



Trafficking Victims Protection and Reauthorization Act of 2008, H.R. 7311 **Analysis of Selected Sections (§§ 105, 201, 204, 205, 211, 212, 238)**

Section 105: Increasing Effectiveness of Anti-Trafficking Programs

This section requires anti-trafficking solicitations of grants, cooperative agreements, and contracts to be awarded through a public process that is subject to full and open competition, and free from review and influence of those outside the government. Applicants are required to certify that all persons who will be delivering services have received training on trafficking issues. Applicants must also disclose in the application all nongovernmental organization collaborators. The President is required to:

- establish objective and quantifiable goals for funded projects;
- ensure that performance indicators are used to measure achievements of funding for anti-trafficking programs;
- provide a basis for recommendations for adjustments to the assistance provided by programs; and
- ensure trafficking experts both in and outside of government conduct evaluations of funded programs.

Section 201: Protecting Trafficking Victims Against Retaliation

DHS Responsibility for Adjudicating T-Visas and T-Visa based Adjustment of Status to Lawful Permanent Residency

This section gives DHS responsibility for adjudicating applications for T-visas and for adjudicating T-visa based adjustment of status. DHS may determine when consultation with DOJ is appropriate in relation to these adjudications. DOJ may submit evidence to DHS regarding a T-visa victim's compliance with reasonable requests from law enforcement. Section 201(a) and (d)

Adjustment of Status to Lawful Permanent Residency for Crime Victims

The bill also shifts adjudicatory authority from DOJ to DHS for U-visa adjustment of status applications. DHS may consult with DOJ when appropriate regarding affirmative evidence demonstrating that a victim unreasonably refused to cooperate in a Federal investigation or prosecution. Section 201(e).

Expansion of T-Visa Protections

The T-visa requirement of "physical presence in the United States...on account of trafficking" is expanded to include victims who are physically present in the U.S. for the purposes of participating in an investigation or prosecution of trafficking. DHS is authorized to grant a T-visa to a parent or unmarried sibling under the age of 18 of an adult

trafficking victim if the relative is in danger of a trafficker's retaliation as a result of the victim's cooperation with law enforcement. Section 201(a).

Extension of Duration of T-visas

DHS may extend T-visa status beyond 4-years when:

- There has been a delay in issuance of adjustment regulations;
- Extension is warranted due to exceptional circumstances; or
- An adjustment of status application is pending. Section 201(b).

Extension of Duration of U-visas and Employment Authorization for U-visa Victims

DHS may extend U-visa status beyond 4 years when:

- There has been a delay in the issuance of adjustment regulations; or
- An adjustment of status application is pending.

DHS may grant work authorization to any victim who has a pending, bona fide application for U-visa status. Section 201(c).

Adjustment of Status to Lawful Permanent Residency for Trafficking Victims

The TVPRA of 2008 clarifies that persons who obtained T-visas based on trafficking while they were minors do not have to comply with reasonable requests for cooperation from law enforcement. The continuous physical presence requirement now allows absences from the U.S. for longer than 90 days or in aggregate 180 days if the absence was to assist with an investigation or prosecution or is otherwise justified by an investigatory or prosecutorial agent. DHS is granted the authority to exercise its discretion to waive the good moral character disqualification in trafficking cases. Section 201(d)

Fee Waiver for VAWA, T and U visa cases.

The TVPRA of 2008 assures permanent access to fee waivers of all costs and fees associated with filing an application through final adjudication of the adjustment of status in VAWA self-petition, T-visa, U-visa, VAWA cancellation of removal, and VAWA suspension of deportation cases and for the cases of nonimmigrant derivative victims of domestic violence. Section 201(d).

Section 204: Stays of Removal for T and U Visa Victims.

DHS has the authority to grant stays of removal to persons with pending T and U-visa applications that will last through granting of the T or U-visa and if the case is denied will last through the exhaustion of administrative appeals. Applicants granted stays shall not be removed from the U.S. A denial of a stay under this provision does not preclude an individual from applying for a stay, deferred action, or a continuance under other immigration provisions. This provision does not preclude DHS or DOJ from granting stays of removal or deportation under other immigration provisions.

Section 205: Expansion of Authority to Permit Continued Presence in the U.S.

Continued Presence of Trafficking Victims in the U.S.

- If requested by law enforcement, DHS may extend continued presence for trafficking victims to facilitate investigations and prosecutions.
- Federal law enforcement should make reasonable efforts to protect trafficking victims and their families from intimidation and threats of reprisals from traffickers and their associates.
- DHS shall permit a victim who has filed a civil action under 18 U.S.C. 1595 to remain in the country until the civil action is concluded as long as the victim exercises due diligence in pursuing the civil action. Immigrants who have committed or admitted to drug offenses; have asserted immunity from prosecution; are traffickers, money launderers, or terrorists; or pose security risks can be removed despite these provisions.
- DHS in consultation with DOJ must develop and distribute materials to assist state and local law enforcement in obtaining continued presence for victims of a severe form of trafficking that is being investigated or prosecuted at the state or local level. Section 205(a).

Parole for Derivatives of Trafficking Victims

- DHS may parole into the U.S. a relative of a victim granted continued presence upon written request by a law enforcement official if the qualifying relationship existed upon the grant of continued presence.
 - For victims under 21, qualifying relatives may include a spouse, child, parent, or unmarried sibling under the age of 18.
 - For victims over 21, qualifying relatives may be a spouse or child of the victim.
 - Irrespective of age, qualifying relatives may also include parents or siblings who are in present danger of retaliation as a result of the victim's escape or cooperation with law enforcement as a result of the trafficking.
- DHS may extend parole until the later of the final adjudication date of a T-visa application, the expiration of the victim's continued presence or the date on which a civil action filed by the principal victim is concluded.
- If the victim failed to exercise due diligence in filing a visa petition for the victim's relative, parole may be revoked.
- DHS may deny parole to a relative if DHS or DOJ determines that the relative is complicit in the trafficking or is inadmissible or deportable on criminal or security grounds. Section 205(b)

Section 211: T-visa Victims Are Qualified Aliens for Public Benefits Purposes

This section expands *qualified alien* eligibility for the purposes of public benefits to include T-visa applicants who receive a prima facie notice of eligibility. Eligibility is created as a matter of law with passage of TVPRA regardless of whether or not regulations are promulgated. Section 211(a).

Section 238: Processing of Certain Visas

The bill requires DHS to submit a report on the specially trained VAWA Unit at the DHS Vermont Service Center within 180 days after the enactment of the Act. The report shall include detailed information about:

- the funds expended to support the Unit;
- training of the Unit staff and supervisors on VAWA, T and U relief and VAWA confidentiality
- measures taken to ensure the retention of specially trained staff within the Unit and creation and retention of a core supervisory staff within the Unit that have historical knowledge and expertise on VAWA, T and U visas;
- measures taken to ensure routine consultation between the Unit and DHS Headquarters on policy development;
- information on circumstances in which any part of VAWA confidentiality protected immigration case is handled outside of the VAWA Unit at the Vermont Service Center; and
- information on the adjudication time including grants of work authorization in victim-based immigration applications. Section 238.