job. The Applicant began working for another family during the week and only returning to M-A-R-’s apartment on weekends. She stopped working for M-A-R- and M-P- and they stopped paying her, but she still felt dependent on them. M-A-R- continued to try to sexually assault her by arriving at the home of her new employer and honking his horn for her to come out, but she did not.

About a year later, M-A-R- and M-P- told the Applicant that they were going to move and that it was time for her to return to Mexico. They offered to pay for her trip. Around the same time, the Applicant heard from a mutual friend that M-A-R- was considering reporting her to immigration because she “had changed so much toward the family,” and she feared that if she returned to Mexico, he would

hurt her there. In an effort to stay safe from M-A-R-, she decided to move in with E-S-, despite not feeling ready to live with or have a sexual relationship with him. After she moved in with him, E-S- was abusive.

The Applicant did not report her trafficking sooner because she did not understand what happened to her, was not in therapy yet, and was trying to deal with ongoing abuse from E-S-. She also felt confused about her relationship with M-A-R- and M-P- because they continued to call her their niece, referred to her children as their grandchildren, and praised her in front of others, causing her to continue to feel obligated to them and question her thoughts about how they had mistreated her. Additionally, she thought that no one would believe her if she spoke about what M-A-R- did to her. She began receiving therapy only after escaping from E-S-, and had attended therapy for two years as of her 2017 statement. She has not returned to Mexico because she fears M-A-R-, who is a respected man in her hometown, would harm her there. Further, returning to Mexico would mean an end to the therapy that has helped her begin to heal from her experiences of child sexual assault, two years of sexual assault by M-A-R-, and an abusive relationship with E-S- that included rape. She has been living in the United States for over 20 years, has two U.S. citizen children, and wants to remain safely in the United States.

In response to a request for evidence from the Director, the Applicant submitted a supplemental statement. She explained that her traffickers, M-A-R- and M-P-, introduced her to E-S-, and she felt she had no choice but to move in with E-S- after she stopped working for M-A-R- and M-P- because she thought they would report her to immigration. While they lived together, E-S- yelled at her, threatened her, pretended he was going to hit her and then laughed at her reaction, and threatened to take her son away. She sought help at a women's center in 2013 and was placed on a waiting list for therapy. She began therapy in 2015 and has continued to attend weekly to work on overcoming the trauma of her trafficking. In 2016, the Applicant's sons told her that E-S- was beating them, and she spoke with a social worker and eventually got a domestic violence restraining order. After being trafficked, she felt angry, isolated, and humiliated when people asked why she waited so long to get help. She felt it was difficult to explain how she "[f]ell from one abuse to another," and had trouble escaping a "continual circle of violence." She waited to ask for help because she was afraid, and did not believe she had any rights to ask for help as an undocumented person. Further, she believed M-A-R- when he said that what he did to her was not a crime because she was an adult, and she believed her "feelings were out of weakness and not legitimate mental pain." She feels the mental health services she has been receiving in the United States are "absolutely essential to [her] healing process."

As supporting evidence, she submitted a 2017 letter from a licensed marriage and family therapist who stated that the Applicant had been attending weekly psychotherapy sessions at his clinic and had been diagnosed with major depressive disorder and anxiety disorder. In a letter from 2019, the same therapist indicated that the Applicant's diagnosis had been updated to include chronic post-traumatic stress disorder (PTSD), that she continued to attend weekly therapy since March 2017, and that she "would continue to benefit from therapeutic treatment to grow in managing and coping with her trauma symptoms and how they have impacted her life." The Applicant's administrative record also contains a letter from a different clinic confirming that the Applicant attended a 16-week domestic violence education group in 2013, began individual therapy in September 2015, and began parenting classes and a domestic violence counseling group in 2016, where she discussed "the abuse she and her children have experienced."

B. The Applicant is Physically Present in the United States on Account of Trafficking

The Director concluded that the Applicant had not submitted sufficient evidence to establish that she 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 Applicant has overcome this finding on appeal.

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).

The Applicant asserts that she fits the scenario at 8 C.F.R. § 214.11(g)(1)(iv) because she was trafficked in the past and her continued presence in the United States is directly related to that past trafficking. On appeal, she argues that the Director applied the wrong standard in analyzing her case. She notes that the Director explained that because “the physical presence requirement is only phrased in the present tense,” USCIS must consider “the victim’s current situation in relation to the trafficking.” She alleges, however, that the Director did not apply that requirement but instead focused too heavily on the amount of time that had passed between her escape from trafficking and the filing of her T application. She contends that the Director did not consider the “factors which existed at the time she filed her I-914 Application,” including the fact that she was receiving ongoing counseling services, which the Director acknowledged were “in relation to [her] trafficking situation.” She asserts that the amount of time she waited to receive such services is irrelevant and that the Director did not properly consider that her receipt of mental health services when she filed her T application showed that she was currently present on account of trafficking at that time. She further states that her initial entry into the United States “was arranged for by her trafficker and was for the sole purpose of subjecting her to involuntary servitude,” and that she has remained in the United States since that time due to her trafficking.

In the denial decision, the Director indicated that since her trafficking situation ended, the Applicant had found employment, “continued a lengthy relationship with [E-S-],” and had two children. However, the Director did not consider the evidence the Applicant provided regarding the connection between her relationship with E-S- and her trafficking situation. As the Applicant explained in her supplemental statement, the Applicant’s relationship with E-S- began when her traffickers introduced her to him. She moved in with E-S-, despite not feeling ready to do so, in an effort to stay safe from her traffickers when they began to pressure her to return to Mexico after she no longer worked for them. During her relationship with E-S-, he subjected her to emotional and sexual abuse and also abused her children. The Director’s discussion of the Applicant’s “lengthy relationship” with E-S- incorrectly implies that she moved forward from her trafficking situation during her relationship with him and does not acknowledge its abusive nature and direct connection to her past trafficking.

Furthermore, the Director concluded that the Applicant had not begun counseling until March 2017, shortly before filing her T application, but did not consider the Applicant's statement and other evidence in the record that she got on a waiting list for counseling beginning in 2013, began attending therapy in 2015, and had been attending weekly therapy sessions for approximately two years by the time she filed her T application. Additionally, the Director did not acknowledge the Applicant's explanations of why she waited so long to receive help, including the ongoing violence she experienced in her relationship with E-S-, her fear of seeking help and belief that she was not entitled to it due to her undocumented status, her feelings of isolation due to her trauma, and her belief that M-A-R- was correct when he told her that he had done nothing wrong and that her feelings about her experiences were mistaken. Also, the Director did not discuss the Applicant's statements that she relied on weekly therapy sessions in order to overcome the trauma of her trafficking and felt those services were essential to her continued healing, or the statement of her therapist indicating that she was diagnosed with PTSD and would benefit from ongoing therapy to address the effects of her trauma on her life.

Moreover, the Director did not consider the evidence the Applicant submitted regarding the reasons she had not returned to Mexico. In her personal statements, she described her fear that M-A-R- would harm her in Mexico or damage her reputation there because he still traveled there and was a respected member of her community. Furthermore, she expressed concern that she would be unable to access necessary services for victims of trafficking in Mexico. She provided country conditions evidence from the U.S. Department of State indicating that "victim services were unavailable in much of the country, leaving many reported victims vulnerable to re-trafficking." U.S. Department of State, *2017 Trafficking in Persons Report* (June 2017). Upon *de novo* review, the Applicant has demonstrated that her continued presence in the United States is directly related to her past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv). Accordingly, she has met her burden of establishing by a preponderance of the evidence that she is physically present on account of trafficking as section 101(a)(15)(T)(i) of the Act requires.

C. Inadmissibility

Section 212(d)(13) of the Act 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. The applicant bears the burden of establishing that he or she is 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 is inadmissible to the United States under sections 212(a)(6)(A)(i) (alien present without admission or parole), 212(a)(6)(C)(i) (fraud or misrepresentation), and 212(a)(7)(B)(i) (no valid passport) of the Act. The Director denied the waiver application 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 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 application.

III. CONCLUSION

The Applicant has demonstrated by a preponderance of the evidence that she is currently physically present in the United States on account of a severe form of trafficking in persons. The Applicant has overcome the Director's grounds for denial of her T application. Consequently, the matter is remanded to the Director to consider the Applicant's eligibility for a waiver of inadmissibility in the exercise of discretion.

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