



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 06479121

Date: SEPT. 9, 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 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 the matter is now before us on appeal. Upon de novo review, we will remand the appeal.

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; 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).

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 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 evidence for us to consider; however, we determine, in our sole discretion, the evidentiary weight to give that evidence. 8 C.F.R. § 214.11(d)(5). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

A. Factual and Procedural History

The Applicant, a native and citizen of Mexico, entered the United States without inspection, admission, or parole in 2007. She filed the instant T application in September 2017.

In the record before the Director, the Applicant explained that in March 2007, when she was 17 years old, she met a woman named M-¹ through a neighbor. M- asked the Applicant to join her in the United States to work as a waitress where she could earn good money to send home to her family. M- told her that everything she needed would be paid for by a woman named R-. Shortly thereafter, the Applicant left her son with her mother and traveled to the United States with M-, R-, and three other females. The Applicant stated that she stopped at her mother's house on the way out of town to say goodbye to her mother and son. The Applicant explained that she reached her 18th birthday while on her journey and that once she arrived in Kansas, her destination, R-'s sister took her and the other females shopping. The Applicant stated that R-'s sister picked out high heels and clothes that were short and tight and assured her that the clothes would enable her to make a "good presentation."

The Applicant stated that she realized something was wrong that night when R-'s sister took her and the other females to a bar and told her that she needed to accompany men, including drinking and consuming drugs with them if they asked. The Applicant stated that the other women working at the bar were "extremely drunk and drugged all the time." The Applicant explained that she felt "incompetent" because she could not escape as she had no money or phone. Moreover, R- and her associates told the Applicant that she owed them \$2,700.00 and that she had to do as they instructed until the debt was paid. The Applicant stated that there were many security guards at the bar and that she lived at R-'s house. She stated that R- controlled her movements, as she drove her to and from the bar. The Applicant explained that she worked seven days per week without pay and was not allowed to do anything on her own.

The Applicant stated that in May 2007, R- told her that she had been sold to a man and would leave that night. The man picked her up, took her to an apartment in [REDACTED] Kansas, and gave her a fake identification. He later took her to work at a bar where she had to accompany men and make sure they consumed drugs and alcohol. R- explained that each day, the man picked her up and took her to the bar. She also stated that a friend of the bar owner paid to sleep with her, and that every weekend the man she had been sold to raped her.

In June 2007, as the Applicant was entering the bar, a police officer approached her and asked for her identification. The Applicant explained that she noticed police cars in front of the bar. She stated that she gave the officer her fake identification, at which time the officer took her by the hand and led her to the car. The officer asked her questions including whether she wanted to work at the bar. The Applicant explained that she did not, but that she could not leave because she owed the bar owners money. The officer asked if the Applicant could help her, as the bar had been under surveillance and the Applicant could be their "missing piece" of the puzzle. The Applicant agreed to help. The officer took her to a shelter. The Applicant stated that she told the police her entire story, reviewed

¹ We use initials to protect the privacy of individuals.

photographs, and identified R-'s house on an electronic map. Shortly thereafter, the Applicant was transported to [REDACTED] Arizona and reunited with her sister. She stated that she remained in contact with immigration officials and detectives and received work authorization.

The Applicant stated that she agreed to cooperate despite her fear for her mother and son in Mexico, as R- and M- knew where her mother lived because they took her to say goodbye as she was leaving home. Shortly after her rescue, the Applicant contacted her mother and told her to move because she feared that her traffickers would harm her or her son. The Applicant stated that within days, her mother relocated to a town about an hour and a half away. The Applicant explained that even after the trafficking investigation concluded, she feared returning to Mexico because the women who recruited her knew where she had lived and she feared retaliation for cooperating with the police. The Applicant stated that her mother told her that when she went to check on her house, former neighbors informed her that "a few people had stopped by to ask for [her] whereabouts"—people that the neighbors had never seen before.

The Applicant explained that since her separation from her traffickers, she had remained in Arizona. The record reflects that the Applicant is married and raising two children, including the son who initially stayed with her mother in Mexico.

In a June 2018 request for evidence (RFE), the Director stated that the Applicant had provided insufficient evidence that she was physically present in the United States on account of trafficking because she had not demonstrated that her continuing presence in the United States was related to her original trafficking situation. The Director explained that one way in which a T applicant may demonstrate his or her physical presence was to show that he or she had been "recently liberated from trafficking" by a law enforcement agency (LEA).

In response, the Applicant provided an updated personal statement explaining that she could not return to Mexico because her traffickers had asked about her whereabouts and continued to look for her, and she was afraid that they would seek revenge against her for cooperating with authorities and providing the names of the people involved in the trafficking. She stated that she helped to identify the leaders of the trafficking operation and that there were successful arrests. The Applicant further stated that she continued to be physically present in the United States because she was involved in her community and seeking ways to overcome the "horrific memories" of the trafficking, such as participating in a bible study group and joining a church. The Applicant provided letters verifying her church group membership and bible study participation. The Applicant also submitted a psychological evaluation from August 2018 stating that she suffered from moderate depression, had symptoms of lifetime posttraumatic stress disorder (PTSD), and experienced moderate to severe emotional distress. The evaluation explained that the Applicant "fear[ed] for her life and [was] certain that she [would] be killed if she return[ed] to Mexico."

The Applicant additionally submitted an August 2018 written statement from her mother in Mexico, explaining that she continued to live in the small town to which she relocated, that she rarely left the town, and that she lived in fear due to information from her former neighbor, T-G-L-. In a separate August 2018 written statement, T-G-L- explained that on multiple occasions, she heard comments from other neighbors about "strange people who have come into town" looking for the Applicant's mother. T-G-L- stated that around five months earlier, as she was headed to the store, two men around

the age of 30 approached her, rolled the window down, and asked if she knew anyone from the family of the “girl who used to live in that property,” in reference to the Applicant. T-G-L- explained that when she answered in the negative, one of the men told her that “if [she] knew someone from that family to inform them[,] as if he were warning [her] that they would return.” T-G-L- expressed her belief that the Applicant and her mother were at risk if they returned to their home.

The Director denied the application, determining that the Applicant had not established that she was physically present in the United States on account of trafficking.

B. The Applicant’s Physical Presence

In determining the physical presence requirement, 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 his or her 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 an 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). In considering the evidence of the physical presence requirement, USCIS may consider an applicant’s responses to when he or she 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).

On appeal, the Applicant first asserts that the Director misstated the applicable law in the RFE by stating that a T applicant must establish that he or she was “recently” liberated from a severe form of trafficking in persons, because 8 C.F.R. § 214.11(g)(1)(ii) requires that an applicant be liberated from trafficking by an LEA without regard to when the release occurred. The Applicant is correct that the current regulatory language does not place a time constraint on when the liberation from trafficking by an LEA must have occurred. Nonetheless, this issue is not determinative, because the Director correctly explained that we consider a T applicant’s physical presence at the time the T application is filed. 8 C.F.R. § 214.11(g)(1).

The Applicant further claims that she established that she continues to be physically present in the United States on account of her original trafficking in part because she fears that her traffickers will retaliate against her in Mexico for cooperating with the police. The Applicant explains that R- and M- know where her mother’s house is because they were with her when she said goodbye, that they worked with many other individuals, and that “it is no coincidence” that unknown individuals came looking for her near her mother’s former home as recently as 2018. The Applicant maintains that the Director erred in not considering this critical information, as the Director’s decision does not mention the Applicant’s “very real and present fear” of returning to Mexico due to her traffickers’ continuing actions.

The record reflects that in her decision, the Director stated that the evidence submitted in response to the RFE “detail[ed the Applicant’s] trafficking situation, indicate[d] that she [had] never left the United States since [her] 2007 entry, and describe[d her] fear of returning to Mexico.” The Director emphasized the Applicant’s cooperation in the investigation or prosecution of trafficking, which concluded in May 2008, noted that she was granted continued presence status until October 22, 2009, and referenced the Applicant’s statements regarding her son, husband, church, bible study group, and lack of access to professional services, for which the record did not show that the Applicant had availed herself other than the August 2018 psychological evaluation.² The Director concluded that the evidence demonstrated that Applicant had “remained in the United States raising [her] son and building a family,” which was insufficient to demonstrate that her continuing presence since October 22, 2009, was directly related to her original trafficking situation.

Upon de novo review, although the Director made general reference to the Applicant’s fear of returning to Mexico, as asserted by the Applicant on appeal, the record does not indicate that the Director considered the statements from the Applicant’s mother and T-G-L- that described the on-going and recent attempts of unknown individuals to locate the Applicant and her family in her home town in Mexico. As the Director does not appear to have considered evidence that is relevant to the Applicant’s claim that she continues to be physically present in the United States on account of her original trafficking, we will remand the matter to the Director to consider this evidence in the first instance.

ORDER: The decision of the Director is withdrawn. The matter is remanded for consideration of evidence consistent with the foregoing analysis.

² In her updated written statement, the Applicant stated that she did “not have much money” and could “not afford to pay out of pocket for professional services.”