

# T Visa Quick Reference for Law Enforcement and Prosecutors<sup>140</sup>

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<p><b>Purpose of the T Visa</b></p>	<ul style="list-style-type: none"> <li>• Congress created the T visa program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of their human traffickers.<sup>141</sup> Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities.<sup>142</sup></li> </ul>
<p><b>Benefits of the T Visa</b></p>	<ul style="list-style-type: none"> <li>• Strengthens the ability of the law enforcement, prosecutors, the courts, and state and federal government agencies to detect, investigate, prosecute, convict and sentence perpetrators of human trafficking while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.<sup>143</sup></li> <li>• Immigrant victims are ensured access to justice by alleviating fears, such as deportation, that keep victims from participating in the civil, family, and criminal justice systems.<sup>144</sup> The T visa promotes access to justice by enhancing accessibility and ensuring fairness.</li> <li>• If certain conditions are met, an individual with T visa may apply for lawful permanent residency (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier.<sup>145</sup></li> </ul>
<p><b>Who is eligible for a T visa?<sup>146</sup></b></p>	<ul style="list-style-type: none"> <li>• U.S. Citizenship and Immigration Services (USCIS) of DHS may find an individual eligible for a T visa if the victim: <ul style="list-style-type: none"> <li>○ Is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;</li> <li>○ Is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to human trafficking;</li> <li>○ Has complied with any reasonable request from a law enforcement or prosecution agency for assistance in the detection, investigation or prosecution of human trafficking;<sup>147</sup> and</li> <li>○ Would suffer extreme hardship involving unusual and severe harm if removed from the U.S.<sup>148</sup></li> </ul> </li> <li>• In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual</li> </ul>

<sup>140</sup> U Visa Toolkit for Law Enforcement Agencies and Prosecutors (March 2018)

<http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-proscutors>

<sup>141</sup> See TVPA 2000, § 102(b)(20), Pub. L. No. 106-386, 114 Stat. 1464.

<sup>142</sup> *DHS U and T Visa Resource Guide* at 9; 67 Fed. Reg. 4782, 4785 (2002).

<sup>143</sup> 72 Fed. Reg. 92266, 92269 (2016).

<sup>144</sup> 67 Fed. Reg. 4782, 4784 (2002); 73 Fed. Reg. 75540, 75554 (2008).

<sup>145</sup> See generally 73 Fed. Reg. 75540 (2008).

<sup>146</sup> *DHS U and T Visa Resource Guide* at 9–10.

<sup>147</sup> Special exceptions are made for trafficking victims who are under 18, or those who are unable to cooperate due to physical or psychological trauma.

<sup>148</sup> 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)) (2016).

<p><b>Who is eligible for a T visa?</b></p>	<p>may apply for any waiver of inadmissibility for which they may be eligible.<sup>149</sup></p> <ul style="list-style-type: none"> <li>• Individuals currently in removal proceedings or with final orders of removal are eligible for a T visa.<sup>150</sup></li> <li>• Certain family members of a T visa recipient may also be eligible to live and work in the United States. These are: <ul style="list-style-type: none"> <li>○ Children;</li> <li>○ Spouse;</li> <li>○ Parents of child trafficking victims who are under age 21 at the time of application, or any victim’s parents who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement;</li> <li>○ Unmarried siblings under 18 years old of child victims who are under age 21 at the time of filing, or any victim’s unmarried siblings under 18 years old who face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement; and</li> <li>○ Adult or minor children of any T visa recipient (including eligible family members of the victim), if the children face a present danger of retaliation as a result of the victim’s escape from trafficking or cooperation with law enforcement.<sup>151</sup></li> </ul> </li> <li>• While in the United States, the victim has an ongoing duty to comply with reasonable requests from law enforcement or prosecutors for assistance in the investigation or prosecution of human trafficking.<sup>152</sup></li> <li>•</li> </ul>
<p><b>T visa Qualifying Criminal Activities<sup>153</sup></b></p>	<ul style="list-style-type: none"> <li>• A victim of severe forms of trafficking in persons is an individual who is a victim of either: <ul style="list-style-type: none"> <li>○ Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;</li> <li>○ Sex trafficking in which the person induced to perform such an act is under the age of 18;</li> <li>○ The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude (including psychological coercion), peonage, debt bondage, or slavery.<sup>154</sup></li> </ul> </li> <li>• DHS clarifies that an individual need not actually perform labor, services, or a commercial sex act to meet the definition; even if the illicit end is never realized, the definition is met as long as a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery) are present in the case.<sup>155</sup> This</li> </ul>

<sup>149</sup> 72 Fed. Reg. 92266, 92283 (2016). Limayli Huguet, Faiza Chappell and Leslye E. Orloff, Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases (January 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>

<sup>150</sup> 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(1)(i)) (2016).

<sup>151</sup> Age-out protection applies. 72 Fed. Reg. 92266, 92310 (codified at 8 C.F.R. § 214.11(k)(1)(i)) (2016).

<sup>152</sup> 72 Fed. Reg. 92266, 92274 (2016); *DHS U and T Visa Resource Guide* at 13.

<sup>153</sup> *DHS U and T Visa Resource Guide* at 12.

<sup>154</sup> 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

<sup>155</sup> 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(f)(1)) (2016); 72 Fed. Reg. 92266, 92270 (2016); Freedom Network, *General Tips for T Visas for Victims of Severe Form of Trafficking in Persons* (Apr. 2018), <https://freedomnetworkusa.org/app/uploads/2018/04/CAST-Advisory-General-T-Visa-Tips-April-2018.pdf>.

<b>T visa Qualifying Criminal Activities</b>	would include, for example, a situation where the victim was recruited and came to the United States through force, fraud or coercion for the purpose of a commercial sex act, but the victim was rescued or escaped before performing a commercial sex act. <sup>156</sup>
<b>Status of Criminal Case Against Crime Perpetrator</b>	<ul style="list-style-type: none"> <li>• The crime perpetrator may have any immigration or citizenship status including but not limited to U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.</li> <li>• A declaration may be signed whether or not a criminal investigation or prosecution is brought against the trafficker and regardless of the outcome of the criminal case brought against the trafficker. There is no requirement that an arrest, prosecution, or conviction occur.<sup>157</sup></li> </ul>
<b>What Is a T visa Declaration?</b> <sup>158</sup>	<ul style="list-style-type: none"> <li>• The T visa declaration is supplementary evidence that law enforcement, prosecution, and other authorized agencies can complete for a T visa applicant to help demonstrate victimization and compliance with reasonable requests<sup>159</sup> for assistance in the detection, investigation or prosecution of human trafficking.<sup>160</sup></li> <li>• The T visa declaration is not a required document or conclusive evidence for a T visa application, but when provided, is useful evidence.<sup>161</sup> DHS applies the Violence Against Women Act’s “any credible evidence” standard to T visa cases to encourage government officials including law enforcement and prosecutors to sign T visa declarations.<sup>162</sup></li> <li>• Signing a declaration is at the government officials authorized to sign the declaration’s discretion, and it does not mean the government official is sponsoring or endorsing the victim for a T visa.<sup>163</sup> USCIS considers the T visa declaration as one part of the evidence in the T visa application. USCIS also conducts a full background check and, in considering each T visa application and the applicant’s credibility, examines the totality of the evidence and the circumstances of each case.<sup>164</sup></li> <li>• The T-visa declaration must be provided on Form I-914 Supplement B, and must be completed by a qualifying certifier, such as a judge. On the I-914B form the certifying official verifies that that the victim applying for a T visa meets the following criteria: <ul style="list-style-type: none"> <li>○ The victim is or was a victim of a severe form of trafficking in persons; and/or</li> <li>○ The victim has met the “assistance requirement” by either having complied with any reasonable requests from law enforcement or prosecutors in an investigation or prosecution of human trafficking or by being exempt from the requirement because the victim is under 18 years of age, or because the victim is unable to assist due to physical or psychological trauma.<sup>165</sup></li> </ul> </li> </ul>

<sup>156</sup> 72 Fed. Reg. 92266, 92270 (2016).

<sup>157</sup> 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016); *DHS U and T Visa Resource Guide* at 21.

<sup>158</sup> *DHS U and T Visa Resource Guide* at 10–11.

<sup>159</sup> 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016). Although 8 C.F.R. § 214.11(d)(3)(i) only requires judges to demonstrate victimization *and/or* compliance with reasonable requests, we recommend attesting to both prongs if you have sufficient information. See DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, FORM I-914B 2 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>

<sup>160</sup> *DHS U and T Visa Resource Guide* at 18–19.

<sup>161</sup> 72 Fed. Reg. 92266, 92276 (2016).

<sup>162</sup> 72 Fed. Reg. 92266, 92272 & 92276 (2016).

<sup>163</sup> *DHS U and T Visa Resource Guide* at 11.

<sup>164</sup> 72 Fed. Reg. 92266, 92276 (2016).

<sup>165</sup> 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i) (2016).

<p><b>What Is a T visa Declaration?</b></p>	<ul style="list-style-type: none"> <li>• The criminal activity may have occurred at <b>any time</b> in the past.<sup>166</sup> There is no statute of limitations and certification can be made even when the state statute of limitations for the criminal activity has passed. There is no expiration date for the Form I-914B T visa declaration. The applicant can submit the form any time after the certifying government official signs the form.</li> </ul>
<p><b>Law Enforcement and Prosecutors as T visa Certifiers</b></p>	<ul style="list-style-type: none"> <li>• Law enforcement officials and prosecutors are specifically listed in the regulations as one of the government agencies that are authorized certifiers able to complete the T visa Certification Form I-914, Supplement B.<sup>167</sup> A certifying official is the head of a law enforcement or prosecution agency or the persons with supervisory responsibility at the agency designated by the head of the agency to sign certifications.<sup>168</sup></li> <li>• Law enforcement officials are the first responders to immigrant victims of human trafficking. Police departments, sheriffs’ offices, marshals, and other law enforcement officials have firsthand knowledge of a victim’s assistance in reporting the crime and participating in any subsequent investigations. Law enforcement officials, therefore, are well positioned to provide T visa declarations and verify a victim’s assistance in the detection, investigation, or prosecution of human traffickers.</li> <li>• When a human trafficking related crime is prosecuted, prosecutors work closely with both law enforcement and victims. The prosecutors might need the victim to testify in court, or otherwise help during the prosecution, which might include the sentencing phase. During the prosecution of a qualifying criminal activity when there is an immigrant victim, the prosecutors are well positioned to verify a victim’s eligibility for a T visa and to provide the declaration. Although the manner in which prosecutions are initiated vary by jurisdiction, law enforcement officers and prosecutors encounter persons who have been victims of human trafficking.</li> </ul> <p>The declaration is not necessary to establish eligibility for the T visa, nor does it by itself grant immigration status to the victim. To obtain a T visa, a victim must meet eligibility requirements. The Department of Homeland Security (DHS) has sole authority to grant or deny a T visa and completes full background checks on all applicants.</p>
<p><b>Assessing the Assistance Requirement</b></p>	<ul style="list-style-type: none"> <li>• The T visa requires that the victim has complied with any reasonable requests from law enforcement in detection, investigation, or prosecution of human trafficking and/or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.<sup>169</sup></li> <li>• In determining “reasonableness” of the request for assistance or cooperation made by law enforcement and prosecution officials, USCIS will consider the totality of the circumstances. USCIS is required by regulations to use a broad range of factors, including but not limited to: general law enforcement and prosecutorial practices; the nature of the victimization; and the specific circumstances of the victim, including fear, severe traumatization, and the age and maturity of young victims.<sup>170</sup> DHS emphasizes that the proper standard is the reasonableness</li> </ul>

<sup>166</sup> See 72 Fed. Reg. 92266, 92278 (2016). “USCIS will accept applications regardless of when the applicant was victimized.”

<sup>167</sup> 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(a)) (2016).

<sup>168</sup> DHS U and T Visa Resource Guide at 13.

<sup>169</sup> I.N.A. § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa).

<sup>170</sup> 72 Fed. Reg. 92266, 92308 (codified at 8 C.F.R. § 214.11(h)(2)) (2016).

<p><b>Assessing the Assistance Requirement</b></p>	<p>of the request, not whether a victim unreasonably refused to assist.<sup>171</sup> It is generally reasonable for law enforcement to ask a trafficking victim similar things they would ask other comparably situated crime victims, such as domestic violence or sexual assault victims.<sup>172</sup></p> <ul style="list-style-type: none"> <li>• There are certain times when the T visa statute does not require a victim to cooperate with requests for assistance: (1) if the victim is under the age of 18, or (2) if the victim has experienced physical or psychological trauma that prevents him or her from complying with a reasonable request.<sup>173</sup></li> <li>• If a T visa victim has complied with any reasonable request in the detection, investigation, or prosecution the certifying official may prepare the certification even when investigation or prosecution efforts have been abandoned or did not result in conviction.<sup>174</sup> A judge may also certify when the only court case the victim participated in was a family or civil court matter.</li> <li>• If a law enforcement official or prosecutor is unsure whether the victim meets the assistance requirement, they may sign the declaration and include all information that has been found relevant about the victim’s assistance (Form I-914B includes several options to select). USCIS will ultimately determine whether the victim meets these requirements.<sup>175</sup></li> </ul> <p>The victim must fulfill an ongoing responsibility to provide assistance from the time of their initial application through the time they apply for lawful permanent residency.<sup>176</sup> At their discretion, a certifying official may revoke or disavow a declaration if a victim stops assisting; after revocation or disavowal, the declaration will no longer be considered as evidence.<sup>177</sup></p>
<p><b>When Officials are Able to Grant T visa Declaration</b></p>	<ul style="list-style-type: none"> <li>• If the law enforcement, prosecutor, or other government official has reasonable suspicion that criminal activity occurred and that the victim was cooperative, a declaration can be signed at any of the stages of the case.<sup>178</sup></li> <li>• Law enforcement and prosecution officials may complete T visa declarations once they are able to assess a victim’s helpfulness. Congress intended that T visa certifications be signed early after detection of the criminal activity. An investigation need not be complete prior to signing a certification.<sup>179</sup></li> <li>• The T visa declaration can be completed at the same time officers are completing police reports or when prosecutors begin working with the victim. Law enforcement and prosecutors can provide declarations at any time after they access the assistance. Waiting to sign declarations until after the criminal case has been concluded increases the ability of perpetrators to intimidate immigrant victim witnesses using threats and calls to DHS to have the victim deported and is not consistent with best practices.<sup>180</sup></li> </ul>

<sup>171</sup> 72 Fed. Reg. 92266, 92275 (2016).

<sup>172</sup> *Id.*

<sup>173</sup> 72 Fed. Reg. 92266, 92305 (codified at 8 C.F.R. § 214.11(b)(3)) (2016).

<sup>174</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR SUPPLEMENT B, DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING IN PERSONS 1 (expires 04/30/2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>; *DHS U and T Visa Resource Guide* at 17, 19.

<sup>175</sup> *Id.* at 18.

<sup>176</sup> 72 Fed. Reg. 92266, 92274 (2016).

<sup>177</sup> 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(ii)) (2016).

<sup>178</sup> *DHS U and T Visa Resource Guide* at 18.

<sup>179</sup> 72 Fed. Reg. 92266, 92306 (codified at 8 C.F.R. § 214.11(d)(3)(i)) (2016); *DHS U and T Visa Resource Guide* at 21.

<sup>180</sup> See NIWAP, Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery (Nov. 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>.

<p><b>T visa, Time Line &amp; Attaining Lawful Permanent Residency</b></p>	<ul style="list-style-type: none"> <li>• Typically within six (6) months after filing the T visa application, if USCIS finds that there is sufficient evidence in the case, the applicant’s case will receive bona fide determination and the victim will receive formal protection from deportation, work authorization,<sup>181</sup> and access to state and federal public benefits.<sup>182</sup> DHS will run a background check based on the applicant’s fingerprints before granting bona fide determination.<sup>183</sup></li> <li>• Approximately two (2) years after the bona fide determination, that is, about 2.5 years after filing, DHS will adjudicate the case. If the case is approved the applicant receives a T visa that lasts for four (4) years. At this point, if the trafficking case is concluded, the applicant will be able to immediately apply for lawful permanent residency. If not, the applicant will be able to apply for to apply for legal permanent residency three (3) years after receipt of T visa.<sup>184</sup></li> <li>• To obtain lawful permanent residency as a T visa holder, the victim must prove: <ul style="list-style-type: none"> <li>○ That they lawfully hold T visa and can prove that they have good moral character;</li> <li>○ That they meet one of the following: <ul style="list-style-type: none"> <li>▪ They have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;</li> <li>▪ They would suffer extreme hardship involving unusual and severe harm if they were removed from the United States; or</li> <li>▪ They were under 18 years of age at the time of the trafficking.</li> </ul> </li> <li>○ That they have continuous presence in the U.S. since receiving the T visa. Due to the “continuous presence” requirement, the T visa holder cannot depart the U.S. for any single period of time longer than 90 days, or for shorter periods in the aggregate exceeding 180 days.</li> <li>○ That they are admissible to the United States or have been granted a waiver by USCIS of any waivable grounds of inadmissibility.<sup>185</sup></li> </ul> </li> <li>• Congress capped the number of available T visas for principal applicants at 5,000 per fiscal year.<sup>186</sup> However, to date, the annual cap has never been reached and visas remain available to all applicants who qualify.<sup>187</sup></li> </ul>
<p><b>More Information</b></p>	<p>Please visit NIWAP’s web library for more information, training or technical assistance at <a href="http://niwaplibrary.wcl.american.edu/">http://niwaplibrary.wcl.american.edu/</a></p>

<sup>181</sup> 72 Fed. Reg. 92266, 92279 & 92307 (codified at 8 C.F.R. § 214.11(e)) (2016); 8 C.F.R. 274a.12(c)(14); Katelyn Deibler and Leslye E. Orloff, *T-Visa Timeline with Background Checks* (2019), <http://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline>.

<sup>182</sup> To look up what federal and state public benefits human trafficking victims are eligible for in each state see NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *All State Public Benefit Charts* (2019), <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

<sup>183</sup> 72 Fed. Reg. 92266, 92307 (codified at 8 C.F.R. § 214.11(e)(1)(iv)) (2016)

<sup>184</sup> 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)(3)) (2008).

<sup>185</sup> 73 Fed. Reg. 75540, 75558 (codified at 8 C.F.R. § 245.23(a)) (2008).

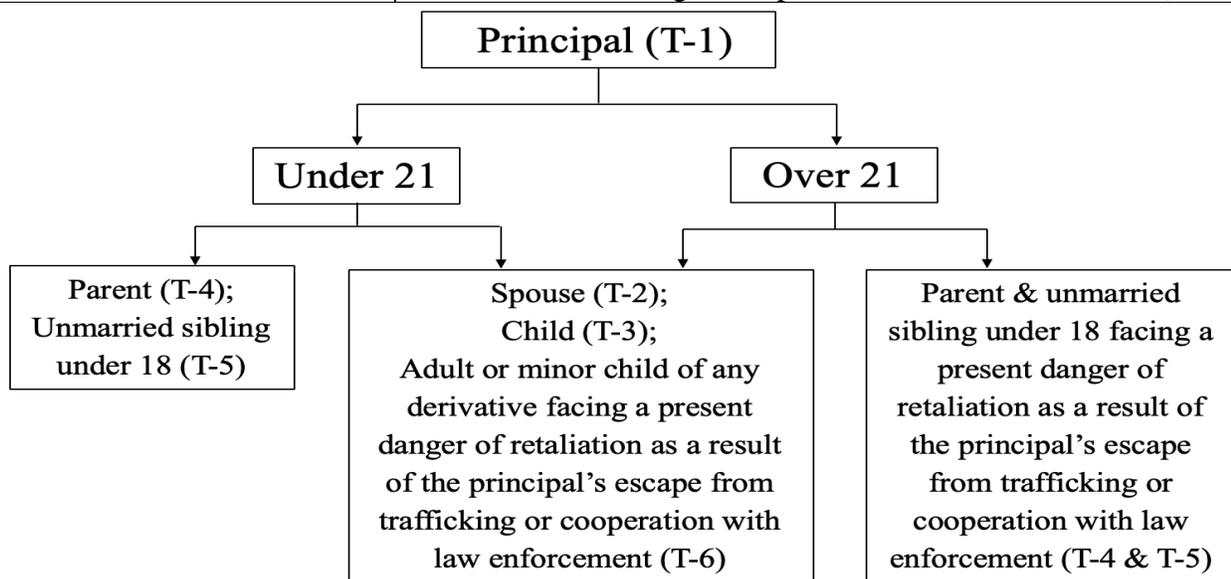
<sup>186</sup> I.N.A. § 214(o)(2)–(3), 8 U.S.C. 1184(o)(2)–(3).

<sup>187</sup> *DHS U and T Visa Resource Guide* at 10.

## T Visa: Protections for Family Members (8 CFR 214.11(k)(1))

A T visa applicant may apply for the admission of eligible family members. The applicant is called a principal, and the family members are called derivatives. The following chart outlines each classification of the T visa. Age-out protections are provided for principals and derivatives under 21 years of age.<sup>188</sup>

Code	Name
<b>T-1</b>	<b>Principal</b> (the victim)
<b>T-2</b>	<b>Principal's spouse</b> (always eligible)
<b>T-3</b>	<b>Principal's child</b> (always eligible)
<b>T-4</b>	<b>Principal's parent</b> (eligible only when principal is under 21 years of age, or when the parent faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)
<b>T-5</b>	<b>Principal's unmarried sibling under the age of 18</b> (eligible only when principal is under 21 years of age, or when the sibling faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)
<b>T-6</b>	<b>Adult or minor child of any derivative (T-2–T-5)</b> (eligible only when the adult or minor child of a derivative faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement)



<sup>188</sup> See I.N.A. § 214(o)(4)–(5), 8 U.S.C. 1184(o)(4)–(5); 8 C.F.R. 214.11(k)(5)(ii)–(iii).

## T Visa Application Victim Flow Chart

