



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

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

In Re: 22819771

Date: AUG. 15, 2023

Motion on Administrative Appeals Office 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 Applicant did not establish that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons. We dismissed a subsequent appeal on the same basis. The matter is now before us on a combined motion to reopen and reconsider. The Applicant submits a brief and additional documentation and reasserts her eligibility for the benefit sought. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will remand the matter to the Director for further proceedings.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other 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). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Upon review, the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal.

The Applicant filed a T application in February 2018. The Director denied the T application, finding that although the evidence indicated that the Applicant had established that she was the victim of a severe form of trafficking in persons, the record was insufficient to establish that she is physically present in the United States on account of that trafficking.

In our decision to dismiss the Applicant's appeal, which is incorporated here by reference, we determined that she had 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 was not eligible for T nonimmigrant classification. We first found that the Applicant had not established by a preponderance of the evidence that her 2004 reentry into the United States was the result of her continued victimization by her trafficker, as required by 8 C.F.R. § 214.11(g)(2).<sup>1</sup> We then determined that the Applicant had not established that her 2004 reentry was the result of a new trafficking incident. As for the Applicant's claim on appeal that she had 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," we detailed that because the Applicant had 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 did not reach the issue of whether she met the requirements of (g)(1). We dismissed the appeal accordingly.

On motion, counsel for the Applicant asserts that this office made several errors that "were the foundation for failing to acknowledge the substantive evidence submitted in the 2019" mental health evaluation. Counsel first maintains that the Applicant returned to Mexico with her daughter to rescue her son and make sure he was safe. While we noted on appeal that the police report the Applicant submitted stated that the Applicant's daughter was residing in the United States, counsel contends that statement is in error. Counsel further contends that this office's finding that there were inconsistencies in the record regarding the Applicant's contact with her trafficker after her departure from the United States is in error; the mental health evaluation never stated that the Applicant had contact with the trafficker while she was in Mexico. Counsel maintains that the Applicant's 2017 written statement, the 2017 police report, and the 2019 mental health evaluation "present the same overarching narrative, but for the one inconsistency regarding [the Applicant] bringing her daughter with her to Mexico, as opposed to leaving her in the U.S. and this is a statement located solely in the police report and not the other two documents." Finally, counsel explains that it is "unreasonable to expect someone with severe PTSD, depression, and anxiety to share every single detail from a lifetime of numerous traumatic events" and while her 2017 statement and police report are more limited in detail than the 2019 mental health evaluation, it "should be taken into context that neither the Officer taking the report, nor the attorney (myself) are licensed mental health professionals" and prior to meeting with an attorney to start the case, the Applicant had "never before spoken of these incidents in detail, not even to her partner of 15 years." Nevertheless, counsel maintains that with ongoing mental health support, the Applicant has been able to describe her time moving around Mexico in 2003 and 2004 more clearly.

In support, the Applicant submits on motion an April 2022 letter from the police officer that conducted the preliminary interview with the Applicant regarding "her traumatic experience and trafficking-based exploitation and victimization carried out by her intimate partner." The police officer explains that victims of human trafficking do not always disclose all of the relevant and critical information in their initial interview due to language, cultural barriers, victimization inflicted trauma, and fear of the police and it may take several interview sessions with a victim to obtain all necessary information "to

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<sup>1</sup> We also determined that there was conflicting evidence in the record regarding the Applicant's return trip to Mexico in 2003-2004.

illuminate a very complex history of abuse.” The police officer then states that they only met the Applicant one time and had no ability to conduct a follow-up investigation and additional investigative inquiries into the matter due to the police bureau’s “lack of investigative resource and staffing crisis” and the “absence of such documentation in a police report is not to be interpreted as the absence of such incidents of abuse.” The police officer also reports that although they noted in their 2017 report that the Applicant “returned to the U.S. because her daughter was here,” they subsequently learned that the Applicant’s daughter went with her to Mexico.

As we previously detailed in our decision to dismiss the Applicant’s appeal, the physical presence requirement reaches an applicant who at the time of filing: (i) is currently being subjected to trafficking; (ii) was liberated from trafficking by a law enforcement agency (LEA); (iii) escaped from trafficking before an LEA was involved; (iv) was subject to trafficking in the past and their continuing presence in the United States is directly related to such trafficking; or (v) 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)-(v). However, 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: (i) their reentry into the United States was the result of their “continued victimization”; (ii) they are a victim of a new incident of trafficking; or (iii) 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). Applicants who departed the United States after having been trafficked and subsequently reentered must establish that they are physically present in the United States on account of such trafficking under both 8 C.F.R. § 214.11(g)(1) and (g)(2).

The Applicant indicated in her 2017 written statement that she lived with her family for one year after moving to Mexico. After that year, her trafficker, M-’s, sister called her and told her that M- said “he was coming to Mexico to take [her son] away from [her].” In her statement, she went on to describe fearing M- because “he used to tell [her] that he could pay someone to take custody away from [her].” She also stated that she did not feel safe in Mexico because she was afraid that M- would never leave her in peace and she believed she would have better protection against M- in the United States. The Applicant’s statements and the supporting evidence in the record corroborate her trafficking experience, the lasting emotional harm resulting from her trafficking, the risk M- continued to pose to the Applicant and her child, and her belief that she had to return to the United States in 2004 because she would have better protection against M- in the United States. The Applicant has thus established on motion that her reentry into the United States in 2004 was the result of her continued victimization by her traffickers, pursuant to 8 C.F.R. § 214.11(g)(2)(i).

Next, the record also establishes that the Applicant satisfies the physical presence requirement under 8 C.F.R. § 214.11(g)(1), as she has demonstrated that her continuing physical presence in the United States is directly related to her past trafficking, consistent with 8 C.F.R. § 214.11(g)(1)(iv). The evidence in the record shows that the Applicant has been evaluated and diagnosed with depression, anxiety, and “severe symptoms of PTSD” stemming from her experience as a victim of human trafficking; she has “frequent flashbacks and nightmares about the trauma she experienced,” she “struggles to be able to leave her home due to her mistrust of other people and has been unable to make social connections or build relationships,” and “she continues to live in a state of constant fear.” The 2019 mental health evaluation indicates that the Applicant also “harbors profound feelings of

worthlessness, low self-esteem, guilt, and feelings of failure.” She is “easily overwhelmed by other stressors in life that send her in to a severe depression” and she has “few internal resources to handle additional stressors as most of these resources are being used just to manage her daily response to her trauma.” The psychologist further notes that the Applicant “needs more ongoing mental health support, likely for years due to the severe trauma she has suffered.” On motion, the Applicant has established that she suffered serious psychological harm as a result of her trafficking and that she continues to suffer serious and ongoing psychological consequences of her past trafficking. Therefore, the record as a whole shows that the Applicant’s continuing physical presence is directly related to her past trafficking, as described at 8 C.F.R. § 214.11(g)(1)(iv).

The Applicant has established, by a preponderance of the evidence, that she is physically present in the United States on account of having been a victim of a severe form of trafficking in persons, as required by section 101(a)(15)(T)(i)(II) of the Act. The matter will be remanded to the Director for consideration of whether the Applicant meets the remaining statutory eligibility criteria for T-1 nonimmigrant status under section 101(a)(15)(T)(i).

**ORDER:** The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.