Chapter 1 - Purpose and Background

A. Purpose

Human trafficking (also known as trafficking in persons) involves the exploitation of persons in order to compel labor, services, or commercial sex acts.[1] The Trafficking Victims Protection Act (TVPA), part of the Victims of Trafficking and Violence Protection Act of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute trafficking in persons, while offering protections to victims of such trafficking, including temporary protections from removal, access to certain federal and state public benefits and services, and the ability to apply for T nonimmigrant status (commonly referred to as the T visa).

T nonimmigrant status allows eligible victims of a severe form of trafficking in persons[2] to remain in the United States on a temporary basis, receive employment authorization, and qualify for benefits and services to the same extent as a refugee.[3] It also allows victims to apply for T nonimmigrant status for certain family members.

B. Background

USCIS has sole jurisdiction over the adjudication of the Application for T nonimmigrant Status (Form I-914). T nonimmigrant status provides:

- Nonimmigrant status and employment authorization for an initial period of up to 4 years;
- Access to public benefits and services;
- Nonimmigrant status for certain qualifying family members; and
- The opportunity to apply for lawful permanent resident status if eligible.[4]

Applications are adjudicated by officers who receive trauma-informed training. There are protections in place to safeguard the confidentiality of any information relating to the applicant.[5] In addition, in recognition of the unique challenges trafficking victims may face in providing evidentiary proof of their victimization, USCIS must consider "any credible evidence" in determining whether the applicant has established eligibility for T nonimmigrant status.[6]

C. Legislative History

Since the initial creation of the T nonimmigrant classification in 2000, Congress has amended the program requirements several times. In addition to creating a nonimmigrant classification for victims of human trafficking, the TVPA and subsequent reauthorizing legislation provide various means to combat trafficking in persons, including tools to effectively prosecute and punish perpetrators of trafficking in persons and prevent incidents of human trafficking.

T Nonimmigrant Status: Acts and Amendments

Acts and Amendments	Key Changes
Trafficking and Violence Protection Act (TVPA) of 2000[7]	• Established T nonimmigrant classification as a temporary immigration benefit available to eligible victims of a severe form of trafficking in persons. • Created a pathway to lawful permanent residence (a green card) for eligible T nonimmigrants.
Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003[8]	• Extended derivative T nonimmigrant status to certain family members of the principal trafficking victim.

Acts and Amendments	Key Changes
Violence Against Women and Department of Justice Reauthorization Act (VAWA) of 2005[9]	• Authorized the duration of T nonimmigrant status for up to 4 years, with the option to extend status in yearly increments when the T nonimmigrant's presence is necessary to assist in the criminal investigation or prosecution of human trafficking. • Defined law enforcement requests where the trafficking victims were unable to cooperate due to physical or psychological trauma suffered as unreasonable. • Eliminated the requirement that relatives of the principal trafficking victim demonstrate extreme hardship to obtain derivative T nonimmigrant status. • Created an additional avenue for trafficking victims to adjust status before accruing 3 years of continuous physical presence in cases where the Attorney General certifies that the investigation or prosecution is complete. • Permitted some trafficking victims earlier access to permanent residency by allowing period(s) of continuous physical presence during the investigation or prosecution into acts of trafficking to count towards the physical presence requirement for adjustment of status under INA 245(l). • Extended 8 U.S.C. 1367 confidentiality protections to applicants for T nonimmigrant status. • Created a waiver for the unlawful presence ground of inadmissibility where the trafficking was at least one central reason for the applicant's unlawful presence in the United States. • Permitted noncitizens who entered the United States in certain nonimmigrant statuses to later change status to T nonimmigrant status.

Acts and Amendments	Key Changes
William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA 2008)[10]	• Provided that an applicant can establish the physical presence requirement if the applicant was allowed entry into the United States to participate in investigative or judicial processes associated with an act or a perpetrator of trafficking. • Provided an exception to the requirement to comply with reasonable requests for assistance from law enforcement due to physical or psychological trauma. • Extended eligibility for derivative status to parents or unmarried siblings under the age of 18 who face a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement. • Expanded ability to extend T nonimmigrant status by allowing DHS to consider exceptional circumstances. • Extended the validity period of T nonimmigrant status to include the period the application for adjustment of status is pending. • Authorized DHS to waive good moral character disqualifications at the adjustment of status stage if the disqualification was caused by or incident to the trafficking.
Violence Against Women Reauthorization Act of 2013 (VAWA 2013)[11]	• Created a new classification of derivative relatives for the adult or minor child of the principal's derivative relative, if the adult or minor child faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement. • Clarified that presence in the Commonwealth of the Northern Mariana Islands constitutes presence in the United States. • Exempted from the public charge ground of inadmissibility T nonimmigrants and applicants setting forth a prima facie ("at first look") case for eligibility for T nonimmigrant status.[12]

Acts and Amendments	Key Changes
Justice for Victims of Trafficking Act of 2015 (JVTA) [13]	• Added “patronizing” and “soliciting” to the definition of sex trafficking at 18 U.S.C. 7102(10). • Added “patronized or solicited” to the crime of sex trafficking at 18 U.S.C. 1591. • Mandated human trafficking awareness training for relevant DHS personnel with law enforcement and public facing roles.

D. Legal Authorities

- INA 101(a)(15)(T) – Definition of T nonimmigrant classification
- 8 CFR 214.11 – Victims of severe forms of trafficking in persons
- INA 101(i) – Referral to nongovernmental organizations and employment authorization
- INA 212(d)(3)(A)(ii) and (d)(13); 8 CFR 212.16 – Waivers of inadmissibility
- INA 214(o) – Nonimmigrants guilty of trafficking in persons, numerical limitations, and length and extension of status
- 8 CFR 274a.12(a)(16) and (c)(25) – Employment authorization
- INA 237(d) – Administrative stay of removal
- 8 U.S.C. 1367 – Penalties for disclosure of information
- 28 CFR 1100.35 – Authority to permit continued presence in the United States for victims of severe forms of trafficking in persons
- 22 U.S.C. 7105(b)(1) – Assistance for victims of trafficking in the United States
- 22 CFR 41.84 – Victims of trafficking in persons

Footnotes

[^ 1] See Trafficking and Violence Protection Act (TVPA) of 2000, Pub. L. 106-386 (PDF), 114 Stat. 1464, 1470 (October 28, 2000), codified at 22 U.S.C. 7101.

[^ 2] The term “severe form of trafficking in persons” is a legal term defined in the TVPA. The term is often referred to as “trafficking”, “human trafficking” or “acts of trafficking.”

[^ 3] See TVPA, Pub. L. 106–386 (PDF), 114 Stat. 1464, 1475 (October 28, 2000) (stating that such persons "shall be eligible for benefits and services…to the same extent as an alien who is admitted to the United States as a refugee under section 207 of the [INA]"). See INA 101(i)(2) (mandating employment authorization for principal T nonimmigrants).

[^ 4] Congress provided a specific basis for T nonimmigrants to adjust under INA 245(l), with eligibility criteria distinct from the criteria that apply to family-based, employment-based, and diversity visa adjustment under INA 245(a). For more information, see Volume 7, Adjustment of Status, Part J, Trafficking Victim-Based Adjustment [7 USCIS-PM J].

[^ 5] See 8 U.S.C. 1367. See 8 CFR 214.11(p). See Volume 1, Privacy and Confidentiality, Part E, VAWA, T and U Cases [1 USCIS-PM E].

[^ 6] See 8 CFR 214.11(d)(5). USCIS also determines the evidentiary value of submitted evidence in its sole discretion.

[^ 7] See Pub. L. 106–386 (PDF) (October 28, 2000). See 22 U.S.C. 7101–7110. See 22 U.S.C. 2151n. See 22 U.S.C. 2152d.

[^ 8] See Pub. L. 108-193 (PDF) (December 19, 2003).

[^ 9] See Pub. L. 109-162 (PDF) (January 5, 2006). See Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, Pub. L. 109-271 (PDF) (August 12, 2006).

[^ 10] See Pub. L. 110-457 (PDF) (December 23, 2008).

[^ 11] See Pub. L. 113-4 (PDF) (March 7, 2013).

[^ 12] See 8 U.S.C 1641(c)(4).

[^ 13] See Pub. L. 114-22 (PDF) (May 29, 2015).

U.S. Citizenship and Immigration Services

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Chapter 2 - Eligibility Requirements

A. Overview of Eligibility Requirements

To establish eligibility for T nonimmigrant status,[1] applicants must demonstrate that they:

- Have been a victim of a severe form of trafficking in persons;
- Are physically present in the United States,[2] American Samoa, or at a U.S. port of entry on account of such trafficking;
- Have complied with any reasonable request for assistance in a federal, state, or local investigation or prosecution into acts of trafficking or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime,[3] except when the applicant was under 18 years of age at the time of victimization or is unable to cooperate with a request due to physical or psychological trauma;[4]
- Would suffer extreme hardship involving unusual and severe harm upon removal from the United States;[5] and
- Are admissible to the United States or qualify for a waiver of any applicable grounds of inadmissibility.[6]

B. Victim of Severe Form of Trafficking in Persons

1. General Definition

The term “severe form of trafficking in persons” is defined by the Trafficking and Victims Protection Act (TVPA)[7] and USCIS regulations.[8] The definition includes both sex trafficking and labor trafficking.

Applicants must demonstrate that the trafficker engaged in a prohibited action by means of force, fraud, or coercion (unless subject to an exemption for age or an exception for trauma suffered) for a particular end. The table below breaks down the definition of a severe form of trafficking in persons into its three elements: action, purpose and means.

Severe Form of Trafficking in Persons Definition

Type of Trafficking	Action	End	Means
Sex Trafficking	• Recruiting • Harboring • Transporting • Provision • Soliciting • Patronizing • Obtaining (Of a person)	For the purpose of a commercial sex act	Induced by force, fraud, or coercion (not required when the victim is under 18 years of age)
Labor Trafficking	• Recruiting • Harboring • Transporting • Provision • Obtaining (Of a person)	For the purpose of subjecting the victim to: • Involuntary servitude • Peonage • Debt bondage • Slavery	Through use of force, fraud, or coercion

2. Definition of Harboring

While the term harboring is most commonly understood to mean actively hiding or concealing a fugitive, harboring within the trafficking context refers to the series of actions a trafficker takes to exert and maintain control over a victim by substantially limiting or restricting a victim's movement or agency.

The term agency refers to the ability to act according to one's own free will, control over one's emotional and physical states of being, and ability to exert (or attempt to exert) influence over oneself.[9] A victim's ability to eventually escape the trafficking does not necessarily invalidate the lack of agency the victim experienced throughout the victimization. Some factors officers may evaluate to determine whether harboring occurred include, but are not limited to:

- Isolation of the victim;
- Limitations on the victim's ability to interact with others;
- Restrictions on the victim's movement; and
- Consequences of acting outside of the trafficker's orders or without the trafficker's explicit permission.

Harboring does not require a preexisting relationship between the victim and the trafficker. However, harboring may occur within a variety of consensual relationships, including employer-employee, parent-child, smuggler-smugglee, landlord-tenant, and marriages and other intimate partner relationships.

Harboring may occur for any period of time, but generally must endure long enough to substantially limit or restrict the victim's movement or agency.

3. Definition of Coercion

The regulations define coercion as:

- 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
- Abuse or threatened abuse of the legal process.[10]

Threats of Serious Harm

Serious harm includes any harm (for example, physical, psychological, or financial) 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[11] in order to avoid experiencing that harm.[12] Serious harm can include a variety of types of harm, including, but not limited to:

- Harm to third parties close to the victim, such as family members or children in the care of the victim;
- Banishment, starvation, or bankruptcy of the victim or family members;
- Subjecting victims to isolation, denial of sleep, and other punishments;
- Refusing to send money home to the victim's family;
- Withholding pay or other compensation resulting in an inability to pay off large debt or obtain necessary medical care or nutrition;

- Deportation or removal from the United States; and
- Reputational harm, such as threats to falsely accuse the victim of being a thief if the victim attempts to leave employment.

Depending on the facts of the case, one type of harm alone may constitute serious harm. In cases involving multiple types of harm, each type of harm might meet the definition of serious harm, or the harms when considered together may constitute serious harm.

In determining whether the trafficker made a threat of serious harm that could reasonably be believed by the victim, USCIS considers any vulnerabilities of the victim, including but not limited to the victim's particular socioeconomic situation, physical and mental condition, age, education, training, experience, or intelligence.[13]

Officers should determine whether a reasonable person in the same circumstances as the victim would believe that the victim would suffer serious harm if the victim did not provide labor or services. Appendix: Case Law References for T Visa Adjudications [3 USCIS-PM B, Appendices Tab] lists decisions that may provide additional clarification on the concepts of threats of harm and serious harm.

Use or Threats of Use of Physical Restraint

The use or threat of use of physical restraint or physical injury, including the use of violence or threats of violence, can constitute coercion.[14] Examples of physical coercion include:

- An actual or threatened physical act that could result in harm;
- The use or threatened use of any object or weapon to intimidate or injure; and
- The use of threats through words or actions to instill in the victim a fear that others would kill, injure, or use force against the victim or any other person.

There is no requirement that the victim be physically restrained and prevented from escaping in order for USCIS to find that physical coercion occurred. In addition, sexual abuse could constitute physical coercion.

Analyzing Whether Actions Constitute Threats

In the coercion analysis, officers may need to determine whether a trafficker's actions constitute a threat.

A threat is a serious expression of an intention to inflict harm, immediately or in the future, as distinguished from idle or careless talk, exaggeration, or something said in a joking manner. For an expression to be a threat, the expression must have been made under such circumstances that a reasonable person (in the victim's circumstances) who heard, read, saw, or otherwise experienced the action would perceive it to be a serious expression of an intent to cause harm. In addition, the trafficker must have made the expression intending it to be a threat, or with the knowledge that the statement would be viewed as a threat.[15]

USCIS views threats from the viewpoint of the victim, considering the victim's individual circumstances and the totality of the circumstances surrounding the trafficker's threats.

Scheme, Pattern, or Plan

Instead of direct threats or use of overt violence, traffickers may employ a 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."[16]

In determining whether there is a scheme, pattern, or plan, officers should consider the totality of the trafficker's actions and any evidence of the trafficker's intent in carrying them out. Officers may consider actions taken before the victim's arrival in the United States or before the start of the performance of labor or services that are relevant to establishing a scheme, pattern, or plan.

Indicators of a scheme, pattern, or plan could include a range of actions by traffickers, some of which may overlap with the types of serious harm discussed above. The following non-exhaustive list includes factors that may contribute to a finding of coercion by way of a scheme, pattern, or plan:

- Limiting access to public benefits and services;
- Confiscation of identification documents;
- Creating a climate of social or linguistic isolation;
- Subjecting the victim to verbal abuse, physical abuse, or harsh living or working conditions;
- Creating a belief that the perpetrator could be physically violent through physical demonstrations of violence against workers or others;
- Inducing workers to take on high debt;
- Fraudulent promises about work or housing conditions;
- Subjecting the victim to economic detriment through tactics including, but not limited to:
  - Underpaying or not paying what was promised to the employee;
  - Not supplying promised work hours; or
  - Deducting expenses from pay that are unreasonable or not as contracted;
- Creating a belief that the employer has the power to deport, arrest, or blacklist[17] a victim through actions such as, but not limited to:
  - Discussing the employer's relationship with law enforcement;
  - Threatening to call the authorities (for example, the sheriff, police, immigration, or Federal Bureau of Investigation) if the employee complains about conditions or leaves the job;
  - Threatening to ensure the employee is never able to work in the United States again;
  - Filing a criminal complaint if the employee complains about working conditions or requests unpaid wages;
  - Threatening to report the employee as an absconder; or
  - Creating a belief that the employer has powerful connections to those who can impose harm on the victim or victim's family members, such as connections to political leaders, local law

enforcement, or organized crime, in the United States or the victim's home country.

Abuse or Threatened Abuse of the Legal Process

Coercion could also include the use or threatened use of the 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. [18]

Appendix: Case Law References for T Visa Adjudications [3 USCIS-PM B, Appendices Tab] lists decisions that may provide additional clarification on the concept of threatened or actual abuse of the legal system. The following is a non-exhaustive list of the types of threats that could establish abuse or threatened abuse of the legal process:

- Threats of imprisonment, prosecution, or imposition of criminal sanctions for failure to perform labor or services;
- Threats to institutionalize someone in a mental health facility;
- Threats to have immigration authorities arrest or deport workers, particularly for failing to comply with the trafficker's directives or as a tactic to keep the workers until the end of their contracts by exploiting their fears; or
- Threats to call immigration authorities, to report a worker for absconding, or to let a person's visa expire.

Legal coercion may occur even when the threatened outcome is not an actual legal possibility. In determining the purpose behind the threats, USCIS examines any threat of legal consequences in light of all of the surrounding circumstances and considers whether the threat is being used for an end different from that envisioned by the law or for a coercive purpose designed to intimidate a worker.

4. Labor Trafficking Concepts

Involuntary Servitude

Involuntary servitude is defined as 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 condition, that person or another person would suffer serious harm or physical restraint; or
- Abuse or threatened abuse of legal process.[19]

Involuntary servitude also occurs when the victim is forced to work for the perpetrator by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition includes those cases in which the perpetrator holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.[20] Coercion may also be established if the perpetrator uses psychological abuse.

Involuntary servitude may occur in circumstances where the victim has a preexisting relationship or arrangement with the trafficker. For example, involuntary servitude may occur in the context of a domestic

relationship (including parent-child, intimate partner, or roommate relationships). Involuntary servitude can include, but is not limited to, domestic servitude and sexual exploitation. Whether the conditions occurred in a domestic context or outside of the home is not in and of itself determinative of whether involuntary servitude has occurred.

Conditions of Servitude Induced by Domestic Violence

Trafficking can occur alongside intimate partner abuse, and involuntary servitude and domestic violence may coexist in some situations. In determining whether threats of abuse (including physical violence, mental abuse, emotional abuse, sexual violence, intimidation, and controlling behavior in the home) create a condition of involuntary servitude that constitutes a severe form of trafficking in persons, officers should evaluate whether the situation involves compelled or coerced labor or services or forced sexual activity and is induced by force, fraud, or coercion.

While domestic violence and trafficking often intersect, not all work that occurs as the result of domestic abuse constitutes a condition of servitude. For example, in certain contexts, the unequal assignment of household tasks among household members may signal an abusive relationship, but it does not automatically constitute the creation of a condition of servitude.

Forced labor[21] compelled by domestic violence occurs where the aim of the domestic violence is to force the victim to engage in labor that creates a condition of servitude. To distinguish between domestic violence and labor trafficking resulting from domestic violence, applicants must demonstrate that the motivation of the perpetrator is or was to subject the applicant to a condition of servitude.

Officers may evaluate the actions the trafficker has taken to maintain the applicant in a condition of servitude, including recruitment, harboring, transportation, provision, obtaining, patronization, or solicitation, to further understand the goal of the perpetrator. Where trafficking is accompanied and enforced by abuse, victims may act upon the trafficker's demands for labor and services due to fear or coercion and may feel that they do not have their own liberty or self-determination.

The following non-exhaustive list outlines circumstances where the trafficker may control the victim's liberty to create a condition of servitude:

- An expectation that the victim's life fulfills the orders of the trafficker (such as a demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and constant availability to labor regardless of health or energy);
- Lack of control over the victim's own wages despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of the campaign of force, fraud, and coercion (for example, unequal sleeping arrangements, living arrangements, or access to nourishment).

Conditions of Servitude Induced During a Voluntary Smuggling Arrangement

Noncitizens may experience violence over the course of their smuggling. While not all crimes or exploitation that occur during a smuggling arrangement rise to the level of trafficking, smuggling may develop into trafficking. The existence of a voluntary smuggling arrangement does not invalidate the possibility of involuntary servitude arising within the smuggling.

Peonage

Peonage is a status or condition of involuntary servitude based upon real or alleged indebtedness.[22] In other words, the perpetrator compels the victim into involuntary servitude in order to satisfy a real or imagined debt.

When a debtor voluntarily enters into a contract to pay off a debt, that debtor, like any other contractor, can choose at any time to break the contract. It does not matter that a debtor entered into a contract agreeing to perform services or labor for the creditor. There is a clear distinction between peonage and voluntarily agreeing to perform labor or provide services in payment of a debt.

In determining whether an applicant has been a victim of peonage, officers should follow the guidance above related to involuntary servitude, with the added element that the victim was held in involuntary servitude in order to satisfy a real or artificially-created debt. If the facts support a finding that the applicant was a victim of peonage, USCIS officers should also consider the applicant a victim of involuntary servitude.

Debt Bondage

"Debt bondage" is the status or condition of a debtor arising from a pledge by the debtor of the personal services of the debtor or those 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 limited and defined.[23] Appendix: Case Law References for T Visa Adjudications [3 USCIS-PM B, Appendices Tab] lists decisions that may provide additional clarification on the concept of debt bondage.

Slavery

The term slavery is not defined in the TVPA or regulations, but is generally understood to mean the state of being held under the complete and total ownership or control of another person or entity and being deprived of liberty, autonomy, and independence for the purpose of subjecting the victim to forced labor or services.

5. Definition of Sex Trafficking

Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.[24] A commercial sex act is any sex act on account of which anything of value is given to or received by any person.[25] For sex trafficking to constitute a severe form of trafficking in persons, the commercial sex act must generally have been induced by force, fraud, or coercion.[26] However, a minor under the age of 18 who engages in a commercial sex act meets the definition of a victim of a severe form of trafficking in persons without having to show force, fraud, or coercion. This is because minors under the age of 18 cannot consent to sexual acts.

6. Key Principles of Trafficking in Persons

Actual Labor or Services Need Not Have Been Performed

In determining whether an applicant has been a victim of a severe form of trafficking, it is not necessary for the victim to actually perform the labor or commercial sex act(s) to be eligible for T nonimmigrant status. For example, a victim may be recruited through force, fraud, or coercion for the purpose of performing labor or services but be rescued or have escaped before performing any labor or services.

Appendix: Case Law References for T Visa Adjudications [3 USCIS-PM B, Appendices Tab] lists decisions that may provide additional clarification on the concepts of labor and services. The statutory definitions of trafficking include acts committed "for the purpose of" subjecting someone to a form of trafficking. Therefore, the statute does not require the victim to actually perform the labor or services.

Compensation is Not Determinative

A worker who is paid some or all the promised wages may still be a victim of trafficking. The fact that an applicant was paid a salary or wage for work is not determinative of whether the applicant was subjected to one of the federal trafficking crimes.

Appendix: Case Law References for T Visa Adjudications [3 USCIS-PM B, Appendices Tab] lists decisions that may provide additional clarification on the concept of compensation.

Labor or Services Might Include Non-Traditional Types of Work

When analyzing whether a person has been subjected to involuntary servitude or peonage, USCIS considers that the labor or services might include non-traditional types of work. Appendix: Case Law References for T Visa Adjudications [3 USCIS-PM B, Appendices Tab] lists decisions that may provide additional clarification on the concepts of non-traditional work. Additionally, compelled labor or services provided in the context of a familial or intimate partner relationship may satisfy the definition.

For example, in certain contexts, domestic labor may constitute forced labor and satisfy the involuntary servitude assessment, when the actions are induced by force, fraud, or coercion and where the perpetrator had a goal of securing the forced labor or services for the purpose of subjecting the victim to a condition of servitude.

No Timeframe Required

To establish that they are or have been a victim of trafficking and have been compelled to perform the labor or services, applicants do not need to show that they were victimized for a defined length of time. For example, in the context of involuntary servitude, the duration of time can be of varying length and may be short in duration.[27]

However, the totality of the circumstances must establish that the nature of the work was intended to create a condition of servitude. Appendix: Case Law References for T Visa Adjudications [3 USCIS-PM B, Appendices Tab] lists decisions that may provide additional clarification on the concept of timeframes.

The labor or services at issue also do not have to be coerced in every instance. There could be time periods in which the labor or services were voluntary and time periods in which they were involuntary. However, the labor or services must have been involuntary for at least some portion of the time that the applicant was performing the work to constitute labor trafficking.

While there is no requirement regarding the length of time the labor or services are performed or the means used to induce the acts, the applicant must establish that the trafficker acted for the purpose of subjecting the victim to involuntary servitude, peonage, debt bondage, slavery, or a commercial sex act.

7. Difference Between Trafficking and Smuggling

Federal law distinguishes between the crimes of human smuggling and human trafficking.[28] Trafficking is a crime committed against a person regardless of the person's immigration status or the crossing of a transnational border, while smuggling is a crime committed against a country's immigration laws and involves the willful movement of a person across a country's border.

A person may voluntarily consent to be smuggled. In contrast, an act of trafficking must involve both a particular means, such as the use of force, fraud, or coercion, and a particular end, such as involuntary servitude or a commercial sex act. Federal law prohibits forced labor regardless of the victim's initial consent to work.[29]

While human trafficking and smuggling are distinct, they are not mutually exclusive. In some smuggling arrangements, conditions may evolve into trafficking. For example, a person who initially agreed to be smuggled in exchange for money, services, or labor could become a victim of trafficking if, over the course of the smuggling, the smuggler subjects or intends to subject the person to acts beyond those agreed upon that meet the definition of a severe form of trafficking through the use of force, fraud, or coercion.

A consensual smuggling agreement does not excuse any acts of trafficking that may arise during the course of smuggling. In cases involving smuggling, officers should look to whether the smuggler's intent may have shifted over time into that of a trafficker and whether the initial consent has been invalidated by the coercive, deceptive, or abusive exploitation of the smuggler-turned-trafficker.

The perpetrator's motivations can be multifaceted. For example, a smuggler who intends to extort a person for financial payments during a smuggling arrangement may also have a dual intent or shifting intent to compel forced labor or services that place the person into a condition of servitude, even where the forced labor or services end upon completion of the smuggling arrangement.

Short periods of victimization may qualify as a condition of servitude depending on the victim's credible statements. Conversely, a person may be forced to perform certain labor within a smuggling arrangement outside of a condition of servitude that does not rise to trafficking, such as facilitating the smuggling operation or avoiding detection at the border. USCIS makes an individualized determination of whether trafficking has been established based on the evidence in each particular case.

C. Physical Presence on Account of Trafficking

Principal applicants for T nonimmigrant status must demonstrate at the time of application that they are physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands,[30] or at a U.S. port of entry, on account of trafficking.[31]

Some traffickers arrange for entry of their victims into these jurisdictions as part of the trafficking scheme, while other traffickers prey upon noncitizens who are already in the United States. These noncitizens may have entered lawfully or they may have entered without being admitted or paroled and are unlawfully present. USCIS takes into account the circumstances relating to the applicant's arrival and current presence in these jurisdictions.[32]

1. Establishing Physical Presence Requirement

Applicants are able to establish physical presence on account of trafficking if they:

- Are present because they are currently being subjected to a severe form of trafficking in persons;

- Were liberated from a severe form of trafficking in persons by a law enforcement agency (LEA);
- Escaped a severe form of trafficking in persons before an LEA was involved;
- Were subjected to a severe form of trafficking in persons at some point in the past and their continuing presence in the United States is directly related to the original trafficking in persons; or
- Are present on account of having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.[33]

Establishing Liberation by Law Enforcement[34]

To establish physical presence under this provision, applicants must demonstrate that law enforcement assisted in liberating them from the trafficking situation. The applicant can satisfy physical presence under this provision regardless of the timeline between the liberation from original trafficking and the filing of the T visa application.

While applicants must demonstrate physical presence at the time of the application, the phrase "at the time of application" does not impose a limitation on the specific amount of time between the original trafficking and the filing of the application. The victim may file the application at any time. There is no requirement that the victim be in an ongoing trafficking situation, be in continuous contact with the trafficker, interact with the trafficker, or be under the control of the trafficker to qualify under this standard.

Establishing Law Enforcement Agency Involvement[35]

To establish physical presence under this provision, the applicant must demonstrate that the LEA became actively involved in detecting, investigating, or prosecuting the acts of trafficking.[36] LEA involvement requires law enforcement action beyond receiving the applicant's tip, and can be satisfied by demonstrating that the LEA interviewed the applicant or otherwise became involved in detecting, investigating, or prosecuting the trafficking after the applicant escaped.

The applicant can satisfy physical presence under this provision regardless of the time that has passed between the LEA's involvement and the filing of the T visa application.

Establishing the Direct Relationship between the Applicant's Ongoing Presence and the Original Trafficking in Persons[37]

The physical presence provision requires USCIS to consider the applicant's presence in the United States at the time of application.[38] The phrase "at the time of application" does not require that the victim file the application within a certain amount of time after the original trafficking. The victim may file the application at any time. There is no requirement that the victim be in an ongoing trafficking situation, be in continuous contact with the trafficker, interact with the trafficker, or be under the control of the trafficker to qualify under this standard.

To establish eligibility under this provision, applicants must establish that their current presence in the United States is directly connected to the original trafficking in persons, whenever that trafficking may have occurred. Observations that the applicant has repeatedly traveled outside the United States since the trafficking, and that the departures from the United States are not the result of continued victimization, or that the applicant lacks continued ties to the United States or has established an intent to abandon life in

the United States, support a finding that their current presence is not directly connected to the original trafficking.

Developments in an applicant's life following the trafficking, including professional and personal milestones (such as finding new employment, having children, getting married, managing mental health diagnoses) do not prevent an applicant from establishing ongoing presence on account of trafficking. Despite reaching certain milestones, an applicant can still demonstrate that their continuing presence in the United States is directly related to the initial victimization. The applicant may accomplish this by explaining the impact of the trauma the applicant continues to experience as a result of the trafficking.

When evaluating whether an applicant's continuing presence in the United States is directly related to the original trafficking in persons, USCIS considers all evidence using a victim-centered approach.[39] Officers should look for a description of the specific impacts of trafficking on the applicant's life at the time of application. The applicant may not establish eligibility if the evidence of the ongoing impact of trauma on the applicant's life does not sufficiently establish the connection between the trafficking and the applicant's presence in the United States at the time of filing.

Factors officers may consider include, but are not limited to:

- Ongoing psychological or physical trauma (or both) the applicant suffers as a result of victimization;
- Health diagnoses stemming from the victimization;
- Ability to access legal and therapeutic services as a tool for rehabilitation in the United States or in the home country, and whether the applicant is currently or has recently accessed trafficking-related services and benefits;
- Current efforts the applicant is undertaking to rehabilitate, stabilize, and acclimate to society; including self-identification as a victim or survivor;
- The level of control or fear the trafficker still exerts over the victim (including continued fear of law enforcement and immigration authorities and fear of retaliation from the trafficker in the victim's home country);
- Current cooperation with law enforcement; and
- Any other activities the applicant has undertaken to deal with the consequences of having been trafficked.

Establishing Presence for Participation in an Investigative or Judicial Process[40]

The applicant meets the physical presence requirement[41] when the trafficking occurred abroad and meets the federal definition of "a severe form of trafficking in persons" and the victim is allowed entry into the United States to participate in an investigative or judicial process associated with an act or a perpetrator of trafficking.

Trafficking that Began Abroad and Continues to the Port of Entry or Into the United States

If the acts of trafficking began abroad, caused the victim's entry into the United States or presence at the port of entry, and were discovered at the port of entry or continued after the applicant entered, and the

acts of trafficking are ongoing, the applicant may establish physical presence as someone who is "present because he or she is currently being subjected to a severe form of trafficking in persons."[42]

Establishing Physical Presence When the Trafficking Ended Outside the United States

Applicants may be able to establish that they are physically present in the United States on account of trafficking[43] even when the trafficking occurred abroad. Applicants must demonstrate that they are now in the United States or at a port of entry on account of trafficking or were allowed valid entry into the United States to participate in a trafficking-related investigation or a prosecution or other judicial process.

2. Departures From the United States

An applicant who has voluntarily left (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons is not considered to be physically present in the United States on account of trafficking except under the following circumstances:

- The applicant's reentry was the result of the continued victimization;
- The applicant is a victim of a new incident of a severe form of trafficking in persons; or
- The applicant has been allowed reentry to the United States for participation in investigative or judicial processes associated with an act, or perpetrator, of trafficking.[44]

The key factors USCIS considers are the reason(s) for the applicant's departure and the circumstances surrounding the applicant's return to the United States.

USCIS cannot approve the application for T nonimmigrant status until the applicant returns to the United States.

Reentry Due to Continuing Victimization

To overcome the presumption that the applicant is no longer physically present on account of trafficking following a departure and sufficiently establish that the applicant's reentry is due to continued victimization, the applicant must demonstrate that the reentry stemmed from a continuation of a prior trafficking scheme or show a clear connection between the applicant's continued victimization from the trafficker and the reentry.

Factors that officers may consider when evaluating whether the applicant's reentry resulted from continuing victimization include, but are not limited to:

- The extent of the applicant's continued fear of and connection to the trafficker;
- The threats and risk of harm the trafficker poses to the applicant and the applicant's family; and
- The nature and severity of the victimization arising out of the impacts of trafficking on the applicant's life at the time of reentry.

Reentry for Participation in Investigative or Judicial Processes

Applicants who departed the United States after their trafficking and subsequently reentered may still satisfy the physical presence requirement if they demonstrate that they were allowed reentry[45] for

participation in investigative or judicial processes[46] associated with an act or perpetrator of trafficking.[47]

Where the applicant was allowed an initial entry or reentry into the United States for participation in investigative or judicial processes[48] associated with an act or perpetrator of trafficking, the applicant must have entered by lawful means, and it does not matter where the trafficking occurred.[49] In this scenario, the applicant is considered to be physically present on account of trafficking, regardless of where such trafficking occurred.[50] To satisfy this ground, the applicant's entry must be lawful and directly connected to the applicant's participation in an investigation or judicial process related to the trafficking.[51]

D. Requests for Law Enforcement Assistance

1. General Rule

An applicant for T nonimmigrant status is required to comply with any reasonable request for assistance in a federal, state, or local investigation or prosecution of acts of trafficking in persons or the investigation of a crime where an act of trafficking in persons is at least one central reason for the commission of that crime.[52]

An LEA includes any federal, state, or local LEA, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons. Federal LEAs include, but are not limited to the following:[53]

- U.S. Attorneys' Offices, Civil Rights and Criminal Divisions;
- U.S. Marshals Service;
- Federal Bureau of Investigation;
- U.S. Immigration and Customs Enforcement;
- U.S. Customs and Border Protection;
- Diplomatic Security Service; and
- Department of Labor.

2. Totality of the Circumstances Test

When determining whether an LEA request for assistance is reasonable, USCIS considers the following non-exhaustive set of factors:

- General law enforcement and prosecutorial practices;
- Nature of the victimization;
- Specific circumstances of the victim;

- Severity of trauma suffered (both mental and physical) and whether the request would cause further trauma;
- Access to support services;
- The safety of the victim or the victim's family;
- Compliance with other requests and the extent of such compliance;
- Whether the request would yield essential information;
- Whether the information could be obtained without the victim's compliance;
- Whether an interpreter or attorney was present to help the victim understand the request;
- Cultural, religious, or moral objections to the request;
- Time the victim had to comply with the request; and
- Age and maturity of the victim.[54]

3. Comparably-Situated Crime Victim Standard

In examining the totality of the circumstances, USCIS uses a comparably-situated crime victim standard,[55] which focuses on the protection of victims and provides more flexibility than other standards in order to strike the proper balance between the law enforcement need to investigate and prosecute and the need to ensure that victims are not overburdened.

The focus is whether it was generally reasonable for an LEA to ask a victim of a severe form of trafficking in persons similar things an LEA would ask other comparably-situated crime victims, not whether a victim's refusal was unreasonable.[56]

4. Contact with Law Enforcement

Applicants must, at a minimum, have had contact with an LEA regarding their victimization.[57] It is sufficient for applicants to provide credible evidence to document that they have reported the victimization, including any crime where the acts of trafficking constitute at least one central reason for the commission of that crime, to law enforcement.

Applicants can generally satisfy the compliance with reasonable requests for assistance requirement by reporting their victimization to law enforcement by email, letter, or other reporting mechanisms and complying with reasonable requests for assistance or demonstrating that they qualify for an exemption due to age or exception due to trauma. Applicants may also establish that they have cooperated with reasonable requests for assistance by submitting a Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B (PDF, 327.01 KB)).

Form I-914, Supplement B provides valuable evidence of the victim's cooperation with reasonable requests for assistance but is not a required form of evidence to establish eligibility for T nonimmigrant status. Completing Form I-914, Supplement B is a discretionary LEA decision. Depending on the individual circumstances, victims may submit evidence of reporting to an LEA outside of the jurisdiction where the

trafficking occurred, which would generally satisfy the reporting requirement, including but not limited to the Supplement B.

An applicant who has never had contact with an LEA regarding the victimization associated with the acts of a severe form of trafficking in persons is not eligible for T nonimmigrant status unless the applicant qualifies for the age-based exemption or trauma-based exception.[58]

5. Age-Based Exemption and Trauma-Based Exception

An applicant is exempt from the requirement to comply with reasonable law enforcement requests if the applicant was under 18 years of age at the time at least one of the acts of trafficking occurred.

An applicant may qualify for an exception if the applicant can establish that applicant's lack of contact with an LEA or compliance with a reasonable request for assistance is due to physical or psychological trauma.[59]

If an officer determines that a request was reasonable and no exceptions or exemptions apply, the officer then examines whether an applicant actually complied with the request.

6. The Relationship Between Assistance with Law Enforcement and Victimization

To establish eligibility for T nonimmigrant status, applicants must demonstrate that the acts of trafficking that they reported to law enforcement are also the acts of trafficking that they experienced directly. Witnessing trafficking alone is not sufficient to satisfy this requirement.

There are many complex factors that inform law enforcement's decision to pursue a case, including the high evidentiary standards for pursuing criminal matters, the difficulty locating the perpetrator, and the expiration of the statute of limitations. The decision to pursue an investigation or prosecution falls solely within the discretion of law enforcement. There is no requirement that law enforcement initiate or complete an investigation or prosecution to satisfy the law enforcement cooperation requirement.

Applicants can satisfy the reasonable request for assistance requirement if they participate in an investigation or prosecution against their trafficker even if the applicant is not directly named in the case. The applicant does not need to demonstrate that the acts of trafficking they suffered are directly referenced in any investigation or prosecution that law enforcement pursues. Therefore, where a case evolves into a formal judicial proceeding as a result of the applicant's cooperation, the applicant does not need to demonstrate direct reference to their victimization.

E. Extreme Hardship

1. General Rule

An applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.[60] A finding of extreme hardship involving unusual and severe harm may not be based solely upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities.[61]

2. Factors

Factors that officers consider in evaluating whether removal would result in extreme hardship involving unusual and severe harm include both traditional extreme hardship factors and factors associated with having been a victim of a severe form of trafficking in persons.[62]

Traditional extreme hardship factors include, but are not limited to, the following:

- The age of the applicant, both at the time of entry and at the time of the application;
- Family ties in the United States and in the country to which the applicant would be returned, if any;
- Length of residence in the United States;
- The health of the applicant and the availability and quality of any required medical treatment in the country of relocation, including length and cost of treatment;
- The political and economic conditions in the country to which the applicant would be returned;
- The possibility of other means of adjusting status in the United States;
- The applicant's community ties in the United States; and
- The applicant's immigration history.[63]

Extreme hardship factors associated with having been a victim of a severe form of trafficking in persons include, but are not limited to:[64]

- The age, maturity, and personal circumstances of the applicant;[65]
- Any physical or psychological illness the applicant has that necessitates medical or psychological care not reasonably available in the foreign country;[66]
- The nature and extent of the physical and psychological consequences of having been a victim of a severe form of trafficking in persons;[67]
- The impact of the loss of access to the U.S. courts and criminal justice system for purposes relating to the incident of a severe form of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;[68]
- The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;[69]
- The likelihood of re-victimization and the need, ability, and willingness of foreign authorities to protect the applicant;[70]
- The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant;[71] and

- The likelihood that the existence of civil unrest or armed conflict would threaten the applicant's individual safety.[72]

In most instances, USCIS does not consider hardship to persons other than the applicant in determining whether an applicant would suffer extreme hardship involving unusual and severe harm. However, USCIS considers the totality of the circumstances, and extreme hardship to an applicant's family member or someone close to the applicant could be a relevant factor, but only to the extent that such hardship affects the applicant. The outcome of the analysis depends on the facts and circumstances of each case.

F. Bar to T Nonimmigrant Status Eligibility

An applicant is barred from receiving T nonimmigrant status if there is substantial reason to believe that the applicant has committed an act of a severe form of trafficking in persons.[73]

G. Effect of Immigration Status on Application

Lawful permanent residents, conditional permanent residents, and U.S. citizens are not eligible for classification as a T nonimmigrant.[74] A person in another valid nonimmigrant status may apply for T nonimmigrant status. However, a noncitizen may not hold more than one nonimmigrant status at a time.[75]

Footnotes

[^ 1] To apply for the T nonimmigrant status classification, the applicant must file an Application for T Nonimmigrant Status, (Form I-914).

[^ 2] The United States includes the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. See INA 101(a)(38). See 8 CFR 214.11(a).

[^ 3] See 8 CFR 214.11(b)(3).

[^ 4] See 8 CFR 214.11(b)(3)(ii). See 8 CFR 214.11(b)(3)(i).

[^ 5] See 8 CFR 214.11(b)(4).

[^ 6] See Volume 9, Waivers and Other Forms of Relief, Part O, Victims of Trafficking [9 USCIS-PM O].

[^ 7] See Pub. L. 106-386 (PDF), 114 Stat. 1464, 1470 (October 28, 2000), codified at 22 U.S.C. 7102(11).

[^ 8] See 8 CFR 214.11(a).

[^ 9] See American Psychological Association Dictionary of Psychology's definition of "agency." See Merriam-Webster Dictionary's definition of "agency."

[^ 10] See 8 CFR 214.11(a).

[^ 11] The term "labor or services" encompasses both labor trafficking and sex trafficking.

[^ 12] See 18 U.S.C. 1589. See H.R. Rep. 106-939 (PDF), p. 101 (Oct. 5, 2000).

[^ 13] See John S. Siffert, *Modern Federal Jury Instructions-Criminal* (Newark: Mathew Bender Elite Products, 2003), P 47A.02 at 5.

[^ 14] See 8 CFR 214.11(a).

[^ 15] See John S. Siffert, *Modern Federal Jury Instructions-Criminal* (Newark: Mathew Bender Elite Products, 2003), P 47A.02.

[^ 16] See 18 U.S.C. 1589.

[^ 17] See Merriam-Webster Dictionary's definition of "blacklist."

[^ 18] See 18 U.S.C. 1589(c)(1).

[^ 19] See 8 CFR 214.11(a).

[^ 20] See 8 CFR 214.11(a).

[^ 21] The term forced labor is commonly used to refer to labor trafficking.

[^ 22] See 8 CFR 214.11(a).

[^ 23] See 8 CFR 214.11(a).

[^ 24] See 8 CFR 214.11(a).

[^ 25] See 8 CFR 214.11(a).

[^ 26] See 8 CFR 214.11(a) (defining "severe form of trafficking in persons").

[^ 27] 18 U.S.C. 1584 requires that involuntary servitude be for "any term," which suggests that the duration of time can be short.

[^ 28] See 8 U.S.C. 1324. See 22 U.S.C. 7102.

[^ 29] See 67 FR 4784, 4787 (PDF) (Jan. 31, 2002).

[^ 30] Before the federalization of Commonwealth of the Northern Mariana Islands (CNMI) immigration law on November 28, 2009, persons in the CNMI had to travel to Guam or elsewhere in the United States to be admitted as a T nonimmigrant. The 2009 legislation effectively replaced the CNMI's immigration laws with U.S. immigration laws. Applicants in CNMI can now apply for T nonimmigrant status without traveling to the United States or Guam. See Consolidated Natural Resources Act of 2008, Pub. L. 110–229 (PDF) (May 8, 2008).

[^ 31] See INA 101(a)(15)(T)(i)(II). See 8 CFR 214.11(g)(1).

[^ 32] See 67 FR 4784, 4787 (PDF) (Jan. 31, 2002).

[^ 33] See INA 101(a)(15)(T)(i)(II). See 8 CFR 214.11(g)(1). See 8 CFR 214.11(g)(3).

[^ 34] See 8 CFR 214.11(g)(1)(ii).

[^ 35] See 8 CFR 214.11(g)(1)(iii).

[^ 36] This means of establishing physical presence is distinct from the eligibility requirement to cooperate with any reasonable requests for assistance from law enforcement under INA 101(a)(15)(T)(III) and 8 CFR 214.11(h). Applicants can generally satisfy the compliance with reasonable requests for assistance requirement by reporting their victimization to law enforcement by email, letter, or other reporting mechanisms and complying with reasonable requests for assistance or demonstrating that they qualify for an exemption due to age or exception due to trauma.

[^ 37] See 8 CFR 214.11(g)(1)(iv).

[^ 38] See 8 CFR 214.11(g)(1).

[^ 39] For additional explanation of the concept of a "victim-centered approach," see Chapter 7, Adjudication, Section A, Victim-Centered Approach [3 USCIS-PM B.7(B)].

[^ 40] See 8 CFR 214.11(g)(1)(v).

[^ 41] See 8 CFR 214.11(g)(1)(v).

[^ 42] See 8 CFR 214.11(g)(1)(i).

[^ 43] See 8 CFR 214.11(g)(ii) – (g)(v).

[^ 44] See 8 CFR 214.11(g)(2).

[^ 45] Applicants may enter the United States through law enforcement agency "sponsorship," such as through a grant of parole to assist law enforcement. See 8 CFR 212.5. If DHS paroles an applicant to pursue civil remedies associated with an act or perpetrator of trafficking, the applicant meets the physical presence requirement because DHS facilitated the victim's entry into the United States for participation in an investigation or prosecution.

[^ 46] The term "judicial processes" refers to criminal investigations, prosecutions, and civil proceedings.

[^ 47] See 8 CFR 214.11(g)(2)(iii).

[^ 48] The term "judicial processes" refers to criminal investigations, prosecutions, and civil proceedings. Applicants may enter the United States through a grant of parole to assist law enforcement. If DHS paroles an applicant to pursue civil remedies associated with an act or perpetrator of trafficking, the applicant meets the physical presence requirement because DHS facilitated the victim's entry into the United States for participation in an investigation or prosecution.

[^ 49] See 8 CFR 214.11(g)(3).

[^ 50] See 8 CFR 214.11(g)(3).

[^ 51] See 8 CFR 214.11(g)(3). See 81 FR 92266, 92272-73 (PDF) (Dec. 19, 2016).

[^ 52] See INA 101(a)(15)(T)(i)(III)(aa).

[^ 53] See 8 CFR 214.11(a).

[^ 54] See 8 CFR 214.11(a). See 8 CFR 214.11(h)(2).

[^ 55] See 81 FR 92266, 92275 (PDF) (Dec. 19, 2016).

[^ 56] See 81 FR 92266, 92275 (PDF) (Dec. 19, 2016). See 8 CFR 214.11(h)(4).

[^ 57] See 8 CFR 214.11(h)(1).

[^ 58] See 8 CFR 214.11(h)(1).

[^ 59] See INA 101(a)(15)(T)(i)(III)(bb). See INA 101(a)(15)(T)(i)(III)(cc). See 8 CFR 214.11(b)(3)(i)-(ii).

[^ 60] See INA 101(a)(15)(T)(i)(IV).

[^ 61] See 8 CFR 214.11(i)(1).

[^ 62] See 8 CFR 214.11(i)(2)(i)-(viii).

[^ 63] See Volume 9, Waivers and Other Forms of Relief, Part B, Extreme Hardship, Chapter 5, Extreme Hardship Considerations and Factors, Section D, Examples of Factors that May Support a Finding of Extreme Hardship [9 USCIS-PM B.5(D)] and Section E, Particularly Significant Factors [9 USCIS-PM B.5(E)]. See *Matter of Anderson* (PDF), 16 I&N Dec. 596, 597 (BIA 1978). See *Matter of Kao and Lin* (PDF), 23 I&N Dec. 45 (BIA 2001). See *Matter of Pilch* (PDF), 21 I&N Dec. 627 (BIA 1996). See *Matter of Cervantes* (PDF), 22 I&N Dec. 560 (BIA 1999).

[^ 64] See 8 CFR 214.11(i)(2).

[^ 65] See 8 CFR 214.11(i)(2)(i).

[^ 66] See 8 CFR 214.11(i)(2)(ii).

[^ 67] See 8 CFR 214.11(i)(2)(iii).

[^ 68] See 8 CFR 214.11(i)(2)(iv).

[^ 69] See 8 CFR 214.11(i)(2)(v).

[^ 70] See 8 CFR 214.11(i)(2)(vi).

[^ 71] See 8 CFR 214.11(i)(2)(vii).

[^ 72] See 8 CFR 214.11(i)(2)(viii).

[^ 73] See INA 214(o)(1). See 8 CFR 214.11(b)(5).

[^ 74] See INA 101(a)(3). See INA 101(a)(15). See INA 101(a)(20). See *Matter of C-G-*, 1 I&N Dec. 70 (BIA 1941) (noting that a noncitizen may not be an immigrant and a nonimmigrant at the same time).

[^ 75] See 67 FR 4784, 4792 (PDF) (Jan. 31, 2002).

Current as of October 30, 2023

Chapter 3 - Documentation and Evidence for Principal Applicants

To apply for the T nonimmigrant status, the applicant must file an Application for T Nonimmigrant Status (Form I-914).[1]

A. Burden of Proof

The applicant bears the burden of establishing eligibility for T nonimmigrant status.[2] The applicant must meet all the eligibility requirements from the time of filing the application through adjudication.[3]

B. Standard of Proof

The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. USCIS evaluates applications for T nonimmigrant status under the preponderance of the evidence standard. The applicant has the burden of demonstrating eligibility by a preponderance of the evidence.[4]

C. Evidence

USCIS reviews all evidence and may investigate any aspect of the application. Officers may use evidence previously submitted by the applicant for any immigration benefit or relief in evaluating the eligibility of an applicant for T nonimmigrant status. USCIS is not bound by previous factual determinations made in connection with a prior application or petition for any immigration benefit or relief. USCIS determines, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.[5]

1. Any Credible Evidence Provision

Inability to Obtain Documentation and Evidence

USCIS must consider "any credible evidence" in determining whether the applicant has established eligibility for T nonimmigrant status.[6] Applicants may experience difficulties obtaining traditional evidence, including documents, relevant to establishing their eligibility. USCIS applies the "any credible evidence" provision to victim-based filings in recognition of the difficulties victims may experience in obtaining such evidence.

Due to the nature of the victimization (including possible loss of control of personal possessions as a tactic to further force, fraud, or coercion), trafficking victims may not have the ability to obtain certain personal information that would otherwise be available to support a finding of eligibility. The trafficker may control access to, confiscate, or destroy relevant documentation, including identification, travel and employment documents, or immigration documents.

Factual Inconsistencies

In determining the credibility of an applicant's personal statement and other evidence and evaluating the sufficiency of evidence submitted, officers must consider the impact of trauma and victimization. Officers should also be mindful of the complex ways in which trauma may present for survivors of trafficking, including cognitive, emotional, sensory, and physical impacts.

Because trauma impacts every person differently, what is traumatizing to one person may not be traumatizing to another. In some cases, trauma may result in the applicant being unable to recollect or express all details of the victimization in a linear fashion. Officers must review inconsistencies in the applicant's story over the course of the applicant's immigration journey in light of this fact, particularly if the applicant has established that the applicant is a victim of a severe form of trafficking in persons.

A person's recollection of traumatic experiences may shift over time. As such, inconsistencies in the applicant's account of victimization may not necessarily be indicators of fraud or lack of credibility but may instead be the result of a fragmented recollection due to trauma.

Weighing and Determining the Credibility of Evidence

Under the "any credible evidence" provision, officers should not require the applicant to submit particular types of evidence and may not deny applications for T nonimmigrant status due to the applicant's failure to submit a particular type of evidence. Officers must examine each piece of evidence individually and within the context of the totality of the evidence for relevance, probative value, and credibility.[7]

The determination of what evidence is credible and the weight given to each type of evidence is within the sole discretion of USCIS and determined on a case-by-case basis.[8] Evidence that is credible generally contains information that is both internally consistent and externally consistent with other relevant evidence in the record.

However, USCIS makes determinations of credibility based on the particular facts and circumstances of the case, taking into account the limitations on the particular applicant's ability to obtain evidence and the general considerations that pertain to victim-based cases, including the impact of trauma and victimization discussed above.

An officer may only deny an application on evidentiary grounds if the evidence the applicant submitted is not credible or otherwise does not meet the preponderance of the evidence standard to establish eligibility. Officers may not request or require that the applicant demonstrate the unavailability of a specific document, including traditionally understood "primary evidence." An explanation from the applicant, however, regarding the unavailability of such documents may assist officers in adjudicating the case.

2. Initial Filing and Accompanying Evidence

When filing the Application for T Nonimmigrant Status (Form I-914), the applicant should submit:

- Any credible evidence demonstrating that the applicant meets the eligibility requirements;
- The applicant's signed personal statement describing the facts of the victimization, compliance with reasonable requests for assistance from law enforcement (or a basis for why the applicant has not complied), and any other eligibility requirements; and
- If the applicant is seeking a waiver of inadmissibility, an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), with the appropriate fee[9] or request for a fee waiver and supporting evidence.[10]

The applicant must also submit biometrics at a local Application Support Center.[11]

3. Evidence from Law Enforcement Agency

An applicant may wish to submit evidence from a law enforcement agency (LEA) to help establish certain eligibility requirements for T nonimmigrant status. Evidence from an LEA is optional and USCIS does not give it any special evidentiary weight.[12]

Law Enforcement Agency Endorsement

An applicant may provide an LEA endorsement by submitting Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B (PDF, 327.01 KB)). The Supplement B must be signed by a supervising official responsible for the investigation or prosecution of severe forms of trafficking in persons.

The LEA completing the Supplement B should attach the results of any name or database inquiries performed on the victim and describe the victimization (including dates where known) and the cooperation of the victim. USCIS, not the LEA, determines if the applicant was or is a victim of a severe form of trafficking in persons and otherwise meets the eligibility requirements for T nonimmigrant status. Under federal law, the decision of whether to complete a Supplement B is within the discretion of the LEA. A formal investigation or prosecution is not required to complete a Supplement B.[13]

An LEA may revoke or disavow the contents of a previously submitted Supplement B in writing.[14] After revocation or disavowal, USCIS no longer considers the original Supplement B as supporting evidence.[15]

Continued Presence Documentation

An applicant granted Continued Presence (CP) by the DHS Center for Countering Human Trafficking should submit documentation of the grant of CP.[16] DHS may revoke CP if the recipient commits a crime,

absconds, departs without obtaining advance parole, receives an immigration benefit, or is determined not to be a trafficking victim. Once CP is revoked, USCIS no longer considers CP as evidence of the applicant's compliance with requests for assistance in the LEA's investigation or prosecution.

4. Evidence of Immigration History

An applicant may also submit any evidence regarding entry, admission into, or permission to remain in the United States, or note that such evidence is contained within an applicant's immigration file.[17]

5. Evidence of Severe Form of Trafficking in Persons

The applicant must submit evidence that demonstrates that the applicant is or has been a victim of a severe form of trafficking in persons. Except in instances of sex trafficking involving victims under 18 years of age, the applicant's evidence should establish that the trafficker:

- Used a particular action (recruitment, transportation, harboring, provision, obtaining, or in the case of sex trafficking, also patronizing or soliciting);
- Employed a particular means (force, fraud, or coercion); and
- Acted with the purpose of achieving an actual or intended end (commercial sex act, involuntary servitude, peonage, debt bondage, or slavery).

If a victim has not performed labor or services or a commercial sex act, the victim must establish that the victim was recruited, transported, harbored, provided, or obtained (or in the case of sex trafficking, patronized or solicited) for the purpose of a commercial sex act or subjection to involuntary servitude, peonage, debt bondage, or slavery.[18]

The applicant may satisfy this requirement by submitting the following types of evidence:[19]

- Form I-914, Supplement B (PDF, 327.01 KB);
- For applicants who are children under 18 years old, a letter from the U.S. Department of Health and Human Services certifying that the child is a victim of trafficking;
- Documentation of a grant of CP; or
- Any other credible evidence, including but not limited to:
  - Trial transcripts;
  - Court documents;
  - Police reports;
  - News articles;
  - Copies of reimbursement forms for travel to and from court; and
  - Affidavits.

Applicants should describe the steps they have taken to report the crime to an LEA and indicate whether any criminal records relating to the trafficking crime are available.[20] If there has been civil litigation related to the trafficking, applicants may include this evidence as well.

6. Evidence of Physical Presence on Account of Trafficking

Evidence of Physical Presence in the United States

The applicant must submit evidence demonstrating that the applicant is physically present in the United States or at a port-of-entry on account of trafficking in persons. Because the regulatory language about the physical presence requirement is phrased in the present tense, USCIS considers the victim's current situation, and whether the victim can establish current presence in the United States on account of trafficking. A victim who is liberated from trafficking is not exempt from the statutory requirement to show that the victim's presence is on account of trafficking.[21]

USCIS considers all evidence presented to determine physical presence, including the applicant's responses on the application for T nonimmigrant status regarding when they escaped from the trafficker, what activities they have undertaken since that time, including any steps taken to deal with the consequences of having been trafficked, and the applicants' ability to leave the United States.[22]

Applicants may establish physical presence by submitting the following types of evidence:

- Form I-914, Supplement B (PDF, 327.01 KB);
- Documentation of a grant of CP;[23]
- Documentation of entry into the United States or permission to remain in the United States, such as parole,[24] or a notation that such evidence is within the applicant's immigration records; or
- Any other credible evidence, including a personal statement from the applicant, stating the date and place (if known) and the manner and purpose (if known) for which the applicant entered the United States and demonstrating that the applicant is now present on account of the trafficking.[25]

Evidence to Establish the Direct Relationship between the Applicant's Ongoing Presence and the Original Trafficking in Persons

An applicant may support the claim that the applicant's continuing presence in the United States is directly related to the original trafficking in persons by providing any credible evidence. Officers should consider all evidence describing the ongoing impacts of trafficking on the applicant's life at the time of application using a victim-centered approach.

The applicant cannot satisfy the physical presence requirement[26] unless the evidence sufficiently establishes the connection between the specific impact of trauma on the applicant's life at the time of filing and the applicant's ongoing presence in the United States.

Evidence that USCIS may consider includes, but is not limited to:

- A narrative within the personal statement explaining the physical health effects or psychological trauma the applicant has suffered as a result of the trafficking and a description of how this trauma impacts the applicant's life at the time of filing;

- Affidavits, evaluations, diagnoses, or other records from the applicant's service providers (including therapists, psychologists, psychiatrists, and social workers) documenting the therapeutic, psychological or medical services the applicant has sought or is currently accessing as a result of victimization and that describe how the applicant's life is being impacted by the trauma at the time of filing;

- Documentation of any additional stabilizing services and benefits, including financial, language, housing, or legal resources, the applicant is accessing or has accessed as a result of being trafficked. For those services and benefits not currently being accessed, the record should demonstrate how those past services and benefits related to trauma the applicant is experiencing at the time of filing;

- Evidence demonstrating the applicant's ability to access services in the United States or in the applicant's home country;

- Form I-914, Supplement B (PDF, 327.01 KB) or other statements from LEAs documenting the cooperation between the applicant and the law enforcement agency; and

- Copies of news reports, law enforcement records, or court records.

Evidence of Entry or Reentry for Participation in Investigative or Judicial Processes

There is a general presumption that victims who have traveled outside of the United States at any time after the act of trafficking and then returned are not present on account of trafficking. To overcome this presumption, applicants must show that their reentry into the United States was the result of continued victimization or that they are a victim of a new incident of a severe form of trafficking in persons.[27] This presumption also may be overcome when the applicant is allowed reentry in order to participate in investigative or judicial processes associated with an act or a perpetrator of trafficking.[28]

To establish that they were allowed entry or reentry into the United States to participate in an investigative or judicial process associated with an act or a perpetrator of trafficking, applicants must show documentation of entry through a legal means such as parole and must submit evidence that the entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.[29]

Such evidence may include:

- Form I-914, Supplement B (PDF, 327.01 KB);

- Other evidence from an LEA to describe the victim's participation;

- A personal statement from the victim, or

- Any other credible supporting documentation showing that the applicant's entry was for participation in the investigative or judicial processes relating to the applicant's trafficking.

If the applicant meets the physical presence requirement, the applicant must still satisfy all the other requirements for T nonimmigrant status, including compliance with reasonable requests for assistance from the LEA.

7. Evidence of Compliance with Law Enforcement Requests

Evidence to Establish Compliance

In determining whether an applicant complied with reasonable LEA requests for assistance, USCIS examines the totality of the circumstances, including several specific factors,[30] and considers any credible evidence submitted.

To establish compliance with LEA requests for assistance, the applicant may submit a variety of evidence, including but not limited to:

- Form I-914, Supplement B (PDF, 327.01 KB);
- Documentation of a grant of CP;[31]
- Email and letter correspondence showing reporting or communication between the applicant or the applicant's attorney and an LEA;
- Copies of phone and fax logs or email and letter correspondence showing contact with an LEA to report the victimization, or offer assistance, and evidence of any response received from the LEA;
- A personal statement explaining the applicant's efforts to report to an LEA and the response or lack of response from the LEA; and
- Any credible evidence demonstrating the victim's willingness to assist in the detection, investigation or prosecution of a severe form of trafficking in persons, such as:
  - Trial transcripts;
  - Court documents;
  - Police reports;
  - News articles;
  - Copies of reimbursement forms for travel to and from court;
  - Affidavits from the victim and other witnesses; and
  - Any other credible evidence.

If submitting a personal statement,[32] the applicant should describe what the applicant has done to report the crime to an LEA and indicate whether criminal records relating to the trafficking crime are available.[33] The applicant's statement should also show that an LEA with the responsibility and authority for the 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 in the investigation or prosecution of such acts of trafficking.

If the applicant did not report the crime, the applicant must provide an explanation to demonstrate that they qualify for an exemption due to age or an exception for trauma.[34]

The absence of a Supplement B does not adversely affect an applicant who can meet the evidentiary burden with the submission of other evidence of sufficient reliability and relevance. Even though it is not required, USCIS considers an LEA endorsement to be a useful and convenient form of evidence, among

other types of credible evidence.[35] Even in the absence of an LEA endorsement, USCIS may contact the LEA that is involved in the case at its discretion.[36]

Evidence to Establish Physical or Psychological Trauma Exception

To establish the trauma-based exception to the requirement to comply with reasonable LEA requests, an applicant may provide the following evidence:

- An affirmative statement describing the trauma; or
- A signed statement attesting to the victim's mental state from a professional qualified to make such determinations, such as a medical professional, social worker, or victim advocate; and
- Medical or psychological records that are relevant to the trauma; or
- Any other credible evidence.[37]

To establish that the person providing the signed attestation is qualified to make such a determination, the applicant should provide a description of the person's qualifications or education or a description of the person's contact and experience with the applicant.[38]

A victim's affidavit alone may satisfy the evidentiary burden. However, USCIS encourages applicants to submit additional relevant evidence.[39]

Evidence of Age-Based Exemption

If an applicant was under the age of 18 at the time of victimization and is therefore exempt from the requirement to comply with reasonable law enforcement requests, the applicant should submit credible evidence of the applicant's age, including an official copy of the applicant's birth certificate, a passport, or a certified medical opinion, if available.[40] The applicant may also submit other evidence of the applicant's age.

8. Evidence of Extreme Hardship

Applicants must submit evidence that demonstrates they would suffer extreme hardship involving unusual and severe harm if removed from the United States. When evaluating whether removal would result in extreme hardship involving unusual and severe harm, USCIS considers several factors.[41]

The applicant may document extreme hardship through a personal statement or other evidence, including evidence from relevant country condition reports and any other public or private sources of information. The applicant may include evidence of hardship arising from circumstances surrounding the victimization and any other circumstances.[42] USCIS does not consider evidence of hardship to persons other than the applicant unless the evidence demonstrates hardship to the applicant.

Applicants under the age of 18 are not exempt from the extreme hardship requirement. However, USCIS considers an applicant's age, maturity, and personal circumstances (among other factors) when evaluating the extreme hardship requirement.[43]

Footnotes

[^ 1] See the Form I-914 webpage for more information on filing. There is no filing fee associated with this application.

[^ 2] See INA 291.

[^ 3] See INA 291. See 8 CFR. 103.2(b)(1). See 8 CFR 214.11(d)(5). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 4, Burden and Standards of Proof [1 USCIS-PM E.4].

[^ 4] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 376 (AAO 2010). See *Matter of Martinez (PDF)*, 21 I&N Dec. 1035, 1036 (BIA 1997). See Volume 1, General Policies and Procedures, E, Adjudications, Chapter 4, Burden and Standards of Proof, Section B, Standards of Proof [1 USCIS-PM E.4(B)].

[^ 5] See 8 CFR 214.11(d)(5).

[^ 6] See 8 CFR 214.11(d)(5).

[^ 7] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 376 (AAO 2010).

[^ 8] See 8 CFR 214.11(d)(5).

[^ 9] See 8 CFR 106.2(a)(11).

[^ 10] See 8 CFR 214.11(d)(2).

[^ 11] See 8 CFR 103.16.

[^ 12] See 8 CFR 214.11(d)(3).

[^ 13] See 8 CFR 214.11(d)(3)(i).

[^ 14] If a certifying official discovers information regarding a victim, crime, or declaration that the agency believes USCIS should be aware of, or if the official wishes to withdraw the certification, the official should contact USCIS using the directions outlined in the Form I-914 Supplement B instructions.

[^ 15] See 8 CFR 214.11(d)(3)(ii).

[^ 16] See 8 CFR 214.11(d)(3)(iii). See 28 CFR 110.35 (U.S. Immigration and Customs Enforcement's authority to grant Continued Presence).

[^ 17] See 8 CFR 214.11(d)(3)(iv).

[^ 18] See 8 CFR 214.11(f).

[^ 19] See 8 CFR 214.11(f)(1).

[^ 20] See 8 CFR 214.11(f)(1).

[^ 21] See 81 FR 92266, 92273 (PDF) (Dec. 19, 2016).

[^ 22] See 8 CFR 214.11(g)(4).

[^ 23] See 28 CFR 1100.35.

[^ 24] See 8 CFR 212(d)(5).

[^ 25] See 8 CFR 214.11(g)(4).

[^ 26] Under 8 CFR 214.11(g)(1)(iv).

[^ 27] See 8 CFR 214.11(g)(2).

[^ 28] See 8 CFR 214.11(g)(2)(iii).

[^ 29] See 8 CFR 214.11(g)(3).

[^ 30] See Chapter 2, Eligibility Requirements, Section D, Requests for Law Enforcement Assistance, Subsection 2, Totality of the Circumstances Test [3 USCIS-PM B.2(D)(2)].

[^ 31] See 28 CFR 1100.35.

[^ 32] See Chapter 3, Documentation and Evidence for Principal Applicants, Section C, Evidence, Subsection 2, Initial Filing and Accompanying Evidence [3 USCIS-PM B.3(C)(2)].

[^ 33] See 8 CFR 214.11(f)(1). See 8 CFR 214.11(h)(1) (requiring that the applicant has had contact with an LEA regarding the acts of a severe form of trafficking in persons).

[^ 34] See 8 CFR 214.11(h)(3)(iii). See 8 CFR 214.11(h)(4).

[^ 35] See 81 FR 92266, 92276 (PDF) (Dec. 19, 2016).

[^ 36] See 81 FR 92266, 92276 (PDF) (Dec. 19, 2016).

[^ 37] See 8 CFR 214.11(h)(4)(i).

[^ 38] See 81 FR 92266, 92277 (PDF) (Dec. 19, 2016).

[^ 39] See 81 FR 92266, 92277 (PDF) (Dec. 19, 2016).

[^ 40] See 8 CFR 214.11(h). A certified medical opinion may include medical evaluations, dental assessments, and x-ray records.

[^ 41] See Chapter 2, Eligibility, Section E, Extreme Hardship, Subsection 2, Factors [3 USCIS-PM B.2(E)(2)].

[^ 42] See 8 CFR 214.11(i)(3). See Volume 9, Waivers and Other Forms of Relief, Part O, Victims of Trafficking, Chapter 3, INA 212(d)(13) Waivers, Section A, Waiver Eligibility [9 USCIS-PM O.3(A)].

[^ 43] See 81 FR 92266, 92277 (PDF) (Dec. 19, 2016).

Current as of October 30, 2023

U.S. Citizenship and Immigration Services

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Chapter 4 - Family Members

A. Overview

A victim who has applied for or been granted T nonimmigrant status (the "principal applicant") may request derivative status for certain eligible family members. The principal applicant may file Supplement A, Application for Family Member of T-1 Recipient (Form I-914, Supplement A) concurrently with the principal applicant's Application for T Nonimmigrant Status (Form I-914) or at any time while the principal's application is pending or while the principal holds T-1 nonimmigrant status.

Eligible family members must be admissible to the United States or apply for a discretionary waiver of inadmissibility.[1]

There are two general categories of family members eligible for derivative T nonimmigrant status if accompanying, or following to join, the principal:

- Those whose eligibility is based on the age of, and their relationship to, the principal; and
- Those whose eligibility is based on a showing of a present danger of retaliation.[2]

B. Derivative Status Based on Relationship to Principal

Where the principal T nonimmigrant (T-1) is under 21 years of age, the following table outlines which family members may be eligible for derivative T nonimmigrant status.[3]

Derivative Status Based on Principal T Nonimmigrant Who is Under 21

Family Member	Code of Admission

Family Member	Code of Admission
Spouse	T-2
Child (unmarried and under 21 years of age)[4]	T-3
Parent	T-4
Unmarried siblings under 18 years of age	T-5

Where the principal is 21 years of age or older, the following table outlines which family members may be eligible for derivative T nonimmigrant status.[5]

Derivative Status Based on Principal T Nonimmigrant Who is 21 or Older

Family Member	Code of Admission
Spouse	T-2
Child (unmarried and under 21 years of age)[6]	T-3

C. Derivative Status Based on Fear of Retaliation

1. General Categories of Eligible Family Members

Regardless of the age of the principal, a principal T nonimmigrant's family members may be eligible for derivative T nonimmigrant status if they are in present danger of retaliation as a result of the principal applicant's escape from trafficking or cooperation with law enforcement.[7] The following table outlines which family members may be eligible on this basis.

Derivative Status Based on Fear of Retaliation

Family Member	Code of Admission
Parent	T-4
Unmarried siblings under 18 years of age[8]	T-5
Adult or minor child of a derivative family member[9]	T-6

2. Adult or Minor Child of Derivative Family Member (T-6)

The T-6 category is unique in that it expands eligibility beyond relatives who are typically eligible for derivative status. To qualify for T-6 status, the applicant must establish:

- The familial relationship between the T-6 family member and the parent of the T-6;
- That USCIS granted the T-6 family member's parent T-2, T-3, T-4, or T-5 status as the principal's derivative beneficiary; and
- That the T-6 family member faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement.

T-6 derivatives could include the principal's grandchild, the principal's spouse's child (if not otherwise already eligible as the principal's child), the principal's sibling (if not otherwise already eligible, such as those over the age of 18 or married), and the principal's niece or nephew.

The table below illustrates which family members of a principal T-1 nonimmigrant could derive T-6 status if they demonstrate they meet the present danger of retaliation requirement.

Family Members Eligible to Derive T-6 Status

Age of the T-1 Principal	Derivative Family Member of the T-1 Principal[10]	Eligible T-6 Derivative Based on Present Danger of Retaliation
Under the age of 21	Spouse (T-2)	The T-2 spouse's child[11] (the principal's stepchild)
	Unmarried child under age 21 (T-3)	The T-3 child's child (the principal's grandchild)
	Parent (T-4)	The T-4's child (the principal's sibling)
	Sibling (under the age of 18 and unmarried) (T-5)	The T-5 sibling's child (the principal's niece or nephew)
21 years of age or older	Spouse (T-2)	The T-2 spouse's child (the principal's grandchild)
	Unmarried child under age 21 (T-3)	The T-3 child's child (the principal's grandchild)

Age of the T-1 Principal	Derivative Family Member of the T-1 Principal[10]	Eligible T-6 Derivative Based on Present Danger of Retaliation
Any age	Parent (T-4) based on present danger of retaliation	The T-4 parent's child (the principal's grandchild)
	Sibling (under the age of 18 and unmarried) (T-5) based on present danger of retaliation	The T-5 sibling's child (the principal's niece or nephew)
Note: Where ages are listed in this table, they refer to age at the time of the principal applicant's filing for T-1 nonimmigrant status. T-6 family members are eligible regardless of their marital status or age. There is no T derivative status for children (or other family members) of the adult or minor child who is granted T-6 status.		

USCIS recognizes that this derivative family category is based on "a present danger of retaliation" and different family members may face a danger of retaliation at different times. The T-6's family member does not have to hold derivative status at the time of the T-6 application.

For example, if the principal's spouse held T-2 status but then died before the principal files for T-6 status for the spouse's adult child, the adult child may still be eligible for T-6 status. Additionally, if a parent who had obtained T-4 status allowed that status to lapse without extending it, the T-4 parent's adult or minor child could still be eligible for T-6 status if the child faced a present danger of retaliation.

D. Family Relationship at Time of Filing

1. General Rule

Generally, subject to age-out protections and except as specified below,[12] the family relationship must exist at each of the following times:

- When the applicant files the application for T-1 nonimmigrant status;[13]
- When USCIS adjudicates the application for T-1 nonimmigrant status;
- When the applicant files the application for derivative T nonimmigrant status;
- When USCIS adjudicates the application for derivative T nonimmigrant status; and
- When the eligible family member is admitted to the United States at a port of entry, if residing abroad.

2. Spousal Relationship Must Exist When Principal's Application is Adjudicated

USCIS evaluates whether the marriage creating the qualifying spousal relationship or stepchild and stepparent relationship exists at the time of adjudication of the principal's application and thereafter.

Principal applicants who marry while their application is pending may file Form I-914, Supplement A on behalf of their spouse, even if the relationship did not exist at the time they filed their principal application.[14] Similarly, the principal applicant may file for a stepparent or stepchild if the qualifying relationship was created after they filed their principal application but before it was approved.[15]

3. Requirement to Remain Unmarried

An eligible child seeking T-3 nonimmigrant status or eligible sibling seeking T-5 nonimmigrant status must remain unmarried:

- When the principal files the application for T-1 nonimmigrant status;
- When USCIS adjudicates the application for T-1 nonimmigrant status;
- When the eligible family member files the application for derivative T-3 or T-5 nonimmigrant status;
- When USCIS adjudicates the application for derivative T-3 or T-5 nonimmigrant status; and
- When the family member is admitted to the United States at a port of entry, if residing abroad.

4. Exceptions to General Rule: Relationship and Age-Out Protections

There are certain protections available to family members whose age or relationship changes after the principal files an application for T nonimmigrant status.

Protection for New Child of a Principal Applicant

If the T-1 principal applicant had a child after filing the application for T-1 nonimmigrant status, the child is eligible to accompany or follow to join the T-1 principal applicant.[16] This includes becoming the parent of a child by means of a biological, step,[17] or adoptive relationship.

Age-Out Protection for Eligible Family Members of a Principal Applicant Under 21 Years of Age

For principal applicants who were under 21 years of age when they filed for T-1 nonimmigrant status, USCIS continues to consider a T-4 parent or T-5 unmarried sibling as eligible for derivative status even if the principal applicant turns 21 before USCIS adjudicates the T-1 application.

Unmarried siblings under 18 years of age at the time the principal filed the T-1 application remain eligible for T-5 status even if they turn 18 years of age before USCIS adjudicates the T-1 application, so long as the sibling remains unmarried.[18] The derivative sibling does not "age out" even upon reaching age 18.

Age-Out Protection for Child of a Principal Applicant 21 Years of Age or Older

If the principal was 21 years of age or older when the principal filed for T-1 nonimmigrant status, USCIS continues to consider a T-3 child as an eligible family member so long as the child was under 21 years of age at the time the principal filed for T-1 nonimmigrant status. The child remains eligible even if the child

is over 21 years of age at the time of adjudication of the T-1 application.[19] The derivative T-3 does not "age out" even upon reaching age 21.

E. Death of Qualifying Relative

USCIS may not approve derivative status for a surviving relative whose qualifying relative (the principal applicant) died before USCIS approved the derivative T application.[20] However, the unique structure of the T-6 classification may provide for continuing eligibility for the T-6 derivative even if the T-2, T-3, T-4, or T-5 derivative beneficiary passes away before the principal files for T-6 status for the surviving relative.

For example, adult children who are married or over 21 years of age could potentially qualify for T-6 nonimmigrant status if they are the children of the T-1's deceased spouse and meet the present danger of retaliation requirement.

However, in order for the spouse's children (adult or minor) to be eligible for the T-6 category under this scenario, the principal's spouse must have held T-2 nonimmigrant status through the principal T-1 nonimmigrant before the T-2 spouse died. If the principal's spouse held T-2 status but then died before the principal filed for T-6 status for the spouse's adult or minor child, the adult or minor child may still be eligible for T-6 status. However, if the T-1 principal's spouse is deceased and never held T-2 status, then the spouse's child would not be eligible for T-6 status.

Footnotes

[^ 1] See 8 CFR 214.11(k)(1)(iv).

[^ 2] See INA 101(a)(15)(T)(ii). See 8 CFR 214.11(k).

[^ 3] See INA 101(a)(15)(T)(ii)(I).

[^ 4] See INA 101(b)(1), which specifically defines the term "child." The definition includes stepchildren and adopted children under certain circumstances.

[^ 5] See INA 101(a)(15)(T)(ii)(II).

[^ 6] See INA 101(b)(1), which specifically defines the term "child." The definition includes stepchildren and adopted children under certain circumstances.

[^ 7] See INA 101(a)(15)(T)(ii)(III).

[^ 8] See INA 101(a)(15)(T)(ii)(III).

[^ 9] The adult or minor child can be of any age or marital status. In enacting this new category of derivative beneficiaries in the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (PDF) (March 7, 2013), Congress used the term "adult or minor children," which is not a term of art in the Immigration and Nationality Act (INA). Under the INA, the term "son or daughter" means a child who is married or over the age of 21, while "child" means a child who is unmarried and under the age of 21. USCIS construes the meaning of the language "adult or minor children" to encompass both the INA definitions of "son or daughter" and "child." Therefore, persons of any age and any marital status are "adult or minor children" and may be eligible for T-6 derivative status.

[^ 10] The derivative family members of the T-1 principal listed in this column can either currently hold T-2, T-3, T-4, or T-5 nonimmigrant status, have a pending application for such status that USCIS will approve before or with the application for the T-6 nonimmigrant, or have held such status in the past (with some exceptions).

[^ 11] This assumes the principal's T-2 spouse's child was not already eligible as a child T-3 derivative beneficiary. Stepchildren are included in the INA definition of a child so long as the parents married when the stepchild (spouse's biological child) was under the age of 18. However, a biological child of the T-2 spouse whose marriage to the T-1 principal nonimmigrant occurred after the child turned 18 years of age is not eligible as a T-3 nonimmigrant, but the same child may be eligible for T-6 status.

[^ 12] See Subsection 2, Spousal Relationship Must Exist When Principal's Application is Adjudicated [3 USCIS-PM B.4(D)(2)].

[^ 13] See 8 CFR 214.11(k)(4) as limited by *Medina Tovar v. Zuchowski*, 982 F.3d 631 (9th Cir. 2020) (holding invalid the regulatory requirement that a spousal relationship exist at the time a Petition for U Nonimmigrant Status (Form I-918) is filed in order for the spouse to be eligible for classification as a U-2 nonimmigrant). As a matter of policy, USCIS applies the *Medina Tovar* decision nationwide to spousal and stepparent relationships arising in T visa and U visa adjudications. Therefore, where the family relationship is created by marriage, it does not have to exist at the time the applicant submits the application for T-1 nonimmigrant status. In that circumstance, the family relationship must exist at the four subsequent points set forth at 8 CFR 214.11(k)(4).

[^ 14] See 8 CFR 214.11(k)(5)(iv) as limited by *Medina Tovar v. Zuchowski*, 982 F.3d 631 (9th Cir. 2020).

[^ 15] See 8 CFR 214.11(k)(5)(iv) as limited by *Medina Tovar v. Zuchowski*, 982 F.3d 631 (9th Cir. 2020).

[^ 16] See 8 CFR 214.11(k)(5)(i).

[^ 17] An applicant can establish a T-3 stepparent and stepchild relationship if the applicant shows that the qualifying relationship was created before the stepchild turned 18, regardless of the adjudication outcome for an application for derivative T-2 nonimmigrant status (for example, the spousal relationship that created the stepparent and stepchild relationship), so long as the application for derivative T-2 nonimmigrant status was not denied due to failure to establish the claimed spousal relationship.

[^ 18] See 8 CFR 214.11(k)(5)(ii).

[^ 19] See 8 CFR 214.11(k)(5)(iii).

[^ 20] See INA 204(l).

Current as of October 30, 2023

Chapter 5 - Documentation and Evidence for Family Members

A principal T nonimmigrant (T-1) may submit an application to USCIS to obtain derivative T nonimmigrant status for eligible family members who are inside or outside the United States.[1] The T-1 principal must complete a separate Application for Family Member of T-1 Recipient (Form I-914, Supplement A) for each eligible family member.

A. Evidence

The applicant must submit the following with the Form I-914, Supplement A:

- Evidence demonstrating the family relationship that makes the derivative eligible for T nonimmigrant status;[2]
- Evidence demonstrating the danger of retaliation if relevant to the basis for seeking derivative status; and
- If the applicant is seeking a waiver of inadmissibility for the family member, an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192), with the appropriate fee[3] or request for a fee waiver, and supporting evidence.

The family member must also submit biometrics.[4] If the family member is inside the United States, USCIS schedules a biometrics appointment at a local Application Support Center. Family members outside the United States must submit fingerprints through a completed fingerprint card (FD-258) for scanning or by electronic means as instructed by the U.S. embassy or consulate. USCIS mails fingerprint cards to the applicant, along with instructions, after the applicant files the application for the eligible family member.[5]

1. Establishing Family Relationship

USCIS must consider any credible evidence submitted to establish proof of the claimed family relationship. The instructions for the Application for T Nonimmigrant Status (Form I-914) include a list of documents the applicant may submit to establish the claimed relationship.

2. Establishing Danger of Retaliation

A family member seeking derivative T nonimmigrant status based on a present danger of retaliation must demonstrate the basis of this danger.

An applicant may satisfy this requirement by submitting the following types of evidence:

- Documentation of a previous grant of parole to an eligible family member;
- A signed statement from a law enforcement official describing the danger of retaliation;
- An affirmative statement from the applicant describing the danger the family member faces and how the danger is linked to the principal applicant's escape or cooperation with law enforcement (ordinarily an applicant's statement alone is not sufficient to prove present danger); or
- Any other credible evidence, including trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits from other witnesses.[6]

USCIS may contact a law enforcement agency involved in the detection, investigation, or prosecution of the trafficking, if appropriate.[7]

B. Timeframe for Filing the Application for Derivative Status

The T-1 principal may file the Application for Family Member of T-1 Recipient (Form I-914, Supplement A) at the following times:

- Concurrently with the principal's Application for T Nonimmigrant Status (Form I-914);
- While the principal's application is pending; or
- At any time after the principal's application is approved, so long as the principal continues to hold T-1 nonimmigrant status.[8]

If the principal no longer holds T-1 nonimmigrant status because the validity period has expired and has not been extended, USCIS denies the application for the eligible family member.

Footnotes

[^ 1] See INA 214(o).

[^ 2] See 8 CFR 214.11(k)(1)(iv).

[^ 3] See 8 CFR 106.2(a)(11). See 8 CFR 214.11(d)(2).

[^ 4] See 8 CFR 103.16.

[^ 5] See 8 CFR 103.16.

[^ 6] See 8 CFR 214.11(k)(6).

[^ 7] See 8 CFR 214.11(k)(6).

[^ 8] See 8 CFR 214.11(k)(1).

Current as of October 30, 2023

Please note that as of the date of this download 10.30.23 no chapter 6 has been published.

U.S. Citizenship and Immigration Services

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Chapter 7 - Adjudication

A. Victim-Centered Approach

USCIS strives to apply a victim-centered approach to all victim-based filings. A victim-centered approach places equal value on stabilizing victims by providing immigration relief and investigating and prosecuting traffickers.[1] In the context of adjudicating applications for T nonimmigrant status, a victim-centered approach means applying a trauma-informed, survivor-informed, and culturally competent approach to all policies regarding victims.[2]

When corresponding with the applicant, officers should be mindful of the potential for retraumatization.[3]

B. Interview

USCIS has discretion to interview applicants for T nonimmigrant status for purposes of adjudicating the application.[4] USCIS conducts a full review of the application and supporting evidence to determine whether an interview may be warranted.

USCIS recognizes the vulnerable position of applicants for T nonimmigrant status. USCIS generally does not require an interview if the record contains sufficient information and evidence to approve the application without an in-person assessment. However, USCIS reserves the right to interview the T applicant as needed.

C. Requests to Expedite

USCIS has discretion to expedite the adjudication of immigration benefit requests, including the Application for T nonimmigrant Status (Form I-914) and Application for Family Member of T-1 Recipient (Form I-914, Supplement A).[5]

D. Requests for Evidence and Notices of Intent to Deny

If the applicant has not presented sufficient evidence to establish each eligibility requirement for T-1 nonimmigrant status, USCIS may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to request evidence of eligibility.[6]

E. Approvals

Principal Applicants

If USCIS determines the applicant is eligible for T-1 nonimmigrant status, USCIS approves the application and grants T-1 nonimmigrant status, subject to the annual limitation.[7] USCIS provides the applicant with a written notice stating the applicant is approved and has received T-1 nonimmigrant status.[8]

USCIS may also notify other parties and entities of the approval as it determines appropriate, including any law enforcement agency (LEA) providing an endorsement and the U.S. Department of Health and Human Services' Office of Refugee Resettlement, consistent with the exceptions to the prohibitions on disclosure.[9]

Derivative Applicants

USCIS cannot approve applications for derivative T nonimmigrant status until the principal's application has been approved.

So long as the principal T nonimmigrant's application has been approved, if USCIS determines a family member of the principal nonimmigrant is eligible for derivative T nonimmigrant status, USCIS approves the family member's application.

Derivative Applicants Inside the United States

For derivative family members inside the United States, USCIS notifies the T-1 principal of the approval and provides evidence of derivative T nonimmigrant status to the derivative.[10]

Derivative Applicants Outside the United States

For derivative family members outside the United States, USCIS notifies the T-1 principal of the approval and provides the necessary documentation to the U.S. Department of State for consideration of visa issuance.[11]

To enter the United States, the derivative beneficiary must present a valid, unexpired passport as well as a valid, unexpired visa.[12] In the event of an unforeseen emergency that prevents a derivative beneficiary from presenting such documents, the derivative may apply to have USCIS waive these documentary requirements.[13] USCIS decides such applications on a discretionary, case-by-case basis. USCIS can revoke any waiver it grants to waive a documentary requirement at any time.

F. Denials

If USCIS determines that the applicant has not established eligibility for T nonimmigrant status, USCIS notifies the applicant of its decision to deny the application.[14] Consistent with disclosure rules,[15] USCIS

may also provide notice of the denial to any LEA providing an LEA endorsement and the U.S. Department of Health and Human Services' Office of Refugee Resettlement.[16]

A principal applicant may request USCIS to reconsider the denial by filing a Notice of Appeal or Motion (Form I-290B). Additionally, both principal applicants and derivatives may appeal a denial of an application for T nonimmigrant status to the Administrative Appeals Office (AAO) using the Form I-290B.[17] The denial does not become final until the AAO issues a decision dismissing the appeal.[18]

Footnotes

[^ 1] See DHS Blue Campaign Discussion of a Victim-Centered Approach.

[^ 2] For further explanation of these terms, see the DHS Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation (PDF) (January 2020).

[^ 3] See U.S. Department of Health and Human Services' definition of "retraumatization." (PDF)

[^ 4] See 8 CFR 214.11(d)(6).

[^ 5] See Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 5, Requests to Expedite Applications or Petitions [1 USCIS-PM A.5].

[^ 6] See 8 CFR 103.2(b)(8). See 8 CFR 214.11(e)(2)(i). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 7] See Chapter 8, Annual Cap and Waiting List [3 USCIS-PM B.8].

[^ 8] See 8 CFR 103.2(b)(19).

[^ 9] See Chapter 14, Confidentiality Protections and Prohibitions Against Disclosure [3 USCIS-PM B.14].

[^ 10] See 8 CFR 103.2(b)(19). See 8 CFR 214.11(k)(9)(i).

[^ 11] See 8 CFR 214.11(k)(9)(ii).

[^ 12] See 8 CFR 212.1.

[^ 13] See 8 CFR 212.1(g). See 8 CFR 212.1(o).

[^ 14] See 8 CFR 103.3.

[^ 15] See Chapter 14, Confidentiality Protections and Prohibitions Against Disclosure [3 USCIS-PM B.14].

[^ 16] See 8 CFR 214.11(d)(10).

[^ 17] See 8 CFR 103.3.

[^ 18] See 8 CFR 214.11(d)(10).

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Chapter 8 - Annual Cap and Waiting List

By Congressional mandate, USCIS may only grant T-1 nonimmigrant status to 5,000 persons in any fiscal year.[1] Derivatives are not subject to this annual cap. However, USCIS does not approve applications for derivative T nonimmigrant status until USCIS has approved T-1 nonimmigrant status for the related principal applicant.

As of 2021, USCIS has never received more than 5,000 principal applications for T-1 nonimmigrant status in a given fiscal year[2] but has created a waiting list procedure by regulation in the event that the statutory cap is ever met in the future.[3]

A. Waiting List Procedures

If the annual cap is met in a given fiscal year, USCIS places all eligible applicants who are not granted T-1 nonimmigrant status due solely to the cap on a waiting list and provides applicants written notice of such placement.[4] USCIS determines priority on the waiting list by the date the application was properly filed, with the oldest applications receiving the highest priority.

In the subsequent fiscal year, USCIS issues a number to each applicant on the waiting list in the order of the highest priority, provided that the applicant remains admissible and eligible for T nonimmigrant status. After USCIS issues T-1 nonimmigrant status to qualifying applicants on the waiting list, USCIS issues any remaining T-1 nonimmigrant numbers for that fiscal year to new qualifying applicants in the order that the applications were properly filed.[5]

B. Protection from Removal

If a waiting list is established, USCIS may, but is not required to, grant, renew, or extend deferred action, parole, administrative stays of removal, or other relief,[6] which may ensure an applicant is not removed

while awaiting T-1 nonimmigrant status. If USCIS extends such relief, the applicant may apply for work authorization by filing an Application for Employment Authorization (Form I-765).

C. Unlawful Presence

An applicant for T nonimmigrant status on the waiting list to whom USCIS granted deferred action or parole does not accrue unlawful presence[7] while maintaining deferred action or parole.[8]

D. Removal from the Waiting List

Applicants on the waiting list must remain admissible to the United States and otherwise eligible for T nonimmigrant status. If at any time before final adjudication, USCIS receives information that an applicant is no longer eligible for T nonimmigrant status, USCIS may remove an applicant from the waiting list and terminate any grant of deferred action or parole at its discretion. USCIS provides notice to the applicant of that decision.[9]

Footnotes

[^ 1] See INA 214(o)(2).

[^ 2] See Number of Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, Fiscal Years 2008-2021 (PDF, 240.84 KB).

[^ 3] See 8 CFR 214.11(j).

[^ 4] See 8 CFR 214.11(j)(1).

[^ 5] See 8 CFR 214.11(j)(1).

[^ 6] See 8 CFR 241.6 (administrative stay of removal). See 8 CFR 274a.12(c)(14) (employment authorization for deferred action grantees demonstrating economic necessity). See 8 CFR 212.5 (parole of noncitizens into the United States).

[^ 7] See INA 212(a)(9)(B). See Volume 8, Admissibility, Part O, Noncitizens Unlawfully Present [8 USCIS-PM O].

[^ 8] See 8 CFR 214.11(j)(2).

[^ 9] See 8 CFR 214.11(j)(3).

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Chapter 9 - Applicants in Removal Proceedings

An applicant in removal proceedings who wishes to apply for T nonimmigrant status must file the Application for T Nonimmigrant Status (Form I-914) or Application for Family Member of T-1 Recipient (Form I-914, Supplement A) directly with USCIS.

A. Administrative Closure

In its discretion, DHS may agree to the request of a person who is in proceedings, whether a principal or derivative applicant, to file with the immigration judge or the Board of Immigration Appeals (BIA) a joint motion to administratively close or terminate proceedings without prejudice, whichever is appropriate, while USCIS adjudicates an application for T nonimmigrant status.[1]

B. Final Orders of Removal

A person subject to a final order of removal, deportation, or exclusion may file an application for T-1 nonimmigrant status directly with USCIS.[2] If a family member eligible for derivative status is the subject of a final order of removal, deportation, or exclusion, the principal may file an application for derivative T nonimmigrant status directly with USCIS.

The filing of an application for T nonimmigrant status, whether for a principal or derivative applicant, does not automatically stay a final order of removal and has no effect on DHS's authority or discretion to execute a final order of removal, although the person who is in proceedings may request an administrative stay of removal.[3]

If the person, whether the principal or derivative applicant, is in detention pending execution of the final order, the period of detention reasonably necessary to bring about the applicant's removal[4] is extended during the period that any stay is in effect.

Neither an immigration judge nor the BIA has jurisdiction to adjudicate an application for a stay of removal, deportation, or exclusion based on the filing of an application for T nonimmigrant status.[5]  s jurisdiction rests with U.S. Immigration and Customs Enforcement (ICE). [6]

By operation of law, a USCIS approval of an application for T nonimmigrant status cancels any order of removal, deportation, or exclusion issued by DHS as of the date of the approval.[7] Upon approval of an application for T nonimmigrant status, an applicant who is the subject of an order of removal, deportation, or exclusion issued by an immigration judge or the BIA may seek cancellation of such order by filing a motion to reopen and terminate removal proceedings with the immigration judge or the BIA, whichever is appropriate.[8] Upon a final denial of the application for T nonimmigrant status, any stay of removal, deportation, or exclusion is lifted.[9]

Footnotes

[^ 1] See 8 CFR 214.11(d)(1)(i) (principal). See 8 CFR 214.11(k)(2)(i) (derivative).

[^ 2] See 8 CFR 214.11(d)(1)(ii).

[^ 3] See 8 CFR 241.6(a) (procedures to request administrative stay).

[^ 4] See 8 CFR 241.4 (discussing duration of detention).

[^ 5] See 8 CFR 214.11(e)(3).

[^ 6] See ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims (August 10, 2021) (PDF).

[^ 7] See 8 CFR 214.11(d)(9)(i).

[^ 8] See 8 CFR 214.11(d)(9)(ii).

[^ 9] See 8 CFR 214.11(d)(10)(iii).

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Chapter 10 - Duration and Extensions of Status

A. Overview

T nonimmigrant status is limited to 4 years for a principal T nonimmigrant, unless the principal qualifies for an extension.[1] USCIS may grant eligible family members derivative T nonimmigrant status for a period that does not exceed the expiration date of the period approved for the T-1 principal.[2]

T nonimmigrant status is extended by operation of law during the time that a principal or eligible family member's Application to Register Permanent Residence or Adjust Status (Form I-485) under INA 245(l) is pending.[3] Additionally, as a matter of discretion, USCIS may grant an extension of T nonimmigrant status for up to 4 additional years in the following two circumstances:

- A law enforcement agency (LEA), prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the nonimmigrant in the United States is necessary to assist in the investigation or prosecution of such activity;[4] or
- USCIS determines that an extension is warranted due to exceptional circumstances.[5]

B. Applications for Extensions of Status

1. Extensions Based on Adjustment of Status Application

To receive an extension of T nonimmigrant status based on filing an Application to Register Permanent Residence or Adjust Status (Form I-485) under INA 245(l), the T nonimmigrant must file the application in accordance with the form instructions.[6] If the T nonimmigrant files the adjustment application while still in valid T nonimmigrant status, the applicant does not need to file an Application to Extend/Change Nonimmigrant Status (Form I-539).

However, if USCIS receives the adjustment application after the period of T nonimmigrant status has expired, the filing does not operate to extend T nonimmigrant status. The Notice of Action (Form I-797) receipt notice for the adjustment application indicates that for applicants who properly and timely file their adjustment application, USCIS extends their T nonimmigrant status for as long as the adjustment application is pending.

Because both timely and untimely applicants receive the receipt notice, the receipt notice by itself does not demonstrate an automatic extension of T nonimmigrant status. Applicants may provide both the receipt notice and the Arrival/Departure Record (Form I-94) showing their most up-to-date period of T nonimmigrant status to demonstrate that their adjustment applicant was timely filed and their T nonimmigrant status has been automatically extended.

The extension of T nonimmigrant status is valid until USCIS makes a decision on the adjustment application and, during that time, the applicant continues to be in valid T nonimmigrant status with all the associated rights, privileges, and responsibilities. T nonimmigrants seeking to adjust status are authorized to work in the United States while their adjustment application is pending.

Proof of Employment Authorization

Principal T-1 nonimmigrants seeking to adjust status may present a Form I-94 reflecting their most recent validity period of T-1 nonimmigrant status with the receipt notice as evidence of employment authorization for 24 months from the expiration date on the Form I-94, unless the adjustment application is denied or withdrawn, whichever is earlier.

Principal T-1 nonimmigrants seeking to adjust status may file an Application for Employment Authorization (Form I-765) concurrently with the adjustment application to obtain an Employment Authorization Document (EAD). While the adjustment application is pending, USCIS issues any EAD, as well as renewals of such EAD, using the (c)(9) eligibility code.[7]

USCIS also issues derivative T nonimmigrants who properly file an adjustment application a receipt notice. USCIS does not extend the status of a derivative T nonimmigrant based solely on the principal T nonimmigrant's pending adjustment application. Derivatives must independently file an adjustment application. To obtain employment authorization during the extended period of T nonimmigrant status, derivative T nonimmigrants must file an Application for Employment Authorization (Form I-765).

2. Extensions Based on Law Enforcement Need or Exceptional Circumstances

To request an extension of T nonimmigrant status based on law enforcement need or exceptional circumstances, the T nonimmigrant must file an Application to Extend/Change Nonimmigrant Status (Form I-539), along with supporting evidence, in accordance with the form instructions. The T nonimmigrant bears the burden of establishing eligibility for this discretionary extension of status.

Derivative family members who have not previously entered or resided in the United States as a T nonimmigrant cannot receive an extension of status. Instead, USCIS may issue an amended approval notice with updated validity dates.

If USCIS approves the Form I-539, USCIS issues a notice of extension of the T nonimmigrant status on a Notice of Action (Form I-797).

The extension of T nonimmigrant status based on law enforcement need or exceptional circumstances is valid for 1 year from the date the initial T nonimmigrant status ends. In the case of a Form I-539 untimely filed after T nonimmigrant status has expired, the extension is valid from the date the previous status expired and for 1 year from approval of the extension.[8] During that period, the applicant continues to be in valid T nonimmigrant status with all the associated rights, privileges, and responsibilities.

USCIS issues any EAD (including renewals) using the (a)(16) eligibility code for principals and (c)(25) eligibility code for derivatives.[9] Applicants must file an application for employment authorization in order to receive an EAD, which they may file concurrently with Form I-539.

C. Timing of Application

The applicant should file the Application to Extend/Change Nonimmigrant Status (Form I-539) before the applicant's T nonimmigrant status expires. USCIS, however, has discretion to grant an extension after the expiration of the status.[10] When filing a Form I-539 untimely, the applicant should explain the reason(s) for the late filing.[11]

D. Evidence

1. Law Enforcement Need

In cases in which the T nonimmigrant is filing for an extension of status based on law enforcement need, supporting evidence may include:

- A newly executed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B); or
- Other evidence from a law enforcement official, prosecutor, judge, or other authority who can investigate or prosecute human trafficking activity and was involved in the applicable case. The applicant must include evidence that comes directly from an LEA.

USCIS does not require Form I-914, Supplement B to demonstrate law enforcement need. The applicant may submit a letter on the agency's letterhead, emails, or faxes from an LEA or any other credible evidence.

2. Exceptional Circumstances

Where T nonimmigrants are filing for an extension of status based on exceptional circumstances, applicants may submit their own statement and any other credible evidence to establish exceptional circumstances. Such evidence could include, but is not limited to:

- Medical records;
- Police or court records;
- News articles;
- Correspondence with a U.S. embassy or consulate; and

- Affidavits of witnesses.[12]

To establish eligibility for an extension of status due to exceptional circumstances, applicants should provide evidence showing how the exceptional circumstances necessitate the continuance of T nonimmigrant status.

While an applicant can file more than one extension of status, if the extension of status is based on the same evidence as a prior request, the mere fact that USCIS previously found the circumstance to be exceptional does not mean that USCIS will come to the same conclusion a second time. USCIS considers every request on a case-by-case basis and based on the evidence presented with the request.

The need to accrue continuous physical presence to be eligible to adjust status is not generally considered an exceptional circumstance warranting an extension of status. However, USCIS can consider delays in consular processing for derivatives to be an exceptional circumstance that justifies extending the principal's T nonimmigrant status, even if it appears the principal will not be able to adjust status under INA 245(l).

E. Considerations for Family Members

To be eligible to apply for adjustment of status, a family member who is a derivative T nonimmigrant must continue to hold T nonimmigrant status at the time of filing the application for adjustment of status.[13] To facilitate efficient processing, USCIS encourages derivative T nonimmigrants to file for adjustment of status concurrently with the principal T nonimmigrant. A derivative T nonimmigrant's status is automatically extended when the derivative properly files for adjustment of status.

Once a principal T nonimmigrant is no longer a T nonimmigrant, whether due to adjustment to lawful permanent residence, change to another nonimmigrant status, or expiration of T nonimmigrant status, derivative T nonimmigrants may no longer be eligible for initial admission into the United States on a T visa.[14]

Where the approved derivative is awaiting initial issuance of a T visa by a consulate and the principal's nonimmigrant status is soon to expire, USCIS strongly encourages the principal to seek an extension of status based on exceptional circumstances, following the instructions to the Form I-539, and then wait for the derivatives to be admitted to the United States as T derivatives before filing an adjustment application.

This will prevent the derivative from being ineligible for initial admission to the United States on a derivative T visa due to the expiration of the principal's T nonimmigrant status or adjustment of status to lawful permanent residence.

Footnotes

[^ 1] See INA 214(o)(7)(A). See 8 CFR 214.11(c)(1). See 8 CFR 214.11(l).

[^ 2] See 8 CFR 214.11(c)(2).

[^ 3] See INA 214(o)(7)(C). See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 9, Death of Petitioner or Principal Beneficiary [7 USCIS-PM A.9].

[^ 4] See INA 214(o)(7)(B)(i).

[^ 5] See INA 214(o)(7)(B)(iii).

[^ 6] USCIS adjudicates adjustment of status applications according to the T adjustment regulations at 8 CFR 245.23.

[^ 7] See 8 CFR 274a.12(c)(9).

[^ 8] The applicant should present the Form I-797 demonstrating proof of extension of T nonimmigrant status when filing an Application to Register Permanent Residence or Adjust Status (Form I-485) to adjust status to lawful permanent resident before the extension expires. See Volume 7, Adjustment of Status, Part J, 245(l) Trafficking Victim-Based Adjustment [7 USCIS-PM J].

[^ 9] See 8 CFR 274a.12(a)(16). See 8 CFR 274a.12(c)(25).

[^ 10] See 8 CFR 214.11(l)(3).

[^ 11] See 8 CFR 214.11(l)(3).

[^ 12] See 8 CFR 214.11(l)(6).

[^ 13] See 8 CFR 245.23(b)(2).

[^ 14] See 8 CFR 214.11(c)(2).

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Chapter 11 - Federal Benefits and Work Authorization

A. Federal Benefits

Children under the age of 18 are eligible for certain federal benefits and services as soon as they are identified as possible victims of trafficking.[1] Adults are eligible for these benefits and services upon approval of T nonimmigrant status.[2]

When USCIS receives an application from a principal applicant under the age of 18, USCIS notifies the Department of Health and Human Services (HHS) to facilitate the provision of interim assistance.[3] In the case of adults, USCIS notifies HHS upon approval of an application for T nonimmigrant status.[4]

B. Employment Authorization

A principal T nonimmigrant is authorized to work incident to status and does not need to file a separate Application for Employment Authorization (Form I-765). Upon approval of T-1 nonimmigrant status, USCIS issues an Employment Authorization Document (EAD), which is valid for the duration of the T-1 nonimmigrant status. If the EAD is lost, stolen, or destroyed, the T-1 nonimmigrant must file an application for a replacement document.[5]

A derivative T nonimmigrant is eligible to receive employment authorization but must apply by filing an application for employment authorization with USCIS with the required fee or a Request for Fee Waiver (Form I-912).[6] Derivatives in the United States may file the application concurrently with the Supplement A, Application for Family Member of T-1 Recipient (Form I-914, Supplement A) or any time thereafter.

Derivatives outside the United States are not eligible for employment authorization until after lawful admission to the United States in T nonimmigrant status. Therefore, derivative family members should not file the application for employment authorization until after they are lawfully admitted as a T

nonimmigrant. If USCIS approves the application, USCIS grants the derivative employment authorization[7] for the period remaining in derivative T nonimmigrant status.[8]

Footnotes

[^ 1] See 22 U.S.C. 7105(b)(1)(G).

[^ 2] See 22 U.S.C. 7105(b)(1)(E).

[^ 3] See William Wilberforce Trafficking Victims Protection and Reauthorization Act, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5077 (December 23, 2008). See 8 CFR 214.11(d)(1)(iii).

[^ 4] See 8 CFR 214.11(d)(1)(iii).

[^ 5] See 8 CFR 214.11(d)(11). See Application for Employment Authorization (Form I-765).

[^ 6] See 8 CFR 103.7(b).

[^ 7] USCIS grants such authorization under 8 CFR 274a.12(c)(25).

[^ 8] See 8 CFR 214.11(k)(10).

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U.S. Citizenship and Immigration Services

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Chapter 12 - Travel

A. Travel While Application for T Nonimmigrant Status is Pending

The filing of an application for T nonimmigrant status does not grant the applicant permission to travel outside the United States. Departures from the United States while an application for T nonimmigrant status is pending could impact the applicant's ability to establish eligibility for T nonimmigrant status.[1] Additionally, an applicant's departure from the United States while the application for T nonimmigrant status is pending could impact the applicant's ability to return to the United States unless the applicant has another status that allows for travel.

B. Travel for T Nonimmigrants

A T nonimmigrant may travel outside the United States before applying for lawful permanent residence. The T nonimmigrant must file an Application for Travel Document (Form I-131), to obtain advance parole before departing the United States in order to return to the United States in T nonimmigrant status.

A T nonimmigrant who departs the United States and returns through means other than an advance parole document issued before departure or admission at a designated port of entry with a T nonimmigrant visa does not resume T nonimmigrant status and may have to reapply for such status if certain requirements are not met. In order for a T-2, T-3, T-4, T-5, or T-6 nonimmigrant to depart the United States and return to the United States in T nonimmigrant status, the T nonimmigrant must either:

- File an Application for Travel Document (Form I-131), and obtain advance parole before departure; or
- Apply for and receive a T nonimmigrant visa from the Department of State and seek admission as a T nonimmigrant at a designated port of entry.

C. Travel Considerations

Even if a person is granted an advance parole travel document before departing the United States, the document does not entitle the person to be paroled into the United States. U.S. Customs and Border Protection makes a separate, discretionary decision on a request for parole when the person arrives at a U.S. port of entry.

DHS may revoke or terminate an advance parole document at any time, including while the person is outside the United States.[2] In that event, the person may be unable to return to the United States unless the person has a valid visa or other document that permits the person to travel to the United States and seek admission.

If the person is in the United States and DHS has granted deferred action in the case, the deferred action terminates automatically if the person leaves the United States without advance parole. Generally, if the person is in the United States and has applied for adjustment of status to that of a lawful permanent resident, USCIS deems the adjustment application abandoned if the person leaves the United States without advance parole.

Footnotes

[^ 1] See Chapter 2, Eligibility Requirements, Section C, Physical Presence on Account of Trafficking [3 USCIS-PM B.2(C)].

[^ 2] See 8 CFR 212.5(e).

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Chapter 13 - Revocation of Status

A. Grounds for Revocation

USCIS can revoke its approval of T nonimmigrant status at any time based on the specific grounds discussed below.[1] For most grounds, USCIS first issues a notice of intent to revoke. However, USCIS automatically revokes an approved application for derivative T nonimmigrant status if the beneficiary of the approved derivative application notifies USCIS that the beneficiary will not apply for admission to the United States.[2]

USCIS may revoke an approved application for T nonimmigrant status for the following reasons:

- The approval of the application violated the statutory and regulatory requirements for T nonimmigrant visas[3] or involved USCIS error in the preparation, procedure, or adjudication that affects the outcome;
- In the case of a T-2 spouse, a final divorce from the T-1 principal;
- In the case of a T-1 principal, a law enforcement agency (LEA) with jurisdiction to detect or investigate the acts of severe forms of trafficking in persons notifies USCIS that the T-1 nonimmigrant has refused to comply with reasonable requests to assist with the investigation or prosecution of the trafficking in persons and provides USCIS with a detailed explanation in writing; or
- The LEA that signed the LEA endorsement withdraws it or disavows its contents and notifies USCIS and provides a detailed explanation of its reasoning in writing.[4]

B. Procedure for Revocation

If USCIS revokes approval of the previously approved T nonimmigrant status application, USCIS may notify the LEA that signed the LEA endorsement, any consular officer having jurisdiction over the applicant, or

the Office of Refugee Resettlement of the Department of Health and Human Services of the revocation.[5]

The applicant may appeal the decision to revoke the approval within 30 days after the date of the revocation notice to the Administrative Appeals Office using the Notice of Appeal or Motion (Form I-290B).[6]

C. Effect of Revocation

1. Revocation of a Principal's Application

Revocation of an approved application for T-1 nonimmigrant status results in termination of T status for the principal and any derivatives. If a derivative application is pending at the time of such revocation, USCIS denies it. Revocation of an approved application for T-1 nonimmigrant status or an application for derivative T nonimmigrant status also revokes any waiver of inadmissibility granted in conjunction with such application. The revocation of a person's T-1 status has no effect on the annual cap.[7]

2. Revocation of T-2, T-3, T-4 or T-5 Derivative Status

If USCIS revokes T-2, T-3, T-4, or T-5 derivative status under 8 CFR 214.11(m), eligibility for T-6 derivative status may be affected. In cases in which the revocation ground relates to the derivative beneficiary's eligibility for derivative T nonimmigrant status, the adult or minor child of the derivative beneficiary may not be eligible for T-6 status. Without a derivative beneficiary parent who has obtained valid derivative T nonimmigrant status, a potential T-6 family member is not able to derive T-6 status.

However, when the revocation ground is not related to the derivative beneficiary's eligibility for derivative status, the adult or minor child may still be eligible for T-6 status. For example, one of the revocation grounds is for divorce. If the T-1's spouse held T-2 status but then the couple divorced and USCIS revoked the T-2 status under 8 CFR 214.11(m)(2)(ii), the adult or minor child of the T-2 may still be eligible for T-6 status. The divorce of the T-2 does not impact eligibility when the T-6 derivative's application is approved and is therefore different from other revocation grounds.

Footnotes

[^ 1] See 8 CFR 214.11(m).

[^ 2] See 8 CFR 214.11(m)(1).

[^ 3] See INA 101(a)(15)(T). See 8 CFR 214.11.

[^ 4] See 8 CFR 214.11(m)(2).

[^ 5] See 8 CFR 214.11(m)(3) for procedures for revocation and appeal specific to applications for T nonimmigrant status. See 8 CFR 103.3 for additional information on appeal procedures.

[^ 6] See 8 CFR 103.3(a)(2).

[^ 7] See 8 CFR 214.11(m)(4).

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Chapter 14 - Confidentiality Protections and Prohibitions Against Disclosure

A. Confidentiality Protections

DHS may not generally disclose any information relating to applicants for T nonimmigrant status, as that information could be used against them by traffickers or others who would seek to harm them.[1] They are also protected against traffickers attempting to provide adverse evidence against them in relation to their applications with USCIS. These protections include the following:

- DHS is prohibited from making an adverse determination of admissibility or deportability against an applicant for T nonimmigrant status based on information furnished solely by the perpetrator of the acts of trafficking in persons;[2] and
- DHS is prohibited from disclosing any information relating to the beneficiary of a pending or approved application for T nonimmigrant status except in certain limited circumstances.[3]

B. Disclosure of Information

Officers must comply with the confidentiality provisions when an applicant for T nonimmigrant status requests information about the applicant's case.[4]

Footnotes

[^ 1] See 8 U.S.C 1367.

[^ 2] See 8 U.S.C. 1367(a)(1)(F).

[^ 3] See 8 U.S.C. 1367(a)(2). See Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 7, Privacy and Confidentiality, Section E, VAWA, T and U Cases [1 USCIS-PM A.7(E)]. See DHS Instruction No. 002-02-001, Implementation of Section 1367 Information Provisions (PDF) (Nov. 7, 2013).

[^ 4] See Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

Current as of October 30, 2023