

Administrative Appeals Office

DATE: JUL 22, 2020

OFFICE: Motion on Vermont Service Center Decision

Reporter

2020 Immig. Rptr. LEXIS 10301 *

In Re: 6500168

Core Terms

traffic, was, has, inadmissibility, therapy, nonimmigrant, reconsideration motion, physical presence, motion to reopen, severe form

[*1] AAO Designation: D12

Form I-914, Application for T Nonimmigrant Status

Opinion

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 that the Applicant had not demonstrated that she was a victim of a severe form of trafficking in persons, is physically present in the United States on account of the claimed trafficking, and had complied with reasonable requests for assistance in the investigation or prosecution of the trafficking.¹ We dismissed the Applicant's subsequent appeal, and the matter is now before us on a combined motion to reopen and motion to reconsider. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. [8 C.F.R. § 214.11\(d\)\(5\)](#); [Matter of Chawathe, 25 I&N Dec. 369, 375 \(AAO 2010\)](#). Upon review, [*2] we will grant the motion to reopen and remand the matter to the Director for further proceedings. The motion to reconsider is moot.

I. LAW

¹ The Director also determined that the Applicant is inadmissible to the United States. The Applicant did not raise that issue on appeal and we did not reach it.

A motion to reopen must state new facts and be supported by documentary evidence. [8 C.F.R. § 103.5\(a\)\(2\)](#). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. [8 C.F.R. § 103.5\(a\)\(3\)](#).

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 in pertinent part as the “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion [*3] for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” [8 C.F.R. § 214.11\(a\) \(2017\)](#).

II. ANALYSIS

In our decision on appeal, we concluded that the Applicant had overcome the Director’s determinations that she was not the victim of a severe form of trafficking in persons and had not assisted in the investigation or prosecution of such trafficking. However, we determined that the Applicant had not established that she is physically present in the United States on account of her trafficking, as section 101(a)(15)(T)(i)(II) of the Act requires, and that she therefore was not eligible for T nonimmigrant classification.

As we discussed in our appeal decision, the Applicant’s boyfriend, C-T,² subjected her to severe physical, verbal, and sexual abuse beginning in 2000. In 2003, the Applicant went to Mexico to bring her daughter to the United States, returning to C-T- because he threatened to kill her if she left him. After she returned, C-T- said she had to repay him the money he spent for her to go to Mexico, and he forced her to work picking tomatoes to repay the debt. He forced her to work six to seven days per week [*4] from 2003 until 2010, watched her while she worked and yelled at her if she rested or drank water, and would not allow her to leave the house unless she was working or getting groceries. He threatened to beat her and take her children if she did not work, and refused to let her rest even when she was in pain or felt ill due to working in high heat. When she begged for time off: he hit her in the nose and caused it to bleed, burned her arm with a tortilla griddle, and threw plates and food at her. He also took half of her salary each week, leaving her without enough to feed her three children, and said she must provide for him or he would take the children away. Further, he threatened that she would be deported if she reported him and that if she left him, he would find and kill her and her children. The Applicant finally escaped in 2010, when she sought medical help after C-T- beat and raped her. She filed her T application in 2016. We determined that the Applicant was subjected to involuntary servitude as defined at [8 C.F.R. § 214.11\(a\)](#) and therefore had established that she was the victim of a severe form of trafficking in persons under section 101(a)(15)(T)(i)(I) of the Act.

The [*5] Applicant claims that she is physically present in the United States under [8 C.F.R. § 214.11\(g\)\(1\)\(iv\)](#) as an individual who was trafficked in the past and whose continued presence in the United States is directly related to the past trafficking. On appeal, we determined that the Applicant had not submitted sufficient evidence to meet this requirement. We noted that the Applicant claimed that she

² We use initials to protect identities.

feared C-T- would harm her in Mexico, was receiving services for trafficking victims in the United States, and was struggling financially. However, we concluded that the Applicant did not claim that she had ongoing contact with C-T- or had reason to believe she would fall under his control again, did not establish that her present financial hardship was directly related to her past trafficking, and did not indicate that she was suffering ongoing physical or emotional harm resulting from the trafficking that continued to adversely affect her life.

On motion to reconsider, the Applicant asserts that we misapplied the regulation and violated applicable law and policy. She contends that we did not apply the “any credible evidence” standard at [8 C.F.R. § 214.11\(d\)\(5\)](#), but instead required evidence [*6] additional to her testimony, and gave insufficient weight to her statements regarding the “financial, emotional, and physical harm that she continues to suffer as a result of trafficking.” She also alleges that we did not consider the length of time she was subjected to abuse and trafficking and incorrectly assessed her current situation by determining that her statements indicated that her life had improved. She further argues that she remains financially vulnerable and depends on services for trafficking survivors that she receives in the United States. Additionally, she states that she can seek police protection from her trafficker in the United States but would be at risk of harm if he found her in Mexico.

In support of her motion to reopen, the Applicant submits a supplemental declaration in which she asserts that she “continue[s] to suffer severe trauma” due to the actions of her trafficker, she is still afraid of him, and she relies on therapy. She has nightmares about C-T-, fears she will see him when she is out in public, and sometimes thinks she sees him or hears his voice. She states that she has trouble forming relationships with other people because she does not trust people [*7] and fears they will mistreat her the way C-T- did, and therefore she has no friends. She struggles to leave the house and has poor self-esteem. She notes that looking at her son, R-, brings back painful memories and accompanying physical illness because R- reminds her of how C-T- threatened to take her children away or kill her and the children, and how she feared R- would not reach adulthood. The Applicant indicates that although C-T- was deported in 2010, she “relive[s] the trauma and pain basically every day” and still fears that he will find and hurt her. Additionally, she notes that she works in the fields doing work similar to that which C-T- forced her to do because she lacks other job skills, and she fears that he will appear at her workplace. Further, she struggles to focus at work because of intrusive thoughts of C-T-, has been disciplined at work for being distracted, and has earned less because she struggles to focus on her work and is paid based on the amount of fruit she picks. She states that she has received therapy since 2016 and continues to need therapy in order to decrease her “nightmares, fear, and constant worrying.” She believes she would be unable to receive [*8] such therapy in Mexico. Finally, the Applicant states that she had no money or way to support her children after C-T- was deported, and she continues to struggle to make ends meet. As additional supporting evidence, the Applicant provides a letter from her therapist confirming that she attends bi-weekly therapy and has been diagnosed with posttraumatic stress disorder (PTSD). The therapist recommends that the Applicant “continue to seek therapy and support for health and well-being.”

In her motion to reopen, the Applicant provides new facts, which are supported by documentary evidence, to establish her eligibility. [8 C.F.R. § 103.5\(a\)\(2\)](#). The Applicant’s supplemental personal statement and supporting letter from her therapist provide sufficient evidence to establish that the Applicant has suffered, and continues to suffer, ongoing fear, nightmares, recurring memories, and physical symptoms caused by the trauma she experienced during her trafficking. Despite the fact that she escaped from her trafficking in 2010, the effects of the trafficking continue to affect her daily life, including her relationship

with her child, her ability to form relationships with others, and her ability to [*9] work and provide for her family. Additionally, the evidence on motion shows that the severity of the harm she suffered during her period of trafficking from 2003 to 2010 contributes to the ongoing effect of the trauma. She requires continuing therapy to address her PTSD and move forward with her life. As supplemented on motion, the record establishes by a preponderance of the evidence that the Applicant 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. Accordingly, we will grant the motion to reopen, and the motion to reconsider is moot.

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 [*10] 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 and denied her waiver application based on the denial of the Applicant's T application. Because the Applicant has overcome the grounds 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.

ORDER: The motion to reopen is granted. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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