Cast ADVISORY: Overview of the 2024 T Visa Final Rule

MAY 2024

On April 30, 2024, the Department of Homeland Security published a final rule updating the 2016 interim T visa regulations. The final rule goes into effect August 28, 2024. This advisory provides a high-level overview of the changes impacting applicants for T nonimmigrant status and T adjustment of status and is intended for attorneys and DOJ accredited representatives. The advisory links to existing agency guidance and to CAST resources that will be updated to reflect the final regulations and accompanying agency guidance.[1] The advisory *does not* provide a comprehensive analysis of the changes, does not address all changes, and does not replace a thorough reading of the regulations and accompanying agency guidance.[2]

The following table captures some of the primary additions and changes to the 2016 T visa regulations, including the creation of an entirely new subpart of 8 CFR Part 214 to house the final regulations.[3]

TERMINOLOGY KEY

- 2016 Interim Final Rule, 81 Fed. Reg. 92266 = **2016 Preamble**[4]
- 2024 Final Rule, 89 Fed. Reg. 34864 = **2024 Preamble**
- USCIS T Visa Policy Manual = **T Visa PM**
- ICE Directive 11005.3: *Using a Victim-Centered Approach with Noncitizen Crime Victims* (August 10, 2021) = **ICE Directive 11005.3**
- Bona fide determination = **BFD**
- Request for evidence = **RFE**

[1] To better understand the meaning behind the regulatory text, practitioners should review the preamble to the regulations (available in the Federal Register notice, 89 Fed. Reg. 34864) and the relevant USCIS Policy Manual sections (Vol. 3, Part B – Victims of Trafficking, Vol. 9, Part O – Victims of Trafficking (Waivers), and Vol. 7, Part J – Trafficking Victim-Based Adjustment).

[2] The advisory also does not address DHS responses to form comments received in connection with the publication of the 2016 interim regulations and discussed beginning at 89 Fed. Reg. 34916.

[3] 8 CFR 214 Subpart C, Noncitizen Victims of Severe Forms of Trafficking in Persons now houses the regulations for T nonimmigrant status in §§ 200 to 216. T adjustment regulations were not renumbered and remain at 8 CFR § 245.23. Similarly, the T nonimmigrant waiver and T adjustment waiver provisions remain at 8 CFR §§ 212.16 and 212.18, respectively.

[4] A regulatory preamble explains the basis for a rule and responds to significant and relevant issues raised by public comments. The preamble is published along with a proposed or final rule in the Federal Register *See* Regulations.gov/learn and https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf for more information about the rulemaking process.
The preamble to the 2024 final T visa rule provides context and insight into USCIS interpretation of the regulatory text and is therefore important for practitioners to review in conjunction with the regulations and USCIS Policy Manual.

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
§ 204.201 - Definitions			
§ 214.201 – Definitions [abuse or threatened abuse of the legal process & serious harm]	Added definitions of: • *Abuse or threatened abuse of the legal process* • *Serious harm.*	§ 214.11(a)	These definitions were also included in the T Visa PM section on coercion, Ch. 2.B.3, released in October 2021.[5] More on important definitions for trafficking analysis can be found in CAST's advisory, *Understanding the Legal Definition of Human Trafficking*.
§ 214.201 – Definitions [commercial sex]	[no textual change]	§ 214.11(a) [commercial sex]	DHS explains that "'[a]nything of value' does not always have an exact monetary value" and includes but is not limited to "safety, protection, housing, immigration status, work authorization, or continued employment." (2024 Preamble at 34872.)
§ 214.201 – Definitions [involuntary servitude]	[no significant textual change]	§ 214.11(a) [involuntary servitude]	DHS acknowledges that a perpetrator's motivations can be multifaceted, using the example of forced labor during a smuggling arrangement, but also states that not all forced labor within a smuggling arrangement will meet the *severe form of trafficking* definition. DHS states "there may be situations where an individual is forced to perform labor for another purpose, and not for the purpose of involuntary servitude, peonage, debt bondage, or slavery." (2024 Preamble at 34870.) This language is largely consistent with T Visa PM Ch. 2.B.7, which discusses mixed motives in the smuggling context.

[5] All USCIS Policy Manual references in this advisory pertain to the version in existence at the time of publication of the final rule on April 30, 2024.

2024 Regulations (8 CFR)	**Regulatory Updates/Changes**	**Previous Section(s) (if applicable)**	**Comments**
§ 214.201 – Definitions [law enforcement agency]	Updated the definition of *law enforcement agency (LEA)* to include: • Tribal authorities. • Agencies with the responsibility and authority for detection, investigation and/or prosecution of trafficking under *any administrative, civil, criminal, or Tribal laws*. • Additional examples of federal LEAs, including the Equal Employment Opportunity Commission (EEOC); National Labor Relations Board (NLRB); Offices of Inspectors General (OIG); Bureau of Indian Affairs (BIA) Police, and Offices for Civil Rights and Civil Liberties.	§ 214.11(a) [law enforcement agency (LEA)]	The regulations include a broader list of law enforcement agencies (LEAs) than currently included in T Visa PM Ch. 2.D.1.
§ 214.201 – Definitions [request for assistance]	Removes "reasonable" from the definition of *reasonable request for assistance* because the adjudicator must first determine whether a request was made.	§ 214.11(a) [reasonable request for assistance]	Factors to be considered in determining reasonableness are addressed in § 214.208(c) and T Visa PM Ch. 2.D.2.
§ 214.201 – Definitions [law enforcement involvement]	Adds definition of *law enforcement involvement*.	§ 214.11(a)	This definition is relevant to the physical presence requirement, not the LEA cooperation requirement. DHS clarifies that *law enforcement involvement* means LEA action beyond simply receiving a survivor's report of their trafficking victimization, including "interviewing the applicant, liberating the applicant from their trafficking, or prosecuting the acts of trafficking. Liberation of an applicant from their trafficking will suffice to establish law enforcement involvement *where the record indicates that the LEA detected the applicant's*

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			trafficking as part of this process." (2024 Preamble at 34871 (emphasis added)). A similar definition was also included in T Visa PM Ch. 2.C.1. More on physical presence may be found in CAST's toolkit and advisory.
§ 214.201 – Definitions [T-1 nonimmigrant]	Adds a definition of *T-1 nonimmigrant*.	§ 214.11(a)	
§ 214.202 - Eligibility for T-1 nonimmigrant status			
§ 214.202(c)(1) – Exemption for minor victims	Amends the minor exemption section to clarify long-standing policy that the exemption applies to an applicant under 18 years of age at the time at least one act of trafficking occurred.	§ 214.11(b)(3)(i)	T Visa PM Ch. 2.D.5 indicates this same position prior to issuance of the final regulations. More on law enforcement cooperation may be found in CAST's toolkit and advisory.
§ 214.204 - Application			
§ 214.204(b)(1) – Applicants in pending immigration proceedings [prosecutorial discretion]	Specifies that ICE *may exercise* prosecutorial discretion for T nonimmigrant applicants (both principals and derivatives) while an application for T nonimmigrant status is pending.	§§ 214.11(d)(1)(i) & 214.11(k)(2)	In deference to ICE's ability to make case-by-case determinations, DHS has declined stakeholder requests—which raised concerns regarding ICE counsel refusal to join motions and the additional hurdles and trauma faced by survivors and their families in removal and with removal orders—to specifically include language that ICE *should agree* to motions to administratively close, terminate, or continue proceedings for T nonimmigrant applicants in removal proceedings. (2024 Preamble at 34888.)

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
			ICE Directive 11005.3 states at Section 5.4(a) that OPLA should consider whether agreeing to a continuance of removal proceedings would be appropriate where an individual has a survivor-based application pending before USCIS. The Directive also indicates that ICE "will request" that USCIS expedite the decision of a pending victim-based immigration benefit for a detained applicant and that it will seek expedited adjudication of victim-based immigration applications and petitions "when necessary and appropriate." (ICE Directive 11005.3 at 2 & 5.4(a).) ILRC's *Overview of ICE's Victim-Centered Directive* provides helpful analysis of the ICE Directive. T Visa PM Ch. 9 addresses applicants in removal proceedings. Practitioners assisting T applicants at imminent risk of removal may reach out to CAST for technical assistance and possible intervention with DHS.
§ 214.204(b)(2) – Applicants with final orders of removal, deportation, or exclusion	[no significant textual change]	§§ 214.11(d)(1)(ii); 214.11(k)(2)(ii)	DHS has declined to adopt stakeholder recommendations that proper filing of an application for T nonimmigrant status automatically stays removal. The preamble states "[a]s a matter of policy, DHS generally will not remove applicants with *pending* T nonimmigrant status applications; however, *there may be situations where it is prudent for DHS to execute removal orders prior to adjudication*, and DHS does not intend to limit DHS discretion in this manner." (2024 Preamble at 34889.)

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
			See *ICE Directive 11005.3* for current ICE policy regarding enforcement actions involving applicants for and beneficiaries of victim-based benefits. ILRC's *Overview of ICE's Victim-Centered Directive* provides helpful analysis of the ICE Directive. Practitioners assisting T applicants at imminent risk of removal may reach out to CAST for technical assistance and possible intervention with DHS.
§ 214.204(b)(3) – Referral of applicants for removal proceedings	Updates the regulations to explicitly state that USCIS will *generally* not refer a T applicant for removal proceedings absent aggravating circumstances.	§ 214.11(n)	DHS explains that referral of T applicants for removal proceedings "absent serious aggravating circumstances, such as the existence of an egregious criminal history, a threat to national security, or where the applicant is complicit in trafficking" "undermines both the humanitarian and law enforcement purposes of the statute." (2024 Preamble at 34889.) The 2016 regulations stated that nothing prohibits DHS from initiating removal proceedings against a T applicant or nonimmigrant.
§ 214.204(c)(1) – Initial evidence [signed personal statement]	Provides more detail about the information that should be provided in the applicant's signed personal statement.	§ 214.11(d)(2)	The preamble states that while a personal statement alone may be sufficient to prove victimization, it would have to be "sufficiently detailed, plausible, and consistent in order to satisfy evidentiary requirements" if it is the only evidence of victimization. (2024 Preamble at 34872.) Specifics about the applicant's personal statement are also addressed in other sections of the regulations, including §§ 214.206(a)(3)(i), 214.208(d)(3), 214.208(e)(1)(i), 214.211(f)(3). T Visa PM Ch. 3 also

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			includes references to the applicant's personal statement throughout. See CAST's Initial T Visa Declaration toolkit for tips on T-1 personal statement drafting.
§ 214.204(e) – **Evidence from law enforcement**	The regulations no longer indicate that a LEA endorsement (Form I-914, Supplement B) should include the results of any name or database inquiries performed.	§ 214.11(d)(3)(i)	The preamble specifies that immigration judges and ICE attorneys may provide an I-914B upon detection of trafficking. (2024 Preamble at 34874-75.) More on law enforcement cooperation and evidence may be found in CAST's toolkit and advisory.
§ 214.204(f) – **Any credible evidence** [law enforcement cooperation]	Reiterates that USCIS will consider any credible evidence of law enforcement cooperation.	§ 214.11(d)(2)(ii)	The final rule makes clear that the *any credible evidence* standard applies equally to the LEA cooperation requirement.
§§ 214.204(h)-(i) **Disavowed or withdrawn LEA declaration & Continued Presence** [disavowed or withdrawn I-914B & revoked CP]	Amends the regulations to specify that LEA disavowal or withdrawal of a Form I-914, Supplement B should be accompanied by a detailed explanation of its reasoning in writing. Also clarifies that a disavowed or withdrawn I-914, Supplement B or revoked Continued Presence will *generally* no longer serve as evidence of the applicant's compliance with requests for assistance but *may be considered for other purposes*.	§§ 214.11(d)(3)(ii) - (iii)	The preamble indicates DHS recognition that a LEA may withdraw or disavow an I-914B for reasons unrelated to the applicant's cooperation with a reasonable request for assistance. While a withdrawn or disavowed I-914B will *generally* no longer be evidence of compliance with reasonable requests, it may still be considered for other eligibility requirements (including evidence of victimization). Additionally, the preamble states that "DHS will determine whether the disavowed or withdrawn Supplement B will be considered as evidence of compliance by assessing the reasons for the disavowal or withdrawal." (2024 Preamble at 34874.)

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§ 214.204(l) – Evidentiary standards, standard of proof, and burden of proof	Clarifies that the applicant has the burden of establishing eligibility by a preponderance of the evidence.	§ 214.11(d)(5)	Establishing eligibility by a preponderance of the evidence means that the applicant must prove that the facts included in their application are "more likely than not" to be true. (2024 Preamble at 34871.) DHS states that while the same evidence may support multiple eligibility requirements, the applicant has the burden of explaining how the evidence presented addresses each eligibility criteria. (2024 Preamble at 34878-79.) DHS declines to specify in the T visa regulations that applicants must be provided a copy of information in the administrative record that could result in an unfavorable decision so that the applicant is afforded a meaningful opportunity to respond, citing other regulatory provisions (8 CFR § 103.2(b)(16)) that address this issue. (2024 Preamble at 34872.)
§ 214.204(m) – Bona fide determination	Upon submission, USCIS will conduct an initial review to determine if an application for T nonimmigrant status is bona fide. USCIS will conduct an initial review of an eligible family member's I-914A after the principal applicant's I-914 has been deemed bona fide.	§ 214.11(d)(7)	USCIS *generally* will not grant BFD-based deferred action and employment authorization to a derivative applicant unless the T-1 applicant has received a positive BFD. (2024 Preamble at 34875-76.) The BFD process is laid out in greater detail beginning at 8 CFR § 214.205.
§ 214.204(p) – Travel abroad [for T-1 nonimmigrants]	Clarifies that T-1 nonimmigrants must be granted advance parole prior to departing the U.S. in order to resume T-1 status upon return from travel abroad.	N/A	Travel abroad for T derivatives is discussed in 8 CFR § 214.211(i)(4). Travel for T nonimmigrant applicants and beneficiaries is discussed in T Visa PM Ch. 12. CAST's FAQ on travel for T nonimmigrants is available here.

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§ 214.205 - Bona fide determination			
§§ 214.205(a) & (a)(1) – Bona fide determinations for principal applicants for T nonimmigrant status & request for evidence	Includes the following new T BFD procedures for principal applicants: • **For I-914 applications *filed after* August 28, 2024**: USCIS will conduct an initial review to determine if an application submitted is bona fide. • **For I-914 applications pending as of August 28, 2024**: USCIS will issue a request for evidence (RFE) if required to establish eligibility for T-1 status and will conduct a bona fide review based on available evidence.	§§ 214.11(a) [bona fide determination], 214.1(d)(7), 214.11(e)	Bona fide determinations are also referenced in 8 CFR §§ 214.204(b)(2)(iii), (m) & (q)(1); § 214.210(b); and § 274a.12(c)(40). Information on bona fide determinations will eventually be available in Ch. 6 of the T Visa PM. DHS explains its rationale for amending the BFD process outlined in the 2016 interim regulations but not yet implemented outside of litigation cases, citing increased processing times and agency recognition of the increased stability offered by a BFD process. (2024 Preamble at 34875-76.) The agency has declined to include a timeline within which it will conduct BFDs in T cases. (2024 Preamble at 34876.) DHS also explains that it declined to include language requiring ICE to seek a BFD from USCIS for detained T applicants, citing to ICE Directive 11005.3. (2024 Preamble at 34877.) ICE's Fact Sheet on ICE Directive 11005.3 states that "ICE will refrain from taking enforcement actions against the applicant or petitioner" until USCIS adjudicates a T visa application. *See* ICE Fact Sheet, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (August 8, 2023). As part of ICE's policy of deferring its enforcement actions until USCIS adjudication of pending victim-based applications, ICE "will exercise prosecutorial discretion in appropriate circumstances to facilitate access to justice and victim-based immigration benefits by noncitizen crime victims." (ICE Directive 11005.3 at 2 (referencing its 2011 memorandum, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*).) The

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			directive states that ICE "will request" that USCIS expedite the decision of a pending victim-based immigration benefit for a detained applicant and that ICE will seek expedited adjudication of victim-based immigration applications and petitions "when necessary and appropriate." (*Id.* at 2 & 5.4(a).) Practitioners assisting detained T applicants or T applicants at risk of imminent removal may reach out to CAST for technical assistance and possible intervention with DHS.
§ 214.205(a)(2) – Initial review criteria	USCIS will deem an application bona fide if: • The I-914 is properly filed & complete; • The applicant has included a signed personal statement; and • Initial background check results are complete and do not present national security concerns.	§ 214.11(e)(1)	The final T regulations no longer require that USCIS: • Assess whether the application appears fraudulent; • Determine whether the application contains prima facie evidence of each eligibility requirement; • Make an inadmissibility determination. Explanation of the admissibility and fraud determination changes can be found in the 2024 Preamble at 34876. While the regulations no longer explicitly require submission of evidence supporting each eligibility requirement, applications deemed "incomplete" will not be granted a BFD. (8 CFR § 214.205(d).)
§ 214.205(a)(3) – Secondary review criteria	If USCIS's initial review does not determine that an I-914 is bona fide, USCIS will conduct a full eligibility review for T nonimmigrant status. An I-914 that meets all eligibility	N/A	

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	requirements will be approved or will be issued a BFD if the cap has been reached.		
§ 214.205(b) – Bona fide determinations for eligible family members in the United States	Adds a BFD process for T derivative applicants in the U.S.: • Once the T-1's application has been deemed bona fide, USCIS will conduct a BFD review of the I-914As for any eligible family members in the U.S. • If an I-914A application was pending as of August 28, 2024 and an RFE is required to establish eligibility for derivative T status, USCIS will issue an RFE and conduct a bona fide review based on available evidence. USCIS will deem an I-914A bona fide if: • The eligible family member is in the U.S. at the time of the review; • The I-914A was properly filed and is complete; • The I-914A is supported by credible evidence that the derivative qualifies as an eligible family member; and • Initial background check results are complete and do not present national security concerns. If the I-914A is not deemed bona fide, USCIS will conduct a full eligibility review. An I-914A that meets all eligibility requirements during this secondary review will be approved or will	N/A	The preamble indicates that USCIS *generally* will not grant BFD-based deferred action and employment authorization to a derivative applicant unless the T-1 applicant has received a positive BFD. (2024 Preamble at 34875-76.) Evidence to establish that an individual is an eligible family member is discussed in the T Visa PM Ch. 5 and the I-914 instructions.

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	be deemed bona fide if the statutory cap has been met.		
§ 214.205(c) – Notice of USCIS determination [applications deemed bona fide]	Where an application has been deemed bona fide, USCIS will issue the applicant a written notice indicating as much and informing the applicant that they may be considered for deferred action and may file an I-765 if they have not already. The notice will also advise the applicant that any final order of removal is automatically stayed as of the date of the BFD.	§ 214.11(e)(2)	
§ 214.205(d) – Not considered bona fide	If an application is incomplete or presents national security concerns, it will not be considered bona fide. Applicants cannot file a motion to reconsider or appeal a negative bona fide determination. After a negative BFD, USCIS will proceed to review for full T nonimmigrant status eligibility *generally in order of application receipt date*.	§ 214.11(e)(2)(i)	
§ 214.205(e) – Exercise of discretion	After USCIS determines that an application is bona fide, it can consider whether the applicant merits deferred action and employment authorization, in an exercise of discretion. Applicants may not file a motion to reconsider or appeal a negative discretionary finding.	N/A	Once an I-914 or I-914A is deemed bona fide, USCIS will consider whether the applicant merits a favorable exercise of discretion and will be granted deferred action and a BFD EAD under category (c)(40). (2024 Preamble at 34865 & 34875.) The applicant must have an I-765 on file to be issued deferred action and a BFD EAD. (2024 Preamble at 34865 & 34875.) If there is no I-765 on file, the applicant will be notified in writing that they may submit one. USCIS recommends that new I-914/914A applications include an I-765 with the (c)(40) category to facilitate

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			expeditious case processing. In cases where more information is needed to establish T nonimmigrant eligibility and an RFE is issued, USCIS will automatically convert previously filed I-765 applications under categories (a)(16) and (c)(25) to the (c)(40) category, for efficiency purposes, rather than contacting the applicant to submit a (c)(40) I-765 if they are interested in a BFD EAD. Where there is no I-765 on file and USCIS needs to issue an RFE for T nonimmigrant status eligibility, USCIS will include a notice of eligibility to apply for a BFD EAD. (2024 Preamble at 34875.)
§ 214.205(f) – Bona fide determinations for applicants in removal proceedings	In a section applicable to both I-914 and I-914A applicants, DHS states that ICE *may* exercise discretion for an applicant in removal proceedings while USCIS adjudicates an I-914A.	N/A	The preamble clarifies DHS's position that ICE "will maintain a policy regarding the exercise of discretion toward *all* applicants for T nonimmigrant status[,]" and that "ICE *may* exercise prosecutorial discretion, including in cases of T derivatives or eligible family members. (2024 Preamble at 34888.) T Visa PM Ch. 9 addresses applicants in removal proceedings.
§ 214.205(g) – Stay of final order of removal, deportation, or exclusion	A bona fide determination automatically stays execution of any final order of removal, deportation, or exclusion. The stay remains in effect until any adverse decision becomes final. Neither an IJ nor the BIA has jurisdiction to adjudicate a stay of removal *on the basis of* filing an I-914 or I-914A.	§ 214.11(d)(1)(ii)	The updated text is substantially similar to the 2016 interim regulations but is included here for reference given DHS revision of the BFD process overall.
§ 214.206 - Victim of a severe form of trafficking in persons			
§ 214.206(a)(2) – Evidence	Includes a reference to attempted trafficking cases (cases where the applicant has not	N/A	Though the 2016 regulations did not specifically reference attempted trafficking cases in the regulatory

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[attempted trafficking]	performed labor or services or a commercial sex act).		text, the preamble to the 2016 regulations did reference attempted trafficking cases. (2016 Preamble at 92271.) T Visa PM Ch. 2.B.6 addresses attempted trafficking cases. CAST's FAQ on attempted trafficking cases is here.
§ 214.206(a)(3) – Evidence [examples of evidence that can be included]	Amends the list of evidence to emphasize alternative forms of evidence to establish an individual is a victim of severe form of trafficking, or to establish an individual purposes.	§ 214.11(f)(1)	The updated list expands on the list of possible evidence included in the 2016 regulations and serves to prevent unintentional emphasis on specific types of evidence. The preamble states that "[e]ach form of evidence alone may be sufficient under the any credible evidence standard, and no form of evidence is preferred over another." (2024 Preamble at 34877.) Although the current list is more extensive, practitioners should remember that not all possible evidence needs to be submitted. Submitting more evidence does not necessarily improve the chances of success and may sometimes serve to undermine the applicant's eligibility. For a recommended list of evidence, refer to CAST's T Visa Checklist.
§ 214.207 - Physical presence			
§ 214.207(a) – Requirement [T-1 requirement to establish physical presence under one of five grounds]	Simplifies the regulatory text explaining that all T-1 applicants must establish that they meet one of five physical presence grounds enumerated in this section.	§§ 214.11(g)-(g)(1)	DHS explains in the preamble that it has declined to codify any general presumption of physical presence. (2024 Preamble at 34878.) Additionally, DHS makes explicit that it does not interpret the statute as covering situations where a trafficking victim seeks protection in the U.S. from trafficking that occurred exclusively outside U.S. borders where there is no nexus to the U.S. "either through presence at a United States port of entry on account of the trafficking or

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			cooperation with U.S. law enforcement." (2024 Preamble at 34880.) Finally, DHS clarifies the distinction between physical presence and extreme hardship, stating that "[p]hysical presence is a current assessment of an applicant's experience, whereas extreme hardship is a prospective assessment of hardship the applicant may face." (2024 Preamble at 34878-79.) More on physical presence can be in CAST's toolkit and advisory.
§§ 214.207(a)(2)-(3) – Requirement [liberated by an LEA & escaped before an LEA was involved]	Clarifies that subsection (a)(2) applies to an individual liberated from trafficking by an LEA prior to filing an I-914 and that (a)(3) applies to an individual who escaped before an LEA became involved and prior to filing an I-914.	§§ 214.11(g)(1)(ii)-(iii)	The technical fixes help distinguish (a)(2) and (a)(3) from (a)(1). LEA involvement is defined in 8 CFR § 214.201. Liberation by LEA and LEA involvement are discussed in the T Visa PM Ch. 2.C.1.
§ 214.207(a)(4) – Requirement [subject to a severe form of trafficking in persons at some point in the past]	Amends the regulations to clarify that to establish eligibility under this subsection, the applicant needs to establish that their *current presence* in the U.S. is directly related to the original trafficking in persons, *regardless of the length of time* between the trafficking and the T visa application.	§ 214.11(g)(1)(iv)	The use of the term "current presence" is intended to clarify the focus on the applicant's presence at the time of filing and adjudication of the I-914 rather than their presence prior to that time. (2024 Preamble at 34878.) DHS acknowledges that lack of access to legal representation, trauma, lack of support, and lack of self-identification as a trafficking victim may delay an I-914 filing and emphasizes that the passage of time alone does not negate the ability of the applicant to establish physical presence. (2024 Preamble at 34877-78.) Additionally, DHS states that "developments in an applicant's life following the trafficking do not prevent

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			an applicant from establishing ongoing presence on account of trafficking. An applicant may still demonstrate that their current presence in the United States is directly related to the initial victimization and should not be penalized for stabilizing themselves following their victimization." (2024 Preamble at 34879.) Finally, DHS notes that evidence of receipt of services in the U.S. as a trafficking victim or evidence of pursuit of civil, administrative, or criminal remedies "will be considered favorably in the physical presence assessment." (2024 Preamble at 34878.) More on physical presence can be in CAST's toolkit and advisory.
§§ 214.207(a)(5)(i)-(ii) – Requirement [allowed entry into the United States for participation in the detection, investigation, prosecution, or judicial process]	Amends this subsection to indicate that an applicant who has been allowed entry into the U.S. for participation in the detection, investigation, prosecution, or judicial processes associated with an act or perpetrator of trafficking may be deemed physically present *regardless of where the trafficking occurred*. Instructs applicants to submit documentation showing valid entry into the U.S. and that the entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.	§ 214.11(g)(1)(v)	While DHS clarifies that it does not believe Congressional intent was to offer T visas to victims who were trafficked abroad and lack a connection or nexus to the U.S., it reiterates that an applicant who suffered trafficking abroad may be able to establish their physical presence under (a)(5) with evidence of a valid entry that was for the purpose of participation in investigative or judicial processes. (2024 Preamble at 34880.) The T Visa PM discusses presence for participation in investigative or judicial processes in Ch. 2.C.1 and Ch. 3.C.6.
§ 214.207(b)(1) – Departure from the United	[no textual change]	§ 214.11(g)(2)(i)	While the final rule does not change the regulatory text, DHS confirms in the preamble that "continued victimization" does not require that an applicant is

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States [continued victimization]			currently a victim of severe form of trafficking. Rather, this subsection includes ongoing victimization that directly results from past trafficking. (2024 Preamble at 34866.) DHS includes "abduction, abuse, threats, or other trauma that resulted in continuing harm" as types of continued victimization that *may* be sufficient under § 214.207(b)(1). The preamble also indicates that "reentry due to current fear of the traffickers in the victim's home country or last country of residence" falls under § 214.207(b)(1). (2024 Preamble at 34879.) Continued victimization is discussed in T Visa PM Ch. 2.C.2.
§ 214.207(b)(3) – Departure from the United States [allowed reentry for participation in the detection, investigation, prosecution, or judicial process associated with an act or perpetrator of trafficking]	Clarifies that regardless of where the trafficking occurred, the applicant will be deemed physically present if they submit documentation to show their valid entry into the U.S. and evidence that the entry is for participation in investigative or judicial processes associated with the act of trafficking.	§ 214.11(g)(2)(iii)	DHS confirms in the preamble that the TVPA's reference to "allowed entry" means a "lawful entry." (2024 Preamble at 34881.) This interpretation is consistent with current interpretation that requires a lawful entry as stated in T Visa PM Ch. 2.C.2.
§ 214.207(b)(4) – Departure from the United States [past or current	Adds a new provision allowing an applicant to establish their physical presence on account of trafficking following a departure due to "past or current participation in investigative or judicial processes associated with an act or	N/A	The preamble clarifies that this provision is intended to capture "victims of trafficking who departed the United States and reentered unlawfully, but are present in order to participate in an investigative or judicial process associated with the trafficking" regardless of

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
participation in investigative or judicial processes associated with an act or perpetrator of trafficking]	perpetrator of trafficking, regardless of where such trafficking occurred."		the manner of reentry or the amount of time that has passed between the participation in investigative or judicial processes and filing the I-914. (2024 Preamble at 34881.) While (b)(3) focuses on purpose and manner of reentry, (b)(4) focuses on the reason for the victim's current presence rather than the purpose or manner of their entry. (*Id.*) The footnotes to T Visa PM Ch. 2.D address USCIS's interpretation of "investigative or judicial process," which is slightly expanded by the preamble, which clarifies that "investigative or judicial processes" include "criminal, civil, administrative, or other investigations, prosecutions, or judicial processes." (2024 Preamble at 34881.)
§ 214.207(b)(5) – Departure from the United States [returned to the U.S. and received treatment or services related to their victimization]	Adds a provision allowing an applicant who returned to the U.S. following a departure and received treatment or services related to their victimization that cannot be provided in their home country or last place of residence to overcome the presumption of a break in physical presence as per § 214.207(b).	N/A	The only context provided for this section is in the 2024 Preamble at 34880. Practitioners should check the T Visa PM section on departures after the final rule goes into effect to for any additional guidance on interpreting this new provision.
§ 214.207(c) – Evidence [of physical presence on account of trafficking]	Expands the non-inclusive list of evidence and facts that an applicant may utilize to demonstrate physical presence eligibility. Removes the "ability to leave" language from the 2016 interim regulations. Reemphasizes that applicants may submit any credible	§ 214.11(g)(4)	DHS explains in the preamble that USCIS will consider a non-exhaustive list of factors in § 214.207(c) in analyzing the applicant's physical presence. (2024 Preamble at 34879.) In expanding the non-exhaustive list of evidence that may help establish physical presence on account of trafficking, DHS underscores that there is "no preferred or required type of

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
	evidence to establish their physical presence on account of trafficking.		evidence[.]" (2024 Preamble at 34881.) Finally, DHS confirms that T-1 applicants are not required to demonstrate that they had no opportunity to depart or no ability to leave in order to establish their physical presence. (2024 Preamble at 34880.)
§ 214.208 - Compliance with any reasonable request for assistance in the detection, investigation, or prosecution of an act of trafficking			
§ 214.208(b) – Applicability [minimum contact with LEA & evidence]	Clarifies that the applicant must, at a minimum, contact an LEA with proper jurisdiction unless claiming a cooperation exemption or exception under § 214.208(e). Revises the regulation to include that a single contact with an LEA, through telephonic, electronic, or other means, may be sufficient to meet the reporting requirement.	§ 214.11(h)(1)	The final regulations now explicitly require that applicants contact an LEA with jurisdiction unless claiming a cooperation exemption or exception. The preamble states that the applicant must demonstrate that "an LEA that has responsibility and authority for detection, investigation or prosecution of severe forms of trafficking in persons has information about such trafficking in persons" and that the applicant has complied with any reasonable request for assistance as laid out in § 214.208(c). (2024 Preamble at 34937.) The preamble confirms there is no requirement that law enforcement respond to the applicant in order to establish a minimum contact as required by the regulations. (2024 Preamble at 34882.) Additionally, there is no *requirement* that the applicant document whether the LEA responded. "Applicants *may* document whether the LEA responded and the type of response received . . . ." (*Id.* (emphasis added).) The preamble clarifies that an anonymous report generally does not satisfy the reporting requirement, and that a report to the National Human Trafficking Hotline (NHTH) would generally satisfy the reporting requirement if the person making the report

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
			authorized the report to be shared with law enforcement. (2024 Preamble at 34882.) CAST advises that legal representatives follow up directly with the law enforcement agencies with whom the report is shared, when reporting via the NHTH, to ensure the applicant is able to demonstrate compliance with reasonable requests from law enforcement. More on law enforcement cooperation and evidence may be found in CAST's toolkit and advisory. T Visa PM Ch. 2.D.4 addresses contact with law enforcement.
§ 214.208(c) – Reasonable requests	Removes "severity" with reference to trauma suffered or that could occur as a result of complying with the LEA request. Clarifies that whether a "qualified" interpreter is present is the relevant language access consideration. Adds a catchall, "any other relevant circumstances surrounding the request."	§ 214.11(h)(2)	Commentary regarding the changes to the reasonableness determination can be found in the 2024 Preamble beginning at 34882. The T Visa PM addresses reasonable LEA requests at Ch. 2.D.
§ 214.208(e) – Exception or Exemption [trauma & age]	Reiterates that an applicant who has not had contact with an LEA *or* who has not complied with any reasonable request may be excepted or exempt from the cooperation requirement by establishing eligibility for the age-based exemption or the trauma exception. Amended the regulations to include additional examples of evidence that may establish eligibility for the trauma exception. Also clarifies that the applicant's statement should	§§ 214.11(b)(3); (h)(4)	The T Visa PM addresses contact with LEA at Ch. 2.D.4, reviews evidence to establish eligibility for the trauma exception in Ch. 3.C.7, and covers the age-based exemption in Ch. 2.D.5.

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
	explain the trauma and the circumstances surrounding the trauma. Amended the minor exemption section to clarify long-standing policy that the exemption applies to an applicant under 18 years of age at the time at least one act of trafficking occurred.		
§ 214.209(b) – **Factors** [extreme hardship]	Added "current or likelihood of future economic harm" as an extreme hardship factor.	§ 214.11(i)(2)	The preamble clarifies that though economic hardship alone is now allowable under the revised regulations, such harm must rise to the level of extreme hardship involving unusual and severe harm and as a result, economic hardship alone may generally be insufficient to meet the requirement. (2024 Preamble at 34884.) The T Visa PM addresses hardship in Ch. 2.E. Hardship in T visa cases is covered in CAST's advisory on physical presence.
§ 214.209 - Extreme hardship involving unusual and severe harm			
§ 214.209(c)(2) – **Evidence** [hardship to others]	Clarifies that hardship to individuals other than the applicant may be considered in determining the applicant's requisite hardship *only if* the evidence demonstrates that the applicant themselves will specifically suffer extreme hardship upon removal.	§ 214.11(i)(3)	
§ 214.210 – Annual numerical limit			
§ 214.210(b) – **Waiting list**	Revises and amends the waiting list provisions to reflect how the waiting list works in conjunction with the amended BFD process.	§ 214.11(j)(1)	If USCIS has determined that an applicant for T nonimmigrant status has established eligibility but the cap has been met, the applicant will be issued a BFD.

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
			When new slots become available at the beginning of a new fiscal year, the oldest applications will be processed first. The receipt date for the BFD will generally not affect the order in which cases are processed for cap adjudication. (2024 Preamble at 34876-77.) There is no statutory cap for grants of derivative T status or visas. (2024 Preamble at 34943 (FN50).)
§ 214.211 - Application for eligible family members			
§ 214.211(a)(3) – Eligibility [family member facing danger of retaliation]	Amends this section to reflect that in cases where there is no LEA investigating the acts of trafficking after the applicant has reported the crime, USCIS will evaluate any credible evidence.	§ 214.11(k)(3)	The 2024 Preamble discusses the present danger of retaliation category beginning at 34884. DHS has declined to mandate an expedited adjudicated process for present danger of retaliation-based I-914As, stating that there is already a process available to request an expedite. (2024 Preamble at 34884.) With respect to stakeholder requests that DHS expand eligibility to a principal's adult children, DHS indicates that Congress would need to address via statute. (2024 Preamble at 34884.) The T Visa PM addresses eligibility for the present danger of retaliation category in Ch. 4.C.
§ 214.211(e)(1) – Protection for new child of a principal applicant	Clarifies that if the T-1 establishes they have become a parent of a child after filing, the child will be deemed an eligible family member.	§ 214.11(k)(5)	The final rule replaces "had a child" with present-tense language for clarity. (2024 Preamble at 34886.) The T Visa PM addresses new children in Ch. 4.D.4.

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
§ 214.211(e)(3) – Age-out protection for child of a principal applicant	Amends to clarify that the age-out protections apply to a child who may turn 21 during the pendency of the principal's T visa application, stating that as long as the child is under 21 at the time of filing the T-1 visa application, the age of the child when the I-914A is submitted, when the I-914A is adjudicated, or when the child is admitted does not affect the derivative's eligibility.	§ 214.11(k)(5)(iii)	The preamble clarifies that the interim regulations erroneously referred to age-out protections for children of T-1 applicants 21 years old or older. (2024 Preamble at 34886.) The age-out protections are discussed in T Visa PM Ch. 4.D.4.
§§ 214.211(e)(4)(ii)-(iii) – Relationship and age-out protections [*Medina Tovar* application to T visa applicants]	Amends the T visa regulations to reflect current USCIS policy that a T-1 who marries while their I-914 is pending but before it is adjudicated may file an I-914A for their spouse. The amendment also clarifies that a T-1 may file an I-914A for a stepparent or stepchild where the relationship was created after the I-914 was filed but before the I-914 was approved.	§ 214.11(k)(4)	The final rule codifies *Medina Tovar v. Zuchowski* which USCIS has been applying in the T context since issuance of the T Visa PM in October 2021. (T Visa PM Ch. 4.D.2.)
§ 214.211(f) – Evidence demonstrating a present danger of retaliation	Provides an updated list of evidence that may be submitted in support of present danger of retaliation I-914A and clarifies that the evidence may be from any country in which the family member faces retaliation.	§ 214.11(k)(6)	The preamble states that, in accordance with the *any credible evidence* standard, a personal statement alone *could be* sufficient to establish a present danger of retaliation, though DHS encourages submission of additional credible evidence when possible. (2024 Preamble at 34885.) The T Visa PM addresses evidence establishing present danger of retaliation in Ch. 5.A.2.
§ 214.212 - Extension of T nonimmigrant status			
§ 214.212(b) – Application for a	Amends the regulations to add that derivative T applicants may apply for an extension of	§ 214.11(l)(2)	Extension of status for family members is discussed in T Visa PM Ch. 10.E.

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
discretionary extension of status	status independently if the T-1 remains in valid T nonimmigrant status, or that a T-1 may file for an extension of their status and request that this extension be applied to the derivative family members.		
§ 214.212(f) – Exceptional circumstances	Amends the regulations to explicitly state that USCIS may approve an extension of tatus based on exceptional circumstances when an eligible family member is awaiting consular processing.	§ 214.11(l)(6)	This regulatory change is reflective of USCIS practice in T cases. T Visa PM Ch. 10.D.2 mentions derivative consular processing delays as an exceptional circumstance that could merit approval of an I-539.
§ 214.213 - Revocation of approved T nonimmigrant status			
§§ 213(a) & (c) – Revocation of approved T nonimmigrant status [automatic revocation of derivative status & procedures]	Amends to clarify the appeal rights and procedures in cases where USCIS intends to revoke an approved T visa application.	§ 214.11(m)(3)	Revocation is discussed in T Visa PM Ch. 13.
§ 214.214 - Removal proceedings			
§ 214.214 – Removal proceedings	Indicates that nothing prohibits DHS from initiating removal proceedings for conduct committed after admission as a T nonimmigrant or for undisclosed conduct or conditions prior to T adjudication. Reiterates that ICE will maintain a policy regarding the exercise of prosecutorial discretion toward all T applicants and beneficiaries, including decisions relating to	§ 214.11(n)	In deference to ICE's ability to make case-by-case determinations, DHS has declined stakeholder requests—which raised concerns regarding ICE counsel refusal to join motions and the additional hurdles and trauma faced by survivors and their families in removal and with removal orders—to specifically include language that ICE *should agree* to motions to administratively close, terminate, or continue proceedings for T nonimmigrants in removal proceedings. Similarly, DHS has declined to mandate

2024 Regulations (8 CFR)	Regulatory Updates/Changes	Previous Section(s) (if applicable)	Comments
	removal proceedings and enforcement actions.		that ICE join motions to reopen for approved T nonimmigrants. (2024 Preamble at 34888.) See *ICE Directive 11005.3* for current ICE policy regarding applicants for and beneficiaries of victim-based benefits. ILRC's *Overview of ICE's Victim-Centered Directive* provides helpful analysis of the ICE Directive. T Visa PM Ch. 9 addresses applicants in removal proceedings. Practitioners assisting T applicants at imminent risk of removal may reach out to CAST for technical assistance and possible intervention with DHS.
§ 214.215 - USCIS employee referral			
§ 214.215(a) – **USCIS employee referral** [consultation with ICE]	Revises the interim regulation to indicate that a USCIS employee who comes into contact with a potential trafficking victim *may consult* with ICE officials responsible for trafficking investigations, deterrence, and victim protection.	§ 214.11(o)	The interim regulations stated that USCIS "should consult" with ICE where the victim is not already working with an LEA. In response to stakeholder concerns about increased risk of criminal liability and deportation resulting from USCIS referral to ICE—and the fact that some victims may have already made an informed decision with their legal counsel regarding interaction with law enforcement—DHS indicates that referral to ICE is permitted under 8 USC § 1367, that HSI is victim-oriented and has extensive experience handling cases with sensitivity, and that referral to ICE is important given the role that HSI plays in combatting trafficking. DHS also references here coordination within DHS for purposes of Continued Presence and expedite requests. (2024 Preamble at 34890.)

T Adjustment of Status Regulations – 8 CFR § 245.23

2024 Regulation	Updates/Changes	Previous Section(s) (if applicable)	Comments
§ 245.23(a)(3) – Eligibility of principal T-1 applicants	Removes the reference to filing a complete adjustment application prior to April 13, 2009 as no longer applicable.	§ 245.23(a)(2)(ii)	
§ 245.23(a)(4) - Eligibility of principal T-1 applicants [continuous physical presence]	Amends § 245.23(a)(4) to allow T nonimmigrants to restart the clock after a break in continuous physical presence after initial admission as a T nonimmigrant by removing "first" from this section.	§ 245.23(a)(3)	For more on T adjustment, see CAST's T AOS Checklist and Ch. 23 of USCIS's Adjudicator's Field Manual until the T AOS Policy Manual sections are released (Vol. 7, Part J).
§§ 245.23(a)(7)(iii)-(iv) - Eligibility of principal T-1 applicants [compliance with reasonable requests from LE]	Specifies that those T nonimmigrants who were excepted or exempted from the law enforcement cooperation requirement at the T nonimmigrant status stage are exempt from demonstrating compliance with reasonable requests or extreme hardship at adjustment.	§ 245.23(a)(6)	§§ 245.23(a)(7)(iii) and (iv) make clear that a T nonimmigrant who utilized the age-based cooperation exemption or the trauma exception does not have to demonstrate compliance with reasonable requests or extreme hardship involving unusual and severe harm.
§ 245.23(b)(1) - Eligibility of derivative family members [T-1 has applied & meets eligibility requirements]	[no significant textual change]	§ 245.23(b)(1)	Confirms USCIS position that T derivative applicants cannot adjust independently of the T-1 because of the statutory text. (2024 Preamble at 34887.)
§ 245.23(b)(5) - Eligibility of	Codifies DHS's longstanding policy that derivatives admitted into T nonimmigrant status	N/A	The revised regulations codify the policy as laid out by USCIS Policy Memorandum PM-602-0032.2, *Extension*

2024 Regulation	Updates/Changes	Previous Section(s) (if applicable)	Comments
derivative family members [derivative does not lose status when T-1 adjusts]	do not lose their status simply because the T-1 has adjusted status.		*of Status for T and U Nonimmigrants* (Corrected and Reissued) (October 4, 2016) at p. 1.
§ 245.23(d)(2) – Jurisdiction [reasonable requests for assistance]	Removes the requirement that the Attorney General (DOJ) determine whether an applicant receive a reasonable request from law enforcement and if so, whether the applicant complied with such a request.	§ 245.23(d)	

Classes of aliens authorized to accept employment - 8 CFR § 274a.12(c)(40)

2024 Regulation	Updates/Changes	Previous Section(s) (if applicable)	Comments
§ 274a.12(c)(40) – Classes of aliens authorized to accept employment [BFD EAD]	Creates a new category (c)(40) for work authorization based on a T-based bona fide determination.	N/A	Explanation of the new BFD EAD category can be found at 2024 Preamble at 34875.

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