



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

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

In Re: 5600239

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 record did not establish that the Applicant 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. 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 Guatemala who last entered the United States in August 2004 without inspection, admission, or parole. She filed her T application in July 2017.

## A. The Applicant's Trafficking Claim

The Applicant's personal statement credibly establishes the following claim: When she was a child in Guatemala, her mother subjected her to severe physical and verbal abuse daily and that her father sexually abused her weekly beginning when the Applicant was six years old, stopping only after impregnating the Applicant when she was 14 years old. Her mother blamed her for becoming pregnant, worked to cover up her father's abuse, abused her while she was pregnant, did not allow her to care for the baby, and threatened to give the baby away. Her baby died at three months of age due to a stomach infection after her mother attempted to treat it at home. After the death of her baby, she moved in with a 25-year-old man, but then returned to her family's home after he learned that her father had sexually abused her. She again endured abuse by her parents until marrying a man named R-C-S-<sup>1</sup> at the insistence of her parents. R-C-S- soon began subjecting her to severe physical, emotional, and sexual abuse, and he sometimes dropped her off at her parents' house where they treated her like a slave. She and R-C-S- had three children and he was never a loving father.

The Applicant and R-C-S- eventually moved into a room in a hostel where the Applicant's father also lived, and her father attacked her with a knife. After that, she began thinking of going to the United States to escape the abuse from R-C-S- and her father, and she heard of a smuggler named T-F- who helped people reach the United States. Her father offered to arrange for her to travel with T-F-, and she was unaware of her father's motives but accepted because she was determined to leave Guatemala. She departed Guatemala with T-F- in August 2004. During the journey, T-F- raped her multiple times and although she wanted to return to Guatemala, he assigned someone to guard her so that she could not escape and made sure she was transported over the border. She was taken to [REDACTED], California, and became afraid because she had planned to go to [REDACTED].

Men brought the Applicant with a group of other people to an apartment building in [REDACTED] but the driver let the other people get out and then attempted to rape the Applicant. He then returned her to the apartment building, where an armed man with a scar on his face took her to an apartment where other people were being held. The man with the scar raped her in the parking garage that night and again another day. She and the others held there were not allowed to make noise or leave the apartment without permission. After about three days, the man with the scar took her to a parking lot and forced her to get in a car with another man who took her to a house and raped her, saying that the man with the scar "told him he could do whatever he wanted with [her]." On the fourth day, the men guarding the apartment said they were going to take the people to other houses. A member of the group being held there told the Applicant to escape in any way she could because "what [she] had been through was nothing compared to what could happen to [her]." She remained alone in the apartment with the man with the scar, who raped her several times, threatened to call the police if she did not cooperate, and deprived her of food. Additionally, she indicated that approximately every other day the man with the scar had a phone conversation in English, which she could not understand, and then took her to meet other men who transported her to houses or motel rooms and raped her, stating that the man with the scar said they could "do whatever [they] wanted with [her]." The man with the scar did not have conversations with these men when he dropped her off and did not appear to be friends with them, so she thinks the men were paying to have sex with her. She feared she would be physically harmed if she did not follow orders.

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<sup>1</sup> We use initials to protect identities.

After about two weeks in the apartment, she escaped through a door to the balcony during a period when the men left her alone. She saw a man in a neighboring apartment and asked him if she could climb onto his balcony to escape, and he agreed. The neighbor offered her his phone so that she could call her sister, who lived in [REDACTED] and then gave her a ride to her sister's house. The neighbor later called the Applicant's sister to let her know that the men went to his apartment to look for her and demanded that she be returned. Additionally, her father received a call about the Applicant's escape. Also, the Applicant's daughter, G-, later told her that in 2004, several weeks after the Applicant left Guatemala, T-F- arrived at the hostel where the family lived in Guatemala and angrily told the Applicant's father that the Applicant "got out from where [they] had her," and forcibly took the Applicant's father away in a truck, returning him over an hour later. Furthermore, G- told the Applicant that in 2010, when G- was 14 years old, T-F- arrived and asked the Applicant's brother-in-law where the Applicant was and threatened to "hurt her where it hurts the most," noting that he "kn[e]w she ha[d] an older daughter." The Applicant expressed a belief that T-F- intended to take her daughter, "rape her, sell her into prostitution, or even kill her."

The Applicant remained in [REDACTED] for less than a year after her escape, working as a maid. She went to the doctor about pain in her ovaries and genital area but did not tell the doctor what had happened to her because she was embarrassed. She did not report her experience to the police because she was afraid she would be arrested. The Applicant subsequently moved to [REDACTED] Florida, and then to [REDACTED] Texas. She lives with a partner whom she met at work, and cares for her three children. She fears that her father or R-C-S- would harm her if she returned to Guatemala, and that T-F- would retaliate against her for escaping by harming her, her daughters, or her granddaughter. Further, she and her daughters continue to suffer the effects of her father's abuse, and her community looks differently upon her family due to that history. She hopes to remain in the United States with her partner and her U.S. citizen children, and wants to get counseling that she believes she would be unable to access in Guatemala. Revisiting the memories of her experience is difficult for her, but she eventually sought help from an attorney because she was afraid immigration agents would arrest her.

In a supplemental personal statement, the Applicant credibly stated the following: She has not returned to Guatemala because she fears T-F- will kill her and her children. Her brother, E-, told her on a couple of occasions that T-F- was looking for her. In 2009, while she was living in Texas, she received a phone call from T-F-, who threatened to find her, send her back, and make her "pay." T-F- would not tell her how he obtained her phone number. After this call, she believed that T-F- had discovered her address, so she convinced her partner and children to move to a different house in Texas, and she has repeatedly asked her children in Guatemala to move. Also, her daughter G- told her in 2010 that T-F- was looking for her. The Applicant wanted to return to Guatemala to be with her children there, but G- told her not to because of the threat from T-F-, and "the thought of [T-F-] hurting [her] and [her] family always stops [her]" from returning. She feared T-F- because he was still searching for her years after she escaped. In July 2016, she learned that her son, R-, had been threatened in Guatemala by two women and a man who wanted him to sell drugs. The Applicant believed based on R-'s description that the man was T-F-, and that T-F- was trying to get close to R- in order to harm the family. The Applicant began attending church in January 2018 because she realized she "had been focusing on [her] pain and suffering," and through her attendance has made progress on overcoming her past. She also began attending counseling in May 2018, and it has been very difficult to talk about her past. When she first began working with her attorney, she avoided the attorney's calls because

she did not want to talk about her trafficking. In addition to church, counseling, and legal help, she has made progress in overcoming her past trauma through her relationship with her children and partner, painting during free time, and caring for the daughter of a friend.

As supporting evidence, the Applicant submitted a statement from her son, R-, who indicated that after the Applicant left Guatemala when R- was six years old, T-F- arrived at the house and yelled angrily, "Where is she? I want to find her!" R- noted that T-F- threatened to kidnap and hurt R- if he did not tell him where the Applicant was. R- also stated that when he was almost 18 years old, two girls tried to force him to sell drugs and to go to the capital to meet their boss, and a friend told R- that the girls worked for T-F-. He recalled that about 15 days later, a man arrived at his house and said, "If you don't come with me, I am going to kill you and your sisters." R- stated that he ran away and the man chased him with his car, but R- escaped by hiding among cows at a ranch. He then called the Applicant and told her that T-F- wanted to recruit him to sell drugs, and she decided that he should come to the United States for his safety. He stated that he would be afraid to return to Guatemala because of T-F-.

The Applicant also provided a statement from her brother, E-, who stated that when he did not hear from the Applicant for several weeks after she left Guatemala, he called T-F- for information but T-F- denied any knowledge of her. Later, the Applicant called to tell E- that she had escaped, but she was too upset to tell him what had happened to her. E- stated that T-F- arrived at his house several times with men that had tattoos. T-F- was armed and angry, demanded the Applicant's phone number, threatened to kill the entire family, and said that "sooner or later, [the Applicant] would pay." E- claimed that T-F- arrived at his house frequently over a period of three or four years until E- moved to a new house. Even after E- moved, T-F- continued to call E- on the phone multiple times per day until E- changed his phone number, and T-F- also called the Applicant's father. E- emphasized that T-F- said "that it didn't matter if [the Applicant] returned in ten, fifteen, or thirty years, she was going to pay for escaping." Further, E- recalled that T-F- asked him where the Applicant's children lived, threatened R-, and said he would kill the Applicant. E- believes T-F- is capable of killing the Applicant, and said he "was going to pay the amount of money necessary to find [the Applicant] and hurt her."

Additionally, the Applicant submitted a statement from her daughter, G-, who claimed that when she was eight years old, a few weeks after the Applicant had departed Guatemala, T-F- arrived with two armed men and yelled angrily that the Applicant had "escaped." T-F- and the men took the Applicant's father by force into their truck, saying, "You and your daughter will pay!" According to G-, the Applicant's father returned later and would not say what happened, but that "everything [was] fixed." G- recalled that when she was 14 years old and living with her uncle, T-F- and two armed men arrived and demanded to know where the Applicant was. T-F- also said that he would "hit [the Applicant] where it hurts the most" and yelled, "Tell me where her kids are! I know she has three kids! I am going to retaliate with them! I know she had an older daughter . . . !" G- indicated that T-F- arrived at her uncle's house many other times, and that her uncle told her to hide. She noted that she now lives alone with her 5-year-old daughter and sister and fears that if T-F- finds them, he will hurt them because of their relationship with the Applicant.

The Applicant also submitted an evaluation from a psychologist, who noted in her 2018 evaluation that the Applicant "continues to struggle and suffer because of the abuse she survived." The

psychologist summarized the Applicant's report of her experience, which was consistent with the Applicant's personal statements in support of her T application. The psychologist noted that it was very difficult for the Applicant to recount her trauma and that she suffers flashbacks, nightmares, and hypersensitivity to certain situations. The psychologist diagnosed the Applicant with post-traumatic stress disorder (PTSD) and noted that she had also experienced depression, anxiety, and suicidality. According to the psychologist, the Applicant "is suffering extreme psychological hardship because of her past experiences of trauma, now while she is still here."

Furthermore, the Applicant provided a declaration of expert opinion from a university professor, Dr. M-T-, who specializes in immigrant and refugee issues, gender and migration, and Latin American issues. Dr. M-T- expressed her opinion that if the Applicant returns to Guatemala, her father, ex-partner, or T-F- would likely subject her to abuse. Dr. M-T- discussed country conditions in Guatemala, including the high rates of violence against women, and concluded that the Applicant would be unable to live safely in Guatemala.

#### 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 did not consider the ongoing effect of PTSD on her life and her need to receive mental health services in the United States. Additionally, she alleges that the Director not consider the evidence of the trauma she experienced after her escape from trafficking when T-F- continued to look for her at her family's home in Guatemala, repeatedly threatened her children and other family members, called her in Texas several years after her escape, and said he would make her "pay for escaping" even if she returned to Guatemala 10, 15, or 30 years later. She reiterates that her ongoing fear made her avoid discussing her trafficking experience, and that she moved houses to hide from T-F-, repeatedly told her children to move, sought work outside the public eye in order to avoid meeting him, and even years later decided not to return to Guatemala due to threats from T-F- despite a desire to be with her children.

The Director indicated that the Applicant had not provided sufficient evidence of "what activities [she] has undertaken since [her] escape including the steps [she] may have taken to deal with the

consequences of having been trafficked” or how her current presence continues to be related to her trafficking that occurred so many years ago. To the contrary, the Applicant explained that it was very difficult for her to recall her past trauma and she avoided doing so for years; continued to struggle with recounting her trauma even after she began to obtain help; sought comfort in her church, family, work, and art; and attended therapy even though it was very difficult for her to do so. The Director dismissed evidence of these activities because her church and therapy attendance began in 2018, but did not acknowledge the Applicant’s explanation that the delay was due to her ongoing fear and inability to discuss her past trauma. The psychological evaluation she submitted confirmed that it was so painful for the Applicant to discuss her traumatic experiences that during counseling she “sobbed to the point she could not breathe,” and that her trauma continues to have a significant and serious impact on her daily life. According to the psychologist, the Applicant “continues to suffer emotionally from the abuse she endured. Depression negatively impacts every aspect of her life. . . . [H]er fear of the traffickers has kept her silent all these years.”

The Applicant further alleges on appeal that the Director did not evaluate the country conditions information Dr. M-T- provided, which showed that family members in Guatemala often sell women into trafficking situations and that she would be unable to find protection from her traffickers there. She alleges that the Director did not consider the evidence that her “father was complicit in the trafficking scheme” and also poses a risk to her safety that is related to her past trafficking. She explains that because her abusive father arranged for T-F- to smuggle her into the United States, and T-F- later targeted her father with threats after the Applicant escaped, her father likely sold her into the trafficking situation with T-F- and could re-traffic her or report her to T-F- even if T-F- did not find her himself. Furthermore, she states that the Director failed to consider the fact that T-F- is part of a multinational criminal network which facilitated her trafficking through Guatemala, Mexico, and the United States and continued to target her family after she escaped, and that T-F- therefore is not the only individual who might harm her in relation to her trafficking. A preponderance of the evidence establishes that the Applicant continues to be at risk of harm from T-F-, his associates, and her father, all of whom participated in her trafficking, and that the fear, trauma, and credible threats relating to past abuses by those individuals continue to affect her daily life and prevent her from returning to Guatemala.

The Applicant also argues that the Director erred by requiring that she must have had recent contact with her trafficker in order to establish that she was still at risk or that her continuing presence in the United States was directly related to the trafficking. The Director stated that the Applicant and her family last had contact with T-F- three to four years after her escape, and that the passage of time since then weighed against a conclusion that her continuing presence in the United States was related to her past trafficking. However, the Applicant and her family members credibly indicated that they received direct threats from T-F- in 2010, which was more than five years after the Applicant escaped in 2004. The fact that T-F- continued to actively target the Applicant and her family at least five years later, including making credible death threats to her children and finding her phone number after she moved to another state, demonstrates his ongoing interest in retaliating against her for escaping her trafficking. Furthermore, the Director did not acknowledge the credible evidence of T-F-’s threats to make her pay for her actions even 30 years later, his statement that he would spend however much money was necessary to find her, or his threats to “hurt her where it hurts the most” by targeting her daughter. Additionally, contrary to the Director’s conclusion that T-F- stopped threatening the Applicant in 2010 and that she had only a “suspicion” that T-F- contacted her son R- in 2016, R-

credibly explained in his statement that when people threatened him and attempted to force him to sell drugs in Guatemala in 2016, he verified that those people were T-F- and his associates.

Additionally, the Director stated that the Applicant had “not provided credible evidence that [she] or [her] family have had any interaction with [T-F-] since approximately 2010 such that [she] continued to be under [T-F-]’s control.” However, the regulation does not require that the Applicant continue to be under the control of her trafficker in order to establish that her physical presence in the United States is directly related to her past trafficking under 8 C.F.R. § 214.11(g)(1)(iv). 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) and 212(a)(6)(E) (alien smuggling) 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.