



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 09944862

Date: AUG. 5, 2021

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, 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). 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).

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 Romania, entered the United States in March 2004 with an H-2B visa. In March 2018, the Applicant filed the instant T application, asserting that she was the victim of labor trafficking by her employer in the United States.

A. The Applicant's Trafficking Claim

The record reflects that the Applicant arrived in the United States in 2004 on an H-2B visa to work as a housekeeper for E-H-¹ a U.S. company in the hotel industry in Florida. In her statements, the Applicant characterized some of the employer's staff as like "mafia" and stated that they intimidated her by pushing and yelling at her to make her work faster and were rumored to carry guns. She stated that she had to work at least six days a week, 10-12 hours per day with no overtime pay and was paid at a lower rate than the promised wages. According to the Applicant, one of the managers took her and the other workers' passports when they first arrived at their place of employment, and some of the managers later told the workers that if they left the company-provided housing or sought another employer, they would make sure that they would get deported. The Applicant stated that the living quarters that were provided were small and infested with cockroaches, and she had to share a small bedroom with three other people. In August 2004, one of the staff members demanded \$850 to extend the Applicant's visa, but she never got the visa extension or her money back. The Applicant eventually moved out of the house with the help of some individuals and stopped working for E-H- in October 2004.

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

In determining the physical presence requirement, U.S. Citizenship and Immigration Services (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 applicants who at the time of filing: (i) are currently being subjected to trafficking; (ii) were liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved, subject to paragraph (g)(2); (iv) were subject to trafficking in the past and their continuing presence in the United States is directly related to such trafficking; or (v) 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 considering the evidence of the physical presence requirement, USCIS may consider applicants' responses to when they 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).

On appeal, the Applicant asserts that she meets the physical presence requirement under 8 C.F.R. § 214.11(g)(1)(iv), as an individual who was subjected to trafficking in the past and whose continuing presence in the United States is directly related to such trafficking. Specifically, she contends that the length of time between the end of her trafficking and the filing of her T application is not determinative in assessing physical presence. She asserts that she is physically present in the United States on account of her past trafficking because she continues to suffer from "physical, emotional, and financial harm (medical bills) directly related to her past trafficking." Upon review of the entire record, as supplemented on appeal, the Applicant has not established her eligibility.²

¹ We use initials to protect the privacy of the parties involved.

² The Applicant also asserts that we "should strike down the new regulations" on the basis that the regulatory agency exceeded their authority in looking to an applicant's current situation at the time of filing the T application. However, we lack authority to waive or disregard the requirements of the statute, as implemented by regulation. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

In her statements below, the Applicant indicated that she looked for and obtained other employment after leaving E-H-'s employ. She indicated that in 2005, she met her current spouse and they had a daughter several years later. The Applicant also explained how she tried to maintain her "legal status" after leaving her trafficker and detailed her efforts to obtain various immigration benefits over the years. The Applicant discussed the financial debt she incurred since 2004, including \$40,000 in immigration lawyer fees and another \$40,000 for health and dental expenses. She stated that some of her friends helped her financially, but she "still owe[s] them money."³ The Applicant stated that because of the "tremendous physical, emotional and financial stress," she started feeling "extremely stressed" and was diagnosed with anemia, atopic dermatitis, migraines, insomnia, anxiety, depression, and Post Traumatic Stress Disorder (PTSD). She stated that they "spent all [their] earnings here trying to make it happen" and that if they go back to Romania, they won't be able to provide their daughter the opportunities she would have in the United States. Similarly, in a 2017 statement, the Applicant's sister, M-T-, discussed the Applicant's debt she incurred in Romania prior to her departure for the United States and stated that the Applicant "could not return home broke." M-T- further stated that it would be "extremely hard" for the Applicant and her family to integrate into "Romanian society, find decent jobs and make a living" if they relocated there.

In her 2019 statement, the Applicant stated that her sister, M-T-, who lives in Romania, told her that during the criminal investigation of E-H- (which resulted in some E-H- employees being convicted of immigration fraud in 2007), she received phone calls from E-H-'s associates in Romania asking about the Applicant's collaboration with the authorities in the United States against E-H- employees and warning her of the proximity of their house to the Russian border. M-T-'s 2019 statement provided a similar account of the calls she received from E-H-'s associates and the threats they made against her and the Applicant.

In the record below, a brief letter from the Applicant's dermatologist confirms her diagnosis of atopic dermatitis. The letter states that the Applicant's condition is exacerbated by physical and mental stress and that she has been advised to follow the topical medical regiment and to reduce her stress. With the RFE response, the Applicant also submitted a two-page mental health evaluation from a licensed clinical social worker (clinician). According to the clinician, the Applicant suffers from somniphobia (fear of sleep) due to "unpredictable recurrence" of unspecified "highly disturbing dream images" related to the "human trafficking" event. The clinician stated that the Applicant's approach to her anxiety is "dysfunctional" and that she exhibits symptoms of "intense psychological distress" to phone calls from unknown numbers and the appearance of "official-looking" individuals, and further noted that "as a direct result of her uncertain immigration status, she expresses a constant fear of 'discovery.'" The clinician concluded that the Applicant's condition is "fully consistent with a diagnosis of PTSD."

We concur with the Applicant's assertion on appeal that the length of the period between the end of her trafficking and the filing of her T application does not preclude her from establishing the physical presence requirement. We further acknowledge the above evidence of the emotional, physical, and financial harm the Applicant suffered, including her diagnoses of PTSD and dermatitis, and her significant financial debt. However, the Applicant's statements and supporting evidence do not

³ The record is unclear as to whom the Applicant still owes money.

demonstrate that her current presence in the United States at the time of application is directly related to her past trafficking as discussed below.

The Applicant's statements, the mental health evaluation, and the letter from the Applicant's dermatologist lack probative information showing that her PTSD diagnosis and the atopic dermatitis are related to her trafficking. The mental health evaluation states generally that the Applicant's PTSD is related to her trafficking event but does not address in any detail the trauma or harm the Petitioner suffered during or as a result of her trafficking and does not otherwise reflect that her PTSD diagnosis and mental health symptoms are related to her past trafficking. The evaluation further attributes the constant fear of discovery she experiences to her uncertain immigration status, rather than to her trafficking experience. As discussed above, the Applicant's statements reflect several other ongoing and recurring stressors in her life, including her lack of lawful status in the United States, concerns regarding returning to Romania related to political corruption there, and the significant financial debt she accrued as a result of health and dental expenses, as well as legal expenses related to her many attempts to obtain lawful immigration status for herself and her spouse. While the Applicant's statement generally identified several ailments, including anemia, eczema, migraines, insomnia, anxiety and depression, as resulting from these various "physical, emotional and financial" stressors in her life, she did not specifically assert or explain in her written statements that they were also related to or resulting from her past trafficking. The dermatologist's letter similarly does not provide any nexus between her dermatitis and her trafficking. The record is also unclear as to the frequency and the recency of the symptoms the Applicant reported in the mental health evaluation, which states only generally that the Applicant reported experiencing the symptoms "continually over a period of years." In addition, while the mental health evaluation states that the Applicant "is at risk of severe decompensation" if she returns to her home country, it does not indicate that she is currently receiving any treatment or recommend any ongoing treatment plan for her. Further, although the Applicant generally asserted that the debt, which causes her financial stress, was from 2004 (when she was still in a trafficking situation), she provided no additional information showing that her current debt or financial difficulties are tied to her past trafficking. In the absence of probative testimony and evidence from the Applicant demonstrating that the harm she alleges is related to her trafficking, she has not shown that her continuing presence in the United States is directly related to her past trafficking.

Counsel further asserts that as a trafficking victim, the Applicant may be exploited again if she returns to Romania. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, the Applicant's statements do not reflect such fears that she would be trafficked again if she returns. Further, the record shows that the Applicant left her trafficking situation over 15 years ago and has had no direct contact with her traffickers since. We acknowledge her claim that E-H-'s associates in Romania called her sister there to inquire about the Applicant's collaboration with U.S. authorities in the criminal investigation of E-H- and made implied threats against her. However, the Applicant stated that this investigation ended with the conviction of some E-H- employees in 2007. She has not provided any probative information regarding the frequency of these threatening telephone calls and has not alleged that the calls continued after the 2007 convictions (or still occur), or that E-H- or its associates retaliated against her or her family such that her continuing physical presence in the United States is related to her trafficking. Instead, her statements reflect that she does not wish to return to Romania because her daughter would be deprived

of the life and opportunities she would have in the United States, as well as because of general corruption there. She also asserted that her family would be in danger financially and physically because people like them “are always targeted for ‘not playing by the rules,’” which she does not further explain.

Accordingly, the preponderance of the evidence does not establish that the Applicant’s current physical presence in the United States is directly related to her past trafficking, as 8 C.F.R. § 214.11(g)(1)(iv) requires. The Applicant therefore has not demonstrated that her physical presence in the United States is on account of her having been the victim of a severe trafficking in persons, as section 101(a)(15)(T)(i) of the Act requires. Consequently, the Applicant has not established her eligibility for T-1 nonimmigrant status.⁴

ORDER: The appeal is dismissed.

⁴ Our review indicates that the Applicant also did not establish that she is the victim of trafficking. However, as our decision on the physical presence issue is dispositive of the Applicant’s appeal, we are not reaching that issue. However, the Applicant must address that eligibility criteria in any future filings relating to this application.