



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

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

In Re: 28105388

Date: OCT. 31, 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) and a subsequent motion to reconsider, concluding that the evidence did not establish that the Applicant is physically present in the United States on account of a severe form of trafficking in persons. We dismissed a subsequent appeal as moot because the Applicant simultaneously filed an appeal to us and a motion to reconsider before the Director. Thereafter, we dismissed a motion to reconsider. In the instant joint motion to reopen and motion to reconsider, the Applicant reasserts her eligibility. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. We review the questions raised in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 dismiss the joint motion.

**I. LAW**

Section 101(a)(15)(T)(i) of the Act provides that an applicant may be classified as a T-1 nonimmigrant if they: are or have been a victim of a severe form of trafficking in persons; 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 the 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) (reiterating the statutory eligibility criteria). The term "severe form of trafficking in persons" is defined in 22 U.S.C. § 7102(11) and 8 C.F.R. § 214.11(a) 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."

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Applicant submits an uncertified copy of her 2022 joint federal tax return and a letter from her attorney. The Applicant asserts that these new facts establish her eligibility as a T Nonimmigrant.

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Applicant contests the correctness of our prior decision. In support of the motion, the Applicant relies on the U.S. Citizenship and Immigration Services (USCIS) Policy Manual.

## II. ANALYSIS

The Applicant, a citizen of Mexico, last entered the United States in 2002, when she was 17 years old. She filed her T application in 2018.

### A. The Applicant's Trafficking Claim

The Applicant's personal statements set forth the following claim: In November 2001, an individual offered her employment in the United States. The individual told the Applicant that a restaurant owner would pay for her travel, and she could repay the restaurant owner from her earnings. Upon entering the United States in January 2002, the Applicant resided with J-M.<sup>1</sup> J-M- told the Applicant that the restaurant where she was supposed to report for work was a "place of damnation where women dance at night." She resolved to return to Mexico. However, the restaurant owner contacted J-M- and told him that if he did not bring the Applicant to the restaurant, he would kill J-M- and the Applicant's family in Mexico. At the restaurant, the Applicant learned that she was expected to dance for "clients" and encourage the clients to buy drinks. She indicated that "clients paid us \$5 per song for dancing. And the beers we drank costs \$10, which we would be splitting – \$5 for the bar and \$5 for us." The restaurant owner did not credit the time she worked towards her debt but instead expected her to repay him from the money she received from clients. In [REDACTED] 2002, she discovered that she was pregnant. Around the same time, she befriended, and confided in, a customer named C-T-. She told C-T- that she could not stop working because she needed to look out for her sister who also worked at the restaurant. In May 2002, her sister returned to Mexico. Following her sister's departure, the Applicant and C-T- confronted the restaurant owner, and the Applicant told him that she would no longer work at the restaurant. In [REDACTED] 2002, she gave birth to her first child. The Applicant and C-T- were married in 2018, and they have three children, born in 2005, 2008, and 2016.

### B. The Applicant is Not Physically Present on Account of a Severe Form of Trafficking in Persons

---

<sup>1</sup> Initials are used in this decision to protect the identities of individuals.

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, USCIS may consider when an applicant escaped the trafficker, 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).

The Director determined that the Applicant did not establish that her continuing presence in the United States was directly related to her original trafficking. The Director highlighted that the Applicant escaped her trafficker 20 years ago, found employment, and started a family with her spouse. The Director also noted that although the Applicant submitted a psychological evaluation which indicated that she experienced severe childhood trauma as well as depression and anxiety, the record did not demonstrate that she suffered from any psychological conditions as a direct result of her trafficking or the impact that the trafficking had on her daily life.

In our prior decision, we acknowledged the Applicant's statements regarding the emotional and financial harm she suffered as a result of her trafficking. We also acknowledged the findings in the psychological evaluation indicating that the Applicant is a survivor of child sexual abuse and human trafficking and experiencing these kinds of trauma "has caused [the Applicant] difficulty with intimacy in her marriage, depression, anxiety, fear, guilt and shame." However, we determined that the Applicant did not provide evidence detailing the ongoing effects of the trafficking upon her current mental health status, her daily life activities, or her presence in the United States. We also noted that while the Applicant contends that the inception of her relationship with her spouse is a direct result of her trafficking, she previously indicated that her spouse assisted her in escaping her trafficker. We determined that the Applicant's trafficking situation ended approximately 20 years ago and since then, she has built a life in the United States that is no longer directly related to her trafficking; she has maintained employment, married, and raised a family. Further, the Applicant did not submit any evidence demonstrating that her trafficker retaliated against her and her spouse after they confronted him or that the trafficker threatened the Applicant's family in Mexico.

On motion, the Applicant argues that the AAO should have employed a "victim-centered" approach in light of the October 2021 update of the T visa adjudication guidance.<sup>2</sup> However, the Applicant misconstrues what a victim-centered approach entails. Notably, "...[a] victim-centered approach places equal value on stabilizing victims by providing immigration relief and investigating and prosecuting traffickers. In the context of adjudicating applications for T nonimmigrant status, a victim-centered approach means applying trauma-informed, survivor-informed, and culturally competent approach to all policies regarding victims." See 3 *USCIS Policy Manual* B. 7 A, <https://uscis.gov/policymanual>. Nevertheless, a victim-centered approach does not mean that we will not fully evaluate the proffered evidence, nor does it divest the Applicant of her burden to provide sufficient evidence to establish her eligibility for T Nonimmigrant Status. The Applicant correctly observes that the Policy Manual states that, "...[d]evelopments in an applicant's life following the

---

<sup>2</sup> See <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211020-VictimsOfTrafficking.pdf>

trafficking, including professional and personal milestones (such as finding new employment, having children, getting married, managing mental health diagnoses) do not prevent an applicant from establishing ongoing presence on account of trafficking. Despite reaching certain milestones, an applicant can still demonstrate that their continuing presence in the United States is directly related to the initial victimization.” *See 3 USCIS Policy Manual B. 2 C 1*, <https://uscis.gov/policymanual>. Here, although we acknowledge some of the milestones the Applicant has achieved including marriage, the birth of her children, employment and filing a joint federal tax return, the crux of the issue is that the Applicant still has not provided evidence detailing the ongoing effects of the trafficking upon her current mental health status, her daily activities, or her presence in the United States. Therefore, while these milestones do not prevent the Applicant from establishing ongoing presence on account of trafficking, when the record is viewed as a whole, the record establishes that the Applicant achieved these milestones in spite of being trafficked, and she has built a life in the United States that is no longer directly related to her trafficking. Thus, the Applicant does not meet the physical presence requirement under 8 C.F.R. § 214.11(g)(iv).

On motion, the Applicant argues that she has demonstrated that she was undertaking efforts to access legal and therapeutic services due to her victimization, she recently began to self-identify as a victim and survivor of trafficking, and she made a report to the Federal Bureau of Investigation (FBI) regarding the establishment where she was forced to work. The Applicant also argues that she did not previously assert that she met the physical presence requirement under 8 C.F.R. §§ 214.11(g)(1)(iii) and states that she meets the physical presence requirement because she escaped a severe form of trafficking in persons before a law enforcement agency was involved. However, the Applicant does not meet the physical presence requirements under 8 C.F.R. § 214.11(g)(iii) because although the Applicant provided evidence with her initial T application showing that her attorney sent an email confirming that the Applicant spoke with an FBI Special Agent in September 2018 to report her situation from nearly 20 years ago, the follow-up email in September 2018 from the FBI Special Agent indicated that there was “not much” that could be done with the Applicant’s case. Thus, the record does not establish LEA involvement within the meaning of 8 C.F.R. § 214.11(g)(1)(iii), as “involved” requires more than passive receipt by law enforcement of a report of trafficking. Here, the record does not reflect any actions taken by or actual involvement of the FBI or other LEA related to the Applicant’s claim. Consequently, the Applicant does not meet the physical presence factor under 8 C.F.R. § 214.11(g)(1)(iii).

In the end, the Applicant has not established by a preponderance of the evidence that her past trafficking continues to impact her daily life such that her current physical presence is directly related to it, as 8 C.F.R. § 214.11(g)(1)(iv) requires. Accordingly, the Applicant has not established 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, and therefore is not eligible for T nonimmigrant classification.

On her motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). Although the Applicant has submitted additional evidence in support of the motion to reopen, namely, an uncertified copy of her 2022 joint federal tax return, she has not established eligibility. The scope of a motion is limited to “the prior decision” and “the latest decision in the proceeding.” 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider

new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Applicant has not provided new facts to establish that we erred in dismissing the prior motion. Because the Applicant has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.