

T Visa Manual:

Identification and Legal Advocacy for Trafficking Survivors

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Table of Contents

Part A: Is The T Visa Appropriate For Your Client?

	Page
I. Introduction	A-1
A. Initial Considerations in Case Evaluation	A-2
1. Immigration Status	A-3
2. Liability for Criminal Behavior	A-3
3. Privilege	A-5
4. “Smuggled In” Versus “Trafficked In”	A-7
5. “Labor Exploitation” Versus “Trafficking”	A-7
B. Continued Presence and Certification	A-8
C. Practice Points for Interviewing a Potential T visa Applicant	A-10
II. Qualifying for T Visa Status: Regulatory Elements	A-12
A. Victim of a Severe Form of Trafficking	A-12
B. Physically Present	A-14
C. Complied With Any Reasonable Request To Assist Law Enforcement	A-14
1. Complied With	A-14
2. Reasonable Request (Trauma Exception)	A-16
D. Suffer Extreme Hardship Upon Removal Harm Involving Unusual and Severe Harm	A-18
III. Special Considerations	A-18
A. If Your Client is a Child	A-18
1. Establishing Coercion	A-18
2. Reasonable Request to Assist LEAs	A-19
3. Hardship Upon Removal	A-19
4. Benefits	A-20
B. Intersection of DV and Trafficking	A-21
C. Derivative Family Members	A-24
1. General Application	A-22
2. Consular Processing of T Visa	A-21
3. Derivative Children	A-22
IV. After Issuance of T Status	A-22
A. Employment Authorization	A-22
B. Travel Overseas	A-23
C. Adjustment Of Status To Permanent Residency	A-22

DISCLAIMER

V.	Examples of Industries Where Victims are Predominantly Found	A-25
A.	Factory Workers	A-25
B.	Migrant Workers	A-26
C.	Domestic Workers	A-26
D.	Household Employees of Diplomats	A-26
E.	Restaurant Workers	A-27
F.	Sex Workers	A-27
G.	Begging & Pan Handling	A-27
H.	Gangs	A-28
I.	Stash Houses	A-28
J.	Domestic Relationships – Partner & Family	A-29

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Table of Contents

Part B: Preparing the T Nonimmigrant Petition

	Page
I. The Basics of the Application	B-1
II. Preparing and Drafting the T Visa Application Package	B-2
A. Completing the Forms	B-2
1. The G-28	B-2
2. The I-914	B-2
3. The I-914, Supplement A	B-5
4. The I-914, Supplement B	B-7
5. The I-192	B-9
6. Photographs and Filing Fees	B-9
B. Preparing the Supporting Documentation	B-9
1. Personal Statement/Affidavit	B-9
2. Prepare Summary of Law, Memorandum of Law, or Brief	B-12
3. Prepare/Organize the Exhibits	B-14
4. Prepare Cover Letter	B-15
5. Assemble the Application	B-15
6. Mail the Application	B-16
7. Follow Up	B-16
III. Sample Questions for Legal Assessment	B-17

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Part C: Resources

I.	Screening Tools	C-1
A.	Human Trafficking Identification Tool, <i>Vera Institute of Justice</i>	C-2
B.	Legal Quick Tips: Analyzing and Understanding “Severe form of trafficking in Persons,” <i>Coalition to Abolish Slavery & Trafficking (CAST)</i>	C-39
II.	Trauma Informed Care	C-42
A.	A Rights-Based Approach to Combating Human Trafficking, <i>Freedom Network USA</i>	C-43
B.	“Crime Victims Have the Right to Retained Counsel’s Presence During Investigative Interviews,” <i>National Crime Victim Law Institute</i>	C-45
III.	Application Process	C-50
A.	Law Enforcement Cooperation	C-51
1.	Administrative Appeals Office (AAO) Decision Dated 6/21/2011	C-51
2.	Law Enforcement Referral Form, <i>CAST</i>	C-58
3.	Legal Quick Tips: Reporting Trafficking to Law Enforcement for T Visa Purposes, <i>CAST</i>	C-60
B.	Adjustment of Status	C-66
1.	T Visa Adjustment of Status Application Checklist, <i>CAST</i>	C-66
2.	Sample E-Mail to Request “Case Closed” to Allow Adjustment, <i>CAST</i>	C-68
IV.	Family Reunification	C-69
A.	International Organization for Migration (IOM) Guidelines	C-70
V.	Other Resources	C-71
A.	Immigration Consequences Checklist, Immigrant Defense Project	C-72
B.	Information for Law Enforcement Officials, Blue Campaign	C-74

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Preface

The NY Anti-Trafficking Network¹ (NYATN) is a coalition of diverse legal and social service providers in New York State dedicated to ending human trafficking and coordinating resources to provide services to trafficked persons. NYATN advocates on policy issues, advises on technical legal issues, and works toward educating attorneys on the problem of human trafficking in its many manifestations. This manual was drafted to provide guidance to lawyers on issues that arise in the context of representing trafficking survivors. The manual is designed for practitioners who are familiar with basic legal terms and concepts, to offer some insight into the process. It is not meant to be an exhaustive source of the law.

This manual is focused on the T visa, which was established by the Trafficking Victims Protection Act of 2000 (TVPA) and initially put into effect by immigration regulations published in January 2002. Since that time, there have been a number of Congressional reauthorizations of the TVPA, and the most recent—albeit interim—regulations were promulgated in December 2016.²

This manual discusses the background of the T visa, suggests points to consider in evaluating a client's eligibility for the T visa, evaluates the statute and the regulations, and offers step-by-step instruction on preparing a T application for consideration by the U.S. Citizenship & Immigration Service. Nevertheless, the manual is not meant to provide instruction on every aspect of representing survivors, or to take the place of direct legal advice, advocacy, and a practitioner's own research and evaluation of the survivor's case. Nor does this manual address in detail other avenues of immigration relief that may be available to trafficking survivors. These other avenues may include, *inter alia*: asylum, a petition under the Violence Against Women Act (VAWA), the U visa, and petitions for Special Immigrant Juvenile Status (SIJS). We also encourage practitioners to be creative in exploring other possibilities for immigration relief on behalf of survivors.

Please access our website at www.nyatn.com for updates and research on trafficking related issues.

¹ The network was originally convened as the NYC Service Network for Trafficked Persons. The name of the network was changed to reflect the broad scope of work performed by the various members of the network.

² Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 67 Fed. Reg. 4783, 92275 (Dec. 19, 2016) (to be codified at 8 C.F.R. pts. 212, 214, 245, and 274a).

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Part A: Is The T Visa Appropriate For Your Client?

I. Introduction

Human trafficking is the process through which individuals are compelled into a severely exploitative situation for economic gain.³ Trafficking takes many forms and is rooted in inequality and discrimination, restrictive migration policies and demand for cheap labor, which traffickers use to their advantage. Traffickers use false businesses and schemes, presenting opportunities such as educational and work programs, or promising economic or immigration benefits, to lure their victims and entrap them. Often believing these opportunities to be legitimate, victims are then trafficked into sweatshops, agricultural labor, panhandling, the sex industry, construction, and domestic servitude, to name a few.

Trafficking may appear similar to smuggling and irregular migration, but is distinguishable by the nature of the associated human rights violations.⁴ Trafficking also encompasses labor law violations, gender-based crimes, and a myriad of other illegal activities. The Center for the Study of Intelligence characterized trafficking in persons generally as the use of force and deception to transfer the victim into circumstances of extreme exploitation.⁵ As defined by the Trafficking Victims Protection Act (TVPA) of 2000⁶ and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005, 2008, and 2013⁷ “trafficking” refers to “severe forms of trafficking in persons,” meaning:

- 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 has not attained 18 years of age; 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

As mentioned above, because of the range of crimes that trafficking encompasses, persons who are trafficked may come into contact with a number of different law enforcement agencies. For instance, if a child is trafficked into agricultural work, they may come to the attention of local law enforcement, Child Protective Services, the Department of Labor, U.S. Citizenship &

³ Office of the United Nations High Commissioner for Human Rights (New York and Geneva, 2014), Fact Sheet No. 36: Human Rights and Human Trafficking, http://www.ohchr.org/Documents/Publications/FS36_en.pdf.

⁴ Amy O’Neill Richard, International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime, Center for the Study of Intelligence (Nov. 1999), at v, <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>.

⁵ *Id.* More specifically, the President’s Interagency Counsel on Women (which was established to ensure the implementation of the Platform for Action of the 1995 UN Fourth World Conference on Women, and coordinates international and domestic policy to develop policies and programs for the advancement of women) formulated the following definition: “Trafficking is all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons; within national or across international borders; through force coercion, fraud deception; to place persons in situations of slavery or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.”

⁶ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 Div. A, 114 Stat. 1464 (Oct. 2000) (TVPA).

⁷ Trafficking Victims Protection Reauthorization Acts 2003–2013: Pub. L. No. 108-193. [TVPRA 2003]; Pub. L. No. 109-164. [TVPRA 2005]; Pub. L. No. 110-457 [TVPRA 2008]; Pub. L. No. 113-4. [TVPRA 2013].

⁸ In order to be eligible to apply for a T visa the primary applicant must meet this definition of “severe forms of trafficking in persons” trafficking. 8 C.F.R. § 214.11(a).

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Immigration Services, Immigration and Customs Enforcement, or the Federal Bureau of Investigation. The agencies most likely to come into contact with trafficked persons on a regular basis are U.S. Citizenship and Immigration Services (USCIS) or Immigration and Customs Enforcement (ICE). Homeland Security Investigations, a sub-agency of ICE, investigates trafficking cases and assists trafficking victims, while USCIS' Vermont Service Center adjudicates T visa petitions.

The TVPA and the TVPRAs respond to the international problem through a multi-pronged approach:

- the apprehension and prosecutions of traffickers;
- increased sentencing for traffickers;
- protection of and assistance for recognized victims of trafficking identical to services available to refugees through the Office of Refugee Resettlement (ORR), Department of Health and Human Services;⁹
- permission for foreign nationals assisting law enforcement to remain in the country during the course of the criminal investigation ("continued presence"); and
- opportunity for foreign nationals to regularize their status in the U.S. to T nonimmigrant status, and later adjust their status to permanent residency (green card).

The purpose of this manual is to provide guidance on the last prong; namely, assisting victims with issues concerning their immigration status. While the most immediate form of immigration relief for a trafficking victim is the issuance of "continued presence," it is temporary and must be initiated by a federal law enforcement agency ("LEA"). T non-immigrant status, on the other hand, may be self-petitioned by the victim by filing Form I-914, Application for T non-immigrant status directly with the USCIS Vermont Service Center (VSC).

A. Initial Considerations in Case Evaluation

1. *Immigration Status*

Given the circumstances surrounding their entrance into the United States, victims of severe forms of trafficking usually have issues with the validity of their immigration status. The most common issues include the following:

- entering the U.S. without passing through a border post or port of entry (known as "entry without inspection" or "EWI"). This is frequently the case with individuals "smuggled in;"
- entering on a tourist visa (B1/B2) and engaging in unauthorized employment. This is considered a violation of that particular status;
- entering on a tourist visa (B1/B2) but overstaying the authorized period of stay on the I-94 Departure Record. Once an individual overstays the I-94 card by even one day, they

⁹ In order to be eligible for benefits, trafficking victims 18 years of age and older must be certified by the Office of Refugee Resettlement (ORR) at the U.S. Department of Health and Human Services (HHS). Children are not required to cooperate with law enforcement in order to receive benefits.

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are considered “unlawfully present.” There are serious and permanent consequences associated with unlawful presence;

- entering on a fraudulent passport or using another’s passport. This constitutes visa fraud, and does not confer a valid non-immigrant status. However, if the individual did not overstay the I-94 (even though fraudulently issued) he or she is not considered to be unlawfully present.
- entering the U.S. in a status valid for employment (such as H-2A—temporary agriculture worker, H-2B temporary nonagriculture worker, A-3—domestic employees of foreign government official, or G-5—domestic employees for representatives to international organizations) but losing status upon escaping the trafficking situation because the visa was tied to a specific employer.
- Entering the U.S. in a status valid for studying (such as F-1 visa) but failing to maintain status by not enrolling or leaving the school because the trafficking experience was tied to the school.

The validity of a T applicant’s immigration status is important because if an applicant is not in valid status, and he or she is being brought to the attention of USCIS or ICE, the applicant could be issued a Notice to Appear (NTA), and removal (deportation) proceedings may be commenced. In addition, status violations or unlawful presence may interfere with the T application. Significantly, trafficking survivors are **not considered “unlawfully present”** if they demonstrate that the severe form of trafficking “*was at least one central reason for the alien's unlawful presence in the United States.*”¹⁰ Applicants with status violations may seek a waiver of inadmissibility, although such waivers are granted at the discretion of USCIS.

2. *Liability for Criminal Behavior*

Another frequent issue that arises is the T applicant’s participation in criminal activity, albeit usually involuntary. Traffickers exert extreme control over trafficking victims and often require them to commit criminal acts. While this is recognized as part of the phenomena of trafficking, it is critical that liability for such acts does not interfere with the relief available to trafficked persons under the TVPA. In protecting your client from criminal prosecution, consider the following:

- When approaching law enforcement to discuss cooperation, attorneys should ask prosecutors for limited use or proffer agreements. Such agreements protect your client against his or her own statements, except for perjured statements. The goal is to protect your client from criminal or removal proceedings. Be aware that investigative agents may not offer proffer agreements.
- It is a good practice to request an FBI “rap sheet” on behalf of your client early on so that there are no surprises.¹¹ You should definitely request it prior to filing any applications on behalf of the individual. In addition to revealing criminal history, it will indicate whether the applicant has a removal order.

¹⁰ Immigration & Nationality Act (INA) § 212(a)(9)(B)(iii)(V) (emphasis added).

¹¹ For instructions on how to obtain a rap sheet, go to <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. You should use your office address as the mailing address.

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- For clients with pending charges, such as prostitution or controlled substance-related offenses, it is critical to engage in aggressive advocacy that avoids a conviction, even for a low-level offense. This may include conferring with a criminal immigration expert and apprising the defender of the immigration consequences of the charges, suggesting a plea that would not trigger deportability or inadmissibility. You may also want to talk with the prosecutor as an advocate for victim rights, and provide the context underlying the arrest. When the prosecutor has reliable evidence of force or coercion, s/he has the discretion to dismiss or reduce the charges, or to offer a plea that would minimize harmful immigration consequences. As noted above, a criminal conviction may impact the client's ability to stay in the United States and/or obtain legal permanent residency even if they can prove that they were trafficked. **PRACTICE POINT:** ICE and USCIS will take into consideration if the conviction was caused by, or incident to, the victimization. However, it is better to advocate for an appropriate disposition.
- Many states have laws providing vacatur and other forms of post-conviction relief for survivors of trafficking. Vacatur Laws allow survivors to petition to have convictions for crimes incident to their trafficking experience cleared from their record.¹²
- **Timing of T Visa Application:** If a trafficker is facing prosecution, the trafficker's defense attorney could subpoena a victim's application, claiming that it contains potentially exculpatory information or is inconsistent with other statements. Prosecutors are required to turn over potentially exculpatory evidence to the defense. It is common for the prosecutor to defer signing a T Visa Certification (914 Supplement B) for this reason. In an effort to cooperate with law enforcement and the prosecution of the traffickers, it may be strategic to wait until after a prosecution is complete before submitting a T visa application. However, because this delay in filing the T application will delay your client's eligibility for ORR (Office of Refugee Resettlement) benefits, which requires a T approval, attorneys and advocates should request federal law enforcement to issue "continued presence," unless the client is under the age of 18, in which case the attorney may directly file for ORR benefits. With continued presence, your client is eligible for employment authorization and other ORR benefits. Note that it is ultimately your client's decision whether to delay submission of the T application, notwithstanding law enforcement's needs, and should be made on a carefully considered case-by-case basis.

3. Confidentiality and Privilege

There are important distinctions between privacy, confidentiality, and privilege. Privacy belongs to each of us, including our clients. Our clients have the right to decide what information they will share and to whom they will share the information. When a client has chosen to disclose information in a professional social services setting, the professional—whether it is a case manager, social worker, advocate or attorney—has a duty to keep the information confidential unless the client specifically gives permission for the professional to share that information.

Although the information our clients share with us is confidential, not all professionals are protected from being compelled to disclose that information to a government actor, such as a

¹² As of December 2017, 29 states had laws providing for vacatur of convictions for crimes arising from a trafficking victimization. Three states provide relief for survivors under 18, and five states provide sealing of the record only. Up to date information on vacatur laws is available at: http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/survivor-reentry-project.html.

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prosecutor or other law enforcement agency, or a defendant. In short, the right to privacy belongs to everyone; the duty of confidentiality applies to all social service professionals (with some exceptions); and the protection from forced disclosure known as privilege is determined by relationship. Common examples of privileged relationships include doctor-patient, clergy-parishioner and attorney-client.

The attorney-client privilege is an established principle of law that protects communications between attorneys and their clients, when such communication is for the purpose of requesting or receiving legal advice. This privilege encourages openness and honesty between attorneys and their clients by prohibiting attorneys from revealing (and from being forced to reveal) the contents of attorney/client communications. The privilege belongs to the client, meaning that only the client may waive the privilege to give consent to reveal the protected communications. However, certain situations may “break” the privilege, even if the client did not have the intention to reveal the communications. This includes the presence of a third party in an attorney-client meeting or inclusion in another form of communication.

In the trafficking context, it is important to clearly communicate to your client that they are required to report the trafficker to law enforcement and to cooperate with any ensuing investigation and/or prosecution if they want to pursue a T Visa. They must also understand that the privilege they enjoy with you will not extend to their conversations with law enforcement officers, prosecutors, victim liaisons, case managers and social workers—all of whom may be active participants in the investigation and who are frequently simultaneously present during investigation meetings. Your client needs to make an informed decision before they engage this process that will result in the waiver of privilege. Once they decide to move forward, it is important for you to put on your victim rights advocate hat, prepare clients for the investigation meetings, and accompany them to these meetings.¹³

Even if your client is not actively participating in a law enforcement investigation or prosecution, the presence of a social worker or case manager in your client meetings could break privilege. Once privilege is broken, the social worker or case manager could theoretically be subpoenaed by a defense attorney or prosecutor in the future. Limited exceptions to this rule include when the social worker, or other assistant, is acting solely in the context of an interpreter or translator, or where the social worker is present solely to facilitate the provision of legal services.¹⁴ For example, a client suffering from severe post-traumatic stress disorder may not have the ability to relive the horrors of the trafficking experience in response to the attorney’s questions without the active support of a trusted trauma-informed social worker.

Generally speaking, communications between a lawyer and her client made in the presence of a known third party are not privileged. The theory is that such communications could not have been intended to remain confidential.¹⁵ Nevertheless, in circumstances where a client can demonstrate that she had a reasonable expectation of confidentiality and the communications were “made to [or in the presence of] agents of an attorney...hired to assist in the rendition of legal services,” the

¹³ For guidance on how to prepare your client for a law enforcement meeting, see appendix.

¹⁴ See, e.g., *United States ex rel. Edney v. Smith*, 425 F. Supp. 1038, 1046 (E.D.N.Y. 1976). Although such “exceptions” may not break the privilege, it is extremely important that where a social worker is playing such a role, his or her function is fully documented as limited to that role. Should the social worker’s role go beyond translating or facilitating the provision of legal services, it may blur the line, making the privilege easier to pierce. Moreover, such exceptions are not absolute, and both the attorney and social worker should ensure that any communications are made in a setting most conducive to protecting the communications.

¹⁵ See *Weatherford v. Bursey*, 429 U.S. 545, 554 (1977).

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attorney-client privilege is not broken.¹⁶ This holds even where such communications were made entirely outside the presence of the attorney so long as the communications were made to the third party in order to facilitate the attorney's representation of her client.¹⁷ The federal courts have applied the privilege to diverse professionals working with attorneys including "a psychiatrist assisting a lawyer in forming a defense."¹⁸ However, it is important to remember that this jurisprudence protects communications made to an attorney or on behalf of the services provided by an attorney—it does not extend beyond the scope of representation provided by an attorney.

A separate question is whether there is a privilege protecting communications between a social worker and a client made pursuant to providing other services, such as counseling, assisting with housing, medical assistance, *et cetera*. This is not as well established in the law. In very broad terms, the issue seems to turn on the professional level of the social worker, i.e. licensure or certification, the expectations of the client as to confidentiality of the communications, and the purpose of the communications. For example, the Supreme Court recognizes "the ability to communicate freely without the fear of public discourse [as] the key to successful treatment" in psychotherapy and clinical social workers.¹⁹ However, it is not clear how far this privilege extends. Moreover, in state courts, privilege is adjudicated under state law, and each state has different rules regarding this matter. Therefore, social workers and social services organizations need to take every precaution to protect clients' communications, and/or to advise clients that such communications may not be confidential. Some providers respond to this quandary by requiring staff without privilege—such as case workers—to not keep detailed case notes in the file.

4. *"Smuggled In" Versus "Trafficked In"*

Many victims of trafficking are brought into the United States without going through border points of inspection. Basically, they are "smuggled" into the U.S. However, there are individuals who voluntarily hire "coyotes" to smuggle them into the U.S. because they are fearful of crossing the border lawfully, or do not have a valid visa to enter the U.S. and they nevertheless want to enter the country, or need to enter to escape persecution. Their interaction with the smuggler is limited and usually involves no more than two payments.

While many seek better lives in the U.S., those who are smuggled are not necessarily trafficked. It is important to assess whether there is an on-going relationship with the facilitator or one of the facilitator's networks, and whether the smugglers engaged in any behavior that would make them "traffickers" and whether your client meets any of the requirements for the T visa.

5. *"Labor Exploitation" Versus "Trafficking"*

While most trafficking cases do involve some form of labor exploitation, labor exploitation does not always rise to the level of trafficking. Labor exploitation involves extremely low wages, usually below minimum wage, long hours, poor working conditions, lack of avenues of redress, and may be linked to various forms of mistreatment of immigrants. A situation becomes

¹⁶ United States v. Schwimmer, 892 F.2d 237, 243 (2d Cir. 1989), cert. denied, 502 U.S. 810 (1991).

¹⁷ Note that this privilege applies to both the testimony and records of the third party. See, e.g., Federal Trade Commission v. TRW, Inc., 628 F.2d 207, 212 (D.C. Cir. 1980) (citing United States v. Kovel, 296 F.2d 918 (2d Cir. 1961)) (finding the reports prepared by a third party privileged where report prepared at request of attorney and "the purpose of the report was to put in usable form information obtained from the client.").

¹⁸ Occidental Chemical Corp. v. OHM Remediation Services Corp., 175 F.R.D. 431, 437 (W.D.N.Y. 1997).

¹⁹ Jaffee v. Redmond, 518 U.S. 1, 6, 15 (1996).

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“trafficking” when it involves the use of force, fraud or coercion that creates a climate of fear preventing the individual from leaving the situation. It is important to screen individuals presenting with labor exploitation claims for trafficking.

In assessing whether your client has been coerced, it is important to make the assessment based upon the statutory definition found at 22 USC § 7102(3):

- a. threats of serious harm to or physical restraint against any person;
- b. any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm²⁰ to or physical restraint against any person;
or
- c. the abuse or threatened abuse of the legal process.²¹

B. Continued Presence and Certification

Recognizing that trafficking cases require extensive, and often lengthy, investigation by multiple law enforcement agencies, the TVPA created two remedies for trafficking victims to ensure their well-being from the time of discovery through case resolution. This includes ‘continued presence’²² and the ‘T’ non-immigrant status,²³ the latter of which will be discussed in more detail in the section below. Both of these remedies give the trafficked person access to services such as shelter and medical care, services that are absolutely necessary to their survival. However, continued presence is a more immediate form of relief, optimally taking only a few weeks to process. In essence, continued presence is temporary permission to live and work in the U.S. and can be issued even if the trafficked person entered the U.S. without permission or inspection or with false documents.

Continued presence incentivizes the victims/witness’ cooperation with the investigation and their availability to participate in the prosecution of the traffickers. If the witness is no longer in the country or is convicted of a crime or ceases to cooperate, continued presence will most likely be terminated. It is important to recognize that eligibility for continued presence does not require an imminent prosecution, nor that a victim *actually* testify. Rather, recognizing the immediacy of the victim’s needs and the stop-gap capability of continued presence, Congress worded the statute so that the victim may only be a *potential* witness:

²⁰ Serious Harm (Forced Labor) is any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm. 18 U.S.C. § 1589 (c)(2). Serious Harm (Sex Trafficking) means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm. 18 U.S.C. § 1591(e)(4).

²¹ Abuse of the Legal Process is the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action. 22 U.S.C. § 7102 (1).

²² TVPA § 107(c)(3) (“Federal law enforcement officials may permit an alien individual’s continued presence in the United States, if, after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking in order to effectuate prosecution of those responsible....”). See also 28 C.F.R. § 1100.35.

²³ 8 C.F.R. § 214.11.

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Federal law enforcement officials who encounter alien victims of severe forms of trafficking in persons who are potential witnesses to that trafficking may request that the Immigration and Naturalization Service (INS) grant the continued presence of such aliens in the United States.²⁴

It is clear from the language of the regulations that any trafficking victim that was cooperative with federal law enforcement should be eligible for continued presence, even if they are not ultimately asked to testify. In practice, continued presence is usually only offered after the victim has at least had one meeting with law enforcement.

As stipulated by the regulation, only federal LEAs may initiate the process. However, state or local law enforcement can partner with a federal law enforcement agent in their investigation, requesting that the federal agent apply for continued presence on behalf of the victim. Continued presence does not require the victim to make a formal statement, and in fact, prosecutors often do not want victims to make such statements during an investigation if there is going to be a criminal trial. Also for this reason, law enforcement may be unwilling to provide the endorsement for the T status until the criminal trial is over or the investigation is concluded.

In addition, continued presence is an option available to victims who have filed a civil suit.²⁵ You or your client must provide a copy of the filed complaint to the nearest HSI Victim Assistance Specialist and ask that Continued Presence be requested based on a civil action. The process is simple. The federal LEA pre-fills forms I-102 (Application for Initial Non-Immigrant Arrival-Departure Document) and I-765 (work authorization application). Once the survivor signs the forms, via the attorney if represented, the federal LEA submits the materials along with a short memorandum requesting continued presence to USCIS. USCIS then processes the forms and sends the approval notices and work authorization card directly to the LEA who relays the documents to the applicant or attorney.

In practice, a grant of continued presence is issued in one year increments, and it may be extended. Continued presence in and of itself does not convey any immigration status or benefit apart from that already encompassed by the particular form of authorized continued presence granted. Such forms may include parole, deferred action, voluntary departure or stay of a final removal order. If granted, documentation of continued presence should be submitted with the application for T Nonimmigrant Status.²⁶

Once continued presence has been granted, ORR generates a letter for adults “certifying” that the individual is recognized as a victim of a severe form of trafficking, or for children that they are eligible for services as victims of a severe form of human trafficking.²⁷ Victims may choose between public benefits or a Match-Grant program. A refugee resettlement agency or federally designated non-profit organization can assist with both, and qualified providers can be found at <https://ovc.ncjrs.gov/humantrafficking/map.html>. For those who do not have the language or other skills to obtain immediate employment, or for those who are still traumatized from their experience, public benefits that include food stamps, cash assistance, Medicaid, and SSI may also be selected. These are the same benefits offered to those who enter the U.S. as refugees or who

²⁴ 28 C.F.R. § 1100.35(a) (emphasis added).

²⁵ See Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and Other Crimes, Department of Homeland Security Blue Campaign, <https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>.

²⁶ 8 C.F.R. § 214.11(f)(2).

²⁷ This certification does not guarantee approval of a T nonimmigrant status, as such status also requires evidence of cooperation with reasonable requests from law enforcement.

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are granted asylum. Under federal rules, benefits are generally available for nine months, but duration of these benefits may be longer depending on the state's implementation.

In the alternative, victims may instead elect to enter into a Match-Grant program. A Match-Grant program is a three-month intensive program that may include English as a Second Language (ESL), job training and skills, computer training, or other benefits. Either Match-Grant or refugee benefits must be elected within 30 days of issuance of the ORR certification letter. If benefits are not elected during this period, they are not allowed to reapply. However, other public benefits may still be an option at any time depending on the victim meeting eligibility standards, which may vary state by state.

It is worth noting that several states provide benefits to confirmed survivors of human trafficking. This is especially helpful for clients who do not have continued presence and will not be eligible for ORR benefits until their T Visa application is approved. In the meantime, they can seek to be confirmed as a trafficking victim through the regional provider designated by the State to serve survivors. They may then be eligible for temporary benefits including cash assistance, ESL, shelter, food, medical care and legal services. To find out if your state provides benefits to survivors, you can contact the National Human Trafficking Hotline at 888-373-7888.

C. Practice Points for Interviewing a Potential T visa Applicant:

It is essential to use a trauma-informed interviewing style when meeting with your client. This essentially means that, without judgment or impatience, you meet your client where s/he is and honor your client in the process by being fully present to them. You are gradually building a relationship with someone who does not necessarily share your language or culture, and who has survived unspeakable harms. S/he is likely suffering from post-traumatic stress disorder and/or other physical and mental health conditions. This is not a transaction or interrogation, but a series of meetings that will build on each other, designed to elicit each component of your client's story. The process is not likely to be linear, but you can be confident that you will ultimately create a coherent narrative if you give your client the space to recall the events and their emotional impact as they occur (often out of chronological order in the early stages), listening actively to both what is said and where the silences fall.

- **Physical Environment:** Prepare your office in advance of the client meeting. Your client will be nervous and may have triggers that could result in hyper-vigilance, etc. You also want the environment to be a non-verbal expression of your respect for your client. For example, you may want to consider gentle lighting since many clients have bad associations with florescent lighting; you may want to sit your client near the door so that s/he feels like she has some control and is not trapped; you may want to have a clear desk since it signals the opposite of chaos; you may want to have refreshments available for comfort; you may want to have a stress ball or other "toy" on hand to help with nerves.
- **Presence:** When you are meeting with your client, you should give your undivided attention and let them know through your conduct and your body language that they are your sole focus throughout the meeting. Put your phone on mute and put a 'do not interrupt sign' on your door; do not check email; lean forward to show you are engaged; do not fidget or drum your pen or engage in other behaviors that might signal boredom; do not interrupt your client. Leading experts suggest not typing during the first meeting as a way of humanizing an artificial situation to the greatest degree possible. At the start of the meeting, let your client know that you do not like to rely solely on your memory

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and that you may be taking notes or typing for the purpose of doing the best job possible for them.

- **Body language is key:** Especially in an initial meeting, a client may be telling you far more with his or her body language (looking down, not engaging in eye contact, lack of affect/disengaged demeanor, or fidgeting with hair or jewelry) than through verbal communication. It is important to observe the client's body language, as it may signal when you need to ask a follow-up question in a different way, take a break, table an area of inquiry, or let give your client assurance that you understand how painful it is to return to this time in their lives. You want them to feel as safe and comfortable as they can when they are with you.
- **Do not overwhelm the client:** Trafficking cases are complex, and they often involve numerous law enforcement and non-governmental agencies. It is helpful to keep an initial meeting to less than one hour, and if necessary to facilitate the provision of legal services, have a case manager or social worker accompany the client to the meeting.²⁸ Unless there is an impending deadline at the time you are retained, subsequent meetings should not last more than two hours, and you will want to focus on discrete aspects of the story and/or elements of the T Visa. At the conclusion of the initial meeting, it can be helpful to let your client know which areas of inquiry that you plan to explore at the next meeting. This will help them prepare themselves and understand that the process will be staggered (e.g., "At the next meeting, let's talk a little bit about your life in your home country and how you got connected to your trafficker").
- **Funnel Approach:** It is not effective to ask yes or no questions or interrogative questions. It is better to ask open-ended questions in a conversational manner, and then follow up with specific questions for clarification and to bring out details. Understanding that chronological recall may be difficult due to cultural differences and the effects of trauma, it is better to ask "what else happened" rather than "what happened next" **if your client** is struggling in this regard. If your client is having trouble recalling a general timeline or specific locations, you might want to jog their memory by asking whether they recall if it was a cold or warm time of year, if the event took place before or after they had their baby, if they were living in the trailer on the farm at the time, etc.
- **Understand the Effects of Trauma and Be Supportive:** It is not uncommon for survivors to deny they are a victim, to be fearful and reluctant, to be anxious or demanding, and to express frustration that the T Visa preparation process is not quick even though you have taken time to explain. They might seem faraway or angry or distracted, have trouble with recall, or provide a response that can seem inconsistent with a prior response. These are all very normal responses to trauma. Try to resist any impatience or inference that your client is disrespecting you or your time if they express anger or frustration, or if they need to have repetitive conversations. A trauma-informed lawyer will have grace in these moments and acknowledge the reasons for the frustration—often due to fear about how they will survive while the case is being prepared and is pending—and will empathize, create reasonable expectations and marshal supportive services for the client. In a similar vein, lawyers should be slow to infer that a client is lying if they are hearing new or seemingly conflicting information.

²⁸ See *supra* Part A Section 3.

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Many cultures have a non-linear way of relaying information, and the order in which something unfolded is not as important as what happened and the impact it had. Trauma can also inhibit memories, which are gradually released as clients experience healing and feel safe with you. Also, lawyers can also fail in their efforts to explore the different aspects of the story—since we know the elements of the T Visa, we have the responsibility to creatively explore the dimensions of our clients’ trafficking experiences.

II. Qualifying for T Status: Statutory & Regulatory Elements²⁹

It is difficult both to identify a trafficked person, and to determine when such a person qualifies for the T visa. As discussed in the section on smuggling, advocates must be attuned to the particulars of their client’s situation as most do not self-identify as trafficked persons. It is important to determine why your client originally came to the U.S., how they got here, and what has happened since. Many trafficking cases may initially present as domestic violence, sexual abuse, or labor law violations. If an advocate is aware of the client’s legal remedies, however, they may be able to more fully assess the client’s situation. The annexed suggested questions at the end of Part B may be of assistance in an initial evaluation.³⁰

Particularly challenging are cases that involve child victims. By definition, a trafficked child has already undergone an incredible trauma and, as with other child victims of trauma, coming forward to law enforcement about their situation is complex and emotionally difficult if not handled in a sensitive manner. The child may have been trafficked by a relative or trusted adult and may not want to get this person “in trouble” despite the abuse that the child has suffered. The TVPRA recognized this in providing that children under 18 years old need not demonstrate that they have been willing to comply with any reasonable request for assistance in the investigation or prosecution of trafficking.³¹

Since trafficked persons suffer such extreme types of abuse, it might seem that they would be open to discussing their experiences in order to receive help. In fact, the opposite is true—trafficked persons are often reticent to discuss their situation or admitting to having been victims of coercion. It can take multiple meetings over a period of months to obtain information that clarifies whether an individual is a candidate for a T visa. The regulatory elements that must be met for T visa eligibility include:

A. Definition/Prong 1: Victim of a Severe Form of Trafficking

The TVPA defines trafficking in terms of “sex” and “labor” trafficking, noting that victims of either may be eligible for relief:

- **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 has *not attained 18 years of age*; **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

²⁹ This section refers to T-1 eligibility for the principal applicant. Derivative family members are also issued T visas and/or T status, but are not required to meet these criteria.

³⁰ Prepared by Christa Stewart, Esq., formerly Director of Legal Services, The Door.

³¹ TVPRA § 4(b)(1)(a); 8 C.F.R. § 214.11(b)(3)(i) exempting aliens under 18 years of age.

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involuntary servitude, peonage, debt bondage, or slavery.³²

The component terms are defined by the regulations at 8 CFR § 214.11(a):

- *Sex trafficking*: the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act;
- *Commercial sex act*: any sex act on account of which anything of value is given to or received by any person.
- *Coercion*: threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process;
- *Debt bondage*: the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or the services of a person under the debtor's control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not appropriately limited and defined;
- *Involuntary servitude*: a condition of servitude induced by means of any scheme, plan or pattern intended to cause a person to believe that, if the person did not enter into or continue in such a condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use of physical restraint or physical injury, or by the use of threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion; and
- *Peonage*: status or condition of involuntary servitude based upon real or alleged indebtedness.

To establish a “severe form” of trafficking, an applicant 18 years old or older must demonstrate both the means (force, fraud, or coercion) and a particular end or a particular intended end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery). The recently promulgated regulations also clarify that even if the applicant has not performed labor or services, he or she may still qualify as a victim of a severe form of trafficking if it can be shown that he or she was recruited, transported, et cetera for the purposes of subjection to sex trafficking or labor trafficking.³³

EVIDENCING SEVERE FORM OF TRAFFICKING

Your client's detailed, signed statement will be an important element in establishing that they suffered a severe form of trafficking in persons. The statement should address the circumstances of the trafficking, including how they were recruited, what they were told by the trafficker, how

³² TVPA § 103(8), 8 C.F.R. § 213.11(a) (emphasis added). In order to be eligible to apply for a T visa the primary applicant must meet this definition of trafficking.

³³ 8 C.F.R. § 214.11(f)(1).

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they were treated, whether they had control of their passport or other identification, whether had freedom of movement, whether they had access to food/shelter/medical care, the hours they worked, details of the work they were asked to perform, et cetera. Essentially, it should incorporate the types of issues addressed in the Sample Questions for Legal Assessment.³⁴

However, the affidavit should certainly be in the T applicant's voice. If the applicant is not fluent in English, you should prepare an Affidavit of Oral Translation that confirms the statement was read to them and that they agree with the content, that their feedback was incorporated and that they signed it voluntarily.

In addition to the applicant's affidavit, a psychological evaluation is often helpful to clarify underlying issues regarding the client's motivation for either taking or failing to take certain actions. Psychological evaluators may unearth critical information that a client neglects to tell his or her attorney. Clients are frequently too ashamed to disclose such information to the attorney, especially if they are from countries where attorneys are feared or held in extremely high esteem. A psychological evaluation is also probative evidence that can be helpful in documenting an applicant's claim. In addition, it will strengthen an affidavit if you can provide other forms of corroborating evidence such as affidavits of co-victims, confidantes, social service and medical providers; medical records; law enforcement records such as police reports, charging documents, dispositions, and orders of protection; and relevant medical records.

B. Definition/Prong 2: Physically Present on "Account of"

Applicant must be physically present in the U.S. "on account of" trafficking at the time the T visa application is received at USCIS.³⁵ "On account of" is now liberally interpreted to include those currently in a trafficking situation, those liberated from a trafficking situation, and those who have escaped a trafficking situation. In addition, it does not require that the applicant initially entered the U.S. on account of trafficking; it is sufficient that the trafficking occurred in the U.S. or that the applicant came to the U.S. to assist in an investigation or judicial processes associated with an act or perpetrator of trafficking, including civil suits seeking damages under the TVPA and other relevant statutes.³⁶

"Physical Presence" in the U.S. includes all fifty states, American Samoa, Northern Mariana Islands, and a port-of-entry into the U.S.³⁷ A departure from the U.S. breaks physical presence, so an individual who has made trips abroad, including a brief visit home for family/safety reasons, will need to document that their return to the U.S. is related to the trafficking. This may be due to continued victimization by the trafficker(s), a new trafficking incident, or to assist law enforcement. Departures from the U.S. should be addressed in the affidavit, and in a psychological evaluation if one is being included with the application. The evaluation may be useful to explain the client's underlying reasons for leaving the country and then returning, as well as the client's state of mind and level of fear while he or she was outside the U.S.

C. Definition/Prong 3: Complied With Any Reasonable Request for Assistance in an Investigation or Prosecution

1. "Complied With"

³⁴ Prepared by Christa Stewart, Esq., formerly Director of Legal Services, The Door.

³⁵ 8 C.F.R. § 214.11(g)(1).

³⁶ 8 C.F.R. § 214.11(g)(3).

³⁷ 8 C.F.R. § 214.11(g).

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To qualify for a T visa, any applicant 18 years or older³⁸ must have had contact with a Law Enforcement Agency (LEA) regarding the acts of a severe form of trafficking in person. The interim regulations expanded the definition of a LEA to include Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, human rights commission, or other authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons.³⁹ If an applicant has not had contact with a LEA, he or she must report the crime, though there are exceptions for minors and victims who can demonstrate that the severity of their trauma prevents them from cooperating.⁴⁰

Prior to contacting law enforcement, however, applicants should be made aware of possible ramifications, and weigh the pros against the cons. Benefits include protecting others from harm, immigration relief, justice, potential for restitution, and immunity or lower charges if your client is facing charges. Cons includes the length of the criminal justice process, retaliation against survivors and survivors' families in home countries, the fact that trial proceedings are open to the public, the fact that the government controls the case, and the risk of the government contacting ICE to initiate removal proceedings if your client ceases to cooperate.

If your client decides to report to law enforcement, your local anti-trafficking task force can help you identify the agency that would be best suited to handle the case. You can provide a short, simple referral to the law enforcement agency and represent your client at the investigation meetings. In advance of the meeting, you should explain to your client the criminal investigation process and how it is distinct from any civil and immigration remedies you may be pursuing. It will also be important to help your client be prepared to address predictable questions about the trafficking experience along with any troubling facts that may emerge—such as your client's delay in reporting, any arrests your client may have and concerns such as fear of retaliation. At the investigation meeting, you can advocate for an interpreter, breaks as needed, continuance of the investigation meeting if your client is drained, and cessation of certain lines of questioning.⁴¹

If applicant has had contact with law enforcement, it is appropriate to request that such agency or office sign a Law Enforcement Attestation on Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victims of Trafficking in Persons. A LEA endorsement is not required for the T application, but evidences both victimization and compliance with reasonable requests. If a LEA attestation is included, the regulation stipulates that it must be signed by a supervising official responsible for the detection, investigation, or prosecution of severe forms of trafficking in persons. There is no requirement of a formal investigation or prosecution. If submitted, the LEA endorsement must attach the results of any name or database inquiries performed and describe the victimization (including dates where known) and the cooperation of the victim.

Applicants who are unable to obtain a LEA endorsement may attach documentation that they were granted "continued presence" (CP), and should provide evidence of their efforts to report to, and cooperate with, law enforcement. For those with CP, there will be an "A file" on the client—which is essentially the application, law enforcement memo, and biometrics and decision notices issued by U.S. Citizenship and Immigration Services in response to the continued presence application—and should be highlighted on the T visa application. It may also be helpful

³⁸ 8 C.F.R. § 214.11(b)(3)(i).

³⁹ 8 C.F.R. § 214.11(a)(3).

⁴⁰ Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline can be reached at 888-428-7581, and/or fax a request for an Investigation to the Department of Justice Civil Rights Trafficking Unit at 202-401-5487.

⁴¹ See CAST Law Enforcement Advisory in Part C.

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to include the name, jurisdiction and telephone numbers for the Agent (in bold format) who submitted the application. However, for purposes of the T visa application, it is only necessary to show that the applicant contacted an LEA, not that the LEA responded or acted on the information. In lieu of CP or an LEA endorsement, the **applicant can submit any other documentation** of efforts to contact law enforcement; this may include a log of phone calls - including time, date, phone number, if you spoke to someone; faxes should include proof that it went through; emails should have “read” receipt. The applicant should also describe efforts to contact law enforcement in his or her personal statement.

*NOTE: General assertions from an attorney are not considered to be evidence for law enforcement purposes. Therefore, relevant copies of letters, e-mail, or any other documentation of the attempted communication with the law enforcement agency, as well as responses from law enforcement, should accompany the statement from the attorney. It is important to note that photocopies of an email submitted **generically** to law enforcement would not be sufficient.*

Keep in mind that a LEA may ask that the T visa application not be filed until after a criminal case is complete. This is because the filing or approval of a T visa application may be a factor that the defense uses against a client/witness, or they may use the victim’s statements from the T visa application to underscore contradictions.

2. “Reasonable Requests” (and the Trauma Exception)

The statute requires compliance only with “reasonable requests” for assistance in an investigation. Reasonableness is determined based on a totality of factors described in the interim regulations, and include general law enforcement and prosecutorial practices, the nature of the victimization and the circumstances of the victim, the safety of the victim’s family, the extent of any previous compliance, as well as religious and moral objections.⁴² Consider whether “unreasonable” requests were made too often; too repetitive; too late at night? Or too intrusive? In a decision by USCIS’s Administrative Appeals Office, ICE’s continuing requests for cooperation extending beyond one year were found to fail the “reasonableness standard.”⁴³

In addition, with the TVPRA 2005, Congress introduced the trauma exception, which explicitly stated that it is unreasonable for law enforcement to request assistance in the investigation or prosecution of a trafficking crime if the victim is unable to cooperate “due to psychological or physical trauma.”⁴⁴ As a result, an applicant who is unable to cooperate with a reasonable request due to psychological or physical trauma is exempt from documenting contact and compliance with law enforcement.⁴⁵ Documentation of trauma may include applicant’s own statement of trauma, a signed statement from a qualified professional, and medical records.

Ultimately it is the USCIS, not the LEA, which determines whether or not a request for assistance is reasonable for purposes of T visa adjudication. In fact, the proper standard to determine “reasonableness” is whether the LEA request was reasonable, not whether the victim’s refusal was unreasonable.⁴⁶ Pursuant to the regulations, it is generally reasonable for an LEA to ask a

⁴² The full list of factors is at 8 C.F.R. § 214.11(h)(2).

⁴³ AAO June 21, 2011, available in resources.

⁴⁴ 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb).

⁴⁵ 8 C.F.R. § 214.11(h)(4)(i).

⁴⁶ 8 C.F.R. § 214.11(a); 8 C.F.R. § 214.11(h)(2).

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victim of a severe form of trafficking in persons similar things an LEA would ask other comparably situated crime victims.⁴⁷ In making the determination of reasonableness, USCIS takes into account the “totality of the circumstances” including, but not limited to

- general law enforcement, prosecutorial, and judicial practices;
- the nature of the victimization;
- the specific circumstances of the victim;
- including fear, severe trauma (both mental and physical); and
- the age and maturity of young victims.⁴⁸

In light of these requirements, on behalf of your client, you should contact law enforcement if it appears that they will be eligible for the T visa, and to determine how your client can assist law enforcement in any way that does not put them in direct danger, or that will not result in severe emotional trauma.

D. Definition/Prong 4: Suffer Extreme Hardship Upon Removal Involving Unusual and Severe Harm

Unlike other types of humanitarian relief, a T visa applicant must establish “extreme hardship involving unusual and severe harm upon removal,” as opposed to the more prevalent test of “extreme hardship.” Whereas extreme hardship alone may be met by current or future economic detriment or disruption due to social or economic hardship, the elevated standard of extreme hardship involving unusual and severe harm considers an aggregate of factors, including, but are not limited to:⁴⁹

- the age, maturity, and personal circumstances of the applicant;
- the physical and psychological issues necessitating medical or psychological care that is not reasonable available in the foreign country;
- the nature and extent of the physical and psychological consequences of having been trafficked;
- impact on the applicant of loss of access to U.S. courts and criminal justice system for purposes such as protection of the applicant and criminal and civil redress for the acts of trafficking;
- the reasonable expectation that laws, social practices, or customs in the applicant’s country would penalize the applicant severely for having been the victim of trafficking;
- the likelihood of re-victimization and foreign authorities’ ability and willingness to protect

⁴⁷ Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 67 Fed. Reg. 4783, 92275 Section B (Dec. 19, 2016) (to be codified at 8 C.F.R. pts. 212, 214, 245, and 274a).

⁴⁸ 8 C.F.R. § 214.11(a).

⁴⁹ 8 C.F.R. § 214.11(i)(2).

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the applicant;

- the likelihood that the trafficker or others acting on his or her behalf would severely harm the applicant; and
- the likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict.

Significantly, the factors relating to extreme hardship need not be related to the trafficking experience alone. If a client has medical or other serious issues that arose independent of their trafficking experience, these may be sufficient grounds to establish unusual and severe harm if treatment is not sufficiently available in their country of origin. In addition, while economic need is not considered relevant for this purpose, if economic issues are likely to lead to a client being re-trafficked upon his or her return to the country of origin, that is a relevant concern.⁵⁰

Evidence of extreme hardship involving and unusual and severe harm should be included in the applicant's statement and the statement of any case manager or social worker working with the applicant. Corroborating documentation may include material personal to the applicant—such as medical reports, reliance on social services, and/or ties to a church or community, affidavits from individuals from your client's home country who can testify that your client will be ostracized or endangered if returned—as well as “objective evidence”—such as country condition reports, and reports from Non-Governmental Organizations (NGO), government and international agencies, and individuals regarding the current conditions in the home country and the protection or lack of protection likely to be afforded the applicant in the home country.⁵¹

III. Special Considerations

A. If Your Client is a Child

If your client is a child, he or she may not be required to establish all of the aforementioned factors in order to be eligible for the T visa however it is important consider all options for immigration relief, even if your client is a trafficking survivor. Special Immigrant Juvenile Status (SIJS) might be a better option of your client's goal is to obtain a green card as quickly as possible.

1. *Establishing Coercion*

Children under the age of 18 trafficked for commercial sex purposes do not have as high of an evidentiary burden. As previously mentioned, victims of “severe forms of trafficking in persons” include:

- 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 *has not attained 18 years of age*; or

⁵⁰ *Id.*

⁵¹ A persuasive report on country conditions are those prepared by the United States government, specifically the Victims of Trafficking and Violence Protection Act 2000: Trafficking In Persons Annual Report, prepared by the Department of State, *available at* www.state.gov/g/tip/rls/tiprpt/. Other sources include: www.amnesty.org, www.antislavery.org, www.asylumlaw.org, www.childtrafficking.com, www.hrw.org, and www.protectionproject.org.

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- 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 subsection to involuntary servitude, peonage, debt bondage, or slavery.⁵²

Accordingly, a child under the age of 18 who has been a victim of sex trafficking is not required to show evidence that he or she was induced by force, fraud, or coercion.⁵³ This means that if any younger than 18 years old, trades sex for food, shelter, drugs, money, clothing or anything else of value, they are automatically deemed a victim of trafficking. The argument needs to focus on who or what induced the young person to trade sex. Through the creation of Justice for Victims of Trafficking Act anyone who solicits sex from someone who is younger than 18 can be considered a trafficker. However, a child under the age of 18 who is recruited for labor trafficking or other services is required to show inducement through force, fraud, or coercion as indicated earlier in this document.

2. *Reasonable Request to Assist LEAs*

Another T visa eligibility factor affected by age is the requirement to assist law enforcement and in the prosecution of traffickers. Children under 18 are not required to assist law enforcement.⁵⁴

Regardless of the purpose for which the victim was recruited, a child age 18 and older can be required to comply with all reasonable requests. The age, maturity, and individual circumstances of each victim may be considered to determine the reasonableness in “the totality of the circumstances.”⁵⁵

3. *Hardship Upon Removal*

The age of a child may be taken into account when making determinations of hardship.⁵⁶ Again, children are recognized as being in a special circumstance since it is understood that they are not in control of their situation, nor are they legally recognized as being able to consent to a contractual relationship. The trauma faced by children can be exacerbated if appropriate interventions are not available in the home country, or if the family played a part in their trafficking. ORR has a mandate to provide care and appropriate placement, including shelter, for trafficked children.

Children’s advocates have also urged that three fundamental principles should guide agency decision-making involving victims of trafficking:

1. The best interest of the child standard;
2. The placement of the child in the least restrictive setting; and
3. The child’s need for permanence.⁵⁷

⁵² TVPA § 103(8).

⁵³ 8 C.F.R. § 214.11(f).

⁵⁴ 8 C.F.R. § 214.11(d)(1)(iii).

⁵⁵ 8 C.F.R. § 214.11(a).

⁵⁶ 8 C.F.R. § 214.11(i)(2)(i).

⁵⁷ See Letter to Anne Veysey, Recommendation for T Implementation in Relation To Children, Lutheran Immigration and Refugee Service, September 7, 2001; Also based on conversation between Christa Stewart, Director of Legal Services, The Door, and Antoinette Aqui, Program Analyst—Trafficking, ORR, November 19, 2004.

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Evidence offered to establish “severe hardship involving unusual and severe harm” upon removal for children should incorporate these principles. Special attention should be given to the treatment of, and benefits available to, victimized children in the country of origin. Country specific stigmatization of street children, orphans, and sexually abused children also may be compelling factors to consider.

4. *Benefits*

In order to receive humanitarian benefits, similar to those available to refugees, victims age 18 and older must be certified by ORR. As noted above, this letter is generally issued either pursuant to a grant of continued presence, recognition by USCIS that a T application is *bona fide*, or approval of the T visa. A child is eligible for this certification without/prior a grant of continued presence or a T visa. An advocate can apply for this eligibility letter for a client who is younger than 18 years old without the help of law enforcement.⁵⁸ However, it is important to remember that once this request is made, all of the information is then provided to law enforcement.

B. Intersection of DV and Trafficking

Human trafficking and domestic violence do not occur in silos; rather, there is a marked overlap in the pattern of behaviors that both abusers and traffickers use to exert power and control over a victim. Intimate partner trafficking occurs when an abuser coerces their partner to engage in commercial sex, forced labor, or involuntary servitude. Alternatively, trafficked individuals sometimes live with their trafficker and are subjected to the physical violence, emotional manipulation, and overbearing control that are hallmarks of domestic violence.

Physical abuse is a mechanism of exerting power and control over another person, but both domestic violence abusers and human traffickers use subtle tactics that make it possible to exert control over a victim without raising a fist.⁵⁹ Abusers and traffickers isolate victims, allowing abusers to re-define a victim’s reality and making them feel as though there is no one to turn to and no means of escape. Victims who lack legal documentation are often threatened with deportation if they refuse to comply with an abuser or trafficker’s demands and might fear interaction with law enforcement because of the possibility of deportation. Frequently, victims are denied access to money and lack the financial resources necessary to leave an abuser or trafficker. In another effort to control, abusers/traffickers will impregnate a victim or claim her existing children as their own so they can use the threat of violence or separation as another tool to manipulate a victim into compliance.

As attorneys, we need to understand this intersection and screen for trafficking when domestic violence has been the trigger for a referral. Conversely, we need to resist automatically discounting a trafficking referral if we learn that the victim lives with the trafficker.

C. Derivative Family Members

1. *General Application*

⁵⁸ See U.S. Department of Health and Human Services Administration for Children and Families, Request for Assistance for Child Victims of Human Trafficking (Feb. 2015), https://www.acf.hhs.gov/sites/default/files/orr/request_for_assistance_form_feb_2015.pdf.

⁵⁹ Frundt, Tina, Louis Longhitano, and Jeremiah Johnson. “Explore the Intersection between Domestic Violence and Human Trafficking.” Office on Violence against Women, 10 October 2017, Department of Justice, Washington, DC, available at https://nnedv.org/latest_update/intersections-domestic-violence-human-trafficking/.

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A T visa applicant over 21 can include as derivative applicants his or her spouse and unmarried children under the age of 21.⁶⁰ A T visa applicant under 21 at the time of filing may include the spouse, children, parents, and unmarried siblings under the age of 18.⁶¹ Additional family members may be eligible for T status if they are able to show there is a present danger of retaliations as a result of the principal's escape. This category includes principal's parent and unmarried siblings under the age of 18. Also, adult or minor children of a derivative beneficiary of the principal may also be eligible.⁶²

An I-914, Supplement A, must be included for each derivative family member, and included with the Supplement A should be documentation of the derivative's relationship to the principal applicant, including birth and/or marriage certificates, as well as three passport photos. If represented by counsel, a separate G-28 should also be included.

A T visa applicant or holder may choose to apply for derivative family members later. If they do not include the derivatives in their initial application, they must refile the I-914 form along with an I-914A for each family member. It is not necessary to include all of the attachments. You should include a copy of the T approval notice and explain in a cover letter that they are now applying for derivative family members. T visa holders can apply for their derivatives at any time during the duration of their status. However, once they adjust their status to permanent resident, they must follow the regular family petitioning process.

There are currently no filing fees for derivatives who apply in the United States. However, derivatives that live abroad may need to pay a biometric fee at the consular post. Derivatives presently in the U.S. are eligible to apply for employment authorization, while derivatives abroad may apply for employment authorization after they enter the U.S. in derivative T status. Derivatives do not need to establish extreme hardship.

Family members implicated in the trafficking scheme may not apply for derivative status. If USCIS flags such involvement, the derivative application must demonstrate that he or she did not commit the trafficking against the applicant which forms the basis of the applicant's T visa application. In addition, as with the applicant, advocates should examine whether derivative applicants face inadmissibility issues, such as unlawful presence, issues around unlawful entry, or prior criminal convictions. If such is the case, it may be necessary to file form I-192 and relevant fees to request a waiver of inadmissibility.

2. Consular Processing of the T Visa

Derivatives living abroad will need a valid passport or a waiver of the passport requirement in order to enter the U.S. in T status. Such applicants will undergo a detailed interview at the appropriate consular post. The derivative should not be asked about the underlying trafficking of their family member and is not required to know the details of their relative's experience. The only relevant questions should be to confirm the relationship with the principal applicant. If there are questions about the veracity of a derivative blood relationship to the principal applicant, the consular post may require a DNA test.

Practice point: When the derivative application is approved, email a copy to the U.S. Embassy or consulate that has jurisdiction. Include the approval notice, G-28, current address and telephone

⁶⁰ 8 C.F.R. § 214.11(k)(1)(i).

⁶¹ 8 C.F.R. § 214.11(k)(1)(ii).

⁶² 8 C.F.R. § 214.11(k)(1)(iii).

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number for the derivatives. Request the scheduling of an appointment to process the derivative's visa. Consular email addresses can be found at www.usembassy.gov.

In addition, the International Organization for Migration (IOM) may be able to assist with the travel logistics to bring derivatives to the U.S.

3. *Derivative Children*

Derivative children may need the consent of *both* parents in order to obtain a valid passport in their home country. Obtaining passports for children of trafficked persons can pose a number of obstacles. This is particularly the case when the trafficked person is not in contact with the child's second parent, or if the second parent is abusive. Many times, the second parent is the trafficker, and this may necessitate legal proceedings in the home country to obtain a passport for the child.

In addition, custody of derivative children may need to be addressed before the child can lawfully be brought to the U.S. If the second parent has parental rights over the child, then his or her parental rights might have to be severed through the courts in the home country before the child can be brought to the U.S.

Issues relating to passports and custody may significantly delay, or in some cases preclude, issuance of a T visa to the derivative child. This is because the consulate will not issue the visa once the principal applicant's period of T status has expired. The maximum amount of time an individual can be in T status is four years. If custody or other proceedings take longer, the principal may submit an I-539 application to extend the expiration of the T Visa so that the minor child can consular process as a T derivative as quickly as possible once the passport is obtained. Otherwise, the child will have to wait for the principal applicant to become a permanent resident before they can enter the U. S. on a relative petition.

IV. After Issuance of T Status

The approval for T status will be issued on Form I-797 with an I-94 on the bottom third of the page. The I-94 is important; it indicates that the applicant is lawfully admitted in the U.S. in T status and provides the validity period of that status. T status is granted for a maximum of four years, and can only be extended in very limited circumstances. The T status beneficiary should be advised that the I-94 governs their lawful stay in the U.S., and without applying for the adjustment of status (discussed below), they cannot stay even one day beyond that date. It is therefore very important that individuals apply for adjustment of status no later than 3 years after the initial T approval.

A. Employment Authorization

With the grant of T status, USCIS will issue an initial Employment Authorization Document (EAD) to the beneficiary for the full duration of the validity period indicated on the I-797. If the EAD is not granted for the full period, or is lost, stolen or destroyed, an extension can be filed with Forms I-765 and G-28 (if represented by counsel), two passport photos, and appropriate filing fee (or fee waiver). Eligibility classification for the T status holder should be indicated under (a)(16).

Derivatives of T status holders can also obtain work authorization. Form I-765 should be submitted with the I-914 Supplement A. Also included should be Form G-28 (if represented by counsel), two passport photos, and appropriate filing fee (or fee waiver) should be submitted. Eligibility classification for the derivatives of T status holders should indicate I(25).

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B. Travel Overseas⁶³

T status holders can only travel using Advanced Parole. Advanced Parole is a travel document that eliminates the need for a visa stamp in the passport. Instructions for submitting the advance parole application are included within the text of the T approval notice. These instructions note that all T status based advanced parole petitions should be filed at the VSC. An application for Advanced Parole is made by submitting form I-131 accompanied by form G-28, if represented by counsel, two passport photos, and appropriate filing fee (or fee waiver).

Overseas travel raises a number of concerns, and advocates may want to err on the side of caution given the serious consequences at issue, and consider advising clients against overseas travel:

- If the T holder accrued “unlawful presence,”⁶⁴ departure from the U.S. may trigger a three or ten year bar to future immigration benefits in the U.S.⁶⁵ However, if the applicant establishes that the victimization was a central reason for the unlawful presence, they may not be subject to the three or ten year bar.⁶⁶ Nevertheless, given the significant consequences, it may be a situation where it is best to err on the side of caution and advise against travel.
- In order to be eligible to “adjust status to a permanent resident”, the T holder must demonstrate continuous physical presence in the U.S.⁶⁷ “An alien shall not be considered to have maintained continuous physical presence...if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days.”⁶⁸
- If the T holder returns to the country from which they were trafficked, it may undermine the hardship concerns that will be revisited when the adjustment of status is adjudicated.

C. Adjustment of Status to Permanent Residency

Those approved for T-1 may adjust their status to that of permanent resident (“LPR” or “green card”) after three (3) years in T-1 status or after the investigation and prosecution of acts of trafficking is complete, whichever period of time is less.⁶⁹ As long as the T-1 applicant applies, those in derivative T status may apply at the same time to adjust their status. Up to 5,000 principal T visa holders may be adjusted to permanent residents each year.⁷⁰

The statutory and regulatory provisions for a T visa holder to adjust status are

- continuous physical presence in the U.S. in T status or continuous presence in the U.S. during the investigation and prosecution of the trafficking case and the Attorney General indicates that the processes is complete;

⁶³ This section is based on a series of emails between Mie Lewis, attorney, Asian Pacific Islander Legal Outreach, and Rebecca Story, associate general counsel, Department of Justice dated July 30, 2004 and August 2, 2004.

⁶⁴ See *supra* Part A, Section I.a.1.

⁶⁵ INA § 212(a)(9)(B).

⁶⁶ 8 C.F.R. § 245.23(c)(3).

⁶⁷ 8 C.F.R. § 245.23(a)(3).

⁶⁸ TVPA § 107(4)(f)(2)(B)(2).

⁶⁹ INA § 245(l)(1)(A).

⁷⁰ INA § 245(l)(4).

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- an absence from the U.S. for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days breaks physical presence, unless:
 - the absence was necessary to assist in the investigation; or
 - an official involved in the investigation certifies that the absence was justified⁷¹
- good moral character; and
- at least one of the following
 - compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;
 - suffer extreme hardship involving unusual and severe harm if removed; or
 - principal applicant was younger than 18 years of age at the time of the victimization.⁷²

It may be a good practice to advise clients to start maintaining documents of their continuous physical presence in the U.S. at the time they file for T status. These may include documents such as rent or utility payments, cellphone bills, medical bills, paystubs, prescription history, library history, and/or affidavits from clergy.

In addition, as with any application for adjustment of status, the applicant must not be “inadmissible” under INA§212(a). Grounds of inadmissibility generally include, *inter alia*, criminal convictions, membership in terrorist organizations, certain immigration violations, and false claims to U.S. citizenship. T visa holders are explicitly exempt from the public charge ground of inadmissibility⁷³ and the unlawful presence ground of inadmissibility—the latter requires the applicant establish that the unlawful presence was related to the victimization.⁷⁴ For other grounds of inadmissibility, the applicant may have already received a waiver of such grounds in conjunction with the application for T status for prostitution and/or criminal convictions, and if so, such ground are considered waived for purposes of adjustment of status.⁷⁵ If not, they may file a waiver with the adjustment of status application. However, this can be a complicated area of law, so it is recommended that you consult with an expert in criminal immigration issues.

Timing of the Adjustment of Status

The general rule is that an individual can hold T status for a maximum of four years, and must be in T status for three years prior to filing the adjustment of status. However, if the T visa holder can demonstrate that the prosecution is concluded, they can file as soon as they are granted T status. Note they will need to provide a letter from the Department of Justice (DOJ) confirming that the investigation is closed.⁷⁶ The applicant’s employment authorization, and that of their

⁷¹ INA § 245(l)(3)(B); 8 C.F.R. § 245.23(a)(3).

⁷² INA § 245(l)(1); 8 C.F.R. § 245.23(a)(5)–(6).

⁷³ 8 C.F.R. § 212.16(b).

⁷⁴ 8 C.F.R. § 245.23(c)(3).

⁷⁵ *Id.*

⁷⁶ See example in Section C.

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derivative family members, will be tied to their T status and to the timely filing of an adjustment of status. Therefore, it is important to begin preparing the adjustment of status application when the applicant is nearing the end of his/her three year period. An individual in T status that does not timely file the adjustment of status will have their status terminated.⁷⁷ Once the adjustment of status is properly filed, the applicant will be considered in status and will continue to be eligible for employment authorization.⁷⁸

V. Industries Where Victims are Predominantly Found

Provided below are examples of industries that are commonly associated with trafficking victims. It is important to remember that trafficking happens in every industry and in all forms of labor.

This is in no way a comprehensive list, but merely a reference tool as well as a possible flag for identifying potential victims. For each of these categories, please note a brief fact pattern to provide further guidance in the identification process.

A. Factory Workers

Lan was one of 251 Vietnamese “guest workers”—more than 90 percent of them women—who was held for nearly two years, under conditions of indentured servitude sewing clothing for J.C. Penney, Sears and Target. The labels read, “Made in the USA” since American Samoa is a U.S. territory. However, Lan was not even paid the already very low \$2.60 an hour minimum wage in Samoa. She was beaten, sexually harassed, threatened with deportation and imprisonment, starved, forced to work 12 to 18 hours a day, seven days a week when rush orders came in, and to live in crowded rat-infested dormitories. The U.S. Department of Labor has assessed the Daewoosa factory a total of \$604,225 in back wages and fines.

B. Migrant Workers

Pedro came to the U.S. on an H-2A visa to work as a fruit harvester for a large farm-labor contractor. When he was recruited, the company said that he would receive the federal-mandated rate of pay for farm workers (which is higher than the minimum wage), housing, and transportation. Although he was a monolingual Spanish speaker, he had to sign a contract that was written in English. Upon arriving in the U.S., the contractor took his passport and other identification documents; the contractor explained that they needed to do this since other workers had walked off the job. Pedro worked 12 hours a day, seven days a week. He was not paid even the minimum wage, and he was not paid in a timely manner. He was not allowed to take meal breaks, and passed out on at least four occasions during work hours from dehydration. He was not allowed to see a doctor and instead was told to return to work. Pedro slept in a trailer with nine other men, and had to do his laundry in the sink. As an H-2A visa holder, he was legally bound to this contracting company or he would have to return to Guatemala. Pedro felt like he had little recourse to complain about the working conditions.

C. Domestic Workers

⁷⁷ 8 C.F.R. § 214.11(p)(2).

⁷⁸ *Id.*

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Ami was brought to the U.S. from India to work as a nanny for a family in New York. She was promised a wage four times greater than what she would earn in India. She was told that she would be treated like a family member. When Ami arrived, she was required to work 15-17 hours a day, cooking, cleaning, and doing laundry for the entire family, as well as childcare. She was forced to sleep on the floor and her documents were taken from her and withheld. She was told that if she went outside without permission or telling her employers when she would be back, she would be arrested on the spot. For three years of work, she was never paid.

When Ami finally asked to leave the house alone to attend church, she was thrown out of the family home. An Indian nanny in the building helped her find a place to stay. However, Ami was worried about her legal status, and that she would be deported since she no longer had a valid visa. With the help of a community-based organization whose members spoke her language, Ami reported her traffickers to the police, the FBI, and to DOJ. After numerous calls to law enforcement advocating the merits of the case, DOJ was interested in investigating the case, and decided to interview Ami to evaluate the case and determine if she might be a credible witness.

D. Household Employees of Diplomats

Teresa was a young woman working as a nanny in her home country in Latin America. The family she worked for were diplomats, and when the husband was posted to the United States, the family asked her to accompany them in the same capacity. Teresa was reluctant to leave her home and her own family, but her employers promised her education, English lessons, and increased wages. On this basis, Teresa agreed and came to the United States. Once here, she was required to sleep on the kitchen floor, to work fourteen hour days, was paid only rarely and far less than what was agreed, and was not allowed to leave the apartment. She was also continually verbally abused and threatened with deportation if she complained. A friend of the employer's witnessed the situation, and contacted ICE who rescued Teresa from the situation, and referred her to a social service agency. However, since the traffickers were diplomats, no prosecution was ever pursued because of diplomatic immunity. Moreover, the ICE agents involved in the "rescue" were reluctant to provide the LEA certification, but did so after continuous requests. Teresa is now resettled in the U.S. in T status.

E. Restaurant Workers

When Li was sixteen, a man came to his village recruiting young men for jobs in the U.S. He told Li that he could make a lot of money to send home to his parents. Since Li's parents were getting older and there were no jobs available in the village, Li decided to take this opportunity. His parents scraped together their savings to pay the man. Li was advised that he would then have to pay a balance of \$20,000 after he arrived.

Li traveled with six other young men. He was given travel documents to pass through checkpoints in Korea and Canada, but after he cleared each of the checkpoints the papers were taken away. Once he arrived in Canada, Li was held in captivity for twenty days where he was deprived of food, threatened, and interrogated about his extended family. When he finally reached the U.S., he was allowed to live with his uncle in San Francisco. However, he was forced to work seven days a week, fourteen hours a day at a Chinese restaurant to pay off his arbitrarily growing debt to the traffickers. He was closely monitored and threatened with physical harm to his family if he

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took a day off from work to rest. In addition, the traffickers often asked him to perform criminal activity, and threatened his family if he did not agree.

F. Sex Workers

Susanna and Penelope are two adolescent girls who were trafficked into the United States from a South American country and forced into sex work. The trafficker lured them to the U.S. by claiming he could get jobs for them. He also told one of the girls that he would reunite her with her mother, who was already in the U.S. The trafficker created personal relationships with these girls, thus earning their trust. He told Susanna and her family that he wanted to marry her, and acted as a boyfriend, while he created a platonic “older brother” friendship with Penelope. Ultimately, he sexually assaulted both girls and forced them to work against their will in a brothel. Susanna and Penelope were resourceful enough to escape from him one night, and made contact with the local police. Both were under the age of 18, meaning that they were not required to cooperate with a reasonable request from law enforcement in order to qualify for a T visa. However, they are now choosing to cooperate with law enforcement in the prosecution of their trafficker.

G. Begging and Pan Handling

Alix and Beatrix are two adolescents who are deaf or hard of hearing. They grew up in Mexico and when they were eleven years old, a woman from the United States approached their families about taking the children to the United States for better access to education. The families trusted this woman because she was also Mexican and seemed to genuinely care about the children. However, upon arrival to the United States they were taken to a rodent infested apartment in New York City where they lived with many other young people. They were told they had to travel the subways and sell trinkets with the other children. When Alix did not sell the minimum 50 trinkets on his first day, he was beaten in front of the rest of the children and denied food. After that, Alix and Beatrix were told if they did not sell enough trinkets, they would not be allowed back in the apartment and would have to stay on the subway all night until they met their quota. The woman also threatened violence against Alix and Beatrix’s families in Mexico. Fearing this woman, and being able to only communicate in Spanish Sign Language, the violence and abuse lasted for months. One day on the subway, Alix found someone who understood him and he asked for help. The person recognized that Alix was malnourished and in overall poor condition. The person connected Alix to federal law enforcement, who helped free all of the children and arrested the woman. This story is based on one of the first big trafficking cases prosecuted in the United States.

H. Gangs

Carl entered the United States with his parents as a young child. He grew up in Maryland, and was an active member of many sports teams in high school. When he turned 16, he was approached by a member of a local gang to join, and when he refused, he was beaten badly by many gang members on his way home from school. He was told if he revealed who hurt him, his family would be killed. The next day, the gang member approached him again and told him that if he didn’t want to be in the gang, then he had to work for the gang. He was told that if refused, his younger sister would be gang raped and his parents would be killed. Fearing for the safety of his

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family, Carl began to do errands for the gang. He would be a “look out” during drug sales and he would carry packages for the gang. Shortly after Carl began working for the gang, he was arrested by federal law enforcement. Terrified of what would happen to his family, he initially stayed quiet. Finally, after speaking with a social worker who understood trafficking, Carl began to tell his story about his situation. Carl didn’t realize that he was a victim in the situation because he had engaged in illegal activity. Law enforcement helped Carl and his family move and Carl remained active in the investigation. Ultimately, Carl, his parents and his sister all received T non-immigrant status in the United States.

I. Stash Houses

Danna grew up in El Salvador but due to transphobia, she decided to come to the United States when she was 25 years old. Danna paid a coyote \$2,000 to help her cross the border. Once she entered the United States, she was taken to a house in Arizona. At the house, she was told that she owed an additional \$1,000 dollars and if she didn’t pay, she would be killed. Danna contacted friends in the United States, who said they would get the money together as soon as possible. Danna was then instructed to cook lunch for all of the people in the house and once she was done, to clean the entire house. When Danna protested, one of the coyotes showed her a gun and told her that he would kill her if she didn’t do as she was told. After the first day, Danna was told she was responsible for cooking three meals a day and cleaning the entire house. Fearing for her life, Danna worked. When Danna rested for a moment from exhaustion, the coyote would yell at her and touch his gun. After two weeks in the house, Danna’s friends were able to send the money to the coyotes. Danna was then released and traveled to Tennessee.

J. Domestic Violence Relationships—Both Partner and Family

Ellen came to the United States from Egypt on a tourist visa. Shortly after she arrived, she met a woman and fell in love. At first the woman was very kind, and after dating for a few months, Ellen moved in with her girlfriend. After living together a few weeks, Ellen’s girlfriend changed and started a cycle of abuse. She would call Ellen names and told Ellen that she was in charge of cooking for her every meal. When one day Ellen cooked something that her girlfriend didn’t like, she threw the plate at Ellen and began yelling at her. After that, her girlfriend apologized and things were better, but then shortly after, the girlfriend became abusive again. When Ellen said no or that she wanted to leave, her girlfriend would hit or tell her that she would call immigration and that Ellen would be deported. Fearing deportation because of her sexual orientation, Ellen agreed. After months of abuse, Helen escaped while on her way to her girlfriend’s parents’ house, where she was similarly forced to cook and clean. Without any money, and fearing deportation because she had overstayed her visa, Ellen felt stuck. Also, she didn’t think that what her girlfriend was doing to her was against the law. Feeling hopeless, she sat on a bench crying. A nice woman walked by and asked what was wrong. After hearing her story, the woman took Ellen in and provided with shelter and medical care. Eventually, Ellen contacted an anti-trafficking organization and she applied for T-nonimmigrant status.

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Part B: Preparing the T Nonimmigrant Visa Application Package

I. The Basics of the Application

Immigration relief is provided to victims of a severe form of human trafficking via the T nonimmigrant status. Application for T status requires the submission of Form I-914 (with Form G-28 designating the representative or counsel) with supporting documentation to the VSC.⁷⁹ There is no filing fee for the basic T application, but a filing fee is associated with Form I-192, waiver of inadmissibility. If it is necessary to file Form I-192, a request to waive the filing fee may be made with Form I-912 and appropriate documentation.⁸⁰

The **basic application package** should include:⁸¹

- duly signed and executed form G-28;
- duly signed and executed Form I-914;
- duly signed and executed Form I-192, waiver of inadmissibility (if appropriate);
- evidence supporting the claim (including a personal statement/affidavit);
- evidence supporting cooperation with law enforcement (Form I-914, Supp B., proof of continued presence, email chain with law enforcement, or attorney affidavit);
- country condition reports and any other objective evidence supporting the claim;
- a supporting letter, brief, or memorandum of law establishing the criteria for T status:
 - that the applicant is a victim of a severe form of trafficking in persons;
 - that the applicant is physically present in the United States on account of the trafficking;
 - that the applicant meets one of the following:
 - has complied with any reasonable requests for assistance in a Federal, State, or local investigation or prosecution; or
 - is under 18 years of age; or
 - is unable to cooperate because of physical or psychological trauma

⁷⁹ U.S. Citizenship and Immigration Services, Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001. “T Visa Application” should also be written in bold on the application package.

⁸⁰ These forms can be downloaded off the internet, *available at* www.uscis.gov. It is important to use the most current version of the forms, which are updated often. As of the publication of this manual, 02/27/17 is the current edition date.

⁸¹ See 8 C.F.R. § 214.11(d)(2).

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- that the applicant would suffer extreme hardship involving unusual and severe harm if he or she were removed from the United States.
- a cover letter acting as a roadmap to the evidence included.⁸²

II. Preparing and Drafting the T Visa Application Package

A. Completing the Forms

1. *The G-28*

The G-28 is the notice of appearance that an attorney or representative of a religious, charitable, social service, or similar organization is designated as the representative on behalf of a person involved in a matter before the USCIS. There is no filing fee associated with the G-28. USCIS prefers that it is on light blue paper so it is easily identified.

2. *The I-914*

Part A. Purpose

It will usually be “I’m filing an application for T-1 nonimmigrant status, and have not previously filed for such status.”

Part B. General Information

- Be sure to answer each question correctly. Verify answers with documentation when completing form. Do not assume same or similar data from other applicants.
- Make sure to put dates in the U.S. format (Month/Day/Year) as opposed to the European format (Day/Month/Year) followed by many countries.
- **Safe Mailing Address:** This is the address to which USCIS will send notifications. It is a good idea to include the advocate’s address to ensure that the case is properly processed.
- **Date and Place of Last Entry into U.S.** should be taken from the current I-94 card, or stamp in the passport. If neither passport nor I-94 is available, make an estimate and note on the form that it is an estimate.⁸³
- **Passport Information:** If passport is not available, write “N/A.”
- **Current Immigrant Status**⁸⁴

⁸² “T VISA APPLICATION” should be noted in red marker in the upper right-hand corner of the first page of the cover letter to make sure that the packet is properly routed by the USCIS mailroom.

⁸³ I-94 may be obtained at <https://www.cbp.gov/travel/international-visitors/i-94-instructions>.

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- A client's status can be accessed at <https://i94.cbp.dhs.gov/I94/#/home>—you will need the client's passport information to obtain the I-94. It is the I-94, and NOT the visa stamp in the passport, that denotes non-immigrant status and authorizes length of stay. The individual's status is noted by a letter (usually "B-1 or B-2" or "A-3" or "G-5") and is indicated on the I-94 as the "class of admission." The expiration is the "admit until date."
- If the client has been granted Continued Presence (evidenced by the ORR Certification Letter), the status is likely "Deferred Action" or "Public Interest Parole" and you may so indicate in this section.
- If the client has not yet been granted Continued Presence and does not have an I-94 because he or she crossed the border without inspection, note "EWT" (for Entered Without Inspection) and *consult an immigration attorney with trafficking experience before filing.*⁸⁵
- If the client entered and the status has since expired, and has not yet been granted Continued Presence, indicate status type and date of expiry.⁸⁶

Part C. Details Related to T Nonimmigrant Status

Q1, 3, 4. Check all boxes "Yes."

Q2. If you do not have an LEA endorsement on form I-914 Supplement B, check "No" and attach secondary evidence of cooperation with law enforcement. If I-914 Supplement B is enclosed, or if you were advised that such LEA endorsement would be sent to USCIS, check "Yes" and list the information in response to **Question 5**. A Law Enforcement Agency must be contacted **prior** to submitting the T application.⁸⁷

Q6. Applicant is Under 18 as of the date of filing the application (if yes, applicant does not need to establish compliance with reasonable requests for assistance).

Question 7 response may be "yes" or "no".

Q7. If the applicant is 18 or older as of the date of filing, this will need to be answered "Yes." The supporting documentation should describe the nature and extent of the cooperation—including whether the request for cooperation was "reasonable"⁸⁸ or describe psychological or physical trauma that is the basis for an exception to the cooperation requirement.⁸⁹

Q8. First Visit to the U.S. Include all entries to the U.S., even if prior visits were made unlawfully, but *consult an immigration attorney prior to filing if applicant has made prior unlawful entries.*

⁸⁴ Filing a petition for someone who is not eligible could result in a "Notice to Appear" (NTA) before an immigration judge (IJ) and subsequent removal (deportation) from the United States.

⁸⁵ Form I-192 should be filed to waive any and all grounds of inadmissibility.

⁸⁶ *Id.*

⁸⁷ Definition of an LEA and of an LEA endorsement can be found at 8 C.F.R. § 214.11(a).

⁸⁸ 8 C.F.R. § 214.11(h)(2).

⁸⁹ 8 C.F.R. § 214.11(b)(3)(ii); 8 C.F.R. § 214.11(h)(4).

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Q9. Entry on Account of Trafficking. Check “Yes.”

Q10. Employment Authorization. Check “Yes.” No additional form or fee is required.

Q11. Applying for Eligible Family Members. Answer “Yes” if a Supplement A for a spouse, child(ren), and/or parent(s) is included. If there are no qualified family members, or if the applicant will file for them at a later time, check “No.”

Part D. Processing Information

These questions are to determine “admissibility,” a legal standard to determine if the foreign national is eligible for a legal status to either enter or extend their stay in the U.S, and/or to apply for a “green card.” Be sure to answer each question truthfully, particularly questions about criminal conduct in the U.S. If the answer to ANY of the questions is “Yes,” consult with an immigration attorney. While many grounds of inadmissibility may be “waived” by filing Form I-192 with filing fee (or fee waiver) and appropriate documentation, some grounds may not be waived.

Q1. Criminal History. This may include prostitution, shoplifting, et cetera, even if forced. It is important to check the immigration regulations and statutes to make sure that the applicant’s admission to a criminal act does not permanently bar immigration benefits.

Q2–22, other grounds of inadmissibility. NOTE: Filing an application for someone who is not eligible could result in he or she being placed in “deportation” or “removal proceedings” before an immigration judge.

■ Part E. Information about Family Members

Section 1: Include information about the applicant’s spouse, if any

Section 2: Include information about the applicant’s children, if any

Listing the applicant’s spouse or children **does not mean** they are being included in the application. An application for derivative T status for family members should be made on Form I-914, Supplement B, described below.

Part F. Applicant’s Statement, Certification, Contact Information & Signature

Signature by the applicant certifying that everything is true and correct under penalty of perjury, and that the applicant understands that the USCIS can and will use the information in the application against the traffickers and can and will share this information with other government agencies.

Part G. Interpreter’s Contact Information, Certification, and Signature

Should be completed if an interpreter was used to assist the applicant in preparing or understanding the form and the nature of the questions and answers.

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Part H. Contact Information, Declaration, and Signature of the Preparer

Usually signed by the attorney or advocate who assisted in the preparation of the petition. This is a normal part of any immigration petition or application.

Preparer's Certification: If the attorney's representation is limited to assisting with the T visa application, the answer to this should be "does not extend."

3. *The I-914, Supplement A*

A separate Supplement A must be included for each individual family member being sponsored. A separate G-28 should also be included to ensure the attorney or advocate receives notification. The following family members are eligible for inclusion:

- Applicant 21 years of age or older may include spouse (T-2) and child (T-3)
- Applicant under 21 years of age may include spouse (T-2), child (T-3), parent (T-4), unmarried siblings under 18 (T-5)
- Any applicant may include family members facing danger or retaliation as a result of trafficking, as long as they are spouse (T-2), child (T-3), parent (T-4), unmarried siblings under 18 (T-5), or adult or minor child of a derivative of the principal applicant (T-6)

Derivatives who are applying from outside the U.S., will undergo an interview at the appropriate consular post. However, they are not required to know the substance of the underlying T visa application.

Attorneys should examine whether derivative applicants face inadmissibility issues, such as unlawful presence, issues around unlawful entry, or prior criminal convictions.

Part A. Relationship

Check the appropriate relationship to the principal applicant for T-2, T-3, T-4, or T-5.

Part B. Family Member Relationship to the Derivative

If application is for adult or minor child of a derivative of the principal applicant (T-6), check whether they are adult or minor child.

Part C. General Information about You (Principal Applicant)

If Supplement A is filed together with the original I-914, check "Submitted" for the last question in this section. Otherwise, check the relevant box and include appropriate evidence of that status.

Part D. Information About Your Family Member (Derivative)

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Provide biographic information as requested.

Safe Mailing Address (page 2): This is the address to which USCIS will send notifications. It is a good idea to include the advocate's address to ensure that the case is properly processed.

Foreign Address Where You want Notification Sent (page 3): If the family is outside the U.S., this should be an address where they are likely to receive mail.

Immigration Proceedings (page 3): Consult with immigration attorney if uncertain.

Request for Employment Authorization Document (EAD) (page 3): If within the U.S., a Form I-765 with filing fee (or request for fee waiver), two passport photos, and G-28 (if represented by an attorney. When filing the I-765, indicate at Q16 that the eligibility category is (c)(25). Such employment authorization should last for the duration of the T-1 nonimmigrant status.⁹⁰

If outside the U.S., family member may apply once they have entered the U.S. in T status. Stand-alone applications for the I-765 should be submitted to the T Visa Unit at the Vermont Service Center.

Part E. Processing Information

As with Part D on Form I-914, these questions are to determine "admissibility." Be sure to answer truthfully to each question.

If the answer to ANY of the questions is "Yes," consult with an immigration attorney. While many grounds of inadmissibility may be "waived" by filing Form I-192 with filing fee (or fee waiver) and appropriate documentation, some grounds may not be waived.

Part F. Attestation, Contact Information, Declaration, Certification, and Signature

This is the same as Part F on the I-914. Signature by the applicant certifying that everything is true and correct under penalty of perjury, and that the applicant understands that the USCIS can and will use the information in the application against the traffickers and can and will share this information with other government agencies.

The Principal Applicant signs on the bottom of page 7, and the Derivative signs on the top of page 8. If the Derivative is not in the U.S., only the principal applicant needs to sign.

Part G. Interpreter's Contact Information, Certification, and Signature

⁹⁰ 8 C.F.R. § 214.11(o)(10).

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This is the same as Part G on the I-914. Should be completed if an interpreter was used to assist the applicant in preparing or understanding the form and the nature of the questions and answers.

Part H. Contact Information, Declaration, and Signature of the Preparer

Usually signed by the attorney or advocate who assisted in the preparation of the petition. This is a normal part of any immigration petition or application.

Preparer's Certification: If the attorney's representation is limited to assisting with the T visa application, the answer to this should be "does not extend."

4. *The I-914, Supplement B, Declaration of Law Enforcement Officer*

- This is the official "Law Enforcement Attestation," also referred to as the "LEA" endorsement. Inclusion of this form serves as proof of cooperation with reasonable requests for cooperation by law enforcement. However, this form is not mandatory, and cooperation may also be evidenced in other ways, as described in Part A.
- Qualifying law enforcement for purposes of the LEA endorsement include: Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of trafficking in persons.
- Keep close track of all attempts to obtain the LEA endorsement - including phone and fax log, email copies, and letters.
- In pursuing the LEA endorsement, attorneys/advocates may want to draft the LEA endorsement to ensure that it addresses all of the legal elements directly. This can be an extremely powerful document if it provides thorough and complete information and is free from contradictions.

5. *The I-192, Application for Advance Permission to Enter as a Nonimmigrant*⁹¹

If the answers to any of the questions to Form I-914, Part D were "Yes," you will likely need to file this form. **The filing fee for the I-192 is \$930.** If your client does not have the means to pay this filing fee, you may file Form I-912 with appropriate documentation and request a fee waiver.

Part 1: Application Type

Check 1.B. "status as a victim of trafficking"

Part 2: Information about You

Q1–Q8. Provide information to the best of your ability.

⁹¹ Even though the applicant may be physically in the United States, in order to permit them to be "entered" into a legitimate status, the I-192 must be filed.

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Travel Information

Q9. Location at which you plan to enter: Enter city/state of the nearest Field Office.⁹²

Q10. Name of Port of Entry: “**Vermont Service Center**”

Q11. Means of Transportation. Enter “N/A.”

Q12. Proposed Date of Entry. Enter the date on which you are completing the form.

Q13. Approximate Length of Stay in the U.S. Enter “Indefinite.”

Q14. My Purpose for Entering the U.S. This will most likely be either:

“To serve as a witness in a criminal trafficking case.” *or*

“To cooperate with law enforcement against traffickers.”

Immigration & Criminal History

Q15. Do you believe you are inadmissible? Answer “Yes,” and explain your answer to Part D of Form I-914 in Part 7 (supplemental pages).

Q16–17. Asking if applicant has previously filed form I-192. If yes, provide relevant information.

Q18–21: Do not need to be answered.

Part 3: Biographic Information

Answer as appropriate.

Part 4. Applicant’s Statement, Certification, Contact Information & Signature

Signature by the applicant certifying that everything is true and correct under penalty of perjury, and that the applicant understands that the USCIS can and will use the information in the application against the traffickers and can and will share this information with other government agencies.

Part 5. Interpreter’s Contact Information, Certification, and Signature

Should be completed if an interpreter was used to assist the applicant in preparing or understanding the form and the nature of the questions and answers.

Part 6. Contact Information, Declaration, and Signature of the Preparer

⁹² Field office locations may be found <https://www.uscis.gov/about-us/find-uscis-office/field-offices>.

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Usually signed by the attorney or advocate who assisted in the preparation of the petition. This is a normal part of any immigration petition or application.

Preparer's Certification: If the attorney's representation includes the T visa application and not just the I-912, indicate "extends."

6. Form I-912 "Request for Fee Waiver"

- Fee waivers are available at the sole discretion of the USCIS.
- The fee waiver lists the applicant's assets, income, and expenses, to show that the applicant does not have sufficient funds to pay the application fee.
- If applicant has received a means-tested benefit such as Medicaid, include such documentation with the request.
- Applying for a fee waiver will not prejudice the applicant.
- Only one fee waiver needs to be filed to cover all applications submitted for each applicant.

7. *Photographs and Filing Fees*

- If applying for relative(s), a Form I-914 Supplement A (and Form I-765 if the relative is already in the U.S.) must be completed for each relative, including three passport photographs of the relative.
- The name of the relative should be written on the back of each photo in pencil or felt-tipped pen.

B. Preparing The Supporting Documentation⁹³

1. *Personal Statement/Affidavit*

Applicant should submit a detailed personal statement or affidavit. Make sure that each element is directly addressed:

- Victim of a "severe form of trafficking"⁹⁴
 - State that he or she is a victim of a severe form of trafficking;
 - Discuss the circumstances surrounding the victimization;
 - Were they in control of passport and other identification;
 - Were they free to leave;

⁹³ Samples of supporting documents may be available on Boat People SOS' and the National Immigration Project's websites.

⁹⁴ 8 C.F.R. § 214.11(f).

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- Were they threatened with deportation/removal or police involvement;
- Were they physically, sexually, or psychologically threatened or assaulted;
- Did trafficker threaten to harm loved ones if they were not compliant;
- Were they denied adequate food, toiletries, clothing and other necessities;
- Were they denied medical and dental care?
- Were they unpaid or underpaid;
- Did they work long hours;
- Were they surveilled;
- Were they isolated, i.e. denied cell phone, internet access, keys, etc.;
- If you have an attempted trafficking case, demonstrate sufficient facts that the trafficker had the intention to traffic your client in the U.S. Specifically, identify how client knew they were going to be forced to perform labor or commercial sex: threats by trafficker, witnessed co-victims get sold or heard about it.
- Encourage a chronological, personal account of the victimization considering the elements and factors used to determine if this was appropriate for T visa submission.
- Seek corroborating affidavits from co-victims, anyone who helped extricate your client, and anyone your client confided in who can give state of mind/impact testimony; and
- Seek a psycho-social evaluation from a therapist with trafficking expertise, such as Project Reach;
- If your client was injured by the trafficker, include medical records and medical provider letters;
- **Physically Present Due to Trafficking⁹⁵**
 - Date, place, manner, and purpose of entry;
 - If entry into U.S. was on basis of the trafficker's fraud, describe what trafficker promised and what you expected based upon those promises;
 - Explain current presence on account of victimization;

⁹⁵ 8 CFR § 214.11(g).

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- If trafficked after entering the U.S., explain how you got connected to the trafficker and the means the trafficker used to gain your trust or coerce/force you;
- Show absence of a clear chance to leave, in light of circumstances including trauma, injury, lack of resources, or seizure of travel documents;
- Fear of retaliation;
- Need for victim services through social service providers (Letter from NGO or clinical social worker affidavit may be helpful to describe situation, trauma experienced, et cetera);
- No resources to leave U.S. and return to home country;
- Need to cooperate with law enforcement, e.g. pending investigation or prosecution of trafficker
- Accessing legal remedies such as civil suit to obtain justice against trafficker.
- Complied with any reasonable request for assistance from an LEA⁹⁶
 - State compliance with requests and cite LEA endorsement;
 - Name the responsible LEA;
 - Indicate whether specific records of the crime are available;
 - If no LEA certification then explain why it does not exist or is unavailable, such as an attorney affirmation, secondary evidence noted below, or affidavits;
 - Detail good faith attempts to obtain an LEA endorsement, and note corroborating documentation (such as email communications with LEA);
 - Secondary evidence may include court documents, police reports, trial transcripts, Department of Labor complaints and decisions, and affidavits from affiliated agencies.⁹⁷ Consider also using documentation from state or local police, or District Attorney's office. While they cannot submit the LEA endorsement, such documentation can certainly be used as a strong basis for credible secondary evidence; and
 - If no LEA endorsement/efforts to cooperate with LEA due to age, provide evidence that applicant is under 18 years of age and therefore not required to comply.⁹⁸

⁹⁶ 8 C.F.R. § 214.11(h).

⁹⁷ 8 C.F.R. § 214.11(h)(2); *See also* New Classification for Victims of Severe Forms of Trafficking in Persons, 67 Fed. Reg. 4784, 4788 (Jan. 31, 2002) (codified at 8 C.F.R. pts. 103, et al.).

⁹⁸ 8 C.F.R. § 214.11(h)(3).

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- If no LEA endorsement/efforts to cooperate with LEA due to trauma exception, you must include medical and mental health evidence such as a psycho-social evaluation and letter from mental health providers.
- Extreme hardship involving unusual and severe harm upon removal⁹⁹
 - State age and personal circumstances;
 - Physical or mental illness requiring medical attention not otherwise available in the home country;
 - Nature and extent of the medical and psychological consequences of the victimization;
 - Is applicant undergoing a course of counseling here that would be disrupted, and may not be available and/or acceptable in home country;
 - Impact of the loss of access to the US civil and criminal justice system for purposes relating to legal issues arising from the victimization;
 - Laws, social practices or customs of the home country which might penalize the Principal for having been a trafficking victim;
 - Likelihood of re-victimization and the need, ability, or willingness of home country authorities to protect the Principal;
 - Evidence that client would be vulnerable to retaliation if returned and deprived of the protection of U.S. legal and social services; and
 - Likelihood that the Principal's safety would be seriously threatened by civil unrest or armed conflict in home country designated for Temporary Protected Status (TPS) or Deferred Enforced Departure or for other reasons unrelated to the trafficking, such as fear of persecution.

Make sure to review the completed Personal Statement at least once with the applicant after it has been prepared and edited. If possible, provide the applicant with a translation of the document (if the applicant is not fluent in English). If a written translation is not possible, orally translate the Personal Statement, giving the applicant the chance to make edits and corrections. After finalizing the Personal Statement, attach an Affidavit of Translation or Oral Translation.

2. *Prepare Summary of Law, Memorandum of Law, or Brief*

It is helpful to include a brief or memorandum to detail the legal basis for the petition, substantiating the grounds that support the evidentiary criteria.

⁹⁹ 8 C.F.R. § 214.11(i).

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- **Statement of Facts:** Begin with a brief reiteration of the factual basis of the claim, including how the individual was trafficked and his or her victimization in the United States.
- **Argument:** Note how the facts specifically support each element:
 - is physically present in the United States, American Samoa or the Commonwealth of the Northern Mariana Islands as a result of trafficking;
 - is a victim of a severe form of trafficking in persons;
- for the purpose of a commercial sex act, which act was either induced by force, fraud, coercion, or occurred when the applicant had not reached 18 years of age;
- for the purpose of labor or services induced by force, fraud, or coercion for the purpose of subjecting the applicant to involuntary servitude, peonage, debt bondage, or slavery;
 - *Sex trafficking:* the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act;
 - *Coercion:* threats of serious harm to or physical restraint against any person; any scheme intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process;
 - *Debt bondage:* the status of a debtor arising from the debtor's pledge of his or her personal services or the services of a person under the debtor's control as a security for debt, if the value of those services is not applied to satisfy the debt or if the length and nature of the services are not appropriately limited and defined;
 - *Involuntary servitude:* a condition of servitude induced by causing a person to believe that the person or another would be seriously harmed, physically restrained, or subjected to abuse or threatened abuse of legal process if the person did not enter into or remain in the servitude; or
 - *Peonage:* status or condition of involuntary servitude based upon real or alleged indebtedness.
- would suffer extreme hardship involving unusual and severe harm upon removal; and
 - The applicant's age and personal circumstances;
 - Serious physical or mental illness of the applicant that requires medical or psychological attention not reasonably available in the foreign country;
 - The physical and psychological consequences of the trafficking activity;

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- The impact on the applicant of loss of access to U.S. courts and criminal justice system for purposes such as protection of the applicant and criminal and civil redress for the acts of trafficking;
 - The impact on the applicant of interruption of counseling and other types of services;
 - The reasonable expectation that laws, social practices, or customs in the applicant's country would penalize the applicant severely for having been the victim of trafficking;
 - The likelihood of re-victimization and foreign authorities' ability and willingness to protect the applicant;
 - The likelihood that the trafficker or others acting on his or her behalf would severely harm the applicant; and
 - The likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict, as demonstrated by a designation of Temporary Protected Status under INA § 244 or the granting of other relevant protections.
- has complied with any reasonable request for assistance in the investigation and prosecution of acts of trafficking in persons, unless the applicant is less than 18 years old.¹⁰⁰

3. Prepare/Organize the Exhibits

Note: The VSC wants a COMPLETE copy of each exhibit. Double-sided copies ARE acceptable to reduce bulk. Regular copies are acceptable, it is not necessary to have notarized or certified copies of documents. Translations must be provided of all documents that are not in English. The translation must include a statement of accuracy by the translator, but does not need to be notarized. When including a translation, put the translation on TOP of the original so that the Adjudicator sees the English version first.

The following is a suggested order for submitting the documents to USCIS:

1. USCIS forms and filing fees, or fee waiver. If a G-28 is submitted it should be on top and printed blue paper.
2. Personal Exhibits. These exhibits should come first.
 - a. Personal Statement of the Applicant. This will ALWAYS be the first exhibit;

¹⁰⁰ "Children who have not yet attained the age of 15 at the time of application are exempt from the requirement to comply with law enforcement requests for assistance in order to establish eligibility." 8 CFR § 214.11(h). Please note that while the TVPRA changed this age to 18, that regulations have not yet been amended to reflect this change.

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- b. Marriage Certificate of the Applicant. If applicant is filing for his or her spouse and/or child(ren), a copy of the Marriage Certificate/Birth Certificates, and a translation, must be included. If either the applicant or his or her spouse was previously married, include proof of the termination of all previous marriages (death certificate or divorce decree and translation); and
 - c. Birth Certificates. You must prove the relationship for any derivative family members being added to the application. For children, a copy of the child's birth certificate must be included. For parents, the applicant's birth certificate must be included. If both parents are not listed on the birth certificate, add the parent's marriage certificate.
3. General Exhibits. Following the personal exhibits are the corroborating exhibits that prove the elements required for a T visa. Try to submit at least one document, in addition to the Personal Statement, that addresses each element. Examples of general exhibits may be:
 - a. witness affidavits;
 - b. trial transcripts;
 - c. court documents;
 - d. police reports;
 - e. news articles;
 - f. medical and mental health documents
 - g. Photographs of trafficking conditions or injuries;
 - h. travel receipts and documents; and
 - i. country condition reports.
4. Though the Supplement B LEA Certification is no longer considered primary evidence, note that it adds weight to the application for all elements except extreme hardship. Some advocates have drafted the Supplement B for the LEA to ensure that it addresses all of the legal elements directly. This can be an extremely powerful document if it provides thorough and complete information and is free from contradictions.
5. Highlight key portions. VSC requests that the key portions of the exhibits are highlighted, especially within the longer documents. VSC Adjudicators have told advocates that this assists them greatly in identifying the important sections.¹⁰¹

¹⁰¹ Gail Pendleton, National Immigration Project, *Practice Pointers on Filling with VSC*, Feb. 27, 2002.

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4. *Prepare Cover Letter*

The cover letter indexes the documents included with the application, providing a roadmap for the adjudicator. While the brief or memorandum will detail the legal basis for the petition, the cover letter lists the documents that substantiate the claim. It is helpful to add a summary of each exhibit with an explanation of how it addresses one of the required elements. Add key quotations to bolster your point. In the alternative, you may submit a short cover letter that references the enclosed forms, annotated table of contents, supporting documents and brief. The table of contents would list each supporting document categorized by element with a short description.

5. *Assemble the Application*

- Put everything in this order (top to bottom):
 1. Cover letter printed on your agency's letterhead;
 2. **G-28** (if applicable);
 3. **I-914** with applicant's photos stapled to the lower left-hand corner. Make sure that the staple does NOT go through the face of the applicant's photos;
 4. **I-192**, waiver of inadmissibility (if applicable) with either appropriate filing fee or with **I-912**, Request for Fee Waiver;
 5. **I-914 Supplement A and I-765 (if applicable) for each family member.**
 - **3 passport photos for each applicant;**
 - I-192 for applicants and derivatives who do not have continued presence or have inadmissibility triggers, and supporting affidavit and fee waiver;
 - I-765 for derivative applicants residing in the U.S. with accompanying fee waiver requests. (Derivatives residing overseas may apply for work authorization once they enter the U.S.).
 6. **Exhibits** in order, divided with colored paper.
- **Make two copies of the complete packet.** Give one to the applicant and keep one for your files.

6. *Mail the Application*

Write "T VISA" with a fat, red marker on the front of the envelope. Send it Certified, Return Receipt Requested or by express delivery so that you will have proof that the USCIS received it and so that you will be able to track the application if it is misrouted by the USCIS mailroom to this address:

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United States Citizenship & Immigration Services
Vermont Service Center
Attn: T Visa Unit
75 Lower Welden Street
St. Albans, VT 05479-0001

7. Follow Up

Keep track of the status of the application compare with others to make sure that nothing has gone wrong with the filing.

You should receive notices within four weeks. There will be separate receipts for the I-914, the I-192 (if submitted), and for an I-765 employment authorization (even though you didn't file this form you get a receipt because it was built-in to the I-914). You will also get receipts for each derivative application. At this time, it is taking about nine months to a year for a decision on a T visa. If you do not receive receipts or there are errors, you can call (802) 527-4888 to leave a message with the T visa unit or email the hotline at HotlineFollowUpI918I914.vsc@uscis.dhs.gov. You should also consider writing to them to correct any errors. This number should not be used for case status inquiries and should only be used by the attorney or representative.

Important Dates:

- Date on HHS Certification Letter, applicant only has 30 days from issuance of this letter to elect benefits;
- Date of filing;
- Date on the Receipt Notice. Receipt Notices and a Biometric/Fingerprint Appointment should arrive within three weeks of filing;
- Date on any Request for Additional Evidence;
- Date on the Approval Notice. T status is granted for four years. Ninety days before the three years in T status, a T alien may file for adjustment of status to permanent residency. The T recipient may apply even earlier if s/he can provide evidence that any criminal case against the trafficker is closed. The maximum period of stay in T status is four years, so for those planning to remain in the U.S., it is recommend that they file no later than the third year in T status or such legal status in the U.S. will be terminated;¹⁰²
- Date of interview for family members at consulate appropriate (if relevant);¹⁰³ and
- Date of approval of family members.

¹⁰² 8 C.F.R. § 214.11(p)(2).

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III. Sample Questions for Legal Assessment

Important: This form is intended as a guide for legal practitioners.

Recruitment

- What were you told about the kind of job/situation that was offered to you?
 - Who offered you the job?
 - How much money was promised to you and by whom?
 - Did you sign a contract? If yes, where is it?
 - What were the terms of the contract?
 - What kind of visa or other documents were promised to you?
 - Was anyone paid to bring you to the U.S.?
 - Were you sold? Were you kidnapped?
-

Migration

- How were you brought to the U.S.? Were you informed of this method before you left?
 - Were you in any other countries prior to your arrival here?
 - Who organized your travel?
 - Who accompanied you?
 - If there were other people, do you know what happened to them?
 - Were you always in possession of your documents? If no, who took them and how long did they keep them?
 - Were you told what to say to immigration officials?
-

Arrival

- Where did you stay upon arrival?
- What happened to your documents and belongings upon arrival?
- How soon were you told to begin work?

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Working Conditions

- What was the type of work you were expected to do?
 - Were the conditions and type of work the same as what you expected/ were told?
 - What were the hours/days of your work?
 - What was the pay? Were you paid the amount you agreed to?
 - Were you living and working at the same place? Could you leave?
 - Were you expected to pay off a loan of any kind (i.e. debt bondage)?
 - Do you owe money to your employer or anyone else?
 - Were you allowed time off? Allowed to rest if sick?
 - Were you allowed to communicate with family members? Friends? Other workers?
 - Were you able to attend religious, cultural, or educational programs?
 - Were you able to quit work and work somewhere else?
-

Safety and Risk

Were you threatened with harm at any time (before you left, in transit, upon arrival)?
Have you experienced...

- Physical coercion such as:
 - physical violence
 - threats of violence
 - torture/beatings
 - sexual abuse, harassment
 - isolation/imprisonment/ incarceration
 - denial of medical care
 - denial of food, clothes, or other necessities
 - other
- Psychological coercion such as:

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- ☐ deceit
 - ☐ threats of violence against you or your family, friends?
 - ☐ abuse of others in front of you
 - ☐ threats to report you to authorities, arrange deportation
 - ☐ verbal abuse, degrading remarks
 - ☐ speaking in a language you didn't understand
 - ☐ threat of isolation
 - ☐ other
- Are you currently fearful for your own, or anyone else's, safety?
 - Do you know the current location of the traffickers?
 - What would happen to you if you were to return home?

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Part C: Resources

I. Screening Tools

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A. Human Trafficking Identification Tool, *Vera Institute of Justice*



Screening for Human Trafficking

Guidelines for Administering the Trafficking Victim Identification Tool (TVIT)

JUNE 2014

Vera Institute of Justice
233 Bro www.vera.org

NCJ #246713

The Vera Institute is an independent nonprofit that combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

Tool validation and implementation evaluation research was supported by the National Institute of Justice (Award No. 2011-MU-MU-0066.) Points of view or opinions in this document are those of the authors and do not represent the official position or policies of the United States Department of Justice.

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Table of Contents

About this manual.....	3
The purpose and limitations of screening	3
Tips for Conducting Interviews.....	4
<i>Setting up the interview</i>	<i>4</i>
<i>Developing trust and demonstrating respect during interviews</i>	<i>5</i>
<i>Maintaining confidentiality</i>	<i>5</i>
<i>Understanding the effects of trauma and victimization</i>	<i>6</i>
<i>Additional considerations for law enforcement</i>	<i>7</i>
<i>Some considerations when asking these questions</i>	<i>8</i>
Frequently Asked Questions	9
Advice on Using the Trafficking Victim Identification Tool (TVIT).....	11
Trafficking Victim Identification Tool (TVIT) Long Version.....	13
Trafficking Victim Identification Tool (TVIT) Short Version	25
Training and Other Resources.....	31
Definitions of human trafficking in the United States.....	35

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About this manual

This manual is intended primarily for victim service agency staff and other social service providers, who will administer the Trafficking Victim Identification Tool (TVIT) to clients who are potential trafficking victims. Law enforcement, health care and shelter workers will also find it helpful in improving trafficking victim identification, especially in conjunction with appropriate training or mentoring. The manual content is based on results of research conducted by the Vera Institute of Justice, which collaborated with leading legal and victim services agencies in the United States, to produce the validated screening tool and best practices for identifying trafficked persons, and on other expert sources in government and non-governmental agencies.¹ Vera's research found that the TVIT instrument is highly reliable in predicting both labor and sex trafficking in women and men and among foreign and U.S. born victims. The screening tool can be used in its short version (consisting of 16 core questions, plus questions specific to migration for the foreign-born) without loss of predictive ability, or in its longer form, depending upon the situation and purpose of screening. As with any kind of information gathering from victims of crime, it is essential that screening for trafficking be done with care.

The purpose and limitations of screening

Screening questions can help agency staff to identify victims of human trafficking and help trafficking victims obtain the protection and services they need. Before using the TVIT with persons who may be victims of human trafficking, the victim's personal safety and comfort should be assured. Screening tool users should make every effort to establish trust and rapport before asking difficult questions that focus on traumatic experiences and other facts. Before screening, users should also be prepared to draw upon the expertise of local legal and medical staff and to refer identified trafficking victims to appropriate housing, health and social services in their area. While this user guide provides essential tips for effective screening with the TVIT, the tool is a complement to, not a substitute for, specialized training in human trafficking, good professional practices and victim-centered services.

The TVIT has been found to be valid and reliable in identifying victims of sex and labor trafficking. However, caution must be exercised in relying too heavily on the results of the screening tool alone, as negative responses to the questions do not definitively preclude the possibility of victimization. Respondents whose answers initially indicate a lack of victimization may instead be demonstrating reasonable fear or forgetfulness as a symptom of trauma. As such, for the best outcomes, questions may have to be asked at a time when the potential victim trusts the interviewer and is ready to respond. The screening tool should be used to guide interviews with potential victims, not to eliminate or deny potential victims access to needed services and legal protections. The best practices in this manual will help to ensure appropriate and successful use of the screening tool. Please consult state and federal definitions of human trafficking (Appendix B, p. x) to use alongside the screening tool.

¹ The full research report is available from the National Institute of Justice, and from the Vera Institute of Justice www.vera.org.

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Tips for Conducting Interviews

The effectiveness of screening for trafficking victimization depends on allaying fear, building rapport and asking questions in an appropriate manner. Interviewers should be comfortable working with trafficking victims, sensitive to their special needs, and aware that they are likely to be suffering the impacts of traumatic experiences.

Setting up the interview

The setting in which an interview takes place can be as important as the questions that are asked. Trafficking victims have often been held in servitude through threats of harm and fear of their arrest or deportation by police and immigration authorities. It is crucial to establish a safe space to help victims feel more comfortable and protected. To help allay victims' fears from the onset of an interview, the following techniques have proven effective:

- Before conducting a screening, service providers should fulfill some basic needs, such as providing food, clothing, medical care or assurance of at least temporary shelter, if necessary. It may be difficult for a victim to engage in an interview unless these immediate needs for physical comfort and safety are met.
- Hold the interview in a non-threatening and comfortable location. Provide the victim with food and drink, and incidentals including tissues, regular breaks, and a place where the victim can gain their composure if the interview causes distress.
- Never interview the victim within sight of the trafficker. If the victim arrives with a person exhibiting controlling behavior, talk to the victim in private. This person may be the trafficker or someone working for the trafficker.
- Maintain a professional, but friendly, attitude and appearance. Law enforcement agents should dress in civilian clothes and make sure no weapons are in view. Others should consider dressing in casual clothing, especially when visiting agricultural labor camps to reach out to potential victims. Dressing in uniforms and other formal attire may create fears that interviewers are from immigration or other enforcement agencies.
- Be honest at the beginning about the purpose and duration of the screening. Describe the victim's rights, the interview process, and the roles of everyone involved.
- Employ competent, trustworthy interpreters if the victim's first language is not English. Competent interpreters ask questions using the same wording as the screener and answer as fully as the victim. The victim must be assured of confidentiality.
- Be aware of gender issues and ask victims if they would be more comfortable being interviewed by someone of the same gender. When possible, the victim's preference for an interpreter of a specific gender or culture should also be accommodated.

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Developing trust and demonstrating respect during interviews²

Trafficking victims need to feel safe with the interviewer before they divulge experiences that may revive fears and feelings of distress, or place themselves or their families in further jeopardy. Some service providers may judge that it is in the victim's interest to have a general conversation first and return to the screening questions at a second meeting. When the victim is ready to answer the victim identification questions, interviewers may wish to keep the following techniques in mind:

- ✓ Express prior knowledge of and experience with similar cases, where appropriate, and allow the victim the opportunity to relay any questions or fears they may have.
- ✓ Be patient, caring, and sensitive to the victim's fears of retribution and the possible consequences of being identified as a victim or a party to trafficking crimes. Many victims are not familiar with laws and victim protections regarding trafficking.
- ✓ Be careful not to imply that a victim was responsible for their own abuse and exploitation or for the inability to leave a trafficking situation. Reassure them that others have been in similar situations and, as victims of a crime, they are not to blame.
- ✓ Take the time necessary to allow victims to recount the story, which may mean holding several meetings. Allow the victim to direct the interview and to tell their story in their own words. They should also feel able to stop the interview at any point if they experience distress.
- ✓ Be respectful of the victim's cultural background, including social etiquette, religious observances, societal status, ethnic community ties, customs of clothing, and attitudes toward prostitution. Be aware that cultural differences may make some topics such as sex and mental health uncomfortable to discuss.
- ✓ Some messages to convey include: "We are here to help you;" "You can trust me;" "Your safety is our first priority;" and "You have a right to live without being abused."

Maintaining confidentiality

Maintaining confidentiality is imperative in working with victims who often risk their lives and their families' lives when they try to escape captivity. As such, interviewers should remember the following:

- ✓ Mandatory reporters may not want or need to obtain the level of detail elicited by the screening tool, and may instead refer likely trafficking victims to other service providers who can maintain confidentiality, such as attorneys who have client-attorney privileges. Agencies using the screening tool may need to develop protocols on recording and sharing information about identified trafficking victims.

² Portions of this text adapted from *Lawyer's Manual on Human Trafficking*, Edited by Jill Laurie Goodman and Dorchon A. Leidholdt, Supreme Court of the State of New York, Appellate Division, First Department and New York State Judicial Committee on Women in the Courts; *Trafficking In Persons Report 2013*, State Department.

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- ✓ Discuss with the person exactly how and when confidentiality will be maintained, and what limitations on confidentiality there may be, depending on the situation and the screener's obligations.
- ✓ Keep the number of staff who come into contact with the victim to a minimum and ensure that staff fully understand the importance of confidentiality.
- ✓ If working with an interpreter, he or she should sign confidentiality agreements to enforce professional standards and ensure that the trafficker, the trafficker's associates and the victim's community are not informed.

Understanding the effects of trauma and victimization

Trafficking victims have often endured profound physical and psychological injuries that may impede the efforts of attorneys and other service providers to interview them and develop strong working relationships. Minimization, denial and memory loss, which are symptoms of psychological trauma, can make it extremely difficult to elicit consistent information. Below are important points regarding trauma and victimization to keep in mind:³

- ✓ Be aware that trafficking victims may experience long-lasting effects of psychological and physical abuse, traumatic experiences, chronic substance abuse, or violent physical and psychological assaults. Even if not a mental health expert, a screener can learn to recognize common signs of trauma. A service provider who screens trafficking victims may be the first person to whom victims have reported trauma or mental distress.
- ✓ Express sorrow for what has happened to them, but do not appear to be judgmental or shocked by the details they reveal.
- ✓ Ask only basic questions about mental health unless you are trained as a mental health professional. A few straightforward, non-intrusive questions asked in a kind manner can convey a caring attitude and help the screener and the victim decide if a referral to a mental health professional is desirable or necessary. A user of TVIT should not expect to completely alleviate a victim's distress or be in a position to diagnose mental illnesses.
- ✓ Be understanding when victims do not wish to repeat the details of the crime. Keep in mind that recounting stories many times for various people (social service agencies, lawyers, law enforcement, and so forth) may cause victims to re-experience trauma. Try to minimize the potential for re-traumatization when possible.

³ This section is adapted from The 2011 Trafficking in Person report of the Department of State Office to Monitor and Combat Trafficking in Persons; "Gaining Insight, Taking Action: Basic Skills for Serving Victims," Office for Victims of Crime, Department of Justice (<http://www.ovc.gov/publications/infores/pdf/txt/GainingInsight.pdf>); and "Resources for Social Service Providers," Social Service Tool Kit, Rescue & Restore Victims of Human Trafficking, U.S. Department of Health & Human Services (www.acf.hhs.gov/trafficking/campaign_kits/index.html);

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Additional considerations for law enforcement⁴

Many law enforcement officials advocate for use of a victim-centered approach when working with potential victims of human trafficking, placing equal value on the stabilization and wellbeing of victims with that of the criminal investigation and prosecution of traffickers. Victims are the key for successful prosecutions, and law enforcement should make every effort to help victims feel safe and secure. When working with trafficking victims, law enforcement officers may wish to keep the following in mind:

- ✓ Enlist the help of victim specialists wherever possible.
- ✓ Victims often require social services for safety and recovery. Connecting victims with support services can help them get the help they need, allowing them to be of greater assistance during an investigation.
- ✓ Be mindful that victims may have had prior negative experiences with law enforcement and may be afraid or distrustful as a result. Keep tactical gear, weapons, badges, and uniforms hidden from sight and convey a sincere, caring attitude.
- ✓ Since many victims have been arrested, it takes time and astute questioning to determine that they are victims, and not criminals. If arrested in a raid, the victim may have found the raid itself traumatizing. Police officers should have an established protocol for differentiating and separating the traffickers and victims during interviewing.
- ✓ Minors involved in trafficking require special protections and custodial planning. Any shelter arrangements made for children or adults should ensure a victim's safety and meet the special needs of trafficking victims.
- ✓ Investigative procedures can be frightening and inhibit successful interviewing. Be aware that lawyers are sometimes employed by traffickers.
- ✓ Conventional interrogation techniques may be insensitive to the victim's feelings and the pace at which they can respond to questions. All interpreters should be certified.
- ✓ Traffickers often use immigration status to control foreign-born victims. Victims are often fearful of the immigration consequences resulting from contact with authorities, and may be unable to stay in the United States or access victim assistance services if they do not have legal status. Law enforcement officials can help stabilize these victims so they can obtain immigration relief, including Continued Presence (CP) and T or U Nonimmigrant Status.
- ✓ At times, it may be appropriate to deviate from the screening tool to probe for additional details, such as for questions about payment and medical visits. These details can be important in obtaining further evidence for an investigation, but always be mindful of not re-traumatizing victims. Additional questions about highly sensitive topics may need to wait until subsequent interviews.
- ✓ Many trafficking victims have urgent medical needs that should be addressed promptly and confidentially.

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⁴ This section is adapted from materials made available by the Department of Homeland Security's Blue Campaign(www.dhs.gov/end-human-trafficking).

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Some considerations when asking these questions

- ✓ You may re-phrase the questions on the screening tool as necessary to ensure that they understand clearly what you are asking. Listen carefully to what they say, and return to topics as needed during the conversation to clarify and confirm details.
- ✓ Screeners should ask all questions on the TVIT even if the respondent appears to be the victim of another crime, as trafficking may occur in conjunction with other forms of victimization. Victims of other crimes, such as domestic violence, or labor exploitation, may have experiences of abuse that are similar to those of trafficking victims and may therefore respond in similar ways.
- ✓ The TVIT inquires about “work or other activities” to elicit information about sexual services and other types of informal work. However, victims of sex trafficking may not think of rape and forced prostitution as “work.” Additionally, victims of labor trafficking may not think of forced shoplifting and forced drug smuggling as “work.” Screeners should pay attention to the terms used by potential victims to describe their experiences, and should use this terminology during interviews. Screeners should also be aware that answering direct questions about sexual activities, or even forced labor, may be difficult for victims, especially when associated with violence, humiliation or shame.

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Frequently Asked Questions

Q. When should this screening tool be used?

- A. This tool is most effective when rapport has been established between the interviewer and the potential victim. It may be best not to use it on the very first encounter if the victim is reluctant to talk; rather, an interviewer may use the tool on the second or third meeting more effectively. Screeners may also wish to save highly sensitive questions, such as those concerning physical or sexual violence, until later interviews when a sense of safety has been established. Screeners should also expect to revisit certain questions in subsequent interviews.

Q. Will the tool detect all forms of trafficking victimization?

- A. The screening tool has been tested with victims of both sex and labor trafficking, and has been found to reliably predict victimization in those contexts. It has not yet been validated with individuals with disabilities or with LGBTQ victims. Interviewers who anticipate working with these groups should make efforts to tailor the screening tool to fit the unique needs of these clients. Similarly, additional questions might have to be asked of child victims of trafficking because of their particular experiences and vulnerabilities.

Q. What if there are discrepancies between a person's responses and what you know about them?

- A. Inconsistent answers may be a response to trauma, not untruthfulness, as the person may not want to repeat distressing details or may have repressed them. It is important to give people breaks during interviews and multiple opportunities to respond to questions. You can address inconsistencies in a non-judgmental way and ask for clarification. Remember, it may take time to get the full story.

Q. How do I know if I am using the tool correctly?

- A. Each person and trafficking case is different, so there is no single "right" way to use the screening tool. If you feel that you are communicating clearly and are gathering important information, and the person interviewed feels safe and supported, then you are probably using the tool correctly. It is important to obtain as much prior training as possible and best to have other experienced professionals to turn to if you are in doubt about how to conduct an interview.

Q. How do we determine trafficking once the tool has been completed?

- A. Tool users are expected to have some prior knowledge of what trafficking entails. The TVIT does not contain specific instructions on how to "score" affirmative responses, and interviewers are discouraged from attempting to create their own scoring systems.

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Every trafficking case is unique. Some victims will answer affirmatively to several of these questions, while others may do so for only a few. The totality of the responses, and not any single answer, will help you decide if someone is a likely victim of trafficking under the law. When in doubt, consult a more experienced person. Screeners can read through the Annotated Tool for ideas about what information to look for when administering the tool. They may also find it helpful to record their observations and assessments separately after the screening.

Q. What if there were multiple incidents of trafficking?

A. These can be noted, if described by the victim, but recording all the details at once is not necessary for initial determination of victimization.

Q. What if the potential trafficking situation occurred outside of the U.S.?

A. The importance of asking about trafficking situations that occurred outside the U.S. depends on the goals of the agency conducting the screening. Law enforcement will likely be primarily concerned with victimization that occurred within the United States. In contrast, trafficking situations that occurred outside of the U.S. but continued or had impacts in the U.S. may still have significant implications for a victim's legal relief, allowing someone to access benefits or stay in the country legally. Victims may also be suffering from trauma inflicted during incidents that occurred outside the U.S., and service providers may wish to explore these to provide the victim with necessary support.

DISCLAIMER

Advice on Using the Trafficking Victim Identification Tool (TVIT)

These questions may be integrated into your regular intakes, and you should feel free to rephrase them as needed to ensure communication and understanding. Interviewers should familiarize themselves with these questions in advance, and not read them verbatim, which may feel mechanical and prevent rapport from developing with a potential victim. Similarly, it is recommended that interviewers not use the tool during an initial interview with a client, as establishing trust and rapport first will help clients answer accurately and honestly. All questions, especially the follow up questions, should be used with discretion, while keeping in mind confidentiality issues that may arise by recording details of a client's situation.

As many of these screening questions can recall traumatic experiences, you should be sensitive to the persons' mental health needs. Before and during the interview, note whether a victim is feeling emotionally stable enough to answer questions, and if not, ask if he or she would like to be referred to a counselor or health professional for help. If the client describes situations that seem traumatic, or has emotional reactions to the questions asked, you should ask if they wish to suspend the interview until they feel willing and able to continue.

Specific instructions for each section are described below.

Background and Demographics:

Demographics are important to collect to begin to assess your clients' needs. The questions here are not exhaustive. However, please ensure that you ask about country of birth, to determine whether or not to skip the Migration section. We have provided some basic demographic information questions that are usually asked at an interview. You may wish to add questions that your own agency requires for screening and intakes.

Migration into the United States

Often, the way people become victims of trafficking has to do with how their migration was organized by acquaintances or purported employment agencies. Alternatively, migration may not have been the impetus for trafficking, but it may contribute to a victim's sense of vulnerability. For instance, some people are willingly smuggled across the border and later coerced into paying back high debts through forced labor (debt bondage). People may have entered the country multiple times, so it can be important to probe for information about repeated entrances. Immigration can be a sensitive topic. Many foreign-born victims worry about being reported to authorities, and may feel uncomfortable answering these questions. Furthermore, it is important to keep in mind that a client may not know all the details of their migration, especially if the client came to the U.S. as a child.

Working/Living conditions

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Trafficking victims are often made to work, provide services or do other activities that are not “traditional” work. These activities can include forced prostitution, domestic servitude, or other non-formal work arrangements. Once you make clear to the client that you would like to know about non-traditional work, you do not need to repeat the phrase “[or did other activities]” for each question in this section. Be attentive to the terms used by the victim to describe their “work” experience and try to use these terms. The questions should relate to exploitation he/she encountered while in the U.S., not to work performed abroad.

Trafficking victims may also be forced to work where they live, especially in sex trafficking or domestic servitude. Victims of domestic violence may answer affirmatively to some of the following questions, which do not necessarily signal that trafficking has occurred. However, traffickers are often perceived by victims to be romantic partners, so it is important to probe for more information when an intimate partner is mentioned. Victims may have strong attachments to their traffickers, which make it difficult for them to self-identify as victims or admit they were forced. This often occurs with domestic sex trafficking victims. Please note that under the legal definition, anyone performing sexual activities for things of value while under 18 years of age is a victim of trafficking, regardless of whether they report having been forced into the situation.

Many of these questions are sensitive and asking them directly may elicit negative reactions, including fear and shame. Force can be both explicit and implicit in a trafficking situation, and some individuals may have been initially pressured into these activities to support themselves or their families. Coercion and abuse can be either psychological or physical. Threats of harm include all actions, statements, written or non-verbal messages conveying the intent of physical or psychological injury. It is also important to be aware that a victim may feel loyalty to their trafficker due to forced dependence and therefore have difficulty recognizing and disclosing their own victimization. Many of questions in this section are based on knowledge of the ways in which traffickers commonly control victims, including by depriving victims of their identity documents, basic necessities or social contacts, and by threatening to report them to authorities or to harm their families.

Determining if someone is a victim

In order to determine if someone is a victim of trafficking, you should take the totality of her/his responses into account; no single affirmative answer determines whether trafficking has or has not occurred. Other needs are also important to assess, such as needs for safety, housing, legal assistance (for instance, if the client is foreign born and has immigration questions), social services, employment or other needs. Having reliable local referral networks is extremely important so that clients can get the assistance they need from your agency or partner agencies.

DISCLAIMER

Trafficking Victim Identification Tool (TVIT) Long Version

Screening purpose. This screening tool is intended to be used as part of the regular intake process or as part of enrollment for specific programs. In order for the results to be valid, the screening should be administered according to pre-arranged protocols, *whether or not the client is believed to be a victim of human trafficking*. Please refer to the *User Guide* for directions on using this screening tool.

Screening timing. Since each agency's intake process is unique, agencies should determine how to best integrate this screening tool with their other intake forms or procedures. Whatever the timing and context of the interview, please begin and end with comfortable topics of conversation to minimize the client's discomfort.

Deferred/Suspended Screening. In some cases the intake process extends beyond the first meeting with the client. Service providers may sometimes choose to postpone sensitive screenings, judging that clients are not yet ready to disclose or discuss experiences of victimization and would prefer to continue the interview at a later date. If in the course of an interview the client shows acute signs of anxiety, ask the client if s/he would prefer to stop the interview and resume it at a later time.

Section 1: Screening Background **[DO NOT READ TO CLIENT]**

1a. Date of interview: __ / __ / ____ (MM/DD/YYYY)

1b. How client was referred to your agency most recently *[select only one]:*

- ☐ Own agency/ internal referral
- ☐ Other social service provider *[fill in]:* _____
- ☐ Healthcare provider
- ☐ Local Police Department
- ☐ Dept. of Homeland Security (DHS) / Immigration & Customs Enforcement (ICE)
- ☐ Federal Bureau of Investigation (FBI)
- ☐ Other law enforcement *[fill in]:* _____
- ☐ Referred by other client
- ☐ Referred by someone else *[fill in relationship to client]:* _____
- ☐ Walk-in

1c. Client status: Official determination of trafficking known?

[INTERVIEWER: This includes HHS certification, T-visa approval, or certification by law enforcement or a judge]

- ☐ No
- ☐ Yes

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1d. Sex of client: ☐ male ☐ female ☐ other

1e. Language of interview:

1f. Client's preferred language: _____

1g. Client's English proficiency (*please estimate to the best of your ability*):

☐ Excellent ☐ Good ☐ Fair ☐ Poor

1h. Mode of interview: ☐ interview with interpreter ☐ interview without interpreter

Section 2: Personal Background

INTERVIEWER READ: "I'd like to begin by asking you a few simple questions about your personal and family background."

2a. What is your date of birth? __/__/____ (MM/DD/YYYY)

2b. If you don't know your date of birth, approximately how old are you? _____ -

[INTERVIEWER: If respondent cannot provide a number, offer the following response brackets to choose from]

☐ under 12 ☐ 13-17 ☐ 18-19 ☐ 20-24 ☐ 25-29 ☐ 30-34 ☐ 35-39 ☐ 40-44 ☐ 45-49 ☐ 50-54 ☐ 55-59 ☐ 60+

2c. How many years of schooling have you completed?

☐ 1-6 years ☐ 7-12 years ☐ More than 12 years ☐ Other _____

2d. What country were you born in? _____

2e. Are you a citizen of any *other* countries besides where you were born?

[INTERVIEWER: If concept of 'citizenship' is not clear, rephrase as 'Where were your parents born?']

☐ No

☐ Yes Other country of citizenship # 1 _____ # 2 _____

☐ Don't know

Migration [PLEASE USE THE MIGRATION SECTION WITH FOREIGN-BORN CLIENTS ONLY]

INTERVIEWER READ: “Now I am going to ask you some questions about your country of origin. I am not asking you this to find out about your immigration status. I am only trying to understand fully what your circumstances are so that we can refer you for the right help, if necessary. The questions ask about your migration to the U.S., who was involved, and how it was arranged.”

For children, this may be rephrased: “We would like you to tell us about what happened to you when you traveled to the U.S.”

3a. Can you tell me why you left your country?

- ☐ To find work
☐ To join family
☐ To join romantic partner (spouse/girlfriend/boyfriend)
☐ To escape abuse by family or someone else you know
☐ To escape conflict/violence/persecution
☐ Other [fill in]: _____

3b. What country did you live in for at least 3 months before you came to the U.S.?

[INTERVIEWER: If client has come to the U.S. more than once, probe to make sure client refers to most recent place of residence]

3c. In what year was your most recent arrival to the U.S.? _____(YYYY)

[INTERVIEWER: If client has come to the U.S. more than once, you can ask them about other entries to the U.S. if relevant.]

If you don't know exactly when you arrived in the U.S., about how long have you been here [check one]?

- ☐ Less than 1 year ☐ 1 year ☐ 2 years ☐ 3 years ☐ 4 years ☐ 5 to 10 years ☐ More than 10 years

3d. Did anyone arrange your travel to the U.S.?

- ☐ No
☐ Yes **Can you tell me who?**

What did they do?

3e. Did the people or person who arranged your travel pressure you to do anything (for example, did anyone ask you to carry something across the border)?

[REPHRASE: Did you have to do anything so that they would help you?]

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- ☐ No
☐ Yes **What were you pressured to do?**

3f. Can you tell me the total cost (approximately) of your migration: _____

[REPHRASE: How much did you pay to come to the U.S.?)

What did the payment cover (e.g., transportation such as airplane or bus tickets, documents, work placement)? _____

3g. Did you (or your family) borrow or owe money, or something else, to anyone who helped you come to the U.S.?

[INTERVIEWER: Probe for something else owed, such as property, a house, or land]

- ☐ No
☐ N/A
☐ Yes **Do you (or your family) still have this debt, or does anyone claim you do?** ☐ No ☐ Yes

[INTERVIEWER: Record volunteered information here]

3h. If you did borrow or owe money, have you ever been pressured to do anything you didn't want to do to pay it back?

- ☐ No
☐ N/A
☐ Yes **If you are comfortable telling me, what kinds of things were you pressured to do that you didn't want to do?**

Could you describe how you were pressured?

3i. INTERVIEWER: If client offered additional information about debts or other victimization related to migration, record it here _____

DISCLAIMER

Work

INTERVIEWER READ: “Now I’m going to ask you some questions about work you’ve done *in the United States* and people you have worked for and with. I’m particularly interested in any kind of work you’ve done in which you felt that you did not get paid as much as you should, or if you felt scared or unsafe while working. This includes jobs that were not ‘official’ in regular workplaces. Remember, everything you tell me is confidential and you do not have to answer any questions that you don’t want to answer.”

4a. How have you supported yourself while in the U.S.? *[REPHRASE: How have you paid for food, housing and other items in the U.S?]*

4b. Have you worked for someone or done any other activities for which you thought you would be paid?

[INTERVIEWER: This could include activities like unpaid domestic work that might not be readily defined as “work” and should only detail those jobs in which the person felt unsafe or did not get paid what the person felt he/she should.]

☐ No

☐ Yes **What kind(s) of work or activities were you doing?**

How did you find out about these jobs/activities? *[INTERVIEWER: probe for details, especially as they deal with recruitment from abroad]*

DISCLAIMER

4c. Have you ever worked [or done other activities] without getting the payment you thought you would get?

[INTERVIEWER: You do not need to say "done other activities" if unnecessary and the client understands work does not just mean formal work.]

☐ No

☐ Yes Was it the same work as you described above?

☐ No **What kind(s) of work or activities were you doing?**

☐ Yes **What payment did you expect and why?**

What did you receive?

4d. Did someone ever (check all that apply):

☐ withhold payment/money from you,

☐ give your payment/money to someone else

☐ control the payment/money that you should have been paid?, or

☐ none of the above

[INTERVIEWER: Record volunteered information here]

4e. Were you ever made to sign a document without fully understanding what it stated, for instance, a work contract?

☐ No

☐ Yes *[INTERVIEWER: Probe for details]* _____

4f. Have you ever worked [or done other activities] that were different from what you were promised or told?

☐ No

☐ Yes **What were you promised or told that you would do?**

What did you end up doing?

DISCLAIMER

4g. Did anyone where you worked [or did other activities] ever make you feel scared or unsafe?

- ☐ No
☐ Yes **Could you tell me what made you feel scared or unsafe?**

4h. Did anyone where you worked [or did other activities] ever hurt you or threaten to hurt you?

[INTERVIEWER: This could include any physical, sexual, or emotional harm]

- ☐ No
☐ Yes **Could you tell me what they did or said?**

4i. Did anyone where you worked [or did other activities] ever harm or threaten to harm people close to you, like family or friends?

[INTERVIEWER: This could include any physical, sexual, or emotional harm]

- ☐ No
☐ Yes **Could you tell me what they did or said?**

4j. Were you ever allowed take breaks where you worked [or did other activities], for example, to eat, use the telephone, or use the bathroom?

- ☐ No **What if you were sick or had some kind of emergency?**

What did you think would happen if you took a break?

- ☐ Yes **Did you have to ask for permission?**

What did you think would happen if you took a break without getting permission?

4k. Were you ever injured or did you ever get sick in a place where you worked [or did other activities]?

- ☐ No
☐ Yes **Were you ever stopped from getting medical care?** ☐ No ☐ Yes
If you feel comfortable, could you tell me more about what happened?

4l. INTERVIEWER: if client volunteered additional information relevant to trafficking victimization in a U.S. work context, record it here:

DISCLAIMER

Living and/or Working Conditions

INTERVIEWER READ: “Next, I have just a few more questions I’d like to ask about problems you may have had in your living or working situation in the United States.”

5a. When you were in that situation, were you living [or do you currently live]: *[INTERVIEWER: Should determine if client still in situation in question]*

- ☐ **by yourself,**
☐ **with your family, or**
☐ **with others? If others, who did you live with?** _____

5b. Do you live, or have you ever lived, in the same place where you work?

[INTERVIEWER: This could include activities like unpaid domestic work that might not be readily defined as “work”]

- ☐ **No**
☐ **Yes** *[INTERVIEWER: Record volunteered information here]* _____

5c. Have you ever felt you could not leave the place where you worked [or did other activities]?

[INTERVIEWER: Probe for situations where someone threatened to do something bad if client tried to leave.]

- ☐ **No**
☐ **Yes Could you tell me why you couldn’t leave?**

What do you think would have happened to you if you tried to leave?

5d. Have you ever worked [or did other activities] or lived somewhere where there were locks on the doors or windows or anything else that stopped you from leaving?

- ☐ **No**
☐ **Yes** *[INTERVIEWER: Record volunteered information here]* _____

5e. Did anyone at the place where you lived or worked [or did other activities] monitor you or stop you from contacting your family, friends, or others? *[REPHRASE: did you have to ask permission to contact your family, friends or others?]*

- ☐ **No**
☐ **Yes Could you tell me why not?**

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5f. Did anyone ever take and keep your identification, for example, your passport or driver's license?

☐ No

☐ Yes **Could you get them back if you wanted?** *[INTERVIEWER: Probe for details]* _____

5g. Did anyone ever force you to get or use false identification or documentation, for example, a fake green card?

☐ No

☐ Yes *[INTERVIEWER: Probe for details]* _____

5h. Did anyone where you worked [or did activities] ever tell you to lie about your age or what you did?

☐ No

☐ Yes **Could you explain why they asked you to lie?** _____

5i. Did anyone you ever worked [or did other activities] for or lived with threaten to report you to the police or other authorities?

[INTERVIEWER: If client is foreign-born, probe for threats of being reported to immigration authorities]

☐ No

☐ Yes *[INTERVIEWER: Probe for details]* _____

5j. Did you ever see anyone else at the place where you lived or worked [or did other activities] harmed, or threatened with harm?

[INTERVIEWER: This can include any physical, sexual, or emotional harm]

☐ No

☐ Yes **If you are comfortable talking about it, could you tell me what happened?** _____

5k. Did anyone where you worked [or did other activities] ever trick or pressure you into doing anything you did not want to do?

☐ No

☐ Yes **If you are comfortable talking about it, could you please give me some examples?** _____

DISCLAIMER

5l. Did anyone ever pressure you to touch someone or have any unwanted physical [or sexual] contact with another person?

☐ No

☐ Yes **If you are comfortable talking about it, could you tell me what happened?**

5m. Did anyone ever take a photo of you that you were uncomfortable with?

☐ No

☐ Yes **If you feel comfortable talking about this, could you tell me who took the photo?**

What did they plan to do with the photo, if you know?

[LAW ENFORCEMENT: If the respondent indicates that the photo was posted online, you should ask which website.]

Did you agree to this? ☐ No ☐ Yes

5n. Did you ever have sex for things of value (for example money, housing, food, gifts, or favors)?

[INTERVIEWER: Probe for any type of sexual activity]

☐ No

☐ Yes **Were you pressured to do this?** ☐ No ☐ Yes

Were you under the age of 18 when this occurred? ☐ No ☐ Yes

5o. Did anyone where you worked [or did other activities] ever take your money for things, for example, for transportation, food, or rent?

☐ No

☐ Yes **Did you agree to this person taking your money?** ☐ No ☐ Yes

Could you describe this situation?

5p. Did anyone you ever worked [or did other activities] for or lived with control how much food you could get?

☐ No

☐ Yes **Did you get enough food?** ☐ No ☐ Yes

5q. Did anyone you ever worked [or did other activities] for or lived with control when you could sleep?

☐ No

☐ Yes **Did you get enough sleep?** ☐ No ☐ Yes

5r. In this situation, did language difficulties ever prevent you from seeking help when you needed it?

☐ No

DISCLAIMER

5s. INTERVIEWER: *if client volunteered additional information relevant to force, fraud or coercion in a work or living situation in the U.S., record it here: -*

Finishing the Interview

[INTERVIEWER: Please tell client what services are available at [organization]]

Do you want me to ask someone else at (this agency) to get more help for you? ☐ No ☐ Yes

INTERVIEWER: Tell client the interview is over. Thank the client for their time.

DISCLAIMER

Post-interview Assessment (to be completed by the interviewer)**6a. Note any nonverbal indicators of past victimization:**

6b. Note any indicators that responses may have been inaccurate:

6c. Indicate the likelihood that the client is a victim of trafficking:
☐ certainly not ☐ likely not ☐ uncertain either way ☐ likely ☐ certainly
6d. Briefly state up to three reasons for your rating:(1)

(2)

(3)

6e. What kind of service referrals, if any, will you make for the client?(1)

(2)

(3)

(4)

(5)

6f. Additional notes:

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Trafficking Victim Identification Tool (TVIT) Short Version

Screening purpose. This screening tool is intended to be used as part of a regular intake process or as part of enrollment for specific programs. In order for the results to be valid, the screening should be administered according to pre-arranged protocols, *whether or not the client is believed to be a victim of human trafficking*. Please refer to the *User Guide* for directions on using this screening tool.

Screening timing. Since each agency's intake process is unique, agencies should determine how to best integrate this screening tool with their other intake forms or procedures. Whatever the timing and context of the interview, please begin and end with comfortable topics of conversation to minimize the client's discomfort.

Deferred/Suspended Screening. In some cases the intake process extends beyond the first meeting with the client. Service providers may sometimes choose to postpone sensitive screenings, judging that clients are not yet ready to disclose or discuss experiences of victimization and would prefer to continue the interview at a later date. If in the course of an interview the client shows acute signs of anxiety, ask the client if s/he would prefer to stop the interview and resume it at a later time.

Date of interview: _____

Interviewer: _____

Demographic information: The following are suggested basic demographic questions. You may wish to supplement these with your agency's routine demographic or introductory questions.

Sex of client: female _____ male _____ other _____

Age/birth date of client: _____

Number of years of schooling completed: _____

Client's preferred language: _____

Country of birth: _____

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If client answers outside the U.S., please ask migration questions

Migration

1. In what year was your most recent arrival to the U.S.? _____(YYYY)

[INTERVIEWER: If client has come to the U.S. more than once, you can ask them about other entries to the U.S. if relevant.]

If you don't know exactly when you arrived in the U.S., about how long have you been here?

☐ Less than 1 year ☐ 1 year ☐ 2 years ☐ 3 years ☐ 4 years ☐ 5 to 10 years

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2. Did anyone arrange your travel to the U.S.?

- ☐ No
- ☐ Yes **Can you tell me who?** _____
What did they do? _____

3. Did you (or your family) borrow or owe money, or something else, to anyone who helped you come to the U.S.? *[INTERVIEWER: Probe for something else owed, such as property, a house, or land]*

- ☐ No
- ☐ N/A
- ☐ Yes **Do you (or your family) still have this debt, or does anyone claim you do?** ☐ No ☐ Yes
[INTERVIEWER: Record volunteered information here]

4. If you did borrow or owe money, have you ever been pressured to do anything you didn't want to do to pay it back?

- ☐ No
- ☐ N/A
- ☐ Yes **If you are comfortable telling me, what kinds of things were you pressured to do that you didn't want to do?**

Could you describe how you were pressured?

Working/Living conditions

5. Have you worked for someone or done any other activities for which you thought you would be paid?

[INTERVIEWER: This could include activities like unpaid domestic work that might not be readily defined as "work" and should only detail those jobs in which the person felt unsafe or did not get paid what the person felt he/she should.]

- ☐ No
- ☐ Yes **What kind(s) of work or activities were you doing?**

How did you find out about these jobs/activities? *[INTERVIEWER: probe for details, especially as they deal with recruitment from abroad]*

DISCLAIMER

6. Have you ever worked [or done other activities] without getting the payment you thought you would get? *[INTERVIEWER: You do not need to repeat "done other activities," if unnecessary and the client understands work does not just mean formal work.]*

☐ No

☐ Yes Was it the same work as you described above?

☐ No **What kind(s) of work or activities were you doing?**

☐ Yes **What payment did you expect and why?**

What did you receive?

7. Did someone ever (check all that apply):

☐ withhold payment from you,

☐ give your payment to someone else, or

☐ control the payment that you should have been paid?

☐ none of the above

[INTERVIEWER: Record volunteered information here]

8. Have you ever worked [or done other activities] that were different from what you were promised or told?

☐ No

☐ Yes **What were you promised or told that you would do?**

What did you end up doing?

9. Did anyone where you worked [or did other activities] ever make you feel scared or unsafe?

☐ No

☐ Yes **Could you tell me what made you feel scared or unsafe?**

10. Did anyone where you worked [or did other activities] ever hurt you or threaten to hurt you?

[INTERVIEWER: This could include any physical, sexual, or emotional harm]

☐ No Yes **Could you tell me what they did or said**

☐

DISCLAIMER

11. Were you allowed take breaks where you worked [or did other activities], for example, to eat, use the telephone, or use the bathroom?

☐ No **What if you were sick or had some kind of emergency?**

What did you think would happen if you took a break?

☐ Yes **Did you have to ask for permission?** _____
What did you think would happen if you took a break without getting permission?

12. Were you ever injured or did you ever get sick in a place where you worked [or did other activities]?

☐ No

☐ Yes **Were you ever stopped from getting medical care?** ☐ No ☐ Yes
If you feel comfortable, could you tell me more about what happened?

13. Have you ever felt you could not leave the place where you worked [or did other activities]?

[INTERVIEWER: Probe for situations where someone threatened to do something bad if client tried to leave.]

☐ No

☐ Yes **Could you tell me why you couldn't leave?**

What do you think would have happened to you if you tried to leave?

14. Did anyone where you worked [or did other activities] tell you to lie about your age or what you did?

☐ No

☐ Yes **Could you explain why they asked you to lie?**

15. Did anyone where you worked [or did other activities] ever trick or pressure you into doing anything you did not want to do?

☐ No

☐ Yes **If you are comfortable talking about it, could you please give me some examples?**

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16. Did anyone ever pressure you to touch someone or have any unwanted physical [or sexual] contact?

☐ No

☐ Yes **If you are comfortable talking about it, could you tell me what happened?**

17. Did anyone ever take a photo of you that you were uncomfortable with?

☐ No

☐ Yes **If you feel comfortable talking about this, could you tell me who took the photo?**

What did they plan to do with the photo, if you know?

[LAW ENFORCEMENT: If the respondent indicates that the photo was posted online, you should ask which website.]

Did you agree to this? ☐ No ☐ Yes

18. Did you ever have sex for things of value (for example money, housing, food, gifts, or favors)?

[INTERVIEWER: Probe for any type of sexual activity]

☐ No

☐ Yes **Were you pressured to do this?** ☐ No ☐ Yes

Were you under the age of 18 when this occurred? ☐ No ☐ Yes

19. Did anyone take and keep your identification, for example, your passport or driver's license?

☐ No

☐ Yes **Could you get them back if you wanted?** *[INTERVIEWER: Probe for details]*

20. Did anyone where you worked [or did other activities] ever take your money for things, for example, for transportation, food, or rent?

☐ No

☐ Yes **Did you agree to this person taking your money?** ☐ No ☐ Yes

Could you describe this situation?

DISCLAIMER

Post-interview Assessment (to be completed by the interviewer)**6a. Note any nonverbal indicators of past victimization:**

6b. Note any indicators that responses may have been inaccurate:

6c. Indicate the likelihood that the client is a victim of trafficking:
☐ certainly not ☐ likely not ☐ uncertain either way ☐ likely ☐ certainly
6d. Briefly state up to three reasons for your rating:

- (1)

- (2)

- (3)

6e. What kind of service referrals, if any, will you make for the client?

- (1)

- (2)

- (3)

- (4)

- (5)

6f. Additional Notes:

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Training and Other Resources

To access trainings about human trafficking, please visit the following websites:

- ✓ Polaris Project Trainings: <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/access-training>
- ✓ Office of Justice Programs Trainings: <http://www.ojp.usdoj.gov/specialfocus/humantrafficking/training.htm>

Another very good resource for attorneys is the Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims, edited by Jill Laurie Goodman and Dorchon A. Leidholdt, published by the Supreme Court of the State of New York, Appellate Division, in 2011. A version of the manual in PDF form is available at: www.nycourts.gov/ip/womeninthecourts/publications.shtml.

Many states and localities have existing referral networks that will provide trafficking victims and survivors with much needed services and resources. Users of the screening tool should explore what is available in their area before embarking on identification efforts. As suggested by the 2013 Trafficking in Persons Report, "clear guidelines on how to proceed when someone suspects a case of trafficking, including whether and how to approach a possible victim, and what to expect if a case goes forward, greatly improve the effectiveness of victim identification efforts."⁵ It is important to plan for comprehensive services to ensure that victims' needs are met once they are identified.

For possible referral and other resources, please visit the websites below for information:

- ✓ <http://www.polarisproject.org/state-map> (state by state map of available NGOs and other anti trafficking resources)

The National Human Trafficking Resource Center (NHTRC) is a toll-free hotline in the United States and is reached by calling 1-888-373-7888 or e-mailing NHTRC@PolarisProject.org. The NHTRC operates 24 hours a day, seven days a week, every day of the year.

If referral networks are not well established in your area, this list may help you connect to other resources: <http://www.polarisproject.org/resources/referrals>

⁵ U.S. Department of State. (2013). *Trafficking in Persons Report*. Washington, D.C., p.15.

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Explore the following Federal resources for information about obtaining services for pre- certified victims of human trafficking. (For more on certification please see pp. 19-20):

ACF: Fact Sheet – National Human Trafficking Resource Center

The Office of Refugee Resettlement (ACF) offers a fact sheet on the National Human Trafficking Resource Center and how the national hotline works. Information on how to make a call and how the NHTRC functions in reporting possible trafficking. Tips on how to get involved in reporting trafficking. <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-national-human-trafficking-resource-center>

International Organization of Migration

The "Caring for Victims of Trafficking" handbook provides practical, non-clinical guidance for health care providers in the identification of victims of human trafficking. http://publications.iom.int/bookstore/free/CT_Handbook.pdf

Office of Justice Programs

The Office of Justice lists resources for victims of sex trafficking under their resources for Sexual Assault Response Teams. Listed are fact sheets and materials for download, organizations and programs for reference, web sites that offer other resources and training, and hotlines to report potential cases. <http://ovc.ncjrs.gov/sartkit/focus/culture-tv-d.html>

U.S. Department of Justice - National Criminal Justice Reference Service

Sexual Assault Nurse Examiner (SANE) programs have been established to train nurses to provide services that went beyond examination of the sexual assault to sexual assault victims, emphasizing crisis intervention and supportive counseling in the ER setting, and continuing with follow up counseling by specially trained nurse counselors. Evaluation toolkit to evaluate sexual assault nurse examiner (SANE) programs in the criminal justice system. Free pdf. <https://www.ncjrs.gov/pdffiles1/nij/grants/240917.pdf>

U.S. Department of Justice – Office for Victims of Crime

Development and operation guide - overview of SANE programs. Offers training, staffing, and other program recommendations. <http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>

U.S. Department of Labor

Offers a free online course to businesses interested in learning more about human trafficking and what they can do to help combat it. UN.GIFT's e-learning tool on human trafficking features three modules: (1) What is human trafficking? (2) Why is human trafficking an issue for businesses? and (3) What can business do to address human trafficking? http://www.dol.gov/ilab/child-forced-labor/step4/step4_4.htm

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U.S. Department of State

U.S. Department of State lists national hotlines to report domestic trafficking. Each listing explains who the hotline is for, what they do, why to call, and how to report domestic trafficking. The National Human Trafficking Resource Center, Department of Homeland Security, Department of Justice, Department of Labor, and National Center for Missing & Exploited Children are listed.

<http://www.state.gov/j/tip/id/domestic/index.htm>

Department of Health and Human Services (HHS)

HHS Services Grants provide funding for comprehensive case management services to foreign-born victims and potential victims of trafficking seeking HHS certification in any location in the United States. Grantees provide case management to assist a victim of trafficking to become certified, and other necessary services after certification, through a network of non-governmental service organizations in locations throughout the country. They also streamline support to help victims of human trafficking gain timely access to shelter, legal assistance, job training, and health care. Please contact the grantees regarding services for a client or to obtain more information. Below is a list of some HHS Service Grantees and contact information:

- U.S. Committee for Refugees and Immigrants (USCRI)
Contact information: 1-800-307-4712 or traffickingvictims@uscridc.org
- Heartland Human Care Services: Contact information: 1-800-837-5345
- Tapestry, Inc.: Contact information: 404-299-2185

Office for Victims of Crime

The U.S. Department of Justice's (USDJO) Office of Victims of Crime (OVC) provides services for pre-certified trafficking victims. Services include housing or shelter; food; medical, mental health, and dental services; interpreter/translator services; criminal justice victim advocacy; legal services; social services advocacy; literacy education; and/or employment assistance.

Please see <http://www.ojp.usdoj.gov/ovc/grants/traffickingmatrix.html> for more. In addition, OVC's Online Directory of Crime Victim Services identifies local organizations providing services for crime victims: <http://ovc.ncjrs.gov/findvictimservices/>.

Resources for Pre-Certified Victims Adapted from

http://www.acf.hhs.gov/sites/default/files/orr/traffickingservices_0.pdf

Pre-certified victims are persons who are neither U.S. citizens nor Lawful Permanent Residents ("foreign victims") and who have not yet received a Certification Letter from the U.S. Department of Health and Human Services (HHS) allowing them to access federally funded benefits and services to the same extent as refugees. There are many resources available to pre-certified victims, and many nongovernmental organizations (NGOs) are knowledgeable about community resources to assist victims. Local resources that NGOs may be able to help victims access include food pantries and thrift

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stores for clothing, women's and youth shelters, community health clinics, legal aid clinics, faith-based aid organizations, job training programs, general education and transportation services, and crime victim compensation programs.

Certification: Adapted from <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-certification-for-adult-victims-of-trafficking>

Certification allows adult victims of trafficking who are not U.S. citizens or Lawful Permanent Residents (LPRs) to be eligible to receive benefits and services under any Federal or state program or activity to the same extent as a refugee. Victims of trafficking who are U.S. citizens or LPRs do not need certification to receive benefits because they may already be eligible for many benefits. To receive certification, a person who is 18 years of age or older must:

- ✓ Be a victim of a severe form of trafficking as defined by the TVPA¹
- ✓ Be willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking or be unable to cooperate due to physical or psychological trauma; and
- ✓ Have made a bona fide application for a T visa that has not been denied; or
- ✓ Have received Continued Presence (CP) from the Department of Homeland Security (DHS) in order to contribute to the prosecution of traffickers in persons.

Once a person has met the requirements listed above, he or she can receive a Certification Letter from the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). The certification process typically takes only a few days after ORR is notified by DHS that a person has made a bona fide application for a T visa or has been granted CP. Certification Letters do not expire but many benefits are time-limited. Foreign child victims of trafficking (under the age of 18) do not need to be certified to receive benefits and services. ORR will instead issue a letter stating that a child is a victim of a severe form of trafficking and is eligible for benefits and services. (See Rescue & Restore Fact Sheet on Child Victims and ORR State Letter #10-05 for more information.) For more information on how to obtain certification or what federal programs are available both to certified and non-certified victims, please see pages 12-30 of http://www.acf.hhs.gov/sites/default/files/orr/trafficking-services_0.pdf.

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Definitions of human trafficking in the United States

FEDERAL LAW

18 U.S.C. § 1589 — Forced Labor

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means —

- (1)** by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- (2)** by means of serious harm or threats of serious harm to that person or another person;
- (3)** by means of the abuse or threatened abuse of law or legal process; or
- (4)** by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

(c) In this section:

- (1)** The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- (2)** The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than twenty years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

18 U.S.C. § 1591 — Sex Trafficking of Children or by Force, Fraud, or Coercion

(a) Whoever knowingly —

- (1)** in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
- (2)** benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud,

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coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of eighteen years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is —

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of fourteen years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than fifteen or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of fourteen years but had not attained the age of eighteen years at the time of such offense, by a fine under this title and imprisonment for not less than ten years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of eighteen years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed twenty years, or both

(e) In this section:

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “coercion” means —

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

(4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(5) The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

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B. Legal Quick Tips: Analyzing and Understanding “Severe form of trafficking in Persons,” *Coalition to Abolish Slavery & Trafficking (CAST)*

LEGAL QUICK TIPS

Cast

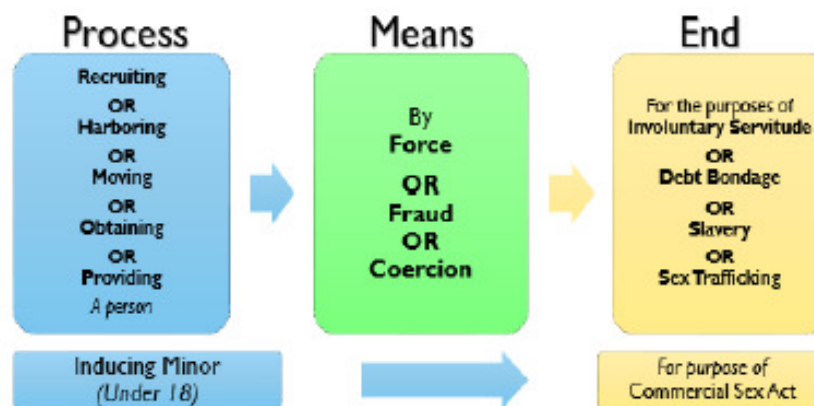
ANALYZING AND UNDERSTANDING “SEVERE FORM OF TRAFFICKING IN PERSONS”
June 2017

FEDERAL DEFINITION OF HUMAN TRAFFICKING

Advocates utilize the federal legal definition of “severe form of trafficking in persons” [under 22 USC §7102\(9\)](#) to identify whether an individual is a victim of human trafficking. Under the federal definition, the term “severe forms of trafficking in persons” means:

- (A) 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 has not attained 18 years of age; or
- (B) 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.¹

To simplify the understanding of severe form of trafficking in persons, CAST uses the Process-Means-End (PME) Model to determine whether a person is a victim of human trafficking.² Each column of the PME model represents an element of the federal definition of severe form of trafficking in persons. If a single element from each of the Process, Means, and Ends columns is present, then the client can be identified as a victim of severe form of trafficking in persons for T-Visa purposes or any reason requiring the determination of a person a victim of severe form of trafficking.³



¹Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000. See also [8 CFR 214.11](#).

²Other partner agencies use a similar model called the Action-Means-Purpose model which is available on the [Polaris Project website](#).

³In the federal definition of trafficking, severity does not depend on the type of the abuse, length of time in trafficking, etc. To be a victim of “severe form of trafficking in persons,” the person need only meet the elements of the definition under [22 USC §7102\(9\)](#) as modeled in the PME chart.

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LEGAL QUICK TIPS

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A person **MUST** be able to prove at least one element in each column unless the person is a minor engaged in commercial sex. An individual under the age of 18 engaged in commercial sex is considered a victim of sex trafficking regardless of the presence of force, fraud or coercion so long as they were induced into the commercial sex act.

P-M-E MODEL BROKEN DOWN

WHAT IS PROCESS?

The “process” column of the P-M-E model is asking what processes the traffickers used to acquire the person for the purposes of human trafficking. In other words, how did the client end up in the trafficking situation?

PROCESS ELEMENT	EXAMPLE
RECRUITING	Encouraging or soliciting a person to take a job
HARBORING	To conceal and hold someone in a place
MOVING/TRANSPORTATION	Transporting someone (no requirement of the distance traveled; does not need to cross country border)
OBTAINING	The literal treatment of an individual as a product (e.g., purchasing individual for commercial sex)
PROVIDING	The literal treatment of an individual as product (e.g., selling someone for commercial sex)
INDUCING	Persuading or encouraging someone to engage in commercial sex

WHAT IS MEANS?

The “means” column describes the tactics the trafficker used to keep the individual in the trafficking situation.

MEANS ELEMENT	EXAMPLE
FORCE	The physical things used to prevent the person from leaving. For example physical beating, locks, barbed wire surrounding the compound, etc.
FRAUD	The lies and deceit used to keep the person from leaving their situation
COERCION ⁴	The psychological things used to prevent the person from leaving: threats of harm, threats of deportation. Coercion is defined in 22 U.S.C. § 7102(3)

⁴ See legal definition of coercion, 22 U.S.C. § 7102(3); See also legal definition of serious harm, 18 USC § 1589 Forced Labor, 18 USC § 1591, Sex Trafficking; see also legal definition of threat of abuse of legal process, 18 USC § 1589 Forced Labor, 18 USC § 1591, Sex Trafficking

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LEGAL QUICK TIPS



WHAT IS END?

The “end” column describes the intended purpose of why the person was obtained. Each of the “end” elements have legal definitions.

ENDS ELEMENT	DEFINITION/EXAMPLE
INVOLUNTARY SERVITUDE ⁵	A condition of servitude induced by means of— (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm ⁶ or physical restraint; or (B) the abuse or threatened abuse of the legal process. ⁷
DEBT BONDAGE ⁸	Debt bondage is also considered bonded labor. In cases of debt bondage, the debt has to be used to coerce someone to work. The debt can have an exorbitant interest or keep increasing due to large fees.
COMMERCIAL SEX ACT ⁹	Sex in exchange for something of value is given to or received by any person. This can be money, food, or housing.

Although slavery¹⁰ and peonage¹¹ are also enumerated “ends” in the federal definition of severe form of trafficking in persons, these definitions are antiquated and narrow definitions. As a result, advocates utilize the legal definition of debt bondage instead of peonage and prefer to utilize the legal definition of involuntary servitude as opposed to slavery in the identification analysis.

Please review the legal definitions for additional information and clarification.

ADDITIONAL ASSISTANCE

For further technical assistance on the identification of trafficking survivors, please email technicalassistance@castla.org.

⁵ [22 USC § 7102\(6\)](#)

⁶ [18 USC § 1589\(c\)\(2\) Forced Labor](#); [18 USC § 1591\(e\)\(4\) Sex Trafficking](#)

⁷ [22 USC § 7102\(1\)](#); [18 USC § 1589\(c\)\(1\) Forced Labor](#); [18 USC § 1591\(e\)\(1\) Sex Trafficking](#)

⁸ [22 USC § 7102\(5\)](#)

⁹ [22 USC § 7102\(4\)](#)

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II. Trauma Informed Care

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A. A Rights-Based Approach to Combating Human Trafficking, *Freedom Network USA*



FREEDOM NETWORK USA: A RIGHTS-BASED APPROACH TO COMBATING HUMAN TRAFFICKING *Updated April 2015*

The Freedom Network was established in 2001 by a group of organizations and individuals who bring decades of experience from a diverse set of backgrounds, such as immigrant women and children's rights, victim and social services, migrant farm worker advocacy, and human rights activism. The Freedom Network recognizes that human trafficking is fueled by complex and interconnected factors, including poverty and economic injustice, racism, gender-based discrimination, and political strife. At its core, the crime of trafficking is a violation of an individual's basic rights and personal freedom. Thus, we believe that a rights-based approach is fundamental to combating human trafficking and ensuring justice for trafficked persons.

In practice, a true rights-based approach places a trafficked person's priorities and narrative at the center of anti-trafficking work. The model relies on voluntary, non-judgmental assistance with an emphasis on self-determination to best meet an individual's short- and long-term needs. This approach means allowing the trafficking survivor to accept or decline assistance, to receive culturally-competent services in a language he or she can understand, to have access to necessary reproductive health care, to decide whether or not to report the crime to law enforcement, to exercise victim witness rights, to sue the trafficker, and to participate in anti-trafficking leadership efforts if he or she chooses.

Our years of work with trafficked persons have shown that those served using a rights-based approach tend to regain trust, safety and self-sufficiency, and to more fully recover from their crime than those who do not. In contrast, those who are treated like criminals instead of victims, who feel that their needs are not being considered, that their stories are not believed, or that their decisions and actions are being judged, are more likely to abandon services and the criminal justice process altogether. This leads to poorer justice outcomes and increases the risk that the individual will return to the trafficker or will face other challenges to safety and well-being.

Given our understanding of these realities, the Freedom Network's rights-based approach takes many forms: client-centered service provision; dedicated criminal justice advocacy; representation of trafficked persons in civil litigation; evidence-based research and legislative advocacy; and survivor-led campaigns to end worker exploitation and economic injustice.

Client-Centered Service Provision

When Freedom Network Members begin working with a trafficking survivor, a detailed needs assessment is carried out with the client to develop an individualized service plan to meet his or her unique goals and needs. The Freedom Network's rights-based approach to anti-trafficking service provision is characterized by:

- A safe environment staffed by professionals who emphasize self-determination;
- Case confidentiality and client privacy given the highly publicized nature of trafficking cases and the complex safety concerns often present;
- Long-term case management services that are culturally-competent, linguistically-appropriate and take into account realistic timeframes of criminal and civil proceedings, immigration adjudication, and the family reunification or repatriation process;
- Referrals for medical, mental health, educational, employment, language training and rehabilitation services;
- Comprehensive legal assistance, such as applying for appropriate immigration relief, providing criminal justice advocacy, filing civil claims on behalf of trafficked persons, and advocating to dismiss or expunge convictions for acts committed while under the control of the trafficker;
- Opportunities for client leadership in anti-trafficking efforts.

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Criminal Justice Advocacy

Benefits and immigration relief options of trafficking victims are largely conditioned on victims' willingness to cooperate with law enforcement in the investigation and prosecution of their trafficker. We believe that a survivor's participation in criminal justice process can play a positive role in his or her recovery, but we also know how difficult cooperation can be. Freedom Network members have earned a reputation for being zealous advocates on behalf of their clients during the criminal justice process, by ensuring that witnesses are educated on their role, are kept informed of case developments, are treated with fairness and respect, and that their fears and concerns are addressed. Likewise, law enforcement officials involved in some of the highest profile criminal cases have praised Freedom Network advocates for their steadfast commitment to trafficking survivors in the face of long cases, for their sensitivity to the strict confidentiality required of advocates, and for their spirit of cooperation in pursuit of justice.

Freedom Network members have actively assisted in over 30 federal criminal cases of human trafficking by providing rights-based services and on-going criminal justice advocacy to the victim-witnesses involved or by supplying information and leads to law enforcement on trafficking schemes that led to successful human trafficking prosecutions.

U.S. v. Afolabi, et. al., U.S. v. Askarkhodjaev et. al, U.S. v. Brockett, U.S. v. Cadena-Sosa, et. al, U.S. v. Calimlim, U.S. v. Caretto, et. al, U.S. v. Chang, U.S. v. Cox and Myers, U.S. v. Cortes-Mestas, et. al, U.S. v. Cuello, U.S. v. Dann, U.S. v. Fang Ping Ding, U.S. v. Farrell, U.S. v. Flores, U.S. v. Gomez, U.S. v. Jimenez-Calderon, et. al., U.S. v. Kil Soo Lee, U.S. v. Mahtani Gobidram, U.S. v. Mammedov, et. al., U.S. v. Maksimenko et. al., U.S. v. Malcolm, U.S. v. Medrano, U.S. v. Molina, U.S. v. Mondragon, U.S. v. Mubang, U.S. v. Navarrete, et. al, U.S. v. Paoletti, U.S. v. Pauline, U.S. v. Pelayo, U.S. v. Perez, U.S. v. Ramos, U.S. v. Soto-Huarta, et. al., U.S. v. Tecum, U.S. v. Valle-Maldonado, U.S. v. Vazquez-Valenzuela, and U.S. v. Zavala.

Civil Litigation

In a number of important cases, ranging from domestic servitude at the hands of diplomats to debt bondage in the agricultural industry, Freedom Network providers have represented survivors in civil litigation against their traffickers. Civil representation offers justice to survivors whose trafficker otherwise might not face criminal charges or be held accountable for the egregious theft of wages and deprivation of liberty. Freedom Network members have pioneered civil litigation on behalf of trafficking survivors, such as authoring manuals and continually setting new records in obtaining the largest U.S. judgment to date awarded to a group of trafficked persons. Most recently in 2015, a Freedom Network member's representation of 600 survivors of labor trafficking led to a jury verdict of \$14.1 million dollars in damages, the largest U.S. judgment to date awarded to a group of trafficked persons.¹

Social Justice Advocacy

The Freedom Network likewise promotes policies that address the root causes of trafficking, guarantee the protections and rights of trafficked persons, and encourage the leadership of trafficking survivors in efforts to combat modern day slavery. Examples of the Freedom Network's advocacy work are:

- Filing a brief as *amicus curiae* in challenges to multiple state anti-immigrant laws before the U.S. Court of Appeals for the Eleventh Circuit;
- Continuing expansion of T-visa and U-visa protections;
- Participating in collaborative advocacy around domestic workers, temporary workers, and students (A-3/G-5/B-1, H-2A/H-1B/H-2B and J-1 visa holders), such as the drafting and release of the State Department's Nonimmigrant Temporary Worker's Rights, Protections and Resources Pamphlet;
- Forging worker-led campaigns to improve working conditions and wages for agricultural workers, resulting in crucial victories for workers in the food production industry;²
- Establishing a Leadership Development Training and a Survivor Advisory Caucus, two programs that empower trafficked persons to set their own advocacy priorities and to lend their voices to the realities of trafficking;³

By employing a variety of strategies to achieve a rights-based approach, the Freedom Network empowers human trafficking survivors and promotes policies that are consistent with their human rights.

¹ This distinction was first given to a Freedom Network member's representation of five survivors of labor trafficking in the case *John Does I-V v. Moises Rodriguez, et al.*, 06-cv-805 (D. Colo. 2009).

² See the Coalition of Immokalee Workers' website (<http://www.ciw-online.org>) for an overview of its worker-led campaigns.

³ See the Coalition to Abolish Slavery and Trafficking website for more information on its Survivor Advisory Caucus and Leadership Development Training for trafficked persons (castla.org/caucus-of-survivors).

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B. “Crime Victims Have the Right to Retained Counsel’s Presence During Investigative Interviews,” *National Crime Victim Law Institute*



AUGUST 2014

*Victim Law Position Paper**

LEGAL PUBLICATIONS PROJECT OF THE NATIONAL CRIME VICTIM LAW INSTITUTE AT LEWIS & CLARK LAW SCHOOL**

Crime Victims Have the Right to Retained Counsel’s Presence During Investigative Interviews

*Position Papers are essays in which NCVLI details its positions on cutting-edge victims’ rights issues to help ensure vigorous assertion and enforcement of victims’ rights.

** View NCVLI’s other legal publications at https://law.clark.edu/centers/national_crime_victim_law_institute/professional_resources/ncvli_library/

The Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771, grants victims of federal crimes a myriad of rights that are implicated at the earliest stages of investigation, including when victims are interviewed by law enforcement or other governmental agencies. Victims also have weighty constitutional and rule-based rights that may be implicated during an investigative interview. These rights, whether grounded in the Constitution, statutes, or rule make crime victims independent participants, rather than mere witnesses, in the criminal justice system.¹ These rights must be interpreted through the lens of due process; consequently, victims’ rights must be afforded in such a way that the rights are meaningful.² In the context of investigatory interviews, due process requires recognition of the right to the presence of retained counsel.

The Supreme Court first recognized a due process right to the assistance of counsel in 1932 in *Powell v. Alabama*,³ and although the context of the proceedings at issue in *Powell* today would be subject to analysis under the Sixth Amendment right of criminal defendants to counsel, commentators have recognized that “the concept of a right to counsel grounded on due process has continuing significance for other proceedings not encompassed by the Sixth Amendment.”⁴ In construing the requirements of due process, the Court has emphasized that “[d]ue process is flexible and calls for such procedural protections as the particular situation demands[.]” and that, a determination of whether procedural protections are constitutionally mandated “requires analysis of the governmental and private interests that are affected.”⁵ The factors to be considered include: (1) the private interests at stake in the official action; (2) the risk of an erroneous deprivation of the private interest through the procedures used and the probable value

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of any additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and any fiscal and administrative burdens that these procedures would create.⁶

Consideration of these factors makes clear that due process requires that investigatory agencies afford notice to victims of their right to have retained counsel present in investigatory interviews,⁷ and that they accommodate victims' counsel's presence at the interviews if the victims so choose. The private interests at stake are vast. In the federal criminal justice system, victims are afforded a number of statutory and rule-based rights that may be implicated in an investigatory interview, including, *inter alia*, to "be reasonably protected from the accused"; "reasonable, accurate, and timely notice" of a variety of proceedings; "confer with the attorney for the Government in the case"; and "be treated with fairness and with respect for the victim's dignity and privacy[.]"⁸ Other critical rights of constitutional dimension are also implicated during such investigatory interviews, including victims' rights to privacy,⁹ to access justice,¹⁰ and to be free from compelled self-incrimination.¹¹

Protecting victims' legal rights and interests implicated in such interviews requires special legal knowledge and analysis that may only be provided by victims' counsel.¹² Thus, there is a considerable risk that victims will be deprived of these rights if retained counsel is dissuaded or barred from being present during investigatory interviews. Notably, the administrative

and financial burden on the government to provide the process of notice of right to the presence of retained counsel and accommodation of such presence would be minimal; law enforcement and other investigative agencies would simply be required to inform the victim in advance of an interview of the victim's right to have his or her counsel present, and then accommodate such presence.¹³

Thus, due process requires that victims who have secured the assistance of counsel have the benefit of the attorney's knowledge and skills in asserting the victims' legal rights as part of investigatory interviews; to conclude otherwise is to deny the victims access to the very tools that are necessary to ensure that their rights are meaningful.¹⁴

¹ See *Kenna v. U.S. Dist. Ct. for the C.D. Cal.*, 435 F.3d 1011, 1016 (9th Cir. 2006) ("The statute [Crime Victims' Rights Act] was enacted to make crime victims full participants in the criminal justice system.").

² See, e.g., *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (observing that fundamental aspects of due process include the opportunity to be heard in a "meaningful manner" and to be treated fairly).

³ 287 U.S. 45 (1932).

⁴ 3 Wayne R. LaFare et al., *The Constitutional Rights to Retained and Appointed Counsel*, Crim. Proc. § 11.1(b), at 1 (3d. ed. 2013). Other Supreme Court decisions have described the right to retained and appointed counsel as resting on "'both equal protection and due process concerns.'" *Halbert v. Michigan*, 545 U.S. 600, 610 (2005) (quoting *M.L.B. v. S.L. J.*, 519 U.S. 102, 120 (1996)). The Court has further explained that: "The equal

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protection concern relates to the legitimacy of fencing out would-be appellants based solely on their inability to pay core costs,' while '[t]he due process concern homes in on the essential fairness of the state-ordered proceedings.'" *Id.* at 610-11.

⁵ *Mathews v. Elardige*, 424 U.S. 319, 334 (1976).

⁶ *Id.*

⁷ The United States Supreme Court has noted that at the core of notions of procedural due process is the idea that "parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must first be notified." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal citations omitted). See also *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (internal citations omitted) ("For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' These essential constitutional promises may not be eroded.").

⁸ 18 U.S.C. § 3771(a)(1), (2), (5), (8).

⁹ See, e.g., *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (noting that "[v]arious guarantees [in the Bill of Rights] create zones of privacy"); *Roe v. Wade*, 410 U.S. 113, 152 (1973) ("[T]he Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.").

¹⁰ Courts recognize the fundamental nature of the right of all people to access the courts. See, e.g., *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003) ("Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment."); *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (noting that

access to courts is a fundamental right).

¹¹ See *Miranda v. Arizona*, 384 U.S. 436, 470 (1966) (recognizing that the "need for counsel to protect the Fifth Amendment privilege [against self-incrimination] comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires"); see also *Hill v. State*, 847 So. 2d 518, 522 (Fla. Dist. Ct. App. 2003) (finding that the trial court did not err when it informed the victim—at the state's request—at an evidentiary hearing that she faced possible criminal exposure for perjury and advised her of her right to counsel and her right against self-incrimination related to an affidavit submitted to the court by defendant in which the victim recanted her trial testimony).

¹² Cf. ABA Formal Op. 95-396 (July 28, 1995) (observing that "[t]he legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel"; ABA Formal Op. 91-359 (Mar. 22, 1991) ("The profession has traditionally considered that the presumptively superior skills of the trained advocate should not be matched against those of one not trained in the law.").

¹³ See *Goldberg v. Kelly*, 287 U.S. 45, 68-69 (1932) (quoting *Powell v. Alabama* and observing that even in cases where an individual is not entitled to court-appointed counsel, he or she "must be allowed to retain an attorney if he [or she] so desires" and that the court did "not anticipate that this assistance will unduly prolong or otherwise encumber the hearing").

¹⁴ One concern that may be raised in connection with having victim counsel present during investigative interviews is whether the defendant or the prosecution will later be able to call the attorney as a witness in a criminal case. Although attorneys acting in the case are not incompetent witnesses, "courts are especially reluctant, and rightfully so, to allow lawyers . . . to be called as witnesses in trials in which they are advocates." *Gajewski v.*

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United States, 321 F.2d 261 (8th Cir. 1963). Given this reluctance, the general standard for allowing an attorney in the case to be called as a witness in federal courts is strict. Some courts find that an attorney in a criminal proceeding is a competent witness for the defense only where there is a “compelling and legitimate need” for the testimony. See, e.g., *United States v. Ragan*, 103 F.3d 1072, 1083 (2d Cir. 1997) (“A defendant who wishes to call a prosecutor as a witness must demonstrate a compelling and legitimate reason to do so.”); *United States v. Roberson*, 897 F.2d 1092, 1098 (11th Cir. 1990) (finding defendant did not establish a “compelling” need for prosecutor to be called as a witness). Similarly, other jurisdictions, including the Sixth Circuit, have found that defendant must demonstrate that “the evidence is vital to his case, and . . . his inability to present the same or similar facts from another source creates a compelling need for the testimony.” *United States v. Ziesman*, 409 F.3d 941, 950 (8th Cir. 2005) (citing *United States v. Watson*, 952 F.2d 982, 986-87 (8th Cir. 1991)); see also *United States v. Brothers*, 856 F. Supp. 388, 391 (M.D. Tenn. 1993) (stating that defendant must “exhaust other available sources of evidence before a court should sustain a defendant’s efforts to call a participating prosecutor as a witness”); *United States v. Atman*, No. 96-6648, 1998 U.S. App. LEXIS 7975, *11-12 (6th Cir. Apr. 22, 1998) (stating that a “defendant seeking to call the prosecutor as a witness must demonstrate that the prosecutor’s testimony is ‘vital’ to his case, and that he will be unable to present the same or similar facts from another source” and finding that the court did not abuse its discretion in concluding that defendant failed to produce evidence that calling the prosecutor was his only means of presenting relevant evidence in his defense). It is unlikely that the presence of a victim’s attorney during law enforcement interviews would create a “compelling need” for the attorney to testify at trial because other people would be present from whom the relevant testimony (if any) could be elicited—for instance, the investigating officers. See, e.g., *United States v. Ashman*, 979 F.2d 469, 494 (7th Cir. 1992) (finding there was no abuse of discretion in preventing defense from calling prosecutor as

a witness regarding defendant’s initial interview as an FBI agent was also in attendance who could testify about the interview); *Brothers*, 856 F. Supp. at 391 (finding attorney was not a necessary witness because “there were many other investigating agents present at [defendants’] proffer who can testify to what occurred during the meetings”). Notably, even if a court were to find that defense counsel or the prosecution had met the burden to call victim counsel as a witness at trial this would not defeat the victim’s right to have had counsel present in the first instance.

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NCVLI'S TOOLS: Legal Advocacy, Training & Education, and Public Policy



NATIONAL CRIME VICTIM LAW INSTITUTE

LEGAL ADVOCACY. We fight for victims' rights by filing amicus curiae (friend of the court) briefs in victims' rights cases nationwide. Through our National Alliance of Victims' Rights Attorneys (NAVRA), we also work to pair crime victims with free attorneys and work to ensure that those attorneys can make the best arguments possible. We do this by providing the attorneys with legal technical assistance in the form of legal research, writing, and strategic consultation.

TRAINING & EDUCATION. We train nationwide on the meaning, scope, and enforceability of victims' rights through practical skills courses, online webinars, and teleconferences. We also host the only conference in the country focused on victim law.

PUBLIC POLICY. We work with partners nationwide to secure the next wave of victims' rights legislation — legislation that guarantees victims substantive rights and the procedural mechanisms to secure those rights.

GET INFORMED & GET INVOLVED

ACCESS RESOURCES

Visit our online Victim Law Library, containing victims' rights laws from across the country, summaries of the latest court cases, and a variety of victims' rights articles and resources.

ATTEND A TRAINING

Join us at one of our online or in - person trainings on topics ranging from introduction to victims' rights to advanced litigation practice. We host trainings across the country and around the world.

STAY INFORMED & SPREAD THE WORD

Sign up to receive our updates and follow us on social media.



GIVE

Sponsor one of our victims' rights events or publications; give through your workplace campaign (CFC # 48652); or donate by mail or online.

VOLUNTEER

Fill out our online volunteer form for notifications regarding upcoming volunteer opportunities ranging from legal work to event organizing to outreach.

JOIN US

Become a member of our National Alliance of Victims' Rights Attorneys (NAVRA) - a membership alliance of attorneys, advocates, law students, and others committed to protecting and advancing victims' rights. Visit www.navra.org to learn more.

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III. Application Process

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A. Law Enforcement Cooperation

1. Administrative Appeals Office (AAO) Decision Dated June 21, 2011

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

DATE: **JUN 11 2011**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for T Nonimmigrant Status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(T)(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

erry Rhew
Chief, Administrative Appeals Office

www.uscis.gov

P
C

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Page 2

DISCUSSION: The Director, Vermont Service Center, ("the director") denied the application for T nonimmigrant status and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to the director for further action.

The applicant seeks nonimmigrant classification under section 101(a)(15)(T)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(T)(i), as a victim of a severe form of trafficking in persons. The director denied the application for failure to establish that the applicant had complied with any reasonable request from a law enforcement agency in the investigation or prosecution of the trafficking or a related crime.

On appeal, counsel submits a brief and copies of documents already included in the record. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Although the applicant has overcome the ground for denial on appeal, the application is not approvable because the applicant is inadmissible to the United States and her request to waive her inadmissibility was denied. Accordingly, the matter will be remanded to the director for further consideration and action.

Applicable Law

Section 101(a)(15)(T) of the Act provides, in pertinent part, that an applicant may be classified as a T-1 nonimmigrant if he or she is:

(i) [S]ubject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines –

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal[.]

DISCLAIMER

Page 3

Section 103(8) of the Trafficking Victims Protection Act of 2000 (TVPA), codified at 22 U.S.C. § 7102(8), defines the term "severe forms of trafficking in persons" as:

- A. 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 has not attained 18 years of age; or
- B. 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.

This definition is incorporated into the regulation at 8 C.F.R. § 214.11(a), which also defines, in pertinent part, the following term:

Reasonable request for assistance means a reasonable request made by a law enforcement officer or prosecutor to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The "reasonableness" of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.

The regulation at 8 C.F.R. § 214.11(l) prescribes, in pertinent part, the standard of review and the applicant's burden of proof:

- (1) *De nova review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application. . . . The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.
- (2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The applicant is a native and citizen of Ecuador. In these proceedings, the applicant states that her trafficker arranged to have her smuggled into the United States in approximately May 1999, when she was 17 years old. In March 2008, approximately two years after escaping her trafficker, the applicant presented herself to U.S. Immigration and Customs Enforcement (USICE) to provide information about her trafficker. USICE granted continued presence to the applicant that same month but declined to extend it because, according to USICE, the applicant failed to comply with some of the terms stipulated prior to her release on bond. The applicant filed the instant Form I-914 on October 2, 2009. The director subsequently issued a Request for Evidence (RFE) on December 29, 2009 and

Page 4

a Notice of Intent to Deny (NOID) the application on April 21, 2010 because the record contained information from USICE indicating that the applicant did not comply with reasonable requests for information from USICE in its investigations of the applicant's trafficker. Counsel responded to the RFE and NOID with additional evidence, which the director found insufficient to establish the applicant's eligibility. The director denied the application and counsel timely appealed on the applicant's behalf.

Compliance with Law Enforcement Requests

The statute requires that a T nonimmigrant demonstrate that he or she has complied with any reasonable request for assistance in the federal, state or local investigation or prosecution of acts of trafficking or the investigation of related crime. Section 101(a)(15)(T)(i)(III) of the Act, 8 U.S.C.

§ 101(a)(15)(T)(i)(III). A law enforcement agency (LEA) endorsement is not mandatory, but, when submitted, the endorsement will be considered primary evidence that an applicant has met this requirement. 8 C.F.R. § 214.11(h)(1). In the absence of an LEA endorsement, an applicant may submit credible secondary evidence and affidavits to show the nonexistence or unavailability of the LEA endorsement and to otherwise establish the alien's compliance with law enforcement requests. *Id.* at § 214.11(h)(2).

While the record in this case shows that USICE declined to provide an LEA endorsement for the applicant, the relevant evidence demonstrates that she complied with multiple requests for assistance in the investigation of her trafficker. Accordingly, the director's determination to the contrary will be withdrawn.

In her March 18, 2010 affidavit, the applicant stated that she began working in a brothel in Ecuador at the age of 13 due to her mother's and sisters' insistence, which is where she met her trafficker who asked her if she wanted to go with him to the United States. The applicant stated that in May 1999, when she was 17 years old, her trafficker arranged for her to be smuggled into the United States where she eventually was placed into a brothel in Newark, New Jersey. The applicant recounted that she attempted to escape on two occasions but was caught each time.

The applicant stated that approximately three or four years after she began working at the brothel, a man named [REDACTED] was hired as one of the watchmen. According to the applicant, she and [REDACTED] began a relationship that eventually led to [REDACTED] helping her escape from the brothel sometime in 2006. The applicant stated that she ceased living with Javier in 2007 because he beat her, so she began living with her sister in New York. According to the applicant, it was through a friend of her sister's that she made contact with social workers at [REDACTED] in January 2008, which led to her speaking with officers of USICE about her trafficking experiences. The applicant stated that USICE granted her continued presence through June 29, 2009.

The applicant described her interactions and interviews with USICE agents in May 2008, February 2009 and her final interview with them in July 2009. The applicant stated that she resumed living with [REDACTED] in May 2008 until November 2008 and also encouraged him to contact USICE agents, and it is her understanding that [REDACTED] provided USICE with information.¹ The applicant asserted

¹ The applicant moved back to her sister's house in November 2008 after leaving [REDACTED]

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Identification and Legal Advocacy for Trafficking Survivors

that she does not understand why USICE is claiming that she has not been helpful, as USICE agents always knew how to contact her either through her social workers at [REDACTED] or her attorney.

In his December 2009 RFE, the director informed the applicant that he had been notified by USICE that she was no longer cooperating with an investigation or prosecution of her trafficker. According to the director, a USICE agent stated that after her release from custody, the applicant had returned to New York and stopped complying with the terms that were stipulated prior to her release. The director noted that the USICE agent had been unable to contact the applicant for further information, which resulted in the closure of the case against the applicant's trafficker.

When responding to the RFE, the applicant submitted her March 18, 2010 affidavit, described above, as well as a February 16, 2010 letter from her social worker at [REDACTED] who provided the dates that she and the applicant had contact with an USICE agent, as well as a brief synopsis of what transpired during the meetings. Counsel, on the applicant's behalf, stated that the applicant had complied with reasonable requests for assistance from USICE. According to counsel, USICE's statement that it had been unable to contact the applicant was untrue, as USICE knew how to reach both the applicant's social worker and her attorney but never reached out to either of them to locate the applicant. While counsel does state that the applicant did not notify USICE when she moved back to her sister's house in November 2008, counsel maintains that the applicant did inform USICE of the move in February 2009 and USICE agents had not made an effort to contact the applicant during that three-month period.

In his April 21, 2010, NOID, the director informed the applicant that after consulting with USICE, he was not of the opinion that the applicant had been compliant in assisting law enforcement with prosecuting her traffickers. According to the director, the USICE agent who had been working with the applicant stated that the applicant's cooperation was never forthcoming and that, although the applicant was instructed to keep in contact with USICE, she apparently had not maintained such contact. The USICE agent further stated, according to the director, that attempts were made to contact the applicant, which included several trips to her residence in Newark, New Jersey; however, USICE agents had learned that the applicant had moved and could not obtain information about her whereabouts. The director stated that USICE's information conflicted with the applicant's statement and, therefore, the applicant was required to provide evidence from USICE to show that the applicant was cooperating in the prosecution of her trafficker. The director notified the applicant that any personal statements from the applicant, her attorney, or her social worker would not suffice in overcoming the intent of USCIS to deny the application. Counsel responded on the applicant's behalf by stating that it was inaccurate for USICE to state that the applicant's cooperation was never forthcoming. According to counsel, the applicant's affidavit contained a detailed account of her meetings with USICE agents and she encouraged [REDACTED] to contact USICE as well. Counsel states that requiring the applicant to obtain evidence from USICE to show that she was cooperative placed an undue and unrealistic burden on her, as it was apparent that USICE would not provide any such evidence.

Preliminarily, we note the director's error when he notified the applicant in the NOID that she would be required to submit evidence from USICE to establish that she complied with any reasonable request for assistance, and that any statements from her, her social worker, or her attorney would be insufficient. The regulation at 8 C.F.R. § 214.11(h)(2) allows the submission of credible secondary

DISCLAIMER



Page 6

evidence to establish an alien's compliance with law enforcement requests. By not allowing the applicant an opportunity to submit secondary evidence in response to the NOID, the director failed to comply with the applicable regulations.

The information from USICE regarding the applicant's failure to cooperate with its investigation does not outweigh the other evidence of the applicant's compliance with law enforcement requests for assistance. The information that the director received from USICE concerns USICE's inability to contact the applicant after her release from custody, and as well as the applicant's failure to comply with some of the terms stipulated at the time of her release. However, USICE provides no details regarding the terms that the applicant agreed to and subsequently violated upon her release, the dates or general timeframe of when the applicant was unable to be contacted, or how and when the applicant became uncooperative in the investigation after being granted continued presence.

Both the applicant and her social worker have credibly testified that meetings between the applicant and USICE agents took place in a period that spanned more than one year, and that at times USICE initiated the contact while other times it was either the applicant or the social worker who reached out to USICE agents. In her February 2010 letter, the social worker provides specific dates and a general synopsis of the applicant's contact with USICE, which shows three meetings with USICE agents in March 2008 and one meeting in April 2008, which resulted in USICE granting the applicant continued presence through June 29, 2009. According to the letter, the applicant's last meeting with USICE agents occurred in July 2009 after several telephone calls between the USICE agent and the social worker. In her March 2010 affidavit, the applicant also describes in detail her meetings with USICE agents, consistent with the social worker's letter. USICE's continued presence authorization stated that the applicant was "willing to assist in every reasonable way in the investigation and prosecution of a severe form of trafficking in persons." Although USICE did not renew the applicant's continued presence or provide an LEA endorsement for this application, the record lacks any evidence that USICE revoked its authorization of the applicant's continued presence throughout the year of its duration. The preponderance of the relevant evidence of record demonstrates that the applicant complied with reasonable requests for assistance in the federal investigation of acts of trafficking or a related crime, as required by section 101(a)(15)(T)(i)(III)(aa) of the Act. The director's determination to the contrary is hereby withdrawn.

Waiver of Inadmissibility

Although the applicant has established her statutory eligibility for T nonimmigrant status, her application is not approvable because she is inadmissible to the United States. T nonimmigrants must be admissible to the United States or show that any grounds of inadmissibility have been waived through the approval of a form I-192, Application for Advance Permission to Enter as Nonimmigrant. Section 212(d)(13) of the Act, 8 U.S.C. § 1182(d)(13); 8 C.F.R. §§ 212.16, 214.11G).

In this case, the record shows that the applicant entered the United States without inspection, and engaged in prostitution within 10 years of her entry in 1999. The applicant is consequently inadmissible to the United States under section 212(a)(6)(A) of the Act (alien present without admission or parole) and section 212(a)(2)(D)(i) of the Act (engaged in prostitution within 10 years of application). The director denied the applicant's Form I-192 waiver request because the

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underlying Form I-914 application for T nonimmigrant status was denied. No appeal lies from the denial of a Form I-192 filed in connection with a T nonimmigrant application and we have no jurisdiction to review the merits of the applicant's waiver request. 8 C.F.R. § 212.16(b)(4). However, as the sole ground for denial of the Form I-192 has been overcome on appeal, the matter will be remanded to the director for reconsideration of the applicant's Form I-192 waiver request.

Conclusion

As in all visa classification proceedings, the applicant bears the burden of proof to establish her eligibility for T nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(l)(2). On appeal, the applicant has met this burden in regards to her statutory eligibility for T nonimmigrant status. Accordingly, the decision of the director will be withdrawn and the matter will be returned to the director for reconsideration of the applicant's request for a waiver of inadmissibility.

ORDER: The September 22, 2010 decision of the director is withdrawn. The matter is returned to the director for reconsideration of the Form I-192 application.

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2. Law Enforcement Referral Form, **CAST**



Coalition to Abolish Slavery & Trafficking
CLIENT INTAKE & ASSESSMENT

Case #: _____

Date of referral:	CAST Staff:
Referent Name/Telephone:	
Referent Organization:	

First Name:		Last Name:	
Spouse/Children:			
Languages:			Interpreter: Y N
Age:	DOB:	Nationality:	Ethnicity:

Approx. Date of Escape:		From Who/Where:	
Type of Employment:		Approx. Length of Servitude:	
How Recruited:			
Agreed Transportation to US/fee:		Actual Transportation Fee:	
Other Agreed Fees:		Actual Fees:	
Agreed Conditions:		Actual Conditions:	
Agreed Salary/Payment:		Actual Salary/Payment:	
Approx. Date of Entry:		Entry Method (if known) i.e. Visa:	
Restriction of Movement: Y N		Documents Withheld: Y N	
Abuse: (circle) Physical Emotional Psychological Sexual			
Threats: Y N			
Any Current Threats/Fears: Y N Possible		Immediate Action Required: Y N	
Current Emergency/Social Service Needs:			
Trafficking/Forced Labor		Smuggling	
Assigned CAST Staff:		Labor Exploitation	

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Referred out to

(Agency/Telephone):

LEA Referral: FBI/AUSA/ICE/DOL/Other

Contact:

Trafficking

Insufficient Info

Servile Marriage

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3. Legal Quick Tips: Reporting Trafficking to Law Enforcement for T Visa Purposes, CAST

LEGAL QUICK TIPS



REPORTING TRAFFICKING TO LAW ENFORCEMENT FOR T VISA PURPOSES
October 2016

Under [8 CFR § 214.11](#)(f)(1) and (h), applicants for T visas are not required to have [a certification](#) for T visas purposes. The T visa certification is considered primary evidence that 1) the applicant is a victim of severe form of trafficking in persons and 2) that the applicant has complied with any reasonable request in the investigation or prosecution of the severe form of trafficking in persons of which the applicant was a victim.

The regulations also require that if an applicant has not had contact with law enforcement, they should promptly contact law enforcement to report the crime as well as ask for the law enforcement endorsement 8 CFR § 214.11(f)(4).

IMPORTANCE OF ACTING AS A VICTIM RIGHTS ATTORNEY IN T VISA CASES

With the rise of trafficking prosecutions and the increasing need for trafficking survivors to have wraparound legal assistance, attorneys working with trafficking survivors need to be prepared to take on the role of a [Victims' Rights Attorney \(VRA\)](#). Victims of crime have many rights on the [federal](#) and [state level](#) that need to be affirmatively asserted, either by the victim themselves or their legal representative.

Although the trafficking survivor themselves can affirmatively assert their victim rights, often trafficking survivors are unable to effectively articulate their rights or have outstanding issues of criminal liability (e.g. open bench warrants, active criminal cases against them) that prevent them from accessing and asserting their victim rights on their own.

If the survivor cannot assert their own rights, it is important to note that only an attorney who is licensed and authorized to practice law within the state may assert the survivor's victim rights on the survivor's behalf. Board of Immigration Appeals Accredited Representatives (BIA Reps) and attorneys not barred within the state cannot practice outside of federal law such as immigration law, including asserting state victim rights on behalf of their clients. Organizations working with victims of crime should consider this constraint when deciding who in the organization will represent trafficking survivors.

THINGS TO CONSIDER BEFORE REPORTING

While the T visa requires reporting your case to law enforcement, there are some things your client will need to consider before contacting any law enforcement agency (LEA). You should go over these benefits and consequences of reporting to LEA to ensure that your client is empowered to make an informed decision on whether they would like to report to law enforcement.

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- relief
- Path to seeking justice for the crime committed against them
- Potential for order of restitution
- May receive immunity or lower charges
- Other benefits client can think of

- survivors and especially survivors family in home country
- Trial is generally open to the public
- Once start the process US government is in control of the case NOT the victim
- Other challenges client can think of

Benefits

- Protect others from harm
- May be necessary for immigration relief
- Path to seeking justice for the crime committed against them
- Potential for order of restitution
- May receive immunity or lower charges
- Other benefits client can think of

Consequences

- Length of the criminal justice process
- Potential for increased threats to survivors and especially survivors family in home country
- Trial is generally open to the public
- Once start the process US government is in control of the case NOT the victim
- Other challenges client can think of

INITIAL REPORTING TO LAW ENFORCEMENT

CAST reports to our local Human Trafficking Task Force. Contact your local partners (legal service providers, social service providers, etc.) to find out who would be the most appropriate law enforcement agency (LEA) to report the case. These partners will be able to help you identify trained and trauma-informed LEA in your region. Before reporting the case, an attorney must have the consent of their client to provide any information and should take the steps to get a Release of Information before making contact with law enforcement. Reporting by email is the best way to track good faith cooperation with law enforcement for T visa purposes.

Initial emails reporting to law enforcement should be short and simple. A completed Factual Intake Form (available for [downloaded here](#)) is all the information needed to make a report for trafficking and begin the process for arranging an interview. While the factual intake has boxes to complete with our client's phone number and address, we do not distribute client contact information to law enforcement as we expect them to call the client's attorney to schedule any investigatory interviews. Written/e-mail communications to law enforcement officials should include minimal facts about your client's trafficking experience to ensure protection of privileged content and consistency of statements for potential criminal and or civil cases.

Attorneys should advise their clients that once the crime is reported to law enforcement, an agent or government attorney may contact the Victim Rights attorney to discuss additional details about the case; however, LEA may contact your client directly. In this case, attorneys should make sure they have advised their clients of their right to have an attorney present when they talk to a law enforcement officer.

The email samples below show good faith efforts in your client's attempt to cooperate with LEA. These emails should be attached to your attorney declaration in the T visa application if no law enforcement certification is obtained. A sample of the attorney declaration is included below.

REPORTING FOR T VISA PURPOSES

One of the benefits of a T visa over a U visa is that [a Form I-914B Law Enforcement Certification](#) is not required for the T visa, but good faith efforts to obtain the law enforcement certification must be made. Therefore, in addition to reporting the trafficking crime, you must also make a good faith effort

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to obtain the law enforcement certification, even if the LEA does not respond to any previous attempts to report the crime.

SAMPLE FIRST E-MAIL TO LAW ENFORCEMENT

From: Client's attorney
Sent: Wednesday, February 24, 2008
To: special_agent@fbi.gov, special_agent2@fbi.gov, ausa@usdoj.gov
Subject: New Referral for CLIENT NAME (D.O.B.: 01/01/2000)

Attachments: Referral Form-XXXX.doc (This is the completed factual intake form)

Please find attached the intake and referral form for CLIENT NAME (D.O.B.: 01/01/2000). CAST has identified CLIENT NAME as a victim of sex/labor trafficking. CLIENT NAME would like to report her case to law enforcement. Please contact me to arrange an interview with this individual.

FOLLOWING UP WITH LEA

CAST attorneys normally follow up with law enforcement approximately 2-3 weeks after the initial reporting to show continuous good faith in cooperation with LEA.

SAMPLE FOLLOW-UP EMAIL IF NO RESPONSE FROM LEA

From: Client's attorney
Sent: Tuesday, March 12, 2008
To: special_agent@fbi.gov OR ausa@usdoj.gov
Subject: RE: New Referral for CLIENT NAME (D.O.B.: 01/01/2000)

Attachments: Referral Form-XXX.doc

Just following up with you to see if and when you would like to interview the referral I sent you on February 24, 2008.

FOLLOW-UP EMAIL IF NO RESPONSE TO YOUR INTERVIEW REQUESTS:

After the initial reporting and the follow-up email, if you have still not received a response from law enforcement, you should still make one last attempt to follow up with the law enforcement agency with which whom you initially reported. In this follow up email, in addition to affirming your client's willingness to cooperation, you should also request that law enforcement to complete the Form I-914B.

SAMPLE FOLLOW-UP EMAIL REQUESTING CERTIFICATION

From: Client's attorney
Sent: Monday, April 12, 2008
To: special_agent@usdoj.gov
Subject: Request for LEA for XXX trafficking victim reported February 2008
Attachment: XX-LEAFBI.pdf

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I am contacting you again concerning CLIENT NAME, a domestic servitude/sex trafficking victim, I reported to you in February 2008. Please contact me at your earliest convenience to schedule an interview. I am also writing to request that you fill out the I-914 Supplement B form for the client's T-Visa application. The form is attached. Thanks in advance for your assistance with this matter. Please return this form to me at your earliest convenience

CAST attorneys usually partially complete the I-914B certification for their law enforcement partners for their convenience.

ATTORNEY DECLARATION

If you are unable to obtain a Law Enforcement Agency certification for your client, a declaration executed by the client's attorney must be submitted detailing what efforts were taken to report the crime and what efforts were made to obtain a law enforcement certification.

The Attorney's Declaration will be its own exhibit and should include print-outs of all email correspondence with the law enforcement official (FBI agent, DOJ attorney, sheriff, etc.) as attachments to the declaration. You should include proof that an actual request was made that the I-914B Form be completed on the client's behalf and attach this documentation.

The attorney declaration should also include the following information:

1. Introductory paragraph should state your name, title, organization/firm, and the state or territory you are licensed to practice law.
2. Brief background of your organization/firm.
3. If you have experience working with trafficking survivors, please give a brief summary.
4. The last section should state when you reported your client's trafficking and to which agencies. This section will vary depending on whether your client was granted an interview.
 - a. This section should emphasize the following:
 - The client reported the crime against her to law enforcement;
 - Whether your client was interviewed, declined the opportunity to interview, or you received no response to your requests;
 - Client remains ready and willing to cooperate in the investigation and prosecution of her trafficker.
 - That an I-914 Supplement B will be submitted if and when it is received.

To view a sample attorney declaration, [click here](#). Attorney declarations should NOT include facts related to the trafficking. Trafficking facts should be limited to the client's declaration.

ADDITIONAL TIPS

TIP #1: DO NOT WAIT TO FILE THE T VISA BECAUSE YOU HAVE NOT RECEIVED THE LAW ENFORCEMENT CERTIFICATION

CAST has not seen the inclusion of the certification to increase the chances of approval or to speed up the approval process. The biggest success factors in T visas are the quality of the declaration and the quality of the cover letter. Do **not** wait to file a T visa based on the law enforcement certification.

able to access federal benefits and receive work authorization.

TIP #2: THINK CAREFULLY BEFORE USING LAW ENFORCEMENT COOPERATION EXCEPTIONS

While there are exceptions to the law enforcement cooperation requirement for minors and those who have suffered physical/psychological trauma, attorneys should consider the best interests of their client beyond the initial T visa phase.

The 2 considerations that attorney should make are:

1. **If there are family members who wouldn't be eligible because of age-out, but can be eligible based on present danger of retaliation.** The [memo on T-6 and relatives](#) who are eligible under the “present danger of retaliation” standard notes that in order for these derivatives to be eligible, the applicant has to show cooperation with LEA. Though USCIS has been fairly lenient, the applicant still has to show their good faith efforts of cooperation with LEA.
2. **Whether your client wants to adjust early.** If your client does not report to LEA, then they have no opportunity to adjust early. Remember, your client **can** adjust early even if they're never interviewed with LEA as long as they have the letter from the [Department of Justice](#). This is an important reason as to why CAST attorneys generally advise all clients to report even if the client might meet an exception.

At the end of the day, attorneys should do as the client wishes. If the client will not move forward based on the need to cooperate with law enforcement, attorneys should use the exceptions so that their client can obtain T status.

TIP # 3: PREPARE YOURSELF AND THE CLIENT IN THE CHANCE YOU ARE CONTACTED BY LAW ENFORCEMENT FOR AN INVESTIGATORY INTERVIEW

Victims of crime have a right to be represented by their own attorney in an [investigatory interview](#). Attorneys should be prepared to attend the interview and to be able to assist their clients in [asserting their victim rights](#). Attorneys can use the [Interview Guide](#) to prepare the client for the interview. The interview guide covers topics such as explaining the criminal process, explaining the benefits of reporting and cooperating with law enforcement, as well as the interview process.

Following the interview, attorney should be sure that they have the interviewing officers' contact information so that they can follow up with law enforcement regarding next steps, request for Continued Presence, and requests for the law enforcement certification.

POST INTERVIEW FOLLOW UP

Attorneys should take the following steps after an investigatory interview:

- **Debrief with client:** Make the client is feeling okay and understands what the next steps are in the criminal process and that the investigation may not happen quickly or that LEA may request more information.

has their questions answered. Also, follow up with the client to see if there is additional information that they would like to provide law enforcement.

- **Re-advise client on confidentiality:** Remind clients they have the right to have their Victim Rights Attorney present during all communication with LEA. Also remind them that if they are contacted separately by a law enforcement officer, they can request that the officer contacts their VRA and they do not have to share confidential personal information with LEA. Lastly, remind clients to refrain from speaking to others about details of the criminal case for their own safety also avoid having people around them subpoenaed.
- **Discuss Safety Issues:** It is important to have case manager do safety planning with client, but also good to reinforce the safety plan with your client. Have conversations periodically with your client to be aware of all current safety concerns and have legal approach be reflective of client's safety concerns (i.e. restraining order needed; Safe at home needed, etc.)

TIP #4: WHEN REPORTING OLDER CRIMES, BE PREPARED TO ANSWER TO THE PHYSICAL PRESENCE AND EXTREME HARDSHIP ARGUMENTS

Generally, your agency's protocols for reporting trafficking crimes should be standard for old and new crimes. Make sure to discuss with your clients about their reasoning and expectation for reporting. If your client is seeking justice and wants prosecution, make sure that you report to the LEA with the highest chances of criminal prosecution.

Although the procedure on reporting older cases are similar, other potential hurdles for the T Visa exist. After being identified as a victim of trafficking, the applicant will still have to show they are "present on account of trafficking" under 8 C.F.R. § 214.11. The "present on account of trafficking" element speaks to why the victim is still present today in the US on account of trafficking. This can include whether they are here in the US to continue to receive vital social or legal services that they cannot receive in home country, or present to assist in criminal investigation/prosecution, and etc. Attorneys can also argue that the victim had no opportunity to depart the US due to fear of trafficker in home country, lack of means to return home, or other means to show that the victim never left the US.

The second place where you will have issues is in the extreme hardship argument. According to 8 CFR 214.11(i), the extreme hardship cannot be based on current or future economic harm, or disruption to social or economic opportunities alone. Attorneys will also want to paint the picture for the adjudicator about how their client will face unusual and severe harm if they are removed and forced to return to their home country. Applicants need to provide information that they cannot return to their home country because of these severe harms they will encounter if removed from the US. This can be difficult to do when a case is more than 10 years old.

LEGAL QUESTIONS

If you have further questions, please contact CAST's Technical Assistance Hotline at technicalassistance@castla.org.

B. Adjustment of Status

1. T Visa Adjustment of Status Checklist, *CAST*

Cast

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T VISA ADJUSTMENT OF STATUS APPLICATION CHECKLIST

Before filing for T Visa adjustment of status review [8 CFR § 245.23](#).

PRINCIPAL

- ☐ USCIS Forms (Download most recent forms on USCIS.gov)
 - o G-28 Notice of Entry of Appearance As Attorney
 - o I-912 Application for Fee Waiver
 - Derivatives should be included in one fee waiver
 - o I-485 Application to Register Permanent Residence or Adjust Status (Review [Form I-485 Supplement E for additional instructions for T visa applicants](#))
 - Current USCIS Status for Principal: T-1 Nonimmigrant
 - Application Type: Other – I was granted a T Visa and
 - o G-325A Biographical Data Form
 - o I-601 Waiver (if new inadmissibilities acquired after T visa)
 - o I-693 Medical Exam ([List of Civil Surgeons](#))
 - Up to date vaccinations are required including HPV for women 14-26.
 - o I-765 Employment Authorization (if less a year left on EAD)
 - File under category (c)(9)
- ☐ Supporting Documentation
 - o 2 passport photos of applicant
 - o Copy of passport (all pages)
 - o Birth Certificate
 - o T Visa Approval Notice
 - o [Declaration of Applicant](#)
- ☐ Evidence of continuous presence
 - o If placed under one exhibit sheet, use [continuous presence table](#)
 - o Suggested documents:
 - College transcript, employment records, tax statements, receipts for rent, utilities etc.
 - Any documents in the possession of DHS that support applicant in the US.
 - Note: Signed statement alone is not sufficient
 - If documentation not available must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge.
 - o If applying for early adjustment, DOJ letter required. Review [How to Request DOJ Letter](#).

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T VISA ADJUSTMENT OF STATUS APPLICATION CHECKLIST

- ☐ Evidence of good moral character
 - o Affidavit to attest to applicant's good moral character
 - o Local police clearance or state issued criminal background check for each locality or state in the US where applicant has resided for 6 months or more during the T status
 - o If under 14 years old, do not need to submit evidence, but USCIS may require anyway
- ☐ Not required but recommended
 - o Copy of certification letter
 - o Copy of social security card
 - o Copy of EAD Card

DERIVATIVES

- ☐ USCIS Forms
 - o G-28 for each derivative
 - o I-485 Application to Register Permanent Residence or Adjust Status
 - Current Immigration Status:
 - Spouse: T-2 Nonimmigrant
 - Children: T-3 Nonimmigrant
 - Parent: T-4 Nonimmigrant
 - Siblings: T-5 Nonimmigrant
 - Adult or Minor Child of Derivative: T-6 Nonimmigrant
 - Application type: Other – I was granted a T Visa and am eligible for adjustment.
 - o G-325A Biographical Data Form
 - o I-601 Waiver (if new inadmissibilities acquired after T visa)
 - o I-693 Medical Exam ([List of Civil Surgeons](#))
 - Up to date vaccinations are required including HPV for women 14-26.
 - o I-765 Employment Authorization (if less a year left on EAD)
 - File under category (c)(9)
- ☐ Supporting Documentation
 - o Birth certificate
 - o Passport (copy all pages)
 - o Spouses:
 - Marriage Certificate
 - Documentation showing legal termination of previous marriages

*Evidence of good moral character and continuous presence are not required for derivatives. Derivatives are still required to show admissibility.

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2. Sample E-Mail to Request “Case Closed” to Allow Adjustment, CAST



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SAMPLE EMAIL TO DOJ REQUESTING AOS LETTER

April 2017

From: Erika Gonzalez
Sent: Wednesday, January 07, 2015 10:42 AM
To: T-Adjustment.Cert@usdoj.gov (New email as of April 2017)
Cc: Axam, Hilary (CRT)
Subject: Request for DOJ Letters

Hi Melissa:

I write to request Adjustment of Status letters for my clients, whose information is listed below:

Client #1

Name:	CLIENT NAME
Gender:	Male
Date of T Visa:	10/7/2014
Date of Trafficking:	Approximately 09/15/2013 -09/26/2013
Location of Trafficking:	Los Angeles, CA
Reported to:	Case reported to ICE, prosecuted by AUSA Caroline Julian in Los Angeles, CA
Interview Status:	Client was interviewed and cooperated with the ASUA in the investigation of this case.
Other Notes:	Investigated by Special Temprance Brennan, ICE

Client #2

Name:	Client Name
Gender:	Female
Date of T Visa:	12/3/2014
Date of Trafficking:	Approximately 2006-2012
Location of Trafficking:	Los Angeles, CA
Reported to:	Seely Booth FBI
Interview Status:	Never interviewed

Erika Gonzalez, Esq.
The Coalition to Abolish Slavery & Trafficking (CAST)
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[@CASTLA](https://twitter.com/CASTLA)

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IV. Family Reunification

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A. International Organization for Migration (IOM) Application Guidelines



IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

IOM APPLICATION GUIDELINES Return, Reintegration, and Family Reunification Program for Trafficking Victims in the US

Program Description:

This program establishes a mechanism for rapid, case-by-case assistance to victims of trafficking in the United States who need immediate protection and would like to return home and receive reintegration support. It may also provide logistical support and assistance in bringing a victim's eligible derivative family member(s) to United States, as defined by the Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations. The program, available to trafficking victims with financial need, is not intended to duplicate already-established victim assistance programs in the United States. This program was developed at the request of the US Department of State, Bureau of Population, Refugees, and Migration in support of the TVPA.

Application Process:

Return and Reintegration:

To request IOM assistance with return and reintegration, the referring organization must complete and submit:

- 1) Application for Assistance (**Step One, Part A**);
- 2) Attorney Certification that the individual is a trafficking victim as defined by the Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations (**Step One, Part B**);
- 3) Risk Assessment Form to conduct a safety assessment in the countries of origin and transit (**Step Two**);
- 4) Travel Assistance Form to collect information that will facilitate travel (**Step Three**);
- 5) IOM Declaration of Voluntariness, confirming that the individual is returning of her/his own free will (**Step Four**);
- 6) IOM Travel Fitness Form, noting the individual's health issues, if any, before departure (**Step Five**);
- 7) Consent to release confidential information signed by the individual;
- 8) Any relevant or useful documentation, such as copy of passport, birth certificate, school certificate/diploma, etc.

Family Reunification:

To request IOM assistance with family reunification, the referring organization must submit:

- 1) Application for Assistance (**Step One, Part A**);
- 2) Attorney Certification that the individual is a trafficking victim as defined by the Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations only if the victim was granted a visa other than T nonimmigrant status (**Step One, Part B**);
- 3) A copy of the victim's and derivative family members' approval notices issued by U.S. Citizenship and Immigration Services (USCIS) or parole documents, if applicable;
- 4) Risk Assessment Form to conduct a safety assessment in the countries of origin and transit (**Step Two**);
- 5) Travel Assistance Form to collect information that will facilitate travel (**Step Three**);
- 6) Any media and/or public records related to the applicant's trafficking, if available;
- 7) Consent to release confidential information signed by the individual;
- 8) Any relevant documents, such as copies of passport(s), death or birth certificate(s), or minor authorization letters.

Please note: The program can only accept reunification cases when all of the victim's derivatives have USCIS approval notices. Exceptions will be considered only when significant safety concerns or extenuating circumstances exist.

IOM will hold confidential any information submitted to it related to this program. This information is protected from legal processes, including subpoena, under the International Organizations Immunities Act, 22 U.S.C. § 288 (2004). However, depending upon whether you have protection from subpoena, copies of this information contained in your files may be subject to subpoena if there is an ongoing trafficking investigation, prosecution or civil suit. As a result, please use discretion and if needed, seek advice on whether and when to apply for this assistance. If preferred, information requested in the Risk Assessment form can be submitted over the phone and not in writing to IOM.

Please send completed application forms or any program inquiries to:

Elizabeth Darlington
Project Coordinator/Case Manager
edarlington@iom.int
+1 202.862.1826 ext. 260

Amanda Bay
Case Manager
abay@iom.int
+1 202.862.1826 ext. 246

IOM Washington
1752 N Street NW, Suite 700
Washington, D.C. 20036
Fax: +1 202.862.1879

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V. Other Resources

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A. Immigration Consequences Checklist, Immigrant Defense Project

Immigration Consequences of Crimes Summary Checklist

For more comprehensive legal resources, visit the Immigrant Defense Project website at immdefense.org or call 212-725-6422 for individual case support.

<p>CRIMINAL INADMISSIBILITY GROUNDS Will or may prevent a noncitizen from being able to obtain lawful admission status in the U.S. May also prevent a noncitizen who already has lawful admission status from being able to return to the U.S. from a future trip abroad.</p> <p>Conviction or admission of a Controlled Substance Offense, or DHS reason to believe that the individual is a drug trafficker</p> <p>Conviction or admission of a Crime Involving Moral Turpitude (CIMT), including:</p> <ul style="list-style-type: none"> ➤ Offenses with an intent to steal or defraud as an element (e.g., theft, forgery) ➤ Offenses in which bodily harm is caused or threatened by an intentional act or serious bodily harm is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault offenses) ➤ Most sex offenses ➤ Petty Offense Exception – for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year + does not involve a prison sentence > 6 mos. <p>Prostitution (e.g., conviction, admission, or intent to engage in U.S.) and other unlawful Commercialized Vice</p> <p>Conviction of two or more offenses of any type + aggregate prison sentence of 5 yrs.</p>	<p>CRIMINAL DEPORTABILITY GROUNDS Will or may result in deportation of a noncitizen who already has lawful admission status, such as a lawful permanent resident (LPR) green card holder or a refugee.</p> <p>Conviction of a Controlled Substance Offense EXCEPT a single offense of simple possession of 30g or less of marijuana</p> <p>Conviction of a Crime Involving Moral Turpitude (CIMT) [see Criminal Inadmissibility Gds]</p> <ul style="list-style-type: none"> ➤ One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed ➤ Two CIMTs committed at any time after admission and “not arising out of a single scheme” <p>Conviction of a Firearm or Destructive Device Offense</p> <p>Conviction of a Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order (criminal or civil)</p> <p>Conviction of an Aggravated Felony</p> <ul style="list-style-type: none"> ➤ Consequences, in addition to deportability: <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Permanent inadmissibility after removal ◆ Enhanced prison sentence for illegal reentry ➤ Crimes included, probably even if not a felony: <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking (including most sale or intent to sell offenses, but also including possession of any amount of Ritalin/Traxepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism) ◆ Firearm Trafficking ◆ Crime of Violence + at least 1 year prison sentence* ◆ Theft or Burglary + at least 1 year prison sentence* ◆ Fraud or tax evasion + loss to victim(s) >\$10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence* ◆ Obstruction of justice or perjury + at least 1 year prison sentence* ◆ Various federal offenses – money laundering, certain firearms and explosive materials offenses (including arson), alien smuggling, etc. – and analogous state offenses ◆ Other offenses listed at 8 USC 1101(a)(43) ◆ Attempt or conspiracy to commit any of the above <p>* The “at least 1 year” prison sentence requirement includes a suspended prison sentence of 1 year or more.</p>	<p>CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP – Will prevent an LPR from being able to obtain U.S. citizenship.</p> <p>Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years:</p> <ul style="list-style-type: none"> ➤ Controlled Substance Offense (unless single offense of simple possession of 30g or less of marijuana) ➤ Crime Involving Moral Turpitude (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months) ➤ 2 or more offenses of any type + aggregate prison sentence of 5 years ➤ 2 gambling offenses ➤ Confinement to a jail for an aggregate period of 180 days <p>Conviction of an Aggravated Felony on or after Nov. 29, 1990 (and conviction of murder at any time) permanently bars the finding of moral character required for citizenship</p>
<p>CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter</p> <ul style="list-style-type: none"> ➤ Conviction or admission of a Controlled Substance Offense other than a single offense of simple possession of 30 g or less of marijuana ➤ Conviction or admission of a violent or dangerous crime is a presumptive bar. ➤ In the case of an LPR (except one who adjusted to LPR status inside U.S. and who has not entered as an LPR from outside U.S.), conviction of an Aggravated Felony [see Criminal Deportability Gds] or any Criminal Inadmissible offense if removal proceedings initiated before 7 yrs of lawful residence in U.S. 	<p>CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal</p> <p>Conviction of a “Particularly Serious Crime” (PSC), including the following:</p> <ul style="list-style-type: none"> ➤ Aggravated Felony [see Criminal Deportability Gds] <ul style="list-style-type: none"> ◆ All aggravated felonies will bar asylum ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding, & aggravated felonies involving unlawful trafficking in controlled substances are a presumptive bar to withholding of removal ➤ Violent or dangerous crime will presumptively bar asylum ➤ Other PSCs – no statutory definition; see case law <p>CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)</p> <ul style="list-style-type: none"> ➤ DHS reason to believe that the individual is a drug trafficker ➤ Violent or dangerous crime is a presumptive bar 	<p>“CONVICTION” as defined for immigration purposes A formal judgment of guilt of the noncitizen entered by a court, OR, if adjudication of guilt has been withheld, where:</p> <ol style="list-style-type: none"> A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or <i>nolo contendere</i> or has admitted sufficient facts to warrant a finding of guilt, and The judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed <p>THUS:</p> <ul style="list-style-type: none"> ➤ A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated) ➤ A deferred adjudication without a guilty plea IS NOT a conviction ➤ NOTE: A youthful offender adjudication IS NOT a conviction if analogous to a federal juvenile delinquency adjudication
<p>CRIMINAL BARS ON NON-LPR CANCELLATION OF REMOVAL based on continuous physical presence in U.S. for 10+ years; and “exceptional and extremely unusual” hardship to USC or LPR spouse, parent or child</p> <ul style="list-style-type: none"> ➤ Conviction of an offense described under the criminal inadmissibility or deportability grounds, regardless of whether or not the ground would apply to the person, e.g., one CIMT with a potential sentence of 1 year or longer [see Criminal Deportability Gds] even if the offense was not within five years of an admission to the US ➤ Conviction or admission of crimes barring required finding of good moral character during 10 year period [see Criminal Bars on Obtaining U.S. Citizenship] 	<p>CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)</p> <ul style="list-style-type: none"> ➤ Conviction of an Aggravated Felony ➤ Offense triggering removability referred to in Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S. 	<div>  <div> <p>IMMIGRANT DEFENSE PROJECT</p> </div> </div>

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IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST – DACA Supplement

Criminal bars relating to DACA temporary administrative status program (Updated June 16, 2017).



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DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) IS BASED IN PART ON:

- ♦ entry into the U.S. as a child under age 16 before 1/1/10
- ♦ continuous residence in the U.S. since before 1/1/10
- ♦ currently in school, high school degree or GED, or honorably discharged veteran

But certain convictions will generally prevent non-citizens from obtaining DACA:

One felony conviction

- Any federal, state or local offense that is punishable by imprisonment for a term exceeding one year
- ♦ Does not include state immigration-related offenses

One "significant misdemeanor" conviction, including:

- An offense punishable by imprisonment of one year or less but greater than five days (regardless of sentence actually imposed) that is:
 - ♦ Domestic violence
 - ♦ Sexual abuse or exploitation
 - ♦ Burglary
 - ♦ Unlawful possession or use of a firearm
 - ♦ Drug distribution or trafficking
 - ♦ Driving under the influence

NOTE: The above list may include certain offenses that are not classified as misdemeanors in the convicting jurisdiction, e.g. domestic violations or driving under the influence traffic infractions, if punishable by more than five days in prison

- Any other offense punishable by imprisonment of one year or less for which the person received a sentence of time in custody of more than 90 days
- ♦ Suspended sentences do not count towards the 90 days

Three misdemeanor convictions

- Three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct
 - ♦ Includes only federal, state, or local offenses punishable by imprisonment of one year or less but greater than five days (thus, may include certain low level offenses not classified as misdemeanors if punishable by more than five days in prison)
 - ♦ Does not include minor traffic offenses (such as driving without a license)
 - ♦ Does not include state immigration-related offenses

SOME OTHER OFFENSES/CONDUCT THAT CAN LEAD TO A DENIAL OF PROSECUTORIAL DISCRETION TO GRANT DACA STATUS

- Convictions or other information indicating that the applicant is a threat to national security or public safety. DHS considers that such a threat includes, but is not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the U.S.

DISPOSITIONS THAT AVOID AUTOMATIC DISQUALIFICATION

- Juvenile dispositions do not bar DACA (but adult convictions of juveniles may do so)
- Expunged convictions do not bar DACA

IMPORTANT: Potential DACA applicants who may wish to seek LPR or other formal lawful admission status in the future should also consider the Criminal Inadmissibility Grounds on the reverse side because a conviction triggering inadmissibility, even if it does not bar DACA, could affect the person's future ability to obtain formal lawful status

Note: Anyone who has had contact with the criminal legal system who is considering an application to initiate or renew DACA status should proceed with caution. There is uncertainty about how the DACA criminal bars will be applied under the Trump administration, and there are some preliminary indications that any contact with the criminal legal system may lead to heightened scrutiny of the application

DISCLAIMER

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B. Information for Law Enforcement Officials, Blue Campaign



INFORMATION FOR LAW ENFORCEMENT OFFICIALS Immigration Relief for Victims of Human Trafficking and Other Crimes

Human Trafficking is a heinous criminal activity that violates federal law and the laws of most states. Also known as trafficking in persons, human trafficking is a form of modern-day slavery in which traffickers often lure individuals with false promises of employment and a better life. Under federal law, there are two categories of severe forms of trafficking: sex trafficking and labor trafficking. Severe forms of trafficking involve force, fraud, or coercion (with the exception of cases involving sex trafficking victims who are less than 18 years of age, which do not require force, fraud, or coercion).

U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI) and U.S. Citizenship and Immigration Services (USCIS), of the Department of Homeland Security (DHS), play a significant role in combating human trafficking. DHS' authority to investigate crime and its responsibility to protect victims are equally important. HSI leads DHS' law enforcement efforts by investigating human trafficking crimes and issuing Continued Presence to trafficking victims. USCIS administers immigration benefits and has the authority to grant T "visas" or U "visas" to victims of human trafficking or other designated crimes who assist law enforcement with the investigation or prosecution of these crimes.

There are three forms of immigration relief available to victims of human trafficking – Continued Presence, T visas, and U visas. As a Federal, State, local, tribal, or territorial law enforcement official, it is important to understand the three forms of immigration relief available to victims of human trafficking and your role in each process. By encouraging victims to report crimes and cooperate with law enforcement for investigatory or prosecutorial purposes, these forms of relief assist you in investigating and prosecuting criminals and eliminating human trafficking and other crimes within your community.

Below is information about the forms of immigration relief and the distinct roles that HSI, USCIS, and law enforcement officials play in assisting victims of human trafficking and other crimes.

Continued Presence (CP)
What is CP? CP provides temporary immigration relief to individuals who are identified by Federal, State, local, tribal, or territorial law enforcement as victims of human trafficking. This allows victims of human trafficking to remain in the United States temporarily during the ongoing human trafficking investigation and prosecution. This can lead to more successful prosecutions and the potential to identify and rescue more victims. CP is initially granted for one year and may be renewed in one-year increments. CP can be revoked at any time if law enforcement determines in the course of their investigation that the individual is not a victim of human trafficking.
Why is CP important to law enforcement? CP is an important tool for Federal, State, local, tribal, and territorial law enforcement in their investigation of human trafficking-related crimes. Victims of human trafficking often play a central role in building a case against a trafficker. CP affords victims a legal means to temporarily live and work in the United States and receive access to victim assistance resources and benefits. This provides them a sense of stability and protection, which often improves victim cooperation with law enforcement.
Who qualifies for CP? An individual identified as a victim of human trafficking who is a potential witness in the investigation or prosecution of the trafficker. The individual may also have filed a civil action against the trafficker, though it is not a requirement for eligibility. The Federal, State, local, tribal, or territorial law enforcement official makes the initial determination of whether the individual meets the definition of a victim of a severe form of trafficking and submits an application for CP through an appropriate federal law enforcement agency. CP should be made available as soon as law enforcement identifies a victim of human trafficking; the investigation does not have to be completed prior to requesting CP. <u>Although victim cooperation is required in order for a victim with CP to receive social service benefits, it is not a criterion for CP eligibility.</u>
How do I request CP? Federal law enforcement officials, primarily from HSI and the Federal Bureau of Investigation (FBI), as well as federal prosecutors from U.S. Attorney's Offices within the Department of Justice (DOJ), are authorized to submit CP applications. An application for CP should be initiated immediately upon identification of a victim of human trafficking. All CP applications are submitted to the HSI Law Enforcement Parole Unit (LEPU). Federal officials may submit CP applications on behalf of state or local law enforcement in cases where the victimization meets the federal definition of trafficking. When State, local, tribal or territorial law enforcement officials identify a victim of human trafficking, they should coordinate with their Federal law enforcement partners to submit an application for CP.

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