

**PLEASE REMEMBER: AVOID CRIMINALIZING SURVIVORS AT ALL COSTS**

## **Immigration Human Trafficking** **Judicial Bench Card**

**U.S. Citizenship and Immigration Services (USCIS) definition of “severe forms of human trafficking”**

Under Federal law, the term “severe forms of trafficking” can be divided into two categories:

- **Sex trafficking:** recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age.
- **Labor trafficking:** 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 involuntary servitude, peonage, debt bondage, or slavery.<sup>1</sup>

### **Immigration Benefits to Victims Meeting Certain Eligibility Requirements**

#### **T Visa — Victims of Human Trafficking:**

“A temporary immigration benefit that enables certain victims of a **severe form of human trafficking** to remain in the United States for up to four years if they have assisted law enforcement in an investigation or prosecution of human trafficking.”<sup>2</sup>

- Path to a green card after three years or prosecution of trafficking complete
- Dependents can also obtain status
- If approved, work authorization accompanies visa

#### **Additional Benefits of T Visa:**<sup>3</sup>

- Housing assistance
- Food assistance
- Income assistance
- Employment assistance
- English language training
- Health care
- Mental health services
- Foster care

#### **Eligibility for T Visa:**<sup>4</sup>

- Victim of a **severe form of human trafficking** (defined earlier)
- Are in the United States or territories
- Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (unless under 18/unable to cooperate due to physical or psychological trauma)

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- Demonstrate that individual would suffer extreme hardship involving unusual and severe harm if you were removed from the United States; and
- Are admissible to the United States

### **U Visa — Victims Of Criminal Activity:**

“The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity”<sup>5</sup>

- Valid for 4 years
- If approved, work authorization accompanies visa
- Path to a green card
- Dependents can also obtain status
  - Benefits of the U Visa:
    - Much less extensive assistance with food, childcare, in-state tuition, healthcare<sup>6</sup>

### **Eligibility for U Visa:**

- Victim of qualifying criminal activity (including trafficking, prostitution, sexual exploitation)
- Have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- Have information about the criminal activity.
- Were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime.
- The crime occurred in the United States or violated U.S. laws.

### **Unique Vulnerabilities for Immigrants:**

- Immigrants are more likely to experience coercion based on their immigration status and the immigration status of their families
- Foreign nationals are more vulnerable to trafficking based on their immigration regardless of documentation status.
  - Foreign nationals with green cards or valid visas are still coerced and threatened based on their immigration status. Do not assume an individual is “safe” because they have a visa, a green card, or even are a naturalized citizen.
- 142,000 U.S. citizens in Colorado “live with at least one family member who is undocumented.”<sup>7</sup> Being an immigrant in Colorado makes it likely the individual knows/loves someone who is undocumented.
- A majority of immigrants in Colorado work in construction, administrative & support; waste management, remediation services, agriculture, forestry, fishing & hunting, manufacturing, and accommodation & food services.

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- Leaving/staying in the United States is nuanced; there is no one “right answer” for survivors of trafficking. Bear in mind:
  - Returning to their home country could subject individuals to violence
  - Traffickers can threaten/enact violence against the survivor/family
  - Staying in the United States may be dangerous for the survivor/family as well
- May want to ensure interpreters assisting the survivor are not from the same community/country/family due to issues of stigma around trafficking
  - Giving an individual from the same community/country/family information about the survivor's family can put them at risk of threats of violence against them/their family either in the United States or in the source country.
- Visas like H-2A and H-2B tie employees to their employer making exploitation more likely
  - “Between 2015 and 2019, the Trafficking Hotline reported more than 3,600 survivors of human trafficking who were legally working in the U.S. Approximately 87% of these individuals held H-2A and H-2B visas.”<sup>8</sup>

### **Common Misconceptions:**

- There is a misconception that foreign nationals are “making more money in the United States than they would in their country, so the situation is not exploitation”. Exploitation is as wrong for an immigrant as it is for a U.S. Citizen, and both wage theft and human trafficking are crimes.
- Often it is assumed that all foreign national survivors are trafficking are undocumented, however, this is not true.
  - “Seventy-one percent of labor trafficking victims entered the United States on lawful visas. Nearly 29 percent of victims entered the United States without authorization, many of whom were smuggled into the United States.”<sup>9</sup>

### **Empowering Foreign National Survivors**

- Honesty, transparency, and giving survivors of trafficking choice is key to avoid repeating their exploitation and trauma.
- It is essential foreign national survivors be given as much control as possible over their immigration process.
- “This empowerment and encouragement to take decisions into their own hands can serve as a form of healing for many survivors who lost control over their own decision making while being trafficked”<sup>10</sup>
- “Believe survivors in immigration detention when they tell their stories.”<sup>11</sup>

### **JUDICIAL OBJECTIVE: AVOID CRIMINALIZING SURVIVORS**

Crimes have especially serious consequences for foreign national survivors of trafficking:

- A criminal record can lead to foreign nationals becoming “**inadmissible**”.<sup>12</sup>

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- According to the Immigration and Nationality Act: “Individuals who are inadmissible are not permitted by law to enter or remain in the United States.”
  - Crimes involving "moral turpitude." The term moral turpitude is not defined under federal law and varies by state, but often includes crimes like prostitution, arson, etc.
  - Violation of any controlled substance law.
  - Multiple criminal convictions. Any person convicted of two or more crimes is inadmissible if the person was sentenced to five or more total years in prison (counting the sentences in the aggregate).
  - Drug trafficking. If any immigration officer "knows or has reason to believe" that a person has been involved in trafficking in controlled substances, that person is inadmissible to the United States.
  - Prostitution. Any person coming to the United States to engage in prostitution, or any person who has engaged in prostitution within ten years of his or her application for a visa, adjustment of status, or entry into the United States, is inadmissible.
  - Human trafficking. Any person who commits or conspires to commit human trafficking, or aids, abets, or colludes with an individual who is a trafficker in the United States or outside the United States is inadmissible.

## **COURTROOM SUGGESTIONS**

- Allow survivors of trafficking an opportunity to consult with an attorney about immigration consequences.<sup>13</sup>
- "Be aware of holding area conditions and acknowledge the effects of detention on defendants (e.g. hunger, fatigue)."<sup>14</sup>
- "Court users with limited English proficiency:
  - Focus on respectful and non-intimidating body language with limited English proficiency court users.
  - Work to ensure that interpretation services are provided when needed"<sup>15</sup>

**Judge: "I don't even wear my robe when I'm in the courtroom with them. I sit down at the table with them. I don't sit on the bench."<sup>16</sup>**

## **FORCED CRIMINALITY IS EXTREMELY COMMON**

- It is extremely unlikely that a survivor of trafficking will disclose they are being trafficked due to fear of violence against themselves/their families
  - Remember that gang violence in Central America and elsewhere is rampant
  - Foreign nationals recognize the U.S. Government has no power to defend their families in the source country
- Trafficking victims may appear to be drug dealers/drug mulers.
- Do not assume a foreign national willingly committed a crime.

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**Citations:**

<sup>1</sup><https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-of-human-trafficking-t-nonimmigrant-status>

<sup>2</sup><https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status>)

<sup>3</sup><https://www.acf.hhs.gov/orr/fact-sheet/fact-sheet-victim-assistance-english>

<sup>4</sup><https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status>

<sup>5</sup><https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status>

<sup>6</sup><https://niwaplibrary.wcl.american.edu/wp-content/uploads/PublicBenefitsforUVisaApplicantsfactsheet.pdf>

<sup>7</sup><https://www.americanimmigrationcouncil.org/research/immigrants-colorado>

<sup>8</sup><https://polarisproject.org/blog/2020/06/labor-trafficking-red-flags-in-latest-work-visa-program-changes/>

<sup>9</sup><https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states>

<sup>10</sup>[https://www.urban.org/sites/default/files/publication/97356/delivering\\_justice\\_for\\_human\\_trafficking\\_survivors.pdf](https://www.urban.org/sites/default/files/publication/97356/delivering_justice_for_human_trafficking_survivors.pdf)

<sup>11</sup>[https://www.urban.org/sites/default/files/publication/97356/delivering\\_justice\\_for\\_human\\_trafficking\\_survivors.pdf](https://www.urban.org/sites/default/files/publication/97356/delivering_justice_for_human_trafficking_survivors.pdf)

<sup>12</sup>[https://www.uscis.gov/sites/default/files/document/foia/Inadmissibility\\_and\\_Waivers.pdf](https://www.uscis.gov/sites/default/files/document/foia/Inadmissibility_and_Waivers.pdf)

<sup>13</sup><https://www.supremecourt.ohio.gov/JCS/domesticViolence/publications/humanTrafficking.pdf>

<sup>14</sup>[https://www.courtinnovation.org/sites/default/files/documents/P\\_J\\_Practical\\_Tips.pdf](https://www.courtinnovation.org/sites/default/files/documents/P_J_Practical_Tips.pdf)

<sup>15</sup>[https://www.courtinnovation.org/sites/default/files/documents/P\\_J\\_Practical\\_Tips.pdf](https://www.courtinnovation.org/sites/default/files/documents/P_J_Practical_Tips.pdf)

<sup>16</sup> See 9

<https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-a-victim-of-trafficking-t-nonimmigrant>

<https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status>

[https://www.uscis.gov/sites/default/files/document/foia/Inadmissibility\\_and\\_Waivers.pdf](https://www.uscis.gov/sites/default/files/document/foia/Inadmissibility_and_Waivers.pdf)

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