

Administrative Appeals Office

November 28, 2018

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2018 Immig. Rptr. LEXIS 11253 *

MATTER OF N-E-S-

Core Terms

traffic, physical presence, nonimmigrant, reopen

Opinion

[*1]

AAO Designation: D12

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant, a native and citizen of Honduras, seeks T-1 nonimmigrant status 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 did not establish that she was a victim of a severe form of trafficking in persons, that she was physically present in the United States on account of such trafficking, or that she complied with any reasonable request for assistance in the investigation or prosecution of the trafficking. On appeal, we determined that the Applicant established that she was a victim of trafficking, that acts of trafficking occurred in the United States, and that she assisted law enforcement in the investigation and prosecution of the trafficking; however, [*2] we dismissed the appeal, concluding that the Applicant did not establish that she was physically present in the United States on account of such trafficking because she did not demonstrate that, at the time of filing her T application, her continuing presence in the United States was related to the original trafficking.

The matter is now before us on a motion to reopen and motion to reconsider. On motion, the Applicant submits additional evidence and a brief and asserts that her current presence in the United States is on account of the trafficking she experienced. In addition, in response to our October 2018 Notice of Intent to Deny (NOID), issued pursuant to [8 C.F.R. section 103.2\(b\)\(8\)](#), the Applicant submits an additional brief and copies of previously submitted evidence. Upon review, we will grant the motion to reopen and remand the matter for further proceedings.

I. LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. [8 C.F.R. § 103.5\(a\)\(2\)](#). A motion to reconsider must establish that our decision was based on an incorrect [*3] application of law or U.S. Citizenship and Immigration Services (USCIS) policy based on the evidence in the record of proceedings at the time of the decision. [8 C.F.R. § 103.5\(a\)\(3\)](#). Upon review, the Applicant has satisfied the requirements for a motion to reopen, as she has submitted new evidence and arguments that overcome the grounds for our previous dismissal.

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 value to give that evidence. [8 C.F.R. § 214.11\(d\)\(5\)](#).

II. ANALYSIS

In our prior decision, incorporated here by reference, we concluded that the Applicant did not demonstrate that she was 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. Upon review, the Applicant has overcome this [*4] determination.

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\(g\)\(1\)](#). The physical presence requirement reaches an applicant who, at the time of filing: (1) is currently being subjected to trafficking; (2) was liberated from trafficking by a law enforcement agency (LEA); (3) escaped from trafficking before an LEA was involved; (4) was subject to trafficking in the past and his or her continued presence in the United States is directly related to such trafficking; or (5) was allowed to enter the United States to participate in investigative or judicial processes related to the trafficking. [8 C.F.R. §§ 214.11\(g\)\(1\)\(i\)-\(v\)](#).

We previously determined that because the Applicant was the victim of trafficking in the past and escaped her trafficker without LEA involvement, she potentially fell within the scenarios set forth in [8 C.F.R. sections 214.11\(g\)\(1\)\(iii\)](#) and [\(iv\)](#), either as an applicant who escaped [*5] trafficking before an LEA became involved or as one who was trafficked in the past and whose continuing presence was directly related to the original trafficking, respectively. We then determined, based on the record before us, that she had not established that she was physically present under [8 C.F.R. section 214.11\(g\)\(1\)\(iv\)](#), as more than six years had passed since she escaped the trafficking and she had not provided substantive details about her trauma, explained why she was unable to return to Honduras, or established that she remained under the control of her traffickers.

In her NOID response, the Applicant asserts that she is physically present on account of trafficking under [8 C.F.R. section 214.11\(g\)\(1\)\(iii\)](#), as an individual who escaped a severe form of trafficking in persons before an LEA was involved, because a law enforcement agency, Immigration and Customs Enforcement-Homeland Security Investigations (ICE-HSI), was involved in the investigation of the trafficking crimes of which she was a victim. The Applicant notes that, while the term "involved" is not defined in the regulations, in [*6] a recent non-precedent decision (NPD), we interpreted the term to require more than passive receipt by law enforcement of a report of trafficking. She distinguishes her claim by arguing that ICE-HSI was involved in her case because she was interviewed by ICE-HSI, provided them with further documentation, remained in touch, and reiterated her willingness to provide assistance. Although our NPDs do not have precedential authority and we consider each case individually, the Applicant is correct that "involved" within the meaning of [8 C.F.R. 214.11\(g\)\(1\)\(iii\)](#) requires more than *de minimis* involvement by law enforcement, and that the record establishes that ICE-HSI was involved in the investigation of the acts of trafficking of which she was a victim. The record shows that, after receiving a referral from the [redacted] Michigan police, ICE-HSI interviewed the Applicant regarding her trafficking claim in May 2013, and that, following the interview, the Applicant's counsel provided additional documentation to ICE-HSI and repeated that the Applicant was willing to provide further assistance. The record further shows that in August 2013, [*7] ICE-HSI informed the Applicant's counsel that the notes from the interview would remain on file in case the perpetrator, who was in Mexico, was apprehended. The Applicant filed her T application the following year. The record therefore demonstrates that there was LEA involvement, as required by [8 C.F.R. section 214.11\(g\)\(1\)\(iii\)](#).¹

The Applicant further argues that she is not barred from establishing that she is physically present in the United States on account of trafficking by [8 C.F.R. section 214.11\(g\)\(2\)](#), which states that an individual who has voluntarily departed or been removed from the United States may not establish physical presence under [8 C.F.R. section 214.11 \(g\)\(1\)\(iii\)](#), unless the individual's reentry into the United States was the result of continued victimization, the individual is the victim of a new incident of trafficking, or he or she has been allowed reentry [*8] into the United States to participate in investigative or judicial processes related to the trafficking. [8 C.F.R. § 214.11\(g\)\(2\)](#). Here, the record shows that the Applicant was a victim of acts of trafficking that originated in the United States, during which time she was forcibly transported to Mexico. She did not voluntarily depart the United States and was not removed from the United States after the conclusion of the acts of trafficking. Accordingly, she is not barred from demonstrating her physical presence by [8 C.F.R. section 214.11\(g\)\(2\)](#).

In sum, as the Applicant has established that she escaped her trafficking before an LEA was involved, that there was LEA involvement, and that she is not precluded from establishing her physical presence on account of trafficking by [8 C.F.R. 214.11](#) section (g)(2), the Applicant has demonstrated that she is physically present in the United States on account of such trafficking. As such, we withdraw our prior determination that she is ineligible for T nonimmigrant status because she did not establish her physical presence. [*9]

We acknowledge that the Applicant has submitted medical records, a personal statement, and other evidence on motion to demonstrate that her continuing presence in the United States is directly related to

¹Footnote 1. The language regarding LEA involvement at [8 C.F.R. section 214.11\(g\)\(1\)\(iii\)](#) is distinct from the T nonimmigrant eligibility requirement at section 101 (a)(15)(T)(i)(III) of the Act, which requires an applicant to demonstrate that he or she has complied with any reasonable request in the investigation or prosecution of acts of trafficking.

the original trafficking in persons, per [8 C.F.R. section 214.11\(g\)\(1\)\(iv\)](#). However, as the Applicant has demonstrated that she is physically present in the United States on account of trafficking under [8 C.F.R. section 214.11 \(g\)\(1\)\(iii\)](#), we need not reach this issue on motion.

III. CONCLUSION

The Applicant has demonstrated that she is physically present in the United States on account of having been the victim of a severe form of trafficking in persons. Accordingly, we grant the motion to reopen. The motion to reconsider is moot. However, as the record indicates that the Applicant is inadmissible and has a pending Form I-192, Application for Advance Permission to Enter as Nonimmigrant, we remand the matter for further proceedings.

ORDER: The motion to reopen is granted. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of [*10] a new decision.

Cite as *Matter of N-E-S-*, ID# 1683514 (AAO Nov. 28, 2018)

NOV282018_04D12101.pdf

Return to Text

BIA & AAU Non-Precedent Decisions

Copyright 2019, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

End of Document