U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9044770

Date: SEPT. 17, 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). On appeal, the Applicant submits a brief and previously submitted evidence, asserting her 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) (2018).

The term "severe form of trafficking in persons" (trafficking) is defined 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). The definition of trafficking also includes "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." Id. Sex trafficking means the "recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." Id.

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 Mexico, asserted that she was kidnapped and brought to the United States for the purpose of labor and sex trafficking in approximately 1998 or 1999[1] when she was 14 years old. She stated that she was in the control of her traffickers for several years and escaped only in 2005. Following a criminal arrest in 2009, the Applicant was placed into removal proceedings before the Immigration Court and was granted voluntary departure under section 240B(a) of the Act, 8 U.S.C. § 1229c(a) in [redacted] 2009. She thereafter departed the United States voluntarily.[2] The Applicant later entered the United States in August 2013 as an arriving alien and was placed into removal proceedings again.[3]

In November 2017, the Applicant filed the instant T application based on her claim that she had been the victim of labor and sex trafficking when she first entered the United States. In denying the application, the Director determined that the Applicant did not establish that she was the victim of trafficking, was physically present in the United States on account of such trafficking, and had complied with any reasonable requests for assistance in the investigation or prosecution of trafficking. In addition, the Director found that the Applicant she was inadmissible to the United States, and the applicable grounds of inadmissibility had not been waived.

A. The Applicant Is Not Physically Present in the United States on Account of Trafficking

The record on appeal does not overcome the Director's determination that the Applicant had not established that she is physically present in the United States on account of her past trafficking, as section 101(a)(15)(T)(i)(II) of the Act requires, because the Applicant, who departed the United States after her trafficking and did not show that her later reentry was the result of continued victimization or a new incident of trafficking. In addition, the Director found that the Applicant had not shown that she was currently physically present in the United States on account of her past trafficking where she escaped her trafficking over 10 years ago in 2005.

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

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[1] As the Director noted below, the record contains conflicting information regarding the Applicant's initial date of entry into the United States. The record shows that during her 2009 encounter and interview with Immigration and Customs Enforcement officials, the Applicant stated that she last entered the United States in February 2003, as then reflected on her 2009 Form I-862, Notice to Appear, filed with the Immigration Court, and a Form I-213, Record of Deportable/Inadmissible Alien, contained in the record. Similarly, her sworn statement given under oath following her last entry in August 2013 shows that she testified to having previously resided in the United States illegally for four years, which would have been since approximately 2005 or 2006, since she had departed the United States about 2009 or 2010. Lastly, the record shows that prior to her last entry in August 2013, the Applicant filed a nonimmigrant visa application with the U.S. Department of State in April 2013, seeking a B1/B2 tourist visa, and asserted on that application that she had previously arrived in the United States in February 2005 and stayed four years.

[2] The record shows that immigration officials subsequently encountered the Applicant attempting to reenter the United States without authorization and removed her to Mexico in [redacted] 2010.

[3] The Applicant's second removal proceedings resulted in an order of removal issued in [redacted] 2017, and the Board of Immigration Appeals (Board) dismissed her appeal in [redacted] 2018.

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 acknowledges that she departed the United States after escaping her trafficking situation, but asserted below and on appeal that she did not do so voluntarily.[4] However, the requirements of 8 C.F.R. § 214.11(g)(2) specifically apply to applicants who have "voluntarily departed . . . (or [have] been removed from) the United States at any time after the" trafficking. (Emphasis added). The record shows that after her trafficking ended in 2005, the Applicant voluntarily departed the United States sometime after the Immigration Court granted her voluntary departure in [redacted] 2009. She later attempted to reenter the United States without inspection or admission but was removed back to Mexico in [redacted] 2010. Consequently, she must establish that she falls within one of the exceptions at 8 C.F.R. § 214.11(g)(2) in order to establish the physical presence requirement.

The Applicant contends that she is physically present on account of her past trafficking because her 2013 reentry was the result of her continued victimization by her original traffickers. 8 C.F.R. § 214.11(g)(2)(i).[5] Specifically, she contends that her reentry was "for reasons directly related to her trafficking incident," including for the purpose of finding "sanctuary from the trauma that she had suffered in the United States." Her initial written statement indicated that after residing in Mexico for three years, she returned with her four children in 2013 and applied for asylum because of threats to her and her family from a gang who sought to forcibly recruit her partner, the father of her children. Likewise, her written statements before the Immigration Court in support of her asylum application indicated that she left Mexico shortly after gang members approached her partner in July 2013 and told him they would kidnap the couple's children from school, and she later testified in Immigration Court in [redacted] 2017 that the gang twice kidnapped one of her children from school for several hours as a warning in August 2013 before she left for the United States.[6] See Imm. Ct. Transcript at 41-46. In her statement responding to the Director's request for evidence, the Applicant asserted for the first time that she also returned to the United States because she was looking to recover from her trafficking

[4] However, in her 2015 statement before the Immigration Court in support of her asylum application, the Applicant claimed that she and her partner decided to accept voluntary departure order to Mexico during her 2009 removal proceedings because her partner's father in Mexico was sick.

[5] The Applicant does not assert, and the record does not show, that she falls within 8 C.F.R. § 214.11(g)(2)(ii) (as the victim of a new incident of trafficking) or under 8 C.F.R. § 214.11(g)(2)(iii) (allowed reentry to participate in the investigation and prosecution of her claimed traffickers).

[6] The Immigration Judge denied the Applicant's asylum application, finding that she was not credible in light of inconsistencies in her written statements and testimony, and the Board affirmed the decision based on the adverse credibility determination.

experience and that she had fallen deeper into the depression and mental illness resulting from her trafficking, which was aggravated by the violence and threats she experienced in Mexico. The Applicant also submitted mental and physical health assessments showing that she has been diagnosed with Posttraumatic Stress Disorder for which she is receiving treatment.

The term "continued victimization" at 8 C.F.R. § 214.11(g)(2)(i) is not defined in the regulation, but the Act and regulation require T victims of severe forms of trafficking in persons to establish that they are "physically present in the United States... on account of such trafficking." Section 101(a)(15)(T)(i)(II) of the Act; 8 C.F.R. § 214.11(b)(2), (g). The Applicant has not established that her 2013 reentry into the United States was the result of her continued victimization by her traffickers such that her current physical presence in the United States, over 10 years after she escaped her traffickers, is on account of that trafficking. We acknowledge the Applicant's assertions that she suffered lasting emotional harm resulting from her trafficking and that she returned to the United States in 2013 to seek help and recover from her trafficking. However, while such harm resulting from having been a victim of past trafficking is a relevant consideration for a determination of whether T applicants would suffer extreme hardship involving unusual and severe harm upon removal from the United States under section 101(a)(15)(T)(i)(IV) of the Act, it is not sufficient to establish continued victimization by her traffickers as contemplated by 8 C.F.R. § 214.11(g)(2)(i). The record shows that after escaping her trafficking her traffickers in 2005, the Applicant met and married her partner with whom she had four children and remained in the United States before voluntarily returning to Mexico in 2009 or 2010. There is no evidence indicating that her traffickers victimized, threatened, retaliated against, or even attempted to contact her again after she escaped them in 2005, including during the three years she spent in Mexico from 2010 through 2013. Accordingly, the Applicant has not established that her 2013 reentry was the result of continued victimization by her traffickers, as 8 C.F.R. § 214.11(g)(2) requires.

The Applicant also claims on appeal she has established physical presence under 8 C.F.R. § 214.11(g)(1)(iv), because her "continuing presence in the United States is directly related to the original trafficking." However, because the Applicant departed the United States after her trafficking, she must meet the requirements for physical presence under both 8 C.F.R. § 214.11(g)(1) and (2). As the Applicant did not establish her physical presence under the additional requirements of 8 C.F.R. § 214.11(g)(2), we do not reach the issue of whether she meets the requirements of (g)(1).

Accordingly, the Applicant has not established that she 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, and she therefore is not eligible for T nonimmigrant classification. [7]

ORDER: The appeal is dismissed.

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[7] As previously noted, the Director also denied the T application on other grounds, including that the Applicant had not credibly established that she was the victim of trafficking, the predicate requirement to establishing the remaining eligibility criteria for T nonimmigrant classification under section 101(a)(15)(T)(i) of the Act. However, as our decision here is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Applicant's arguments regarding the remaining grounds for denial identified by the Director. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).