U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2920526

Date: JULY 1, 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), concluding that the record did not establish that the Applicant was physically present in the United States on account of having been a victim of a severe form of trafficking in persons. On appeal, the Applicant submits a brief and additional evidence, asserting 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 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 (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).

The term "severe form of trafficking in persons" is defined, in pertinent 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) (2018).

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 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 native and citizen of South Africa, indicated that he first entered the United States in 2001 on a B1/B2 nonimmigrant visa. He asserted that during this visit, he met and was recruited by J-D-,[1] who subjected him to labor trafficking in the United States. The Applicant indicated that he escaped his trafficking (in approximately 2002 or 2003) and reported his trafficker to a Special Agent with Homeland Security Investigations (HSI), Immigration and Customs Enforcement (ICE). He stated that his trafficker had him falsely arrested for theft of trade secrets (in 2002) and that the Special Agent helped him obtain his release. The Applicant eventually departed the United States but returned in 2004 on advance parole that HSI obtained for him as a material witness in their investigation and prosecution of J-D-. The Applicant indicated that he later changed his status in the United States to that of an H1B nonimmigrant, and he subsequently departed the United States and reentered on his H1B visa multiple times, the last time in 2009. In June 2017, the Applicant filed the instant T application based on his claimed trafficking by J-D-. In denying the application, the Director determined that the Applicant did not establish that he is physically present in the United States on account of his past trafficking because the record showed that he departed the United States after his trafficking and did not establish that his last reentry in 2009 was the result of continued victimization or a new incident of trafficking.

On appeal, the Applicant has not overcome the Director's determination, as he has not established that he is physically present in the United States on account of having been trafficking, as section 101(a)(15)(T)(i)(II) of the Act requires. The physical presence requirement reaches applicants who at the time of filing: are currently being subjected to trafficking; were liberated from trafficking by a law enforcement agency (LEA); escaped from trafficking before an LEA was involved, subject to 8 C.F.R. § 214.11(g)(2); were subject to trafficking in the past and "whose continuing presence in the United States is directly related to the original trafficking;" or were 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 evaluating the evidence of the physical presence requirement, USCIS may consider when applicants escaped their traffickers, what activities they have since undertaken to deal with the consequences of having been trafficked, and their ability to leave the United States. 8 C.F.R. § 214.11(g)(4).

Additionally, applicants who have voluntarily departed from or have been removed from the United States at *any* time after having been trafficked will not be 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).

The Applicant here voluntarily departed the United States after his trafficking ended and therefore must establish that he falls within one of the exceptions at 8 C.F.R. § 214.11(g)(2) in order to establish his physical presence. As the Director noted, the record does show that the Applicant reentered the United States in 2004 to participate in the investigation and prosecution of his claimed trafficker by HSI, which falls under 8 C.F.R. § 214.11(g)(2)(iii). However, he departed the United States again on

[1] We use initials in this decision to protect individuals' privacy.

multiple occasions after J-D-'s conviction in 2007 and the record does not show that these later reentries, including his last reentry in 2009, were for that same purpose of participating in an investigation or prosecution relating to his trafficker. Likewise, the record does not establish that these reentries were the result of his continued victimization by his traffickers, and he has not alleged that he was the victim of a new incident of trafficking. 8 C.F.R. § 214.11(g)(2)(i), (ii).

Counsel for the Applicant contends on appeal that his multiple departures from and reentries into the United States were "due to the continuous repercussions" of having been a victim of human trafficking and that his brief absences between 2006 and 2009 did not undermine the fact that he is in the United States because of his trafficking. While we acknowledge the Applicant's assertions that there were lasting repercussions arising from his trafficking after his escape from J-D- sometime in 2002 or 2003, including his claim that he had and would continue to have difficulty obtaining employment in South Africa after J-D- had him falsely arrested in the United States in 2002,[2] he has not shown that his last reentry in 2009 was the result of continued victimization as set forth in 8 C.F.R. § 214.11(g)(2)(i). The Applicant's initial statement below specifically stated that after obtaining his H-1B visa, he returned to "South Africa to visit [his] children and family several times," indicating that his departures from the United States were voluntarily made. Further, his admissions into the United States on his H-1B visa after J-D-'s 2007 conviction reflect that those reentries were for the purpose of working in the United States in an H-1B capacity, and his statements show that he also returned in order to continue operating the business that he started in the United States in 2004. Additionally, according to the Applicant, J-D- fled to South Africa over a decade ago after his 2007 conviction and later died there. Although the Applicant alleged that he fears retaliation by J-D-'s partner who also fled to South Africa, the record lacks any evidence that he or his family in South Africa had any contact with J-D-, his partner, or any other associates since 2007, either in the United States or during his visits to South Africa. Accordingly, the preponderance of the evidence does not show that his last reentry into the United States in 2009 was the result of continued victimization by his traffickers.

On appeal, the Applicant also asserts that his continuing presence in the United States is a direct result of his original trafficking by J-D-, which satisfies the requirements of 8 C.F.R. § 214.11(g)(1)(iv) for physical presence. However, as discussed, the Director's determination was based on a finding that the Applicant did not establish his physical presence under the additional requirements of 8 C.F.R. § 214.11(g)(2), where he departed the United States after his trafficking ended and has not shown that he meets any of the exceptions under that provision as required.

As the Applicant has not met the requirements of 8 C.F.R. § 214.11(g)(2), he has not established that he is physically present in the United States on account of having been a victim of trafficking as section 101(a)(15)(T)(i)(II) of the Act requires. Accordingly, he is ineligible for T nonimmigrant classification.

ORDER: The appeal is dismissed.

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[2] The record includes the Applicant's 2003 email correspondence with the HSI Special Agent who helped him obtain advance parole, which appears to contradict his claim that he was unable to obtain employment in South Africa. The Applicant specifically referenced having couple of opportunities coming his way in South Africa in these emails and indicated that he could not accept any job offers there because he did not know when he would be returning to the United States.