

(7) Immigration benefits or programs that may be relevant to victims of severe forms of trafficking in persons, including those available under the VTPVA;

(8) The right to restitution;

(9) The right to notification of case status; and

(10) The availability of medical services.

(b) The federal agencies as defined in paragraph (a) of this section must ensure reasonable access to translation services and/or oral interpreter services in the event the victim is not able to communicate in English.

§ 1100.35 Authority to permit continued presence in the United States for victims of severe forms of trafficking in persons.

(a) 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. **All law enforcement requests for continued presence must be submitted to the INS, Headquarters Office of Field Operations, in accordance with INS procedures. Each federal law enforcement agency will designate a headquarters office to administer submissions and coordinate with the INS on all requests for continued presence. The designated headquarters office will be responsible for meeting all reporting requirements contained in INS procedures for the processing and administering of the requests for continued presence in the United States of eligible aliens.**

(b) Upon receiving a request, the INS will determine the victim's immigration status. When applicable and appropriate, the INS may then use a variety of statutory and administrative mechanisms to ensure the alien's continued presence in the United States. The specific mechanism used will depend on the alien's current status under the immigration laws and other relevant facts. These mechanisms may include parole, voluntary departure, stay of final order, section 107(c)(3)-based deferred action, or any other authorized

form of continued presence, including applicable nonimmigrant visas.

(1) The alien's continued presence in the United States under this subpart does not convey any immigration status or benefit apart from that already encompassed by the particular form of authorized continued presence granted. In most circumstances, victims granted continued presence will be eligible for temporary employment authorization.

(2) The continued presence granted through any of the mechanisms described in this paragraph (b) will contain the terms normally associated with the particular type of authorized continued presence granted, including, but not limited to, duration of benefit, terms and procedures for receiving an extension, travel limitations, and employment authorization unless expressly waived in an individual approval. Aliens granted deferred action based upon section 107(c)(3) are considered to be present in the United States pursuant to a period of stay authorized by the Attorney General for purposes of INA sections 212(a)(9)(B)(I) and (C).

(c)(1) In cases where it is determined that the granting to an alien of continued presence in the United States poses a threat to national security or to the safety and welfare of the public, the INS may require the requesting agency to meet special conditions or requirements prior to approval. The INS will promptly convey any such condition or requirement to the requesting agency in writing. Upon agreement by the requesting agency to comply with the conditions and accept the costs associated with the implementation of those conditions, the INS will grant the continued presence of the alien in the United States.

(2) Although the INS and the requesting law enforcement agency will make every effort to reach a satisfactory agreement for the granting of continued presence, the INS may deny a request for continued presence in the following instances:

(i) Failure, on the part of the requesting agency, to provide necessary documentation or to adhere to established INS procedures;

(ii) Refusal to agree or comply with conditions or requirements instituted

§ 1100.37

28 CFR Ch. XI (7-1-10 Edition)

in accordance with paragraph (c)(1) of this section;

(iii) Failure, on the part of the requesting agency, to comply with past supervision or reporting requirements established as a condition of continued presence; or

(iv) When the INS determines that granting continued presence for the particular alien would create a significant risk to national security or public safety and that the risk cannot be eliminated or acceptably minimized by the establishment of agreeable conditions.

(3) In the case of a denial, the INS shall promptly notify the designated office within the requesting agency. The INS and the requesting agency will take all available steps to reach an acceptable resolution. In the event such resolution is not possible, the INS shall promptly forward the matter to the Deputy Attorney General, or his designee, for resolution.

(d) In addition to meeting any conditions placed upon the granting of continued presence in accordance with paragraph (c) of this section, the responsible official at the law enforcement agency requesting the victim's continued presence in the United States as described in paragraph (a) of this section shall arrange for reasonable protection to any alien allowed to remain in the United States by the INS. This protection shall be in accordance with 42 U.S.C. 10606 and shall include taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates in accordance with section 107(c)(3). Such protection shall take into account their status as victims of severe forms of trafficking in persons.

§ 1100.37 Requirements to train appropriate personnel in identifying and protecting victims of severe forms of trafficking in persons.

(a) The TVPA requires that appropriate DOJ and DOS personnel be trained in identifying victims of severe forms of trafficking in persons and providing for the protection of such victims. These federal personnel will be trained to recognize victims and pro-

vide services and protections, as appropriate, in accordance with the TVPA, 42 U.S.C. 10606 and 10607, and other applicable victim-assistance laws. Specifically, the training will include, as applicable:

(1) Procedures and techniques for identifying victims of severe forms of trafficking in persons;

(2) Rights of crime victims, including confidentiality requirements;

(3) Description of the services available to victims of severe forms of trafficking in persons at the investigation, prosecution, and, where applicable, correction stages of the law enforcement process;

(4) Referral services to be provided to victims of severe forms of trafficking in persons;

(5) Benefits and services available to alien victims of severe forms of trafficking in persons regardless of their immigration status;

(6) Particular needs of victims of severe forms of trafficking in persons;

(7) Procedures and techniques for dealing with specialized needs of victims who may face cultural, language, and/or other obstacles that impede their ability to request and obtain available services for themselves; and

(8) Protection obligations of responsible officials under federal law and policies, as these apply to victims of severe forms of trafficking in persons.

(b) Each component of the DOJ and the DOS with program responsibility for victim witness services must provide initial training in the particular needs of victims of severe forms of trafficking in persons, and appropriate federal agencies' responses to such victims; initial training of appropriate agency personnel should be conducted as soon as possible. Thereafter, training must be held on a recurring basis to ensure that victims of severe forms of trafficking in persons receive the rights, protections, and services accorded them under the TVPA and federal victims' rights laws, and the federal policies, procedures, and guidelines implementing the TVPA and other federal victims' rights laws.