T VISA REGULATIONS: 2002, 2016, & 2024

Regulations, Comparison, and Regulatory History

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Introduction

This document compares and contrasts the interim rule on the T-visa that DHS published and took effect on March 4, 2002, with the 2016 rule amendments (effective January 18, 2017) and the final rule published by DHS in April 30, 2024. The 2024 rule addressed public comments and made both substantive and technical changes to the 2016 rule. This document will help readers understand the 2024 rule amendments and which portions of the 2002 and 2016 rules and their related regulatory history remain in effect. The full text of the 2002, 2016 and 2024 rules and their preambles that together make up the full regulatory history of the 2024 rule are attached.

The 2016 rule changes are presented via track changes in the 2002 rule, and the 2024 rule changes are presented via track changes in the 2016 rule. Provisions that are no longer applicable are crossed out, provisions that have been amended are highlighted, and provisions that are still in force are unchanged. If you place the cursor on the provisions that are crossed out or highlighted, you will see explanatory notes with citations describing the changes made to the prior rule by either the 2016 or 2024 amendments.

In the 2024 rule, USCIS made technical changes throughout the regulations to update language. The term "alien" has been replaced with "'victim', 'applicant', 'survivor', or 'noncitizen' where appropriate." The 2024 regulations also reorganized the structure of 8 CFR 214.11 and redesignated the provisions with new citations. We add below the table that USCIS included in the 2024 regulations that will help readers identify where of the former CFR code sections have been located with their new CFR section numbers in the current 2024 Code of Federal Regulations. (Table 1 below)

Additionally, since these regulations discuss access to T visas for both human trafficking victims and a number of their family members, the following the new CFR code section list we include a chart that will assist in identifying the full range of trafficking victim's family members eligible for T visas, with their immigration code reference numbers (e.g. T-2, T-3), that the T visa regulations reference.

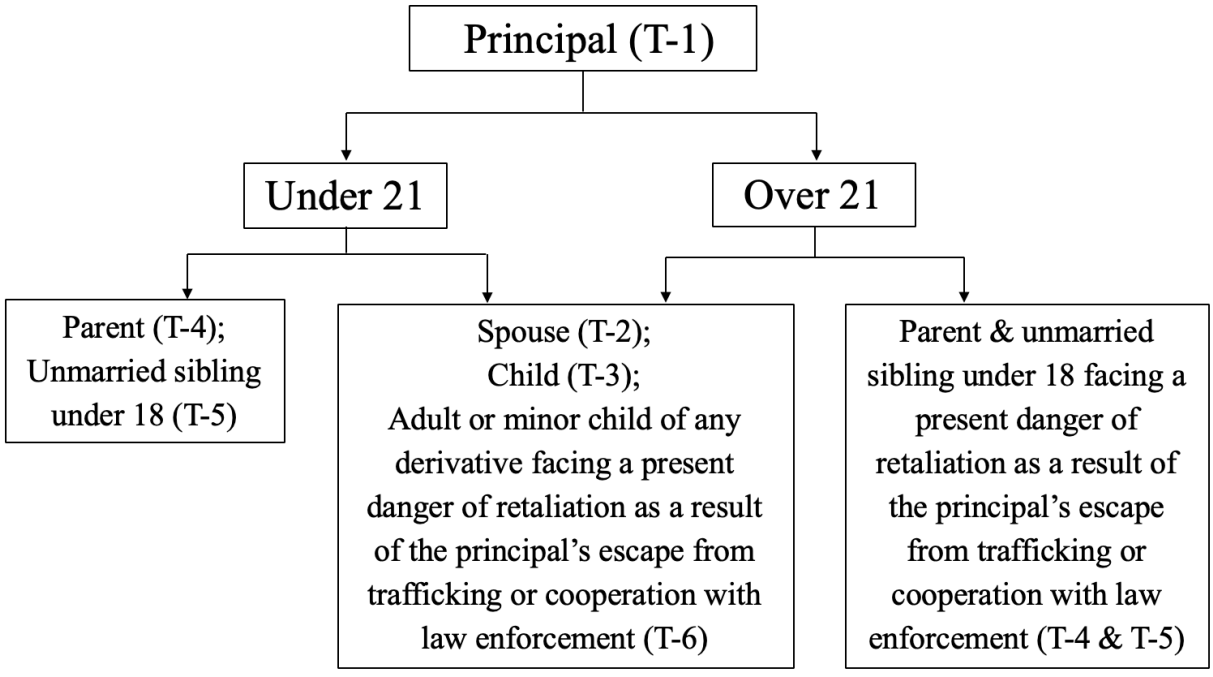
The electronic page numbers for each of the following regulations are:

Table 1. Redesignation Table	
Previous section	New section
214.11(a)	214.201
214.11(b)	214.202
214.11(c)	214.203
214.11(d)	214.204
214.11(e)	214.205
214.11(f)	214.206
214.11(g)	214.207
214.11(h)	214.208
214.11(i)	214.209
214.11(j)	214.210
214.11(k)	214.211
214.11(l)	214.212
214.11(m)	214.213
214.11(n)	214.214
214.11(o)	214.215
214.11(p)	214.216

Glossary: T Visa Classifications
(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.[1]

Code	Name
T-1	**Principal** (the victim)
T-2	**Principal's spouse** (always eligible)
T-3	**Principal's child** (always eligible)
T-4	**Principal's parent** (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)
T-5	**Principal's unmarried sibling under the age of 18** (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)
T-6	**Adult or minor child of any derivative (T-2–T-5)** (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)



[1] *See* INA section 214(o)(4)–(5), 8 U.S.C. 1184(o)(4)–(5); new 8 CFR 214.11(k)(5)(ii)–(iii).

Federal Register

Thursday,
January 31, 2002

Part II

Department of Justice

Immigration and Naturalization Service

8 CFR Part 103, et al.

New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status; Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, 274a and 299

INS No. 2132–01; AG Order No. 2554–2002

RIN 1115–AG19

New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule is intended to assist all concerned Federal officials, including, but not limited to, officials of the Immigration and Naturalization Service (Service), and eligible applicants, in implementing provisions of section 107(e) of the Trafficking Victims Protection Act of 2000 (TVPA). The T nonimmigrant status is available to eligible victims of severe forms of trafficking in persons who have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, and who can demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States. This rule addresses: the essential elements that must be demonstrated for classification as a T nonimmigrant alien; the procedures to be followed by applicants to apply for T nonimmigrant status; and evidentiary guidance to assist in the application process. The Service will promulgate separate regulations concerning the process for adjusting from T nonimmigrant status to lawful permanent resident status.

DATES: *Effective date*: This interim rule is effective March 4, 2002.

Comment date: Written comments must be submitted on or before April 1, 2002.

ADDRESSES: Please submit written comments to the Immigration and Naturalization Service, Policy Directive and Instructions Branch, Attention: TVPA Implementation Team, 425 I Street, NW., Room 4034, Washington, DC 20536 by mail or email your comments to the VTVPA Implementation Team at *insregs@usdoj.gov.* When submitting comments electronically, please include ''INS No. 2132–01'' in the subject box.

To ensure proper handling, please reference INS No. 2132–01 on your correspondence or e-mail. Comments will be available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Anne Veysey, Office of Programs, Immigration and Naturalization Service, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone: (202) 514–3479.

SUPPLEMENTARY INFORMATION:

Background and Legislative Authority

The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106–386, was signed into law on October 28, 2000. The VTVPA is divided into three sections: Division A, the Trafficking Victims Protection Act (TVPA); Division B, the Violence Against Women Act of 2000 (VAWA); and Division C, Miscellaneous Provisions. In passing this legislation, Congress intended to create a broad range of tools necessary for the Federal government to address the particular concerns associated with the problem of trafficking in persons.

In the TVPA, Congress found that ''(a)t least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.'' Section 102(b)(1), TVPA. Congress further found that ''(t)raffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support(.)'' *Id.* at section 102(b)(5). In trafficking in persons situations, perpetrators often target individuals who are likely to be particularly vulnerable and unfamiliar with their surroundings. Congress's intentions in passing the TVPA were to further the humanitarian interests of the United States and to strengthen the ability of government officials to investigate and prosecute trafficking in persons crimes by providing temporary immigration benefits to victims.

In the TVPA, Congress provided a variety of means to combat trafficking in persons by ensuring just and effective punishment of traffickers and by protecting the victims of trafficking in persons. These means include providing immigration benefits to eligible aliens who have been victims of severe forms of trafficking in persons and, ~~in the case of persons aged 15 and older,~~ who comply with any reasonable request to assist law enforcement agencies in the investigation and prosecution of their traffickers. The TVPA addresses the effect of severe forms of trafficking in persons on victims, including many who may not have legal status and are reluctant to cooperate.

In order to develop a comprehensive Federal approach to identifying victims of severe forms of trafficking in persons, to provide them with benefits and services, and to enhance the Department of Justice's ability to prosecute traffickers and prevent trafficking in persons in the first place, the Service conducted a series of stakeholders' meetings with representatives from key Federal agencies; national, state, and local law enforcement associations; non-profit, community-based victim rights organizations; and other groups. Suggestions from these stakeholders were used in the drafting of this regulation. Additionally, the Department established an internal working group to oversee implementation of the new law.

In a variety of ways, the Department has attempted to protect potential victims of severe forms of trafficking in persons by encouraging witnesses to cooperate in the investigation and prosecution of traffickers. Through vigorous investigation and prosecution of severe forms of trafficking in persons, the Department hopes to dismantle trafficking in persons rings and dramatically reduce the number of trafficking victims.

The U.S. Government has already taken a number of actions to implement section 107 of the TVPA. A key initial response under the TVPA was to improve the ability of law enforcement agencies to identify victims of severe forms of trafficking in persons and to provide appropriate information and assistance to them pursuant to section 107(c) of the TVPA. The Attorney General and the Secretary of State already have issued regulations implementing the requirements for assistance to victims of severe forms of trafficking in persons under section 107(c). See 66 FR 38514 (July 24, 2001) (codified at 28 CFR part 1100).

Section 107(c) permits the Service, in cooperation with other law enforcement agencies, to arrange for the ''continued presence'' of aliens who have been the victims of severe forms of trafficking in persons and are potential witnesses to that trafficking, so that they will be available to assist with the investigation and prosecution of the traffickers. As provided in 28 CFR 1100.35, the Service will arrange for ''continued presence'' of such victims, at the request of appropriate law enforcement agencies, during the time that their presence in the United States is needed for law enforcement purposes. In most of those cases, the Service (whether through

parole or other means) will be able to grant the victims temporary work authorization during the time they remain in the United States to assist with these law enforcement efforts.

Section 107(b) of the TVPA also provides that aliens who are victims of severe forms of trafficking in persons who have been granted continued presence, or who have filed a *bona fide* application for T nonimmigrant status, also are eligible to receive certain kinds of public assistance to the same extent as refugees.

Finally, in another part of the same Act that enacted the provisions of the TVPA for victims of trafficking in persons, Congress also provided for a new U nonimmigrant status for victims of certain kinds of crimes, including crimes involving trafficking in persons. VAWA section 1513. The Department will be publishing regulations to implement the U nonimmigrant status in a separate rulemaking action.

T Nonimmigrant Status

This rule implements one aspect of these new protections for victims of severe forms of trafficking in persons, the T nonimmigrant status. Congress established this new classification, in section 107(e) of the TVPA, to create a safe haven for certain eligible victims of severe forms of trafficking in persons who are assisting law enforcement authorities in investigating and prosecuting the perpetrators of these crimes. ~~Children who have not yet attained the age of 15 at the time of application~~ are exempt from the requirement to comply with law enforcement requests for assistance in order to establish eligibility.

T nonimmigrant status is applicable to victims of severe forms of trafficking in persons who are physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, on account of such trafficking in persons. Applicants for this status must demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States and that they have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons.

Principal aliens eligible for T nonimmigrant status may be granted T–1 status, which the TVPA limits to no more than 5,000 each fiscal year. In some circumstances, ~~immediate family members~~ of victims of severe forms of trafficking in persons also may receive a T nonimmigrant visa to accompany or to join the victim. When the Service approves a T nonimmigrant status application, it will provide a list of nongovernmental organizations to which the alien can refer regarding the alien's options while in the United States and resources available to the alien.

T nonimmigrant status allows eligible aliens to remain in the United States and grants specific nonimmigrant benefits. The T status is separate and distinct from the provision for ''continued presence'' pursuant to 28 CFR 1100.35, which is only temporary and requires that the alien depart the United States once his or her presence for purposes of the criminal investigation or prosecution is no longer required, unless the alien has some other immigration status. Those acquiring T–1 nonimmigrant status will be able to remain in the United States for a period of ~~three years~~, whether or not they were granted ''continued presence.''

Unlike other provisions of section 107 of the TVPA, T–1 nonimmigrant status is limited to victims of severe forms of trafficking in persons who are physically present on account of the trafficking and can establish that they would suffer ''extreme hardship involving unusual and severe harm'' if they were removed from the United States. In view of the annual limitation imposed by Congress for T–1 status, and the standard of extreme hardship involving unusual and severe harm, the Service acknowledges that the T–1 status will not be an appropriate response with respect to many cases involving aliens who are victims of severe forms of trafficking in persons.

To best meet these goals, the Service has determined that applicants may apply individually for T–1 nonimmigrant status without requiring third party sponsorship from a law enforcement agency, as is the case for the existing S nonimmigrant status for alien witnesses and informants. See 8 CFR 214.2(t). Recognizing the importance of providing assistance to law enforcement investigations and prosecutions, however, this interim rule provides a standard form for law enforcement agencies to use to provide sufficient background information to document that the alien is a victim of a severe form of trafficking in persons and has cooperated with reasonable requests for assistance to law enforcement. ~~Although a law enforcement endorsement will not be required, and an alien will be able to submit secondary evidence to establish these statutory requirements, the submission of this endorsement form will serve as primary evidence to satisfy these two elements and is strongly encouraged.~~

Aliens who have been granted T–1 status also will be able to seek derivative T status for their ~~immediate family members~~ who are accompanying or following to join them, if they can demonstrate that the removal of those family members from the United States (or the failure to admit the family members to the United States if they are currently abroad) would result in extreme hardship. Eligible immediate family members of the T–1 principal may receive derivative T–2 (spouse) or T–3 (child) status, and, in the case of a T–1 principal alien under the age of 21, T–4 (parent) status. The statutory numerical limitations do not apply to immediate family members classified as T nonimmigrant aliens. The Service notes that such ~~immediate family members~~ also may qualify for protection in appropriate cases under the regulations adopted to implement section 107(c) of the TVPA. See 28 CFR 1100.31.

Eligible victims who are granted T–1 nonimmigrant status will be issued employment authorization to assist them in finding safe, legal employment while they attempt to retake control of their lives. Aliens with derivative T–2, T–3, or T–4 status also may apply for employment authorization.

The TVPA also provides for the adjustment of status, at the Attorney General's discretion, from T nonimmigrant status to lawful permanent resident status for T nonimmigrants who: (1) Are admissible; (2) have been physically present in the United States for a continuous period of at least 3 years since the date of admission with T–1 nonimmigrant status; (3) throughout such period have been persons of good moral character; and (4) establish either (i) that during such period they have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, or (ii) that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States. The provisions concerning adjustment of status will be the subject of a separate rulemaking.

The Interim Rule

To qualify for T–1 nonimmigrant status, a person must demonstrate: (1) That he or she is a victim of a severe form of trafficking in persons; (2) that he or she is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking in persons;

(3) that, ~~if 15 years of age or older~~, he or she has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons; and (4) that he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States. The alien also must be admissible to the United States or obtain a waiver of inadmissibility from the Service. This rule addresses what the alien must show to meet each element necessary to qualify for the T nonimmigrant classification. The Service has created a new Form I–914, *Application for the T Nonimmigrant Status,* for this purpose. Form I–914 is composed of three sections: *Application for the T Nonimmigrant Status* (required); Supplement A, *Application for Immediate Family Member of T–1 Recipient;* and Supplement B, *Declaration of a Law Enforcement Officer for Victim of Trafficking in Persons.*

How Is a Victim of a Severe Form of Trafficking in Persons Defined?

Section 103 of the TVPA defines the term ''victim of a severe form of trafficking in persons.'' To be a ''victim of a severe form of trafficking in persons,'' an individual must

- Have been recruited, harbored, transported, provided, or obtained for labor or services, or the purposes of a commercial sex act; and
- There must have been some force, fraud, or coercion involved to make the victim engage in the labor or services or the commercial sex act (except that there need not be any force, fraud, or coercion in cases of commercial sex acts where the victim is under 18); and
- For situations involving labor or services, the use of force, fraud, or coercion must be for the purpose of subjecting the victim to involuntary servitude, peonage, debt bondage, or slavery.

This legislation provided the first definition under Federal law of a victim of a severe form of trafficking in persons. It builds upon the Constitutional prohibition on slavery, the existing criminal law provisions on slavery and peonage (Chapter 77 of title 18, U.S. Code, sections 1581 *et seq.*), on the case law interpreting the Constitution and these statutes (specifically *United States* v. *Kozminski,* 487 U.S. 931, 952 (1988)), and on the new criminal law prohibitions contained in the TVPA.

In order to make potential applicants for T–1 nonimmigrant status aware of the types of violations that must exist in order to meet the statutory definition of severe forms of trafficking in persons, the Service makes reference to the text of the 12 Federal criminal civil rights statutes contained within Chapter 77 of title 18 of the U.S. Code, beginning with section 1581. This set of statutes contains both preexisting and newly created trafficking in persons laws, many of which appear to constitute the crimes that Congress intended to cover in its statutory definition of severe forms of trafficking in persons. Accordingly, the definitions contained in section 214.11 reference the scope of those criminal provisions as an appropriate guide in applying the definitions of ''severe forms of trafficking in persons'' and its related terms for purposes of the T nonimmigrant status.

The statutory definition of involuntary servitude reflects the new Federal crime of ''forced labor'' contained in section 103(5) of the TVPA, and expands the definition of involuntary servitude contained in *Kozminski.* In crafting the definition in the TVPA, Congress intended to broaden the types of criminal conduct that could be labeled ''involuntary servitude.''

The legislative history of the new ''forced labor'' crime (18 U.S.C. 1589) provides helpful guidance on what types of conduct Congress intended to cover in its statutory definitions of severe trafficking in persons and, in particular, involuntary servitude:

> ''Section 1589 is intended to address the increasingly subtle methods of traffickers who place their victims in modern-day slavery, such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence * * * Because provisions within section 1589 only require a showing of a threat of ''serious harm,'' or of a scheme, plan, or pattern intended to cause a person to believe that such harm would occur, federal prosecutors will not have to demonstrate physical harm or threats of force against victims. The term ''serious harm'' * * * refers to a broad array of harms, including both physical and nonphysical, and section 1589's terms and provisions are intended to be construed with respect to the individual circumstances of victims that are relevant in determining whether a particular type or certain degree of harm or coercion is sufficient to maintain or obtain a victim's labor or services, including the age and background of the victims.'' 146 Cong. Rec. H8881 (daily ed. Oct. 5, 2000).

The only term within the statutory definition in section 103 of the TVPA that is not covered by Chapter 77 of title 18, U.S. Code, is the term ''debt bondage.'' According to the TVPA, ''the term ''debt bondage'' means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her 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 respectively limited and defined.'' TVPA, section 103(4).

The Service also notes that the definitions in section 103 of the TVPA are applicable not only for purposes of the T nonimmigrant status, but also for many other purposes as well under the TVPA. For example, the same definitions of ''severe forms of trafficking in persons'' and its related terms are used for purposes of:

- The provisions of section 107(c) of the TVPA and in the implementing regulations on Protection and Assistance for Victims of Trafficking adopted by the Attorney General and the Secretary of State at 66 FR 38514 (July 24, 2001) (to be codified at 28 CFR part 1100);
- The provisions for eligibility for benefits and services under section 107(b) of the TVPA;
- The annual country reports on human rights practices prepared by the Department of State under the Foreign Assistance Act of 1961, as amended by section 104 of the TVPA; and
- The minimum standards for the elimination of severe forms of trafficking in persons and the provisions to promote compliance with those minimum standards, as provided in sections 108 through 111 of the TVPA.

In providing for the new T nonimmigrant status, Congress directed the Attorney General to apply the definition of a ''victim of a severe form of trafficking in persons'' as it is defined in section 103 of the TVPA. Section 103 of the TVPA provides a common definition of the key statutory terms that are used in several different contexts in Title I of the TVPA. In view of the common usage of these definitions in section 103 for many purposes under the TVPA, the Service will interpret and apply those terms for purposes of the T nonimmigrant status with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of chapter 77 of title 18, United States Code.

In determining whether an applicant is a victim of a severe form of trafficking in persons, the Service will consider all credible and relevant evidence. Except in instances of sex trafficking involving minors, severe forms of trafficking in persons must involve both a particular means (force, fraud, or coercion) and a particular end (sex trafficking,

involuntary servitude, peonage, debt bondage, or slavery). It is the applicant's burden to demonstrate both elements of a severe form of trafficking in persons. For example, an adult involved in commercial sexual activity that is not induced by force, fraud, or coercion will not be considered a victim of a severe form of trafficking in persons.

When Is an Alien Physically Present in the United States on Account of Such Trafficking?

A victim of a severe form of trafficking in persons must be ''physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking.'' TVPA, section 107(e)(1)(T)(i)(II). Some traffickers arrange for entry of their victims into these jurisdictions as part of the trafficking scheme, while other traffickers prey upon aliens who are already in the United States. These aliens may have entered lawfully for a certain purpose, for instance in a student status under section 101(a)(15)(F) of the Immigration and Nationality Act (INA), or they may have entered without being admitted or paroled and are unlawfully present. The Service is interpreting the statute in light of Congressional intent to reach those aliens who are physically present under each of these circumstances if they are or were victims of severe forms of trafficking in persons occurring within those jurisdictions. The Service will take into account the circumstances relating to the alien's arrival and current presence in these jurisdictions.

As a result of this broad range of aliens who may be victims of severe forms of trafficking in persons, the Service interprets the physical presence requirement to reach those aliens who: (1) Are present because they are being held in some sort of severe form of trafficking in persons situation; (2) were recently liberated from a severe form of trafficking in persons; or (3) were subject to severe forms of trafficking in persons at some point in the past and remain present in the United States for reasons directly related to the original trafficking in persons.

~~If such aliens have escaped their traffickers before law enforcement became involved in the matter, they must show that they did not have a clear chance to leave the United States in the interim. The Service will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. Information relevant to this determination may include, but is not limited to, circumstances attributable to the trafficking in persons situation. This determination may reach both those who entered the United States lawfully and those who entered without being admitted or paroled.~~

The Service will consider all evidence available to determine physical presence, including requiring the alien to explain in a narrative submitted as part of Form I–914, *Application for the T Nonimmigrant Status.* ~~This information will help Service adjudicators determine whether the alien had a clear chance to leave the United States after escaping from the trafficker, in order to determine whether an alien is present on account of trafficking.~~

Aliens who have traveled out of the United States and then returned will be presumed not to be here on account of trafficking in persons and will have to show that their presence here is the result of continued victimization at the hands of the traffickers or a new incident of a severe form of trafficking in persons.

It is important to note that aliens who are present in the United States without having been admitted or paroled are inadmissible, and accordingly they will have to obtain a waiver of inadmissibility in order to be eligible for T nonimmigrant status.

What Is the Difference Between Alien Smuggling and Severe Forms of Trafficking in Persons?

Federal law makes a distinction between alien smuggling—in which the smuggler arranges for an alien to enter the country illegally for any reason, including where the alien has voluntarily contracted to be smuggled—and severe forms of trafficking in persons. Unlike alien smuggling, severe forms of trafficking in persons 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 (with regard to a commercial sex act, however, the use of force, fraud, or coercion is not necessary if the person induced to perform a commercial sex act is under the age of 18). Pursuant to the TVPA, victims of a severe form of trafficking in persons are persons who are recruited, harbored, transported, provided, or obtained for: (1) Labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or (2) the purpose of a commercial sex act in which such act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

In most cases, aliens who are voluntarily smuggled into the United States will not be considered victims of a severe form of trafficking in persons. However, individuals who are voluntarily smuggled into the United States in order to be used for labor or services may become victims of a severe form of trafficking in persons if, for example, after arrival the smuggler uses threats of serious harm or physical restraint to force the individual into involuntary servitude, peonage, debt bondage, or slavery. Federal law prohibits forced labor regardless of the victim's initial consent to work. This distinction between alien smuggling and severe forms of trafficking in persons is consistent with the separate treatment of trafficking in persons and alien smuggling internationally.

Aliens who can establish that they are or have been a victim of a severe form of trafficking in persons, regardless of the circumstances of their arrival in the United States, may be eligible to receive various forms of assistance under sections 107(b) or (c) of the TVPA. In addition, a Federal law enforcement agency may request the Service to arrange for the alien's ''continued presence'' as provided in 28 CFR 1100.35 for purposes of the investigation and prosecution of trafficking in persons crimes.

How Is Continued Presence, Issued Under Section 107(c) of the TVPA, Related to Obtaining T–1 Status?

One of the elements an applicant for T–1 nonimmigrant status must prove is that he or she is a victim of a severe form of trafficking in persons. Documentation from the Service granting the applicant ''continued presence'' in accordance with section 107(c) of the TVPA and 28 CFR 1100.35 shall be considered as establishing victim status. Continued presence documentation shall not be valid for purposes of establishing victim status, however, if the continued presence has been revoked based on a determination that the applicant is not a victim of a severe form of trafficking in persons.

What Is a Reasonable Request for Assistance From Law Enforcement in the Investigation or Prosecution of Acts of Trafficking?

To be eligible for T nonimmigrant status, a victim of a severe form of trafficking in persons must comply with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons (unless the victim is ~~under the age of 15~~). When the

applicant submits a Law Enforcement Agency (LEA) ~~endorsement~~ as part of his or her application package, the LEA who requested cooperation will make the initial determination as to the cooperation of the applicant. ~~The Service will only challenge this assertion when there is evidence that the LEA's conclusion is incorrect.~~

The Service interprets a ''reasonable request for assistance'' to be one made to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of acts of trafficking in persons. The Service's evaluation of the reasonableness of a request will be based on the totality of the circumstances, taking into account general law enforcement, prosecutorial, and judicial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims. Absent exceptional circumstances, it is reasonable for a law enforcement agency to ask of a victim of a severe form of trafficking in persons similar things it asks of other comparably-situated crime victims. The Service welcomes comments on how it should evaluate the reasonableness of a request for assistance from law enforcement, particularly with respect to requests made to victims who are under the age of 18.

In view of the statutory requirement for a victim of a severe form of trafficking in persons to comply with reasonable requests made by an LEA investigating or prosecuting severe forms of trafficking in persons, the victim must have had contact with a law enforcement agency regarding the incident, either by reporting the crime or by responding to inquiries from an LEA.

On the form filled out by the LEA investigator or prosecutor, Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*, of Form I–914, *Application for T Nonimmigrant Status*, the Service will ask for information about the victim's cooperation with that LEA. The Service also will ask the alien to provide information about his or her cooperation on Form I–914. In determining whether an alien meets this element of T–1 nonimmigrant status eligibility, the Service will look at the totality of the circumstances surrounding the alien's involvement with the law enforcement or prosecuting agency.

The alien may provide any credible evidence to meet this prong of eligibility or any other prong of eligibility. A non-exhaustive list of suggested forms of secondary evidence includes trial transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. Under 8 CFR 103.2, affidavits are not considered primary or secondary evidence. They are another form of evidence, nonetheless. Applicants may provide their own affidavits and those from other witnesses.

If the Service has reason to believe that there is a question about the reasonableness of a request for assistance by an LEA or the applicant's compliance, and the resolution of this question is necessary for the proper adjudication of the application, the Service will contact the LEA. The Service will take all practical steps to reach an acceptable resolution with the LEA. The determination of what is a reasonable request shall be within the sole discretion of the Service.

From Whom May the Request for Law Enforcement Assistance Come?

This rule provides that any appropriate LEA with jurisdiction in the investigation or prosecution of acts of trafficking in persons may make a request for law enforcement assistance. ~~An LEA is a Federal law enforcement or prosecuting agency, including, but not limited to, the Federal Bureau of Investigation (FBI), the Service, the United States Attorneys' Offices, the Department of Justice's Civil Rights and Criminal Divisions, the United States Marshals Service, and the Department of State's Diplomatic Security Service. While States and localities may investigate or prosecute crimes of ''trafficking in persons,'' for purposes of this rule the only agencies authorized to investigate or prosecute crimes that meet the definition under the TVPA of ''severe forms of trafficking in persons'' are those that investigate violations of the Federal offenses detailed in the TVPA. If state or local investigative or prosecuting agencies believe they have encountered a victim of a severe form of trafficking in persons, they should contact an LEA to report the crime. In this way, aliens who have only received requests to assist in the criminal investigations or prosecutions of state or local crimes also may have the opportunity to assist Federal law enforcement or prosecuting agencies and therefore meet the requirements for eligibility for T–1 nonimmigrant status~~ under this section and the Act.

What Is the Law Enforcement Agency ~~Endorsement~~?

The LEA ~~endorsement~~ is Supplement B, *Declaration of a Law Enforcement Officer for Victim of Trafficking in Persons*, of Form I–914, *Application for T Nonimmigrant Status*. It is issued by the authorities conducting an investigation or prosecution when they believe an individual is or has been a victim of a severe form of trafficking in persons and the victim has cooperated with any reasonable law enforcement requests. ~~The Service has interpreted the statutory language to mean that only Federal law enforcement agencies investigating or prosecuting acts of trafficking in persons will be allowed to fill out the LEA endorsement. The Service has chosen this interpretation because severe forms of trafficking in persons are Federal crimes under the TVPA. If a state law enforcement agency believes it has encountered a victim of a severe form of trafficking in persons who would be eligible for T–1 nonimmigrant status, the state law enforcement agency or the alien should contact the local office of an LEA or the Civil Rights Division's Criminal Section. Potential victims who have not yet reported crimes to an LEA ought to contact the nearest local FBI, Service, or U.S. Attorney's office to report the trafficking in persons crime. Alternatively, the victim may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint line at 1–888–428–7581 to report crimes and to obtain information about LEA endorsements. It is important to recognize that an LEA, if it so desires, may only fill out an endorsement when, after a full assessment, it determines that the individual is a victim of a severe form of trafficking in persons and has complied with any reasonable request the LEA has made.~~

An LEA ~~endorsement~~ is not a mandatory part of a T–1 nonimmigrant status application. ~~All T–1 applicants, however, are strongly encouraged to provide such an endorsement if possible. The LEA endorsement serves as primary evidence that the alien is a victim of a severe form of trafficking in persons, and has not unreasonably refused to assist in the investigation or prosecution of trafficking in persons. If the applicant chooses not to include an LEA endorsement, the Service will make an independent assessment of any credible evidence presented, in accordance with this rule, to determine if the applicant meets the cooperation with law enforcement requirement.~~

When Will the Service Provide Information From the Form I–914, Application for the T Nonimmigrant Status, to Other Agencies?

A victim's confidentiality and his or her safety, to the extent the law allows, will be considered when releasing information to Federal investigative agencies and/or defendants. In accordance with 42 U.S.C. 10606, Department of Justice employees will use their best efforts to see that victims of Federal crimes are accorded the rights due such victims, including the right to be treated with fairness and with respect for their dignity and privacy, and the right to be reasonably protected from accused offenders.

However, the Service may provide the information about any Federal crimes detailed to Federal investigative agencies, such as the FBI, U.S. Attorney's office, or the Department's Civil Rights or Criminal Divisions, or to the Service's Investigations unit. These contacts may be for the purpose of assessing whether an alien has complied with any reasonable request for assistance, or to promote enforcement of the Federal laws against trafficking in persons.

In addition, under established legal standards, the Department of Justice has an obligation to provide statements by witnesses and certain other documents to defendants in pending criminal proceedings. These obligations stem from constitutional, statutory, and other legal requirements that pertain to the government's duty to disclose information, including exculpatory evidence or impeachment material, to the defendant in order to prepare his or her defense. Accordingly, in any case where the Department is prosecuting a person for trafficking in persons offenses involving that victim, the Service will make appropriate arrangements with the Department of Justice component responsible for prosecution to ensure that information in the victim's application for T nonimmigrant status and other documents that fall within the scope of the Department's legal obligations will be made available on a timely basis to the Federal prosecutors.

What Happens if an Applicant Is Inadmissible Under One of the Grounds in Section 212(a) of the Immigration and Nationality Act?

A principal or derivative applicant who is or becomes inadmissible under section 212(a) of the INA will not be eligible for T nonimmigrant status unless the ground of inadmissibility is waived by the Service. If the ground of inadmissibility is one that can be waived, the alien should apply for a waiver of the grounds of inadmissibility from the Service on Form I–192, *Application for Advance Permission to Enter as Nonimmigrant (Pursuant to Section 212(d)(3) of the Immigration and Nationality Act*). Section 212(d)(3)(B) provides general authority for the Service to waive many grounds of inadmissibility for nonimmigrants. These waivers are not automatic, but may be granted in the exercise of its discretion. Form I–192 should be filed at the time of filing Form I–914.

In the TVPA, Congress recognized that victims of a severe form of trafficking in persons might need this specific relief from inadmissibility. Section 107(e)(3) of the TVPA creates additional authority for the waiver of inadmissibility, at the discretion of the Attorney General, in the case of victims of a severe form of trafficking in persons if the Attorney General considers it to be in the national interest to do so. Under new section 212(d)(13) of the INA, such victims may receive a waiver on health-related grounds (section 212(a)(1)) ~~or on public charge grounds (section 212(a)(4)).~~ Section 212(d)(13) of the INA also authorizes the Attorney General to waive the criminal grounds of inadmissibility in section 212(a)(2) of the INA and certain other grounds if the activities rendering the alien inadmissible were caused by or were incident to the alien's victimization.

The reference to waiver of the public charge ground should be understood in light of another section of the TVPA—section 107(b)(1)(A) and (E)—which provides that victims of severe forms of trafficking in persons who are over 18 years of age may be certified by the Department of Health and Human Services (HHS) to receive certain benefits and services ''to the same extent as an alien who is admitted to the United States as a refugee.'' Victims of a severe form of trafficking in persons under age 18 also are eligible for services to the same extent as refugees, but they do not have to be certified by HHS. Under this provision, victims may receive certain benefits and services as if they were refugees, which might include cash assistance. Refugees are provided with special humanitarian benefits because of their vulnerable circumstances, and are exempt from virtually every aspect of the public charge determination. For the purposes of receipt of public benefits, Congress has recognized that victims of severe forms of trafficking are in much the same position as refugees, and therefore has provided specific authority for the Service to exempt them from the ground of inadmissibility for aliens who are likely to become a public charge.

How Does a Victim of a Severe Form of Trafficking in Persons Apply for T–1 Nonimmigrant Status?

A victim of a severe form of trafficking in persons may apply directly to the Service for T–1 nonimmigrant status. The application requires submission of a Form I–914, a $200 filing fee (plus $50 per immediate family member) or an application for a fee waiver, a fingerprinting fee, ~~three current identical color photographs,~~ and evidence establishing each eligibility requirement. All necessary materials should be compiled into one application package and submitted to the Director, Vermont Service Center, 75 Lower Welden Street, St. Albans, Vermont 05479–0001.

All applicants for T nonimmigrant status must be fingerprinted for the purpose of conducting a criminal background check as part of the application process. The Service recognizes the importance of making timely determinations of *bona fide* applications in order for victims of severe forms of trafficking to receive critical health and other social services as soon as possible. After submitting an application with fee to the Service, the applicant will be notified of the proper time and location to appear for fingerprinting. In 1997, Congress created a new program that required the Service to have direct oversight of the fingerprint process and enabled the Service to add new technology for exchanging data with the FBI. As a result, the Service created the Application Support Center (ASC) program, which is currently composed of 133 offices located across the country. In addition, state-of-the-art technology and customized software have been employed at these ASCs, permitting live-scan capture of fingerprints and automated transmission of fingerprints to the FBI's Integrated Automated Fingerprint Identification System (IAFIS) electronically. As a result of these process and systems enhancements, the Service has been able to reduce the rate at which the FBI rejected these fingerprint cards from 40 percent to 3 percent, and reduced the overall FBI response time from approximately nine months to, in most cases, less than one day. The Service will continue to review fingerprint processing operational performance and build upon ongoing enhancements in applicant scheduling, live-scan biometrics capture, and automated data exchange to ensure the overall efficiency and timeliness of fingerprint

processing. As part of the forthcoming final rulemaking, the Service will consider whether any systemic issues have arisen regarding the timeliness of background checks related to the administration of this program, and consider whether any improvements need to be made by the Service to ensure timely determinations of whether an applicant has submitted a *bona fide* application.

What Are the Stages Involved With the Application Process for T Nonimmigrant Status?

There are several stages involved in the T nonimmigrant status application process: (1) The submission of an application for T–1 nonimmigrant status (which may be accompanied by applications for derivative T nonimmigrant status for immediate family members); (2) the Service's determination of whether an application for T nonimmigrant status is *bona fide*; and (3) the adjudication of the application for T nonimmigrant status. The Service will approve an application for T–1 nonimmigrant status when room is available under the cap for each fiscal year, or place the alien on the waiting list (which will be carried over to subsequent years) for the grant of a T–1 nonimmigrant status application if the cap has been reached. The cap is not affected by applications for derivative T nonimmigrant status.

Submission of an application for T–1 nonimmigrant status. In the first stage of the process, the alien submits an application for T–1 nonimmigrant status. At this stage, the victim of a severe form of trafficking in persons provides evidence sufficient to demonstrate each required element necessary for the Service to issue T–1 nonimmigrant status.

A complete application includes Form I–914, *Application for the T Nonimmigrant Status*; ~~three identical color photographs;~~ applicable fees or applications for fee waivers; and all evidence to fully support his or her claims to the four eligibility elements. An application also may include Supplement A, *Supplemental Application of Immediate Family Members for T–1 Recipient*, and Supplement B, *Declaration of a Law Enforcement Officer for Victim of Trafficking in Persons* of Form I–914, *Application for T Nonimmigrant Status*, and Form I–192, *Application for Advance Permission to Enter as Nonimmigrant*, for a waiver of a ground of inadmissibility, if necessary.

An Employment Authorization Document will be generated from the I–914 information. The applicant does not need to file Form I–765, *Application for Employment Authorization*, with the application package.

Determination of a bona fide application for T nonimmigrant status. The Service will review the submitted information to ensure that the application is complete and ready for adjudication, which includes that the fingerprinting and criminal background checks are completed and that the submitted information presents *prima facie* evidence for each eligibility requirement. This determination of whether there is *prima facie* evidence will be made for T–1 applications, according to the eligibility standards for that status. If the application is sufficient, the application will be determined to be a *bona fide* application for T–1 nonimmigrant status. However, if the alien is inadmissible, the Service will not consider the application to be *bona fide* unless the ground of inadmissibility is one under the circumstances described in section 212(d)(13) of the INA, as added by section 107(e) of the TVPA, or unless the Service already has granted a waiver of inadmissibility with respect to any other ground. All waivers are discretionary and require a request for a waiver. Under section 212(d)(13), however, an application can be *bona fide* before the waiver is granted. This is not the case under other grounds of inadmissibility.

The Service will not consider an application that is incomplete to be *bona fide* until the applicant submits the necessary additional evidence to establish *prima facie* eligibility for each required element of the T–1 nonimmigrant status. The Service will notify the applicant regarding the additional evidence that needs to be submitted in those circumstances, as provided in 8 CFR 103.2(b)(8).

Once an application is determined to be a *bona fide* application for T nonimmigrant status, the Service will provide written confirmation to the applicant. The Service will use various means to prevent the removal of individuals who have filed *bona fide* applications, such as deferred action, parole, and stay of removal, until the Service issues a final decision on the application. (Some victims of a severe form of trafficking in persons, however, already may have been granted ''continued presence'' as provided in section 107(c) of the TVPA and the regulation implementing it. See 66 FR 38514 (July 24, 2001) (codified at 28 CFR 1100.35).) Individuals granted deferred action, parole, or stay of removal may be granted employment authorization by filing Form I–765, *Application for Employment Authorization*, in accordance with Service policies and procedures.

Once an application for T–1 nonimmigrant status is determined to be *bona fide* by the Service, an applicant age 18 or older may apply to HHS to be certified to receive certain benefits and services to the same extent as refugees, as provided in section 107(b) of the TVPA. In order for the victim of a severe form of trafficking in persons to be eligible, HHS must certify him or her to receive such benefits and services, unless the victim is under the age of 18. The Service notes that victims under age 18 do not need to be certified, nor do they need to submit a *bona fide* application for T nonimmigrant status, in order to receive such benefits and services. To be considered a victim and therefore eligible for these benefits and services, those under 18 must be determined to have been subjected to a severe form of trafficking in persons. The Service also notes that individuals who have received ''continued presence'' under section 107(c) of the TVPA may apply to HHS to be certified.

Adjudication of applications for T nonimmigrant status. The Service has centralized the adjudication process at its Vermont Service Center. This centralization will allow adjudicators to develop expertise in handling these cases and provide for uniformity in the adjudication of these applications. If the Service finds that the alien has satisfied the requirements for T nonimmigrant status, it will either grant T nonimmigrant status or (in the case of T–1 applicants who are subject to the annual cap) place the alien on a waiting list, as discussed below.

In any case in which the Service denies an application for T nonimmigrant status, the applicant can appeal to the Administrative Appeals Office (AAO) under procedures outlined in 8 CFR 103.3.

Approval of T–1 nonimmigrant status or placement on the waiting list for the grant of T–1 nonimmigrant status. If the Service determines that there are sufficient grounds to grant T–1 nonimmigrant status, the Service will send a notice of approval to the applicant only if a T–1 nonimmigrant status number is available. When the Service grants an application for T–1 status, it will simultaneously grant employment authorization (if not already obtained).

In the event a number is not available, the Service will send the applicant a notice of placement on the waiting list.

What Will Happen if There Are More Eligible T–1 Applicants Than the Number Available for the Year?

According to the TVPA, there is a 5,000-person limit to the number of individuals who can be granted T–1 status per fiscal year (from October 1 through September 30). Once the numerical limit has been reached in a particular fiscal year, all pending and subsequently submitted applications will continue to be reviewed in the normal process to determine eligibility, but the Service will not grant T–1 nonimmigrant status prior to the beginning of the next fiscal year. Eligible applicants who are not granted T–1 status due solely to the numerical limit shall be placed on a waiting list to be maintained by the Service. In the event a number is not available, the Service will send the applicant a notice of placement on the waiting list. Applicants on the waiting list will be given priority the following fiscal year based on the date the application was properly filed. Each year, as new numbers for the T–1 nonimmigrant status become available, the Service will grant them to applicants on the waiting list.

Eligible applicants on the waiting list must be admissible at the time status is granted. Eligible applicants on the waiting list may be asked to resubmit fingerprints (and pay the appropriate fee) and photographs because of the passage of time between their submission and the date a nonimmigrant status becomes available. After the Service has granted T–1 status to applicants on the waiting list, the Service will continue to grant applications, up to the annual limit, to new applicants in the order in which each application was properly filed.

Will T–1 Applicants Be Removed From the United States While on the Waiting List?

The Service will use various means to prevent the removal of T–1 applicants on the waiting list, and their family members who are eligible for derivative T status, including its existing authority to grant deferred action, parole, and stay of removal. However, an applicant may be removed, and his or her application denied, for conduct that occurs while an alien is on the waiting list or for not disclosing relevant information at the time of filing. During this time, applicants for T status who are granted deferred action or stay of removal will not accrue unlawful presence under section 212(a)(6) or (9) of the INA. Applicants also will be able to renew their work authorization documents, as needed.

While on the waiting list, the T–1 applicant will remain in his or her current immigration status (deferred action, parole, stay of removal, or other immigration status) and will retain eligibility for employment authorization, subject to any conditions placed on that authorization, until new numbers for T–1 nonimmigrant status become available in a subsequent fiscal year.

How Will the Revocation of a T–1 Status Affect the Annual Cap?

The revocation of a T–1 status will have no effect on the annual cap. Once a T–1 status is granted, it will be deemed to have been used and cannot be used again. The Service considered re-using the T–1 status but determined it would be infeasible to track, especially if the T–1 status were granted several years ago and the individual were waiting for adjustment to lawful permanent resident status. The Service concluded that tracking when T–1 classifications are granted and then trying to backfill the numbers with additional grants or provide grants above the annual cap would put undue burden on the Service.

When Can a T–1 Nonimmigrant Apply for Derivative Status for Family Members?

An applicant for T–1 status may apply for derivative T nonimmigrant status, at the time of the original T–1 application, for his or her spouse (T–2) or child (T–3), or in the case of a child who is applying for T–1 status, the child's parents (T–4). An applicant for T–1 status or an alien who has been granted T–1 nonimmigrant status also may apply at a later date by filing a separate Form I–914 and attachments. Applications for derivative status must be accompanied by the required attachments, such as fingerprints, photographs, and fees.

How Will the Service Adjudicate Applications for Derivative Status of Family Members of a Victim of a Severe Form of Trafficking in Persons?

The annual limitation does not apply to immediate family members who are granted derivative T–2, T–3, or T–4 status. However, the Service will not grant an application for derivative T status until the principal alien has been granted T–1 status. Once the principal alien is granted T–1 nonimmigrant status, eligible family members who receive a derivative status can apply for employment authorization on Form I–765, and, if granted, receive work authorization.

What Is the Duration of the T Nonimmigrant Status?

T nonimmigrant status will be granted for ~~3 years.~~ This period of stay is timed to coordinate with the separate statutory authority for adjustment of status. An alien in T nonimmigrant status is eligible to apply for adjustment of status to that of a legal permanent resident under the criteria listed in section 107(f) of the TVPA and forthcoming Service regulations. Should an alien with T nonimmigrant status leave the United States during the 3 years prior to applying for lawful permanent residence, he or she must file a Form I–131, *Application for Travel Document*, before departing the United States to obtain advanced parole in order to return to the United States. This requirement is true for T–1 principal aliens as well as family members in derivative T–2, T–3, or T–4 status.

The T nonimmigrant status is not renewable. ~~If the alien properly files for adjustment of status to that of a person admitted for permanent residence within the 90-day period immediately preceding the third anniversary of the date of the approval of the alien's Form I–914, the alien shall continue to be in a T nonimmigrant status with all the rights, privileges, and responsibilities provided to a person possessing such status, including employment authorization, until such time as a final decision is rendered on the alien's adjustment of status. At the time an alien is approved for T nonimmigrant status, the Service shall notify the alien that his or her nonimmigrant status will expire in 3 years from the date of the approval of the alien's Form I–914, and that if the alien wishes to apply to adjust status, the alien must apply within the 90-day period immediately preceding the expiration of T nonimmigrant status.~~

What Is the Fee for an Application for T Nonimmigrant Status?

In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Pub. L. 100–459, Sec. 209, 102 Stat. 2186, 2203 (1988), Congress mandated that the Service prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. Congress has not provided appropriated funds to pay for nonimmigrant classification programs.

The Service has determined that the fee for filing Form I–914, *Application for the T Nonimmigrant Status*, is $200. An applicant for T–1 status also will be

able to request derivative T nonimmigrant status for eligible family members for an additional fee of $50 for each person included in the same application, up to a maximum amount of $400.

Applications for immediate family members filed subsequent to the T–1 principal's application will be considered a new filing and will require the full fee of $200 for the first family member and $50 for each additional family member, up to a maximum amount of $400.

Are Fee Waivers Available?

The Service recognizes that many applicants for T nonimmigrant status may be unable to pay the full application fee. Applicants who are financially unable to pay the application fee may submit an application for a fee waiver, as outlined in 28 CFR 103.7(c). The granting of a fee waiver will be at the sole discretion of the Service. Further guidance on fee waivers can be found on the INS Web site currently at *http://www.ins.gov/graphics/formsfee/forms/index.htm#waiver.*

In addition to the filing fee for the Form I–914, applicants will have to submit the established fee for fingerprinting services for each person between the ages of 14 and 79 years inclusive with each application. This fee is currently $25 per person, and is not subject to a fee waiver. The Service has published a final rule to increase this amount to $50 per person, which takes effect February 19, 2002. See 66 FR 65811 (Dec. 21, 2001) (final rule adjusting fees for the Immigration Examinations Fee Account).

How Did the Service Arrive at the Fee Amount?

The Service arrived at the fee amount by comparing the process requirements of the new I–914 with existing adjudication procedures. The adjudication of the I–914 will be very similar to that of the I–360, *Petition for a Special Immigrant.* The application also will be used to generate an Employment Authorization Document (EAD), taking the place of a separate I–765, *Application for Employment Authorization.* The fee for the I–360 is $110, and the fee for the I–765 is $100. These fees are scheduled to be increased to $130 and $120 respectively on February 19, 2002. The sum of the two fees ($250) is reduced to $240 to reflect that only one form needs handling and tracking. Furthermore, there is no separate adjudication required for employment authorization for T principals, who are authorized to work incident to status. As a result, this fee has been further reduced to reflect saved adjudication expenses and to take into account that only the T principal's EAD is incident to status. Based on these calculations, the Service set the fee at $200. The addition of $50 for each additional person included on the form was based on a comparison of the I–914 process to the processing of Form I–687, *Application for Status as Temporary Resident,* which also requires an additional fee of $50 per additional person on the application. The Service conducts evaluations of the required fees every two years to ensure that they are fair and accurate. The fee charged for the Form I–914 will be reviewed periodically and adjusted, as appropriate.

May T–1 Applicants and Applicants for T Derivative Status Apply From a Foreign Country?

Applicants for T–1 status must be physically present in the United States at the time of application. However, the T–1 principal alien may apply to the Service for derivative T nonimmigrant status on behalf of immediate family members who are following to join the T–1 principal. The Service may approve applications for T–2, T–3, or T–4 status for eligible immediate family members if they are admissible to the United States and can meet the requirement to demonstrate extreme hardship. If the Service grants the application for derivative T nonimmigrant status for aliens who are currently abroad, the Service will notify the appropriate consular office and make arrangements for the issuance of the necessary visas for admission of those eligible family members.

Can Victims of a Severe Form of Trafficking in Persons That Occurred Prior to the Enactment of the TVPA Apply for a T Nonimmigrant Classification?

Yes. Victims of a severe form of trafficking in persons whose victimization occurred prior to enactment of the TVPA on October 28, 2000, may file a completed application. The Service recommends that victims file applications as soon as possible because delays could result in difficulty in establishing statutory eligibility requirements. ~~Section 214.11(d)(4) of this rule provides that, if the victimization occurred prior to the enactment of the TVPA, the alien must file the application for T–1 status within one year of the effective date of this rule, except in exceptional circumstances or within one year after the victim reaches his or her 21st birthday, whichever comes later.~~

Does Applying for T Nonimmigrant Status Prevent the Applicant From Applying for Other Types of Immigration Benefits?

No. An alien may apply for any and all immigration benefits for which the alien may be eligible. However, an alien may not hold more than one nonimmigrant status at a time. Nothing in this regulation or in the TVPA limits a qualified applicant from seeking other immigration benefits while pursuing T status. In addition, aliens granted continued presence may be eligible to receive certain benefits and services authorized by section 107(b)(1) of the TVPA.

Can a Victim Who Is in Exclusion, Deportation, or Removal Proceedings Before an Immigration Judge or the Board of Immigration Appeals (Board) Apply for T Nonimmigrant Status?

Jurisdiction over all applications for T nonimmigrant status rests with the Service. However, a victim of a severe form of trafficking in persons who is currently in proceedings before an immigration judge or the Board may request Service counsel to consent to having the proceedings administratively closed (or that a motion to reopen or motion to reconsider be indefinitely continued) in order to allow the alien to pursue an application for T nonimmigrant status with the Service.

As noted above, in order to be eligible for T nonimmigrant status, the alien must demonstrate that he or she is admissible to the United States, or must obtain a waiver of inadmissibility from the Service. An application from an alien who is inadmissible on grounds other than under the circumstances specified in section 212(d)(13) of the INA will not be considered to be *bona fide* unless the Service has granted a waiver of those other grounds. Accordingly, the Service will consider consenting to the administrative closure of the immigration proceedings for the purpose of filing an application for T nonimmigrant status only if there is a good reason to believe that the alien will be able to satisfy the eligibility requirements for the T status, including admissibility. (The Service notes, however, that it may arrange for the continued presence in the United States of a victim of a severe form of trafficking in persons, pursuant to 28 CFR 1100.35, during such time as an LEA has requested the alien's presence in the United States for purposes of investigating and prosecuting acts of severe forms of trafficking in persons. The Service will not act to remove an alien from the United States until the

law enforcement need for the alien's continued presence has come to an end or the alien has violated the terms of the continued presence.)

The Service also acknowledges that, in some cases, an alien who is in immigration proceedings may be able to file a *bona fide* application for T nonimmigrant status. With respect to the medical and public charge grounds of inadmissibility, and certain other grounds of inadmissibility that were caused by or are incident to the alien's victimization, section 212(d)(13) of the INA provides additional authority for the waiver of these grounds in the case of applicants for T nonimmigrant status. For example, a victim of a severe form of trafficking in persons who had been forced into prostitution may well be able to make a *bona fide* application for T–1 status even though the alien has been placed into removal proceedings on grounds relating to those prostitution activities.

With the concurrence of Service counsel, if the alien appears eligible for T nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, may administratively close the proceeding or continue a motion to reopen or motion to reconsider indefinitely. In the event the Service subsequently denies the alien's application for T nonimmigrant status, the Service will recommence proceedings that have been administratively closed by filing a motion to re-calendar with the Immigration Court or a motion to reinstate with the Board.

Can a Victim of Trafficking in Persons With a Final Order of Exclusion, Deportation, or Removal Apply for T Nonimmigrant Status?

An alien who is the subject of a final order is not precluded from filing an application for T nonimmigrant status directly with the Service. In order to be eligible, an applicant for T nonimmigrant status must be admissible to the United States, and the Service notes that few aliens who are the subject of a final order of exclusion, deportation or removal will be able to satisfy that requirement. Thus, in general, the filing of an application for T nonimmigrant status will have no effect on the status of an alien who is subject to a final order.

In those cases where the only basis for the final order of removal is one of the grounds of inadmissibility described in section 212(d)(13) of the INA, the alien may be able to file a meritorious application for T nonimmigrant status. If the Service determines, as provided in this rule, that an alien's application for T status meets the requirements for a *bona fide* application, the Service will automatically stay execution of the final order of deportation, exclusion, or removal. Such a stay remains in effect until a final decision is made on the T application. If the T application is denied, the stay of the final order is deemed lifted as of the date of such a denial, without regard to whether the alien appeals the denial. However, the alien may apply for a discretionary stay of removal from the Service as provided in § 241.6(a).

If the application for T nonimmigrant status is granted, the final order shall be deemed canceled by operation of law as of the date of the approval.

What Happens to Victims of Severe Forms of Trafficking in Persons Arriving at a Port of Entry Who Are Subject to Expedited Removal?

Expedited removal applies to an ''arriving alien'', as defined in 8 CFR 1.1(q), when the alien is inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the INA. Current Service procedures protect and provide services to victims of a severe form of trafficking in persons when Federal law enforcement officials encounter such victims, including those aliens arriving at ports of entry. 28 CFR 1100.31. In addition, the Service is developing screening procedures to ensure that arriving aliens who are subject to the statutory provisions for expedited removal at ports of entry will, when applicable, be considered for T nonimmigrant status. An alien subject to expedited removal who expresses that he or she is a victim of a severe form of trafficking in persons will be interviewed by a Service officer immediately to determine whether there is reason to believe the individual is such a victim. Following such a determination, the victim will be referred to a District Office and will be interviewed by a Service officer responsible for investigating trafficking in persons within 7 days of arrival to determine whether the individual has a credible claim to victimization. The Service may inform an LEA that also investigates or prosecutes trafficking in persons about the individual's claim. If the alien has a credible claim to victimization, he or she will be given the opportunity to submit an application for T status pursuant to section 101(a)(15)(T) of the INA and any other benefit or protection for which they may be eligible. An arriving alien determined not to have a credible claim to being a victim of a severe form of trafficking in persons in the United States will be subject to expedited removal in accordance with Service policy.

Regulatory Procedures

Good Cause Exception

This interim rule is effective 30 days from the date of publication. The Service invites post-promulgation comments and will address any such comments in a final rule. The Department finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b), because, in light of the public safety implications of the rule, giving prior notice and opportunity for comment would be contrary to the public interest.

In passing the TVPA, Congress intended to create a broad range of tools to be used by the Federal government to combat the serious and immediate problem of trafficking in persons. The provisions of the TVPA address the effect of severe forms of trafficking in persons on victims, including many who may not have legal status and are reluctant to cooperate. In trafficking in persons situations, perpetrators often target individuals who are likely to be particularly vulnerable and unfamiliar with their surroundings. The TVPA strengthens the ability of government officials to investigate and prosecute trafficking in persons crimes by providing for temporary immigration benefits to victims of severe forms of trafficking in persons. This interim rule implements a legal nonimmigrant immigration status for eligible victims who have not refused any reasonable request to assist in the investigation or prosecution of a crime and can demonstrate that they would suffer extreme hardship involving severe and unusual harm if removed from the United States. Under section 107(b) of the TVPA, the filing of a *bona fide* application for T nonimmigrant status provides a basis to seek certification of the alien for purposes of eligibility for certain public benefits. In addition, this regulation provides certain victims with work authorization so that they may seek lawful employment. Without the prompt promulgation of this rule, victims of severe forms of trafficking in persons might continue to be victimized for fear of coming forward, thus hindering the ability of law enforcement to investigate and prosecute cases and preventing victims from obtaining critical assistance and benefits.

The issuance of these regulations as an interim rule effective 30 days after publication will allow victims to receive needed benefits and assistance as soon as possible. The 30-day delay in the

effective date will provide a brief interim period in which forms, informational brochures, and other guidance will be made available to Federal, state, tribal and local ~~law enforcement officers~~ and officials as well as non-profit victims rights and services groups. Because prior notice and comment with respect to this interim rule is contrary to the public interest, given the public safety implications of this rule, there is ''good cause'' under 5 U.S.C. 553 to make this rule effective March 4, 2002.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General, by approving this regulation, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Attorney General has reviewed this regulation in light of its potential impact on small businesses. The businesses that would be most significantly affected by this rule would be those in which the illegal act of trafficking in persons contributed to, or composed the majority of, their workforce. The human rights and criminal issues associated with such trafficking in persons are seen as more significant than the impact on small businesses that are dependent on illegal or coerced labor in violation of United States law.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display Control Numbers, and are noted herein. Form I–131, *Application for Travel Document*, OMB Control Number 1115–0062; Form I–192, *Application for Advance Permission to Enter as Nonimmigrant*, OMB Control Number 1115–0028; Form I–765, *Application for Employment Authorization*, OMB Control Number 1115–0163. In addition, one new Service form, Form I–914, *Application for T Nonimmigrant Status*, has received clearance from OMB and was assigned OMB Control Number 1115–0246.

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students, Victims.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.1 is amended by:

a. Revising paragraph (f)(3))(iii)(W);

b. Removing the word ''and'' at the end of paragraph (f)(3)(iii)(MM);

c. Removing the period at the end of paragraph (f)(3)(iii)(NN) and adding ''; and'' in its place; and by

d. Adding a new paragraph (f)(3)(iii)(OO) to read as follows:

§ 103.1 Delegation of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(W) Revoking approval of certain applications, as provided in §§ 214.2, 214.6, and 214.11 of this chapter;

* * * * *

(OO) Applications for T nonimmigrant status under § 214.11 of this chapter.

* * * * *

3. Section 103.7(b)(1) is amended by adding, in proper alpha/numeric sequence, a new Form ''I–914,'' to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–914. For filing an application to classify an alien as a nonimmigrant under section 101(a)(15)(T) of the Act (victims of a severe form of trafficking in persons and their immediate family

members)—$200. For each immediate family member included on the same application, an additional fee of $50 per person, up to a maximum amount payable per application of $400.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

5. Section 212.1 is amended by revising paragraph (g) and adding a new paragraph (o), to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and a passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act, or a valid border crossing identification card at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f), (i), or (o) of this section. Upon a nonimmigrant's application on Form I–193, a district director at a port of entry may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements, if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

~~(o) *Alien in T–2 through T–4 classification.* Individuals seeking T–2 through T–4 nonimmigrant status may avail themselves of the provisions of paragraph (g) of this section, except that the authority to waive documentary requirements resides with the Service Center.~~

6. Section 212.16 is added, to read as follows:

§ 212.16 Applications for exercise of discretion relating to T nonimmigrant status.

(a) *Filing the waiver application.* An alien applying for the exercise of discretion under section 212(d)(13) or (d)(3)(B) of the Act (waivers of inadmissibility) in connection with an application for T nonimmigrant status shall ~~submit Form I–192, with the appropriate fee in accordance with § 103.7(b)(1) of this chapter or an application for a fee waiver, to the Service with the completed Form I–914 application package for status under section 101(a)(15)(T)(i) of the Act.~~

(b) *Treatment of waiver application.* (1) The Service shall determine whether a ground of inadmissibility exists with respect to the alien applying for T nonimmigrant status. If a ground of inadmissibility is found, the Service shall determine if it is in the national interest to exercise discretion to waive the ground of inadmissibility, except for grounds of inadmissibility based upon sections 212(a)(3), 212(a)(10)(C) and 212(a)(10)(E) of the Act, which the Commissioner may not waive. Special consideration will be given to the granting of a waiver of a ground of inadmissibility where the activities rendering the alien inadmissible were caused by or incident to the victimization described under section 101(a)(15)(T)(i) of the Act.

(2) In the case of applicants inadmissible on criminal and related grounds under section 212(a)(2) of the Act, the Service will only exercise its discretion in exceptional cases unless the criminal activities rendering the alien inadmissible were caused by or were incident to the victimization described under section 101(a)(15)(T)(i) of the Act.

(3) An application for waiver of a ground of inadmissibility for T nonimmigrant status (other than under section 212(a)(6) of the Act) will be granted only in exceptional cases when the ground of inadmissibility would prevent or limit the ability of the applicant to adjust to permanent resident status after the conclusion of 3 years.

(4) The Service shall have sole discretion to grant or deny a waiver, and there shall be no appeal of a decision to deny a waiver. However, nothing in this paragraph (b) is intended to prevent an applicant from re-filing a request for a waiver of a ground of inadmissibility in appropriate cases.

(c) *Incident to victimization.* When an applicant for status under section 101(a)(15)(T) of the Act seeks a waiver of a ground of inadmissibility under section 212(d)(13) of the Act on grounds other than those described in sections 212(a)(1) and (a)(4) of the Act, the applicant must establish that the activities rendering him or her inadmissible were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I) of the Act.

(d) *Revocation.* The Commissioner may at any time revoke a waiver previously authorized under section 212(d) of the Act. Under no circumstances shall the alien or any party acting on his or her behalf have a right to appeal from a decision to revoke a waiver.

PART 214—NONIMMIGRANT CLASSES

7. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; Section 643 of Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

8. Section 214.1 is amended by:

a. Removing the ''and'' at the end of paragraph (a)(1)(vi);

b. Removing the period at the end of paragraph (a)(1)(vii) and adding '';'' in its place;

c. Adding paragraph (a)(1)(viii); and by

d. Adding in proper numeric/alphabetical sequence in paragraph (a)(2) the classification designations, to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(1) * * *

(viii) Section 101(a)(15)(T)(ii) is divided into (T)(ii), (T)(iii) and (T)(iv) for the spouse, child, and parent, respectively, of a nonimmigrant classified under section 101(a)(15)(T)(i); and

(2) * * *

* * * * *

101(a)(15)(T)(i)—T–1
101(a)(15)(T)(ii)—T–2
101(a)(15)(T)(iii)—T–3
101(a)(15)(T)(iv)—T–4

* * * * *

9. A new § 214.11 is added to read as follows:

§ 214.11 Alien victims of severe forms of trafficking in persons.

(a) *Definitions.* The Service shall apply the following definitions as provided in sections 103 and 107(e) of the Trafficking Victims Protection Act (TVPA) with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of chapter 77 of title 18, United States Code:

Bona fide application means an application for T–1 nonimmigrant status

as to which, after initial review, the Service has determined that there appears to be no instance of fraud in the application, the application is complete, properly filed, ~~contains an LEA endorsement or credible secondary evidence,~~ includes completed fingerprint and background checks, and presents *prima facie* evidence to show eligibility for T nonimmigrant status, including admissibility.

Child means a person described as such in section 101(b)(1) of the Act.

Coercion means 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 the abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her 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 respectively limited and defined.

~~*Immediate family member* means the spouse or a child of a victim of a severe form of trafficking in persons, and, in the case of a victim of a severe form of trafficking in persons who is under 21 years of age, a parent of the victim.~~

Involuntary servitude means 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 the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes ''a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.'' ~~(*United States* v. *Kozminski,* 487 U.S. 931, 952 (1988)).~~

~~*Law Enforcement Agency* (LEA) means any Federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons. LEAs include the following components of the Department of Justice: the United States Attorneys' Offices, the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (Service), and the United States Marshals Service. The Diplomatic Security Service, Department of State, also is an LEA.~~

Law Enforcement Agency (LEA) ~~endorsement~~ means Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* of Form I–914, *Application for T Nonimmigrant Status.*

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

Reasonable request for assistance means a reasonable request made ~~by a law enforcement officer or prosecutor~~ to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The ''reasonableness'' of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.

Severe forms of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or 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, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

TVPA means the Trafficking Victims Protection Act of 2000, Division A of the VTVPA, Pub. L. 106–386.

United States means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the United States Virgin Islands.

Victim of a severe form of trafficking in persons means an alien who is or has been subject to a severe form of trafficking in persons, as defined in section 103 of the VTVPA and in this section.

VTVPA means the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106–386.

(b) *Eligibility.* Under section 101(a)(15)(T)(i) of the Act, and subject to section ~~214(n)~~ of the Act, the Service may classify an alien, if otherwise admissible, as a T–1 nonimmigrant if the alien demonstrates that he or she:

(1) Is or has been a victim of a severe form of trafficking in persons;

(2) Is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, on account of such trafficking in persons;

(3) Either:

(i) Has complied with any reasonable request for assistance in the investigation or prosecution of acts of such trafficking in persons, or

(ii) ~~Is less than 15 years of age;~~ and

(4) Would suffer extreme hardship involving unusual and severe harm upon removal, as described in paragraph (i) of this section.

(c) *Aliens ineligible for T nonimmigrant status.* No alien, otherwise admissible, shall be eligible to receive a T nonimmigrant status under section 101(a)(15)(T) of the Act if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons.

(d) *Application procedures for T status.*

(1) *Filing an application.* An applicant seeking T nonimmigrant status shall submit, by mail, a complete application package containing Form I–914, *Application for T Nonimmigrant Status,* along with all necessary supporting documentation, to the Service.

(2) *Contents of the application package.* In addition to Form I–914, an application package must include the following:

(i) The proper fee for Form I–914 as provided in § 103.7(b)(1) of this chapter, or an application for a fee waiver as provided in § 103.7(c) of this chapter;

~~(ii) Three current photographs;~~

(iii) The fingerprint fee as provided in § 103.7(b)(1) of this chapter;

(iv) Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons as set forth in paragraph (f) of this section;

(v) Evidence that the alien is physically present in the United States on account of a severe form of trafficking in persons as set forth in paragraph (g) of this section;

(vi) Evidence that the applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons, as set forth in paragraph (h) of this section, or has not attained ~~15 years of age;~~ and

(vii) Evidence that the applicant would suffer extreme hardship involving unusual and severe harm if he

or she were removed from the United States, as set forth in paragraph (i) of this section.

(3) *Evidentiary standards.* The applicant may submit any credible evidence relevant to the essential elements of the T nonimmigrant status. Original documents or copies may be submitted as set forth in § 103.2(b)(4) and (b)(5) of this chapter. Any document containing text in a foreign language shall be submitted in accordance with § 103.2(b)(3) of this chapter.

~~(4) *Filing deadline in cases in which victimization occurred prior to October 28, 2000.* Victims of a severe form of trafficking in persons whose victimization occurred prior to October 28, 2000 must file a completed application within one (1) year of January 31, 2002 in order to be eligible to receive T–1 nonimmigrant status. If the victimization occurred prior to October 28, 2000, an alien who was a child at the time he or she was a victim of a severe form of trafficking in persons must file a T status application within one (1) year of his or her 21st birthday, or one (1) year of January 31, 2002, whichever is later. For purposes of determining the filing deadline, an act of severe form of trafficking in persons will be deemed to have occurred on the last day in which an act constituting an element of a severe form of trafficking in persons, as defined in paragraph (a) of this section, occurred. If the applicant misses the deadline, he or she must show that exceptional circumstances prevented him or her from filing in a timely manner. Exceptional circumstances may include severe trauma, either psychological or physical, that prevented the victim from applying within the allotted time.~~

(5) *Fingerprint procedure.* All applicants for T nonimmigrant status must be fingerprinted for the purpose of conducting a criminal background check in accordance with the process and procedures described in § 103.2(e) of this chapter. After submitting an application with fee to the Service, the applicant will be notified of the proper time and location to appear for fingerprinting.

~~(6) *Personal interview.* After the filing of an application for T nonimmigrant status, the Service may require an applicant to participate in a personal interview. The necessity of an interview is to be determined solely by the Service. All interviews will be conducted in person at a Service-designated location. Every effort will be made to schedule the interview in a location convenient to the applicant.~~

(7) *Failure to appear for an interview or failure to follow fingerprinting requirements.*

(i) Failure to appear for a scheduled interview without prior authorization or to comply with fingerprint processing requirements may result in the denial of the application.

(ii) Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the Service unless the Service determines that the applicant received reasonable notice of the appointment. The applicant must notify the Service of any change of address in accordance with § 265.1 of this chapter prior to the date on which the notice of the interview or fingerprint appointment was mailed to the applicant.

(iii) Failure to appear at the interview or fingerprint appointment may be excused, at the discretion of the Service, if the applicant promptly contacts the Service and demonstrates that such failure to appear was the result of exceptional circumstances.

(8) *Aliens in pending immigration proceedings.* Individuals who believe they are victims of severe forms of trafficking in persons and who are in pending immigration proceedings must inform the Service if they intend to apply for T nonimmigrant status under this section. With the concurrence of Service counsel, a victim of a severe form of trafficking in persons in proceedings before an immigration judge or the Board of Immigration Appeals (Board) may request that the proceedings be administratively closed (or that a motion to reopen or motion to reconsider be indefinitely continued) in order to allow the alien to pursue an application for T nonimmigrant status with the Service. If the alien appears eligible for T nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, may grant such a request to administratively close the proceeding or continue a motion to reopen or motion to reconsider indefinitely. In the event the Service finds an alien ineligible for T–1 nonimmigrant status, the Service may recommence proceedings that have been administratively closed by filing a motion to re-calendar with the immigration court or a motion to reinstate with the Board. If the alien is in Service custody pending the completion of immigration proceedings, the Service may continue to detain the alien until a decision has been rendered on the application. An alien who is in custody and requests bond or a bond redetermination will be governed by the provisions of part 236 of this chapter.

(9) *T applicants with final orders of exclusion, deportation or removal.* An alien who is the subject of a final order is not precluded from filing an application for T–1 nonimmigrant status directly with the Service. The filing of an application for T nonimmigrant status has no effect on the Service's execution of a final order, although the alien may file a request for stay of removal pursuant to § 241.6(a) of this chapter. However, if the Service subsequently determines, under the procedures of this section, that the application is *bona fide,* the Service will automatically stay execution of the final order of deportation, exclusion, or removal, and the stay will remain in effect until a final decision is made on the T–1 application. The time during which such a stay is in effect shall not be counted in determining the reasonableness of the duration of the alien's continued detention under the standards of § 241.4 of this chapter. If the T–1 application is denied, the stay of the final order is deemed lifted as of the date of such denial, without regard to whether the alien appeals the decision. If the Service grants an application for T nonimmigrant status, the final order shall be deemed canceled by operation of law as of the date of the approval.

(e) *Dissemination of information.* In appropriate cases, and in accordance with Department of Justice policies, the Service shall make information from applications for T–1 nonimmigrant status available to other Law Enforcement Agencies (LEAs) with the authority to detect, investigate, or prosecute severe forms of trafficking in persons. The Service shall coordinate with the appropriate Department of Justice component responsible for prosecution in all cases where there is a current or impending prosecution of any defendants who may be charged with severe forms of trafficking in persons crimes in connection with the victimization of the applicant to ensure that the Department of Justice component responsible for prosecution has access to all witness statements provided by the applicant in connection with the application for T–1 nonimmigrant status, and any other documents needed to facilitate investigation or prosecution of such severe forms of trafficking in persons offenses.

(f) *Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons.* The applicant must submit evidence that fully establishes eligibility for each element

of the T nonimmigrant status to the satisfaction of the Attorney General. First, an alien must demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement ~~either by submitting an LEA endorsement, by demonstrating that the Service previously has arranged for the alien's continued presence under 28 CFR 1100.35, or by submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim (this showing is not necessary if the person induced to perform a commercial sex act is under the age of 18).~~ An application must contain a statement by the applicant describing the facts of his or her victimization. In determining whether an applicant is a victim of a severe form of trafficking in persons, the Service will consider all credible and relevant evidence.

(1) *Law Enforcement Agency ~~endorsement.~~* An LEA ~~endorsement~~ is not required. However, if provided, it must be submitted by an appropriate law enforcement official on Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons,* of Form I–914. The LEA ~~endorsement~~ must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide persuasive evidence, the LEA ~~endorsement~~ must contain a description of the victimization upon which the application is based (including the dates the severe forms of trafficking in persons and victimization occurred), and be signed by a supervising official responsible for the investigation or prosecution of severe forms of trafficking in persons. ~~The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act. The traffickers must have used force, fraud, or coercion to make the victim engage in the intended labor or services, or (for those 18 or older) the intended commercial sex act. The situations involving labor or services must rise to the level of involuntary servitude, peonage, debt bondage, or slavery.~~ The decision of whether or not to complete an LEA ~~endorsement~~ for an applicant shall be at the discretion of the LEA.

~~(2) *Primary evidence of victim status.* The Service will consider an LEA endorsement as primary evidence that the applicant has been the victim of a severe form of trafficking in persons provided that the details contained in the endorsement meet the definition of a severe form of trafficking in persons under this section. In the alternative, documentation from the Service granting the applicant continued presence in accordance with 28 CFR 1100.35 will be considered as primary evidence that the applicant has been the victim of a severe form of trafficking in persons, unless the Service has revoked the continued presence based on a determination that the applicant is not a victim of a severe form of trafficking in persons.~~

~~(3) *Secondary evidence of victim status; Affidavits.* Credible secondary evidence and affidavits may be submitted to explain the nonexistence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant be a victim of a severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons; credible evidence of victimization and cooperation, describing what the alien has done to report the crime to an LEA; and a statement indicating whether similar records for the time and place of the crime are available. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts. Applicants are encouraged to provide and document all credible evidence, because there is no guarantee that a particular piece of evidence will result in a finding that the applicant was a victim of a severe form of trafficking in persons. If the applicant does not submit an LEA endorsement, the Service will proceed with the adjudication based on the secondary evidence and affidavits submitted. A non-exhaustive list of secondary evidence includes trial transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. In addition, applicants may also submit their own affidavit and the affidavits of other witnesses. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.~~

(4) *Obtaining an LEA endorsement.* ~~A victim of a severe form of trafficking in persons who does not have an LEA endorsement should contact the LEA to which the alien has provided assistance to request an endorsement. If the applicant has not had contact with an LEA regarding the acts of severe forms of trafficking in persons, the applicant should promptly contact the nearest Service or Federal Bureau of Investigation (FBI) field office or U.S. Attorneys' Office to file a complaint, assist in the investigation or prosecution of acts of severe forms of trafficking in persons, and request an LEA endorsement. If the applicant was recently liberated from the trafficking in persons situation, the applicant should ask the LEA for an endorsement. Alternatively, the applicant may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline at 1–888–428–7581 to file a complaint and be referred to an LEA.~~

(g) *Physical presence on account of trafficking in persons.* The applicant must establish that he or she is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto on account of such trafficking, and that he or she is a victim of a severe form of trafficking in persons that forms the basis for the application. Specifically, the physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.

(1) *In general.* The evidence and statements included with the application must state the date and place (if known) and the manner and purpose (if known) for which the applicant entered the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or a port-of-entry thereto, and demonstrate that the applicant is present now on account of the applicant's victimization as described in paragraph (f) of this section and section 101(a)(15)(T)(i)(I) of the Act.

~~(2) *Opportunity to depart.* If the alien has escaped the traffickers before law enforcement became involved in the matter, he or she must show that he or she did not have a clear chance to leave the United States in the interim. The Service will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. Information relevant to this determination may include, but is not limited to, circumstances attributable to the trafficking in persons situation, such as trauma, injury, lack of resources, or travel documents that have~~

~~been seized by the traffickers. This determination may reach both those who entered the United States lawfully and those who entered without being admitted or paroled. The Service will consider all evidence presented to determine the physical presence requirement, including asking the alien to answer questions on Form I–914, about when he or she escaped from the trafficker, what activities he or she has undertaken since that time, including the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States.~~

(3) *Departure from the United States.* An alien 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 shall be deemed not to be present in the United States as a result of such trafficking in persons unless the alien's reentry into the United States was the result of the continued victimization of the alien or a new incident of a severe form of trafficking in persons described in section 101(a)(15)(T)(i)(I) of the Act.

(h) *Compliance with reasonable requests from a law enforcement agency for assistance in the investigation or prosecution.* Except as provided in paragraph (h)(3) of this section, the applicant must submit evidence that fully establishes that he or she has complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. As provided in paragraph (h)(3) of this section, if the victim of a severe form of trafficking in persons is under age ~~15~~, he or she is not required to comply with any reasonable request for assistance in order to be eligible for T nonimmigrant status, but may cooperate at his or her discretion.

~~(1) *Primary evidence of compliance with law enforcement requests.* An LEA endorsement describing the assistance provided by the applicant is not required evidence. However, if an LEA endorsement is provided as set forth in paragraph (f)(1) of this section, it will be considered primary evidence that the applicant has complied with any reasonable request in the investigation or prosecution of the severe form of trafficking in persons of which the applicant was a victim. If the Service has reason to believe that the applicant has not complied with any reasonable request for assistance by the endorsing LEA or other LEAs, the Service will contact the LEA and both the Service and the LEA will take all practical steps to reach a resolution acceptable to both agencies. The Service may, at its discretion, interview the alien regarding the evidence for and against the compliance, and allow the alien to submit additional evidence of such compliance. If the Service determines that the alien has not complied with any reasonable request for assistance, then the application will be denied, and any approved application based on the LEA endorsement will be revoked pursuant to this section.~~

~~(2) *Secondary evidence of compliance with law enforcement requests; Affidavits.* Credible secondary evidence and affidavits may be submitted to show the nonexistence or unavailability of the primary evidence and to otherwise establish the requirement that the applicant comply with any reasonable request for assistance in the investigation or prosecution of that severe form of trafficking in persons. The secondary evidence must include an original statement by the applicant that indicates the reason the LEA endorsement does not exist or is unavailable, and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence must show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime at the time, why the crime was not previously reported. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts. In addition,~~ applicants may also submit their own affidavit and the affidavits of other witnesses. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. Applicants are encouraged to describe and document all applicable factors, since there is no guarantee that a particular reason will result in a finding that the applicant has complied with reasonable requests. An applicant who never has had contact with an LEA regarding the acts of severe forms of trafficking in persons will not be eligible for T–1 nonimmigrant status.

(3) ~~*Exception for applicants under the age of 15.* Applicants under the age of 15~~ are not required to demonstrate compliance with the requirement of any reasonable request for assistance in the investigation and prosecution of acts of severe forms of trafficking in persons. Applicants under the age of ~~15~~ must provide evidence of their age. Primary evidence that a victim of a severe form of trafficking in persons has not yet reached the age of ~~15~~ would be an official copy of the alien's birth certificate, a passport, or a certified medical opinion. Secondary evidence regarding the age of the applicant also may be submitted in accordance with § 103.2(b)(2)(i) of this chapter. An applicant under the age of ~~15~~ still must provide evidence demonstrating that he or she satisfies the other necessary requirements, including that he or she is the victim of a severe form of trafficking in persons and faces extreme hardship involving unusual and severe harm if removed from the United States.

(i) *Evidence of extreme hardship involving unusual and severe harm upon removal.* To be eligible for T–1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act, an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(1) *Standard.* Extreme hardship involving unusual and severe harm is a higher standard than that of extreme hardship as described in § 240.58 of this chapter. A finding of extreme hardship involving unusual and severe harm may not be based upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities. Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should take into account both traditional extreme hardship factors and those factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to, the following:

(i) The age and personal circumstances of the applicant;

(ii) ~~Serious~~ physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;

(iii) The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;

(iv) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms 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;

(v) 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;

(vi) The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;

(vii) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would ~~severely~~ harm the applicant; and

(viii) The likelihood that the applicant's individual safety would be ~~seriously~~ threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.

(2) *Evidence.* An applicant is encouraged to describe and document all factors that may be relevant to his or her case, since there is no guarantee that a particular reason or reasons will result in a finding that removal would cause extreme hardship involving unusual and severe harm to the applicant. ~~Hardship to persons other than the alien victim of a severe form of trafficking in persons cannot be considered in determining whether an applicant would suffer extreme hardship involving unusual and severe harm.~~

(3) *Evaluation.* The Service will evaluate on a case-by-case basis, after a review of the evidence, whether the applicant has demonstrated extreme hardship involving unusual or severe harm. The Service will consider all credible evidence submitted regarding the nature and scope of the hardship should the applicant be removed from the United States, including evidence of hardship arising from circumstances surrounding the victimization as described in section 101(a)(15)(T)(i)(I) of the Act and any other circumstances. In appropriate cases, the Service may consider evidence from relevant country condition reports and any other public or private sources of information. The determination that extreme hardship involving unusual or severe harm to the alien exists is to be made solely by the Service.

(j) *Waiver of grounds of inadmissibility.* An application for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with § 212.16 of this chapter, and submitted to the Service with the completed application package.

(k) *Bona fide application for T–1 nonimmigrant status.*—(1) Criteria. Once an application is submitted to the Service, the Service will conduct an initial review to determine if the application is a *bona fide* application for T nonimmigrant status. An application shall be determined to be *bona fide* if, after initial review, it is properly filed, there appears to be no instance of fraud in the application, the application is complete (including the LEA endorsement or other secondary evidence), the application presents *prima facie* evidence of each element to show eligibility for T–1 nonimmigrant status, and the Service has completed the necessary fingerprinting and criminal background checks. If an alien is inadmissible under section 212(a) of the Act, ~~the application will not be deemed to be *bona fide* unless the only grounds of inadmissibility are those under the circumstances described in section 212(d)(13) of the Act, or unless the Service has granted a waiver of inadmissibility on any other grounds. All waivers are discretionary and require a request for a waiver. Under section 212(d)(13), an application can be *bona fide* before the waiver is granted. This is not the case under other grounds of inadmissibility.~~

(2) *Determination by the Service.* An application for T–1 status under this section will not be treated as a *bona fide* application until the Service has provided the notice described in paragraph (k)(3) of this section. In the event that an application is incomplete, the Service will request the additional information as provided in § 103.2(b)(8) of this chapter. If the application is complete, but does not present sufficient evidence to establish *prima facie* eligibility for each required element of T nonimmigrant status, ~~the Service will adjudicate the application on the basis of the evidence presented, in accordance with the procedures of this section.~~

(3) *Notice to alien.* Once an application is determined to be a *bona fide* application for a T–1 nonimmigrant status, the Service will provide written confirmation to the applicant.

(4) *Stay of final order of exclusion, deportation, or removal.* A determination by the Service that an application for T–1 nonimmigrant status is *bona fide* automatically stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the T application. The filing of an application for T nonimmigrant status does not stay the execution of a final order unless the Service has determined that the application is *bona fide*. Neither an immigration judge nor the Board of Immigration Appeals (Board) has jurisdiction to adjudicate an application for a stay of execution, deportation, or removal order, on the basis of the filing of an application for T nonimmigrant status.

(l) *Review and decision on applications.*—(1) ~~*De novo review.* The Service shall conduct a de novo review of all evidence submitted and is not bound by its previous factual determinations as to any essential elements of the T nonimmigrant status application.~~ Evidence previously submitted for this and other immigration benefits or relief may be used by the Service in evaluating the eligibility of an applicant for T nonimmigrant status. However, the Service will not be bound by its previous factual determinations as to any essential elements of the T classification. The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(2) *Burden of proof.* At all stages of the processing of an application for any benefits under T nonimmigrant status, the burden shall be on the applicant to present to the Service evidence that fully establishes eligibility for the desired benefit.

(3) *Decision.* After completing its review of the application, the Service shall issue a written decision granting or denying the application. If the Service determines that the applicant has met the requirements for T–1 nonimmigrant status, the Service shall grant the application, subject to the annual limitation as provided in paragraph (m) of this section. Along with the approval, the Service will include a list of nongovernmental organizations to which the applicant can refer regarding the alien's options while in the United States and resources available to the alien.

(4) *Work authorization.* When the Service grants an application for T–1 nonimmigrant status, the Service will provide the alien with an Employment Authorization Document incident to that status, which shall extend concurrently with the duration of the alien's T–1 nonimmigrant status.

(m) *Annual cap.* In accordance with section 214(n)(2) of the Act, the total number of principal aliens issued T–1 nonimmigrant status may not exceed 5,000 in any fiscal year.

(1) *Issuance of T–1 nonimmigrant status.* Once the cap is reached in any fiscal year, the Service will continue to review and consider applications in the order they are received. The Service will determine if the applicants are eligible for T–1 nonimmigrant status, but will

not issue T–1 nonimmigrant status at that time. The revocation of an alien's T–1 status will have no effect on the annual cap.

(2) *Waiting list.* All eligible applicants who, due solely to the cap, are not granted T–1 nonimmigrant status shall be placed on a waiting list and will receive notice of such placement. While on the waiting list, the applicant shall maintain his or her current means to prevent removal (deferred action, parole, or stay of removal) and any employment authorization, subject to any limits imposed on that authorization. Priority on the waiting list is determined by the date the application was properly filed, with the oldest applications receiving the highest priority. As new classifications become available in subsequent years, the Service will issue them to applicants on the waiting list, in the order in which the applications were properly filed, providing the applicant remains admissible. The Service may require new fingerprint and criminal history checks before issuing an approval. After T–1 nonimmigrant status has been issued to qualifying applicants on the waiting list, any remaining T–1 nonimmigrant numbers will be issued to new qualifying applicants in the order that the applications were properly filed.

(n) [Reserved]

(o) *Admission of the T–1 applicant's immediate family members.*—(1) *Eligibility.* Subject to section 214(n) of the Act, an alien who has applied for or been granted T–1 nonimmigrant status may apply for admission of an immediate family member, who is otherwise admissible to the United States, in a T–2 (spouse) or T–3 (child) derivative status (and, in the case of a T–1 principal applicant who is a child, a T–4 (parent) derivative status), if accompanying or following to join the principal alien. The applicant must submit evidence sufficient to demonstrate that:

~~(i) The alien for whom T–2, T–3, or T–4 status is being sought is an immediate family member of a T–1 nonimmigrant, as defined in paragraph (a) of this section, and is otherwise eligible for that status;~~ and

~~(ii) The immediate family member or the T–1 principal would suffer extreme hardship, as described in paragraph (o)(5) of this section, if the immediate family member was not allowed to accompany or follow to join the principal T–1 nonimmigrant.~~

(2) *Filing procedures.* A T–1 principal may apply for T–2, T–3, or T–4 nonimmigrant status for an immediate family member by submitting Form I–914 and all necessary documentation by mail, including Supplement A, to the Service. The application for derivative T nonimmigrant status for eligible family members can be filed on the same application as the T–1 application, or in a separate application filed at a subsequent time.

(3) *Contents of the application package for an immediate family member.* In addition to Form I–914, an application for T–2, T–3, or T–4 nonimmigrant status must include the following:

(i) The proper fee for Form I–914 as provided in § 103.7(b)(1) of this chapter, or an application for a fee waiver as provided in § 103.7(c) of this chapter;

~~(ii) Three current photographs;~~

(iii) The fingerprint fee as provided in § 103.2(e) of this chapter for each immediate family member;

(iv) Evidence demonstrating the relationship of an immediate family member, as provided in paragraph (o)(4) of this section; and

~~(v) Evidence demonstrating extreme hardship as provided in paragraph (o)(5) of this section.~~

(4) *Relationship.* The relationship must exist at the time the application for the T–1 nonimmigrant status was filed, and must continue to exist at the time of the application for T–2, T–3, or T–4 status and at the time of the immediate family member's subsequent admission to the United States. If the T–1 principal alien proves that he or she became the parent of a child after the T–1 nonimmigrant status was filed, the child shall be eligible to accompany or follow to join the T–1 principal.

~~(5) *Evidence demonstrating extreme hardship for immediate family members.* The application must demonstrate that each alien for whom T–2, T–3, or T–4 status is being sought, or the principal T–1 applicant, would suffer extreme hardship if the immediate family member was not admitted to the United States or was removed from the United States (if already present). When the immediate family members are following to join the principal, the extreme hardship must be substantially different than the hardship generally experienced by other residents of their country of origin who are not victims of a severe form of trafficking in persons. The Service will consider all credible evidence of extreme hardship to the T–1 recipient or the individual immediate family members. The determination of the extreme hardship claim will be evaluated on a case-by-case basis, in accordance with the factors outlined in § 240.58 of this chapter. Applicants are encouraged to raise and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding of extreme hardship if the applicant is not allowed to enter or remain in the United States. In addition to these factors, other factors that may be considered in evaluating extreme hardship include, but are not limited to, the following:~~

~~(i) The need to provide financial support to the principal alien;~~

~~(ii) The need for family support for a principal alien; or~~

~~(iii) The risk of serious harm, particularly bodily harm, to an immediate family member from the perpetrators of the severe forms of trafficking in persons.~~

(6) *Fingerprinting; interviews.* The provisions for fingerprinting and interviews in paragraphs (c)(5) through (c)(7) of this section also are applicable to applications for immediate family members.

(7) *Admissibility.* If an alien is inadmissible, an application for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with § 212.16 of this chapter, and submitted to the Service with the completed application package.

(8) *Review and decision.* After reviewing the application under the standards of paragraph (l) of this section, the Service shall issue a written decision granting or denying the application for T–2, T–3, or T–4 status.

(9) *Derivative grants.* Individuals who are granted T–2, T–3, or T–4 nonimmigrant status are not subject to an annual cap. Applications for T–2, T–3, or T–4 nonimmigrant status will not be granted until a T–1 status has been issued to the related principal alien.

(10) *Employment authorization.* An alien granted T–2, T–3, or T–4 nonimmigrant status may apply for employment authorization by filing Form I–765, *Application for Employment Authorization,* with the appropriate fee or an application for fee waiver, in accordance with the instructions on, or attached to, that form. For derivatives in the United States, the Form I–765 may be filed concurrently with the filing of the application for T–2, T–3, or T–4 status or at any time thereafter. If the application for employment authorization is approved, the T–2, T–3, or T–4 alien will be granted employment authorization pursuant to § 274a.12(c)(25) of this chapter. Employment authorization will last for the length of the duration of the T–1 nonimmigrant status.

(11) *Aliens outside the United States.* When the Service approves an

application for a qualifying immediate family member who is outside the United States, the Service will notify the T–1 principal alien of such approval on Form I–797, *Notice of Action.* Form I–914, Supplement A, *Supplemental Application for Immediate Family Members of T–1 Recipient,* must be forwarded to the Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the T–1 recipient's qualifying immediate family member is located. The supplemental form may be used by a consular officer in determining the alien's eligibility for a T–2, T–3, or T–4 visa, as appropriate.

(p) *Duration of T nonimmigrant status.*—(1) *In general.* An approved T nonimmigrant status shall expire after ~~3 years~~ from the date of approval. The status is not renewable. At the time an alien is approved for T nonimmigrant status, the Service shall notify the alien that his or her nonimmigrant status will expire in ~~3 years~~ from the date of the approval of the alien's Form I–914. The applicant shall immediately notify the Service of any changes in the applicant's circumstances that may affect eligibility under section 101(a)(15)(T)(i) of the Act and this section.

~~(2) *Information pertaining to adjustment of status.* The Service shall further notify the alien of the requirement that the T alien apply for adjustment of status within the 90 days immediately preceding the third anniversary of the alien's having been approved such nonimmigrant status, and that the failure to apply for adjustment of status as set forth in section 245(l) of the Act will result in termination of the alien's T nonimmigrant status in the United States at the end of the 3-year period. If the alien properly files for adjustment of status to that of a person admitted for permanent residence within the 90-day period immediately preceding the third anniversary of the date of the approval of the alien's Form I–914, the alien shall continue to be in a T nonimmigrant status with all the rights, privileges, and responsibilities, including employment authorization, provided to a person possessing such status until such time as a final decision is rendered on the alien's application for adjustment of status.~~

(q) ~~*De novo review.* The Service shall conduct a *de novo* review of all evidence submitted at all stages in the adjudication of an application for T nonimmigrant status.~~ Evidence previously submitted for this and other immigration benefits or relief may be used by the Service in evaluating the eligibility of an applicant for T nonimmigrant status. However, the Service will not be bound by its previous factual determinations as to any essential elements of the T classification. The Service will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(r) *Denial of application.* Upon denial of any T application, the Service shall notify the applicant, any LEA providing an LEA endorsement, and the Department of Health and Human Service's Office of Refugee Resettlement in writing of the decision and the reasons for the denial in accordance with § 103.3 of this chapter. Upon denial of an application for T nonimmigrant status, any benefits derived as a result of having filed a *bona fide* application will automatically be revoked when the denial becomes final. If an applicant chooses to appeal the denial pursuant to the provisions of § 103.3 of this chapter, the denial will not become final until the appeal is adjudicated.

(s) *Revocation of approved T nonimmigrant status.* The alien shall immediately notify the Service of any changes in the terms and conditions of an alien's circumstances that may affect eligibility under section 101(a)(15)(T) of the Act and this section.

(1) *Grounds for notice of intent to revoke.* The Service shall send to the T nonimmigrant a notice of intent to revoke the status in relevant part if it is determined that:

(i) The T nonimmigrant violated the requirements of section 101(a)(15)(T) of the Act or this section;

(ii) The approval of the application violated this section or involved error in preparation procedure or adjudication that affects the outcome;

(iii) In the case of a T–2 spouse, the alien's divorce from the T–1 principal alien has become final;

(iv) In the case of a T–1 principal alien, an LEA with jurisdiction to detect or investigate the acts of severe forms of trafficking in persons by which the alien was victimized notifies the Service that the alien has unreasonably refused to cooperate with the investigation or prosecution of the trafficking in persons and provides the Service with a detailed explanation of its assertions in writing; or

(v) The LEA providing the LEA endorsement withdraws its endorsement or disavows the statements made therein and notifies the Service with a detailed explanation of its assertions in writing.

(2) *Notice of intent to revoke and consideration of evidence.* A district director may revoke the approval of a T nonimmigrant status at any time, even after the validity of the status has expired. The notice of intent to revoke shall be in writing and shall contain a detailed statement of the grounds for the revocation and the time period allowed for the T nonimmigrant's rebuttal. The alien may submit evidence in rebuttal within 30 days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke approval of the T nonimmigrant status. The determination of what is relevant evidence and the weight to be given to that evidence shall be within the sole discretion of the director.

(3) *Revocation of T nonimmigrant status.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the alien with a written notification of the decision that explains the specific reasons for the revocation. The director also shall notify the LEA that supplied an endorsement to the alien, any consular officer having jurisdiction over the applicant, and HHS's Office of Refugee Resettlement.

(4) *Appeal of a revocation of approval.* The alien may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. All appeals of a revocation of approval will be processed and adjudicated in accordance with § 103.3 of this chapter.

(5) *Effect of revocation of T–1 status.* In the event that a principal alien's T–1 nonimmigrant status is revoked, all T nonimmigrant status holders deriving status from the revoked status automatically shall have that status revoked. In the case where a T–2, T–3, or T–4 application is still awaiting adjudication, it shall be denied. The revocation of an alien's T–1 status will have no effect on the annual cap as described in paragraph (m) of this section.

(t) *Removal proceedings without revocation.* Nothing in this section shall prohibit the Service from instituting removal proceedings under section 240 of the Act for conduct committed after admission, or for conduct or a condition that was not disclosed to the Service prior to the granting of nonimmigrant status under section 101(a)(15)(T) of the Act, including the misrepresentation of material facts in the applicant's application for T nonimmigrant status.

(u) [Reserved]

~~(v) *Service officer referral.* Any Service officer who receives a request from an alien seeking protection as a victim of a severe form of trafficking in persons or seeking information regarding T nonimmigrant status shall~~

follow the procedures for protecting and providing services to victims of severe forms of trafficking outlined in 28 CFR 1100.31. Aliens believed to be victims of a severe form of trafficking in persons shall be referred to the local Service office with responsibility for investigations relating to victims of severe forms of trafficking in persons for a consultation within 7 days. The local Service office may, in turn, refer the victim to another LEA with responsibility for investigating or prosecuting severe forms of trafficking in persons. If the alien has a credible claim to victimization, he or she will be given the opportunity to submit an application for T status pursuant to section 101(a)(15)(T) of the Act and any other benefit or protection for which he or she may be eligible. An alien determined not to have a credible claim to being a victim of a severe form of trafficking in persons and who is subject to removal will be removed in accordance with Service policy.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

10. The authority citation for section 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

11. Section 274a.12 is amended by:

a. Revising the reference citation to ''(a)(15)'' to read ''(a)(16)'' in the second sentence in paragraph (a) introductory text;

b. Adding a new paragraph (a)(16); and by

c. Adding a new paragraph (c)(25), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(16) An alien authorized to be admitted to or remain in the United States as a nonimmigrant alien victim of a severe form of trafficking in persons under section 101(a)(15)(T)(i) of the Act. Employment authorization granted under this paragraph shall expire upon the expiration of the underlying T–1 nonimmigrant status granted by the Service.

* * * * *

(c) * * *

(25) An immediate family member of a T–1 victim of a severe form of trafficking in persons designated as a T–2, T–3 or T–4 nonimmigrant pursuant to § 214.11 of this chapter. Aliens in this status shall only be authorized to work for the duration of their T nonimmigrant status.

* * * * *

PART 299—IMMIGRATION FORMS

12. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

13. Section 299.1 is amended by adding Form ''I–914'' to the table, in the proper alpha/numeric sequence; to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I–914	1–22–02	Application for T Nonimmigrant Status.

* * * * *

14. Section 299.5 is amended in the table by adding Form ''I–914'' to the table, in proper alpha/numeric sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
I–914	Application for T Nonimmigrant Status.	1115–0246

* * * * *

Dated: January 24, 2002.

John Ashcroft,

Attorney General.

Note: Form I–914 is published for informational purposes only and will not be codified in Title 8 of the Code of Federal Regulations.

BILLING CODE 4410–10–P

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0246; Expires 05/31/02

Application for T Nonimmigrant Status

(Filing Instructions for Application for T Nonimmigrant Status (Form I-914); Application for Immediate Family Member of T-1 Recipient (Form I-914, Supplement A); and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B).

Index

Section 1. Purpose

Form I-914, Application for T Nonimmigrant

The purpose of the Form I-914 is to provide temporary immigration benefits to aliens who are victims of severe forms of trafficking in persons, and to their immediate family members, as appropriate. Form I-914 shall be filed initially by the victims themselves, who may also include eligible family members on their application at that time. The form may also be filed to petition for eligible family members whom the victim did not include in the original application, but for whom the victim subsequently wishes to file.

Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient

The purpose of the Form I-914, Supplement A, is to allow principal T nonimmigrant status holders and applicants to apply for derivative benefits for their immediate family members. The Principal Applicant shall complete and file one Form I-914, Supplement A, for each family member for whom the Principal Applicant is now seeking derivative status.

An alien granted **T-2, T-3,** or **T-4** nonimmigrant status may apply for employment authorization by filing an Application for Employment Authorization (Form I-765), with the appropriate fee or an application for fee waiver.

The Form I-765 may be filed concurrently with the filing of the application for **T-2, T-3,** or **T-4** status, or at any time thereafter.

If employment authorization is approved, the **T-2, T-3,** or **T-4** alien will be given an eligibility classification of **C25** in accordance with section 274a.12(c)(25). Employment authorization will last for the length of the duration of the T nonimmigrant status (3 years maximum).

The validity period of the initial EAD will be for twelve (12) months. Extensions may be granted in twelve-month increments, up to the expiration date of the T nonimmigrant status (3 years maximum).

Note: An Employment Authorization Document (EAD) cannot be issued to an alien (derivative family member) that is presently residing outside the United States. The principal alien will be notified of this fact.

Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons

The Form I-914, Supplement B, is used by Federal Law Enforcement Officers to certify that the applicant is a victim of a severe form of trafficking in persons.

Section 2. General Filing Instructions

As a result of situations leading to your filing of this application, you may not feel secure receiving correspondence regarding this application at the address where you live. The Safe Mailing Address may, but need not be, the mailing address for the place where you live. It may be a post office box, the address of a friend, a community based organization that is helping you, your attorney, or any other address at which you can receive correspondence safely and punctually.

How to File

Form I-914

In addition to the Form I-914 application and the requisite evidence in support of the applicant's claim, as described in Section 3 below, a complete application package shall include the filing fee and three identical photographs of the applicant.

The photographs must have been taken within six months of filing the application, and be unmounted and unretouched. The photographs shall be three-quarter views of the right side of the applicant's face, showing the applicant's entire face, including the right ear and left eye. The photographs shall be 1 1/2 X 1 1/2 inches. The applicant's head shall not make up less than 3/4 of the photographs. The background must be consistent and light in color. The applicant's name and A#, if known, shall be lightly printed on the back of each photograph with a pencil.

A principal or derivative applicant who is or becomes inadmissible under section 212(a) of the Immigration and Nationality Act (the Act) will not be eligible for T nonimmigrant status unless the ground of inadmissibility is waived by the Service. If the ground of inadmissibility is one that can be waived, the alien should apply for a waiver of the grounds of inadmissibility from the Service on Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Pursuant to Section 212(d)(3) of the Immigration and Nationality Act). Section 212(d)(3)(B) provides general authority for the Service to waive many grounds of inadmissibility for nonimmigrants. These waivers are not automatic, but may be granted in the exercise of discretion. Form I-192 should be filed at the time of filing Form I-914.

Form I-914, Supplement A

If, in addition to the Form I-914, the applicant also files one or more Forms I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient, each must be accompanied by all of the appropriate documentation and evidence, the appropriate fees, and three photographs of the Derivative Applicant. The photographs of the derivative must comply with the same requirements as the photographs of the Principal Applicant, described above. If you are requesting employment authorization for the Derivative Applicant, a Form I-765, Application for Employment Authorization, must also accompany the Form I-914, Supplement A.

A Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient, may be filed concurrently with the initial application of the Principal Applicant, or at any time thereafter. Any Form I-914, Supplement A, submitted subsequently to the Principal Applicant's initial filing, however, must be accompanied by a new Form I-914 with the appropriate boxes checked in Part A, and **original signature**, with the appropriate fee. Evidence supporting the original application, however, is not required to be resubmitted with the new Form I-914. No Form I-914, Supplement A, will be accepted without a copy of the original Form I-914.

Fingerprinting and Interview Appointments

All applicants between the ages of 14 and 79 inclusive must be fingerprinted to facilitate a criminal background check. In addition, the Immigration and Naturalization Service (Service) may require the applicant to appear for a personal interview. The applicant will be notified of the proper time and location to appear for an interview, if the Service so requires, and for fingerprinting. Failure to appear for a scheduled interview without prior authorization, or failure to comply with fingerprint processing requirements, may result in denial of the application.

Section 3. Required Documentation for Each Application

Evidence

Form I-914

Application must be filed with evidence sufficient to demonstrate that each of the eligibility requirements is satisfied.

Principal Applicant for T Nonimmigrant (T-1) Status:

To qualify for T-1 nonimmigrant status, an applicant must demonstrate that he or she:

- Is physically present in the United States, American Samoa or the Commonwealth of the Northern Mariana Islands as a result of trafficking;
- Is a victim of a severe form of trafficking in persons;
- Would suffer extreme hardship involving unusual and severe harm upon removal; and
- Has complied with any reasonable request for assistance in the investigation and prosecution of acts of trafficking in persons, unless the applicant is less than 15 years old.

To establish that he or she is a victim of a severe form of trafficking in persons, the applicant must demonstrate that he or she was brought to the United States either:

(1) For the purpose of a commercial sex act, which act was either induced by force, fraud or coercion, or occurred when the applicant had not reached 18 years of age, or

(2) For the purpose of labor or services induced by force, fraud, or coercion for the purpose of subjecting the applicant to involuntary servitude, peonage, debt bondage, or slavery.

An applicant is encouraged to raise all arguments and to document all elements of his or her claim, including allegations of extreme hardship, in his or her initial application.

Form I-914, Supplement A

The Form I-914, Supplement A, must be filed with evidence sufficient to demonstrate that each of the eligibility requirements is satisfied.

Qualifications for T Derivative Applicants for Nonimmigrant Status

An applicant for T derivative status must be:

- The spouse or child of the T nonimmigrant principal applicant or the T nonimmigrant status holder, if the principal applicant or status holder is over the age of 21;

- The spouse, child or parent, if the principal applicant or status holder is under the age of 21.

Applicants for derivative status, as family members of an applicant for T-1 nonimmigrant status, or of a person granted T-1 nonimmigrant status, must submit credible documentary evidence of the relationship of the Derivative Applicant to the Principal Applicant. Documents that will be considered for this purpose are described below. If the Principal Applicant is over the age of 21, the Derivative Applicant must be the spouse or child of the Principal Applicant. If the Principal Applicant is under the age of 21, the Derivative Applicant may be the spouse, child, or parent of the Principal Applicant. If the Derivative Applicant is applying as the child of the Principal Applicant, the evidence must also establish that the Derivative Applicant is under the age of 21.

In addition, applicants for derivative status must submit evidence to demonstrate that either the principal or the Derivative Applicant will suffer extreme hardship if the Derivative Applicant is not permitted to join the Principal Applicant. An applicant is encouraged to raise all arguments and to document all elements of his or her claim, including allegations of extreme hardship, in his or her initial application.

Form I-914, Supplement B (Declaration of Law Enforcement Officer for Victim of Trafficking in Persons)

The primary evidence of an applicant's claim to be a victim of trafficking shall be a Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. That certification is appended to this form. An applicant for T-1 nonimmigrant status need not necessarily file a Form I-914, Supplement B, to prove the claim. However, the endorsement of a Federal Law Enforcement Officer on the Form I-914, Supplement B, constitutes presumptive proof that the applicant is a victim and has complied with any reasonable request for assistance in the investigation and prosecution. These elements of the applicant's claim may be difficult to establish otherwise, and submission of the Form I-914, Supplement B, is strongly advised. Instructions pertinent to the Form I-914, Supplement B, follow.

If you do not provide a completed Form I-914, Supplement B, however, you must submit an explanation, describing your attempts to obtain the certification and why your request was refused. If you did not attempt to obtain the certification, you must explain why you did not.

Secondary Evidence

If you do not provide a completed Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, in addition to the explanation described above, you must also submit credible secondary evidence to establish your eligibility. Such evidence may include, but is not limited to, police reports, newspaper articles, witness affidavits, or any other form of evidence. Even if you do provide a Form I-914, Supplement B, you may submit additional evidence.

Whether or not you provide a Form I-914, Supplement B, you must provide a personal narrative statement. That statement should describe the trafficking crime of which you were a victim, including:

- How you were induced to enter the United States;
- The purpose for which you were brought to the United States;
- When these events took place;
- Who was responsible;
- How long were you detained by the traffickers;
- How and when you escaped, were rescued, or otherwise became separated from the traffickers;
- What you have been doing since you were separated from the traffickers;
- Why you were unable to leave the United States after you were separated from the traffickers;
- What harm or mistreatment you fear if you are removed from the United States; and
- Why you fear you would be harmed or mistreated.

Attach documents to support your claim. The evidence submitted in support of the application must credibly establish each element of your claim. If you have in your possession, or have access to, a document showing how you entered the United States, you must submit a copy of that document with your application.

Section 4. Completing Each Application

Form I-914

Provide the specific information requested about you and your family. Answer ALL of the questions asked. If any question does not apply to you or you do not know the answer, reply "none," "N/A" (for not applicable), or "unknown," as appropriate. Provide detailed information. Answer the questions as completely as possible. You are strongly encouraged to attach additional written statements and documents that support your claim.

Part A. Purpose for Filing the Application

As was explained above, this form shall be used both for the initial application of a victim of trafficking in persons, and to file subsequently for eligible family members. In this section, you are asked to describe, by checking one or more boxes, your purpose in filing this form.

Part B. General Information about the Applicant

Provide the requested information about yourself.

Part C. Details Related to Nonimmigrant Status

The applicant must answer each question. The Principal Applicant must provide evidence to document that he or she:

(1) Is a victim of a severe form of trafficking in persons;

(2) Is present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, on account of such trafficking;

(3) Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking (or is not yet 15 years old); and

(4) Would suffer extreme harship involving unusual and severe harm upon removal.

The applicant must explain each of those elements of the claim in detail, and provide evidence of each of those elements of the claim. The evidence must be attached to the application when it is submitted. Failure to demonstrate eligibility credibly will result in denial of the application.

Part D. Processing Information

Answer each of the questions. If you answer "Yes" to any of the questions, you must explain your answer on a separate piece of paper. Label that sheet Form I-914, Part D, reference the number of the question which requires explanation, and attach that sheet to your application. Answering "Yes" does not necessarily mean that your application will be denied.

Part E. Information about Your Family Members

Provide the requested information about each of your family members for whom you now wish to seek immigration benefits. You may also file for a family member at a later date, rather than on your initial application. You must file one Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient, with this application for each family member for whom you are now applying.

Part F. Attestation and Release

By signing this form, you declare, under penalty of perjury, that the statements made on the application, and the evidence submitted with it, are true and correct.

By signing this form, you also agree that the Service may release information from the record in order to investigate your claim to determine your eligibility to investigate fraudulent claims, and to assist in the investigation of trafficking in persons and related crimes. The Service requires that you sign the attestation and release so that the Service may investigate your claim to eligibility.

Part G. Preparer and/or Translator Certification

If anyone assisted you in preparing this form, translated the questions to you, or translated your responses to the questions, they must sign this certification, declaring, under penalty of perjury, that they asisted you, and that, to the best of their knowledge, the information on the form is truthful.

Form I-914, Supplement A

Provide the specific information requested about you and your family. Answer ALL of the questions asked. If any question does not apply to you or you do not know the answer, reply "none," "N/A" (for not applicable), or "unknown," as appropriate. Provide detailed information. Answer the questions as completely as possible. You are strongly encouraged to attach additional written statements and documents that support your claim.

Part A. Relationship

State the relationship of the Derivative Applicant family member to you. You must also include documentation of the claimed relationship. Documents acceptable for this purpose are listed below.

If you are filing for your:

- **Husband or wife,** give the Service a copy of your marriage certificate.
- **Child, and you are the mother,** give the child's birth certificate showing your name and the name of your child.
- **Child, and you are the father or stepparent,** give the child's birth certificate, showing both parents' names, and your marriage certificate. Child born out of wedlock and you are the father, give proof that a parent/child relationship exists or existed. For example, the child's birth certificate showing your name and evidence that you have financially supported the child. (A blood test may be necessary.)

- **Mother,** give your birth certificate showing your name and the name of your mother.
- **Father,** give your birth certificate showing your names of both parents, and your parents' marriage certificate.
- **Stepparent,** give your birth certificate showing the name of both natural parents, and the marriage certificate of your parent to your stepparent.
- **Adoptive parent or adopoted child,** give a certified copy of the adoption decree, the legal custody decree if you obtained custody before adoption, and a statement showing the dates and places you have lived together with the adopted parent or child.

In addition, in any case in which a marriage license is required, if either the husband or wife was married before, you must submit documents to show that all previous marriages were legally ended (for example, a divorce decree or death certificate). In cases where the names shown on the supporting documents have changed, give the Service legal documents to show how the name change occurred (for example, a marriage certificate, adoption decree, court order, etc.).

If a required document is unavailable, you may give the Service the following instead. (The Service may require a statement from the appropriate civil authority certifying that the necessary document is unavailable.)

- **Church record:** A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of child's birth, date of the religious ceremony, and the names of the child's parents.
- **School record:** A letter from the authorities of the school attended (preferably the first school), showing the date of admission to the school, child's date and place of birth, and the names and birthplaces of both parents, if shown in the school records.
- **Census record:** State or Federal census record showing the names, place of birth, and date of birth or age of the person listed.
- **Affidavits:** Written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove; for example, the date and place of birth, marriage, divorce, or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information: (1) the relationship, if any, of the affiant to you; (2) full information concerning the event; and (3) complete details concerning how the person acquired knowledge of the event.

Part B. Information about Primary Applicant

Provide the requested information about yourself.

Part C. Information about Derivative Applicant

Provide the requested information about the family member for whom you are applying. Answer each question fully. If necessary, attach additional sheets to completely address the question. Label those sheets "Form I-914, Supplement A, Part C." and reference the questions that require additional explanation.

Part D. Processing Information

Answer each of the questions. If you answer "Yes" to any of the questions, you must explain your answer on a separate sheet of paper. Label that sheet Form I-914, Supplement A, Part D, reference the number of the question that requires additional explanation, and attach the sheet to the application. Answering "Yes" does not necessarily mean that benefits will be denied.

Part E. Attestation and Release

By signing this application, you declare, under penalty of perjury, that the statements made on the application, and the evidence submitted with it, are true and correct. The derivative applicant must also sign, also under the penalty of perjury, if he or she is in the United States.

By signing this application, you also agree that the Service may release information from the record in order to investigate your claim, to determine your eligibility, to assist in the investigation and prosecution of trafficking and related crimes, and to investigate and prosecute false claims. The Service requires that you sign the attestation and release.

Part F. Preparer and/or Translator Certification

If anyone assisted you in preparing this application, translated the questions to you, or translated your responses to the questions, they must sign this certification, declaring, under penalty of perjury, that they assisted you, and that, to the best of their knowledge, that the information on the application is truthful.

Part G. Application Checklist

Please verify that you have complied with each item on this checklist. Be sure that you have complied with all Service requirements pertinent to this form. The Service is not obliged to return your form to you if it is incomplete, is unaccompanied by supporting evidence or the correct fee, or is otherwise

unacceptable. In addition, failure to answer any question on the form, or failure to comply with any other Service requirement, may result in a processing delay, or in denial of the application.

Section 5. Fee

Form I-914

The fee for this application is a base fee of $200, to a maximum amount of $400, plus:

- $50 for each immediate family member filed concurrently on the same application, to a maximum amount payable per application of $400.
- $25 fingerprint charge for each applicant between the ages of 14 and 79.

Pay the fee in the exact amount. Checks and money orders must be payable in U.S. currency. Make check or money order payable to "Immigration and Naturalization Service." If you live in Guam, make your check or money order payable to "Treasurer, Guam." If you live in the U.S. Virgin Islands, make your check or money order payable to "Commissioner of Finance of the Virgin Islands." A charge of $30 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. Please do not send cash in the mail.

Section 6. Where to File

An applicant for status as a T nonimmigrant shall submit a complete application package, by mail, to the **USINS, Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479-0001.**

Section 7. Certification Instructions (Form I-914, Supplement B)

Form I-914, Supplement B, is to be completed by Federal Law Enforcement Officers for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386. The law enforcement officer must complete the form based upon his or her knowledge of the case, including evidence developed by other law enforcement officers investigating the case.

In order to be granted immigration benefits, the applicant must demonstrate that he or she is present in the United States as a result of being a victim of a severe form of trafficking in persons. Unless the applicant is less than 15 years of age, the applicant must also demonstrate that he or she is cooperating with law enforcement in the investigation and prosecution of the trafficking crime of which he or she was a victim. These elements may be established without submitting a Form I-914, Supplement B, but submission of the Supplement B, is strongly advised.

The Form I-914 applicant may detach Form I-914, Supplement B, and submit it to a Federal law enforcement officer familiar with the case in which he or she was a victim of a severe form of trafficking in persons. After the officer has completed the form, submit it with your application package.

Section 8. Other Information

Confidentiality

Information provided in the application package is confidential. It will be used to determine eligibility, to investigate the fraudulent claims, to enforce penalties for false statements, to assist in the investigation and prosecution of trafficking and related crimes, but for no other purpose. The information provided is subject to verification by the Service. However, the Service will release the information only as necessary to the stated purposes.

Penalties for Perjury

All statements contained in response to questions in this application are declared to be true and correct under penalty of perjury. Title 18, United States Code, Section 1546, provides in part:

> . . . Whoever knowingly makes under oath, or as permitted under penalty of perjury under 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement shall be fined in accordance with this title or imprisoned not more than five years, or both.

The knowing placement of false information on this application may subject you and/or the preparer of this application to criminal penalties under Title 18 of the United States Code. The knowing placement of false information on this application may also subject you and/or the preparer to civil penalties under Section 274C of the Immigration and Nationality Act (INA), 8 U.S.C. 1324c. Under 8 U.S.C. 1324c, a person subject to a final order for civil document fraud is deportable from the United States and may be subject to fines.

Authority for Collecting this Information

The authority to require you to file Form I-914, Application for T Nonimmigrant Status, when applying for employment authorization is found in Public Law 106-386, Victims of Trafficking and Violence Protection Act. Information you provide on your Form I-914 is used to investigate the veracity of your claim. The information may form the basis for granting the benefit sought, or may form the basis for an investigation of a fraudulent claim. The information may also be provided to law enforcement agencies or prosecutors investigating or prosecuting crimes of trafficking or related crimes.

Failure to provide all information as requested may result in the denial or rejection of this application. The information you provide may also be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies during the course of the INS investigations.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Immigration and Naturalization Service (INS) tries to create forms and instructions which are accurate and easily understood. Often this is difficult because immigration law can be very complex. The public reporting burden for this form is estimated to average three (3) hours and twenty-five (25) minutes per response, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The INS welcomes your comments regarding this burden estimate or any other aspect of this form, including suggestions for reducing this burden to Immigration and Naturalization Service, HQPDI, 425 I Street, N.W., Room 4034, Washington, DC 20536; OMB No. 1115-0246. **DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.**

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0246; Expires 05/31/02

Application for T Nonimmigrant Status

START HERE - Please Type or Print. ***Use black ink. See Instructions for information about eligibility and how to complete and file this application.***

FOR INS USE ONLY

Bar Code

Date Stamp

Remarks

Bona Fide Application

Initials | Stamp # | Date

Conditional Approval

Initials | Stamp # | Date

Action Block

PART A. Purpose for Filing the Application

Check all that apply:

- ☐ I am filing an application for T-1 nonimmigrant status, and have not previously filed for such status.
- ☐ I have a T-1 application pending.
- ☐ I have received T-1 status.
- ☐ I am applying to bring family member(s) to the United States.

PART B. General Information About Applicant

Family Name	Given Name	Middle Name

Other Names Used *(If any)*? *(Include maiden name and aliases)*

Residence in the U.S. (Street Number and Name)	Apt. No.	Home Phone ( )
City	State	ZIP Code
SAFE Mailing Address in the U.S., if other than above.	Apt. No.	Daytime Phone ( )
City	State	ZIP Code

Sex ☐ Male ☐ Female

Marital Status ☐ Single ☐ Married ☐ Divorced ☐ Widowed

A# *(If any)*	Social Security # *(If any)*	Date of Birth *(MM/DD/YYYY)*
Country of Birth		Country of Citizenship
Passport #	Issue Date *(MM/DD/YYYY)*	Place of Issuance
I-94 #		Date of Last Entry into U.S.
Place of Last Entry into U.S.		Current INS Status

PART C. Details Related to T Nonimmigrant Status

When answering the following questions about your claim you should explain relevant information. You should ***attach documents in support of your claim that you are a victim of a severe form of trafficking in persons*** *and the specific facts on which you are relying to support your claim. If only applying for T derivative status subsequent to the Principal Applicant's initial filing, evidence supporting the original application is not required to be resubmitted with the new Form I-914. (Attach additional sheets of paper as needed, labeling them as Part C and the question number. Refer to Instructions for further information.) Check either Yes or No, as appropriate.*

1. I **am** a victim of a severe form of trafficking in persons. *(Attach evidence to support your claim.)* ☐ Yes ☐ No
2. I **am** submitting a Law Enforcement Agency (LEA) declaration on Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. *(If No, explain why you are not submitting the LEA Certification.)* ☐ Yes ☐ No
3. I **am** physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry, **on account of trafficking.** *(If Yes, explain in detail and attach evidence and documents supporting this claim.)* ☐ Yes ☐ No
4. I fear that I will suffer extreme hardship involving unusual and severe harm upon removal. *(If Yes, explain in detail and attach evidence and documents supporting this claim.)* ☐ Yes ☐ No

PART C. T Nonimmigrant Status *(Continued)*

5. I have reported the crime of which I am claiming to be a victim. *(If Yes, indicate to which law enforcement agency and office you have made the report, the address and phone number of that office, and the case number assigned, if any. If No, please explain the circumstances.)* ☐ Yes ☐ No

Law Enforcement Agency and Office	*Address*	*Phone No.*
		Case No.

6. I am under *the age of 15 years. (If Yes, proceed to question 8.)* ☐ Yes ☐ No

7. I have complied with requests from U.S. government authorities for assistance in the investigation or prosecution of acts of trafficking. *(If No, explain the circumstances. You may add additional pages if necessary, marking them Form I-914, Part C.7.)* ☐ Yes ☐ No

8. This is the first time I have entered the United States. *(If No, list each date, place of entry and under which status you entered the United States for the past 5 years.)* ☐ Yes ☐ No

Date of Entry *Place of Entry* *Status*

9. My most recent entry was on account of the trafficking that forms the basis for my claim. *(Explain the circumstances of your most recent arrival.)* ☐ Yes ☐ No

10. I **want** an Employment Authorization Document. ☐ Yes ☐ No

11. I **am** now applying for one or more eligible family members. *(If Yes, complete and include a Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient, for each family member for whom you are now applying. You may also apply to bring eligible family members to the United States at a later date.)* ☐ Yes ☐ No

PART D. Processing Information

Please answer the following questions. *(If your answer is "Yes" to any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that you are not entitled to adjust your status or register for permanent residence.)*

1. Have you ever, in or outside the U.S.:
   a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☐ No
   b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☐ No
   c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☐ No
   d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U.S.? ☐ Yes ☐ No

2. Have you ever received public assistance in the U.S. from any source, including the U.S. government or any state, country, city or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? ☐ Yes ☐ No

3. Have you ever:
   a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in any such activities in the future? ☐ Yes ☐ No
   b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☐ No
   c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☐ No
   d. illicitly trafficked in any controlled substance, firearms, or persons, or knowingly assisted, abetted or colluded in illegal trafficking? ☐ Yes ☐ No

PART D. Processing Information *(Continued)*

4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☐ No

5. Have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has engaged or conspired to engage in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☐ No

6. Do you intend to engage in the U.S. in:
   a. espionage? ☐ Yes ☐ No
   b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☐ No
   c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☐ No

7. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☐ No

8. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national orgin or political opinion? ☐ Yes ☐ No

9. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion? ☐ Yes ☐ No

10. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings? ☐ Yes ☐ No

11. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States or any immigration benefit? ☐ Yes ☐ No

12. Have you ever left the United States to avoid being drafted into the United States Armed Forces? ☐ Yes ☐ No

13. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver? ☐ Yes ☐ No

14. Are you now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child? ☐ Yes ☐ No

15. Do you plan to practice polygamy in the U.S.? ☐ Yes ☐ No

PART E. Information about Your Family Members

List information for each family member you are now applying to have join you in the United States.

Name	Family Relationship	Date of Birth *(MM/DD/YYYY)*	Current Location

Complete Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient, for each eligible family member listed above and attach it to this application.

PART F. Attestation and Release

After reading the information regarding penalties in the instructions, complete and sign below. If someone helped you prepare this application, he or she must complete Part G.

I have read, or had read to me, this form, the information provided on it, and the evidence provided with it, and I certify, under penalty of perjury under the laws of the United States of America, that all of the information in this entire application package, including the documentary evidence submitted with it, is true and correct.

I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking, to investigate my claim, and to investigate fraudulent claims. I further authorize the Immigration and Naturalization Service to release information to law enforcement agencies and prosecutors investigating or prosecuting crimes of trafficking or related crimes.

Signature of Applicant *(The Person in Part A.)*

[_____] _____

(Sign your name within the brackets) Date *(Month/Day/Year)*

PART G. Preparer and/or Translator Certification

To be completed and signed if form is prepared by a person other than the applicant.

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

_____ _____

(Preparer's/Translator's Printed Name) *(Preparer's/Translator's Signature)*

Address _____ Phone Number _____

Date *(Month/Day/Year)* _____ Relationship to the Applicant _____

WARNING: **Applicants who are in the United States illegally are subject to removal if their claims are not granted. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn.**

OMB No. 1115-0246; Expires 05/31/02

U.S. Department of Justice
Immigration and Naturalization Service

Application for Immediate Family Member of T-1 Recipient

START HERE - Please Type or Print. ***Use black ink. See Instructions for information about eligibility and how to complete and file this application.***

The recipient of the T nonimmigrant classification is referred to as the principal applicant. His/her family members are referred to as derivative applicants. The Form I-914, Supplement A, is to be completed by the principal applicant.

PART A. Relationship

The derivative applicant is my: *(Check one)* ☐ Husband/Wife ☐ Child ☐ Parent

PART B. Information about Principal Applicant

Family Name	Given Name	Middle Name	Date of Birth *(MM/DD/YYYY)*	A# *(If any)*

Principal applicant's application has been previously: *(Check One)* ☐ Submitted ☐ Granted Conditional Approval ☐ Found Bona Fide ☐ Approved for T Nonimmigrant Status

PART C. Information about Derivative Applicant

Family Name	Given Name	Middle Name	A # *(If any)*	Social Security # *(If any)*

Other Names Used *(If any)*? *(Include maiden name and aliases)*

Intended Residence in U.S. *(Street Number and Name)*	Apt. No.	City

State	ZIP Code	Home Phone ( )	Daytime Phone ( )

Mailing Address in the U.S., if other than above.	Apt. No.	City	State	ZIP Code

Sex ☐ Male ☐ Female	Marital Status ☐ Single ☐ Married ☐ Divorced ☐ Widowed	Date of Birth *(MM/DD/YYYY)*

Names of Prior Husband/Wives *(if any)* and Dates Marriages Ended

Country of Birth	Country of Citizenship	Passport #	Issue Date *(MM/DD/YYYY)*	Place of Issuance

Is the Derivative Applicant currently in the United States? ☐ Yes ☐ No *(If Yes, complete the following.)* *He or she last arrived as a (visitor, student, stowaway, without inspection, other, please specify.)*

Has the Derivative Applicant previously entered the United States? ☐ Yes ☐ No *(If Yes, list each previous entry during the past five years. Attach additional sheets, if necessary.)*

Date of Entry	*Place of Entry*	*Status*

Arrival/Departure Record (I-94) Number, Date arrived, and Date authorized stay expired, or will expire. *(As shown on Form I-94 or I-95)*

PART C. Information about Derivative Applicant *(Continued)*

Has family member for whom you are applying ever been under immigration proceedings?

☐ Yes ☐ No If Yes, answer the following: Where: _____ When *(MM/DD/YYYY)*: _____

☐ Exclusion ☐ Deportation ☐ Recission ☐ Judicial Proceeding

List your family member's spouse and children. *(Attach additional sheets of paper, if necessary. If family member is your spouse, list only his or her children.)*

Name	*Relationship*	*Date of Birth (MM/DD/YYYY)*	*Country of Birth*

Are you applying for employment authorization for your family member? ☐ Yes ☐ No *(If Yes, submit a Form I-765, Application for Employment Authorization, for the family member.)*

PART D. Processing Information

Please answer the following questions. *(If your answer is "Yes" to any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that your family member will be denied T nonimmigrant status.)*

1. Has the family member for whom you are applying ever:
   a. knowingly committed any crime of moral turpitude or a drug-related offense for which he or she have not been arrested? ☐ Yes ☐ No
   b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☐ No
   c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☐ No
   d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U.S.? ☐ Yes ☐ No
2. Has the family member for whom you are applying ever received public assistance in the U.S. from any source, including the U.S. government or any state, country, city or municipality (other than emergency medical treatment), or is he or she likely to receive public assistance in the future? ☐ Yes ☐ No
3. Has the family member for whom you are applying:
   a. within the past ten years been a prostitute or procured anyone for prostitution, or does he or she intend to engage in any such activities in the future? ☐ Yes ☐ No
   b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☐ No
   c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☐ No
   d. illicitly trafficked in any controlled substance, firearms, or persons, or knowingly assisted, abetted or colluded in illegal trafficking? ☐ Yes ☐ No
4. Has the family member for whom you are applying ever engaged in, conspired to engage in, or does he or she intend to engage in, sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☐ No
5. Has the family member for whom you are applying ever solicited membership or funds for, or through any means ever assisted or provided any type of material support to, any person or organization that has engaged or conspired to engage in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☐ No
6. Does the family member for whom you are applying intend to engage in the U.S. in:
   a. espionage? ☐ Yes ☐ No
   b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☐ No
   c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☐ No
7. Has the family member for whom you are applying ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☐ No
8. Did the family member for whom you are applying, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national orgin or political opinion? ☐ Yes ☐ No

PART D. Processing Information *(Continued)*

9.	Has the family member for whom you are applying ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion?	☐ Yes ☐ No
10.	Has the family member for whom you are applying ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or is he or she now in exclusion or deportation proceedings?	☐ Yes ☐ No
11.	Is the family member for whom you are applying under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or has he or she, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States or any immigration benefit?	☐ Yes ☐ No
12.	Has the family member for whom you are applying ever left the United States to avoid being drafted into the United States Armed Forces?	☐ Yes ☐ No
13.	Has the family member for whom you are applying ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver?	☐ Yes ☐ No
14.	Is the family member for whom you are applying now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child?	☐ Yes ☐ No
15.	Does the family member for whom you are applying plan to practice polygamy in the U.S.?	☐ Yes ☐ No

PART E. Attestation and Release

The Derivative Applicant, the family member for whom you are applying, must sign below if he or she is presently in the United States. If someone helped you prepare this supplementary application, he or she must complete Part F.

I have read, or had read to me, this form, the information provided on it, and the evidence provided with it, and certify, under penalty of perjury under the laws of the United States of America, that the information on this supplementary application and the evidence submitted with it are true and correct.

I authorize the release of any information from the record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking for the family member for whom I am applying, to investigate my claim, and to investigate fraudulent claims. I further authorize the Immigration and Naturalization Service to release information to law enforcement agencies and prosecutors investigating or prosecuting crimes of trafficking or related crimes.

[_____] _____

Signature of Derivative Applicant *(The family member for whom you are applying.)* Date *(Month/Day/Year)*

[_____] _____

Signature of Principal (*Sign your name within the brackets)* Date *(Month/Day/Year)*

PART F. Preparer and/or Translator Certification

To be completed and signed if form is prepared by a person other than the applicant.

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

_____ _____

(Preparer's/Translator's Printed Name) (Preparer's/Translator's Signature)

Address _____ Phone Number _____

Date *(Month/Day/Year)* _____ Relationship to the Applicant _____

WARNING: **Applicants who are in the United States illegally are subject to removal if their claims are not granted. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn.**

PART G. Checklist

☐ I completely filled out and signed the form.

☐ I have attached evidence that:

- I am a victim of a severe form of trafficking;
- I am physically present in the United States on account of trafficking;
- I am cooperating with the government in the investigation/prosecution of the traffickers (unless under age 15); and
- I would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

☐ I have included three photographs of myself.

☐ I have attached a check or money order for the required fees.

The required fees include:

- the fee for filing this application;
- the fingerprinting fee for the applicant, if the applicant is between the ages of 14 and 79 inclusive, and
- if the applicant is also currently filing for family members, the appliant is responsible for additional charges, as detailed in the instructions to Form I-914, Supplement A.

If I am applying for one or more family members:

☐ I have completed a Form I-914, Supplement A for each member for whom I am now applying and, if he or she is in the United States, each family member has signed that Form I-914, Supplement A.

☐ I have submitted the required evidence, including evidence of:

- my relationship to the family member for whom I am applying;
- my age, if I am applying for my parent;
- my child's age, if I am applying for my child; and
- the extreme hardship that either I or my family member will suffer, if my family member is not permitted to join me in the United States.

☐ I have included three photographs of each family member for whom I am now applying.

☐ I have included a Form I-765 Application for Employment Authorization, if I am requesting employment authorization for my family member.

☐ I have attached a check or money order for the required fees.

The required fees include:

- the fee for filing this supplementary application;
- the fingerprinting fee for the applicant, if the applicant is between 14 and 79; and
- the filing fee for Form I-765, Application for Employment Authorization, if the family member is requesting employment authorization.

NOTE: ***The required fees are posted at the INS website, at*** **http://www.ins.usdoj.gov,** ***and are also available from the INS National Customer Service Center, at 1-800-375-5283.***

OMB No. 1115-0246; Expires 05/31/02

U.S. Department of Justice
Immigration and Naturalization Service

Declaration of Law Enforcement Officer for Victim of Trafficking in Persons

Instructions to Certifying Officer: This applicant is applying for immigration benefits based upon a claim of having been a victim of a severe form of trafficking in persons. Please complete the form below based upon your knowledge of the case, including evidence developed by other law enforcement officers investigating the case.

In order to be granted immigration benefits, the applicant must demonstrate that he or she is present in the United States as a result of being a victim of a severe form of trafficking in persons. Unless the applicant is less than 15 years old, the applicant must also demonstrate that he or she is cooperating with law enforcement in the investigation and prosecution of the trafficking crime of which he or she was a victim.

To be completed by Federal Law Enforcement Officers for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386.

PART A. General Information

Name of Government Agency:	☐ U.S. Marshall's Service, DOJ	☐ U.S. Attorney's Office	Date
☐ Immigration and Naturalization Service, DOJ	☐ Federal Bureau of Investigation, DOJ	☐ Dept. of State Diplomatic Security	
☐ Civil Rights Division, DOJ	☐ Criminal Division, DOJ	☐ Other _____	

Address of Agency/Official			Name and Title of Certifying Officer or Official	
City	State	ZIP Code	Phone No. ( )	Fax No. ( )

Victim's Name	Other Names Used	Sex ☐ Male ☐ Female	Date of Birth *(MM/DD/YYYY)*
Date of Crime	Charges		Case No.
Date Initiated *(MM/DD/YYYY)*	Case Status ☐ On-going ☐ Completed ☐ N/A	Date Completed *(MM/DD/YYYY)*	FBI Identification No., *if any*

PART B. Statement of Claim

1. The applicant is a victim of a severe form of trafficking in persons. Specifically, he or she is a victim of: *(Please check all that apply.)*

   ☐ Sex trafficking in which a commercial sex act was induced by force, fraud or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

   ☐ Sex trafficking and the victim is under the age of 18.

   ☐ 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, peonage, debt bondage, or slavery.

   ☐ Not applicable.

   ☐ Other, please specify on attached additional sheets.

2. Please describe the victimization upon which the applicant's claim is based and identify the relationship between that victimization and the crime under investigation/prosecution. Attach the results of any name or database inquiry performed in the investigation of the case. Please include relevant dates, etc. Has the applicant expressed any fear of retaliation or revenge if removed from the United States? Explain. Attach additional sheets, if necessary.

PART C. Cooperation of Victim *(Attach additional sheets, if necessary.)*

The applicant:

- ☐ Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- ☐ Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- ☐ Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- ☐ Has not yet attained the age of 15.
- ☐ Other, please specify on attached additional sheets.

PART D. Family Members

☐ Yes ☐ No Are any of the applicant's relatives believed to have been involved in his or her trafficking to the United States? If Yes, list the relatives and describe that relative's involvement in the applicant's trafficking.

PART E. Attestation

Based upon investigation of the facts, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTVPA. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make, no promises regarding the above victim's ability to obtain a visa from the Immigration and Naturalization Service, based upon this certification.

[_____] _____

(Signature of Law Enforcement Officer identified in Box A above) Date *(Month/Day/Year)*

[_____] _____ _____

(Signature of Supervisor of Certifying Officer) *(Printed Name of Supervisor)* Date *(Month/Day/Year)*

[FR Doc. 02–2186 Filed 1–30–02; 8:45 am]
BILLING CODE 4410–10–C

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212, 214, 245, and 274a

[CIS No. 2507–11; DHS Docket No. USCIS–2011–0010]

RIN 1615–AA59

Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations governing the requirements and procedures for victims of human trafficking seeking T nonimmigrant status. The Secretary of Homeland Security (Secretary) may grant T nonimmigrant status (commonly known as a ''T visa'') to aliens who are or were victims of severe forms of trafficking in persons, who are physically present in the United States on account of such trafficking, who have complied (unless under 18 years of age or unable to cooperate due to trauma) with any reasonable request by a Federal, State, or local law enforcement agency (LEA) for assistance in an investigation or prosecution of acts of trafficking in persons or the investigation of other crimes involving trafficking, and who would suffer extreme hardship involving unusual and severe harm if removed from the United States. In this interim rule, DHS is amending its regulations to conform with legislation enacted after the initial rule was published in 2002: the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), and Titles VIII and XII of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).

DHS is also streamlining procedures, responding to public comments on the 2002 interim final rule, and providing guidance for the statutory requirements for T nonimmigrants. The intent is to make sure the T nonimmigrant status regulations are up to date and reflect USCIS adjudicative experience, as well as the input provided by stakeholders.

DATES: *Effective date.* This rule is effective January 18, 2017.

Comment date. Written comments must be submitted on or before February 17, 2017. Comments on the form, form instructions, and information collection revisions in this interim rule must be submitted on or before January 18, 2017.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2011–0010, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* You may submit comments directly to U.S. Citizenship and Immigration Services (USCIS) by email at *USCISFRComment@uscis.dhs.gov.* Include DHS Docket No. USCIS–2011–0010 in the subject line of the message.
- *Mail:* Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. To ensure proper handling, please reference DHS Docket No. USCIS–2011–0010 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dallam, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2099, telephone (202) 272–8377 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. Public Participation

DHS invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. DHS particularly encourages comments from individuals, organizations, and agencies with direct experience handling T nonimmigrant cases or issues. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name (U.S. Citizenship and Immigration Services) and DHS Docket No. USCIS–2011–0010 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. See the **ADDRESSES** section above for information on how to submit comments. Those wishing to submit anonymous comments should do so electronically at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

II. Executive Summary

A. Purpose of the Regulatory Action

The T nonimmigrant status regulations—which include eligibility criteria, application process, evidentiary standards, and benefits associated with the T nonimmigrant classification (commonly known as the ''T visa'' [1])—have been in effect since a 2002 interim rule. *New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status,* 67 FR 4784 (Jan. 31, 2002) (2002 interim rule). Since the publication of that interim rule, the public has submitted comments on the regulations and Congress has enacted numerous pieces of related legislation. DHS is responding to the public comments on the 2002 interim rule, clarifying requirements based on experience operating the program for more than 14 years, and amending provisions as required by legislation.

1. Need for the Regulatory Action and How the Action Will Meet That Need

Statutory amendments to the Trafficking Victims Protection Act of 2000 (TVPA) require that DHS amend and clarify the eligibility and application requirements to conform to current law. In addition, DHS needs to respond to public comments on the 2002 interim rule. DHS accomplishes both actions in this interim rule.

2. Statement of Legal Authority for the Regulatory Action

The TVPA authorizes various means to combat trafficking in persons, including tools to effectively prosecute and punish perpetrators of trafficking in persons, and protection to victims of trafficking through immigration relief and access to Federal public benefits. *See* Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), div. A, TVPA, Public Law 106–386, 114 Stat. 1464 (Oct. 28, 2000), *as amended by* TVPRA 2003, Public Law 108–193, 117 Stat. 2875 (Dec. 19, 2003); VAWA 2005, Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006); Technical Corrections to VAWA 2005, Public Law 109–271, 120 Stat. 750 (Aug. 12, 2006); TVPRA 2008, Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008), and VAWA 2013, Public Law 113–4, titles viii, xii, 127 Stat. 54 (Mar. 7, 2013); Justice for Victims of Trafficking Act of 2015 (JVTA), Public Law 114–22, 129 Stat. 227 (May 29, 2015). The Immigration and Nationality Act of 1952 (INA), as amended, permits the Secretary to grant T nonimmigrant status to aliens who are or were victims of a severe form of trafficking in persons, who have complied with any reasonable request by an LEA for assistance in an investigation or prosecution of acts of trafficking in persons or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime, or who are exempt from this compliance requirement, and who would suffer extreme hardship involving unusual and severe harm if removed from the United States. *See* INA section 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T).

B. Summary of the Major Provisions of the Rule

1. Statutory Changes

The legislative changes to the T nonimmigrant statute addressed in this interim rule are as follows:

- Expanding the definition and discussion of LEA to include State and local law enforcement agencies (added by VAWA 2005). *See* INA section 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa); new 8 CFR 214.11(a).
- Raising the age at which the applicant must comply with any reasonable request by an LEA for assistance in an investigation or prosecution of acts of trafficking in persons, from 15 years to 18 years of age (added by TVPRA 2003). *See* INA section 101(a)(15)(T)(i)(III)(cc), 8 U.S.C. 1101(a)(15)(T)(i)(III)(cc); new 8 CFR 214.11(b)(3)(i) and (h)(4)(ii).
- In cases where the applicant is unable, due to physical or psychological trauma, to comply with any reasonable request by an LEA, exempting the

[1] T nonimmigrant status is known as the ''T visa'' colloquially, however ''T visa'' is not an entirely accurate term in light of the statutory scheme. Principal victims granted T–1 nonimmigrant status may seek derivative T nonimmigrant status for certain family members. 8 CFR 214.11(o)(1). Some of these family members may reside outside the United States and, if eligible, can join the victim in the United States. Before family members with approved derivative T nonimmigrant status can enter the United States, the family members must first undergo processing with the Department of State at a U.S. Embassy or Consulate to obtain a T visa abroad. This is known as consular processing. USCIS will decide on the basis of the application filed by the principal T–1 nonimmigrant whether an overseas family member qualifies for derivative T nonimmigrant status. The Department of State will then separately determine that family member's eligibility to receive a visa in order to enter the United States.

applicant from the requirement to comply (added by TVPRA 2008). *See* INA section 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb); new 8 CFR 214.11(b)(3)(ii) and (h)(4)(i).

- Expanding the regulatory definition of physical presence on account of trafficking to include those whose entry into the United States was for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking (added by TVPRA 2008). *See* INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II); new 8 CFR 214.11(b)(2) and (g)(1).
- Allowing principal applicants under 21 years of age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years and parents as eligible derivative family members (added by TVPRA 2003). *See* INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I); new 8 CFR 214.11(k)(1)(ii).
- Providing age-out protection for a principal applicant's eligible family members under 21 years of age (added by TVPRA 2003). *See* INA section 214(o)(4), 8 U.S.C. 1184(o)(4); new 8 CFR 214.11(k)(5)(ii).
- Providing age-out protection for principal applicants under 21 years of age (added by TVPRA 2003). *See* INA section 214(o)(5), 8 U.S.C. 1184(o)(5); new 8 CFR 214.11(k)(5)(iii).
- Allowing principal applicants of any age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years of age and parents as eligible family members if the family member faces a present danger of retaliation as a result of the principal applicant's escape from a severe form of trafficking or cooperation with law enforcement (added by TVPRA 2008). *See* INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III); new 8 CFR 214.11(k)(1)(iii) and (k)(5)(iv).
- Allowing principal applicants of any age to apply for derivative T nonimmigrant status for children (adult or minor) of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the principal's escape from a severe form of trafficking or cooperation with law enforcement (added by VAWA 2013). *See* INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III); new 8 CFR 214.11(k)(1)(iii).
- Permitting all derivative T nonimmigrants, if otherwise eligible, to apply for adjustment of status under INA section 245(l), 8 U.S.C. 1255(l). *See* new 8 CFR 245.23(b)(2).
- Removing the requirement that eligible family members must face extreme hardship if the family member is not admitted to the United States or was removed from the United States (removed by VAWA 2005). *See* previous INA section 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii); 8 CFR 214.11(o)(1)(ii)
- Exempting T nonimmigrant applicants from the public charge ground of inadmissibility (added by TVPRA 2003). *See* INA section 212(d)(13)(A), 8 U.S.C. 1182(d)(13)(A); new 8 CFR 212.16(b).
- Limiting duration of T nonimmigrant status to 4 years but providing extensions for LEA need, for exceptional circumstances, and for the pendency of an application for adjustment of status (VAWA 2005 and TVPRA 2008). *See* INA section 214(o)(7)(B), 8 U.S.C. 1184(o)(7)(B); new 8 CFR 214.11(c)(1) and (l).
- Implementing a technical fix to clarify that presence in the Commonwealth of the Northern Mariana Islands after being granted T nonimmigrant status qualifies toward the requisite physical presence requirement for adjustment of status (added by VAWA 2013). *See* VAWA 2013, tit. viii, section 809; section 705(c) of the Consolidated Natural Resources Act of 2008 (CNRA), Title VII, Public Law 110–229, 122 Stat. 754 (2008); new 8 CFR 245.23(a)(3)(ii).
- Conforming the regulatory definition of sex trafficking to the revised statutory definition in section 103(10) of the TVPA (22 U.S.C. 7102(10)), as amended by section 108(b) of the JVTA, 129 Stat. 239. *See* new 8 CFR 214.11(a).

2. Discretionary Changes

In addition to the necessary statutory changes, DHS makes the following changes and clarifications related to the T nonimmigrant classification in this interim rule:

- Specifies how USCIS will exercise its waiver authority with respect to criminal inadmissibility grounds; new 8 CFR 212.16(b)(3).
- Discontinues the practice of weighing evidence as primary and secondary in favor of an ''any credible evidence'' standard; 8 CFR 214.11(f); new 8 CFR 214.11(d)(2)(ii) and (3).
- Provides guidance on the definition of ''severe form of trafficking in persons'' where an individual has not performed labor or services, or a commercial sex act; new 8 CFR 214.11(f)(1).
- Removes the current regulatory ''opportunity to depart'' requirement for those who escaped traffickers before law enforcement became involved; 8 CFR 214.11(g)(2).
- Addresses situations where trafficking has occurred abroad, but the applicant can potentially meet the physical presence requirement; new 8 CFR 214.11(g)(3).
- Eliminates the requirement that an applicant provide three passport-style photographs; 8 CFR 214.11(d)(2)(ii); new 8 CFR 214.11(d)(4).
- Removes the filing deadline for applicants victimized prior to October 28, 2000; 8 CFR 214.11(d)(4).
- Announces forthcoming updates to the forms used to apply for T nonimmigrant status.
- Updates the regulation to reflect the creation of DHS, and to implement current standards of regulatory organization, plain language, and USCIS efforts to transform its customer service practices.

C. Costs and Benefits

With this interim rule, DHS incorporates in its regulations several statutory provisions associated with the T nonimmigrant status that have been enacted since 2002 and that DHS already has been implementing. While codifying these changes in the DHS regulations will not result in additional quantitative costs or benefits, ensuring that DHS regulations are consistent with applicable legislation will provide qualitative benefits. In addition, DHS will implement changes made necessary by VAWA 2013, and other discretionary changes. DHS estimates the changes made in this interim rule will result in the following costs:

- A per application opportunity cost for the T–1 principal alien of $33.92 to complete and submit the Application for Family Member of T–1 Recipient, Form I–914 Supplement A, in order to apply for children (adult or minor) of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the principal's escape from a severe form of trafficking and/or cooperation with law enforcement. The children of the principal's derivative relatives will be admitted under the T–6 classification. DHS has no basis to project the population of children of derivative family members that may be eligible for the new T–6 nonimmigrant classification.
- An individual total cost of $89.70 for applicants who become eligible to apply for principal T–1 nonimmigrant status when the filing deadline for those trafficked before October 28, 2000 is removed. The total cost includes the opportunity cost associated with filing the Application for T Nonimmigrant Status, Form I–914, and the time and travel costs associated with submitting

biometrics. If the applicant includes the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B in the application, there is an opportunity cost of $149.70 for the law enforcement worker that completes that form. DHS has no way of predicting how many individuals physically present in the United States may now be eligible for T–1 nonimmigrant status as a result of removing the filing deadline.

- An individual total cost of $89.70 for those applicants trafficked abroad that will now become eligible to apply for T nonimmigrant status due to DHS's expanded interpretation of the physical presence requirement. As previously described, the total cost includes both the opportunity of time cost and estimated travel cost incurred with filing Form I–914 and submitting biometrics. If the applicant includes the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B in the application, there is an opportunity cost of $149.70 for the law enforcement worker that completes that form. DHS is unable to project the size of this new eligible population.

Based on recent filing volumes, DHS estimates total cost savings of $56,130 for T nonimmigrant applicants and their eligible family members as a result of no longer being required to submit three passport-style photographs with their T nonimmigrant applications. In addition, the interim rule will provide various qualitative benefits for victims of trafficking, their eligible family members, and law enforcement agencies investigating trafficking incidents. These qualitative benefits result from making the T nonimmigrant classification more accessible, reducing some burden involved in applying for this status in certain cases, and clarifying the process by which DHS adjudicates and administers the T nonimmigrant benefit.

D. Public Comments

DHS welcomes public comment on all aspects of this interim final rule.

III. Background and Legislative Authority

Congress created the T nonimmigrant status in the TVPA. *See* Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), div. A, TVPA, Public Law 106–386, 114 Stat. 1464 (Oct. 28, 2000). Congress has since amended the TVPA, including the T nonimmigrant status provisions, several times: TVPRA 2003, Public Law 108–193, 117 Stat. 2875 (Dec. 19, 2003); VAWA 2005, Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006); Technical Corrections to VAWA 2005, Public Law 109–271, 120 Stat. 750 (Aug. 12, 2006); TVPRA 2008, Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008); VAWA 2013, Public Law 113–4, titles viii, xii, 127 Stat. 54 (Mar. 7, 2013); JVTA, Public Law 114–22, 129 Stat. 227 (May 29, 2015).

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 protect victims of trafficking through immigration relief and access to federal public benefits. The T nonimmigrant status is one type of immigration relief available to victims of severe forms of trafficking in persons who assisted LEAs in the investigation or prosecution of the perpetrators of these crimes.

The INA permits the Secretary to grant T nonimmigrant status to individuals who are or were victims of a severe form of trafficking in persons, who have complied with any reasonable request by an LEA for assistance in an investigation or prosecution of crime involving acts of trafficking in persons (or who are under 18 years of age or are unable to cooperate due to physical or psychological trauma).[2] *See* INA Section 101(a)(15)(T)(i)(I), (III), 8 U.S.C. 1101(a)(15)(T)(i)(I), (III). Applicants for T nonimmigrant status must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, on account of trafficking in persons, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking. *See* INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II). In addition, an applicant must demonstrate that he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States. *See* INA section 101(a)(15)(T)(i)(IV), 8 U.S.C. 1101(a)(15)(T)(i)(IV). T nonimmigrant status allows eligible individuals to remain in the United States for a period of not more than 4 years (with the possibility for extensions), receive work authorization, receive federal public benefits, and apply for derivative status for certain eligible family members. *See* INA section 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii); INA section 214(o), 8 U.S.C. 1184(o); 8 U.S.C. 1641(c)(4).

On January 31, 2002, the former Immigration and Naturalization Service (INS)[3] published an interim final rule in the **Federal Register** titled *New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status* implementing the T nonimmigrant status provisions of the TVPA. 67 FR 4784. INS outlined the eligibility criteria, application process, evidentiary standards, and benefits associated with the T nonimmigrant status. *Id.* Most of the provisions in this rule have been in effect since the 2002 interim rule and have been the subject of extensive public comment.[4] In this rule, DHS is responding to the 14 public submissions with comments on multiple provisions of the 2002 interim rule. No comments were received regarding the procedural aspects of the 2002 interim rule or the good cause arguments put forth in the rule for bypassing notice and comment.

As noted above, DHS also welcomes additional input by stakeholders in response to this action. As explained further in the Administrative Procedure Act section of this rule, DHS is publishing this rule as an interim final rule and requesting additional comment on all aspects of this rulemaking.

IV. Eligibility and Application Requirements, Procedures, and Changes in This Rule

DHS provides a summary of the changes made in this rule in Section II.B. of this preamble above. In this section, DHS describes the changes in greater detail. The discussion is organized generally in the same order as the relevant regulatory provisions in this interim rule, and proceeds as follows:

[2] The primary victim of trafficking is also referred to as the ''principal T nonimmigrant'' or ''principal alien'' and receives T–1 nonimmigrant status, if eligible. The principal alien may be permitted to apply for certain family members who are referred to as ''eligible family members'' or ''derivative T nonimmigrants'' and when approved those family members receive T–2, T–3, T–4, T–5, or T–6 nonimmigrant status. The term derivative is used in this context because the family member's eligibility derives from that of the primary nonimmigrant.

[3] Various functions formerly performed by the INS, or otherwise vested in the Attorney General, were transferred to DHS in March 2003. *See* 6 U.S.C. 251, 271(b), 557; 6 U.S.C. 542 note; 8 U.S.C. 1103(a)(1), (g), 8 U.S.C. 1551 note. Even though INS published the 2002 interim rule, this rule refers to DHS because DHS is now the regulatory actor.

[4] Since the publication of the 2002 interim rule, DHS has amended the core regulatory provision relating to T nonimmigrant status, 8 CFR 214.11, multiple times. Most of these changes have been minor conforming changes as parts of other actions. *See, e.g., Removal of the Standardized Request for Evidence Processing Timeframe,* 72 FR 19100, 19107 (Apr. 17, 2007); *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,* 73 FR 75558 (Dec. 12, 2008); *Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands,* 74 FR 55738 (Oct. 28, 2009).

A. Eligibility Requirements for T Nonimmigrant Classification (including core eligibility factors such as victimization, physical presence on account of trafficking in persons, and extreme hardship involving unusual and severe harm upon removal),

B. Application Requirements (include filing deadlines, bona fide determinations, and processes and eligibility for derivative family members),

C. Adjudication and Post-Adjudication (including waivers of inadmissibility, confidentiality requirements, and duration of status), and

D. Filing and Biometric Services Fees.

Throughout the discussion, DHS addresses and responds to the public comments received in connection with the 2002 interim rule.

A. Eligibility Requirements for T Nonimmigrant Classification

There are four statutory eligibility requirements for T nonimmigrant status. *See* INA section 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T). To be eligible, the applicant must meet the following criteria:

- The applicant must be or have been a victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102 (section 103 of the TVPA);
- The applicant must be physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI),[5] or at a port-of-entry thereto, on account of such trafficking, including physical presence based on the applicant having been allowed to enter the United States to participate in investigative or judicial processes associated with an act or a perpetrator of trafficking; and
- The applicant must meet one of the following criteria:
  - Has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of 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; or
  - Is under 18 years of age; or
  - Is unable to cooperate with a request due to physical or psychological trauma; and
- The applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

[5] The federalization of the CNMI immigration law took place on November 28, 2009. *See* Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110–229, title VII, 122 Stat. 754 (2008). This effectively replaced the CNMI's immigration laws with the INA and other applicable United States immigration laws, with few exceptions.

Below DHS addresses each of these requirements in turn.

1. Victim of a Severe Form of Trafficking in Persons

First, an individual applying for classification as a T nonimmigrant must demonstrate that he or she is or was a victim of a severe form of trafficking in persons. *See* INA section 101(a)(15)(T)(i)(I), 8 U.S.C. 1101(a)(15)(T)(i)(I). In the 2002 interim rule, DHS defined ''victim of a severe form of trafficking in persons'' consistent with the statutory definitions in TVPA section 103(9) and (14), 22 U.S.C. 7102(9), (14). Under the interim rule, an applicant must show that he or she is a victim of one or more of the following:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion;
- Sex trafficking in which the person induced to perform such an act is under the age of 18; or
- 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, peonage, debt bondage, or slavery.

See 8 CFR 214.11(a); *see also* TVPA section 103(9), 22 U.S.C. 7102(9).

DHS received public comments on the definition of ''victim of a severe form of trafficking in persons,'' and responds as follows:

- DHS clarifies that the term ''involuntary servitude,'' as used in 22 U.S.C. 7102(9), encompasses the use of psychological coercion. *See* 8 CFR 214.11(a).
- DHS clarifies that an individual need not perform labor, services, or a commercial sex act to meet the definition of a ''victim of a severe form of trafficking in persons.'' New 8 CFR 214.11(f)(1).
- DHS explains how a victim can meet the evidentiary burden to show victimization, even when the victim did not perform labor, services or a commercial sex act.

In order to simplify the regulatory text, DHS used and defined the term ''victim'' in this rule as shorthand to refer to ''an alien who is or has been subject to a severe form of trafficking in persons,'' as defined by TVPA section 103 (22 U.S.C. 7102). *See* 8 CFR 214.11(a).

a. Definition of ''Involuntary Servitude''

DHS received four comments about the definition of ''involuntary servitude'' in 8 CFR 214.11(a). Commenters maintained that the definition appeared to be too narrow because it cited *United States* v. *Kozminski,* 487 U.S. 931, 952 (1988). In Kozminski, the Supreme Court had occasion to construe ''involuntary servitude'' as used in the criminal provisions at 18 U.S.C. 241 (conspiracy to interfere with free exercise of constitutional rights, including Thirteenth Amendment guarantee against involuntary servitude) and 1584 (knowingly and willfully holding to involuntary servitude . . . any other person for any term). The Court, considering the historical context of the term as used in those criminal provisions, held that involuntary servitude excluded compulsion by psychological coercion.

The commenters stated that Congress intended the definition of involuntary servitude as used in 22 U.S.C. 7102(9) and defined in part in 22 U.S.C. 7102(6), to go beyond the *Kozminski* construction, and recommended striking the citation from the definition. We agree. In the 2002 interim rule, DHS did not intend to exclude psychological coercion from the definition of involuntary servitude. The citation to *Kozminski* in the definition was qualified by the word ''includes,'' and therefore did not limit the definition of involuntary servitude by excluding psychological coercion. Additionally, in the 2002 interim rule's preamble, DHS specifically said that the TVPA definition of ''forced labor'' was meant to ''expand[] the definition of involuntary servitude contained in *Kozminksi*.'' 67 FR 4784, at 4786. To avoid the potential for confusion, DHS is removing the citation to *Kozminski* from the definition of ''involuntary servitude.''

b. Performing Labor, Services, or Commercial Sex Is Not Necessary

In this interim rule, DHS is clarifying that an individual need not actually perform labor, services, or a commercial sex act to meet the definition of a ''victim of a severe form of trafficking in persons.'' *See* new 8 CFR 214.11(f)(1).

In the 2002 interim rule, DHS explained that it interpreted the term ''severe form of trafficking in persons'' to require a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery). *See* 67 FR at 4786 (construing the statutory definition at 22 U.S.C. 7102(9) and (14)). However, DHS did not discuss how it would address cases involving the means of force, fraud, or coercion and the intended ends of sex trafficking, involuntary servitude, peonage, debt bondage, or slavery, where those illicit

ends are never realized. This 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.

The definition of ''severe form of trafficking in persons'' at 22 U.S.C. 7102(9) includes the phrase ''for the purpose of'' subjection to a form of human trafficking; *i.e.,* the applicant may establish that he or she was recruited, transported, harbored, provided, or obtained through force, fraud, or coercion *for the purpose of* subjecting him or her to a commercial sex act, involuntary servitude, peonage, debt bondage, or slavery.[6] The statutory definition does not require a victim to have actually performed labor, services, or a commercial sex act to be considered a victim of a severe form of trafficking, for T nonimmigrant status eligibility purposes.

The TVPA did not elaborate on the term ''for the purpose of subjection to'' a form of human trafficking. We therefore consider common definitions of the key terms:

- *Purpose:* ''something set up as an object or an end to be attained.'' *See* Merriam-Webster Online Dictionary, 2011, *http://merriam-webster.com.* Also defined as ''an objective, goal, or end; specifically the business activity that a corporation is chartered to engage in.'' *See* Black's Law Dictionary (7th ed. 2000).
- *Subjection:* ''the act of subjecting someone to something.'' *See* Black's Law Dictionary (7th ed. 2000). ''Subjecting'' is also defined as ''bringing under control or dominion'' or ''causing or forcing to undergo or endure.'' *See* Merriam-Webster Online Dictionary, 2011, *http://merriam-webster.com.*

The concept of ''for the purpose of'' speaks to the process of attaining an object or end or the intention to attain something, but not the end result. The inclusion of the ''for the purpose of'' language may reasonably be construed as encompassing situations where labor or commercial sex act has not occurred.

Furthermore, Congress amended the federal criminal code to punish attempts to violate any trafficking-related criminal provision in the same manner as a completed act of trafficking would be punished. *See* TVPA section 112; 18 U.S.C. 1594. The criminal code thus specifically allows for attempts and conspiracy to commit trafficking to be prosecuted. *Id.* The T nonimmigrant status was intended to assist LEAs and provide a tool to, in part, allow for prosecution and stop the traffickers from continuing to enslave human beings. *See* TVPA section 102. Congress intended to provide an incentive for victims to report these crimes by providing for an immigration benefit connected to assistance to LEAs. *Id.*

If victims who have been recruited, harbored, transported, provided, or obtained for the purposes of trafficking (or patronized or solicited in the case of sex trafficking) and have not yet performed any labor, services, or commercial sex acts are not eligible for T nonimmigrant status, Congress's intent in the TVPA to prosecute traffickers would be thwarted. Such an interpretation would hinder victims from coming forward to report trafficking to LEAs and assist with investigations or prosecutions. This could amount to a chilling effect on LEAs' ability to investigate and prosecute trafficking-related crimes. Since the 2002 interim rule, USCIS has seen far fewer filings than expected. However, based on the Federal Government estimates, the small number of filings is not due to a correspondingly small number of victims in the United States. *See U.S. Department of State, Trafficking in Persons Report* (June 2010). Victims already often find it difficult to report trafficking and work with law enforcement; excluding an entire class of potential victims from T nonimmigrant eligibility could thwart the purpose of the visa and hinder prosecutions. A narrow interpretation would also seem to punish a victim who was rescued by an LEA or escaped on their own before any labor, services or commercial sex acts were performed. That result is illogical and inconsistent with Congressional intent. Therefore, those who have been recruited, harbored, transported, provided, or obtained for the purposes of trafficking (or patronized or solicited in the case of sex trafficking) are eligible for T nonimmigrant status in this rule, irrespective of the actual performance of any labor, services or commercial sex acts.

Below, DHS includes a discussion of how victims can meet the evidentiary burden to show victimization when they did not perform labor, services or a commercial sex act.

c. Evidence of Victimization

An applicant can meet the victimization requirement in a number of ways. In the 2002 interim rule, DHS required the submission of primary or secondary evidence to establish victimization. *See* 8 CFR 214.11(f). Primary evidence of victimization included an LEA endorsement on the Declaration of a Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B to the Application for T Nonimmigrant Status,[7] Form I–914, and a grant of Continued Presence from U.S. Immigration and Customs Enforcement (ICE) under 28 CFR 1100.35. Secondary evidence included any credible evidence that demonstrated that the applicant is or has been a victim of a

[6] Note that the labor trafficking prong of the statutory definition of ''severe forms of trafficking in persons'' at 22 U.S.C. 7102(9)(B) directly uses the phrase ''for the purpose of,'' whereas the sex trafficking prong of the statutory definition does not. The sex trafficking prong, however, incorporates the definition of ''sex trafficking'' at 22 U.S.C. 7102(10) (''The term 'sex trafficking' means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act''), which employs the phrase ''for the purpose of.'' Although the statute requires the commercial sex act to be ''induced,'' the statute does not expressly provide that the inducement must be successful in order for a victim to satisfy the definition, nor does the term ''induce'' necessarily require that the desired end be achieved. *See, e.g., United States* v. *Murrell,* 368 F.3d 1283, 1287 (11th Cir. 2004) (''We have previously held that the term 'induce' in [18 U.S.C.] § 2422 is not ambiguous and has a plain and ordinary meaning. . . . By negotiating with the purported father of a minor, Murrell attempted to stimulate or cause the minor to engage in sexual activity with him. Consequently, Murrell's conduct fits squarely within the definition of 'induce.' '') (citations omitted); *cf. NLRB* v. *Associated Musicians of N.Y.,* 226 F.2d 900, 904 (2d Cir. 1955) (holding that ''common understanding of the meaning'' of ''induce,'' as used in the National Labor Relations Act, does not require the inducement to be successful). Moreover, the two prongs of the statutory definition should be read to fit harmoniously as part of ''a symmetrical and coherent statutory scheme.'' *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000). We can discern neither a logical reason nor any congressional design to designate inchoate labor trafficking offenses as ''severe forms of trafficking in persons,'' but not so designate inchoate sex trafficking offenses. To the extent there is ambiguity in the statutes, it is reasonable for the Department to adopt the more expansive conception of ''victim'' for purposes of the T visa regime given the protection and humanitarian aims of the statutory scheme. *Cf., e.g., INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 449 (1987) (construing ''any lingering ambiguities'' in Refugee Act of 1980 so as to ''increase [ ] . . . flexibility'' in protecting refugees in light of statute's humanitarian aims); *Flores* v. *USCIS,* 718 F.3d 548, 554 (6th Cir. 2013) (observing that court's more expansive reading of temporary protected status (TPS) provision is supported by clear congressional intent ''to protect a class of people . . . due to an extraordinary circumstance''); *Akhtar* v. *Burzynski,* 384 F.3d 1193, 1200 (9th Cir. 2004) (observing that ''[i]n determining congressional intent'' when seeking to resolve ambiguities in LIFE Act (''V visa'' program), ''we should adhere to the general rule of construction that when the legislature enacts an ameliorative rule designed to forestall harsh results, the rule will be interpreted and applied in an ameliorative fashion'') (quotations marks omitted).

[7] Currently USCIS Form I–914. Available online at *http://www.uscis.gov/files/form/i-914.pdf.*

severe form of trafficking in persons, including evidence that explained the nonexistence or unavailability of the primary evidence.

As discussed later in this preamble, DHS received comments suggesting that the interim rule made the LEA endorsement mandatory because it was ''primary'' evidence. Commenters also thought the LEA endorsement created an imbalance between the needs of law enforcement and the rights of victims.

DHS amends the regulations in this rule to discontinue giving the two types of evidence different and unequal weight. *See* new 8 CFR 214.11(d)(3). Under new 8 CFR 214.11(d)(2)(ii), USCIS will accept any credible evidence of victimization, including but not limited to an LEA endorsement or a grant of Continued Presence. Following this change, USCIS will review applications where there is no LEA endorsement or grant of Continued Presence and give equal weight to other credible evidence based on the TVPA goals of protecting victims and enhancing law enforcement's ability to investigate and prosecute human trafficking. *See* TVPA section 102. By making the LEA endorsement just one type of evidence of victimization, DHS clarifies a misconception of the LEA role in the T nonimmigrant process. An LEA does not determine if the victim meets the ''severe form of trafficking definition'' under Federal law. That is a determination that is made by USCIS.

Except in instances of sex trafficking involving victims under 18 years of age, severe forms of trafficking in persons must involve both a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery) or intended particular end. *See* new 8 CFR 214.11(f)(1). The applicant must demonstrate both elements, regardless of the evidence submitted.

As noted above, if the victim has not yet actually performed labor, services or a commercial sex act, he or she must establish that the trafficker acted ''for the purpose of'' subjecting the victim to sex trafficking, involuntary servitude, peonage, debt bondage, or slavery. *See* new 8 CFR 214.11(f)(1). The clearest evidence of this purpose would be that the victim did in fact perform labor, services, or commercial sex acts. In the absence of that evidence, a victim can submit any credible evidence from any reliable source that shows the purpose for which the victim was recruited, transported, harbored, provided or obtained. Examples of evidence that may be submitted to demonstrate the trafficker's purpose include, but are not limited to: Correspondence with the trafficker, evidence from an LEA, trial transcripts, court documents, police reports, news articles, and affidavits. *See* new 8 CFR 214.11(f)(1).

2. Physical Presence on Account of Trafficking in Persons

Second, an alien applying for T nonimmigrant status must demonstrate physical presence in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of trafficking. *See* INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II).

In this interim rule, DHS makes the following changes and clarifications:

- If a victim departed from the United States but the victim is allowed reentry into the United States to participate in an investigative or judicial process [8] associated with an act or a perpetrator of trafficking, USCIS will consider the victim to have met the physical presence requirement. New 8 CFR 214.11(g)(1)(v) and (2).
- If the trafficking occurred abroad, but the victim is allowed entry into the United States for the purpose of participating in an investigative or judicial process associated with an act or a perpetrator of trafficking, USCIS will consider the victim to have met the physical presence requirement. New 8 CFR 214.11(g)(1)(v) and (3).
- If the victim escaped a trafficker before an LEA became involved in the matter, DHS will no longer require the victim to show that he or she did not have a clear chance to leave the United States, or an ''opportunity to depart.'' New 8 CFR 214.11(g)(1).
- Where a 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, the victim must show documentation of entry through a legal means such as parole and must submit evidence that the entry is for the purpose of participation in investigative or judicial processes associated with an act or perpetrator of trafficking. New 8 CFR 214.11(g)(3). DHS discusses each change in turn below.

a. LEA Returns a Victim to the United States

DHS received six comments suggesting that if a victim leaves the United States and then returns to the United States for an investigation or prosecution, USCIS should consider the victim to have met the physical presence requirement. DHS agrees that victims who left but who are allowed valid reentry into the United States for the purposes of an investigation or prosecution meet the physical presence requirement. Moreover, TVPRA 2008 amended section 101(a)(15)(T)(i)(II) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(II), to include physical presence on account of the victim having been allowed to enter the United States to participate in investigative or judicial processes associated with an act or perpetrator of trafficking. *See* TVPRA 2008 section 201(a)(1)(C). DHS codifies this change in this rule at new 8 CFR 214.11(b)(2) and 214.11(g)(1)(v).

In the 2002 interim rule, DHS presumed that individuals who have traveled outside of the United States and then returned are not here on account of trafficking in persons. To overcome this presumption, an applicant must show that his or her presence in the United States is the result of continued victimization or a new incident of a severe form of trafficking in persons. *See* 8 CFR 214.11(g)(3). DHS clarifies in this rule that the presumption does not apply when the victim who previously left the United States is allowed reentry in order for the victim to participate in investigative or judicial processes associated with an act or a perpetrator of trafficking. *See* new 8 CFR 214.11(g)(2)(iii).

b. Victim Who Has Been Trafficked Abroad Is Allowed Entry Into the United States

The physical presence language introduced in TVPRA 2008 broadens the physical presence requirement. It applies not only to valid reentry to the United States as discussed above, but also to initial entry to the United States to participate in investigative or judicial processes associated with trafficking.

[8] Congress used different language in INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II), than in INA section 214(o)(7)(B)(i), 8 U.S.C. 1184(o)(7)(B)(i), which specifically requires the LEA to ''certify that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity.'' Congress could have inserted ''prosecution'' in INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II), as it did in INA section 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa), and INA section 214(o)(7)(B)(i), 8 U.S.C. 1184(o)(7)(B)(i), but did not. Instead it used the broader concept of ''judicial processes.'' DHS does not interpret the phrase ''judicial processes'' as referring only to criminal investigations or prosecutions, nor will DHS require LEA ''sponsorship.'' For example, if DHS were to parole a victim to pursue civil remedies associated with an act or perpetrator of trafficking, *see, e.g.,* 18 U.S.C. 1595, the applicant may potentially meet this physical presence requirement. DHS does not interpret this provision to require the victim enter the United States through an LEA sponsored entry, such as Significant Public Benefit Parole, although practically use of this parole may be the most common way these applicants enter the United States.

For these types of cases, DHS has identified two primary examples where a victim may qualify for T nonimmigrant status:

- When trafficking occurred in the United States or the victim was physically present in the United States on account of trafficking, but the victim has left the United States and is allowed valid reentry into the United States for participation in investigative or judicial processes associated with trafficking; or
- When trafficking occurred outside the United States, but the victim is allowed valid entry into the United States in order to participate in investigative or judicial processes associated with trafficking.

DHS anticipates limited types of cases when trafficking occurred outside the United States that could lead to eligibility for T nonimmigrant status. One type could be when criminal activities occur outside the United States, but the relevant statutes provide for extraterritorial jurisdiction, and the activity involved would meet the Federal definition of ''severe forms of trafficking in persons.'' Statutes establishing extraterritorial jurisdiction generally require some nexus between the criminal activity and the United States' interests. For example, under 18 U.S.C. 2423(c), the United States has jurisdiction to investigate and prosecute cases involving citizens or nationals who engage in illicit sexual conduct outside the United States, such as sexually abusing a minor. This offense is referred to as ''sex tourism.''

Sex tourism often interplays with crimes of human trafficking. According to the Federal definition of ''severe forms of trafficking in persons,'' where a minor (*i.e.,* a person under the age of 18) engages in a commercial sex act, that minor meets the definition without having to show force, fraud, or coercion. *See* TVPA section 103(9), 22 U.S.C. 7102(9). The TVPA definition of ''commercial sex act'' is any sex act on account of which anything of value is given to or received by any person. TVPA section 103(4), 22 U.S.C. 7102(4). Violations of the sex tourism statute could involve commercial sex acts involving a minor. Such a minor would also meet the Federal definition of a victim of ''severe forms of trafficking in persons,'' and if the victim is allowed valid entry into the United States in order to participate in investigative or judicial processes associated with trafficking, the victim may qualify for T nonimmigrant status.

Even absent extraterritorial jurisdiction, there are other cases which could lead to eligibility for T nonimmigrant status when the trafficking occurred outside the United States. DHS understands that the nature of human trafficking crimes often means that traffickers operate internationally and may commit crimes in a number of countries. If the victim is allowed valid entry into the United States in order to participate in investigative or judicial processes, the victim could potentially qualify for T nonimmigrant status. DHS notes that the victim would need to meet every eligibility requirement in order to qualify for T nonimmigrant status and DHS adjudicates every application on a case-by-case basis.

Even before the statutory expansion of the physical presence requirement, it was possible that trafficking that occurred abroad could qualify a victim for T nonimmigrant status. INA section 101(a)(15)(T)(i)(II); 8 U.S.C. 1101(a)(15)(T)(i)(II), allows victims at a port of entry to qualify, so long as they can show that their presence at the port is on account of trafficking. This means that the recruitment, harboring, transportation, provision, or obtaining of a person for a severe form of trafficking that occurs abroad and results in the person's presence at a port of entry of the United States qualifies a victim for T nonimmigrant status. INA section 101(a)(15)(T)(i)(II); 8 U.S.C. 1101(a)(15)(T)(i)(II). DHS notes that not every instance of trafficking occurring abroad would qualify a victim for T nonimmigrant status. The victim must establish that he or she is now in the United States or at a port of entry on account of trafficking or the victim was allowed valid entry into the United States to participate in a trafficking-related investigation or a prosecution or other judicial process. If a victim of trafficking abroad makes his or her way to the United States and the reason is not related to or on account of the trafficking and the victim was not allowed valid entry to participate in an investigative or judicial process related to trafficking or a trafficker, this victim cannot meet the physical presence requirement and would not be eligible for T nonimmigrant status on account of that trafficking incident.

c. Removal of the ''Opportunity To Depart'' Requirement

DHS is also amending the former ''opportunity to depart'' aspect of the physical presence requirement. DHS provided in the 2002 interim rule that the general physical presence requirement can cover applicants who are currently being trafficked, were recently liberated from trafficking, or were subject to trafficking in the past. For those who escaped a trafficker before an LEA became involved, DHS required in the 2002 interim rule that the applicant show that, evaluated in light of the applicant's circumstances, he or she did not have a clear chance to leave the United States, or an ''opportunity to depart.'' 8 CFR 214.11(g)(2). This requirement was intended to ensure that the applicant's continuing presence in the United States is directly related to the trafficking.

Most commenters on the subject of physical presence objected to USCIS requiring a victim liberated from traffickers to demonstrate that his or her continuing presence in the United States is directly related to the trafficking. Commenters also opposed the requirement that a victim who escaped the traffickers and remains in the United States must show he or she had no clear chance to leave, asserting it is burdensome, vague, and may frustrate congressional intent to protect victims.

Although DHS has tempered this requirement by looking at the opportunity to depart in light of the individual's circumstances such as trauma, injury, and lack of resources, DHS agrees that this requirement is unnecessary and may be counterproductive. DHS therefore is removing the requirement that an applicant must show that he or she did not have a clear chance to leave (*i.e.,* ''opportunity to depart'') the United States.

Notwithstanding this change, every applicant must still establish that they are physically present in the United States on account of trafficking. Section 101(a)(15)(T)(i)(II) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(II), requires that a victim be physically present ''on account of such trafficking.'' Unlike the requirement of victimization, which is phrased in both the present and past tense, the physical presence requirement is only phrased in the present tense. DHS interprets this language to require a consideration of the victim's current situation, and a consideration of whether the victim can establish that his or her current presence in the United States is on account of trafficking. A victim who is liberated from trafficking is not exempt from the statutory requirement to show that his or her presence is on account of trafficking. Applicants who have not performed labor or services, or a commercial sex act also need to demonstrate physical presence in the United States on account of trafficking.

d. Evidence of Physical Presence on Account of Trafficking in Persons

For those victims demonstrating physical presence on account of ''the alien having been allowed entry into the United States,'' DHS interprets this language to require the victim's entry through a lawful means. *See* INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II); new 8 CFR 214.11(g)(3). The victim must provide evidence of the lawful entry. New 8 CFR 214.11(g)(3).

DHS does not interpret the phrase ''judicial processes'' as referring only to criminal investigations or prosecutions, nor will DHS require LEA ''sponsorship.'' For example, if DHS were to parole a victim to pursue civil remedies associated with an act or perpetrator of trafficking, *see, e.g.,* 18 U.S.C. 1595, the applicant may potentially meet this physical presence requirement. DHS does not interpret this provision to require the victim to enter the United States through an LEA sponsored entry, such as Significant Public Benefit Parole (SPBP).

Practically, SPBP may be the most common way these applicants enter the United States, because United States law enforcement may investigate or prosecute the trafficking crime, and law enforcement could sponsor an individual for SPBP for access to United States courts that would likely have jurisdiction over the related trafficking incidents. In these cases, the victim is in the United States on account of trafficking because DHS facilitated the victim's entry into the United States for participation in an investigation or prosecution.

The lawful entry must be connected to the victim's participation in an investigative or judicial process associated with an act or perpetrator of trafficking. The victim must include evidence of the lawful entry and of how he or she entered to participate in an investigative or judicial process associated with an act or perpetrator of trafficking. Evidence could include a Form I–914 Supplement B, or other evidence from an LEA to describe the victim's participation. The victim can also provide other credible evidence, such as a personal statement, or attach supporting documentation.

When the physical presence requirement is met by the victim's entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking, the victim must still establish his or her eligibility for all the other requirements for T nonimmigrant status. The compliance with the any reasonable request for assistance requirement would not be met simply by the entry into the United States with the intent to assist the LEA, but by the victim actually complying with any reasonable request by an LEA or meeting an exception to the compliance requirement. The requirement to comply with any reasonable request is an ongoing requirement, meaning that applicants must continue to cooperate with the LEA from the time of their initial application through the time they apply for adjustment of status to lawful permanent resident. *See* new 8 CFR 214.11(h)(1) and (m)(2)(ii)–(iii); 8 CFR 245.23(a)(6)(i). Failure to comply with any reasonable request from the LEA can result in revocation of the T nonimmigrant status. *See* new 8 CFR 214.11(m)(2)(ii)–(iii). However, if the LEA chooses not to pursue an investigation or prosecution, that decision will not affect the applicant's eligibility so long as the applicant complied with any reasonable LEA request.

DHS notes that victims must also meet the other eligibility requirements, including the requirement that the victim establish that she or he would suffer extreme hardship involving unusual and severe harm upon removal from the United States. 8 CFR 214.11(i). The victim must include evidence of extreme hardship following the guidelines laid out in 8 CFR 214.11(i). One example of where this requirement may be met when the victimization occurred abroad is if the traffickers abroad are now threatening the victim or the victim's family because the victim is no longer under the trafficker's control or because the victim is cooperating with an LEA or judicial process in the United States. DHS will make ''extreme hardship'' determinations in accordance with the law and DHS policy, as discussed below in this preamble.

3. Compliance With Any Reasonable Request

Third, a victim 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. *See* INA section 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa); new 8 CFR 214.11(b)(3). A ~~''reasonable request for assistance'' is defined as ''a reasonable request made by an LEA or prosecutor to a victim of a severe form of trafficking in persons to assist an LEA in the 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.'' 8 CFR 214.11(a)~~.

In this rule, DHS makes the following changes and clarifications:

- Expanding the factors that DHS may consider in the totality of the circumstances test to determine the ''reasonableness'' of LEA requests. New 8 CFR 214.11(h)(2).
- Clarifying that DHS will continue to use a ''comparably situated crime victims'' standard to determine reasonableness, rather than a ''subjective trafficked persons'' standard.
- Clarifying that the proper standard to determine ''reasonableness'' is whether the LEA request was reasonable, not whether the victim's refusal was unreasonable. New 8 CFR 214.11(m)(2)(ii).
- Raising the age at which the applicant must comply with any reasonable request by an LEA for assistance in an investigation or prosecution of acts of trafficking in persons from 15 years to 18 years of age. New 8 CFR 214.11(h)(4)(ii).
- According no special weight to an LEA endorsement and moving to an ''any credible evidence'' standard. New 8 CFR 214.11(h)(3).
- In cases where the applicant is unable, due to physical or psychological trauma, to cooperate with any reasonable request by an LEA, exempting the applicant from the requirement to comply. New 8 CFR 214.11(h)(4)(i).

DHS discusses each change in turn below.

a. Totality of the Circumstances Test To Determine the ''Reasonableness'' of LEA Requests

In the 2002 interim rule, DHS accounted for situations in which a request made to a victim was not reasonable. *See* 8 CFR 214.11(a). Under that rule, the reasonableness of a request depended on the totality of the circumstances, taking into account general law enforcement and prosecutorial practices, the nature of victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims. *Id.*

In the 2002 interim rule, DHS sought specific comments on this requirement. Of the total 191 public comments received, 37 comments related to some aspect of this issue. Fifteen commenters commended DHS for adopting a totality

of the circumstances test to determine the reasonableness of an LEA request and for balancing law enforcement needs and the protection of victims. Some commenters appreciated the comprehensiveness of the totality of the circumstances test. Some commenters also provided a broad, non-exhaustive list of factors to be considered when implementing the totality of the circumstances test, including fear of retribution against family members outside the United States for whom foreign law enforcement cannot or will not provide protection. Six commenters also thought the regulations were too vague regarding how long a victim must comply with any reasonable requests for assistance. The commenters urged DHS to take into account circumstances that may delay or limit an applicant's compliance with LEA requests when determining whether an applicant meets the compliance requirement. These circumstances could include responses to trauma and psychological issues, delays necessary to ensure the safety of the applicant or the applicant's family members, delays or difficulties accessing social services, and the time it takes an applicant to build trust with law enforcement.

DHS appreciates the public's input with respect to the ''reasonable requests for assistance'' requirement. DHS strives to implement the aims of the TVPA while striking the proper balance between the law enforcement need to investigate and prosecute and the need to ensure that victims are not overburdened. DHS includes in this rule almost all of the commenters' suggested factors to consider when evaluating the reasonableness of an LEA request, including factors related to time. *See* new 8 CFR 214.11(h)(2). DHS will evaluate the totality of the circumstances using a broad range of factors, and is not limited by those listed in this rule. *Id.*

b. ''Comparably-Situated Crime Victims'' Standard

In the 2002 interim rule, DHS noted that it is 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, thus articulating a ''comparably-situated crime victims'' standard. 67 FR 4784, at 4788. Some commenters suggested, however, that in the application of the test, DHS could go further by replacing the ''comparably-situated crime victims'' standard with a ''subjective trafficked person'' standard that would take into account the unique situation of the particular trafficking victim. DHS has determined, however, that a ''subjective trafficked persons'' standard could actually be narrower than the existing ''comparably-situated crime victims.'' 67 FR 4784, at 4788. DHS also notes that many factors of the totality of the circumstances test are unique to trafficking victims.

The definition of ''severe forms of trafficking in persons'' can be limiting in that elements of force, fraud, and coercion are required. By adopting a ''subjective trafficked persons'' standard, USCIS would be bound by the federal trafficking definition. The existing comparably-situated crime victim standard can go beyond the scope of the federal trafficking definition to victims of other crimes, such as domestic violence. Law enforcement practice regarding sensitivity to domestic violence victims is long standing and has evolved over the course of several decades. DHS did not limit who it envisioned as a comparably-situated crime victim, intending to keep the evaluation of reasonableness as broad as possible. After considering the comments, DHS has determined that it will retain the reasonableness test and use the comparably-situated crime victim standard in its application, as it properly focuses on the protection of victims and provides more flexibility than the alternative suggested by commenters.

In addition, DHS notes that when comments on the 2002 interim rule were submitted, Congress had not yet added the trauma exemption from compliance with any reasonable requests. In part because of the trauma exemption that Congress enacted following the 2002 interim rule and that is discussed later in this Preamble, DHS sees no need to amend current practice.

c. Proper Standard Is the Reasonableness of the LEA Request

DHS received six comments asserting that USCIS inconsistently implements the statutory requirement that a victim must comply with ''any reasonable request for assistance'' by sometimes trying to determine whether the victim's refusal to assist was reasonable, instead of whether the request itself was reasonable. The commenters pointed out that the 2002 interim rule discusses the victim's refusal to assist an LEA at page 4788 under, ''What is the Law Enforcement Agency Endorsement?'' and at 8 CFR 214.11(s)(1)(iv), *Grounds for notice of intent to revoke.* Commenters also suggested the word ''reasonable'' should be added to Part D (Cooperation of Victim) checklist item of the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B. The item would then read that the applicant ''has complied with reasonable requests for assistance . . . .''

DHS agrees that the statute focuses on whether an LEA request was reasonable and not whether a victim unreasonably refused to assist. (DHS notes, however, that whether a request is reasonable can depend on victim-specific factors, such as whether the victim and the victim's family are sufficiently safe or emotionally able to assist law enforcement at any given time.) DHS is amending the revocation standards to reflect the statutory language. New 8 CFR 214.11(m)(2)(iii). DHS has also revised Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B to the Application for T Nonimmigrant Status, Form I–914, to add the term ''reasonable'' to refer to requests made to a victim.

d. Minors Exempt From Compliance With Any Reasonable Request

DHS received eight comments specific to minors and the requirement for compliance with any reasonable request. These commenters proposed that DHS consider the applicant's age and any developmental delays for minors above the age of 15. Persons under the age of 15 were not required to comply with any reasonable requests for assistance under the 2002 interim rule. The commenters requested special consideration for those between the ages of 15 and 18.

Since the 2002 interim rule, the statute has been amended to exempt from this requirement children under 18 years of age and those who cannot comply with a request for assistance due to physical or psychological trauma. *See* INA section 101(a)(15)(T)(i)(III)(bb) and (cc), 8 U.S.C. 1101(1)(15)(T)(i)(III)(bb) and (cc); new 8 CFR 214.11(b)(3)(i) and (ii). Therefore, there is no longer a population of 15 to 18 year olds to which this comment would apply. *See* new 8 CFR 214.11(b)(3)(i) and 214.11(h)(4)(ii).

e. Evidence of Compliance With Any Reasonable Request

Under the 2002 interim rule, evidence of compliance was weighed as primary evidence or secondary evidence, similar to the evidentiary requirement for victimization. *See* 8 CFR 214.11(h). An LEA endorsement was primary evidence of compliance with reasonable requests. *Id.* Secondary evidence was any credible evidence submitted to explain the nonexistence or unavailability of the primary evidence and to demonstrate

compliance with any reasonable request. *Id.*

DHS received 10 comments relating to the creation of an LEA endorsement, an optional part of an application for T nonimmigrant status. Commenters believed that in practice the endorsement is mandatory since it is primary evidence, and that it creates an imbalance between the needs of law enforcement and the rights of victims. Commenters asserted that the use of an LEA endorsement is not specifically required by statute. Furthermore, commenters believed that Congress did not intend for the LEA endorsement to be required because an endorsement was required in the U nonimmigrant statute concerning victims of certain qualifying criminal activity under INA section 214(p)(1), which includes human trafficking, but not specifically required in the T nonimmigrant statute. Commenters also suggested allowing State or local LEAs to issue an endorsement in addition to Federal LEAs.

DHS is amending the regulations with this rule to discontinue the ''primary'' and ''secondary'' evidentiary distinctions in favor of an ''any credible evidence'' standard. *See* new 8 CFR 214.11(d)(2)(ii) and (3). Under new 8 CFR 214.11(h)(3), USCIS will accept any credible evidence of compliance with reasonable requests, including, but not limited to, an LEA endorsement. *See* new 8 CFR 214.11(d)(3). DHS notes that under the ''any credible evidence'' standard, the absence of an LEA endorsement will not adversely affect an applicant who can meet the evidentiary burden with the submission of other evidence of sufficient reliability and relevance.

Even though the statute creating T nonimmigrant status did not explicitly require an LEA endorsement, DHS considers such an endorsement a useful and convenient form of evidence, among other types of credible evidence. In TVPRA 2003, Congress added section 214(o)(6) of the INA, 8 U.S.C. 1184(o)(6), which instructs USCIS to consider statements from State and local LEAs that a victim has complied with any reasonable requests for assistance in investigations or prosecutions where trafficking appears to have been involved. *See* TVPRA 2003 section 4(b)(2)(B). TVPRA 2003 also added State and local LEAs to the compliance requirement at section 101(a)(15)(T)(i)(III)(aa) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa). *Id.* TVPRA 2003 endorsed and codified the LEA endorsement process by directing USCIS to consider statements from State and local LEAs. *See* TVPRA 2003 section 4(b)(2)(B), INA section 214(o)(6), 8 U.S.C. 1184(o)(6).

In creating the T nonimmigrant status, Congress intended to provide law enforcement with a tool to combat and prosecute human trafficking and to protect victims of human trafficking. DHS intends to equally balance the goals of law enforcement and victim protection by moving to an ''any credible evidence'' standard. DHS has amended the evidentiary standard as described above.

This change to an ''any credible evidence'' standard also clarifies some misconceptions of the LEA role in the T nonimmigrant process. Signing an endorsement does not grant T nonimmigrant status, nor does it lead to automatic approval. Only USCIS can grant T nonimmigrant status after reviewing evidence and completing security and background checks. An ''any credible evidence'' standard may assist LEAs in better understanding their role in the T nonimmigrant process. This new standard may also result in LEAs being more likely to sign endorsements, increasing the likelihood that T nonimmigrant status will be utilized as the law enforcement tool that it is intended to be. Even in the absence of an LEA endorsement, in order to determine whether a victim meets the ''compliance with any reasonable request'' requirement, DHS may contact the LEA that is involved in the case at its discretion to document the victim's compliance (or inability to comply) with reasonable requests for assistance.

Consistent with DHS' adoption of an any credible evidence standard, this rule also expands the definition of ''Law Enforcement Agency (LEA)'' to allow for any Federal, State or local law enforcement agency, prosecutor, judge, labor agency, or other authority that has responsibility for the detection, investigation, and/or prosecution of severe forms of trafficking in persons to complete an LEA endorsement. New 8 CFR 214.11(d)(2); 8 CFR 214.11(h)(3). Federal LEAs include but are not limited to: U.S. Attorneys' Offices, Civil Rights Division, Criminal Division, U.S. Marshals Service, Federal Bureau of Investigation (Department of Justice); U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP); Diplomatic Security Service (Department of State); and U.S. Department of Labor. State and local LEAs include but are not limited to: Police departments, sheriff's offices, district attorney's offices, human rights commissions, departments of labor, and child protective services. An agency that has the responsibility to detect severe forms of trafficking in persons may be an LEA even if the agency does not investigate or prosecute acts of trafficking.

Further, commenters suggested that the act of filing an application for T nonimmigrant status amounts to contacting law enforcement and DHS should require no additional action. At a minimum, commenters asked USCIS to ensure that Federal LEAs issue LEA endorsements without undue delay if a prosecution does not proceed as originally charged, a prosecution moves forward for a lesser offense, or a State or local prosecution proceeds in lieu of a Federal prosecution.

Since the regulations were promulgated, INS was dissolved and its responsibilities transferred to several components of DHS. Unlike the Department of Justice (DOJ) or law enforcement components within DHS, such as ICE, USCIS has no authority to investigate or prosecute trafficking. Therefore, applying for T nonimmigrant status with USCIS is not the same as contacting an LEA to report a trafficking crime. DHS cannot assure applicants that LEAs will issue endorsements, but has clarified with this rule that a formal investigation or prosecution is not required in order for an LEA to complete an endorsement. *See* new 8 CFR 214.11(d)(3)(i). DHS has created awareness materials and training for LEAs that describe the LEA role in the process and emphasize that a formal investigation or prosecution is not required to complete an endorsement.

DHS is removing language that described how to obtain an LEA endorsement if the victim has not had contact with an LEA. *See* former 8 CFR 214.11(f)(4). That provision directed applicants to contact the DOJ hotline to file a complaint and be referred to an LEA. This level of specificity is overly-detailed for regulations and it does not provide sufficient flexibility to adapt to changes in the future. Since the publication of the 2002 regulations, DHS and many other Federal agencies and nongovernmental partners have engaged in various public education campaigns and posted information on Web sites, which are better vehicles than regulations for conveying this type of guidance.

Finally, the 2002 interim rule created a requirement that the LEA endorsement be signed by a supervising official responsible for the detection, investigation or prosecution of severe forms of trafficking in persons. *See* 8 CFR 214.11(f)(1). This interim final rule maintains that requirement at new 8 CFR 214.11(d)(3)(i). USCIS did not receive any comments on this requirement in connection with the

2002 interim rule. More recently, however, USCIS has received public feedback on a similar requirement in the U nonimmigrant status process. USCIS will consider any changes related to the U nonimmigrant status process in a separate rulemaking.

f. Trauma Exception

Legislation enacted since the publication of the 2002 interim rule exempts victims who cannot cooperate with an LEA request due to physical or psychological trauma from compliance with the any reasonable request requirement. *See* INA section 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb); new 8 CFR 214.11(b)(3)(ii). DHS adds this statutory change in this rule and provides guidance on how an applicant can demonstrate the requisite trauma. New 8 CFR 214.11(h)(4)(i). DHS welcomes comments on how it should evaluate whether an applicant cannot comply with a request for cooperation from an LEA due to trauma. DHS will require that an applicant submit an affirmative statement describing the trauma, and any other credible evidence. Other supporting evidence may include a signed attestation as to the victim's physical or psychological indicators of trauma from a person qualified to make such determinations in the course of his or her job, such as a medical professional, social worker, or victim advocate, or any medical, psychological, or other records that are relevant to the trauma. *See* INA section 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb); new 8 CFR 214.11(h)(4)(i). In order to show that the person providing the signed attestation is qualified to make such a determination in the course of his or her job, the applicant could provide a description of the person's qualifications or education or a description of the person's contact and experience with the applicant.

Although a victim's affidavit alone may suffice to satisfy the victim's evidentiary burden, USCIS encourages applicants to submit additional evidence that will assist them in establishing the trauma exception from the general requirement that they comply with any reasonable LEA request for assistance. In order to determine whether a victim meets the trauma exception, DHS may contact the LEA that is involved in the case at its discretion to document the victim's inability to assist in the law enforcement process. *See* new 8 CFR 214.11(h)(4)(i). In these trauma exception cases, the applicant is not required to have had contact with an LEA, including reporting the trafficking. In those cases with no LEA contact, DHS will not contact an LEA because there will not be an LEA involved with the applicant's case.

Congress instructed DHS to consult with DOJ as appropriate when adjudicating the trauma exception from compliance with reasonable LEA requests. *See* INA section 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb). USCIS already collaborates with DOJ on certain T nonimmigrant matters and it will follow a similar process for the trauma exception. USCIS may consult with DOJ regarding the trauma exception when the underlying criminal case is being handled by DOJ.

4. Extreme Hardship Involving Unusual and Severe Harm Upon Removal

The fourth and final eligibility requirement for T nonimmigrant status is that the applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States. *See* INA section 101(a)(15)(T)(i)(IV), 8 U.S.C. 1101(a)(15)(T)(i)(IV); new 8 CFR 214.11(b)(4). When evaluating whether removal would result in such extreme hardship, USCIS considers a number of factors and uses an ''any credible evidence'' standard. *See* 8 CFR 214.11(i)(3); new 8 CFR 214.11(d)(5).

In this rule, DHS clarifies two points regarding the extreme hardship requirement based on public comment:

- Minors are not exempt from the extreme hardship requirement.
- The applicant bears the burden of proof for the extreme hardship requirement.

DHS discusses these in turn below.

Nine commenters suggested a rule that minors would always suffer extreme hardship involving unusual and severe harm on removal.

Congress did not exempt minors from the extreme hardship requirement. *See* INA section 101(a)(15)(T)(i)(IV), 8 U.S.C. 1101(a)(15)(T)(i)(IV). In contrast, Congress did exempt minors from compliance with reasonable LEA requests. *See* INA section 101(a)(15)(T)(i)(III)(cc), 8 U.S.C. 1101(a)(15)(T)(i)(III)(cc). As noted above, Federal law also defines ''severe forms of trafficking in persons'' differently with respect to victims under 18 years old than with respect to victims 18 years and older. *See* 22 U.S.C. 7102(9)(A). Consistent with the different treatment of minors with regard to certain eligibility criteria in the statute, DHS will not adopt a per se rule that minors would suffer extreme hardship. USCIS, however, considers an applicant's age, maturity, and personal circumstances (among other factors) when evaluating the extreme hardship requirement. *See* new 8 CFR 214.11(i)(2).

One commenter stated that it is unrealistic to place the burden of proof on the applicant to show extreme hardship. This comment appears to be based on a lack of general understanding of USCIS immigration benefit processing. The applicant bears the burden of proving he or she is eligible to receive any immigration benefits requested; the government is not required to prove an applicant's ineligibility. *See* INA section 291, 8 U.S.C. 1361; *Matter of Chawathe,* 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Brantigan,* 11 I&N Dec. 493 (BIA 1966); 8 CFR 103.2(b)(1). The applicant may document his or her extreme hardship through a personal statement or other evidence. New 8 CFR 214.11(i)(3). USCIS can consider relevant country condition reports and any other public or private sources of information, when appropriate. *Id.* By allowing such a broad ''any credible evidence'' standard, including the applicant's own statement, USCIS is recognizing and taking into account difficulties applicants may encounter in obtaining certain documents.

B. Application Requirements

1. Filing the Application

An applicant must submit a complete Application for T Nonimmigrant Status, Form I–914, in accordance with the form instructions. *See* new 8 CFR 214.11(d)(1). DHS is making the following changes and clarifications in this rule:

- Removing the filing deadline.
- Amending the related forms to reflect public comments.
- Continuing to require proof of identity and relationship for family members of minor applicants. New 8 CFR 214.11(k)(3).
- Amending the law enforcement referral language to account for the creation of DHS. New 8 CFR 214.11(o).

DHS discusses each of these in turn.

a. Filing Deadline

DHS required anyone victimized prior to October 28, 2000, to apply for T nonimmigrant status before January 31, 2003. 8 CFR 214.11(d)(4). DHS received seven comments against the adoption of this filing deadline. Commenters noted that Congress did not impose a deadline and further noted T nonimmigrant status is meant for a person who is or has been a victim of severe form of trafficking in persons. Commenters also

thought the deadline would hinder victims from coming forward and receiving protection, as well as LEA efforts to combat trafficking.

DHS acknowledges that Congress did not impose a filing deadline. At the time of the 2002 interim rule, DHS anticipated a large volume of applications for T nonimmigrant status. The deadline was intended to prevent application backlogs. T nonimmigrant application volume has not reached expected levels. To protect as many victims as possible, DHS is removing the deadline in this interim rule. As of January 18, 2017, USCIS will accept applications regardless of when the applicant was victimized.

b. Form-Related Changes

DHS received 11 specific comments about particular fields on the Application for T Nonimmigrant Status, Form I–914 and the Application for Family Member of T–1 Recipient, Form I–914 Supplement A. Commenters asked USCIS to change a question on victimization to allow for the past tense, remove a question on public benefits, and add a safe address for the eligible family members of an approved T–1 nonimmigrant.

USCIS has updated the Application for T Nonimmigrant Status, Form I–914, and Application for Family Member of T–1 Recipient, Form I–914 Supplement A, several times since the publication of the 2002 interim rule. The current version of the form allows victimization in the past tense. Forms I–914 and Supplement A for T nonimmigrant derivatives contain a safe address. In addition, the application no longer contains a question about public benefits. In the Paperwork Reduction Act (PRA) section of this rule, DHS requests public comments on the revised Application for T Nonimmigrant Status, Form I–914; Application for Family Member of T–1 Recipient, Form I–914 Supplement A; and Declaration of Law Enforcement Office for Victim of Trafficking in Persons, Form I–914 Supplement B. 44 U.S.C. 3507. DHS is renaming the Application for Family Member of T–1 Recipient, Form I–914 Supplement A. DHS is removing the phrase ''immediate family member'' because, as explained in this preamble, the derivative categories have been statutorily expanded to include family members who are not traditionally thought of as ''immediate family members''

Four comments suggested that USCIS should return incomplete forms to the applicant with a rejection notice and allow an applicant to re-file using the process USCIS established for VAWA self-petitioners. USCIS is not aware of the process for VAWA self-petitioners to which the commenter is referring. Nonetheless, 8 CFR 103.2(a) requires benefit requests to be executed and filed in accordance with the form instructions and provides that a benefit request that is not executed may be rejected. Accordingly, USCIS properly returns substantially incomplete forms (including U nonimmigrant petitions and VAWA self-petitions) to the petitioner, who is instructed in the rejection notice that they may correct the deficiencies that are noted and refile their request.

c. Proof Required for Family Members of a Minor Applicant

One commenter also asserted that the standards for proving identity and eligibility for eligible family members of a minor principal are too burdensome and recommended approving the eligibility of family members of a minor principal regardless of the incomplete application. DHS declines to accept the commenter's proposal because all applicants for immigration benefits generally must submit all required initial evidence, and supporting documentation, with an application completed according to form instructions. 8 CFR 103.2(a). There are already allowances in regulations if original documentation to prove age and identity are not available. 8 CFR 103.2(b)(2) (permitting the submission of secondary evidence to overcome the unavailability of primary evidence, and affidavits to overcome the unavailability of both primary and secondary evidence).

In addition, many eligible family members are outside the United States and need to be processed by the Department of State (DOS) at a United States embassy or consulate in order to receive a T visa to apply for admission to the United States. These eligible family members must prove identity, age, and relationship during consular processing according to DOS standards. DHS does not believe it would be beneficial to applicants for DHS to relax the standard USCIS requires to prove identity because that may result in a situation where USCIS approves a Form I–914, but DOS will not grant a T visa for entry to the United States.

d. Referral to Law Enforcement and Department of Health and Human Services

One commenter also recommended that a filing from a victim under 18 years of age should trigger a proactive investigation by law enforcement and experts in child protective services. USCIS cannot initiate this type of investigation because USCIS is not a law enforcement agency, but the 2002 interim rule contained provisions for referring cases to investigators. *See* 8 CFR 214.11(v). DHS is amending this language to account for the creation of DHS and will instruct USCIS officers who come into contact with a possible victim who is not already working with an LEA to refer the case to ICE officials responsible for victim protection, trafficking investigations and prevention, and deterrence, as appropriate. *See* new 8 CFR 214.11(o).

Furthermore, child protective services are generally under the jurisdiction of States, and USCIS cannot require States to investigate claims of crimes or abuse against children. TVPRA 2008 vested responsibility for the care and custody of unaccompanied alien children with the U.S. Department of Health and Human Services (HHS).[9] *See* TVPRA 2008 section 235(b)(1), 8 U.S.C. 1232(b)(1). Federal agencies must notify HHS upon apprehension or discovery of an unaccompanied alien child or any claim or suspicion that an individual in custody is under 18 years of age. *See* TVPRA 2008 section 235(b)(2), 8 U.S.C. 1232(b)(2). TVPRA 2008 also provided that federal agencies would notify HHS to facilitate the provision of public benefits to trafficking victims. Minors are eligible to receive federally funded benefits and services to the same extent as a refugee as soon as they are identified by HHS as a possible victim of trafficking, unlike adults who are eligible for public benefits only upon a grant of continued presence by DHS under 28 CFR 1100.35, a bona fide determination, or approval of T nonimmigrant status. Federal officials also must notify HHS upon discovering that a person under the age of 18 may be a victim of a severe form of trafficking in persons to facilitate provision of interim assistance to the minor victim. *See* TVPRA 2008 section 212(a)(2), 22 U.S.C. 7105(b)(1)(H). Upon receiving a T nonimmigrant status application from a minor, USCIS will notify HHS in order for the minor to be advised of public benefits that may be available as a minor victim of trafficking. *See* new 8 CFR 214.11(d)(1)(iii).

[9] An unaccompanied alien child is defined as one who has no lawful immigration status in the United States, has not attained 18 years of age, and has no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. 279(g)(2).

2. Initial Evidence

All applicants for immigration benefits generally must submit all required initial evidence, and supporting documentation, with an application completed according to form instructions. 8 CFR 103.2(a). DHS is amending what constitutes acceptable initial evidence that must accompany the application for T nonimmigrant status. *See* new 8 CFR 214.11(d)(2). DHS will allow the following initial evidence:

- A signed statement in the applicant's own words describing the victimization and cooperation with any LEA reasonable request for assistance or applicable exemptions from cooperation with such an LEA request, and any other eligibility requirements;
- Evidence that the applicant is or has been a victim of a severe form of trafficking in persons;
- Evidence that the applicant meets the physical presence requirement;
- Evidence of any one of the following:
  - The applicant has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of crime where acts of trafficking are at least one central reason for the commission of that crime;
  - The applicant is under 18 years of age; or
  - The applicant is unable to cooperate with a reasonable request due to physical or psychological trauma;
- Evidence that the applicant would suffer extreme hardship involving unusual and severe harm if removed from the United States; and
- If the applicant is inadmissible, an Application for Advance Permission to Enter as Nonimmigrant, Form I–192, and supporting evidence to explain the inadmissibility.

As discussed above, DHS is removing the provisions requiring USCIS to weigh evidence as primary or secondary, and will accept any credible evidence to demonstrate each eligibility requirement for T nonimmigrant status. *See* new 8 CFR 214.11(d)(2)(ii). USCIS will determine the credibility and weight of evidence at its sole discretion. *See* new 8 CFR 214.11(d)(5). As is the case in all other immigration benefits, the applicant bears the burden of establishing eligibility. *Id.*

3. Bona Fide Determinations

Current regulations provide for USCIS to conduct an initial review of each T nonimmigrant status application package to determine if the application is a bona fide application. An application will be determined to be bona fide if the application is complete and ready for adjudication. Among other requirements, the application must include biometrics, background checks, and prima facie evidence for each eligibility requirement. *See* 8 CFR 214.11(k). In conjunction with this pre-adjudication bona fide determination review, USCIS may grant the applicant deferred action when the application for T nonimmigrant status is bona fide, which allows the applicant to request employment authorization. *See* Memorandum from Stuart Anderson, Executive Associate Commissioner, Office of Policy and Planning, INS, Deferred Action for Aliens with Bona Fide Applications for T Nonimmigrant Status (May 8, 2002).[10]

One commenter recommended that USCIS make a bona fide determination and grant deferred action within 90 days of the receipt of the application.

Since 2002, USCIS has received fewer applications for T nonimmigrant status than were expected. USCIS generally adjudicates the merits of T nonimmigrant applications as quickly as it can make a bona fide determination. Nevertheless, in the event of processing backlogs, DHS recognizes that a bona fide determination may offer a victim of trafficking some protection for immigration status purposes, employment authorization, and the availability of public benefits through HHS.

In reference to a 90-day deadline, USCIS cannot guarantee a bona fide determination within 90 days in every case because the bona fide determination is dependent on the unique circumstances of each case, and the completion of biometric and background checks. Typically, these checks will be completed within 90 days, but occasionally the checks will take longer than 90 days. The completion of biometric and background checks depends on several factors, such as the schedule of the applicant, the workload of the Federal Bureau of Investigation (FBI) and other factors over which USCIS does not have control. DHS will retain the current regulatory process for bona fide determinations and make no additional changes at this time. *See* new 8 CFR 214.11(e).

This commenter also asked USCIS to notify HHS of a bona fide determination so that HHS can facilitate federal public benefits available to trafficking victims, as well as amend the bona fide determination notice to include information about the federal benefits. USCIS currently notifies HHS upon approval of an application or a bona fide determination. As discussed elsewhere in this preamble, DHS will also notify HHS in accordance with TVPRA 2008 section 212(a)(2), 22 U.S.C. 7105(b)(1)(G). *See* new 8 CFR 214.11(d)(1)(iii).

4. Derivative Family Members

An applicant may be permitted to apply for certain family members to receive derivative T nonimmigrant status. In this rule, DHS is making the following changes and clarifications:

- Defining terms used to refer to victims and their family members to provide clarity. New 8 CFR 214.11(a).
- Adding new derivative categories since publication of the 2002 interim rule. New 8 CFR 214.11(k)(1).

DHS will discuss each in turn.

a. Definitions

DHS is defining ''~~principal T nonimmigrant,~~'' ''eligible family member'' and ''derivative T nonimmigrant'' to clarify these terms used throughout the regulations. New 8 CFR 214.11(a). ~~Principal T nonimmigrant~~ means the victim of trafficking who has been granted T–1 nonimmigrant status. *Id.* DHS uses the term ''victim'' to refer to aliens who were subject to a severe form of trafficking in persons, and who may be eligible to apply for T–1 nonimmigrant status. *Id.* Eligible family member means someone who has the relationship to a principal applicant required for derivative T nonimmigrant status. *Id.* Derivative T nonimmigrant refers to an eligible family member in the United States who has been granted T–2, T–3, T–4, T–5, or T–6 nonimmigrant derivative status or an eligible family member who has been admitted to the United States as a T–2, T–3, T–4, T–5, or T–6 nonimmigrant. *Id.*

b. Eligibility of Certain Family Members

The law governing T nonimmigrant status was changed in 2003 to allow a principal alien under 21 years of age to apply for admission of his or her parents and unmarried siblings under 18 years of age. *See* TVPRA 2003 section 4(b)(1)(B) and (b)(2), INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I). In 2008, the law was amended to allow any principal, regardless of age, to apply for derivative T nonimmigrant status for parents or unmarried siblings under 18 years of age if the family member faces a present danger of retaliation as a result of the principal's escape from the severe form of trafficking in persons or cooperation

[10] Available for review in the rulemaking docket for this rule (DHS Docket No. USCIS–2011–0010) at *http://www.regulations.gov.*

with law enforcement. *See* TVPRA 2008 section 201(a)(2)(D), INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III). In 2013, the derivative categories were further expanded to allow any principal, regardless of age, to apply for children (adult or minor) of the principal's derivative family members if the derivative's child (adult or minor) faces a present danger of retaliation as a result of the principal's escape from the severe form of trafficking or cooperation with law enforcement. *See* VAWA 2013 section 1221, INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III). DHS is amending the T nonimmigrant status regulations accordingly in this rule. New 8 CFR 214.11(k)(1)(ii)–(iii).

There are two general categories of family members eligible for T nonimmigrant status: those whose eligibility is based on the age of the principal and those whose eligibility is based on a showing of a present danger of retaliation. *See* INA section 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii).

Under INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I), eligible family members of a principal alien under 21 years of age are the principal's:

- Spouse,
- Child(ren),[11]
- Unmarried sibling(s) under 18 years of age; and/or
- Parent(s).

Under INA section 101(a)(15)(T)(ii)(II), 8 U.S.C. 1101(a)(15)(T)(ii)(II), eligible family members of a principal alien over 21 years of age are the principal's:

- Spouse, and/or
- Child(ren).

Under INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III), eligible family members whose eligibility is based on a showing of a present danger of retaliation as a result of the principal's escape from the severe form of trafficking or cooperation with law enforcement (regardless of the age of the principal or, except where noted below, the age of the derivative) are the principal's:

- Parent(s) (added by TVPRA 2008),
- Unmarried sibling(s) under 18 years of age (added by TVPRA 2008),[12]
- Child(ren) or stepchild(ren),[13] namely the adult or minor child of the principal alien's spouse (added by VAWA 2013),
- Grandchild(ren), namely the adult or minor child of the principal alien's child (added by VAWA 2013),
- Niece or nephew, namely the adult or minor child of the principal alien's sibling (added by VAWA 2013), and/or
- Sibling(s) (regardless of age or marital status), namely the adult or minor child of the principal alien's parent (added by VAWA 2013).[14]

The VAWA 2013 derivative expansion for children (adult or minor) of the principal's derivative family members if the derivative's child (adult or minor) faces a present danger of retaliation does not extend to the family members of the adult or minor child. For example, the spouse of an adult niece would not be eligible for derivative T nonimmigrant status.

The principal applicant may file an Application for Family Member of T–1 Recipient, Form I–914 Supplement A on behalf of these eligible family members, in accordance with form instructions. When relevant, and as described below, evidence that demonstrates a present danger of retaliation to the eligible family member must be included.

New 8 CFR 214.1(a)(1)(viii) classifies the principal alien and eligible derivative family members as:

- T–1 (principal alien);
- T–2 (spouse);
- T–3 (child);
- T–4 (parent);
- T–5 (unmarried sibling under 18 years of age); and/or
- T–6 (adult or minor child of a principal's derivative).

VAWA 2013 did not amend INA section 245(l), 8 U.S.C. 1255(l) to explicitly provide for adjustment of status for individuals who were granted derivative T nonimmigrant status as the children (adult or minor) of the principal's derivative family members who face a present danger of retaliation as a result of the principal's escape from the severe form of trafficking or cooperation with law enforcement.[15] However, USCIS may adjust the status of the principal and any person admitted under INA section 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii), as the spouse, parent, sibling or child. *See* INA section 245(l)(1), 8 U.S.C. 1255(l)(1). Even though section 245(l)(1) of the INA specifically names only the ''spouse, parent, sibling or child'' of the T–1 nonimmigrant, the statute is reasonably construed as allowing for the adjustment of status of any eligible derivative given its general reference to ''any person admitted under section 101(a)(15)(T)(ii),'' which as amended by VAWA 2013 includes the new derivative classes. The plain text, therefore, could reasonably be construed to encompass the new derivative class of children of derivative T nonimmigrants.

To conclude otherwise would be to impute to Congress, by virtue of this apparently inadvertent omission, an improbable intent to preclude the new class of derivatives from adjusting status, thwarting the very protection, family unity, and victim stabilization aims animating the expansion of derivative eligibility in the 2008 TVPRA and 2013 VAWA reauthorizations. *See, e.g., United States* v. *Casasola,* 670 F.3d 1023, 1029 (9th Cir. 2012) (''[W]e do not impute to Congress an intent to create a law that produces an unreasonable result.''). The practical effect of precluding adjustment of status would be to require these children of derivative T nonimmigrants to return, upon the expiration of their T nonimmigrant status, to the danger of retaliation that DHS and the LEA believed warranted their admission to the United States.

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[11] See definition of child at INA section 101(b)(1), 8 U.S.C. 1101(b)(1), which includes stepchildren.

[12] Practically, the ''parent(s)'' and ''unmarried sibling(s) under 18 years of age'' derivative categories added by TVPRA 2008 benefit principal aliens who are over 21 years of age. This is because regardless of whether the family member faces a present danger of retaliation as a result of the principal alien's escape from the severe form of trafficking or cooperation with law enforcement, the parent(s) and unmarried sibling(s) under 18 years of age of a principal who is under 21 years of age qualify for derivative T nonimmigrant status under INA section 101(a)(15)(T)(ii)(II).

[13] Stepchildren are eligible under the definition of child at INA section 101(b)(1). Delineating stepchildren in this list is not intended to mean stepchildren are not already eligible. DHS includes this because the new T–6 category is complex and this list is intended to aid the reader.

[14] Section 1221 of VAWA 2013 provided, ''Section 101(a)(15)(T)(ii)(III) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)(ii)(III)[)] is amended by inserting ', or any adult or minor children of a derivative beneficiary of the alien, as' after 'age'.'' 127 Stat. 144. The resulting statutory text in INA section 101(a)(15)(T)(ii)(III) is awkwardly worded: ''any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, *as of an alien* described in subclause (I) or (II) who the Secretary . . . determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or with law enforcement'' (emphasis added). DHS believes that this provision is most reasonably construed as encompassing parents of principal T–1 nonimmigrants (regardless of the T–1's age), unmarried siblings of T–1 nonimmigrants (regardless of the T–1's age), and adult and minor children of derivative T nonimmigrants described in INA section 101(a)(15)(T)(ii)(I) or (II). A contrary reading would result in the inclusion of at-risk parents and unmarried siblings under 18 of *derivative* T nonimmigrants but the exclusion of at-risk parents and unmarried siblings under 18 of adult *principal* T–1 nonimmigrants. DHS does not believe that Congress intended such a counterintuitive outcome.

[15] In section 809 of VAWA 2013, however, Congress did amend section 705(c) of the CNRA to clarify that physical presence in the CNMI on, before or after November 28, 2009 will be considered physical presence in the United States for purposes of INA section 245(l).

Nothing in the greater statutory scheme or the legislative history of either law suggests that such a result was congressionally designed or that the failure to provide a conforming amendment to section 245(l)(1) was intentional or due to anything other than oversight or inadvertence.[16]

Thus, individuals who were granted derivative T nonimmigrant status as the children (adult or minor) of the principal's derivative family members who face a present danger of retaliation as a result of the principal's escape from the severe form of trafficking or cooperation with law enforcement, may apply for adjustment of status under INA section 245(l) provided they are otherwise eligible. *See* new 8 CFR 245.23(b)(2).

5. Age-Out Protection of Eligible Family Members

In some USCIS benefits, a principal alien is said to ''age-out'' if the alien was a certain age, generally under 21 years of age, at the time of filing, but then turns a certain age before USCIS adjudicates the application or petition. This type of age-out does not occur for principal aliens applying for T nonimmigrant status because they are protected by statute. *See* INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I). However, as described in the following, DHS is addressing other types of age-out situations related to the ability of eligible family members to seek T nonimmigrant status.

In this rule, DHS makes the following changes and clarifications:

- A child principal can apply for all eligible family members, including parents and unmarried siblings under 18 years of age, so long as the child was under 21 years of age when he or she filed for T–1 nonimmigrant status. New 8 CFR 214.11(k)(5)(ii).
- An unmarried sibling of a child principal need only be under 18 years of age at the time the principal files for T–1 nonimmigrant status. New 8 CFR 214.11(k)(5)(ii).
- A child derivative need only be under 21 years of age at the time the principal parent filed for T–1 nonimmigrant status. New 8 CFR 214.11(k)(5)(iii).
- Clarifying the distinction between age-out protections and marital status of a child or a sibling. New 8 CFR 214.11(k)(5)(v).

a. Age-Out Protection for Child Principal To Apply for Eligible Family Members

Seven commenters noted that a principal applicant under 21 years of age could turn 21 years of age before adjudication of the T nonimmigrant application, or age-out, and not be able to apply for a parent as a T–4 derivative. These commenters urged DHS to adopt the standard that if a principal applicant is under 21 years of age at the time of filing an application for T–1 nonimmigrant status, the ability to include a parent as a T–4 derivative is preserved. One commenter wrote that DHS should lock in the child's age for purposes of eligibility as of the date the child comes to the attention of law enforcement.

TVPRA 2003 fixed this potential age-out problem. *See* TVPRA 2003 section 4(b)(2)(B). A principal who files an application for T nonimmigrant status while under 21 years of age will continue to be treated as an alien described in INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I) (a principal alien under 21 years of age), even if the alien attains 21 years of age while the T–1 application is pending. *See* INA section 214(o)(5), 8 U.S.C. 1184(o)(5). This means that as long as a principal applicant was under 21 years of age at the time of filing for T–1 status, he or she can still file an Application for Family Member of T–1 Recipient, Form I–914 Supplement A, to include T–4 parents or T–5 unmarried siblings under 18 years of age, even if the principal applicant turns 21 years of age before the principal alien's T–1 application is adjudicated. *See* new 8 CFR 214.11(k)(5)(ii).

b. Age-Out Protection for Unmarried Sibling Derivative of Child Principal

Similarly, TVPRA 2003 provides that an unmarried sibling of a principal T–1 applicant under 21 years of age need only be under the age of 18 at the time the principal T–1 applicant files the Application for T Nonimmigrant Status, Form I–914 for T–1 nonimmigrant status. *See* TVPRA 2003 section 4(b)(1)(B), INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I); new 8 CFR 214.11(k)(5)(ii). It does not matter if the unmarried sibling turns 18 years of age before the principal applicant files an Application for Family Member of T–1 Recipient, Form I–914 Supplement A.

c. Age-Out Protection for Child Derivative

In addition, INA section 214(o)(4), 8 U.S.C. 1184(o)(4) was revised to provide that as long as a child T–3 derivative was under 21 years of age on the date the principal T–1 parent applied for T–1 nonimmigrant status, he or she will continue to be classified as a child and allowed entry as a derivative child. *See* TVPRA 2003 section 4(b)(2)(B). This means that age at the time of classification, entry into the United States, or the date the child came to the attention of law enforcement, does not matter. Therefore, DHS has provided in this rule that for a child to be T–3 derivative, he or she must be under the age of 21 when the parent T–1 filed the Application for T Nonimmigrant Status, Form I–914 for T–1 nonimmigrant status. *See* new 8 CFR 214.11(k)(5)(iii).

d. Marriage of Eligible Family Members

In order to be eligible for T–3 or T–5 status, this interim rule requires a child or a sibling under the age of 18 to be unmarried:

- At the time the Application for T Nonimmigrant Status, Form I–914 for the principal is filed and adjudicated;
- At the time the Application for Family Member of T–1 Recipient, Form I–914 Supplement A for the eligible family member is filed and adjudicated; and
- At the time of admission to the United States (if an eligible family member is outside the United States). *See* new 8 CFR 214.11(k)(5)(v).

The law uses the term ''children'' in the derivative categories for family members. *See* INA section 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii). The term ''child'' is defined as a person who is under 21 years of age and unmarried. *See* INA section 101(b)(1), 8 U.S.C. 1101(b)(1). The derivative category for siblings

[16] This conclusion is bolstered by the fact that Congress similarly did not update the identical reference to ''spouses, sons, daughters, siblings, or parents of such aliens [(T–1 nonimmigrants)]'' in the provision establishing that the annual numerical limitation on grants of T nonimmigrant visas or status does not apply to derivative beneficiaries. INA section 214(o)(3), 8 U.S.C. 1184(o)(3); *cf., e.g., King* v. *Burwell,* 135 S. Ct. 2480, 2489, 2495 (2015) (observing that court's ''duty is to construe statutes, not isolated provisions,'' that the meaning of a phrase ''may seem plain when viewed in isolation, [but] turns out to be untenable in light of the statute as a whole'' and that ''the context and structure of the [act may] compel us to depart from what would otherwise be the most natural reading of the pertinent statutory phrase'') (quotation marks and citation omitted); *Validus Reinsurance, Ltd.* v. *United States,* 786 F.3d 1039, 1045–46 (D.C. Cir. 2015) (noting that courts ''must . . . avoid statutory interpretations that bring about an anomalous result when other interpretations are available'') (quotation marks omitted); *Kolon Indus. Inc.* v. *E.I. DuPont de Nemours & Co.,* 748 F.3d 160, 169 (4th Cir. 2014) (''Even the plain meaning of a statute is not conclusive 'in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'''') (quoting *United States* v. *Ron Pair Enters., Inc.,* 489 U.S. 235, 242 (1989) (alteration in original)).

clarifies that the sibling must be unmarried and under the age of 18 years. *See* INA section 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii).

The age-out protections described above are linked specifically to age, but are not linked to marital status. For example, INA section 214(o)(4), 8 U.S.C. 1184(o)(4), specifies that an ''unmarried alien,'' who is the eligible family member of a parent and was under 21 years of age when the parent applied for T–1 status, can continue to be classified as a child if he or she turns 21 before adjudication. DHS believes that in giving a specific time frame related to age only and by using the term ''unmarried alien,'' Congress did not intend a similar time-of-filing standard with respect to marital status.

Similarly, Congress used the phrase ''children, unmarried siblings under 18 years of age on the date on which such alien applied for status'' in listing eligible family members for a principal who is under 21 years of age. *See* INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I). Congress provided a specific time frame related to when siblings need to be under the age of 18, but does not give a time frame for marriage of either children or siblings. DHS believes that Congress intended that derivative status for T–3 children and T–5 unmarried siblings under the age of 18 should be limited to unmarried children and unmarried siblings through time of adjudication of both the principal's and derivative's T nonimmigrant application, as well as the admission into the United States of the family member. *See* new 8 CFR 214.11(k)(5)(v); *cf., e.g., Akhtar* v. *Gonzales,* 406 F.3d 399, 407–08 (6th Cir. 2005) (concluding that Congress' provision of special age-out protections for derivative asylees but not similar protections based on marital status is reasonable and ''easily withstand[s] constitutional scrutiny'').

e. Evidence for Eligible Family Members

The principal applicant must submit an Application for Family Member of T–1 Recipient, Form I–914 Supplement A, for each eligible family member with all required initial evidence and supporting documentation according to form instructions. *See* new 8 CFR 214.11(k)(2) and (3). DHS will require the following initial and supporting evidence:

- Evidence demonstrating the relationship of the eligible family member to the principal applicant;
- If seeking T–4, T–5, or T–6 status based on present danger of retaliation to the eligible family member, evidence of this danger; and
- If the eligible family member is inadmissible, a copy of the eligible family member's Application for Advance Permission to Enter as Nonimmigrant, Form I–192 and attachments.

As discussed above, DHS has removed the provisions weighing evidence as primary or secondary and will accept any credible evidence to demonstrate each eligibility requirement for derivative T nonimmigrant status. As is the case in all other immigration benefits, the applicant bears the burden of establishing eligibility. *See* 8 CFR 103.2(b). USCIS will consider any credible evidence relevant to the application for derivative T nonimmigrant status. *See* new 8 CFR 214.11(k)(7) and (d)(2)(ii). USCIS will exercise its sole discretion to determine what evidence is credible and the weight of such evidence. *Id.*

DHS is removing regulatory language that required demonstration of extreme hardship to an eligible family member if the eligible family member was not allowed to accompany or follow to join the T–1 principal applicant. *See* 8 CFR 214.11(o)(1)(ii) and (5). This was a statutory requirement that was removed by VAWA 2005. *See* VAWA 2005 section 801(a)(2).

The provisions under new 8 CFR 214.11(k)(6) describe how an applicant can demonstrate a present danger of retaliation to an eligible parent or unmarried sibling under the age of 18, or to a child (adult or minor) of a derivative applying for derivative T nonimmigrant status. USCIS will consider any credible evidence of a present danger of retaliation to the eligible family member. Present danger will be evaluated on a case-by-case basis. An applicant may submit a statement describing the danger the family member faces and how the danger is linked to the victim's escape from trafficking or cooperation with law enforcement. An applicant's statement alone, however, may not be sufficient. Other examples of evidence include, but are not limited to: a previous grant of advance parole to a family member; a signed statement from an LEA describing the danger of retaliation; trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court; documentation from their country of origin or place of residence (*e.g.* foreign government agencies, local law enforcement, social services), and affidavits from other witnesses. Regardless of whether the applicant submits a statement from an LEA, USCIS reserves the right to contact the LEA most likely to be involved in the criminal case, if appropriate. Applicants who believe such contact could further endanger them or their family member should indicate that in a cover letter in the application for the family member's T derivative status or otherwise contact USCIS.

C. Adjudication and Post-Adjudication

1. Prohibitions on Use of Information

In this rule, DHS makes the following changes and clarifications relating to the disclosure and use of an applicant's information provided to USCIS:

- Updating the regulations to account for statutory confidentiality provisions applicable to T nonimmigrants. *See* new 8 CFR 214.11(p)
- Confirming the legal requirement to turn over information to prosecutors. *Id.*
- Confirming the warning on the T nonimmigrant application that information an applicant provides could be used to remove the applicant.

DHS discusses each in turn.

a. Applicability of Confidentiality Provisions

The confidentiality provisions of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), codified at 8 U.S.C. 1367, apply to applicants for T nonimmigrant status. *See* IIRIRA section 384, 8 U.S.C. 1367. DHS issued the 2002 interim rule before the confidentiality provisions were applicable to those seeking T nonimmigrant status. Congress extended the confidentiality provisions to T nonimmigrant applicants in VAWA 2005. *See* VAWA 2005 section 817. In the 2002 interim rule, DHS did include some information about disclosure of an applicant's information. For example, DHS allowed for disclosure of information to LEAs with the authority to detect, investigate, or prosecute severe forms of trafficking in persons. *See* 8 CFR 214.11(e). In this rule, DHS is incorporating the confidentiality provisions provided at 8 U.S.C. 1367, as amended, and including implementing provisions similar to those provided in the DHS U nonimmigrant status regulations. *See* new 8 CFR 214.11(p).

DHS, however, does not see a need to include the full list of protections and exceptions, as it would essentially reiterate the language of 8 U.S.C. 1367(a)(2) and (b). By citing to the statutory confidentiality provisions, DHS is protecting applicants while also ensuring that the regulations remain up to date. DHS has issued department-wide guidance on how these confidentiality provisions are interpreted and how they will be

implemented. *See, e.g.,* Department of Homeland Security Directive 002–02 and Instruction 002–02–001, Implementation of Section 1367 Information Provisions. DHS components plan to issue further guidance specific to component operations.

T nonimmigrant applicants are protected under 8 U.S.C. 1367 in two ways. First, adverse determinations of admissibility or deportability against an applicant for T nonimmigrant status, with a limited exception for individuals convicted of certain crimes, cannot be made based on information furnished solely by the perpetrator of the acts of trafficking in persons. *See* IIRIRA section 384(a)(1)(F), 8 U.S.C. 1367(a)(1)(F). Second, the statute prohibits the use or disclosure to anyone of any information relating to the beneficiary of a pending or approved application for T nonimmigrant status except in certain limited circumstances. *See* IIRIRA section 384(a)(2), (b), 8 U.S.C. 1367(a)(2), (b). Section 1367(a)(2) allows the release of information to a sworn officer or employee of DHS, DOJ, DOS, or a bureau or agency of either of those Departments for legitimate Department, bureau, or agency purposes. *Id.* Section 1367(b) also enumerates specific exceptions to confidentiality. The statute permits, for example, disclosure of protected information, in certain limited circumstances, to law enforcement and national security officials and nongovernmental victim services providers.

This rule, at new 8 CFR 214.11(p), also essentially reflects the same restrictions on use and disclosure of information relating to applicants for and beneficiaries of T nonimmigrant status that are described in DHS' interim U nonimmigrant status regulations at 8 CFR 214.14(e). *See* New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status, 72 FR 53014, 53039 (Sept. 17, 2007). These restrictions are based on the statutory directive that DHS not ''permit use by or disclosure to anyone'' (other than a sworn officer or employee of DHS, DOJ, or DOS) of ''any information which relates to'' an applicant for or beneficiary of T or U nonimmigrant status or VAWA immigration relief, with limited exceptions (*e.g.,* law enforcement or national security purposes). *See* 8 U.S.C. 1367(a)(2), (b). The intent of the restrictions in 8 U.S.C. 1367(a) on the use and disclosure of protected information was to ''ensure that abusers and perpetrators of crime cannot use the immigration system against their victims,'' either to silence them or to commit further abuse. 151 Cong. Rec. E2605, E2607 (statement of Rep. John Conyers in support of VAWA 2005 amendments to 8 U.S.C. 1367).

b. Disclosure Required in Relation to Criminal Prosecution

In the 2002 interim rule, DHS allowed for disclosure of information to DOJ officials responsible for prosecution in all cases involving an ongoing or impending prosecution of any defendants who are or may be charged with severe forms of trafficking in persons in connection with the victimization of the applicant. *Id.* This provision complies with constitutional requirements that pertain to the government's duty to disclose information, including exculpatory evidence or impeachment material, to defendants. *See, e.g.,* U.S. Const. amends. V, VI; *Brady* v. *Maryland,* 373 U.S. 83, 87 (1963); *Giglio* v. *United States,* 405 U.S. 150, 154 (1972).

DHS received seven comments relating to the provision that allows federal authorities and defendants in criminal proceedings to review any information from an application for T nonimmigrant status. Commenters suggested that the standard for disseminating information should be that:

1. Federal authorities should have to make a request in writing for release of information;

2. Prosecutors should be prohibited from releasing information to a defendant unless the information is needed for impeachment; and

3. In the event a prosecutor determines evidence to be exculpatory, a judge should review the information and give time for victim safety planning before information will be released.

In the 2002 interim rule, DHS explained its position on timely disclosure of information, including DOJ's obligation to provide statements by witnesses and certain other documents to defendants in pending criminal proceedings. *See* 67 FR at 4789. These obligations stem from constitutional, statutory and other legal requirements pertaining to the duty to disclose exculpatory evidence or impeachment material to a criminal defendant in order to prepare a defense. *Id.* DHS appreciates the need for confidentiality and especially the desire to protect the safety of victims. However, we must balance the need to take measures to protect victims from perpetrators with the need to comply with constitutional requirements, and DHS believes that the regulations as currently drafted reflects the best way to balance these considerations. In addition, the determination of whether constitutional or other legal obligations require disclosure in a criminal matter is a determination reserved to prosecuting attorneys. DHS therefore declines to amend its regulation regarding the dissemination of information, other than some minor edits to account for the creation of DHS and streamline the language.

c. Use of Information on the T Nonimmigrant Status Application

Commenters also raised concerns that the Application for T Nonimmigrant Status, Form I–914 warns that any information provided could be used to remove an unsuccessful applicant. The commenters asserted that this policy would hinder applications because victims may be reluctant to work with law enforcement if a victim thought he or she would be removed. USCIS does not have a policy to refer applicants for T nonimmigrant status for removal proceedings absent serious aggravating circumstances, such as the existence of an egregious criminal history, a threat to national security, or where the applicant is implicit in the trafficking. USCIS includes a standard warning on many applications that information within the application could lead to removal. USCIS believes it is a sound practice to warn applicants of this fact, and not including it would be unfair to applicants for whom such a warning could prove important.

2. Waivers of Grounds of Inadmissibility

An applicant for T nonimmigrant status must be admissible to the United States, or otherwise obtain a waiver of any grounds of inadmissibility. In this rule, DHS is making the following changes and clarifications:

- Clarifying the waiver authority for T nonimmigrants and the public charge exemption. New 8 CFR 212.16(b).
- Changing the standard for exercising waiver authority only in ''extraordinary circumstances'' over criminal grounds of inadmissibility when the crime does not relate to the trafficking victimization. New 8 CFR 212.16(b)(2).
- Removing language that waiver authority should not be exercised for inadmissibility grounds that may limit the ability of the applicant to adjust status. 8 CFR 212.16(b)(3).
- Clarifying that DHS takes into account trafficking victimization when exercising waiver authority. New 8 CFR 212.16(b)(2).
- Retaining the current separate waiver application process. New 8 CFR 212.16(a).

• Clarifying the waiver process at adjustment of status.

a. Waiver Authority for T Nonimmigrants

Under INA section 212(d)(13), 8 U.S.C. 1182(d)(13), DHS has broad discretionary authority to waive grounds of inadmissibility.[17] DHS may waive INA section 212(a)(1) (health-related grounds), 8 U.S.C. 1182(a)(1), if DHS considers it to be in the national interest to grant a waiver. *See* INA section 212(d)(13)(B)(i), 8 U.S.C. 1182(d)(13)(B)(i). DHS may waive almost any other ground of INA section 212(a), 8 U.S.C. 1182(a), if DHS considers it to be in the national interest to grant a waiver and determines that the activities rendering the applicant inadmissible were caused by, or were incident to, the trafficking victimization. *See* INA section 212(d)(13)(B)(ii), 8 U.S.C. 1182(d)(13)(B)(ii). DHS, however, may not waive INA sections 212(a)(3) (security and related grounds), (10)(C) (international child abduction), or (10)(E) (former U.S. citizens who renounced citizenship to avoid taxation), 8 U.S.C. 1182(a)(3), (10)(C), (10)(E).

In addition, because INA section 212(a)(4) (public charge), 8 U.S.C. 1182(a)(4), does not apply to an applicant for T nonimmigrant status (but would apply at the time of adjustment of status to lawful permanent resident), *see* INA section 212(d)(13)(A), 8 U.S.C. 1182(d)(13)(A), no waiver of that ground is necessary. TVPRA 2003 added INA section 212(d)(13)(A), 8 U.S.C. 1182(d)(13)(A), to eliminate the public charge ground at the time the applicant seeks T nonimmigrant status. TVPRA 2003 section 4(b)(4), codified at INA section 212(d)(13)(A), 8 U.S.C. 1182(d)(13)(A). DHS is amending the regulations as necessary in this interim rule. *See* new 8 CFR 212.16(b).

b. Criminal Grounds of Inadmissibility

DHS received 21 comments relating to different aspects of waivers of inadmissibility. Eight commenters objected to the language of 8 CFR 212.16(b)(2), stating that USCIS will exercise its discretion to waive criminal grounds of inadmissibility under INA section 212(a)(2), 8 U.S.C. 1182(a)(2) (criminal and related grounds), only in ''exceptional cases'' where the criminal activity was not caused by or was not incident to the trafficking in persons. Commenters thought the language about ''exceptional cases'' was not statutorily required, replaced a simple exercise of discretion, and was unnecessary. In addition, commenters encouraged DHS to consider the type of crimes and the seriousness of the offenses when exercising discretion based on criminal grounds. DHS has the discretionary authority to waive the criminal grounds of inadmissibility for T nonimmigrant status applicants if the criminal activities were caused by or incident to the trafficking victimization. *See* INA section 212(d)(13)(B)(ii), 8 U.S.C. 1182(d)(13)(B)(ii). DHS implemented this provision in the 2002 interim rule and explained that it was choosing to exercise its discretion in cases where the criminal grounds of inadmissibility were not caused by or incident to trafficking, only in ''exceptional cases.'' *See* 67 FR 4789; 8 CFR 212.16(b)(2). In this interim rule, DHS is revising its regulations to describe how USCIS will consider the nature and seriousness of the offenses and the number of convictions in exercising its discretion. See new 8 CFR 212.16(b)(3). In this rule, DHS is replacing the general ''exceptional cases'' limitation. Instead, in cases where the applicant has a conviction for a violent or otherwise dangerous crime, DHS will allow waivers, in its discretion, in ''extraordinary circumstances'' only. *See* new 8 CFR 212.16(b)(3). A similar standard applies in the related U nonimmigrant status regulations at 8 CFR 212.17.[18]

c. Waivers Relating to Adjustment of Status

Five commenters expressed concern with the language of 8 CFR 212.16(b)(3), stating that USCIS will exercise its discretion to waive grounds of inadmissibility that would prevent or limit the applicant from adjusting to permanent resident status only in exceptional cases. Commenters objected to the connection between inadmissibility at the application phase of T nonimmigrant status with inadmissibility at the adjustment of status phase. Commenters urged DHS to take note of INA section 245(l)(2), 8 U.S.C. 1255(l)(2), which provides a waiver authority for the adjustment of status phase that is similar to the authority contained at INA section 212(d)(13), 8 U.S.C. 1182(d)(13). Since the publication of the 2002 interim rule, DHS published a rule on adjustment of status to permanent resident for T nonimmigrants. *See* 8 CFR 245.23 and *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,* 73 FR 75540 (Dec. 12, 2008). The regulations at 8 CFR 245.23 clarify that any grounds of inadmissibility waived at the time USCIS grants T nonimmigrant status will be considered waived for purposes of adjustment of status under INA section 245(l) and that any grounds of inadmissibility that an applicant acquires while in T nonimmigrant status require a new waiver. In this interim rule, DHS is removing 8 CFR 212.16(b)(3), as it is no longer necessary in light of the adjustment of status regulations.

d. Waivers of Inadmissibility Grounds Related to the Trafficking Victimization

A number of commenters expressed general concerns over particular grounds of inadmissibility that relate to victimization based on trafficking in persons. DHS received two comments about waivers of inadmissibility for those with the human immunodeficiency virus (HIV), one comment about waivers of inadmissibility for those engaged in prostitution, and one comment about waivers of inadmissibility for drug users. Commenters stated that victims may become HIV positive as a result of trafficking. Commenters noted that often trafficking victims are forced to engage in prostitution by traffickers, or continue in prostitution for basic survival. Commenters also expressed concern about victims who self-medicate with illegal drugs to ease the effects of trauma and/or other psychological conditions due to the victimization they suffered. These commenters did not provide specific recommendations, beyond asking DHS to take special note of those concerns.

DHS acknowledges that victims of trafficking in persons are an especially vulnerable population, and therefore considers the special circumstances of victims when exercising its waiver authority. As of January 4, 2010, HIV infection is no longer defined as a ''communicable disease of public health significance'' according to HHS regulations. *See* 74 FR 56547 (Nov. 2, 2009) (effective Jan. 4, 2010). Therefore, HIV infection does not make an applicant inadmissible on health-related grounds for any immigration benefit. In addition, USCIS personnel who

[17] Section 212(d)(13)(B) of the INA states, in part, ''[I]f the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, *in the Attorney General's discretion,* may waive the application of'' various grounds of inadmissibility. 8 U.S.C. 1182(d)(13)(B) (emphasis added). The vestigial reference to the Attorney General in that sentence is clearly a drafting oversight. DHS therefore reads the provision as referring, instead, to the Secretary's discretion.

[18] This approach also is consistent with DHS and DOJ practice in other immigration contexts. *See, e.g.,* 8 CFR 212.7(d) (INA section 212(h)(2) waivers); *Matter of Jean,* 23 I&N Dec. 373, 383 (A.G. 2002) (INA section 209(c) waivers).

adjudicate applications for T nonimmigrant status and waivers of inadmissibility are trained on various aspects of the dynamics of victimization. DHS has not made any changes to the regulation as a result of these comments.

e. Requesting a Waiver

In the 2002 interim rule, DHS directed applicants to file the form designated by USCIS to request a waiver of inadmissibility. *See* 8 CFR 212.16(a). This form is the Application for Advance Permission to Enter as Nonimmigrant, Form I–192.[19] Five commenters asserted that this waiver application procedure was overly complicated and suggested a simpler procedure of providing space on the Application for T Nonimmigrant Status, Form I–914, itself for victims to explain any grounds of inadmissibility and attach evidence.

DHS is not adopting the suggestion. DHS is concerned that additional inadmissibility concerns can arise after an application for T nonimmigrant status is approved. Without a waiver of inadmissibility on a separate form, USCIS would be unable to address inadmissibility concerns other than to revisit the underlying approval itself, which could cause problems for the applicant. In addition, USCIS has developed a process with DOS for eligible family members abroad so that DOS officers are made aware of the inadmissibility grounds waived by USCIS. This process might be compromised if a separate waiver form were not used, resulting in potential delays or problems for eligible family members consular processing to apply for admission to the United States. DHS believes the Application for Advance Permission to Enter as Nonimmigrant, Form I–192 process is working well and does not need to be modified at this time; however, DHS welcomes further comments on this process.

In addition, one commenter asserted that the waiver application process at the time of adjustment was burdensome. The commenter recommended sparing victims from applying for a waiver of inadmissibility both at the time of application and the time of adjustment of status.

Since publication of the 2002 interim rule, DHS published an interim rule with request for comments on adjustment of status to lawful permanent resident for T nonimmigrants. *See* 8 CFR 245.23 and 73 FR 75540. The regulations only require a new request for a waiver of inadmissibility at the adjustment of status phase for any new ground of inadmissibility that has arisen since the grant of T nonimmigrant status. Typically, T nonimmigrants applying for adjustment of status do not need to file a request for a new waiver of inadmissibility for inadmissibility grounds that were waived at the T nonimmigrant stage. In this interim rule, DHS is mainly addressing the T nonimmigrant application phase; DHS will consider comments and recommendations that relate to adjustment of status in a separate rulemaking.

3. Decisions

At new 8 CFR 214.11(d)(8)–(10), DHS describes approval and denial procedures for applications for T nonimmigrant status. USCIS will issue written decisions to grant or deny T nonimmigrant status. If USCIS denies an application, it will provide written reasons for the denial. In any case where USCIS denies an application for T nonimmigrant status, an applicant may appeal to the USCIS Administrative Appeals Office (AAO) under established procedures in 8 CFR 103.3.

4. Benefits

DHS provides for employment authorization incident to a grant of ~~principal T nonimmigrant~~ status. *See* 8 CFR 214.11(l)(4). One commenter pointed out that even after a bona fide determination is made, the applicant would not receive an employment authorization document (EAD) until T nonimmigrant status is granted. This commenter highlighted this fact because, even though a victim could be certified by HHS on the basis of a bona fide application, he or she would not be eligible for certain types of cash assistance and would not be accepted into the federal Matching Grant Program. This commenter recommended granting an EAD when USCIS determined that an application is bona fide. DHS is authorized to grant an EAD in connection with a bona fide determination. *See* Memorandum from Stuart Anderson, Executive Associate Commissioner, Office of Policy and Planning, INS, *Deferred Action for Aliens with Bona Fide Applications for T Nonimmigrant Status* (May 8, 2002). In its discretion, USCIS may grant deferred action to an applicant when a T nonimmigrant application is deemed bona fide, while awaiting final adjudication. *Id.* Once an application is deemed bona fide and USCIS grants deferred action, the applicant can request employment authorization based on the grant of deferred action. *See* 8 CFR 274a.12(c)(14).

5. Duration of Status

Originally, T nonimmigrant status was granted for a period of 3 years from the date of approval. *See* 8 CFR 214.11(p) (2002). Upon approval, USCIS would notify the recipient of the future expiration of his or her nonimmigrant status and of a requirement to apply for adjustment of status to permanent resident within the 90 days immediately preceding the third anniversary of the approval. *Id.* At the time of the 2002 interim rule, there was no ability to extend T nonimmigrant status. *Id.* DHS provided that an applicant who properly applied for adjustment of status would remain in T nonimmigrant status until a final decision was rendered on the application. *Id.* DHS received seven comments related to the 90 day adjustment of status application period requirement.

In 2008, DHS published an interim rule implementing adjustment of status procedures for T and U nonimmigrants. *See* 73 FR 75540. DHS amended 8 CFR 214.11(p) to incorporate VAWA 2005 legislative changes that lengthened the duration of status from 3 years to 4 years, but also limited the status to 4 years unless an applicant could qualify for an extension. *See* VAWA 2005 section 821(a), INA section 214(o)(7)(A), 8 U.S.C. 1184(o)(7)(A). DHS also removed the 90-day adjustment of status application period requirement; instead, a T nonimmigrant may apply for adjustment of status after accruing three years in valid T nonimmigrant status. *See* 8 CFR 245.23(a)(3).

6. Extension of Status

Commenters on the 2002 interim rule also objected to the lack of extensions available for T nonimmigrant status. Since the publication of the 2002 interim rule, legislation allowed for extensions of T nonimmigrant status in the following circumstances:

- An LEA, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the victim in the United States is necessary to assist in the investigation or prosecution of such activity; [20]

[19] On August 29, 2011, as part of USCIS's business transformation initiative, USCIS replaced specific references to Form I–192 to read, ''the form designated by USCIS.'' Immigration Benefits Business Transformation, Increment I, Final Rule, 76 FR 53764 (Aug. 29, 2013), at 53788.

[20] *See* VAWA 2005 section 821(a); INA section 214(o)(7)(B)(i), 8 U.S.C. 1184(o)(7)(B)(i).

• DHS determines that an extension is warranted due to exceptional circumstances; [21] or

• During the pendency of an application for adjustment of status under INA section 245(l), 8 U.S.C. 1255(l).[22]

INA section 214(o)(7)(B) and (C), 8 U.S.C. 1184(o)(7)(B) and (C). DHS is implementing the extension of status provisions at new 8 CFR 214.11(l).[23] Below, DHS discusses each extension category in turn.

a. Extension of Status for Law Enforcement Need

In this interim rule, DHS is implementing the discretionary extensions for law enforcement need at new 8 CFR 214.11(l)(1)(i). The T nonimmigrant bears the burden of establishing eligibility for an extension of status. *Id.* As outlined in new 8 CFR 214.11(l)(2), to request an extension, the T nonimmigrant will file an Application to Extend/Change Nonimmigrant Status, Form I–539, along with supporting evidence. The Application to Extend/Change Nonimmigrant Status should be filed before the individual's T nonimmigrant status expires.

To establish law enforcement need, supporting evidence may include a newly executed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form 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 (*e.g.,* a letter on the agency's letterhead, emails, or faxes). *See* new 8 CFR 214.11(l)(5). The applicant must include evidence that comes directly from an LEA (as listed above). *Id.* The applicant may also submit any other credible evidence. *Id.* DHS believes this is necessary under INA section 214(o)(7)(B)(i), 8 U.S.C. 1184(o)(7)(B)(i), because that section allows for an extension only if a law enforcement official (which includes prosecutors, judges, and others with the authority to investigate or prosecute human trafficking) at the Federal, State, or local level ''certifies'' that the presence of the victim is necessary. The use of the word ''certifies'' does not allow for the substitution of evidence that does not come directly from an LEA. Applicants are not required to use Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B, to seek an extension of T nonimmigrant status.

b. Extension of Status for Exceptional Circumstances

In this interim rule, DHS is implementing the discretionary extensions for exceptional circumstances at new 8 CFR 214.11(l)(1)(ii). As described above, to request an extension, the T nonimmigrant will file an Application to Extend/Change Nonimmigrant Status, Form I–539, along with supporting evidence. New 8 CFR 214.11(l)(2).

An applicant may submit his or her own statement and any other credible evidence to establish exceptional circumstances for an extension of status. Such evidence could include, but is not limited to, medical records, police or court records, news articles, correspondence with an embassy or consulate, and affidavits of witnesses. *See* new 8 CFR 214.11(l)(6). An exceptional circumstance could exist when a principal T nonimmigrant's status will expire and an approved family member had not yet received a T visa from a consulate to apply for admission to the United States. In this example, without an extension, if the principal T nonimmigrant's status expires, the family member could not apply for a T visa to apply for admission to the United States. In the evidence submitted to establish exceptional circumstances in this example, the principal should explain what exceptional circumstances prevented the family member(s) from applying for admission to the United States.

Applicants should apply for an extension before the T nonimmigrant status has expired. USCIS, however, has discretion to grant an extension after T nonimmigrant status expires. *See* new 8 CFR 214.11(l)(3). The T nonimmigrant should explain in writing, in accordance with 8 CFR 214.1(c)(4), why he or she is filing the Application to Extend/Change Nonimmigrant Status, Form I–539, after the T nonimmigrant status has expired. If USCIS grants an extension of T nonimmigrant status, USCIS will issue a new Notice of Action valid from the date the previous status expired until 1 year after approval of the extension. Once an applicant receives this new Notice of Action, he or she may then file an Application to Register Permanent Residence or Adjust Status, Form I–485, to adjust status to lawful permanent resident before the extension expires.

c. Extension of Status While an Application for Adjustment of Status Is Pending

In this interim rule, DHS implements a mandatory extension for those who apply for adjustment of status at new 8 CFR 214.11(l)(7), and does not require a separate application or additional supporting evidence to request an extension of status when an application for adjustment of status has been properly filed. INA section 214(o)(7)(C), 8 U.S.C. 1184(o)(7)(C), requires USCIS to grant this extension; therefore no evidentiary burden rests on the applicant.

7. Waiting List

Congress has established a 5,000-person limit on the number of grants of T–1 nonimmigrant status per fiscal year (from October 1 through September 30). *See* INA section 214(o)(2)–(3), 8 U.S.C. 1184(o)(2)–(3). In the 2002 interim rule, DHS implemented a waiting list procedure in the event that the numerical limit is reached in a particular fiscal year. *See* former 8 CFR 214.11(m)(2). USCIS has not had to utilize the waiting list procedure created in the 2002 interim rule because approvals have not approached 5,000 in any given fiscal year. The 2002 interim rule provided that an applicant on the waiting list would ''maintain his or her current means to prevent removal.'' *Id.*

DHS received three comments pointing out that DHS did not address protection from removal for those without current means. The commenters urged DHS to provide protection from removal or a legal means to stay in the United States for this population of applicants.

DHS agrees with this comment, and has determined that this provision is superfluous and confusing. DHS has therefore removed the provision, to clarify that applicants who may be placed on the waiting list for T nonimmigrant status can either maintain their ''current means'' to prevent removal (deferred action, parole, or stay of removal) and any employment authorization, or attain ''new means.'' *See* new 8 CFR 214.11(j)(2).

Although DHS retains the authority to protect applicants on the waiting list from being removed, the 2002 interim

[21] *See* TVPRA 2008 section 201(b)(1); INA section 214(o)(7)(B)(iii), 8 U.S.C. 1184(o)(7)(B)(iii).

[22] *See* TVPRA 2008 section 201(b)(2); INA section 214(o)(7)(C), 8 U.S.C. 1184(o)(7)(C).

[23] In addition, TVPRA 2008 provided an extension of status for T nonimmigrants who were eligible for adjustment of status relief under INA section 245(l), 8 U.S.C. 1255(l), but could not obtain adjustment of status relief because DHS had not issued implementing regulations. *See* TVPRA 2008 section 201(b)(1); INA section 214(o)(7)(B)(ii), 8 U.S.C. 1184(o)(7)(B)(ii). TVPRA 2008 was enacted on December 23, 2008. DHS issued regulations on adjustment of status on December 12, 2008. *See* 73 FR 75540. Therefore, when TVPRA 2008 was enacted, regulations on adjustment of status existed. Because INA section 214(o)(7)(B)(ii), 8 U.S.C. 1184(o)(7)(B)(ii), is obsolete, DHS will not reference this language in this interim rule.

rule's implication that the applicant may not seek other means to prevent removal was problematic. DHS has existing policies, procedures, and regulations for exercising its discretion in providing parole, deferred action, or a stay of removal to individuals on a case-by-case basis. *See, e.g.,* 8 CFR 241.6 (administrative stay of removal); 8 CFR 274a.12(c)(14) (employment authorization for deferred action grantees demonstrating economic necessity); 8 CFR 212.5 (parole of aliens into the United States). DHS will consider providing temporary relief on a case by case basis to applicants on the waiting-list who are participating in law-enforcement investigations in the United States pursuant to those policies, regulations and procedures.

This change maintains the protections in the previous regulation while providing DHS and the applicant with more flexibility, particularly as to those applicants who may have no ''current means'' to prevent removal, and allows applicants the flexibility to seek alternate avenues of relief if their ''current means'' may not be sustainable or the most beneficial.

8. Revocation

In the 2002 interim rule, DHS created several grounds for revocation on notice at 8 CFR 214.11(s). T nonimmigrant status could be revoked on notice if:

- The T nonimmigrant violated the requirements of T nonimmigrant status;
- The approval of the T nonimmigrant application violated 8 CFR 214.11 or involved an error in preparation, procedure, or adjudication;
- In the case of a T–2 spouse, the T–2 spouse's divorce from the T–1 principal became final;
- The LEA notifies USCIS that the principal T nonimmigrant has unreasonably refused to cooperate with the investigation or prosecution and provides USCIS with a detailed explanation in writing; or
- The LEA withdraws its endorsement or disavows the contents of the endorsement in a detailed written explanation.

a. Streamlining Revocation Based on Violation of the Requirements of T Nonimmigrant Status

Six commenters asserted that the ground of revocation at 8 CFR 214.11(s)(1)(i), based on a violation of the requirements of the status by the T nonimmigrant, needs clarification. Commenters suggested that the meaning is unclear because if the applicant satisfied the eligibility requirements, the status should not be revoked, unless there was an error in granting the status (which is provided for in another ground of revocation).

DHS agrees that the ground of revocation on notice at 8 CFR 214.11(s)(1)(i) could benefit from greater clarification. The requirements of INA section 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T) generally are victimization, physical presence, compliance with any reasonable LEA request for assistance, and extreme hardship involving unusual and severe harm if the applicant is removed. If USCIS has evidence that one of these requirements was not met, it could revoke under 8 CFR 214.11(s)(1)(ii). If the violation is based on a victim not complying with reasonable requests, USCIS could revoke under 8 CFR 214.11(s)(1)(iv) or (v), based on information from an LEA or a withdrawal or disavowal of an LEA endorsement (bullets 4 and 5 above, respectively). In this interim rule, DHS is therefore removing 8 CFR 214.11(s)(1)(i). *See* new 8 CFR 214.11(m)(2). Relatedly, for clarity, DHS is incorporating a statutory citation into the ''errant approval'' ground of revocation (bullet 2 above). *Id.*

b. Revocation Based on Information Provided by Law Enforcement

Commenters were also concerned that an LEA could provide information to USCIS that a victim is no longer cooperating and this information could serve as the basis for revocation. The commenters noted that revocation could be problematic in these cases, because USCIS would have already determined the individual would face extreme hardship involving unusual and severe harm if removed.

DHS is not persuaded that there is a problem with receiving information from an LEA about a victim with T nonimmigrant status. Consistent with the goals of the TVPA, DHS must balance law enforcement needs with the protection of victims of trafficking. Law enforcement may provide USCIS with valuable probative information, and it would be illogical for USCIS to reject this information solely because it came from an LEA or because USCIS made a prior adjudication of eligibility. USCIS does not revoke automatically upon receiving this LEA information; rather, it can revoke after providing notice to the T nonimmigrant of the intent to revoke and an opportunity for the victim to respond. As new 8 CFR 214.11(m)(2) and 8 CFR 103.3 explain, USCIS will issue a notice of intent to revoke in writing, providing the applicant with an opportunity to respond, and potentially provide additional evidence to rebut the information provided by the LEA. USCIS will accept any relevant evidence under new 8 CFR 214.11(d)(2)(ii) and (3). Evidence could include, but is not limited to, information about the mental or physical health of the applicant, including any ongoing trauma, information about the safety concerns involved for the applicant or his or her family, information about how the victim has been cooperative, information about the disposition of the case, or information about how the LEA requests were not reasonable. *Id.*

USCIS will then review all the evidence considering the totality of the circumstances, and will not revoke based solely on any one factor or piece of evidence, including the information provided by the LEA. When USCIS initially approves the T nonimmigrant status, including making the determination that the victim would face extreme hardship upon removal, USCIS also accounts for victimization and compliance with reasonable requests. If USCIS learns after approval that there are grounds sufficient for revocation under new 8 CFR 214.11(m), USCIS may exercise its discretion to revoke the T nonimmigrant status.

c. Revocation of Derivative Nonimmigrant Status

In this interim rule, DHS is adding a ground for automatic revocation applicable only to family members outside of the United States. DHS will revoke an approved derivative application if the family member notifies USCIS that he or she will not apply for admission into the United States. *See* new 8 CFR 214.11(m)(1). This provision closely mirrors a provision in the U nonimmigrant status regulations at 8 CFR 214.14(h)(1).

9. Technical Fix for T Nonimmigrants Residing in the CNMI

Physical presence in the CNMI will be considered in determining whether an applicant for T nonimmigrant status meets the physical presence requirement. *See* INA section 101(a)(15)(T)(i)(II); 8 CFR 214.11(b)(2); *see also* INA section 101(a)(38) (defining ''United States'' for immigration purposes as including the CNMI).

Prior to the federalization of CNMI immigration law on November 28, 2009, victims in the CNMI had to travel to Guam or elsewhere in the United States to actually be admitted as a T nonimmigrant. *See* Title VII of the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110–229, 122 Stat. 754 (2008) (effectively replacing the CNMI's immigration laws with the INA and other applicable U.S.

immigration laws, with few exceptions). The adjustment of status provisions for T nonimmigrants require 3 years of continuous physical presence in the United States since admission as a T nonimmigrant. *See* INA section 245(l)(1)(A), 8 U.S.C. 1255(l)(1)(A). An approved T nonimmigrant in the CNMI would not accrue this time in the United States for purposes of adjustment of status until on or after November 28, 2009, when the CNRA took effect, and only if he or she was actually admitted to the United States. The CNRA included a rule of construction that time in the CNMI before November 28, 2009 does not count as time in the United States (except for limited purposes). *See* CNRA section 705(c).

VAWA 2013 added a new exception to this rule, so that time in the CNMI, whether before or after November 28, 2009, counts as time admitted as a T nonimmigrant for establishing physical presence for purposes of adjustment of status to lawful permanent residence, so long as the applicant was granted T nonimmigrant status. *See* VAWA 2013, tit. viii, section 809. DHS interprets this to mean that when T nonimmigrant status was granted to an individual in the CNMI, the 3-year continuous physical presence required for adjustment of status began to run at that time, even if he or she was not actually admitted in T nonimmigrant status. *See* new 8 CFR 245.23(a)(3)(ii).

D. Filing and Biometric Services Fees

DHS received 17 comments on the interim rule regarding fees. Commenters thought application fees for T nonimmigrant status, derivative T nonimmigrant status, and waivers of inadmissibility were excessive and burdensome. Some commenters recommended eliminating or greatly reducing fees associated with applying for T nonimmigrant status, especially for minor victims.

Since the publication of the 2002 interim rule, intervening events resolved commenters' concerns. In 2007, DHS eliminated the fee to file the Application for T Nonimmigrant Status, Form I–914, and the Application for Family Member of a T–1 Recipient, Form I–914 Supplement A. *See Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,* 72 FR 29851, at 29865 (Feb. 1, 2007). Further, USCIS may waive the fee for any request from the time of application for T nonimmigrant status until USCIS adjudicates an application for adjustment of status. *See* TVPRA 2008 section 201(d)(3); INA section 245(l)(7), 8 U.S.C. 1255(l)(7). DHS added this waiver authority at 8 CFR 103.7(c)(3)(xviii). *See U.S. Citizenship and Immigration Services Fee Schedule,* 75 FR 58961 (Sept. 24, 2010). Thus, an applicant may request a fee waiver for any other form associated with the application for T nonimmigrant status.

DHS will require biometric services for all applicants for T nonimmigrant status between the ages of 14 and 79. *See* new 8 CFR 214.11(d)(4) and 8 CFR 103.16 (providing that any individual may be required to submit biometric information if the regulations or form instructions require such information).[24] In addition, regarding the biometric services fee, at the time of the 2002 interim rule, DHS charged applicants for biometric services. DHS regulations now provide that no fee will be charged for biometric services for T nonimmigrant applicants. *See* 8 CFR 103.7(b)(1)(i)(C)(*3*); *U.S. Citizenship and Immigration Services Fee Schedule; Final Rule,* 75 FR 58962, 58991, 58967, 58986 (Sept. 24, 2010).

One commenter suggested that taking fingerprints as part of the application process was duplicative since many victims have already had fingerprints taken. Biometric capture is a necessary measure in any USCIS application process to ensure identity and prevent fraud. USCIS must determine the identity of the individual through biometric capture. In addition, not all victims of trafficking or all applicants for T nonimmigrant status will have had contact with law enforcement or have had fingerprints taken by law enforcement and USCIS will not have access to the applicant's fingerprints from those who do.

DHS will not amend its general biometric capture requirements as requested by the commenter. DHS, however, is removing the requirement at 8 CFR 214.11(d)(2)(ii) that applicants submit three photographs with an application for T nonimmigrant status. At the time of the 2002 interim rule, the DHS biometric process did not include taking photographs of applicants. USCIS now takes photographs when capturing biometrics, so this requirement is no longer necessary.

[24] Any individual may be required to submit biometric information if the regulations or form instructions require such information or if requested in accordance with 8 CFR 103.2(b)(9). DHS may collect and store for present or future use, by electronic or other means, the biometric information submitted by an individual. DHS may use this biometric information to conduct background and security checks, adjudicate immigration and naturalization benefits, and perform other functions related to administering and enforcing the immigration and naturalization laws. 8 CFR 103.16(a).

V. Regulatory Requirements

A. Administrative Procedure Act

As explained below, the changes made in this interim rule do not require advance notice and opportunity for public comment, because they are (1) required by various legislative revisions, (2) exempt as procedural under 5 U.S.C. 553(b)(A), (3) logical outgrowths of the 2002 interim rule, or (4) exempt from public comment under the ''good cause'' exception to notice-and-comment under 5 U.S.C. 553(b)(B). DHS nevertheless invites written comments on this interim rule, and will consider any timely submitted comments in preparing a final rule.

1. Statutorily Required Changes

As noted elsewhere in the preamble, DHS is conforming its T nonimmigrant regulations to statutory changes that provide little agency discretion in their interpretation and promulgation. When regulations merely restate the statute they implement (*i.e.,* when the rule does not change the established legal order), the APA does not require the agency to use notice-and-comment procedures. *See* 5 U.S.C. 553(b)(B); *Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1291 (D.C. Cir. 1991). So long as the agency does not expand the substantive reach of the statute to impose new obligations, penalties, or substantive eligibility requirements—*i.e.,* so long as the agency ''merely restate[s]'' the statute—notice and comment are unnecessary. *See World Duty Free Americas, Inc.* v. *Summers,* 94 F. Supp. 2d 61, 65 (D.D.C. 2000). The following changes meet these criteria:

(a) Victims who leave the United States and are allowed reentry for participation in investigative or judicial processes are eligible. New 8 CFR 214.11(b)(2), (g)(1)(v), (g)(2)(iii). INA 101(a)(15)(T)(i)(II), *as amended by* TVPRA 2008 section 201(a)(1)(C).

As discussed above in the preamble, section 201(a)(1)(C) of TVPRA 2008 amended section 101(a)(15)(T)(i)(II) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(II), to include physical presence on account of the victim having been allowed to enter the United States to participate in investigative or judicial processes associated with an act or perpetrator of trafficking. DHS codifies this change in this rule at new 8 CFR 214.11(b)(2) and 214.11(g)(1)(v), which provide, respectively, that, ''the alien is physically present in the United States,'' and the presence requirement reaches an alien who is present, ''on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes

associated with an act or perpetrator of trafficking.'' This change in regulation merely codifies intervening statutory changes. Advance notice and opportunity for public comment are therefore unnecessary.

Incident to expanding the definition of presence as described above, this rule also establishes that applicants claiming entry into the United States for participation in investigative or judicial processes must document that their entry was valid and that it was for participation in investigative or judicial processes associated with trafficking. New 8 CFR 214.11(g)(3). This provision makes no changes to the established legal order, other than to reiterate the public's statutory rights and establish procedures for adjudication. Similar to a number of other evidentiary requirements in this rule, the documentation requirement affords the public maximum flexibility in presenting their case to the agency. The change does not impose any limitation on the types of evidence that would be acceptable to show valid entry. Advance notice and opportunity for public comment are therefore unnecessary.

(b) Victims of trafficking which occurred abroad, who have been allowed entry for investigative or judicial processes, are eligible. New 8 CFR 214.11(b)(2), (g)(1)(v), (g)(3). INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i).

As noted above, DHS is revising its regulations at new 8 CFR 214.11(g)(3) to provide that the victim may be physically present in the United States on account of having been allowed initial entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking that did not occur in the United States. This change expands the scope of the regulation as required by section 201(a)(1)(C) of TVPRA 2008 to account for eligibility when the trafficking occurred abroad but the victim was allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking. Similar to the change described directly above, this change in regulation merely codifies intervening statutory changes. Advance notice and opportunity for public comment are therefore unnecessary.

(c) Exemption for victims under 18 years old from compliance with any reasonable request for assistance. INA section 101(a)(15)(T)(i)(III)(bb) and (cc), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb) and (cc); new 8 CFR 214.11(b)(3)(i), (ii).

Under the 2002 interim rule, persons under the age of 15 were not required to comply with any reasonable request for assistance in a prosecution or investigation from an LEA. Former 8 CFR 214.11(b)(3)(ii). The statute was amended by TVPRA 2008 to exempt from this requirement children under 18 years of age. *See* INA section 101(a)(15)(T)(i)(III)(bb) and (cc), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb) and (cc). In this rule, DHS is codifying the intervening statutory changes without modification.[25] New 8 CFR 214.11(b)(3)(i) and (ii).

(d) Exemption for victims who suffer trauma from compliance with reasonable requests for assistance. INA section 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb); New 8 CFR 214.11(h)(4)(i).

INA section 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa) requires that victims comply with any reasonable request for assistance from an LEA, but the INA exempts victims who are, ''unable to cooperate with a request described in item (aa) due to physical or psychological trauma.'' INA section 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb). DHS provides in this rule that, if the applicant is unable to cooperate with a reasonable request due to physical or psychological trauma or age, an applicant who has not had contact with an LEA or who has not complied with any reasonable request may be exempt from the requirement to comply with any reasonable request for assistance in an investigation or prosecution. New 8 CFR 214.11(h)(4)(i). In this rule, DHS is codifying the intervening statutory changes without modification.[26]

This rule also establishes general procedures for an applicant to demonstrate the trauma necessary for this exception. The victim will be required to submit evidence of the trauma by submitting an affirmative statement describing the trauma and any other credible evidence. This includes, for instance, a signed statement from a qualified professional, such as a medical professional, social worker, or victim advocate, who attests to the victim's mental state, and medical, psychological, or other records which are relevant to the trauma. *Id.* USCIS reserves the authority and discretion to contact the law enforcement agency involved in the case, if appropriate. *Id.* These provisions are procedural and make no changes to the established legal order, other than to reiterate the public's statutory rights. Although notice-and-comment requirements do not apply to this provision, DHS welcomes comments from the public on this matter.

(e) Requirement to notify HHS upon discovering that a person under the age of 18 may be a victim of trafficking. TVPRA 2008 section 212(a)(2); New 8 CFR 214.11(d)(1)(iii).

Federal agencies must notify HHS within 48 hours upon (1) apprehension or discovery of an unaccompanied alien child or (2) any claim or suspicion that an alien in custody is under 18 years of age. *See* TVPRA 2008 section 235(b)(2), codified at 8 U.S.C. 1232(b)(2). In addition, to facilitate the provision of public benefits to trafficking victims, federal agencies must notify HHS not later than 24 hours after discovering that a person under the age of 18 may be a victim of a severe form of trafficking in persons. *See* TVPRA 2008 section 212(a)(2), codified at 22 U.S.C. 7105(b)(1)(G). In this rule, DHS is codifying the statutory changes without modification; receipt of a T nonimmigrant status application from a minor will result in DHS notifying HHS. *See* new 8 CFR 214.11(d)(1)(iii).

(f) Expansion of family members an alien victim is permitted to apply for derivative T nonimmigrant status. INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I). New 8 CFR 214.11(k)(1)(ii), (iii).

The INA allows a principal applicant under 21 years of age to apply for admission in T nonimmigrant status of his or her parents and unmarried siblings under 18 years of age. *See* INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I). In addition, the INA allows any principal, regardless of age, to apply for parents or unmarried siblings under 18 years of age if the family member faces a present danger of retaliation as a result of the principal's escape from the severe form of trafficking in persons or his or her cooperation with law enforcement. *See* INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III). Finally, any principal, regardless of age, may apply for the adult or minor children of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the principal's escape from the severe form of trafficking or cooperation with law enforcement. *See* INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III).

[25] USCIS has implemented this change in practice. *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004).

[26] USCIS has implemented the trauma exception in practice. *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004).

In this rule, DHS is codifying the change made by TVPRA 2003 to expand eligibility by allowing a victim granted T–1 nonimmigrant status (principal) to apply for the admission of his or her spouse, child, and, if the principal is under 21 years of age, his or her parent, or unmarried sibling under the age of 18. New 8 CFR 214.11(k)(1)(ii). In addition, DHS is codifying the change made by TVPRA 2003 that provides that, regardless of the age of the principal, if the eligible family member faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement, the principal alien can apply for the admission of his or her parents. New 8 CFR 214.11(k)(1)(iii). Finally, DHS is codifying the change made in VAWA 2013 that permits the adult or minor children of a principal's derivative family member to be an eligible family member if he or she faces a present danger of retaliation. *Id.* DHS is codifying these statutory changes without modification; notice and comment thereon are therefore unnecessary.[27]

Finally, this rule includes a procedural provision at new 8 CFR 214.11(k)(3) requiring the principal applicant to demonstrate that the derivative applicant is a family member who meets one of the categories in new 8 CFR 214.11(k)(1)(ii)–(iii), *i.e.,* that the family member meets statutory eligibility requirements as a family member accompanying or following to join the principal applicant. Similar to a number of other evidentiary requirements in this rule, the documentation requirement concerning eligible family members affords the public maximum flexibility in presenting their case to the agency. DHS nonetheless invites public comment on this matter.

(g) Age-out protection for child principal applicant to petition for eligible family members. INA section 214(o)(5), 8 U.S.C. 1184(o)(5). New 8 CFR 214.11(k)(5)(ii).

TVPRA 2003 section 4(b)(2)(B) revised the INA to provide that a principal who files an application for T nonimmigrant status while under 21 years of age will continue to be eligible even if the principal turns 21 while the application is pending. INA section 214(o)(5), 8 U.S.C. 1184(o)(5). DHS has revised the regulations in this rule to provide that a principal who was under 21 years of age at the time of filing for T–1 status can file an Application for Family Member of T–1 Recipient, Form I–914 Supplement A, to include T–4 parents even if the principal turns 21 years of age before the principal's T–1 application is adjudicated. *See* new 8 CFR 214.11(k)(5)(ii). DHS is codifying this statutory change without modification; notice and comment thereon are therefore unnecessary.[28]

(h) The unmarried sibling of a child principal need only be under 18 years of age when the child principal files for T–1 status. INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I). New 8 CFR 214.11(k)(5)(ii).

TVPRA 2003 sections 4(b)(1)(B) and (b)(2) provide that a principal under 21 years of age may apply for admission of his or her parents and unmarried siblings under 18 years of age. Thus, the INA now provides that an unmarried sibling who is seeking status as a T–5 derivative of a principal T–1 applicant under 21 years of age need only be under the age of 18 at the time the principal T–1 applicant files for T–1 nonimmigrant status. INA section 101(a)(15)(T)(ii)(I), 8 U.S.C. 1101(a)(15)(T)(ii)(I). It does not matter if the unmarried sibling turns 18 years of age between the time the principal files his or her own application and before the principal files the application for his or her sibling. *Id.* The age of an unmarried sibling when USCIS adjudicates the T–1 application, when the unmarried sibling files the derivative application, when USCIS adjudicates the derivative application, or when the unmarried sibling is admitted to the United States does not affect eligibility. 8 CFR 214.11(k)(5)(ii). DHS is codifying this statutory change without modification; notice and comment thereon are therefore unnecessary.[29]

(i) A child derivative only needs to be under 21 at the time the principal parent filed for T–1 status. INA section 214(o)(4), 8 U.S.C. 1184(o)(4); New 8 CFR 214.11(k)(5)(iii).

TVPRA 2003 section 4(b)(2)(B) revised INA section 214(o)(4), 8 U.S.C. 1184(o)(4), to provide that as long as a child derivative (T–3) was under 21 years of age on the date the principal T–1 parent applied for T–1 nonimmigrant status, he or she will continue to be classified as a child and allowed entry as a derivative child. DHS implements this statutory requirement in this rule by providing that the derivative's age at the time of classification or entry does not matter as long as the child T–3 derivative was under the age of 21 when the parent T–1 filed for T nonimmigrant status. *See* new 8 CFR 214.11(k)(5)(iii). DHS is codifying this statutory change without modification; notice and comment thereon are therefore unnecessary.[30]

(j) Exemption for the public charge ground of inadmissibility. INA section 212(d)(13)(A), 8 U.S.C. 1182(d)(13)(A); New 8 CFR 212.16(b).

The INA generally prohibits DHS and immigration judges from admitting as an immigrant or granting adjustment of status to lawful permanent residence to any alien who is likely to become a public charge at any time. *See* INA section 212(a)(4), 8 U.S.C. 1182(a)(4). TVPRA 2003 section 4(b)(4), however, provided that inadmissibility as a public charge does not apply to an applicant for T nonimmigrant status. *See* INA section 212(d)(13)(A), 8 U.S.C. 1182(d)(13)(A). DHS is amending the regulations in this interim rule and on the form to comply with the statutory requirements. *See* new 8 CFR 212.16(b). DHS is codifying these statutory provisions without modification; notice and comment thereon are therefore unnecessary.[31]

(k) Allowing extensions of status and the process to request them for LEA need, exceptional circumstances, and applying for adjustment of status. INA

[27] USCIS implemented the statutory directive to allow a T–1 to apply for their spouse, child, and, if the principal is under 21 years of age, their parent, or unmarried sibling under the age of 18 in a policy memorandum dated April 15, 2004. *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004). USCIS has also implemented the change allowing the principal, regardless of his or her age, to apply for the admission of parents, unmarried siblings under the age of 18, or the adult or minor children of their derivative family members if the family member faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement was implemented by USCIS in a memorandum dated July 21, 2010. *See* Mem., USCIS, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions;* Revisions to Adjudicators Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10–38) (July 21, 2010).

[28] USCIS has already implemented this change in a policy memorandum dated April 15, 2004. *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004).

[29] USCIS has already implemented this change in a policy memorandum dated April 15, 2004. *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004).

[30] USCIS has already implemented this change in a policy memorandum dated April 15, 2004. *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004).

[31] USCIS has already implemented this change in a policy memorandum dated April 15, 2004. *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004).

section 214(o)(7), 8 U.S.C. 1184(o)(7); New 8 CFR 214.11(l).

VAWA 2005 section 821(a) requires DHS to allow extensions of T nonimmigrant status for law enforcement need. TVPRA 2008, section 201(b)(1), requires DHS to allow extensions of T nonimmigrant status in cases of exceptional circumstances, and TVPRA 2008 section 201(b)(2) requires extensions for T nonimmigrants who apply for adjustment of status. INA section 214(o)(7), 8 U.S.C. 1184(o)(7). DHS provides in this rule that USCIS may grant extensions of T–1 nonimmigrant status beyond 4 years from the date of approval in 1-year periods from the date the T–1 nonimmigrant status ends, if the presence of the victim in the United States is necessary to assist in the investigation or prosecution of such activity, an extension is warranted due to exceptional circumstances, or the T–1 nonimmigrant has a pending application for adjustment of status to lawful permanent resident. New 8 CFR 214.11(l)(1). DHS is codifying this statutory change without substantive modification; notice and comment thereon are therefore unnecessary.

This rule also establishes general procedures for an applicant to demonstrate that he or she has met the requirements for an extension of stay including prescribing an application and supporting evidence to establish eligibility. New 8 CFR 214.11(l)(2)–(7). The victim will be required to document his or her eligibility by submitting the form designated by USCIS with the prescribed fee in accordance with form instructions before the expiration of T–1 nonimmigrant status, including: Evidence to support why USCIS should grant the extension; evidence of law enforcement need that comes directly from a law enforcement agency, including a new LEA endorsement; evidence from a law enforcement official, prosecutor, judge, or appropriate authority; or any other credible evidence. New 8 CFR 214.11(l)(2)–(5). An applicant may demonstrate exceptional circumstances by submitting an affirmative statement or any other credible evidence, including medical records, police or court records, news articles, correspondence with an embassy or consulate, and affidavits of witnesses. New 8 CFR 214.11(l)(6). USCIS will automatically extend T nonimmigrant status when a T nonimmigrant properly files an application for adjustment of status, and a separate application for extension of T nonimmigrant status is not required. New 8 CFR 214.11(l)(7). These broad procedural provisions make no changes to the established legal order, other than to reiterate the public's statutory rights, and to allow the applicants to exercise such rights. DHS has therefore determined it is not required to publish these procedures for public notice and comment. DHS nevertheless welcomes comments from the public on these changes.[32]

(l) Time of physical presence in the CNMI counts as time admitted as a T nonimmigrant for establishing physical presence required at adjustment of status. INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II); New 8 CFR 214.11(b)(2), 245.23(a)(3)(ii).

Title VIII, section 809 of VAWA 2013 provides that aliens in the CNMI are eligible for T nonimmigrant status because status in the CNMI meets the requirement for an alien to be physically present in the United States. INA section 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II) (aliens eligible for T nonimmigrant status include those who are ''physically present in the . . . [CNMI] . . . on account of such trafficking''). This means that under the statute, when T nonimmigrant status was granted for someone in the CNMI, the 3-year continuous physical presence required for adjustment of status began to toll at that time, even if he or she was not actually admitted in T nonimmigrant status. DHS provides in this rule that if the individual was granted T nonimmigrant status under 8 CFR 214.11, such individual's physical presence in the CNMI before, on, or after November 28, 2009, including physical presence subsequent to the grant of T nonimmigrant status, is considered as equivalent to presence in the United States pursuant to an admission in T nonimmigrant status. New 8 CFR 245.23(a)(3)(ii). DHS is codifying this statutory directive without substantive modification; notice and comment thereon are therefore unnecessary.

(m) The definition of sex trafficking includes patronizing or soliciting of a person for the purpose of a commercial sex act. *See* INA 101(a)(15)(T)(i)(I), 22 U.S.C. 7102.

The Justice for Victims of Trafficking Act of 2015 (JVTA), Public Law 114–22, 129 Stat 227 (May 29, 2015), expanded the definition of sex trafficking at 22 U.S.C. 7102(10) to add ''patronizing or soliciting of a person for the purpose of a commercial sex act'' to the list of activities constituting sex trafficking. DHS believes the terms ''patronizing or soliciting of a person for the purpose of a commercial sex act'' are clear both in terms of USCIS adjudications and LEA certification and do not require clarification of their intent or meaning in regulatory text. Because DHS is codifying this statutory change without modification, notice and comment on those provisions are unnecessary. New 8 CFR 214.11(a), (f)(1).

[32] In addition, USCIS has already implemented these statutory requirements through policy guidance. *See* Mem., USCIS, *Extension of Status for T and U Nonimmigrants;* Revisions to AFM Chapter 39.1(g)(3) and Chapter 39.2(g)(3) (AFM Update AD11–28) (Apr. 19, 2011).

2. Procedural Changes Only

Binding agency rules that do not themselves alter the substantive rights or interests of parties are exempt from the APA notice and comment requirements. 5 U.S.C. 553(b)(A); *Public Citizen* v. *Dep't of State,* 276 F.3d 634, 640 (D.C. Cir. 2002). Although the exception for procedural rules is to be construed narrowly, its purpose is clear: to provide agencies with flexibility to implement and modify administrative procedures efficiently, so long as such procedures do not intrude on the public's substantive rights or interests. Above, DHS notes that in revising its regulation to codify intervening statutory changes, DHS has included a number of procedural provisions that provide the public with maximum flexibility to exercise statutory rights. In addition to such provisions, DHS is also making a number of procedural changes, as described below and in the succeeding sections.

This rule includes at least one change to reflect changes to agency organization. The 2002 interim rule provided that any Service officer who receives a request for T nonimmigrant status shall be referred to the local Service office with responsibility for investigations relating to victims of severe forms of trafficking in persons for a consultation. Former 8 CFR 214.11(v). DHS provides in this rule that a USCIS employee who comes into contact with an alien believed to be a victim of a severe form of trafficking in persons should consult with the ICE officials responsible for victim protection, trafficking investigations and prevention, and deterrence, as appropriate. New 8 CFR 214.11(o). This change is necessary because the former INS was split into separate components responsible for the adjudication of immigration benefits and investigations and enforcement.

3. Logical Outgrowth

A number of the changes made in this interim rule are logical outgrowths of the 2002 rule, and made in response to the public comments on that rule. When issuing a final or interim final rule following an interim rule, an agency must maintain ''a flexible and open-

minded attitude'' toward comments that support changing the original interim rule. *Fed. Express Corp.* v. *Mineta,* 373 F.3d 112, 120 (D.C. Cir. 2004) (quoting *Nat'l Tour Brokers Ass'n* v. *United States,* 591 F.2d 896, 902 (D.C. Cir. 1978), and citing *Advocates for Highway & Auto Safety* v. *Fed. Highway Admin.,* 28 F.3d 1288, 1292 (D.C. Cir. 1994)). The agency should change its original rule if the data before the agency justify the change. Substantial changes may be made so long as the interim final rule provided a clear signal to the affected public as to what changes may be made, they are in character with the original scheme, and they are a logical outgrowth of the notice provided. *See id.; Methodist Hosp. of Sacramento* v. *Shalala,* 38 F.3d 1225 (D.C. Cir. 1994); *BASF Wyandotte Corp.* v. *Costle,* 598 F.2d 637 (1st Cir. 1979).

The following changes made in this rule are logical outgrowths of the 2002 interim rule because they were suggested by commenters or they are clearly within the scope and in character with the original scheme of the interim rule. Notwithstanding the passage of time since the 2002 interim rule was published and intervening legislation that affects the T nonimmigrant visa program, comments provided, the factual circumstances surrounding the rule, and the administration of the T nonimmigrant visa program have not changed to an extent that would render the comments on the 2002 rule not germane or otherwise inapplicable. As described more fully in the section-by-section analysis above, in each case, the justification for the change is either as strong as or stronger than it was in 2002. Among these changes are the following:

(a) No need to actually perform labor or services to qualify as victim. New 8 CFR 214.11(f)(1); TVPA sections 103(9), (10), (14); 22 U.S.C. 7102(9), (10), (14).

(b) Removal of filing deadline. Former 8 CFR 214.11(d)(4).

(c) Eliminating citation to *United States* v. *Kozminski,* 487 U.S. 931 (1998), and otherwise clarifying the definition of ''involuntary servitude'' for purposes of TVPA section 103(9), 22 U.S.C. 7102(9). New 8 CFR 214.11(a).

(d) For evidence of victimization, accept LEA endorsements as any credible evidence. New 8 CFR 214.11(f)(1).

(e) Remove the requirement to show no clear chance to depart the United States. Former 8 CFR 214.11(g)(2).

(f) Provide a non-exhaustive list of factors used in the ''totality of the circumstances'' test to determine reasonableness of failure to cooperate with law enforcement. New 8 CFR 214.11(h)(2).

(g) Consolidate the grounds for revocation of status for violation of requirements of T status from two into one ground. New 8 CFR 214.11(m)(2)(i).

(h) Provide for revocation of derivative nonimmigrant status if the family member will not apply for admission to the United States. New 8 CFR 214.11(m)(1).

(i) Clarify that the standard for judging a victim's refusal to satisfy an LEA request is not whether the victim's refusal was reasonable, but whether the LEA request was reasonable. New 8 CFR 214.11(m)(2)(iii).

(j) For evidence of compliance with an LEA request, accept any credible evidence and ascribe no special weight to the LEA endorsement. New 8 CFR 214.11(h)(3).

(k) Changing the standard for when DHS will exercise its discretionary criminal waiver authority with respect to crimes that do not involve a link to the victimization; whereas the former standard allowed for discretionary waiver in ''exceptional cases'' only, the new standard allows for discretionary waiver in a broader category of cases (and in cases involving violent or dangerous crimes, only in ''extraordinary circumstances''). New 8 CFR 212.16(b)(2).

(l) Revise 8 CFR 212.16(b)(3), which previously provides that USCIS would waive a ground of inadmissibility only in exceptional cases when the ground of inadmissibility would prevent or limit the ability of the applicant to adjust to permanent resident status after the conclusion of 3 years. Former 8 CFR 212.16(b)(3). DHS is replacing ''exceptional cases'' with the term ''extraordinary circumstances.'' New 8 CFR 212.16(b)(3).

(m) Remove language that applicants on the wait list would maintain current means to prevent removal, to clarify that people can maintain current means or attain new means to prevent removal, in accordance with existing practice. Former 8 CFR 214.11(m)(2); new 8 CFR 214.11(j)(2).

(n) Updating nondisclosure protections for information relating to an applicant or beneficiary of an application for T nonimmigrant status. 8 U.S.C. 1367; New 8 CFR 214.11(p)(1).

4. Contrary to the Public Interest

Finally, public notice and comment is also not required when an agency for good cause finds that notice and public comment procedure are contrary to the public interest. The good cause exception is an important safety valve to be used where delay would do real harm. *N. Am. Coal Corp.* v. *Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor,* 854 F.2d 386, 389 (10th Cir. 1988). To the extent DHS is filling any gaps in promulgating provisions to implement the new statutory provisions, DHS has determined that delaying the effect of this rule during the period of public comment is contrary to the public interest. Congress created the T nonimmigrant classification to protect victims of human trafficking in the United States and encourage victims to fully participate in the investigation or the prosecution of the traffickers. *See* TVPA, sec. 102(b). Since the 2002 interim rule, Congress enacted legislation to encourage victims of human trafficking to assist law enforcement. Public Law 108–193, 117 Stat. 2875 (Dec. 19, 2003); Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006); Public Law 109–271, 120 Stat. 750 (Aug. 12, 2006); Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008), Public Law 113–4, 127 Stat. 54 (Mar. 7, 2013), and Public Law 114–22, 129 Stat 227 (May 29, 2015). Even if DHS has some remaining discretion in their execution, each of the specific changes made in the underlying law were intended to reduce the number of people who will be exposed to the dangers associated with human trafficking.

It is contrary to the public interest to delay the changes made by this rule to provide for pre-promulgation public comment. For example, adult or minor children of the principal's derivative family members who face a present danger of retaliation as a result of the victim's escape from a severe form of trafficking or cooperation with law enforcement may now qualify for adjustment of status after expiration of their T nonimmigrant derivative status. Without this change taking effect immediately, family members of victims who can get nonimmigrant status would not be able to adjust status to that of a lawful permanent resident and could be required to depart the United States after their nonimmigrant status runs out. This would expose them to danger from traffickers in their home country as a result of the principal's cooperation with law enforcement. In order to be eligible to adjust status, the family member must continue to hold status at the time of the application. 8 CFR 245.23(b)(2). If this provision is delayed, there is a risk the T–6 derivative status period will expire and the family member will not be able to adjust status, as his or her time in T–6 status will have ended.

USCIS does not have another source of authority to preserve the eligibility of the T–6 status of the family member to

adjust status in lieu of implementing this provision immediately. In addition to potential harm to family members and reduced incentive for principals to participate in the T nonimmigrant visa program, delaying this change would also harm law enforcement's ability to leverage the knowledge and experience of family members themselves. Family members coming to the United States from abroad may have knowledge of the actions of the trafficker that even the victim cooperating with the LEA may not know. DHS has seen situations where the assistance of the family members has greatly furthered the investigation. DHS has decided to avoid these harms by not delaying this change for a period of public notice and comment.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. As a result, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States companies to compete with foreign-based companies in domestic and export markets.

D. Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. DHS considers this to be a ''significant regulatory action,'' although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

1. Summary

With this interim rule, DHS incorporates in its regulations several statutory provisions associated with the T nonimmigrant status that have been passed since 2002. All statutory changes made before VAWA 2013 have already been implemented by DHS, and codifying these changes in the DHS regulations will result in no additional quantitative costs or benefits to impacted stakeholders nor the Federal government in administering the T nonimmigrant status program. Ensuring that DHS regulations are consistent with applicable legislation will provide qualitative benefits. Additionally, with the enactment of VAWA 2013, the following legislative changes were made to the statute and later implemented into DHS policy: (a) Expanding the derivative categories of family members that are eligible for derivative T nonimmigrant status; and (b) providing a technical fix to clarify that physical presence in the CNMI while in T nonimmigrant status will count as continuous presence in the United States for purposes of adjustment of status. DHS will assess the impact of the statutory provisions that will be codified into regulation in this interim rule. In addition, DHS is making several discretionary changes that will: (1) Clarify DHS policy in adjudicating T nonimmigrant applications; (2) eliminate a redundant requirement to include three passport-style photographs with applications; and, (3) make the T nonimmigrant status more accessible to victims of severe forms of trafficking in persons and their eligible family members. DHS estimates the statutory and discretionary changes made in this interim rule will result in the following impacts:

- A per application opportunity cost of time of $33.92 for the T–1 nonimmigrant principal alien to complete and submit the Application for Family Member of T–1 Recipient, Form I–914 Supplement A, in order to apply for children (adult or minor) of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the victim's escape from a severe form of trafficking and/or cooperation with law enforcement.[33] The cost is due to the VAWA 2013 statutory change that permits eligible children of the principal's derivative relatives to be admitted under the T–6 classification. DHS has no basis to project the population of children of derivative family members that may be eligible for the new T–6 nonimmigrant classification. Like current T nonimmigrant derivative classifications, the new T–6 visa classification is not subject to a statutory cap.
- An individual total cost of $89.70 for aliens who become eligible to apply for principal T–1 nonimmigrant status due to the discretionary change that removes the filing deadline for aliens trafficked before October 28, 2000. The total cost includes the opportunity cost associated with pulling together supporting evidence and filing the Application for T Nonimmigrant Status, Form I–914, and the time and travel costs associated with submitting biometrics. If the applicant includes the Declaration of Law Enforcement Office for Victim of Trafficking in Persons, Form I–914 Supplement B in the application, there is an opportunity cost of $149.70 for the law enforcement worker that completes that form. DHS has no way of predicting how many victims physically present in the United States may now be eligible for T–1 nonimmigrant status as a result of removing the filing deadline. Those that are newly eligible for T–1 nonimmigrant status as a result of removing the date restriction will still be subject to the statutory cap of 5,000 T–1 nonimmigrant visas allotted per fiscal year.
- An individual total cost of $89.70 for victims trafficked abroad that will now become eligible to apply for T nonimmigrant status due to the discretionary change that expands DHS's interpretation of the physical presence requirement. As previously described, the total cost includes both the opportunity of time cost and estimated travel cost incurred with filing Form I–914 and submitting biometrics. If the applicant includes the Declaration of Law Enforcement Office for Victim of Trafficking in Persons, Form I–914 Supplement B in the application, there is an opportunity cost of $149.70 for the law enforcement worker that completes that form. DHS is unable to project the size of this new eligible population, but note that all victims newly eligible for T–1 nonimmigrant status due to this change are still subject to the statutory cap of

[33] There is no filing fee for the Form I–914 and its supplements. The opportunity cost of time refers to the estimated cost associated with the time it takes for an individual to complete and file the Form I–914 and its supplements.

5,000 T–1 nonimmigrant visas allotted per fiscal year.

Based on recent filing volumes, DHS estimates total cost savings of $56,130 for T nonimmigrant applicants and their eligible family members as a result of the discretionary change that eliminates the requirement to submit three passport-style photographs with their T nonimmigrant applications. In addition, the interim rule will provide various qualitative benefits for victims of trafficking, their eligible family members, and law enforcement agencies investigating trafficking incidents. These qualitative benefits result from making the T nonimmigrant classification more accessible, reducing some burden involved in applying for this status in certain cases, and clarifying the process by which DHS adjudicates and administers the T nonimmigrant benefit.

2. Background

Congress created the T nonimmigrant status in the TVPA of 2000. The TVPA provides various means to combat trafficking in persons, including tools for LEAs to effectively investigate and prosecute perpetrators of trafficking in persons. The TVPA also provides protection to victims of trafficking through immigration relief and access to federal public benefits. DHS published an interim final rule on January 31, 2002 implementing the T nonimmigrant status and the provisions put forth by the TVPA 2000.[34] The 2002 interim final rule established the eligibility criteria, application process, evidentiary standards, and benefits associated with obtaining T nonimmigrant status.

T nonimmigrant status is available to victims of severe forms of trafficking in persons who comply with any reasonable request for assistance from LEAs in investigating and prosecuting the perpetrators of these crimes. T nonimmigrant status provides temporary immigration benefits (nonimmigrant status and employment authorization) and a pathway to permanent resident status, provided that established criteria are met. Additionally, if a victim obtains T nonimmigrant status then certain eligible family members may also apply to obtain T nonimmigrant status.[35]

Table 1 provides the number of T nonimmigrant application receipts, approvals, and denials for principal victims and derivative family members for fiscal year 2005 through fiscal year 2015. Although the maximum annual number of T nonimmigrant visas that may be granted is 5,000 for T–1 principal aliens per fiscal year, this maximum number has never been reached and is not projected to be reached in the foreseeable future under current practice.[36]

TABLE 1—USCIS PROCESSING STATISTICS FOR FORM I–914[37]

FY	Victims (T–1)			Family of victims (T–2,3,4,5)			I–914 Totals		
	Receipts	Approved	Denied	Receipts	Approved	Denied	Receipts	Approved	Denied
2005	379	113	321	34	73	21	413	186	342
2006	384	212	127	19	95	45	403	307	172
2007	269	287	106	24	257	64	293	544	170
2008	408	243	78	118	228	40	526	471	118
2009	475	313	77	235	273	54	710	586	131
2010	574	447	138	463	349	105	1,037	796	243
2011	967	557	223	795	722	137	1,762	1,279	360
2012	885	674	194	795	758	117	1,680	1,432	311
2013	799	848	104	1,021	975	91	1,820	1,823	195
2014	944	613	153	925	788	105	1,869	1,401	258
2015	1,062	610	294	1,162	694	192	2,224	1,304	486

From the publication of the interim final rule in 2002 through 2016, Congress passed various statutes amending the original TVPA 2000. These include: The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). After the passage of each of the statutes, as noted in section I.A.1 of this preamble, USCIS issued policy and guidance memorandum to both implement the provisions of the Acts and to ensure compliance with the legal requirements of the Acts.[38]

This interim final rule codifies DHS policy and guidance from these statutes into the Code of Federal Regulations (CFR). The statutory changes from TVPRA 2003, TVPRA 2008, and VAWA 2005 are reflected in Table 2, below. Codifying existing USCIS policy and guidance ensures that the regulations are consistent with the applicable legislation, and that the general public has access to these policies through the CFR without locating and reviewing multiple policy memoranda. DHS provides the impact of these provisions in Table 2 assuming a pre-statutory baseline per OMB Circular A–4 requirements.

[34] *See* 67 FR 4784.

[35] The current T nonimmigrant categories are: T–1 (principal alien), T–2 (spouse), T–3 (child), T–4 (parent), and T–5 (unmarried sibling under 18 years of age). This interim rule creates a new T nonimmigrant category, T–6 (adult or minor child of a principal's derivative).

[36] There is no statutory cap for grants of T nonimmigrant derivative status or visas.

[37] Approved and denied volumes may not sum to the receipts in a given fiscal year because the processing and final decision for T nonimmigrant status applications may overlap fiscal years. USCIS records indicate that processing an application for T nonimmigrant status requires an estimated 6 to 9 months. Data source for the table: Performance Analysis System (PAS), USCIS Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB).

[38] *See* Mem. from Paul Novak, Director, Vermont Service Center, USCIS, *Trafficking Victims Protection Reauthorization Act of 2003* (Apr. 15, 2004); *see also* Mem., USCIS, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to AFM Chapters 23.5 and 39 (AFM Update AD10–38)* (July 21, 2010); Mem., USCIS, *Extension of Status for T and U Nonimmigrants; Revisions to AFM Chapter 39.1(g)(3) and Chapter 39.2(g)(3) (AFM Update AD11–28)* (Apr. 19, 2011); Mem., USCIS, *New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands; Revisions to Chapters 23.5 and Chapter 39.2 (AFM Update AD14–05)* (Apr. 15, 2015).

TABLE 2—SUMMARY OF IMPACTS TO THE REGULATED POPULATION OF TVPRA 2003, TVPRA 2008 AND VAWA 2005 STATUTORY CHANGES CODIFIED BY THIS INTERIM RULE

Provision	Current policy	Expected cost of the interim rule	Expected benefit of the interim rule
Expanding the definition and discussion of LEA (added by VAWA 2005).	LEA includes State and local law enforcement agencies.	None	Provides clarity and consistency in DHS practice with DHS regulations will lead to a qualitative benefit providing transparency to both the victims of trafficking and USCIS adjudicators.
Removing the requirement that eligible family members must face extreme hardship if the family member is not admitted to the United States or was removed from the United States (removed by VAWA 2005).	Family members may be eligible for T nonimmigrant status without having to show extreme hardship.	No additional costs, other than the opportunity cost of time to file Form I–914 Supplement A. However, DHS reiterates that this is a voluntary provision.	Provides a broader definition of an eligible family member and may increase the number of eligible family members.
Raising the age at which the applicant must comply with any reasonable request by an LEA for assistance in an investigation or prosecution of acts of trafficking in persons (added by TVPRA 2003).	The provision increased the minimum age requirement from 15 years to 18 years of age.	None	Provides a benefit by acknowledging the significance of an applicant's maturity in understanding the importance of participating with an LEA.
Exempting T nonimmigrant applicants from the public charge ground of inadmissibility (added by TVPRA 2003).	DHS may grant T nonimmigrant status to applicants even if they are likely to become a public charge.	No additional costs, other than the opportunity cost of time to file Form I–914 and if necessary Supplement B.	Victims who are likely to become a public charge are able to apply for T nonimmigrant status and receive the benefits associated with that status.
Exemptions to an applicant's requirement, to comply with any reasonable request by an LEA (added by TVPRA 2008).	Applicants are exempt from the requirement to comply with any reasonable request by an LEA in cases where the applicant is unable to comply, due to physical or psychological trauma.	None	Provides a benefit by acknowledging the significance of an applicant's mental capacity in understanding the importance of participating with an LEA.
Limiting duration of T nonimmigrant status but providing extensions for LEA need, for exceptional circumstances, and for the pendency of an application for adjustment of status (VAWA 2005 and TVPRA 2008).	Extends the duration of T nonimmigrant status from 3 years to 4 years, but limits the status to 4 years unless an applicant can qualify for an extension.	None	Provides T nonimmigrants status for an additional year with the possibility of extension.
Expanding the regulatory definition of physical presence on account of trafficking (added by TVPRA 2008).	DHS will consider victims as having met the physical presence requirement if they were allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator trafficking for purposes of eligibility for T nonimmigrant classification.	None	Provides a broader definition of physical presence on account of trafficking and may increase the number of eligible applicants.
Allowing principal applicants under 21 years of age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years and parents as eligible derivative family members (added by TVPRA 2003).	Unmarried siblings under 18 years of age and parents of the principal applicant may now be eligible for T nonimmigrant status under the T–4 and T–5 derivative category, if the principal applicant is under age 21.	No additional costs, other than the opportunity cost of time to file Form I–914 Supplement A on behalf of the principal's unmarried siblings under 18 years of age and parents.	Provides a broader definition of eligible family member and may increase the number of eligible family members.
Providing age-out protection for child principal applicants to apply for eligible family members (added by TVPRA 2003).	A principal applicant who was under 21 years of age at the time of filing the Form I–914 can file Form I–914 Supplement A on behalf of eligible family members, including parents and unmarried siblings under age 18, even if the principal alien turns 21 years of age before the principal T–1 application is adjudicated.	None	Provides a qualitative benefit by removing an age-out restriction, allowing principal applicants to apply for parents and unmarried siblings under age 18, even if the principal applicant turns 21 years of age before the T–1 application is adjudicated.

TABLE 2—SUMMARY OF IMPACTS TO THE REGULATED POPULATION OF TVPRA 2003, TVPRA 2008 AND VAWA 2005 STATUTORY CHANGES CODIFIED BY THIS INTERIM RULE—Continued

Provision	Current policy	Expected cost of the interim rule	Expected benefit of the interim rule
Providing age-out protection for child derivatives (added by TVPRA 2003).	An unmarried child of the principal who was under age 21 on the date the principal applied for T–1 nonimmigrant status may continue to qualify as an eligible family member, even if he or she reaches age 21 while the T–1 application is pending.	None	Provides a qualitative benefit by removing an age-out restriction, allowing a principal applicant parent to apply for a child as a derivative beneficiary, even if the child reaches age 21 while the principal's T–1 application is pending.
Allowing principal applicants of any age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years of age and parents as eligible family members if the family member faces a present danger of retaliation as a result of the principal applicant's escape from a severe form of trafficking or cooperation with law enforcement (added by TVPRA 2008).	Allows any principal applicant, regardless of age, to apply for derivative T nonimmigrant status for parents or unmarried siblings under 18 years of age if they face a present danger of retaliation.	No additional costs, other than the opportunity cost of time to file Form I–914 Supplement A, on behalf of the derivative's unmarried siblings under 18 years of age and parents.	If eligible, unmarried siblings under 18 years of age and parents of principal applicants may qualify for T–4 and T–5 nonimmigrant status, and obtain the immigration benefits that accompany that status. In addition, LEAs may benefit if more victims come forward to report trafficking crimes.
Care and custody of unaccompanied children with the HHS (added by TVPRA 2008).	Federal agencies must notify HHS upon apprehension or discovery of an unaccompanied child or any claim or suspicion that an individual in custody is under 18 years of age. Minors are eligible to receive federally funded benefits and services as soon as they are identified by HHS as a possible victim of trafficking.	DHS may have some additional administrative costs associated with informing HHS of unaccompanied children. As a result, HHS may have some additional costs in providing benefits and services to the affected minors.	Provides a qualitative benefit by enabling the health and well-being of a minor victimized by trafficking. These victims also obtain federally funded benefits and services.

3. Changes Implemented in This Interim Rule

This regulatory evaluation will provide a more in-depth analysis of the costs and benefits of the two statutory provisions added by VAWA 2013 and implemented in this interim rule. In addition, this analysis will address the impacts of several new discretionary provisions DHS is making in this interim rule.

a. Statutory Provisions

The legislative changes to the T nonimmigrant statutes added by VAWA 2013 and addressed in this analysis include:

• Allowing principal applicants of any age to apply for derivative T nonimmigrant status for children (adult or minor) of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the applicant's escape from a severe form of trafficking or cooperation with law enforcement. *See* INA section 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III); new 8 CFR 214.11(k)(1)(iii). Harmonizing with current allowances for T derivatives, this interim rule will also permit those classified as children of derivative aliens to apply for adjustment of status under INA section 245(l), 8 U.S.C 1255(1); new 8 CFR 245.23(b)(2).

• Implementing a technical fix to clarify that presence in the Commonwealth of the Northern Mariana Islands (CNMI) after being granted T nonimmigrant status qualifies toward the requisite physical presence requirement for adjustment of status to lawful permanent resident. *See* section 705(c) of the Consolidated Natural Resources Act of 2008 (CNRA), Title VII, Public Law 110–229, 122 Stat. 754 (May 8, 2008); new 8 CFR 245.23(a)(3)(ii).

VAWA 2013 expanded the eligibility of family members who may qualify for T nonimmigrant derivative status. The new statutory provision allows for the eligibility of the children (adult or minor) of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the victim's escape from a severe form of trafficking or cooperation with law enforcement. Family members that may be eligible as a result of this new provision could, for example, include: Stepchild(ren) (the adult or minor child(ren) of the principal's spouse); grandchild(ren) (the adult or minor child(ren) of the principal's child); niece(s) or nephew(s) (the adult or minor child(ren) of the principal's sibling); and/or sibling(s) (the adult or minor child of the principal's parent). The principal must file an Application for Family Member of T–1 Recipient, Form I–914 Supplement A, on behalf of these eligible family members, in accordance with form instructions. Evidence that demonstrates a present danger of retaliation to the family member must be included with the application.

New 8 CFR 214.1(a)(7) classifies the principal and eligible family members (including the new category as set forth by VAWA 2013) as:

- T–1 (principal alien);
- T–2 (spouse);
- T–3 (child);
- T–4 (parent);
- T–5 (unmarried sibling under 18 years of age); or
- T–6 (adult or minor child of a principal's derivative).

The final relevant provision in VAWA 2013 is a clarification that presence in the CNMI after being granted T nonimmigrant status qualifies toward the physical presence requirement for adjustment of status. T nonimmigrants may adjust to lawful permanent resident status after three years of continuous

physical presence in the United States. *See* INA section 245(l)(1)(A), 8 U.S.C. 1255(l)(1)(A). Prior to the enactment of VAWA 2013, an approved T nonimmigrant in the CNMI would not accrue time that counts toward the three year continuous physical presence requirement for adjustment of status until on or after November 28, 2009. Title VII of the CNRA extended, with limited exceptions, the U.S. immigration laws to the CNMI, effective November 28, 2009. Before the U.S. immigration laws were in effect in the CNMI, aliens in the CNMI had to travel to Guam or the United States to be admitted as a T nonimmigrant. In addition, the CNRA noted that time in the CNMI prior to the date the U.S. immigration laws became effective would not count as time in the United States. DHS data does not track aliens who were admitted as T nonimmigrants in the United States or Guam who relocated to the CNMI, and who may have been unable to adjust to lawful permanent resident because their time in the CNMI prior to November 28, 2009 did not qualify towards the three year physical presence requirement. VAWA 2013 added an exception to this provision so that time in the CNMI prior to November 28, 2009 would count as time admitted as a T nonimmigrant for establishing physical presence for purposes of adjustment of status to lawful permanent resident. *See* new 8 CFR 245.23(a)(3)(ii).

b. Discretionary Changes

In addition to the statutory provisions, DHS will make the following discretionary changes to DHS regulations governing the T nonimmigrant classification:

- Specify how USCIS will exercise its waiver authority over criminal inadmissibility grounds; new 8 CFR 212.16(b)(3).
- Discontinue the practice of weighing evidence as primary and secondary in favor of an ''any credible evidence'' standard; 8 CFR 214.11(f); new 8 CFR 214.11(d)(2)(ii) and (3).
- Eliminate the requirement that an applicant provide three passport-style photographs; 8 CFR 214.11(d)(2)(ii); new 8 CFR 214.11(d)(4).
- Remove the filing deadline for those victimized prior to October 28, 2000; 8 CFR 214.11(d)(4).
- Removes the restriction in the 2002 interim rule that an eligible applicant who is placed on the waiting list shall maintain his or her current means to prevent removal (deferred action, parole, or stay of removal) and any employment authorization, subject to any limits imposed on that. *See* former 8 CFR 214.11(m)(2). DHS will clarify that applicants on the waiting-list can either maintain their ''current means'' to prevent removal or find a ''new means'' to attain relief from removal. This will provide USCIS with avenues to exercise its discretion to provide temporary assistance to applicants on a case-by-case basis, even if applicants have no current means of protection if the statutory cap is met in a given fiscal year; new 8 CFR 214.11(j)(1).
- Remove the current regulatory ''opportunity to depart'' requirement for those who escaped traffickers before law enforcement became involved; former 8 CFR 214.11(g)(2).
- Provide guidance on meeting the definition of ''severe forms of trafficking in persons'' in those cases where an individual has not actually performed labor or services, or a commercial sex act; new 8 CFR 214.11(f)(1).
- Addresses situations where trafficking has occurred abroad, but the victim can potentially meet the physical presence eligibility requirement; new 8 CFR 214.11(g)(3).
- Update DHS regulations to reflect the creation of DHS, and to implement current standards of regulatory organization, plain language, and USCIS efforts to transform its customer service practices.

4. Benefits

a. Benefits of Statutory Provisions

A qualitative benefit is realized by incorporating all the statutory provisions that are current USCIS practice in DHS regulations. The addition of these provisions to DHS regulations is necessary to ensure: That DHS regulations are consistent with applicable legislation; that no ambiguity exists between current DHS practices and the CFR; and that the general public is able to access DHS practices via the CFR without having to consult multiple policy memoranda.

The VAWA 2013 provision expanding the derivative eligibility to the children (adult or minor) of the principal's derivative family members provides an additional qualitative benefit for trafficking victims and their eligible family members. Specifically, incorporating this statutory change in DHS regulations upholds the United States Federal Government's commitment to promoting family unity in its immigration laws. Additionally, this provision may provide a qualitative benefit to law enforcement agencies that are investigating trafficking crimes, as it provides them with another method to incentivize victims to report these crimes who otherwise may not have because they feared retaliation against their family members.

In the event the adult or minor children of the principal's derivative family members face a present danger of retaliation as a result of the victim's escape from a severe form of trafficking or cooperation with law enforcement, they may now qualify for T nonimmigrant derivative status. Prior to this expansion of derivative eligibility these family members may have been exposed to danger as a result of the victims coming forward to report the trafficking incidents. This may have acted as a disincentive for victims to report these crimes and to seek assistance. Expanding derivative eligibility to these family members may induce trafficking victims to seek LEA assistance and to cooperate with investigations of trafficking crimes. As a result, trafficking victims, their eligible family members, and law enforcement agencies investigating trafficking abuses all benefit from this statutory expansion.

The final VAWA 2013 provision provides a benefit by addressing a gap in immigration law as it pertains to the CNMI to clarify that presence as a T nonimmigrant in the CNMI before or after November 28, 2009 qualifies toward the three-year physical presence requirement for adjustment of status to lawful permanent residence. Prior to this technical fix, the CNRA provision stated that time in the CNMI before November 28, 2009 did not count as time in the United States. This may have been a barrier to T nonimmigrants residing in the CNMI who wished to adjust status but whose time in the CNMI prior to this date did not qualify toward the three year physical presence requirement. With the enactment of VAWA 2013, time spent as a T nonimmigrant in the CNMI before November 28, 2009 counts toward the physical presence requirement for adjustment of status to lawful permanent residence.

DHS is unable to determine how many T nonimmigrants may have been unable to adjust to permanent residence status as a result of the prior CNRA provision. Those in the CNMI had to travel to Guam or other parts of the United States to be admitted as a T nonimmigrant prior to the replacement of the immigration laws of the CNMI with those of the United States under the CNRA. DHS data does not track individuals who were admitted as T nonimmigrants in the United States (including Guam) who relocated to the CNMI, and who may have been unable to adjust to lawful permanent resident because their time in the CNMI prior to November 28, 2009 did not qualify

towards the three-year physical presence requirement. DHS believes this to have been a rare occurrence, however, and therefore anticipates that any additional population adjusting status solely as a result of this change will be small, if any.

b. Benefits of Discretionary Changes

DHS will eliminate the current requirement that three passport-style photographs be submitted with T nonimmigrant applications. This is a requirement for both principal alien victims and their eligible family members. Enhancements in USCIS operations as it pertains to collecting biometrics make the requirement to submit these photographs redundant. T nonimmigrant applicants have their photographs taken when they visit an application support center (ASC) to submit biometrics. The photographs taken at the ASC replaces the current requirement to submit three passport-style photographs with T nonimmigrant applications. DHS, in our ongoing efforts to review our regulations and reduce unnecessary and/or redundant burdens, is eliminating the requirement to submit these photographs, resulting in quantitative savings for applicants. According to the findings of Department of State (DOS), a passport-style photograph has an average cost of $10.00.[39] Therefore, each T nonimmigrant status applicant would save an estimated $30.00, the cost of three photographs.

This $30.00 savings would benefit all future T nonimmigrant principal and derivative applicants. As noted throughout this analysis, DHS is unable to reasonably project how future filing volumes may be affected by the statutory and discretionary changes implemented by this interim rule. In an effort, however, to calculate total cost savings to applicants by no longer having to submit three photographs DHS averaged total annual receipts for Fiscal Years 2011 through 2015. (Refer to Table 1 in this analysis to view all T nonimmigrant receipts since Fiscal Year 2005.) DHS assumes that average filing volumes for Fiscal Years 11 through 15 offer a reasonable expectation of what future receipts would be under current DHS process. DHS does not have the information to forecast populations that may result from the changes made in this interim rule. Using the average of Fiscal Years 11 through 15 receipts, DHS estimates expects that annual receipts for T nonimmigrant status applications (both principal and derivative applicants) would be approximately 1,871.[40] Again, the assumed volume of 1,871 is calculated without considering any unforeseeable increases in receipts that may result from new population groups that will be eligible for T nonimmigrant status in this interim rule. Therefore, at a minimum, DHS expects the cost savings from eliminating the photograph requirement to be $56,130.[41]

In addition to this quantitative benefit, the remaining discretionary changes result in qualitative benefits for victims of trafficking and their eligible family members, and also for law enforcement agencies in their efforts to combat and investigate trafficking crimes. The provision relating to the discretion of USCIS to administer its waiver authority over criminal inadmissibility grounds provides benefits by clarifying USCIS policy as it relates to USCIS waiver authority and the granting of deferred action. Additionally, removing the regulatory restrictions on methods available to protect applicants on the waiting list from removal will allow DHS the discretion to grant deferred action to applicants on the waiting list who currently have no current means to prevent removal.

Additionally, amending DHS regulations to clarify that a trafficked individual may be eligible for T nonimmigrant status even though he or she did not perform labor or services, or a commercial sex act will also provide benefits for the impacted population. This amendatory language is meant to clarify when an individual can satisfy the definition of being a victim of ''severe forms of trafficking in persons,'' even if the victim escaped his or her traffickers prior to performing the labor, services, or commercial sex acts intended. This clarification will be a qualitative benefit to applicants who, prior to the clarification, may have experienced confusion as to whether they are eligible for T nonimmigrant status if they have not performed the services mentioned. Likewise, the clarification will provide clear guidance to DHS adjudicators in their evaluations of applications in which this might occur.

DHS is also eliminating the filing deadline for those who were victimized prior to October 28, 2000. *See* 8 CFR 214.11(d)(4). According to current DHS regulations, victims of a severe form of trafficking in persons whose victimization occurred prior to this deadline must have filed a completed application for T nonimmigrant status within one year of March 4, 2002, the effective date of the 2002 interim final rule. The deadline was originally put in place because of uncertainty of how many victims may come forward to apply for T nonimmigrant benefits. The reasoning at the time was that there could be a large influx of applicants for T nonimmigrant benefits, which could have adversely impacted timely administration and adjudication of the program if no deadline were in place. This concern never materialized, however, and annual T nonimmigrant application receipts have remained well under the cap of 5,000 T–1 principal aliens. Therefore, DHS will remove the filing deadline for those victims that were trafficked before October 28, 2000. This will make the T nonimmigrant status accessible to those victimized prior to the enactment of TVPA that were unable to apply for T nonimmigrant status prior to the filing deadline. DHS is unable to estimate how many individuals may apply once the deadline is removed, although it is believed the receipts would be small given the amount of time that has passed.

The discretionary provision eliminating the requirement that victims of trafficking must show they had no clear opportunity to depart from the United States will provide another benefit to potential applicants. Currently, victims of trafficking who escaped their traffickers prior to LEA involvement in the matter must submit evidence showing they had no clear chance to leave the United States once they became free of their traffickers. Such evidence may include, but is not limited to, demonstrating the victim had limited ability to depart due to circumstances attributable to the trafficking, such as trauma, injury, lack of funds, or seizure of travel documents by the traffickers. *See* 8 CFR 214.11(g)(2). DHS has determined that this requirement places an unnecessary additional burden on victims of trafficking who wish to apply for T nonimmigrant status. Removing this evidentiary requirement will provide time and cost savings to the applicant by not having to procure and provide such evidence to USCIS; additionally, USCIS may realize some time savings by not having to review these documents during case adjudication. DHS did not have the necessary data to estimate the monetary value of such savings.

[39] DOS estimates an average cost of $10 per passport photo in the PRA Supporting Statement found under OMB control number 1450–0004. A copy of the Supporting Statement is found on *Reginfo.gov* at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201102-1405-001* (see question #13 of the Supporting Statement).

[40] Average of FY 11 through 15 total receipts.

[41] Calculation: 1,871 × $30.00 = $56,130.

DHS also will discontinue the practice of labeling evidence as primary and secondary, in favor of requiring ''any credible evidence'' the applicant may possess to show that they were a victim of a severe form of trafficking and have complied with any reasonable request to assist an LEA. Currently, DHS considers only the submission of the Declaration of Law Enforcement Officer, Form I–914 Supplement B, to be primary evidence. All other evidence the applicant may submit is labeled as secondary evidence. This distinction has proven to be confusing for both applicants and law enforcement officials, because the Supplement B is not a required form to be submitted by applicants. Furthermore, LEAs have expressed concern that because the Supplement B is the only evidence considered by DHS to be ''primary evidence,'' the mere fact that an LEA completes the form may be the primary ground relied on by DHS in granting status to an applicant seeking T nonimmigrant benefits. As a result of this misinterpretation, some LEAs have been reluctant to complete a Supplement B on behalf of applicants. DHS believes removing the ''primary evidence'' and ''secondary evidence'' labels currently in place will reduce confusion for applicants and alleviate the concerns of LEAs. LEAs may then be more likely to complete the Supplement B for an applicant, which, although it would no longer have the label of ''primary evidence,'' would still contribute to the alien's overall application for T nonimmigrant benefits. In turn, the victim may be more willing to cooperate if he or she feels more confident the LEA will recognize this assistance.

Lastly, DHS will amend the regulations to provide guidance on how victims may still qualify for T nonimmigrant status in instances when the trafficking occurred abroad. Though DHS anticipates there will be limited circumstances when trafficking occurred abroad that could still lead to T nonimmigrant eligibility, it has identified some instances when this might occur and discusses them in this interim rule. This expanded interpretation of the physical presence requirement will be a benefit to any additional aliens and their eligible family members who may now become eligible for T nonimmigrant status. In addition, LEAs will benefit from having access to additional eligible populations that can provide key information and assistance to those investigating trafficking crimes. DHS is unable to project how many victims may become eligible for T nonimmigrant status as a result of this change.

5. Costs

a. Costs of Statutory Provisions

The majority of the changes to DHS regulations made to incorporate statutory provisions result in no additional costs to victims of severe forms of trafficking or their eligible family members. Since the application volume for the T nonimmigrant program has never reached capacity, we expect that any additional costs to DHS in its administration of the T nonimmigrant program will be minimal. The provisions created as a result of congressional action in the years following the 2002 interim final rule and prior to the VAWA 2013 are current DHS policy and therefore no changes or amendments to current practice are necessary as a result of codifying them in DHS regulations. Likewise, the provision in VAWA 2013 clarifying that presence in the CNMI qualifies toward the requisite physical presence requirement for adjustment of status will result in no additional costs.

The VAWA 2013 provision expanding T nonimmigrant derivative status eligibility to the children (adult or minor) of the principal's derivative family members is currently reflected in DHS policy and includes certain associated costs. In order for family members to be eligible for the new T–6 derivative categories, the T–1 principal must file an Application for Family Member of T–1 Recipient, Form I–914 Supplement A, on behalf of each of these family members, in accordance with form instructions. There is no fee to file the Form I–914 Supplement A; therefore, the associated cost to the T–1 principal is the opportunity cost of time to file the form. DHS uses the time burden of one hour for Form I–914 Supplement A to calculate the opportunity cost associated with this provision.[42]

Consistent with other DHS rulemakings, we use wage rates as the mechanism to calculate opportunity or time valuation costs associated with submitting required information to USCIS in order to apply for immigration benefits. Since T–1 principals must file one Application for Immediate Family Member of T–1 Recipient, Form 914 Supplement A, on behalf of each of their eligible family members and are authorized to work when they are granted T nonimmigrant status, DHS employs the mean hourly wage rate of all occupations in the United States, $23.23.[43] The mean hourly wage rate is multiplied by 1.46 to account for the full cost of employee benefits such as paid leave, insurance, and retirement, bringing the total burdened wage rate to $33.92.[44] Therefore, the T–1 principal is subject to a per application opportunity cost of $33.92 to complete and file an Application for Immediate Family Member of T–1 Recipient, Form I–914 Supplement A with USCIS.[45]

The opportunity cost of time for T–1 principals to file the Application for Family Member of a T–1 Recipient, Form I–914 Supplement A, as presented here are individual per application costs only; applying these costs to an entire population is not possible at this time. DHS has no way to estimate the additional population of eligible family members who may qualify for status under the new T–6 nonimmigrant derivative classification. Current statutory authority offers no comparable immigration benefits to family members of nonimmigrant aliens outside of those considered immediate relatives, such as spouses, children, parents, and in some cases siblings. Making benefits eligible to the children (adult or minor) of derivatives will be a new practice for DHS; therefore, an informed estimation of this population is not possible.

Table 3 provides a summary of the costs and benefits to the regulated population that are associated with the statutory changes as put forth by VAWA 2013.

[42] Currently, the PRA time burden for Application for T–1 Nonimmigrant Status, Form I–914 and Application for Immediate Family Member of T–1 Recipient, Form I–914 Supplement A are not reported separately. The current time burden is reported in aggregate as 3 hours 15 min. The information collection instrument is being revised slightly, and as part of those revisions, the time burden for each form, Form I–914 (2.25 hours) and Form I–914A (1 hour), will be reported separately. The information collection request will be reviewed by OMB concurrent with the interim final rule.

[43] U.S. Department of Labor, Bureau of Labor Statistics. *May 2015 National Occupational Employment and Wage Estimates,* Mean Hourly Wage (all occupations), available at: *http://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

[44] Calculation: $23.23 × 1.46 = $33.92. Bureau of Labor Statistics, *Economic News Release,* Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, March 2016, available at: *http://www.bls.gov/news.release/ecec.t01.htm.*

[45] ($33.92 hourly burdened wage rate) × (1 hour estimated time burden) = $33.92.

TABLE 3—SUMMARY OF IMPACTS TO THE REGULATED POPULATION OF VAWA 2013 STATUTORY CHANGES CODIFIED BY THIS INTERIM RULE

Provision	Current policy	Expected cost of the interim rule	Expected benefit of the interim rule
Allowing principals to apply for derivative T nonimmigrant status for children of the principal's derivative family members if the derivative's child faces a present danger of retaliation as a result of the victim's escape from a severe form of trafficking or cooperation with law enforcement.	Adult or minor children of the principal's derivative family members may now be eligible for T nonimmigrant status under the new T–6 derivative category.	T–1 principals will face an opportunity cost of $33.92 to file Form I–914 Supplement A on behalf of the derivative's adult or minor child.	If eligible, the children of the principal's derivative relatives may qualify for T–6 nonimmigrant status, and obtain the immigration benefits that accompany that status. In addition, LEAs may benefit if more victims come forward to report trafficking crimes.
Implementing a clarification that presence in the Commonwealth of the Northern Mariana Islands (CNMI) after being granted T nonimmigrant status prior to November 28, 2009 qualifies toward the requisite physical presence requirement for adjustment of status.	Time in the CNMI as a T nonimmigrant, whether before, on or after November 28, 2009, now counts as physical presence for purposes of establishing eligibility for adjustment of status as a T nonimmigrant to lawful permanent residence.	None	Provides a benefit in that it addresses a gap in immigration law as it pertains to the CNMI and removes a provision that may have been a bar to adjustment of status to lawful permanent resident.

b. Costs of Discretionary Changes

Most of the discretionary changes included in the interim rule will require no additional costs to either victims of severe forms of trafficking or to DHS in its administration of T nonimmigrant status benefits. The two provisions related to USCIS's waiver authority over criminal inadmissibility grounds and its discretion to grant deferred action to those victims placed on the waiting list simply clarify current USCIS practice and do not result in changes to the process of handling and adjudicating T nonimmigrant applications. Likewise, the guidance provided in the interim rule for meeting the definition of ''severe forms of trafficking in persons'' where an individual has not performed labor or service, or a commercial sex act is simply a clarification of current DHS interpretation of the definition and will not result in additional costs or changes to the process of handling and the adjudication of T nonimmigrant applications. The remaining discretionary changes that result in no additional costs include:

- No longer weighing evidence as either primary or secondary in favor of an ''any credible evidence'' standard;
- Eliminating the requirement that applicants provide three passport-style photographs as part of his or her application;
- Discontinuing the current practice of requiring victims who escaped from traffickers prior to LEA involvement to submit evidence to show that he or she had no clear opportunity to depart from the United States; and
- Providing guidance on physical presence as it relates to eligibility for T nonimmigrant status when the trafficking has occurred abroad.

Though these provisions do amend current DHS practice, they place no further burden or cost on victims of trafficking who wish to apply for T nonimmigrant status. Furthermore, DHS does not expect these changes to have an impact on staffing plans or adjudication timeframes in processing T nonimmigrant applications. The change to remove the filing deadline for individuals victimized prior to October 28, 2000 will result in costs for any additional victims that may now be eligible to apply for principal T–1 nonimmigrant status. In addition, if the victim wishes to provide evidence in their application that they are cooperating with law enforcement, there will be an opportunity cost for the law enforcement officer completing the Declaration of Law Enforcement Office for Victim of Trafficking in Persons, Form I–914 Supplement B.

Since there are no fees associated with either the T nonimmigrant application or providing required biometrics, the newly eligible population would be responsible only for the opportunity cost of time to file the Form I–914 and to submit the required biometrics.

DHS estimates the time burden to file the Form I–914 to be 2.25 hours. Generally, trafficked individuals applying for T–1 nonimmigrant status are not eligible to work in the United States until after USCIS has made a decision on their application (either a grant of bona fide determination or an approval). There could, however, be instances where a victim may have received other forms of immigration relief which allowed them to legally work, although DHS does not collect the data necessary to estimate the number of victims that may fall into this category.[46] Consistent with other DHS rulemakings, we use wage rates as a mechanism to estimate the opportunity or time valuation costs for these aliens to file the Application for T Nonimmigrant Status, Form I–914 and to submit the required biometrics.

Assuming that most individuals applying for T–1 nonimmigrant status on the basis of removing the October 28, 2000 filing deadline are not yet authorized to work in the United States, DHS will use the Federal minimum wage as a proxy to estimate the opportunity cost understanding these individuals are not currently eligible to participate in the workforce. The Federal minimum wage is currently $7.25 per hour.[47] To anticipate the full opportunity costs faced by the applicants, the minimum hourly wage rate is multiplied by 1.46 to account for the full cost of employee benefits such as paid leave, insurance, and retirement, which equals $10.59 per hour.[48] DHS

[46] For example, some in this population could have received a grant of continued presence from DHS, U.S. Immigrations and Customs Enforcement, which would permit them work authorization. *See* 22 U.S.C. 7105(c)(3)(A)(i).

[47] U.S. Department of Labor, Wage and Hour Division. *Minimum Wage* effective July 24, 2009, available at: *http://www.dol.gov/dol/topic/wages/minimumwage.htm.*

[48] U.S. Department of Labor, Bureau of Labor Statistics, *Economic News Release,* Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, May 2016, available at *http://www.bls.gov/news.release/ecec.t01.*

multiplied the fully burdened wage rate of $10.59 per hour by the 2.25 hours estimated to file the Form I–914 to get an opportunity cost of $23.83 to file the Application for T Nonimmigrant Status.[49]

Applicants seeking T–1 nonimmigrant status will be required to travel to an ASC to submit biometrics. In past rulemaking, DHS estimated that the average round-trip distance to an ASC is 50 miles, and that the average travel time for the trip is 2.5 hours.[50] DHS also estimates that applicants will wait an average of 1.17 hours for service, bringing the total time to submit biometrics to 3.67 hours.[51] [52] In addition, the cost of travel includes a mileage charge based on the estimated 50 mile round trip at the 2016 General Services Administration rate of $0.54 per mile, which equals $27.00 for each applicant.[53] Using an opportunity cost of time of $10.59 per hour and the 3.67 hours estimated time for travel and service and the mileage charge of $27.00, DHS estimates the cost per T–1 principal applicant to be $65.87 for travel to and service at the ASC.[54] Therefore, the full cost for a T nonimmigrant applicant victimized prior to October 28, 2000, including the total costs of filing the Form I–914 and submitting biometrics, is $89.70.[55]

Lastly, there is an opportunity cost for law enforcement to complete Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B if the applicant decides to include that evidence in their application. DHS estimates the time burden to complete Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B is 3.75 hours. In 2015, the mean hourly wage rate for law enforcement workers was $27.34, which when accounting for non-salaried benefits equals $39.92.[56] Using this total hourly wage rate, DHS estimates the opportunity costs for law enforcement to complete the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B is $149.70.[57] DHS is unable to estimate how many individuals victimized prior to October 28, 2000 may apply once the filing deadline is removed. Due to the passage of time, we anticipate filing volumes for those that were victimized prior to October 28, 2000 to be minimal.

Additionally, individuals who may now become eligible for T nonimmigrant status as a result of the expanded interpretation of the physical presence requirement will face the same opportunity cost of $89.70 to file the Form I–914 and submit the required biometrics. Likewise, if the applicant decides to include evidence of law enforcement cooperation, the law enforcement official completing Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B will face an opportunity cost of $149.70. DHS is unable to estimate how many individuals may become eligible as a result of this provision but anticipates there will be a limited number of cases where the trafficking occurred outside of the United States and the alien will now meet the physical presence requirement.

Table 4 provides a summary of the costs and benefits associated with each discretionary change made in this interim rule. The discretionary change that updates terminology and organizational structure in DHS regulations is not included in the table as it results in no additional impacts.

TABLE 4—SUMMARY OF IMPACTS TO THE REGULATED POPULATION OF THE DISCRETIONARY CHANGES IMPLEMENTED IN THIS INTERIM RULE

Provision	Changes to current policy resulting from the interim rule	Expected cost of the interim rule	Expected benefit of the interim rule
Specifies how USCIS exercises its waiver authority over criminal inadmissibility grounds.	None. This will simply be a clarification of current DHS practice and align T nonimmigrant regulations with those currently governing the U nonimmigrant status.	None	Providing clarity and consistency in DHS practice with DHS regulations will lead to a qualitative benefit to both the victims of trafficking and USCIS staff adjudicating these cases.
Discontinues weighing evidence as primary and secondary in favor of a standard that reviews any credible evidence in making the determination to approve or disapprove an application for T nonimmigrant status.	Evidence will no longer be labeled primary or secondary. DHS will accept any credible evidence of compliance with any reasonable request to assist LEAs.	None	Removes confusion associated with labeling evidence as primary and secondary, and will result in qualitative benefits for both the victims of trafficking and LEAs.
Eliminates the requirement that an applicant provide three passport-style photographs.	The applicant will no longer be responsible for submitting three passport-style photographs with his/her application. DHS will continue to take photographs at Application Support Centers at the time of fingerprint collection.	None	Results in total quantitative savings of $56,130 for principal applicants and their derivatives.

[49] ($10.59 per hour) × (2.25 hours) = $23.83.

[50] *See, e.g., Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives,* 78 FR 535 (Jan. 3, 2013) (DHS final rule).

[51] *See* ''Paperwork Reduction Act (PRA) Supporting Statement for Application for Employment Authorization, Form I–765 (OMB control number 1615–0040), Question 13. The Supporting Statement can be found on *Reginfo.gov* at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201502-1615-004*.''

[52] Calculation: 2.5 hours + 1.17 average of service wait time = 3.67 total time to submit biometrics.

[53] The General Services Administration mileage rate of $0.54, effective January 1, 2016, available at: *http://www.gsa.gov/portal/content/100715.*

[54] ($10.46 per hour × 3.67 hours) + ($0.54 per mile × 50 miles) = $65.87.

[55] $23.83 + $65.87 = $89.70.

[56] U.S. Department of Labor, Bureau of Labor Statistics. *May 2015 National Occupational Employment and Wage Estimates,* Law Enforcement Workers (occupational group code 33–3000), *http://www.bls.gov/oes/current/oes_nat.htm#33-0000.* The calculation to load the wage is: $27.34 × 1.46 = $39.92 (rounded).

[57] ($39.92 hourly burdened wage rate) × (3.75 hours in estimated time burden) = $149.70.

TABLE 4—SUMMARY OF IMPACTS TO THE REGULATED POPULATION OF THE DISCRETIONARY CHANGES IMPLEMENTED IN THIS INTERIM RULE—Continued

Provision	Changes to current policy resulting from the interim rule	Expected cost of the interim rule	Expected benefit of the interim rule
Removes the filing deadline for applicants victimized prior to October 28, 2000.	Those victimized prior to October 28, 2000 will be able to apply for T nonimmigrant status.	Any new eligible applicants will be responsible for the full cost of $89.70 for applying and submitting fingerprints. If included in the application, the cost for law enforcement to complete Form I–914 Supplement B is $149.70.	Those victimized prior to October 28, 2000, and their eligible derivative family members, will be able to apply for T nonimmigrant status and receive the immigration benefits associated with that status.
Permits USCIS to take a discretionary action to protect applicants from removal who are placed on the waiting list if the statutory cap is met in a given fiscal year.	None. This will simply be a clarification of current DHS practice and align T nonimmigrant regulations with those currently governing the U nonimmigrant status.	None	Providing clarity and consistency in DHS practice will lead to a qualitative benefit to both the victims of trafficking and DHS staff adjudicating these cases.
Removes the current regulatory ''opportunity to depart'' requirement for those victims who escaped traffickers before law enforcement became involved.	DHS will no longer require additional evidence to show the victim had no opportunity to depart the United States after he/she escaped traffickers prior to LEA involvement.	None	Provides a qualitative benefit by removing an additional evidentiary burden for those victims of trafficking who escaped prior to LEA involvement.
Provides guidance on meeting the definition of ''severe forms of trafficking in persons'' where an individual has not performed labor or services, or a commercial sex act.	None. This will clarify current DHS practice as regards the definition of ''severe forms of trafficking in persons''.	None	Providing clarity and consistency in DHS practice will lead to a qualitative benefit to both the victims of trafficking and DHS staff adjudicating these cases.
Addresses situations where trafficking has occurred abroad and whether the applicant can potentially meet the physical presence requirement.	DHS may consider victims as having met the physical presence requirement for certain instances when the trafficking occurred outside the United States.	Any new eligible applicants will be responsible for the full cost of $89.70 for applying and submitting fingerprints. If included in the application, the cost for law enforcement to complete Form I–914 Supplement B is $149.70.	Individuals victimized abroad, and their eligible derivative family members, can apply for T nonimmigrant status. These victims will also help in investigations of trafficking crimes, which will benefit LEAs.

c. Costs to the Federal Government

If the changes implemented in this interim rule increase the volume of applications for T nonimmigrant status, USCIS could face increased costs to administer the T nonimmigrant status program. The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. INA section 286(m), 8 U.S.C. 1356(m). Recognizing the economic needs and hardships of this vulnerable population, as a matter of policy USCIS exempted the fee for applying for T nonimmigrant status and for submitting biometrics. Likewise, the fees for any additional applications needed for T nonimmigrants, from the time the alien victim applies for initial T nonimmigrant status (*e.g.* for submitting waivers of inadmissibility requests) through applications to adjust status, are eligible for fee waiver requests. Accordingly, the costs incurred by USCIS to process T nonimmigrant applications and biometrics are an insignificant portion of the total USCIS adjudication costs compared to other fee paying immigrant benefit requests. These costs are insignificant due to the small number of receipts of Form I–914. In FY 2015, USCIS received 2,224 Form I–914 applications (see Table 1) out of a total of 7,650,475 applications received agency wide, making Form I–914 receipts less than 0.03% of total agency-wide receipts.[58] Therefore, to the extent that the changes implemented in this interim rule may result in additional applications, or even reach the statutory cap of 5,000 applications, in the short term we expect those costs to be insignificant and absorbed by the current fee structure for immigration benefits. In the long term, USCIS will continue to monitor the costs of administering the T nonimmigrant program as a normal part of its biennial fee review. The biennial fee review determines if fees for immigration benefits are sufficient in light resource needs and filing trends. As previously mentioned, beneficiaries of T nonimmigrant status are also eligible for federal public benefits from the Department of Health and Human Services, so the changes implemented in this interim rule could result in increased transfer payments if there are increases in the number of persons granted T nonimmigrant status.

[58] Source: USCIS, Number of Service-wide Forms by Fiscal Year To-Date, Quarter, and Form Status 2015 available at *https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2015_qtr4.pdf.*

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. DHS has determined that this rule is exempt from notice and comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule. Nonetheless, USCIS examined the

impact of this rule on small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6). The individual victims of trafficking and their derivative family members to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6).

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

H. Family Assessment

This regulation may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. This action has been assessed in accordance with the criteria specified by section 654(c)(1). This regulation will enhance family well-being by encouraging vulnerable individuals who have been victims of severe forms of trafficking in persons to report the criminal activity and by providing critical assistance and benefits. Additionally, this regulation allows certain family members to obtain T nonimmigrant status once the principal applicant has received status.

I. Paperwork Reduction Act

Under the PRA of 1995, 44 U.S.C. 3501 *et seq.,* all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. DHS is amending application requirements and procedures for aliens to receive T nonimmigrant status, defined in section 101(a)(15)(T) of the INA, 8 U.S.C. 1101(a)(15)(T). DHS has revised the Application for T Nonimmigrant Status, Form I–914; the Application for Family Member of T–1 Recipient, Form I–914 Supplement A; and the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B, and the associated form instructions to conform with the new regulations (OMB Control Number 1615–0099). These forms are considered information collections and are covered under the PRA. USCIS previously requested public comments on the revised forms and form instructions for 60 days. 60-day notice, *Agency Information Collection Activities: Application for T Nonimmigrant Status, Form I–914, Application for Immediate Family Member of T–1 Recipient, Supplement A, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Supplement B; Revision of a Currently Approved Collection,* 79 FR 6209–10 (Feb. 3, 2014). One comment was received that expressed general opposition to the T nonimmigrant program but provided no input on the information collection instruments. No changes were made in response to the comment.

The revised information collection has been submitted for approval to the Office of Management and Budget (OMB) for review and approval under procedures covered under the PRA. USCIS is requesting comments on this information collection for 30 days until January 18, 2017. When submitting comments on the information collection, your comments should address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of information collection:

(a) *Type of information collection:* Revised information collection.

(b) *Abstract:* This information collection will be used by individuals (aliens who are victims of severe forms of trafficking in persons and certain family members, as appropriate) to file a request for USCIS approval for T nonimmigrant status.

(c) *Title of Form/Collection:* Application for T Nonimmigrant Status, Application for Family Member of T–1 Recipient, and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(d) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–914, Form I–914 Supplement A, and Form I–914 Supplement B; USCIS.

(e) *Affected public who will be asked or required to respond:* Individuals and households.

(f) *An estimate of the total number of annual respondents:* 1,871 respondents.

(g) *Hours per response:* Application for T Nonimmigrant Status, Form I–914 at 2.25 hours per response; Application for Family Member of T–1 Recipient, Form I–914 Supplement A at 1 hour per response; Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I–914 Supplement B at 3.75 hours per response; and biometric services processing at 1.17 hours per response.

(h) *Total annual reporting burden:* 9,921 annual burden hours.

Comments should refer to the proposal by name and/or the OMB Control Number and should be sent to DHS using *one* of the methods provided under the **ADDRESSES** and I. Public Participation sections of this interim rule. Comments should also be submitted to USCIS Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2. Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 2. Section 212.1 is amended by revising paragraph (o) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(o) *Alien in T–2 through T–6 classification.* USCIS may apply paragraph (g) of this section to individuals seeking T–2, T–3, T–4, T–5, or T–6 nonimmigrant status upon request by the applicant.

* * * * *

■ 3. Section 212.16 is revised to read as follows:

§ 212.16 Applications for exercise of discretion relating to T nonimmigrant status.

(a) *Requesting the waiver.* An alien requesting a waiver of inadmissibility under section 212(d)(3)(B) or (d)(13) of the Act must submit a waiver form as designated by USCIS in accordance with 8 CFR 103.2.

(b) *Treatment of waiver request.* USCIS, in its discretion, may grant a waiver request based on section 212(d)(13) of the Act of the applicable ground(s) of inadmissibility, except USCIS may not waive a ground of inadmissibility based on sections 212(a)(3), (a)(10)(C), or (a)(10)(E) of the Act. An applicant for T nonimmigrant status is not subject to the ground of inadmissibility based on section 212(a)(4) of the Act (public charge) and is not required to file a waiver form for the public charge ground. Waiver requests are subject to a determination of national interest and connection to victimization as follows.

(1) *National interest.* USCIS, in its discretion, may grant a waiver of inadmissibility request if it determines that it is in the national interest to exercise discretion to waive the applicable ground(s) of inadmissibility.

(2) *Connection to victimization.* An applicant requesting a waiver under section 212(d)(13) of the Act on grounds other than the health-related grounds described in section 212(a)(1) of the Act must establish that the activities rendering him or her inadmissible were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I) of the Act.

(3) *Criminal grounds.* In exercising its discretion, USCIS will consider the number and seriousness of the criminal offenses and convictions that render an applicant inadmissible under the criminal and related grounds in section 212(a)(2) of the Act. In cases involving violent or dangerous crimes, USCIS will only exercise favorable discretion in extraordinary circumstances, unless the criminal activities were caused by, or were incident to, the victimization described under section 101(a)(15)(T)(i)(I) of the Act.

(c) *No appeal.* There is no appeal of a decision to deny a waiver request. Nothing in this section is intended to prevent an applicant from re-filing a request for a waiver of a ground of inadmissibility in appropriate cases.

(d) *Revocation.* USCIS, at any time, may revoke a waiver previously authorized under section 212(d) of the Act. There is no appeal of a decision to revoke a waiver.

PART 214—NONIMMIGRANT CLASSES

■ 4. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 111 and 202; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372 and 1762; Sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; Pub. L. 107–173, 116 Stat. 543; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 5. Section 214.1 is amended by:

■ a. Revising paragraph (a)(1)(viii); and

■ b. Adding entries for ''101(a)(15)(T)(v)'' and ''101(a)(15)(T)(vi)'' in alpha/numeric sequence in the table in paragraph (a)(2).

The revision and additions read as follows:

§ 214.1 Nonimmigrant classifications.

(a) * * *

(1) * * *

(viii) Section 101(a)(15)(T)(ii) is divided into (T)(ii), (T)(iii), (T)(iv), and (T)(v) for the spouse, child, parent, and unmarried sibling under 18 years of age, respectively, of a principal nonimmigrant classified under section 101(a)(15)(T)(i); and T(vi) for the adult or minor child of a derivative nonimmigrant classified under section 101(a)(15)(T)(ii); and

* * * * *

(2) * * *

Section	Designation
* * * * *	
101(a)(15)(T)(v)	T–5.
101(a)(15)(T)(vi)	T–6.
* * * * *	

* * * * *

■ 6. Section 214.11 is revised to read as follows:

§ 214.11 Alien victims of severe forms of trafficking in persons.

(a) *Definitions.* Where applicable, USCIS will apply the definitions provided in section 103 and 107(e) of the Trafficking Victims Protection Act (TVPA) with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of 18 U.S.C. 77. As used in this section the term:

Application for derivative T nonimmigrant status means a request by a principal alien on behalf of an eligible family member for derivative T–2, T–3, T–4, T–5, or T–6 nonimmigrant status on the form designated by USCIS for that purpose.

Application for T nonimmigrant status means a request by a principal alien for T–1 nonimmigrant status on the form designated by USCIS for that purpose.

Bona fide determination means a USCIS determination that an application for T–1 nonimmigrant status has been initially reviewed and determined that the application does not appear to be fraudulent, is complete and properly filed, includes completed fingerprint and background checks, and presents prima facie evidence of eligibility for T–1 nonimmigrant status including admissibility.

Child means a person described in section 101(b)(1) of the Act.

Coercion means 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 the abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her 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 respectively limited and defined.

Derivative T nonimmigrant means an eligible family member who has been granted T–2, T–3, T–4, T–5, or T–6 derivative status. A family member outside of the United States is not a derivative T nonimmigrant until he or she is granted a T–2, T–3, T–4, T–5, or T–6 visa by the Department of State and is admitted to the United States in derivative T nonimmigrant status.

Eligible family member means a family member who may be eligible for derivative T nonimmigrant status based on his or her relationship to an alien victim and, if required, upon a showing of a present danger or retaliation; and:

(1) In the case of an alien victim who is 21 years of age or older, means the spouse and children of such alien;

(2) In the case of an alien victim under 21 years of age, means the spouse, children, unmarried siblings under 18 years of age, and parents of such alien; and

(3) Regardless of the age of an alien victim, means any parent or unmarried sibling under 18 years of age, or adult or minor child of a derivative of such alien where the family member faces a present danger of retaliation as a result of the alien victim's escape from a severe form of trafficking or cooperation with law enforcement.

Involuntary servitude means 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 a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant 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 encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

Law Enforcement Agency (LEA) means a Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons. Federal LEAs include but are not limited to the following: U.S. Attorneys' Offices, Civil Rights Division, Criminal Division, U.S. Marshals Service, Federal Bureau of Investigation (Department of Justice); U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP); Diplomatic Security Service (Department of State); and Department of Labor.

Law Enforcement Agency (LEA) ~~endorsement~~ means an official LEA ~~endorsement~~ on the form designated by USCIS for such purpose.

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

Principal T nonimmigrant means the victim of a severe form of trafficking in persons who has been granted T–1 nonimmigrant status.

~~Reasonable~~ request for assistance means a request made by an LEA to a victim to assist in the investigation or prosecution of the acts of trafficking in persons or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime. The ''reasonableness'' of the request depends on the totality of the circumstances. Factors to consider include, but are not limited to: General law enforcement and prosecutorial practices; the nature of the victimization; the specific circumstances of the victim; severe trauma (both mental and physical); access to support services; whether the request would cause further trauma: 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; the time the victim had to comply with the request; and the age and maturity of the victim.

Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or 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, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

Victim of a severe form of trafficking in persons (victim) means an alien who is or has been subject to a severe form of trafficking in persons.

(b) *Eligibility for T–1 status.* An alien is eligible for T–1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act if he or she demonstrates all of the following, subject to section 214(o) of the Act:

(1) *Victim.* The alien is or has been a victim of a severe form of trafficking in persons.

(2) *Physical presence.* The alien is physically present in the United States or at a port-of-entry thereto, according to paragraph (g) of this section.

(3) *Compliance with any reasonable request for assistance.* The alien has complied 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 acts of trafficking in persons are at least one central reason for the commission of that crime, or meets one of the conditions described below.

(i) *Exemption for minor victims. ~~An alien under 18 years of age is not required to comply with any reasonable request.~~*

(ii) *Exception for trauma.* An alien who, due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, is not required to comply with such reasonable request.

(4) *Hardship.* The alien would suffer extreme hardship involving unusual and severe harm upon removal.

(5) *Prohibition against traffickers in persons.* No alien will be eligible to receive T nonimmigrant status under section 101(a)(15)(T) of the Act if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons.

(c) *Period of admission.* (1) *T–1 Principal.* T–1 nonimmigrant status may be approved for a period not to exceed 4 years, except as provided in section 214(o)(7) of the Act.

(2) *Derivative family members.* A derivative family member who is otherwise eligible for admission may be granted T–2, T–3, T–4, T–5, or T–6 nonimmigrant status for an initial period that does not exceed the

expiration date of the initial period approved for the T–1 principal alien, except as provided in section 214(o)(7) of the Act.

(3) *Notice.* At the time an alien is approved for T nonimmigrant status or receives an extension of T nonimmigrant status, USCIS will notify the alien when his or her T nonimmigrant status will expire. USCIS also will notify the alien that the failure to apply for adjustment of status to lawful permanent resident, as set forth in 8 CFR 245.23, will result in termination of the alien's T nonimmigrant status in the United States at the end of the 4-year period or any extension.

(d) *Application.* USCIS has sole jurisdiction over all applications for T nonimmigrant status.

(1) *Filing an application.* An alien seeking T–1 nonimmigrant status must submit an application for T nonimmigrant status on the form designated by USCIS in accordance with 8 CFR 103.2 and with the evidence described in paragraph (d) of this section.

(i) *Applicants in pending immigration proceedings.* An alien in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), and who wishes to apply for T–1 nonimmigrant status must file an application for T nonimmigrant status directly with USCIS. In its discretion, DHS may agree to the alien's request to file with the immigration judge or the Board a joint motion to administratively close or terminate proceedings without prejudice, whichever is appropriate, while an application for T nonimmigrant status is adjudicated by USCIS.

(ii) *Applicants with final orders of removal, deportation, or exclusion.* An alien subject to a final order of removal, deportation, or exclusion may file an application for T–1 nonimmigrant status directly with USCIS. The filing of an application for T nonimmigrant status has no effect on DHS authority or discretion to execute a final order of removal, although the alien may request an administrative stay of removal pursuant to 8 CFR 241.6(a). If the alien is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the applicant's removal will be extended during the period the stay is in effect. If USCIS subsequently determines under the procedures in paragraph (e) of this section that the application is bona fide, DHS will automatically grant an administrative stay of the final order of removal, deportation, or exclusion, and the stay will remain in effect until a final decision is made on the application for T nonimmigrant status.

(iii) *Minor applicants.* When USCIS receives an application from a minor principal alien under the age of 18, USCIS will notify the Department of Health and Human Services to facilitate the provision of interim assistance.

(2) *Initial evidence.* An application for T nonimmigrant status must include:

(i) The applicant's signed statement describing the facts of the victimization and compliance with any reasonable law enforcement request (or a basis for why he or she has not complied) and any other eligibility requirements in his or her own words;

(ii) Any credible evidence that the applicant would like USCIS to consider supporting any of the eligibility requirements set out in paragraphs (f), (g), (h) and (i) of this section; and

(iii) *Inadmissible applicants.* If an applicant is inadmissible based on a ground that may be waived, he or she must also submit a request for a waiver of inadmissibility on the form designated by USCIS with the fee prescribed by 8 CFR 103.7(b)(1), in accordance with form instructions and 8 CFR 212.16, and accompanied by supporting evidence.

(3) *Evidence from law enforcement.* An applicant may wish to submit evidence from an LEA to help establish certain eligibility requirements for T nonimmigrant status. Evidence from an LEA is optional and is not given any special evidentiary weight.

(i) *Law Enforcement Agency (LEA) ~~endorsement.~~* An LEA ~~endorsement~~ is optional evidence that can be submitted to help demonstrate victimization and/or compliance with reasonable requests. An LEA ~~endorsement~~ is not mandatory and is not given any special evidentiary weight. An LEA ~~endorsement~~ itself does not grant a benefit and is one form of possible evidence but it does not lead to automatic approval of the application for T nonimmigrant status by USCIS. If provided, the LEA ~~endorsement~~ must be submitted on the form designated by USCIS in accordance with the form instructions and must be signed by a supervising official responsible for the detection, investigation or prosecution of severe forms of trafficking in persons. The LEA ~~endorsement~~ must attach the results of any name or database inquiries performed and describe the victimization (including dates where known) and the cooperation of the victim. USCIS, not the LEA, will determine 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. The decision whether to complete an LEA ~~endorsement~~ is at the discretion of the LEA. A formal investigation or prosecution is not required to complete an LEA ~~endorsement.~~

(ii) *Disavowed or revoked LEA ~~endorsement.~~* An LEA may ~~revoke~~ or disavow the contents of a previously submitted ~~endorsement~~ in writing. After revocation or disavowal, the LEA endorsement will no longer be considered as evidence.

(iii) *Continued Presence.* An applicant granted Continued Presence under 28 CFR 110.35 should submit documentation of the grant of Continued Presence. If Continued Presence has been revoked, it will no longer be considered as evidence.

(iv) *Other evidence.* An applicant may also submit any evidence regarding entry or admission into the United States or permission to remain in the United States or note that such evidence is contained in an applicant's immigration file.

(4) *Biometric services.* All applicants for T–1 nonimmigrant status must submit biometrics in accordance with 8 CFR 103.16.

(5) *Evidentiary standards and burden of proof.* The burden is on the applicant to demonstrate eligibility for T–1 nonimmigrant status. The applicant may submit any credible evidence relating to a T nonimmigrant application for consideration by USCIS. USCIS will conduct a ~~de novo review~~ of all evidence and may investigate any aspect of the application. Evidence previously submitted by the applicant for any immigration benefit or relief may be used by USCIS in evaluating the eligibility of an applicant for T–1 nonimmigrant status. USCIS will not be bound by previous factual determinations made in connection with a prior application or petition for any immigration benefit or relief. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

~~(6) *Interview.* USCIS may require an applicant for T nonimmigrant status to participate in a personal interview. The necessity and location of the interview is determined solely by USCIS in accordance with 8 CFR part 103. Every effort will be made to schedule the interview in a location convenient to the applicant.~~

(7) *Bona fide determination.* Once an alien submits an application for T–1 nonimmigrant status, USCIS will conduct an initial review to determine if the application is a bona fide

application for T–1 nonimmigrant status under the provisions of paragraph (e) of this section.

(8) *Decision.* After completing its ~~de novo r~~review of the application and evidence, USCIS will issue a decision approving or denying the application in accordance with 8 CFR 103.3.

(9) *Approval.* If USCIS determines that the applicant is eligible for T–1 nonimmigrant status, USCIS will approve the application and grant T–1 nonimmigrant status, subject to the annual limitation as provided in paragraph (j) of this section. USCIS will provide the applicant with evidence of T–1 nonimmigrant status. USCIS may also notify other parties and entities of the approval as it determines appropriate, including any LEA providing an LEA ~~endorsement~~ and the Department of Health and Human Service's Office of Refugee Resettlement, consistent with 8 U.S.C. 1367.

(i) *Applicants with an outstanding order of removal, deportation or exclusion issued by DHS.* For an applicant who is the subject of an order of removal, deportation or exclusion issued by DHS, the order will be deemed cancelled by operation of law as of the date of the USCIS approval of the application.

(ii) *Applicants with an outstanding order of removal, deportation or exclusion issued by the Department of Justice.* An applicant who is the subject of an order of removal, deportation or exclusion issued by an immigration judge or the Board may seek cancellation of such order by filing a motion to reopen and terminate removal proceedings with the immigration judge or the Board. ICE may agree, as a matter of discretion, to join such motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(10) *Denial.* Upon denial of an application, USCIS will notify the applicant in accordance with 8 CFR 103.3. USCIS may also notify any LEA providing an LEA ~~endorsement~~ and the Department of Health and Human Service's Office of Refugee Resettlement. If an applicant appeals a denial in accordance with 8 CFR 103.3, the denial will not become final until the administrative appeal is decided.

(i) *Effect on bona fide determination.* Upon denial of an application, any benefits derived from a bona fide determination will automatically be revoked when the denial becomes final.

(ii) *Applicants previously in removal proceedings.* In the case of an applicant who was previously in removal proceedings that were terminated on the basis of a pending application for T nonimmigrant status, once a denial becomes final, DHS may file a new Notice to Appear to place the individual in removal proceedings again.

(iii) *Applicants subject to an order of removal, deportation or exclusion.* In the case of an applicant who is subject to an order of removal, deportation or exclusion that had been stayed due to the pending application for T nonimmigrant status, the stay will be automatically lifted as of the date the denial becomes final.

(11) *Employment authorization.* An alien granted T–1 nonimmigrant status is authorized to work incident to status. There is no need for an alien to file a separate form to be granted employment authorization. USCIS will issue an initial Employment Authorization Document (EAD) to such aliens, which will be valid for the duration of the alien's T–1 nonimmigrant status. An alien granted T–1 nonimmigrant status seeking to replace an EAD that was lost, stolen, or destroyed must file an application on the form designated by USCIS in accordance with form instructions.

(e) *Bona fide determination.* Once an alien submits an application for T–1 nonimmigrant status, USCIS will conduct an initial review to determine if the application is a bona fide application for T–1 nonimmigrant status.

(1) *Criteria.* After initial review, an application will be determined to be bona fide if:

(i) The application is properly filed and is complete;

(ii) The application does not appear to be fraudulent;

(iii) The application presents prima facie evidence of each eligibility requirement for T–1 nonimmigrant status;

(iv) Biometrics and background checks are complete; and

(v) The applicant is:

(A) Admissible to the United States; or

(B) Inadmissible to the United States based on a ground that may be waived (other than section 212(a)(4) of the Act); and either the applicant has filed a waiver of a ground of inadmissibility described in section 212(d)(13) of the Act concurrently with the application for T nonimmigrant status, or USCIS has already granted a waiver with respect to any ground of inadmissibility that applies to the applicant. USCIS may request further evidence from the applicant. All waivers are discretionary and require a request for waiver, on the form designated by USCIS.

(2) *USCIS determination.* An application will not be treated as bona fide until USCIS provides notice to the applicant.

(i) *Incomplete or insufficient application.* If an application is incomplete or if an application is complete but does not present sufficient evidence to establish prima facie eligibility for each eligibility requirement for T–1 nonimmigrant status, USCIS may request additional information, issue a notice of intent to deny as provided in 8 CFR 103.2(b)(8), or may adjudicate the application on the basis of the evidence presented under the procedures of this section.

(ii) *Notice.* Once USCIS determines an application is bona fide, USCIS will notify the applicant. An application will be treated as a bona fide application as of the date of the notice.

(3) *Stay of final order of removal, deportation, or exclusion.* If USCIS determines that an application is bona fide it automatically stays the execution of any final order of removal, deportation, or exclusion. This administrative stay will remain in effect until any adverse decision becomes final. The filing of an application for T nonimmigrant status does not automatically stay the execution of a final order unless USCIS has determined that the application is bona fide. Neither an immigration judge nor the Board has jurisdiction to adjudicate an application for a stay of removal, deportation, or exclusion on the basis of the filing of an application for T nonimmigrant status.

(f) *Victim of a severe form of trafficking in persons.* To be eligible for T–1 nonimmigrant status an applicant must meet the definition of a victim of a severe form of trafficking in persons described in paragraph (a) of this section.

(1) *Evidence.* The applicant must submit evidence that demonstrates that he or she 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, severe forms of trafficking in persons must involve both a particular means (force, fraud, or coercion) and a particular end or a particular intended end (sex trafficking, 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 he or she was recruited, transported, harbored, provided, or obtained for the purposes of subjection to sex trafficking, involuntary servitude, peonage, debt bondage, or slavery, or patronized or solicited for the purposes of subjection

to sex trafficking. The applicant may satisfy this requirement by submitting:

(i) An LEA ~~endorsement~~ as described in paragraph (d)(3) of this section;

(ii) Documentation of a grant of Continued Presence under 28 CFR 1100.35; or

(iii) Any other 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/or affidavits. In the victim's statement prescribed by paragraph (d)(2) of this section, the applicant should describe what the alien has done to report the crime to an LEA and indicate whether criminal records relating to the trafficking crime are available.

(2) If the Continued Presence has been revoked or the contents of the LEA ~~endorsement~~ have been disavowed based on a determination that the applicant is not or was not a victim of a severe form of trafficking in persons, it will no longer be considered as evidence.

(g) *Physical presence.* To be eligible for T–1 nonimmigrant status an applicant must be physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking.

(1) *Applicability.* The physical presence requirement requires USCIS to consider the alien's presence in the United States at the time of application. The requirement reaches an alien who:

(i) Is present because he or she is currently being subjected to a severe form of trafficking in persons;

(ii) Was liberated from a severe form of trafficking in persons by an LEA;

(iii) Escaped a severe form of trafficking in persons before an LEA was involved, subject to paragraph (g)(2) of this section;

(iv) Was subject to a severe form of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons; or

(v) Is present on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.

(2) *Departure from the United States.* An alien who has voluntarily departed from (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons is deemed not to be present in the United States as a result of such trafficking in persons unless:

(i) The alien's reentry into the United States was the result of the continued victimization of the alien;

(ii) The alien is a victim of a new incident of a severe form of trafficking in persons; or

(iii) The alien has been allowed reentry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking, described in paragraph (g)(4) of this section.

(3) *Presence for participation in investigative or judicial processes.* An alien who was allowed initial entry or reentry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking will be deemed to be physically present in the United States on account of trafficking in persons, regardless of where such trafficking occurred. To satisfy this section, an alien must submit documentation to show valid entry into the United States and evidence that this valid entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.

(4) *Evidence.* The applicant must submit evidence that demonstrates that his or her physical presence in the United States or at a port-of-entry thereto, is on account of trafficking in persons, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking. USCIS will consider all evidence presented to determine the physical presence requirement, including the alien's responses to questions on the application for T nonimmigrant status about when he or she escaped from the trafficker, what activities he or she has undertaken since that time including the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States. The applicant may satisfy this requirement by submitting:

(i) An LEA endorsement, described in paragraph (d)(3) of this section;

(ii) Documentation of a grant of Continued Presence under 28 CFR 1100.35;

(iii) Any other documentation of entry into the United States or permission to remain in the United States, such as parole under section 212(d)(5) of the Act, or a notation that such evidence is contained in the applicant's immigration file; or

(iv) 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.

(h) *Compliance with any reasonable request for assistance in an investigation or prosecution.* To be eligible for T–1 nonimmigrant status, an applicant must have complied with any reasonable request for assistance from an LEA in an investigation or prosecution of 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, unless the applicant meets an exemption described in paragraph (h)(4) of this section.

(1) *Applicability.* An applicant must have had, at a minimum, contact with an LEA regarding the acts of a severe form of trafficking in persons. An applicant who has never had contact with an LEA regarding the acts of a severe form of trafficking in persons will not be eligible for T–1 nonimmigrant status, unless he or she meets an exemption described in paragraph (h)(4) of this section.

(2) *Unreasonable requests.* An applicant need only show compliance with reasonable requests made by an LEA for assistance in the investigation or prosecution of the acts of trafficking in persons. The reasonableness of the request depends on the totality of the circumstances. Factors to consider include, but are not limited to:

(i) General law enforcement and prosecutorial practices;

(ii) The nature of the victimization;

(iii) The specific circumstances of the victim;

(iv) ~~Severity of~~ trauma suffered (both mental and physical) or whether the request would cause further trauma;

(v) Access to support services;

(vi) The safety of the victim or the victim's family;

(vii) Compliance with previous requests and the extent of such compliance;

(viii) Whether the request would yield essential information;

(ix) Whether the information could be obtained without the victim's compliance;

(x) Whether an interpreter or attorney was present to help the victim understand the request;

(xi) Cultural, religious, or moral objections to the request;

(xii) The time the victim had to comply with the request; and

(xiii) The age and maturity of the victim.

(3) *Evidence.* An applicant must submit evidence that demonstrates that he or she has complied with any reasonable request for assistance in a

Federal, State, or local investigation or prosecution of trafficking in persons, or a crime where trafficking in persons is at least one central reason for the commission of that crime. In the alternative, an applicant can submit evidence to demonstrate that he or she should be exempt under paragraph (h)(4) of this section. If USCIS has any question about whether the applicant has complied with a reasonable request for assistance, USCIS may contact the LEA. The applicant may satisfy this requirement by submitting any of the following:

(i) An LEA ~~endorsement~~ as described in paragraph (d)(3) of this section;

(ii) Documentation of a grant of Continued Presence under 28 CFR 1100.35; or

(iii) Any other evidence, including affidavits of witnesses. In the victim's statement prescribed by paragraph (d)(2) of this section, the applicant should show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime, why the crime was not previously reported.

(4) An applicant who has not had contact with an LEA or who has not complied with any reasonable request may be exempt from the requirement to comply with any reasonable request for assistance in an investigation or prosecution if either of the following two circumstances applies:

(i) *Trauma.* The applicant is unable to cooperate with a reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking in persons due to physical or psychological trauma. An applicant must submit evidence of the trauma. An applicant may satisfy this by submitting an affirmative statement describing the trauma and any other credible evidence. ''Any other credible evidence'' includes, for instance, a signed statement from a qualified professional, such as a medical professional, social worker, or victim advocate, who attests to the victim's mental state, and medical, psychological, or other records which are relevant to the trauma. USCIS reserves the authority and discretion to contact the LEA involved in the case, if appropriate; or

(ii) *Age.* The applicant is under 18 years of age. An applicant under 18 years of age is exempt from the requirement to comply with any reasonable request for assistance in an investigation or prosecution, but he or she must submit evidence of age. Applicants should include, where available, an official copy of the alien's birth certificate, a passport, or a certified medical opinion. Other evidence regarding the age of the applicant may be submitted in accordance with 8 CFR 103.2(b)(2)(i).

(i) *Extreme hardship involving unusual and severe harm.* To be eligible for T–1 nonimmigrant status, an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(1) *Standard.* ~~Extreme hardship involving unusual and severe harm is a higher standard than extreme hardship as described in 8 CFR 240.58. 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. The determination of extreme hardship is made solely by USCIS.~~

(2) *Factors.* Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should include both traditional extreme hardship factors and factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to:

(i) The age, maturity, and personal circumstances of the applicant;

(ii) Any physical or psychological issues the applicant has which necessitates medical or psychological care not reasonably available in the foreign country;

(iii) The nature and extent of the physical and psychological consequences of having been a victim of a severe form of trafficking in persons;

(iv) The impact of the loss of access to the United States courts and the 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;

(v) 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;

(vi) The likelihood of re-victimization and the need, ability, and willingness of foreign authorities to protect the applicant;

(vii) The likelihood of harm that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would cause the applicant; or

(viii) The likelihood that the applicant's individual safety would be threatened by the existence of civil unrest or armed conflict.

(3) *Evidence.* An applicant must submit evidence that demonstrates he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States. An applicant is encouraged to describe and document all factors that may be relevant to the case, as there is no guarantee that a particular reason(s) will satisfy the requirement. ~~Hardship to persons other than the alien victim cannot be considered in determining whether an applicant would suffer the requisite hardship.~~ The applicant may satisfy this requirement by submitting any credible evidence regarding the nature and scope of the hardship if the applicant was removed from the United States, including evidence of hardship arising from circumstances surrounding the victimization and any other circumstances. An applicant may submit a personal statement or other evidence, including evidence from relevant country condition reports and any other public or private sources of information.

(j) *Annual cap.* In accordance with section 214(o)(2) of the Act, DHS may not grant T–1 nonimmigrant status to more than 5,000 aliens in any fiscal year.

(1) *Waiting list.* All eligible applicants who, due solely to the cap, are not granted T–1 nonimmigrant status will be placed on a waiting list and will receive written notice of such placement. Priority on the waiting list will be determined by the date the application was properly filed, with the oldest applications receiving the highest priority. In the next fiscal year, USCIS will issue a number to each application on the waiting list, in the order of the highest priority, providing the applicant remains admissible and eligible for T nonimmigrant status. After T–1 nonimmigrant status has been issued to qualifying applicants on the waiting list, any remaining T–1 nonimmigrant numbers for that fiscal year will be issued to new qualifying applicants in the order that the applications were properly filed.

(2) *Unlawful presence.* While an applicant for T nonimmigrant status who was granted deferred action or parole is on the waiting list, the applicant will not accrue unlawful

presence under section 212(a)(9)(B) of the Act ~~while maintaining parole or deferred action.~~

(3) *Removal from the waiting list.* An applicant may be removed from the waiting list and the deferred action or parole may be terminated consistent with law and policy. Applicants on the waiting list must remain admissible to the United States and otherwise eligible for T nonimmigrant status. If at any time prior to final adjudication USCIS receives information that an applicant is no longer eligible for nonimmigrant status, the applicant may be removed from the waiting list and the deferred action or parole may be terminated. USCIS will provide notice to the applicant of that decision.

(k) *Application for eligible family members.* (1) *Eligibility.* Subject to section 214(o) of the Act, an alien who has applied for or has been granted T–1 nonimmigrant status (principal alien) may apply for the admission of an eligible family member, who is otherwise admissible to the United States, in derivative T nonimmigrant status if accompanying or following to join the principal alien.

(i) *Principal alien 21 years of age or older.* For a principal alien who is 21 years of age or over, eligible family member means a T–2 (spouse) or T–3 (child).

(ii) *Principal alien under 21 years of age.* For a principal alien who is under 21 years of age, eligible family member means a T–2 (spouse), T–3 (child), T–4 (parent), or T–5 (unmarried sibling under the age of 18).

(iii) *Family member facing danger of retaliation.* Regardless of the age of the principal alien, if the eligible family member faces a present danger of retaliation as a result of the principal alien's escape from the severe form of trafficking or cooperation with law enforcement, in consultation with the ~~law enforcement officer~~ investigating a severe form of trafficking, eligible family member means a T–4 (parent), T–5 (unmarried sibling under the age of 18), or T–6 (adult or minor child of a derivative of the principal alien).

(iv) *Admission requirements.* The principal applicant must demonstrate that the alien for whom derivative T nonimmigrant status is being sought is an eligible family member of the T–1 principal alien, as defined in paragraph (a) of this section, and is otherwise eligible for that status.

(2) *Application.* A T–1 principal alien may submit an application for derivative T nonimmigrant status on the form designated by USCIS in accordance with the form instructions. The application for derivative T nonimmigrant status for an eligible family member may be filed with the T–1 application, or separately. Derivative T nonimmigrant status is dependent on the principal alien having been granted T–1 nonimmigrant status and the principal alien maintaining T–1 nonimmigrant status. If a principal alien granted T–1 nonimmigrant status cannot maintain status due to his or her death, the provisions of section 204(l) of the Act may apply.

(i) *Eligible family members in pending immigration proceedings.* If an eligible family member is in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), the principal alien must file an application for derivative T nonimmigrant status directly with USCIS. In its discretion and at the request of the eligible family member, ICE may agree to file a joint motion to administratively close or terminate proceedings without prejudice with the immigration judge or the Board, whichever is appropriate, while USCIS adjudicates an application for derivative T nonimmigrant status.

(ii) *Eligible family members with final orders of removal, deportation, or exclusion.* If an eligible family member is the subject of a final order of removal, deportation, or exclusion, the principal alien may file an application for derivative T nonimmigrant status directly with USCIS. The filing of an application for derivative T nonimmigrant status has no effect on ICE's authority or discretion to execute a final order, although the alien may file a request for an administrative stay of removal pursuant to 8 CFR 241.6(a). If the eligible family member is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) will be extended while a stay is in effect for the period reasonably necessary to bring about the applicant's removal.

(3) *Required supporting evidence.* In addition to the form, an application for derivative T nonimmigrant status must include the following:

(i) Biometrics submitted in accordance with 8 CFR 103.16;

(ii) Evidence demonstrating the relationship of an eligible family member, as provided in paragraph (k)(4) of this section;

(iii) In the case of an alien seeking derivative T nonimmigrant status on the basis of danger of retaliation, evidence demonstrating this danger as provided in paragraph (k)(6) of this section.

(iv) *Inadmissible applicants.* If an eligible family member is inadmissible based on a ground that may be waived, a request for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with 8 CFR 212.16 and submitted with the completed application package.

(4) *Relationship.* Except as described in paragraphs (k)(5) of this section, the family relationship must exist at the time:

(i) The application for the T–1 nonimmigrant status is filed;

(ii) The application for the T–1 nonimmigrant status is adjudicated;

(iii) The application for derivative T nonimmigrant status is filed;

(iv) The application for derivative T nonimmigrant status is adjudicated; and

(v) The eligible family member is admitted to the United States if residing abroad.

(5) *Relationship and age-out protections.* (i) *Protection for new child of a principal alien.* If the T–1 principal alien proves that he or she had a child after filing the application for T–1 nonimmigrant status, the child will be deemed to be an eligible family member eligible to accompany or follow to join the T–1 principal alien.

(ii) *Age-out protection for eligible family members of a principal alien under 21 years of age.* If the T–1 principal alien was under 21 years of age when he or she filed for T–1 nonimmigrant status, USCIS will continue to consider a parent or unmarried sibling as an eligible family member. A parent or unmarried sibling will remain eligible even if the principal alien turns 21 years of age before adjudication of the T–1 application. An unmarried sibling will remain eligible even if the unmarried sibling is over 18 years of age at the time of adjudication of the T–1 application, so long as the unmarried sibling was under 18 years of age at the time of the T–1 application. The age of an unmarried sibling when USCIS adjudicates the T–1 application, when the unmarried sibling files the derivative application, when USCIS adjudicates the derivative application, or when the unmarried sibling is admitted to the United States does not affect eligibility.

(iii) *Age-out protection for child of a principal alien 21 years of age or older.* ~~If a T–1 principal alien was 21 years of age or older when he or she filed for T–1 nonimmigrant status, USCIS will continue to consider a child as an eligible family member if the child was under 21 years of age at the time the principal filed for T–1 nonimmigrant status. The child will remain eligible even if the child is over 21 years of age at the time of adjudication of the T–1~~

application. The age of the child when USCIS adjudicates the T–1 application, when the child files the derivative application, when USCIS adjudicates the derivative application, or when the child is admitted to the United States does not affect eligibility.

(iv) *Marriage of an eligible family member.* An eligible family member seeking T–3 or T–5 status must be unmarried when the principal files an application for T–1 status, when USCIS adjudicates the T–1 application, when the eligible family member files for T–3 or T–5 status, when USCIS adjudicates the T–3 or T–5 application, and when the family member is admitted to the United States. If a T–1 marries subsequent to filing the application for T–1 status, USCIS will not consider the spouse eligible as a T–2 eligible family member.

(6) *Evidence demonstrating a present danger of retaliation.* An alien seeking derivative T nonimmigrant status on the basis of facing a present danger of retaliation as a result of the T–1 victim's escape from a severe form of trafficking or cooperation with law enforcement, must demonstrate the basis of this danger. USCIS may contact the LEA involved, if appropriate. An applicant may satisfy this requirement by submitting:

(i) Documentation of a previous grant of advance parole to an eligible family member;

(ii) A signed statement from a law enforcement official describing the danger of retaliation;

(iii) An affirmative statement from the applicant describing the danger the family member faces and how the danger is linked to the victim's escape or cooperation with law enforcement (ordinarily an applicant's statement alone is not sufficient to prove present danger); and/or

(iv) 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.

(7) *Biometric collection; evidentiary standards.* The provisions for biometric capture and evidentiary standards described in paragraph (d)(2) and (d)(4) of this section apply to an eligible family member's application for derivative T nonimmigrant status.

(8) *Review and decision.* USCIS will review the application and issue a decision in accordance with paragraph (d) of this section.

(9) *Derivative approvals.* Aliens whose applications for derivative T nonimmigrant status are approved are not subject to the annual cap described in paragraph (j) of this section. USCIS will not approve applications for derivative T nonimmigrant status until USCIS has approved T–1 nonimmigrant status to the related principal alien.

(i) *Approvals for eligible family members in the United States.* When USCIS approves an application for derivative T nonimmigrant status for an eligible family member in the United States, USCIS will concurrently approve derivative T nonimmigrant status. USCIS will notify the T–1 principal alien of such approval and provide evidence of derivative T nonimmigrant status to the derivative.

(ii) *Approvals for eligible family members outside the United States.* When USCIS approves an application for an eligible family member outside the United States, USCIS will notify the T–1 principal alien of such approval and provide the necessary documentation to the Department of State for consideration of visa issuance.

(10) *Employment authorization.* An alien granted derivative T nonimmigrant status may apply for employment authorization by filing an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) in accordance with form instructions. For derivatives in the United States, the application may be filed concurrently with the application for derivative T nonimmigrant status or at any later time. For derivatives outside the United States, an application for employment authorization may only be filed after admission to the United States in T nonimmigrant status. If the application for employment authorization is approved, the derivative alien will be granted employment authorization pursuant to 8 CFR 274a.12(c)(25) for the period remaining in derivative T nonimmigrant status.

(l) *Extension of T nonimmigrant status.* (1) *Eligibility.* USCIS may grant extensions of T–1 nonimmigrant status beyond 4 years from the date of approval in 1-year periods from the date the T–1 nonimmigrant status ends if:

(i) An LEA investigating or prosecuting activity related to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity;

(ii) The Secretary of Homeland Security determines that an extension is warranted due to exceptional circumstances; or

(iii) The alien has a pending application for adjustment of status to that of a lawful permanent resident.

(2) *Application for a discretionary extension of status.* Upon application, USCIS may extend T–1 nonimmigrant status based on law enforcement need or exceptional circumstances. A T–1 nonimmigrant may apply for an extension by submitting the form designated by USCIS with the prescribed fee and in accordance with form instructions. A T–1 nonimmigrant should indicate on the application whether USCIS should apply the extension to any family member holding derivative T nonimmigrant status.

(3) *Timely filing.* An alien should file the application to extend nonimmigrant status before the expiration of T–1 nonimmigrant status. If T–1 nonimmigrant status has expired, the applicant must explain in writing the reason for the untimely filing. USCIS may exercise its discretion to approve an untimely filed application for extension of T nonimmigrant status.

(4) *Evidence.* In addition to the application, a T–1 nonimmigrant must include evidence to support why USCIS should grant an extension of T nonimmigrant status. The nonimmigrant bears the burden of establishing eligibility for an extension of status.

(5) *Evidence of law enforcement need.* An applicant may demonstrate law enforcement need by submitting evidence that comes directly from an LEA, including:

(i) A new LEA endorsement;

(ii) Evidence from a law enforcement official, prosecutor, judge, or other authority who can investigate or prosecute human trafficking activity, such as a letter on the agency's letterhead, email, or fax; or

(iii) Any other credible evidence.

(6) *Evidence of exceptional circumstances.* An applicant may demonstrate exceptional circumstances by submitting:

(i) The applicant's affirmative statement; or

(ii) Any other credible evidence, including medical records, police or court records, news articles, correspondence with an embassy or consulate, and affidavits of witnesses.

(7) *Mandatory extensions of status for adjustment of status applicants.* USCIS will automatically extend T–1 nonimmigrant status when a T nonimmigrant properly files an application for adjustment of status in accordance with 8 CFR 245.23. No separate application for extension of T nonimmigrant status, or supporting evidence, is required.

(m) *Revocation of approved T nonimmigrant status.* (1) *Automatic revocation of derivative status.* An approved application for derivative T nonimmigrant status will be revoked automatically if the beneficiary of the approved derivative application notifies

USCIS that he or she will not apply for admission to the United States.

(2) *Revocation on notice/grounds for revocation.* USCIS may revoke an approved application for T nonimmigrant status following issuance of a notice of intent to revoke. USCIS may revoke an approved application for T nonimmigrant status based on one or more of the following reasons:

(i) The approval of the application violated the requirements of section 101(a)(15)(T) of the Act or 8 CFR 214.11 or involved error in preparation, procedure, or adjudication that affects the outcome;

(ii) In the case of a T–2 spouse, the alien's divorce from the T–1 principal alien has become final;

(iii) In the case of a T–1 principal alien, an LEA with jurisdiction to detect or investigate the acts of severe forms of trafficking in persons notifies USCIS that the alien 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

(iv) 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.

(3) *Procedures.* ~~Procedures for revocation and appeal follow 8 CFR 103.3. If USCIS revokes approval of the previously granted T nonimmigrant status application, USCIS may notify the LEA who 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~~.

(4) *Effect of revocation.* Revocation of a principal alien's application for T–1 nonimmigrant status will result in termination of T–1 status for the principal alien and, consequently, the automatic termination of the derivative T nonimmigrant status for all derivatives. If a derivative application is pending at the time of revocation, it will be denied. 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 an alien's T–1 status will have no effect on the annual cap described in paragraph (j) of this section.

(n) *Removal proceedings.* Nothing in this section prohibits DHS from instituting removal proceedings for conduct committed after admission, or for conduct or a condition that was not disclosed prior to the granting of T nonimmigrant status, including misrepresentations of material facts in the application for T–1 nonimmigrant status or in an application for derivative T nonimmigrant status, or after revocation of T nonimmigrant status.

(o) *USCIS employee referral.* Any USCIS employee who, while carrying out his or her official duties, comes into contact with an alien believed to be a victim of a severe form of trafficking in persons and is not already working with an LEA should consult, as necessary, with the ICE officials responsible for victim protection, trafficking investigations and prevention, and deterrence. The ICE office may, in turn, refer the victim to another LEA with responsibility for investigating or prosecuting severe forms of trafficking in persons. If the alien has a credible claim to victimization, USCIS may advise the alien that he or she can submit an application for T nonimmigrant status and seek any other benefit or protection for which he or she may be eligible, provided doing so would not compromise the alien's safety.

(p) *Restrictions on use and disclosure of information relating to applicants for T nonimmigrant classification.* (1) The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved application for T nonimmigrant status is prohibited unless the disclosure is made in accordance with an exception described in 8 U.S.C. 1367(b).

(2) Information protected under 8 U.S.C. 1367(a)(2) may be disclosed to federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(3) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(4) DHS officials are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the trafficker, unless the alien has been convicted of a crime or crimes listed in section 237(a)(2) of the Act.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 7. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 8. Section 245.23(a)(3) and (b)(2) are revised to read as follows:

§ 245.23 Adjustment of aliens in T nonimmigrant classification.

(a) * * *

(3) Has been physically present in the United States for a continuous period of at least 3 years since the first date of lawful admission as a T–1 nonimmigrant, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period is less; except

(i) If the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain continuous physical presence in the United States for purposes of section 245(l)(1)(A) of the Act; and

(ii) If the alien was granted T nonimmigrant status under 8 CFR 214.11, such alien's physical presence in the CNMI before, on, or after November 28, 2009, and subsequent to the grant of T nonimmigrant status, is considered as equivalent to presence in the United States pursuant to an admission in T nonimmigrant status.

* * * * *

(b) * * *

(2) The derivative family member was lawfully admitted to the United States in derivative T nonimmigrant status under section 101(a)(15)(T)(ii) of the Act, and continues to hold such status at the time of application;

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 9. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 10. Section 274a.12 is amended by revising paragraphs (a)(16) and (c)(25) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(16) Any alien in T–1 nonimmigrant status, pursuant to 8 CFR 214.11, for the period in that status, as evidenced by an employment authorization document issued by USCIS to the alien.

* * * * *

(c) * * *

(25) Any alien in T–2, T–3, T–4, T–5, or T–6 nonimmigrant status, pursuant to 8 CFR 214.11, for the period in that status, as evidenced by an employment authorization document issued by USCIS to the alien.

* * * * *

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–29900 Filed 12–16–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212, 214, 245, and 274a

[CIS No. 2507–11; DHS Docket No. USCIS–2011–0010]

RIN 1615–AA59

Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On December 19, 2016, the Department of Homeland Security (DHS) published an interim final rule (2016 interim rule) amending its regulations governing the requirements and procedures for victims of a severe form of trafficking in persons seeking T nonimmigrant status. The 2016 interim rule amended the regulations to conform with legislation enacted after the publication of the initial regulations and to codify discretionary changes based on DHS's experience implementing the T nonimmigrant status program since it was established in 2002. DHS is adopting the 2016 interim rule as final with several clarifying changes based on USCIS experience implementing the interim rule, in response to comments received, and due to an organizational change to move the regulations to a separate subpart as explained in the **SUPPLEMENTARY INFORMATION** section below. This final rule is intended to respond to public comments and clarify the eligibility and application requirements so that they conform to current law.

DATES: This rule is effective August 28, 2024.

Comments on the Paperwork Reduction Act section of this final rule must be submitted by July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Rená Cutlip-Mason, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Dr, Camp Springs, MD 20529–2140; or by phone at 240–721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Regulatory Action

The T nonimmigrant status regulations—which include the eligibility criteria, application process, evidentiary standards, and benefits associated with the T nonimmigrant classification (commonly known as the ''T visa'' [1])—have been in effect since a 2002 interim rule. *New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status,* 67 FR 4783 (Jan. 31, 2002) (2002 interim rule). Since the publication of that interim rule, the public submitted comments on the regulations, and Congress enacted numerous pieces of related legislation. DHS published a 2016 interim rule to respond to the public comments, clarify requirements based on statutory changes and its experience operating the program for more than 14 years, and amend provisions as required by legislation. *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status,* 81 FR 92266 (Dec. 19, 2016). In July 2021, DHS reopened the public comment period for the interim rule for 30 days, and subsequently extended the deadline for comments. This final rule adopts the changes in the 2016 interim rule, with some modifications. The rationale for the 2016 interim rule and the reasoning provided in the preamble to the 2016 interim rule remain valid with respect to many of those regulatory amendments, and DHS adopts such reasoning to support this final rule. In response to the public comments received on the 2016 interim rule, DHS has modified some provisions in the final rule. DHS has also made some technical changes in the final rule. The changes are summarized in the following section I.B. Responses to public comments, and substantive changes being made in response, are discussed in detail in section III.

B. Summary of Changes Made in the Final Rule

1. Definitions

In the final rule, DHS has updated several definitions to clarify them and ensure that they are consistent with those in the Trafficking Victims Protection Act of 2000 (TVPA), as amended. *See* 22 U.S.C. 7102; new 8 CFR 214.201. The rule strikes language from the definition of ''involuntary servitude'' which had been derived from the *United States* v. *Kozminski,* 487 U.S. 931 (1988), decision. DHS has also added definitions of the terms ''serious harm'' and ''abuse or threatened abuse of the legal process.'' Additionally, DHS has added a definition of ''incapacitated or incompetent.'' DHS has clarified in the definition of law enforcement agency several additional examples of what may constitute such an agency. In addition, DHS has amended the definition for ''Law Enforcement Agency declaration.'' DHS has also included a new definition for the term ''law enforcement involvement.'' Finally, DHS has struck repetitive language from the definition of ''reasonable request for assistance.''

2. Bona Fide Determination Process

DHS has moved the definition of ''bona fide determination,'' (BFD) to define the process in the relevant provision of the regulations for clarity. *See* new 8 CFR 214.204(m), 214.205.

DHS has also amended provisions regarding BFDs, which reflect a modified process. *See* new 8 CFR 214.204(m), 214.205, and 274a.12(c)(40). The new streamlined process will include case review and background checks. Once an individual whose application has been deemed bona fide files a Form I–765, Application for Employment Authorization under new 8 CFR 274.a12(c)(40), USCIS will consider whether an applicant warrants a favorable exercise of discretion and will be granted deferred action and a BFD employment authorization document.[2]

3. Evidence of Extreme Hardship

In response to comments, DHS is clarifying the regulations to state that hardship to persons other than the applicant will be considered when determining whether an applicant would suffer the requisite hardship, only if the evidence specifically demonstrates that the applicant will suffer hardship upon removal as a result of hardship to a third party. New 8 CFR 214.209(c)(2).

4. Technical Changes

a. Reorganization of 8 CFR Part 214

This rule moves the regulations for T nonimmigrant status to a separate subpart of 8 CFR part 214 to reduce the length and density of part 214 and to make it easier to locate specific provisions. In addition to the renumbering and redesignating of paragraphs, the rule has reorganized and reworded some sections to improve readability, such as in new sections 8 CFR 214.204(d)(1) (discussing the law enforcement agency (LEA) declaration) and 8 CFR 214.208(e)(1) (discussing the trauma exception to the general requirement of compliance with any reasonable law enforcement requests for assistance). The rule also divides overly long paragraphs into smaller provisions to improve the organization of the regulations.

The Administrative Procedure Act (APA) exempts from the prior notice and opportunity for comment requirements, ''. . . rules of agency organization, procedure or practice.'' 5 U.S.C. 553(b)(A). Restructuring the regulations and moving them to a separate subpart resulted in no substantive changes to program requirements. This rule's changes to renumber paragraphs and improve readability affects rules of agency organization, procedure or practice, and those portions of the rule are exempt from the notice-and-comment requirements under 5 U.S.C. 553(b)(A).

Table 1 lists where provisions of 8 CFR 214.11 that were codified in the 2016 interim rule have been moved to in this final rule.

[1] Although T nonimmigrant status is known as the ''T visa'' colloquially, such a classification is not entirely accurate. T–1 applicants must be physically present in the United States or at a port of entry on account of the trafficking in persons to be eligible for T–1 nonimmigrant status, so they do not obtain a ''T visa'' to enter the United States. T–1 nonimmigrants may seek derivative T nonimmigrant status for certain family members. *See* new 8 CFR 214.211(a). Some of these family members may reside outside the United States and, if eligible, can join the T–1 nonimmigrant in the United States. Before family members with approved applications for derivative T nonimmigrant status can enter the United States, the family members must first undergo processing with the Department of State (DOS) at a U.S. Embassy or Consulate to obtain a T visa abroad. This is known as consular processing. USCIS will decide based on the application filed by the T–1 nonimmigrant whether an overseas family member qualifies for derivative T nonimmigrant status. DOS will then separately determine that family member's eligibility to receive a visa to enter the United States. A family member outside of the United States is not a derivative T nonimmigrant until they are granted a T–2, T–3, T–4, T–5, or T–6 visa by the DOS and are admitted to the United States in T nonimmigrant status. *See* new 8 CFR 214.211(a).

[2] Persons seeking or granted T nonimmigrant status pay no fee for Form I–765. *See* 8 CFR 106.3(b)(2)(viii).

Table 1. Redesignation Table	
Previous section	New section
214.11(a)	214.201
214.11(b)	214.202
214.11(c)	214.203
214.11(d)	214.204
214.11(e)	214.205
214.11(f)	214.206
214.11(g)	214.207
214.11(h)	214.208
214.11(i)	214.209
214.11(j)	214.210
214.11(k)	214.211
214.11(l)	214.212
214.11(m)	214.213
214.11(n)	214.214
214.11(o)	214.215
214.11(p)	214.216

b. Terminology Changes

USCIS is making technical clarifications throughout the regulation in amending the use of the term ''alien'' and replacing it with ''victim,'' ''applicant,'' ''survivor,'' or ''noncitizen'' where appropriate. USCIS is also updating terminology to be gender neutral throughout.

Throughout the regulations, DHS has made revisions to reference ''detection, investigation, or prosecution'' rather than just ''investigation or prosecution'' for consistency and accuracy.

DHS has also removed the term ''principal T nonimmigrant'' from the regulations and replaced it with the term ''T–1 nonimmigrant.'' The term ''principal T nonimmigrant'' did not appear elsewhere in the CFR, whereas ''T–1 nonimmigrant'' is used consistently to describe a victim of a severe form of trafficking in persons who has been granted T–1 nonimmigrant status.

c. Definition of Eligible Family Member

DHS has made a technical clarification to the definition of ''eligible family member.'' The 2016 Interim Rule defines this term as a family member who may be eligible for derivative T nonimmigrant status based on their relationship to a noncitizen victim and, if required, upon a showing of a present danger *or* retaliation; however, the statute indicates that the derivative must face a present danger *of* retaliation as a result of escape from the severe form of trafficking or cooperation with law enforcement. INA sec. 101(a)(15)(T)(ii)(III). As such, DHS has made a technical revision to the regulatory text to comply with Congressional intent. *See* new 8 CFR 214.201.

d. Clarification To Address T Visa Evidentiary Standard and Standard of Proof

DHS is also clarifying the evidentiary standard and standard of proof that apply to the adjudication of a T visa application. This rule retains the standard that applicants may submit any credible evidence relating to their T visa applications for USCIS to consider. *See* new 8 CFR 214.204(l).

e. Interview Authority

DHS is removing the interview provision at former 8 CFR 214.11(d)(6) to avoid redundancy. This section indicated that USCIS may require an applicant for T nonimmigrant status to participate in a personal interview. USCIS is removing this provision, because USCIS authority to require any individual filing a benefit request to appear for an interview is already covered at 8 CFR 103.2(b)(9).

f. USCIS Review

DHS has stricken ''de novo'' from 8 CFR 214.11(d)(5) and (8) (redesignated as 8 CFR 214.204(l)(2) and (n)) to reflect that USCIS conducts an initial review, not a ''de novo'' review.

g. Travel Authority

DHS has clarified that a noncitizen granted T nonimmigrant status must apply for advance parole to return to the United States after travel abroad pursuant to section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5). Compliance with advance parole procedures is required to maintain T nonimmigrant status upon return to the United States and remain eligible to adjust status under section 245(l) of the INA, 8 U.S.C. 1255(l). *See* new 8 CFR 214.204(p), 214.211(i)(4); 8 CFR 245.23(j).

h. Departure From the United States as a Result of Continued Victimization

DHS wishes to clarify that the ''continued victimization'' criteria referenced at 8 CFR 214.207(b)(1) does not require that the applicant is currently a ''victim of a severe form of trafficking in persons.'' Instead, continued victimization can include ongoing victimization that directly results from past trafficking. For example, if an applicant experienced harm such as abduction, abuse, threats, or other trauma that resulted in continuing harm, that applicant's reentry could be a result of their continued victimization, even though they were not trafficked upon reentry. As such, the applicant may be able to satisfy the physical presence requirement if they establish that their reentry into the United States was the result of continued victimization tied to ongoing or past trafficking. *See* new 8 CFR 214.207(b)(1).

i. Severe Form of Trafficking in Persons

DHS has revised the regulatory text so that references to ''trafficking'' and ''acts of trafficking'' are consistent with the INA, for consistency and clarity. These changes are intended to clarify for applicants when ''a severe form of trafficking in persons'' applies to a particular eligibility requirement and when instead ''trafficking'' or ''acts of trafficking'' apply to an eligibility requirement. For example, applicants must demonstrate that they have complied with reasonable requests for assistance in the investigation or prosecution of ''acts of trafficking'' or the investigation of crime where ''acts of trafficking'' are at least one central reason for the commission of the crime, pursuant to section 101(a)(15)(T)(i)(III)(aa) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa), as distinct from a ''severe form of trafficking in persons'' that applies to other eligibility requirements, such as section 101(a)(15)(T)(i)(I) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(I). *See, e.g.,* new 8 CFR 214.201, 214.204(c), 214.208(a) and (c) through (e), 214.209(b), 214.211(a), 214.212(a) and (e), 214.215(b) (addressing ''acts of trafficking''); 214.201, 214.202(a) and (e), 214.204(g), 214.206(a), 214.207(a) and (b), 214.208(b), 214.209(b), 214.215(a) (discussing ''severe form of trafficking in persons'').

j. Extreme Hardship Involving Unusual and Severe Harm

DHS has amended previous 8 CFR 214.11(i)(1) because the previous citation at 8 CFR 240.58 no longer exists. *See* new 8 CFR 214.209(a).

k. Waiting List

DHS has revised previous 8 CFR 214.11(j) for clarity, and reorganized the provision at new 8 CFR 214.210, to reflect how the waiting list works in conjunction with the amended bona fide determination process.

l. Appeal Rights and Procedures

USCIS has clarified appeal rights and procedures at new 8 CFR 214.213(c). *See* 8 CFR 103.3. USCIS has further clarified the existing practice that an automatic revocation cannot be appealed. *See* new 8 CFR 214.213(a).

m. References to Forms

The phrase ''form designated by USCIS'' has been replaced in several places with an official form name. Form numbers have also been removed throughout and replaced by form names.

n. Law Enforcement Endorsement

DHS has updated references to ''Law Enforcement Endorsement'' to instead refer to ''Law Enforcement Declaration.'' This update more effectively captures the declaration process in the T visa program. In addition, DHS has deleted the requirement under 8 CFR 214.11(d)(3)(i) that a law enforcement agency (LEA) declaration must include ''the results of any name or database inquiries performed'' because the information is redundant, as USCIS conducts background checks on the applicant as part of its adjudication.

o. Assistance in the Investigation or Prosecution for Adjustment of Status

Prior to TVPRA 2008, the INA referenced the Attorney General at INA section 245(l)(1)(C), 8 U.S.C. 1255(l)(1)(C), which describes the requirement of assisting in an investigation or prosecution of acts of trafficking. TVPRA 2008 amended the INA so that the Secretary of Homeland Security is now only required to consult with the Attorney General as appropriate. *See* INA sec. 245(l)(1)(C), 8 U.S.C. 1255(l)(1)(C). As a result of TVPRA 2008, DHS has sole jurisdiction over the entire T nonimmigrant adjustment of status process, including the determination of whether an applicant complied with any reasonable requests for assistance in the investigation or prosecution of acts of trafficking, and DHS consults the Attorney General as it deems appropriate.[3] The regulations state that the Attorney General has jurisdiction to determine whether an applicant received any reasonable request for assistance in the investigation or prosecution of acts of trafficking, and, if so, whether they complied with that request. *See* previous 8 CFR 245.23(d). This required applicants for adjustment of status to submit a document issued by the Attorney General (or their designee) certifying the applicant had complied with any reasonable requests for assistance. *See* previous 8 CFR 245.23(f). After TVPRA 2008, however, an applicant was no longer required to obtain a certification from the Attorney General to demonstrate compliance with any reasonable requests in the investigation or prosecution of acts of trafficking, and immigration officers were no longer required to deny an application for lack of an Attorney General certification.[4] Instead, officers were required to determine whether the applicant had met the statutory requirement to comply with any reasonable request for assistance. Therefore, consistent with DHS' longstanding practice, and the changes made to the INA by TVPRA 2008, DHS amends 8 CFR 245.23(d) and (f) in this rule to indicate that an applicant is not required to provide a certification letter from the Attorney General regarding their compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. DHS has stricken any reference to the Attorney General in these sections; applicants must establish their compliance with any reasonable request for assistance to the satisfaction of USCIS only.

C. Costs and Benefits

As discussed further in the preamble below, this final rule adopts the changes from the 2016 interim final rule (IFR), with some modifications. The rationale for the 2016 interim rule and the reasoning provided in the preamble to the 2016 interim rule remain valid with respect to these regulatory amendments; therefore, DHS adopts such reasoning to support this final rule. In response to the public comments received on the 2016 interim rule, DHS has modified some provisions for this final rule. In addition, DHS has also made some technical changes in the final rule.

This final rule clarifies some definitions and amends the bona fide determination (BFD) provisions to implement a new process. This final rule also clarifies evidentiary requirements for hardship and codifies the evidentiary standard of proof that applies to the adjudication of an application for T nonimmigrant status. Lastly, DHS made technical changes to the organization and terminology of 8 CFR part 214.

For the 10-year period of analysis of the rule using the post-IFR baseline, DHS estimates the annualized costs of this rule will be $807,314 annualized at 3 and 7 percent. Table 1 in section IV provides a more detailed summary of the final rule provisions and their impacts.

II. Background and Legislative Authority

Congress created T nonimmigrant status in the TVPA. *See* Victims of Trafficking and Violence Protection Act

[3] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicator's Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10–38)'' (2010), *https://www.uscis.gov/sites/default/files/document/memos/William-Wilberforce-TVPRAct-of-2008-July-212010.pdf* (TVPRA Memo).

[4] *See* TVPRA memo.

of 2000, div. A, TVPA, Public Law 106–386, 114 Stat. 1464 (Oct. 28, 2000). Congress has since amended the TVPA, including the T nonimmigrant status provisions, several times: Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, Public Law 108–193, 117 Stat. 2875 (Dec. 19, 2003); Violence Against Women Act (VAWA) 2005, Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006); Technical Corrections to VAWA 2005, Public Law 109–271, 120 Stat. 750 (Aug. 12, 2006); TVPRA 2008, Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008); VAWA 2013, Public Law 113–4, titles viii, xii, 127 Stat. 54 (Mar. 7, 2013); Justice for Victims of Trafficking Act (JVTA), Public Law 114–22, 129 Stat 227 (May 29, 2015). The TVPA may be found in 22 U.S.C. 7101–7110; 22 U.S.C. 2151n, 2152d.

The TVPA and subsequent reauthorizing legislation provide various means to detect and combat trafficking in persons, including tools to effectively prosecute and punish perpetrators of trafficking in persons, and protect victims of trafficking through immigration relief and access to Federal public benefits. T nonimmigrant status is one type of immigration relief available to victims of a severe form of trafficking in persons who assist LEAs in the investigation or prosecution of the perpetrators of these crimes.

The Immigration and Nationality Act (INA) permits the Secretary of Homeland Security (Secretary) to grant T nonimmigrant status to individuals who are or were victims of a severe form of trafficking in persons and have complied with any reasonable request by an LEA for assistance in an investigation or prosecution of crime involving acts of trafficking in persons (or are under 18 years of age or are unable to cooperate due to physical or psychological trauma), and to certain eligible family members of such individuals.[5] *See* INA sec. 101(a)(15)(T)(i)(I), (III), (ii), 8 U.S.C. 1101(a)(15)(T)(i)(I), (III), (ii). Applicants for T–1 nonimmigrant status must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry to the United States, on account of a severe form of trafficking in persons. This includes being physically present on account of having been allowed to enter the United States to participate in investigative or judicial processes associated with an act or a perpetrator of trafficking. *See* INA sec. 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II). In addition, an applicant must demonstrate that they would suffer extreme hardship involving unusual and severe harm if removed from the United States. *See* INA sec. 101(a)(15)(T)(i)(IV), 8 U.S.C. 1101(a)(15)(T)(i)(IV). T nonimmigrant status allows eligible individuals to: remain in the United States for a period of not more than four years (with the possibility for extensions in some circumstances), receive work authorization, become eligible for certain Federal public benefits and services, and apply for derivative status for certain eligible family members. *See* INA sec. 214(o), 8 U.S.C. 1184(o); INA sec. 101(i)(2), 8 U.S.C. 1101(i)(2); 22 U.S.C. 7105(b)(1)(A); TVPA 107(b)(1); section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, 8 U.S.C. 1641(c)(4); INA sec. 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii). T nonimmigrants who qualify may also be able to adjust their status and become lawful permanent residents. INA sec. 245(l), 8 U.S.C. 1155(l).

[5] The primary applicant who is the victim of trafficking may also be referred to as the ''principal T nonimmigrant'' or ''principal applicant'' and receives T–1 nonimmigrant status, if eligible. The principal applicant may be permitted to apply for certain family members who are referred to as ''eligible family members'' or ''derivative T nonimmigrants'' and if approved, those family members receive T–2, T–3, T–4, T–5, or T–6 nonimmigrant status. The term derivative is used in this context because the family member's eligibility derives from that of the principal applicant.

III. Response to Public Comments on the 2016 Interim Final Rule

A. Summary of Public Comments

On December 19, 2016, DHS published an interim final rule (IFR) in the **Federal Register** and received 17 public comments. 81 FR 92266 (Dec. 19, 2016). On July 16, 2021, DHS reopened the public comment period for the IFR rule for 30 days to provide the public with further opportunity to comment on the interim final rule. 86 FR 37670 (July 16, 2021). DHS received multiple requests from stakeholders to extend the deadline for submitting public comments during the reopened public comment period. In response to that request, DHS extended the reopened comment period for an additional 30 days, to provide a total of 60 days for the public to submit comments. DHS received an additional 41 comments on the IFR during the reopened comment period. In total, between the two comment periods, DHS received 58 comments. DHS has reviewed all the public comments and addresses them in this final rule.

B. General and Preliminary Matters

Most comments came from representatives of nonprofit legal service providers who provided detailed recommendations based on their experience advocating for and providing services to trafficking victims. Commenters also included members of the public and individual law practitioners.

1. General Support for the Rule

Comment: Most commenters were generally in favor of the 2016 interim rule. Several commenters supported DHS's decision to issue detailed regulations that reflect statutory changes since the initial 2002 interim rule; some commenters mentioned the confusion that has been caused by having outdated regulations that did not reflect subsequent statutory changes. Some commenters expressed concern about the growing epidemic of human trafficking in the United States and globally. Commenters expressed support for the following:

- Eliminating the requirement that applicants for T nonimmigrant status provide three passport-sized photographs with their applications, which saves victims and assisting nonprofit organizations time and money;
- Removing the filing deadline for applicants whose trafficking occurred before October 28, 2000, recognizing that there was no statutory requirement for the deadline;
- Clarifying that if a T nonimmigrant cannot file for adjustment of status within the 4-year filing deadline and can show exceptional circumstances, they may be eligible to receive an extension of status and may potentially be able to adjust status to a lawful permanent resident;
- Updating regulatory language to reflect statutory changes to the categories of eligible family members and clarifying age-out protections for family members who are eligible at the time of filing but exceed the required age before USCIS adjudicates the application;
- Clarifying that T nonimmigrant applicants are exempted from the public charge ground of inadmissibility;
- Revising the waiver authority for grounds of inadmissibility during the T nonimmigrant application stage and the T adjustment of status stage;
- Providing additional guidance that an individual need not actually perform labor, services, or commercial sex acts to meet the definition of a ''victim of a severe form of trafficking in persons'';
- Clarifying the ''any credible evidence'' standard;

• Referencing the confidentiality provisions that apply to applicants for T nonimmigrant status under 8 U.S.C. 1367(a)(2) and (b);

• Exempting applicants who, due to trauma, are unable to comply with any reasonable request by a law enforcement agency;

• Clarifying that presence in the Commonwealth of the Northern Mariana Islands after being granted T nonimmigrant status qualifies towards meeting the requisite physical presence requirement for adjustment of status;

• Conforming the regulatory definition of sex trafficking to the revised statutory definition in section 103(10) of the TVPA, 22 U.S.C. 7102(10), as amended by section 108(b) of the JVTA, 129 Stat. 239;

• Expanding the definition of ''Law Enforcement Agency'' to include State and local agencies, as well as those that detect and investigate trafficking;

• Removing the requirement that an applicant establish they had no ''opportunity to depart'' the United States and clarifying the circumstances in which an applicant who has left the United States can establish physical presence in the United States on account of trafficking;

• Clarifying that ''involuntary servitude'' encompasses ''the use of psychological coercion''; and

• Removing the extreme hardship requirement for overseas derivative family members.

Response: DHS acknowledges and appreciates commenters' support of the rule. DHS agrees with the substance of these comments and believes these changes provide greater clarity and further align the T visa program with its statutory purpose.

2. Additional Comments

Commenters also requested that DHS modify certain provisions in the 2016 interim rule. Although there was some variation in the proposed changes, there was also significant overlap in their comments. DHS considered the comments received and all other material contained in the docket in preparing this final rule. This final rule does not address comments beyond the scope of the 2016 interim rule, including, for instance, those that express general opinions, those that include personally identifying information, or those that request that USCIS establish a regular timeline for regulatory updates. All comments and other docket material are available for viewing at the Federal Docket Management System (FDMS) at *www.regulations.gov* and searching under Docket Number USCIS–2011–0010.

Many commenters wrote about several subjects. Comments are summarized for clarity and combined with other comments on the same subject matter. The substantive comments received on the 2016 interim rule and DHS responses are discussed in depth below.

C. Terminology

Comment: Several commenters requested terminology changes to the regulation, including replacing ''victim'' with ''survivor,'' using gender neutral language throughout, and replacing ''alien'' with a more appropriate term.

Response: DHS agrees with these recommendations and has made technical clarifications throughout the regulation in amending the use of the term ''alien'' and replacing it with ''victim,'' ''applicant,'' ''survivor,'' or ''noncitizen'' where appropriate, while recognizing that ''alien'' is the statutorily-defined term used by Congress in INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T) and INA sec. 214(o), 8 U.S.C. 1184(o).[6] DHS has also updated terminology to be gender neutral throughout.

D. Definitions

DHS added U.S. Code citations to the regulations that will be afforded due regard throughout subpart B of 8 CFR part 214 based on amendments to subsequent reauthorizing legislation.

1. Involuntary Servitude

Comment: Commenters wrote that they supported DHS removing the citation to *United States* v. *Kozminski,* 487 U.S. 931 (1988), from the definition of ''involuntary servitude'' and made several suggestions for further clarifying the definition. Several commenters requested that DHS delete language derived from the *Kozminski* decision to avoid confusion and promote consistency with the statutory definition of ''involuntary servitude'' at 22 U.S.C. 7102, which codifies section 103 of the TVPA and subsequent amendments.

Response: DHS agrees to delete the language derived from the *Kozminski* decision from the rule's involuntary servitude definition that is inconsistent with the TVPA's definition at 22 U.S.C. 7102(8). As stated in the preamble to the 2002 interim rule, Congress intended to expand the definition of involuntary servitude that was used in *Kozminski* by broadening the types of criminal conduct that could be labeled ''involuntary servitude.'' 67 FR 4786.

a. Abuse of the Legal System and Serious Harm

Comment: One commenter wrote that DHS should acknowledge that traffickers may specifically traffic individuals to force them to commit crimes for the benefit of the trafficker, force victims to commit crimes as a control mechanism, and target individuals with criminal histories for trafficking due to that person's reluctance or inability to seek redress from law enforcement agencies.

Response: DHS acknowledges that traffickers target individuals for these reasons, but does not feel it appropriate or necessary to include references to such practices in the regulations.

Comment: Multiple commenters proposed that the definitions section of the regulation adopt the current terms of ''abuse or threatened abuse of the legal process'' and ''serious harm'' from the criminal provisions related to ''forced labor'' in 18 U.S.C. 1589 and ''sex trafficking'' in 18 U.S.C. 1591, respectively. The commenters stated that these additional definitions would clarify for attorneys, LEAs, and advocates that ''serious harm'' is not based on subjective severity but broadly encompasses the surrounding circumstances, including financial and reputational harm. They commented further that many practitioners do not realize that ''abuse or threatened abuse of legal process'' can include administrative or civil processes and that the inclusion of these two definitions would be consistent with Congressional intent regarding how these terms should be interpreted in the trafficking context.

Response: DHS agrees with these proposed changes and the commenters' stated rationale. As stated in the preamble to the 2002 interim rule on T nonimmigrant status, the TVPA defines ''a severe form of trafficking in persons'' to include ''involuntary servitude.'' For purposes of T nonimmigrant status, this inclusion and other relevant definitions from section 103 of the TVPA, as amended, 22 U.S.C. 7102, apply. *See* 67 FR 4783, 4786. In defining ''severe form of trafficking in persons,'' the TVPA ''builds upon the Constitutional prohibition on slavery, on the existing criminal law provisions on slavery and peonage (Chapter 77 of title 18, U.S. Code, sections 1581 *et seq.*), on the case law interpreting the Constitution and these statutes (specifically *United States* v. *Kozminski,* 487 U.S. 931, 952 (1988)), and on the new criminal law prohibitions contained in the TVPA.''

[6] *See* INA sec. 101(a)(3), 8 U.S.C. 1101(a)(3) (The term ''alien'' means any person not a citizen or national of the United States).

Id. Furthermore, ''[t]he statutory definition of involuntary servitude [in the TVPA] reflects the new Federal crime of 'forced labor' contained in section 103(5) of the TVPA, and expands the definition of involuntary servitude contained in *Kozminski*.'' *Id.* Thus, DHS agrees that it is appropriate to draw from the definition of ''serious harm'' in the statute that criminalizes forced labor, 18 U.S.C. 1589. Accordingly, DHS incorporates these definitions in new 8 CFR 214.201.

b. Reasonable Person Standard

Comment: One commenter requested that the Department state within the involuntary servitude definition that the reasonable person standard applies to those with mental, cognitive, and physical disabilities or those who have been trafficked by a family member.

Response: DHS acknowledges that these factors are considered in individual cases but declines to adopt this language within the definition of involuntary servitude, as DHS does not feel it is necessary or prudent to address every possible scenario within the regulations and that such factors are best addressed in sub-regulatory guidance.[7]

c. Involuntary Servitude Induced by Domestic Violence

Comment: One commenter requested that the Department codify within the definition of involuntary servitude that the trafficker could be the victim's ''paramour or relative.'' Other commenters stated that USCIS inaccurately characterizes domestic relationships and presumes that the presence of domestic violence negates the possibility of trafficking.

Response: DHS acknowledges that trafficking can occur alongside intimate partner abuse, and involuntary servitude and domestic violence may coexist in some situations; however, DHS declines the commenter's suggestion. DHS believes that the regulations are not intended to explicitly capture every possible situation, and that this degree of specificity would not be helpful, and may inadvertently preclude scenarios that are not explicitly described in the regulation.

In determining whether threats, abuse, or violence create a condition of involuntary servitude that constitutes a severe form of trafficking in persons, DHS evaluates a number of factors, including but not limited to whether the situation involves compelled or coerced labor or services and is induced by force, fraud, or coercion. Although domestic violence and trafficking may intersect, not all work that occurs as the result of domestic violence constitutes involuntary servitude. To distinguish between domestic violence and labor trafficking resulting from domestic violence, an individual must demonstrate that the perpetrator's motive is or was to subject them to involuntary servitude.

d. Mixed Motives

Commenter: Several commenters wrote that DHS has incorrectly suggested that a trafficker's sole purpose must be involuntary servitude, and that a trafficker's intent cannot also be extortion or for monetary gain. They request DHS clarify that an applicant may meet the definition of a severe form of trafficking in persons if at least one purpose of the perpetrator's force, fraud, or coercion is to subject the person to involuntary servitude, peonage, debt bondage, slavery, or a commercial sex act. Commenters also request that DHS specify in the preamble of the final rule that a severe form of trafficking in persons may occur during smuggling even if the smugglers also have the purpose of subjecting the victim or their families to other crimes such as extortion, if they also have the purpose of subjecting them to, *inter alia,* involuntary servitude or commercial sex.

Response: DHS agrees that a trafficker may simultaneously have multiple motivations, including a desire to subject the victim to involuntary servitude and a desire for monetary gain through extortion. DHS acknowledges, as commenters note, that human trafficking rarely occurs in a vacuum. In the process of exerting force, fraud, and/or coercion on their victims, perpetrators may commit other crimes during the scheme to initiate and maintain control over the victim, including false imprisonment, assault, sexual assault, domestic violence, and extortion.

A perpetrator's motivations can be multifaceted. For example, smugglers who intend to extort an individual during a smuggling arrangement may also intend 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. Nonetheless, DHS recognizes that not all smuggling arrangements can or will qualify as a severe form of trafficking in persons, particularly where smugglers force a person to perform an act or multiple acts outside of a condition of servitude during a smuggling operation. For example, a person may be forced to perform certain labor during a smuggling arrangement to facilitate the smuggling operation or avoid detection at the border, which would not qualify as involuntary servitude and therefore would not constitute trafficking or a severe form of trafficking in persons. In addition, there may be situations where an individual is forced to perform labor for another purpose, and not for the purpose of involuntary servitude, peonage, debt bondage, or slavery. As with any T visa application, DHS considers all the evidence on a case-by-case basis before making a final determination on an application.

Although DHS agrees with the commenter, no changes have been made to the regulatory text in response to this comment given DHS' consideration of these factors when evaluating evidence in cases involving smuggling, as detailed in existing USCIS policy guidance.[8]

2. Law Enforcement Agency (LEA)

Comment: One commenter suggested using the term ''law enforcement agency'' (LEA) consistently throughout the regulation to provide clarity.

Response: DHS agrees with this comment and has amended the regulation to use the term ''law enforcement agency'' consistently throughout, rather than ''law enforcement'' or ''law enforcement officer.''

Comment: Multiple commenters expressed support for DHS expanding the definition of an LEA. Some commenters stated support for the rule's clarification that LEAs can provide

[7] For example, *see* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements, Section B, Victim of Severe Form of Trafficking in Persons, Subsection 3, Definition of Coercion,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2* (discussing analyzing coercion using a ''reasonable person'' standard) (last updated Oct. 20, 2021). As discussed elsewhere, DHS also applies a victim-centered approach in its adjudications, which takes into consideration all relevant factors in the case, including a victim's individual circumstances. *See, e.g.,* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 7, Adjudication, Section A, Victim-Centered Approach,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-7* (last updated Oct. 20, 2021).

[8] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements, Section B, Victim of Severe Form of Trafficking in Persons, Subsection 7, Difference Between Trafficking and Smuggling,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2 (last updated Oct. 20, 2021).*

Form I–914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons,[9] even when there is no formal investigation or prosecution. Several commenters requested that the rule further expand the LEA definition to include additional agencies, which would help inform victims of their reporting options and identify similar local and state counterpart agencies that would meet the LEA definition. Commenters wrote that employees of some Federal agencies have expressed confusion over their certification authority because they are explicitly designated as certifying agencies in the regulations for U nonimmigrant status but not in this regulation. *See* 8 CFR 214.14(a). Several commenters also requested DHS add tribal authorities to the list of authorized LEAs.

Response: Although the list of agencies included is not exhaustive, DHS agrees that expanding the list will provide clarity to victims, stakeholders, and the LEAs themselves, and has updated the definition accordingly. DHS has also amended the definition to include tribal authorities. Including a more expansive list will assist certifiers and will be an operational efficiency, as adjudicators will not need to evaluate in each case whether a specific agency meets the definition of an LEA.

3. Law Enforcement Involvement

Comment: DHS received comments related to the term ''law enforcement involvement,'' which is a concept used to analyze whether an applicant is physically present in the United States on account of trafficking (''physical presence''). Commenters requested additional clarification regarding the physical presence requirement, discussed in further detail in section J, below.

Response: DHS has defined ''law enforcement involvement'' under new 8 CFR 214.207(c)(4) to mean LEA action beyond simply receiving the applicant's reporting of victimization, to include the LEA interviewing the applicant, liberating the applicant from their trafficking, or otherwise becoming involved in detecting, investigating, or prosecuting the acts of trafficking. Liberation of an applicant from their trafficking will suffice to establish law enforcement involvement where the record indicates that the LEA detected the applicant's trafficking as part of this process. This definition will provide clarity to adjudicators and stakeholders as to the extent of involvement required for physical presence under new 8 CFR 214.207(c)(4).

4. Reasonable Request for Assistance

Although DHS did not specifically receive comments on this topic, as a technical edit DHS has removed the term ''reasonable'' from the definition of the term ''reasonable request for assistance,'' because the initial inquiry for DHS is to determine whether a request was made. After the threshold determination that a request was made by the LEA, the reasonableness of that request is analyzed. Accordingly, the reasonableness is assessed using the list of factors at new 8 CFR 214.208(c) (formerly 8 CFR 214.11(h)(2)). DHS retained ''reasonable request for assistance'' in other sections to reflect this analysis. DHS removed the paragraph at 8 CFR 214.11(a) describing the factors to consider the reasonableness of a request, because this language was duplicative of the language contained at 8 CFR 214.11(h)(2) (redesignated as 8 CFR 214.208(c)). Several revisions were made to the language at 8 CFR 214.208(c), which are discussed further below.

5. Commercial Sex Act

Comment: Commenters requested DHS interpret the term ''commercial sex act'' broadly, beyond what the commenters understood the current definition of ''anything of value'' may encompass, to avoid confusion and maintain consistency with the statute and legal precedent.

Response: DHS acknowledges that the term ''anything of value'' has been interpreted very broadly and encompasses things other than monetary or financial gain. ''Anything of value'' may include a range of activity that does not always have an exact monetary value attached to it, including but not limited to safety, protection, housing, immigration status, work authorization, or continued employment. Given Congressional intent and the significant precedent interpreting the term broadly, DHS has determined that it is not necessary to specifically reflect this range of activity in the regulatory text.

6. Severe Form of Trafficking in Persons

Comment: One commenter wrote that DHS should clarify that attempted trafficking may constitute a severe form of trafficking in persons by adding the following language to the definition of ''severe form of trafficking in persons'': ''This definition does not require a victim to have actually performed labor, services, or a commercial sex act.''

Response: DHS agrees that 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; however, DHS declines to adopt the commenter's suggestion to state this directly in the definition of a severe form of trafficking in persons, as the fact that attempted trafficking may qualify as trafficking is already clarified at 8 CFR 214.206(a) (formerly 8 CFR 214.11(f)).

E. Evidence and Burden and Standard of Proof

USCIS has historically considered ''any credible evidence'' when evaluating T visa applications. T nonimmigrant applicants are instructed to submit any credible, relevant evidence to establish that they have been a victim of a severe form of trafficking in persons, and that they have complied with any reasonable request for assistance from law enforcement. To this end, DHS has included new language in 8 CFR 214.204(f) indicating that all evidence demonstrating cooperation with law enforcement will be considered under the ''any credible evidence'' standard, for consistency with the remainder of the rule, which states that applicants may submit any credible evidence relating to their T applications for USCIS to consider. *See* new 8 CFR 214.204(l).

The ''preponderance of the evidence'' standard of proof is distinct from the evidentiary requirements and standard set by regulation. *Matter of Chawathe,* 25 I&N Dec. 369 (AAO 2010). USCIS has historically applied a ''preponderance of the evidence'' standard when determining whether the T applicant has established eligibility and has included that standard at new 8 CFR 214.204(l). To meet this standard, the applicant must prove that facts included in their claim are ''more likely than not'' to be true. *Id.* at 369. To determine whether an applicant has met their burden under the ''preponderance of evidence'' standard, DHS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376.

This standard of proof should not be confused with the burden of proof. The burden of proving eligibility for the

[9] The title of the Form I–914, Supplement B, is being changed in this rule to ''Declaration for Trafficking Victim.''

benefit sought remains entirely with the applicant. *Id.* at 375.

1. Reasonable Person Standard

Comment: One commenter requested DHS acknowledge in the preamble or regulation that individuals with cognitive, mental, and physical impairments are at greater risk for trafficking and face greater barriers to escape trafficking. The commenter stated that this should be acknowledged so that whenever a reasonableness standard is used, it should be interpreted as a reasonable person with the cognitive, mental, and physical impairments of the specific applicant.

Response: DHS acknowledges that individuals with impairments are at greater risk for exploitation. DHS does not believe that this is necessary or appropriate to include in the regulation. DHS considers all relevant evidence in adjudicating each case, including the circumstances and any vulnerabilities of an individual applicant when determining reasonableness.[10] Despite the existence of certain vulnerabilities, however, each applicant retains the burden of proof to establish eligibility by a preponderance of the evidence.

2. Credibility of Evidence

Comment: Commenters suggested that DHS amend provisions regarding initial evidence at 8 CFR 214.11(d)(2) and (3) (redesignated here as 8 CFR 214.204(c) and (e)) to state that a victim's statement alone may prove victimization.

Response: DHS declines to amend 8 CFR 214.11(d)(2) and (3) (redesignated here as 8 CFR 214.204(c) and (e)) to explicitly state that a victim's statement alone may prove victimization. While DHS may determine, based on the facts and circumstances of a particular case, that a personal statement alone may be sufficient to prove victimization, in such a scenario, the victim's statement would have to be sufficiently detailed, plausible, and consistent in order to satisfy evidentiary requirements. With all T visa applications, DHS makes an individualized determination of whether trafficking has been established based on the evidence in each particular case. DHS notes that it has revised the requirements for a victim's personal statement included in the list of evidence in redesignated 8 CFR 214.204(c) (Initial evidence). These additions are intended to clarify what is expected to be included in a victim's personal statement to establish eligibility and will reduce barriers for victims of trafficking. The revisions in § 214.204(c)(1) are intended to align with longstanding USCIS policy guidance and practice, and are consistent with the program's evidentiary standards.

Comment: One commenter requested DHS clarify that evidence is not rendered less credible because of the amount of time that has elapsed between an applicant's eligibility for T nonimmigrant status and when they filed their application. The commenter also requested DHS clarify that evidence, including personal statements and psychiatric evaluations, is not less credible because it was generated in response to a Request for Evidence.

Response: DHS acknowledges there may be legitimate reasons why significant time elapses between an applicant's trafficking and when they file for T nonimmigrant status. DHS also acknowledges that individuals produce evidence that was not initially submitted with their application in response to Requests for Evidence (RFEs) for various reasons. DHS emphasizes that any credible evidence will be evaluated in determining an applicant's eligibility but declines to include this level of specificity within the regulation. DHS acknowledges that due to the nature of victimization, victims may be unable to provide information or documentation that would otherwise be available to establish eligibility. USCIS instructs adjudicators to be mindful of the ways trauma may impact victims, including their recollection of traumatic experiences, which may shift over time.[11]

3. Opportunity To Respond to Adverse Information

Comment: Multiple commenters discussed RFEs [12] that require applicants to explain inconsistencies identified by adjudicators in the applicant's administrative record to which the applicant is not privy. The commenters stated that the inconsistent evidence typically is found within records of other agencies and that attorneys often cannot obtain this information in a timely manner through requests under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The commenters also wrote that advocates have reported that U.S. Customs and Border Protection (CBP) interviews were conducted without the use of trauma-informed techniques and did not lead to accurate identification of trafficking victims. The commenters wrote that statements taken during these interviews can later appear to be inconsistent statements. The commenters stated that the full content of the CBP interviews is not released in response to a FOIA request and that the applicant is not able to correct the inconsistent statements.

The commenters requested that DHS change the regulation to state that DHS will consider the totality of the evidence submitted along with the administrative record in evaluating the T visa application, and that if information contained in the administrative record could result in an unfavorable determination, the applicant must be given a copy of the information and must be provided an opportunity to meaningfully respond to such adverse evidence.

Response: DHS agrees that all evidence should be assessed in its totality. DHS also agrees that it is important for applicants and their advocates to understand derogatory information on which the decision will be based; however, other regulatory provisions currently address this issue. Specifically, under 8 CFR 103.2(b)(16)(i), when a decision will be adverse and is based on derogatory information ''of which the applicant or petitioner is unaware, [they] shall be advised of this fact and offered an opportunity to rebut the information and present information in [their] own behalf before the decision is rendered.'' Accordingly, when there is derogatory information of which the applicant is unaware and upon which an adverse decision will be based, USCIS will comply with existing laws and regulations in advising an applicant of the derogatory information and offer them an opportunity to rebut such information through an RFE, Notice of Intent to Deny, or other formal notice under 8 CFR 103.2(b)(8)(iii), (b)(16)(i) and 214.205(a)(1), except as otherwise provided in 8 CFR 103.2(b)(16).

[10] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 3, Documentation and Evidence for Principal Applicants,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-3 (discussing ''any credible evidence'' and the nature of victimization) (last updated Oct. 20, 2021).*

[11] As of the time of the publication of this regulation, further policy guidance describing USCIS' interpretation of the T nonimmigrant regulation can be found in the USCIS Policy Manual. *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking,'' *https://www.uscis.gov/policy-manual/volume-3-part-b* (last updated Oct. 20, 2021).

[12] 8 CFR 103.2(b)(8)(ii) (''If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.'').

4. Requests for Evidence (RFE)

Comment: Some commenters expressed concern about a trend of increasing RFEs from USCIS. They indicate that the RFEs do not indicate what evidence is lacking, are boilerplate, and create unnecessary work for practitioners and anxiety for survivors. The commenters state that issuance of RFEs has increased processing times, leaving survivors vulnerable. Finally, the commenters state that these RFEs have resulted in unprecedented denial rates.

Response: DHS acknowledges the concerns stakeholders are raising regarding RFE trends in the program. USCIS strives to apply a victim-centered, trauma-informed approach in each adjudication while also ensuring that the statutory requirements for T nonimmigrant status are met. In addition, USCIS has recently issued significant guidance in the Policy Manual aimed at clarifying evidentiary requirements for both applicants and adjudicators and reducing the need for RFEs.[13] Along with these updates, USCIS included training to adjudicators on the updates. Adjudicators also receive ongoing training on this and other issues. In addition, USCIS reviews trends in the program and revises any guidance if necessary. For example, if USCIS notices patterns in inquiries or questions asked at stakeholder engagements, it prompts review and potential revision of internal procedures.

F. Application

1. Applicant Statements

Comment: One commenter proposed that 8 CFR 214.11(d)(2)(i) (redesignated here as 8 CFR 214.204(c)(1)), which requires applicants to provide a written statement describing their victimization, include an exemption for victims who are minors and victims who invoke the trauma exception from the requirement to comply with reasonable LEA requests. They wrote that DHS could determine on a case-by-case basis whether to waive the requirement of a signed statement. They noted that preparing a statement can re-traumatize victims, even when the victim is assisted by trauma-informed service providers. The commenter stated that the statement may not be necessary when the victimization is apparent from other evidence.

Response: DHS understands that applicants could be re-traumatized by retelling their experience of victimization. Nevertheless, the information provided in the victim's personal statement is very important for USCIS. It allows USCIS to fully understand the facts of the case from the victim's perspective and helps USCIS determine whether the eligibility requirements are met. In addition, it would not be efficient and would cause unnecessary processing delays for USCIS to determine on a case-by-case basis whether a statement was necessary and, when necessary, request one after reviewing the initial filing. Therefore, DHS maintains the requirement that applicants provide a written statement describing their victimization in this final rule. 8 CFR 214.204(c)(1).

2. Interviews of Applicants

Comment: Commenters suggested that 8 CFR 214.11(d)(6) explicitly state that interviews of applicants for T nonimmigrant status are not required, and that DHS could request an interview. They asserted that this change would encourage victims who have faced high levels of trauma to come forward to apply for immigration relief.

Response: DHS is sympathetic to the issues victims face and applies a victim-centered and trauma-informed approach but declines to adopt this recommendation. DHS still reserves the discretion to require an interview for all immigration benefits, including applicants for T nonimmigrant status, as it deems necessary. In such circumstances, interviews can be an important method of obtaining further information when determining eligibility for T nonimmigrant status. As discussed above, DHS has removed the interview provision at 8 CFR 214.11(d)(6) to avoid redundancy with 8 CFR 103.2(b)(9).

3. Notification to the Department of Health and Human Services (HHS)

Comment: One commenter wrote to welcome the addition of a provision indicating that upon receiving an application for T nonimmigrant status from a minor under the age of 18, USCIS will notify HHS to facilitate interim assistance. Multiple commenters discussed the automatic nature of USCIS's notification to HHS upon receiving an application for T nonimmigrant status from a minor. *See* 8 CFR 214.11(d)(l)(iii) (redesignated here as 8 CFR 214.204(b)(4)). These commenters wrote that, in some instances, a referral to HHS can result in premature termination of some State-funded benefits that may be more comprehensive than the Federal interim assistance obtained through HHS. The commenters requested that the rule be amended to include an exception to the provision mandating automatic notification of HHS upon receiving an application for T nonimmigrant status from a minor.

Response: DHS understands the commenters' concerns and appreciates why minor applicants may want to access more expansive State-funded benefits. DHS is unable to change the regulations in response to these concerns, however, because TVPRA 2008 section 212(a)(2), 22 U.S.C. 7105(b)(1)(H), requires that DHS notify HHS no later than 24 hours after discovering that a person who is under 18 years of age may be a victim of a severe form of trafficking in persons.

4. Notification of Approval of T Nonimmigrant Status

The rule at 8 CFR 214.11(d)(9) (redesignated as 8 CFR 214.204(o)) states that upon approving an application for T–1 nonimmigrant status, USCIS may notify others ''as it determines appropriate, including any LEA providing an LEA endorsement and the HHS Office of Refugee Resettlement, consistent with 8 U.S.C. 1367.''

Comment: Commenters requested that DHS clarify in the rule which agencies or bodies that it considers appropriate to receive information about applicants for T nonimmigrant status or to limit the language to the entities listed in the rule.

Response: DHS has maintained the current broader language because it provides USCIS and applicants with more flexibility in implementing these provisions than an exhaustive list would. USCIS may identify other entities that are appropriate to receive this information and instances in which the notification would be beneficial to the T–1 nonimmigrant and/or an LEA and its efforts to combat trafficking. The final rule continues to require that the disclosure of any information must be consistent with the restrictions on information sharing in 8 U.S.C. 1367. USCIS has issued guidance and training to those who adjudicate applications for T nonimmigrant status to ensure there is no inappropriate sharing of applicant information, and to ensure any information sharing action is consistent with 8 U.S.C. 1367.

G. Law Enforcement Declarations

As noted in new 8 CFR 214.204(e), applicants may wish to submit evidence

[13] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 3, Documentation and Evidence for Principal Applicants,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-3* (last updated Oct. 20, 2021).

from LEAs, including an LEA declaration, to help establish their eligibility. Although an LEA declaration is an optional form of evidence and does not have any special evidentiary weight, it may support a T nonimmigrant application by providing detailed, relevant information about the applicant's victimization and compliance with reasonable requests for assistance. DHS received several comments on LEA declarations, discussed below.

1. Declaration Signature

Comment: One commenter supported the clarification that a formal investigation or prosecution is not required for an LEA to complete the declaration, and stated that the requirement that a law enforcement declaration be signed by a supervising official may add an unnecessary step to this more flexible approach.

Response: DHS declines to adopt this recommendation. First, the Law Enforcement Declaration is an optional form of evidence. Second, maintaining the status quo in requiring a supervisor's signature adds a level of review to DHS's flexible approach, which acknowledges that whether an investigation or prosecution occurs is outside of a victim's control.

2. Withdrawn Declarations and Revoked Continued Presence (CP)

DHS has updated terminology at new 8 CFR 214.204(h). DHS has replaced the term ''revocation'' relating to law enforcement declarations with ''withdrawal'' for accuracy and to avoid any confusion that status is being revoked.

a. Withdrawn Declarations

Comment: Commenters requested that DHS delete the language in 8 CFR 214.11(d)(3)(ii) (redesignated here as 8 CFR 214.204(h)) that provides that disavowed or withdrawn LEA declarations will no longer be considered evidence. Commenters suggested that rather than leaving it to the discretion of the LEA to provide a written explanation of its reasons for disavowing or withdrawing the declaration, the LEA should be required to do so. Commenters stated that an application should not be rejected based solely on one factor or one piece of evidence. They wrote that USCIS must provide a T nonimmigrant the opportunity to review and respond to the documentation from the LEA. Commenters also suggested adding language to 8 CFR 214.11(d)(3)(ii) (redesignated here as 8 CFR 214.204(h)) and 8 CFR 214.11(m)(2)(iv) (redesignated here as 8 CFR 214.213(b)(4)) to state that before revoking T nonimmigrant status due to a revocation or disavowal of an LEA declaration, USCIS would review the application and reassess the applicant's eligibility for T–1 nonimmigrant status in light of the LEA's explanation for the revocation, and consider all other evidence provided by the applicant under the ''any credible evidence'' standard. Finally, they stated that if USCIS determines that the application no longer meets the requirements, USCIS should issue a Notice of Intent to Revoke or a Request for Evidence.

Response: The rule at 8 CFR 214.213(b)(4) provides that USCIS may revoke T nonimmigrant status based on withdrawal by the LEA, but does not require USCIS to automatically revoke T nonimmigrant status upon a disavowal or withdrawal of the Supplement B. DHS recognizes that a Supplement B may be withdrawn or disavowed for reasons unrelated to the applicant's cooperation with the LEA's reasonable request for assistance. For example, an LEA may receive additional information indicating the initial Supplement B was issued in error. The law enforcement declaration is one piece of evidence that USCIS considers in determining whether an applicant meets the eligibility requirements for T nonimmigrant status based on the totality of the evidence. *See, e.g.,* new 8 CFR 214.204(c) and (l). Furthermore, 8 CFR 214.213(b)(4) indicates that the LEA must provide an explanation for any withdrawal or disavowal for it to serve as the basis for revocation. Therefore, DHS clarifies in this rule that a disavowed or withdrawn Supplement B will not be completely disregarded. After withdrawal or disavowal, the LEA declaration will *generally* no longer be considered as evidence of the applicant's compliance with requests for assistance in the LEA's detection, investigation, or prosecution; however, a disavowed or withdrawn Supplement B may be considered for other eligibility requirements (such as evidence of victimization) along with any other credible evidence relevant to the application. *See* new 8 CFR 214.204(f) and (h). DHS will determine whether the disavowed or withdrawn Supplement B will be considered as evidence of compliance by assessing the reasons for the disavowal or withdrawal. Once the Supplement B is disavowed or withdrawn, DHS will determine the reason for the disavowal or withdrawal and then determine what purpose, if any, for which it may be used. DHS notes that if there is an explanation from the LEA for the withdrawal or disavowal, adjudicators should consider that explanation in determining whether to still consider the declaration as evidence of compliance with requests for assistance.

DHS acknowledges that even if a declaration is disavowed or withdrawn, an individual may still meet the eligibility requirements for T nonimmigrant status, and a withdrawal or disavowal will not always lead to revocation of T nonimmigrant status. In addition, prior to issuing a Notice of Intent to Revoke (NOIR) based on the withdrawal or disavowal of the Supplement B, DHS would reassess an applicant's eligibility based on all available evidence. If DHS intends to revoke T nonimmigrant status following the withdrawal or disavowal of a Supplement B, DHS will issue a NOIR to inform the individual of the agency's intent to revoke T nonimmigrant status and the basis for intended revocation. The individual would then be able respond to the NOIR with additional evidence to overcome any noted deficiencies or discrepancies. The NOIR would detail or summarize the reasons for withdrawal or disavowal from the LEA and any other bases for intended revocation, but DHS declines to codify a requirement that USCIS provide a copy to the individual.

b. Revoked Continued Presence

DHS has similarly clarified that if the DHS Center for Countering Human Trafficking (CCHT) revokes a grant of Continued Presence (CP), generally the CP grant will no longer be considered as evidence of the applicant's compliance with the corresponding LEA investigation or prosecution but may be considered for other purposes. *See* new 8 CFR 214.204(i). If DHS determines that the revocation of the CP grant was unrelated to an applicant's compliance, for example revocation based on departing without advance parole or for subsequent criminal conduct, it may continue to consider the grant of CP as evidence of the applicant's compliance with the LEA investigation or prosecution.

3. Requirement To Sign Law Enforcement Declaration

Comment: One commenter stated DHS should clarify in the regulations that immigration judges and ICE counsel should be required to sign law enforcement declarations. The commenter wrote that a directive to immigration judges and ICE attorneys should indicate that they, and not just Homeland Security Investigations (HSI),

should be able to detect trafficking and certify in the process.

Response: DHS declines to adopt this recommendation. DHS cannot require any certifying agencies to certify a case, as signing the LEA Declaration is at the discretion of the LEA and the LEA Declaration is not a required piece of initial evidence. However, DHS agrees that immigration judges and ICE attorneys may submit declarations upon detection of trafficking consistent with applicable law and agency policy. However, DHS may accept declarations from immigration judges and ICE attorneys should such declarations be permissible under applicable law and agency policy.

H. Bona Fide Determination (BFD)

By statute, a determination that an application for T nonimmigrant status is bona fide (T BFD) enables trafficking survivors to obtain certain stabilizing benefits, including access to Federal services and benefits via the issuance of Certification Letters from HHS,[14] and the ability to obtain an administrative stay of removal.[15] The preamble to the 2016 IFR provided that USCIS may grant deferred action if the application for T nonimmigrant status is deemed bona fide, and the applicant could request employment authorization based on the grant of deferred action.[16] Although an extensive BFD process was codified in the 2016 IFR, such a process has not been implemented in the last decade outside of litigation cases due to resource constraints and the inefficiencies of the prior process. Under the extensive BFD review process set forth in the IFR, USCIS generally adjudicated the merits of T nonimmigrant applications in the same amount of time that it would take to issue a BFD. Therefore, it has generally been more efficient to adjudicate the T visa application alone than to conduct both a BFD review and full adjudication of the same application.

The revised BFD process codified in this rule at 8 CFR 214.205 is as follows: USCIS will conduct an initial review of the T nonimmigrant status application filed on or after the effective date for completeness and conduct and review the results of background checks to determine if the application is bona fide and the applicant merits a favorable exercise of discretion to receive a grant of deferred action and employment authorization. Applicants must file a Form I–765, Application for Employment Authorization, under proposed 8 CFR 274a.12(c)(40) to receive a BFD Employment Authorization Document (EAD), even if they have indicated on Form I–914, Application for T Nonimmigrant Status that they are requesting an EAD. If an applicant has not already filed a Form I–765, they will be notified in writing that they may do so, to receive a BFD EAD under 8 CFR 274a.12(c)(40). DHS strongly recommends that applicants file a Form I–765, Application for Employment Authorization, simultaneously with their T nonimmigrant status application to facilitate expeditious case processing.[17] If DHS issues a request for evidence in a case filed before the effective date of the final rule, DHS will automatically convert previously filed applications for employment authorization filed under 8 CFR 274a.12(a)(16) and (25), to applications for the newly created BFD EAD classification. This will limit the need for applicants to submit new requests or information, and enable DHS to focus on the adjudication, rather than the process of issuing multiple notices, including first notifying the applicant that they have a pending bona fide application, and then notifying the applicant that they are eligible for employment authorization. If initial review does not establish that the application is bona fide, USCIS will conduct a full T nonimmigrant status eligibility review. If the full review establishes eligibility and the statutory cap has been reached, the application will be considered bona fide.

In the situation where DHS is issuing a request for evidence and thus conducts a bona fide determination on an application filed before the effective date of this rule, if an applicant with a pending bona fide application has not previously filed an application for employment authorization, DHS will issue a notice of eligibility to apply for a BFD EAD, indicating that the individual should designate category ''(c)(40)'' on the application. *See* new 8 CFR 274a.12(c)(40).

After receipt of the Form I–765, USCIS will then consider whether the applicant warrants a favorable exercise of discretion to be granted deferred action, and if granted deferred action, whether they will be granted a discretionary employment authorization document.

In the interim rule, DHS provided that employment authorization for a bona fide T nonimmigrant applicant to whom USCIS grants deferred action would be requested under category ''(c)(14),'' 8 CFR 274a.12(c)(14). 81 FR 92285. DHS has decided to record T BFD EADs as a separate category from other EADs that are based on a grant of deferred action. Accordingly, in this rule DHS amends 8 CFR 274a.12 to establish a specific eligibility category for applicants for T nonimmigrant status whose applications have been deemed bona fide. These BFD EADs will be issued under category (c)(40). *See* new 8 CFR 274a.12(c)(40). DHS notes that a bona fide determination, or an initial grant or renewal of a BFD EAD and deferred action does not guarantee that DHS will approve the principal applicant or their derivative family members for T nonimmigrant status.

Comment: Several commenters wrote that USCIS has justified its operational practice of fully adjudicating the T visa application rather than initiating the BFD review process by claiming that because there is no T visa application backlog, it is more efficient to conduct a full adjudication. Commenters urged USCIS to uphold the regulatory mandate to provide BFDs. They emphasized that BFDs provide work authorization, which allows survivors to be self-sufficient and help reduce the risk of revictimization as well as provide access to federally funded public benefits. Commenters also wrote that BFDs are much more important given increased processing times, especially as applicants lose access to time-limited social services benefits. Commenters indicated that USCIS' failure to conduct BFDs has had a negative impact on trafficking survivors in removal proceedings and has led to survivors being removed while their applications were pending. Multiple commenters noted that applicants are forced to proceed with other forms of relief in removal proceedings while awaiting a decision on their T visa application, which wastes administrative resources and inflicts needless trauma.

Response: DHS acknowledges that processing times have increased in recent years. DHS also understands the important stabilizing benefits the BFD

[14] 22 U.S.C. 7105(b)(1)(E)(i)(II)(aa).

[15] INA sec. 237(d)(1); 8 U.S.C. 1227(d)(1). This statutory provision authorizes the Secretary of Homeland Security to grant an administrative stay of removal to an individual whose Application for T Nonimmigrant Status sets forth a ''prima facie case for approval,'' until the application is approved or there is a final administrative denial on the application after the exhaustion of administrative appeals. A determination that the application is ''bona fide'' is also sufficient to establish that the applicant has established a ''prima facie case for approval'' within the meaning of section 237(d)(1) of the INA, 8 U.S.C. 1227(d)(1). ''Prima facie'' means that the application appears sufficient on its face, which is encompassed by the bona fide determination described at 8 CFR 214.205.

[16] *See* 81 FR 92279.

[17] There is no fee for a Form I–765 filed by an applicant seeking T nonimmigrant status. 8 CFR 106.3(b)(2)(viii).

can provide to trafficking survivors, and that a lack of a viable BFD process can have negative impacts on victims. DHS is committed to implementing a streamlined and operationally efficient BFD process through the final rule and has codified a new BFD process at new 8 CFR 214.205, consistent with DHS's victim-centered approach. Pursuant to new 8 CFR 214.204(m), USCIS will conduct a BFD review for applicants in the United States once they have applied for principal or derivative T nonimmigrant status. DHS has also amended 8 CFR 214.11(d)(7) (redesignated as 8 CFR 214.204(m)) to state that USCIS will conduct an initial review of an eligible family member's Application for Derivative T Nonimmigrant Status once the principal's application has been deemed bona fide. However, as a matter of discretion, USCIS generally will not grant deferred action and employment authorization to an eligible family member based on a bona fide determination unless the principal applicant has received a positive bona fide determination.

Comment: Several commenters stated that the IFR's inclusion of an inadmissibility determination as part of the BFD is contrary to Congressional intent. They recommended that either the filing of a waiver of inadmissibility constitute *prima facie* evidence of eligibility, or that USCIS implement the same procedures used in the U visa BFD context, which eliminates the requirement that USCIS assess an applicant's admissibility as part of the BFD process. Some commenters further recommended that DHS amend the standard for finding an application to be bona fide to mirror the requirements to establish a prima facie case in an application for benefits available under VAWA. *See* 8 U.S.C. 1641; 8 CFR 204.2(c)(6).

Response: DHS agrees with the commenters' suggestion to remove the inadmissibility determination from the BFD process. The BFD process is an initial review, and an assessment of the applicant's admissibility is not necessary to determine whether an application is bona fide. In addition, as commenters noted, considering admissibility twice during adjudication would be inefficient and burdensome and would delay the BFD process. Accordingly, DHS has eliminated the requirement that USCIS analyze an applicant's admissibility as part of the BFD process, but will implement other safeguards, including background checks, to ensure the applications are bona fide, that the applicants merit a favorable exercise of discretion and do not present a threat to national security, and to maintain the integrity of the program.

Comment: Commenters also requested DHS eliminate 8 CFR 214.11(e)(1)(ii), which requires a T visa applicant to demonstrate that their application ''does not appear to be fraudulent,'' because the fraud assessment is superfluous to the other BFD requirements.

Response: DHS agrees with the commenters' rationale. Because USCIS considers an applicant's compliance with initial evidence requirements and background checks in the T visa BFD process, as well as whether the applicant merits a favorable exercise of discretion, it is unnecessary to separately analyze whether the application appears to be fraudulent. DHS has removed consideration of whether an application appears to be fraudulent from the BFD review process. An applicant who attempts to gain an immigration benefit through fraud is inadmissible,[18] and would not be granted deferred action or a BFD EAD.

Comment: Commenters urged DHS to implement a BFD review process for T derivative applicants, applying the standards set forth in the Policy Manual for eligible family members of U visa applicants.

Response: DHS understands the importance of BFDs not just for principal applicants, but for their eligible family members. Conducting BFD reviews and providing initial benefits to eligible family members is also consistent with a victim-centered approach, as it provides victims needed support from stabilized family members. DHS will conduct BFDs for eligible family members who are in the United States at the time of review, if the principal has already received a BFD.

Comment: Several commenters requested that USCIS commit to a 30- or 90-day timeline for making a bona fide determination and notifying applicants of the outcome in 8 CFR 214.11(e)(2) (redesignated here as 8 CFR 214.205(c)).

Response: Although DHS recognizes that being without work authorization or Federal benefits may be a hardship for applicants, it declines to mandate that USCIS conduct a BFD within a certain number of days. USCIS strives to process all immigration benefits in a reasonable and timely manner; however, USCIS cannot guarantee that the determination will be completed within any set number of days. The volume of applications to be reviewed will vary over time, each application is unique, and some may be complex. In addition, there are aspects of the determination beyond USCIS' control (for example, background checks) that may take longer than 90 days.

Comment: Some commenters recommended that qualified trafficking survivors on the waiting list should be granted BFDs and should have access to employment authorization and Federal benefits to ensure their safety, and so they are not vulnerable to exploitation or trafficking.

Response: DHS acknowledges the importance of these benefits for trafficking survivors, which is why USCIS will initiate the BFD process upon initial review of the application. After considering the comments on the interim final rule and our recent experience with the program, DHS has added 8 CFR 214.205(a)(3), which provides that USCIS will conduct a full T nonimmigrant status eligibility review of any applications that do not initially receive a favorable BFD. Applicants who are determined eligible following the T nonimmigrant status eligibility review will then be issued a BFD if the statutory cap has been met. In addition, applicants with a favorable BFD may be considered for deferred action and may request employment authorization based on a grant of deferred action. 8 CFR 214.205(d)(1).

DHS notes that the T visa waiting list has never been utilized in the history of the program due to the statutory cap never being reached. However, if the statutory cap is met, USCIS will place all applications that have been issued a BFD on the waiting list, including those that are deemed eligible for a BFD following a T nonimmigrant status eligibility review. 8 CFR 214.210(b). This revision will allow BFD recipients to be on the waiting list without having to provide additional information, avoid USCIS having to perform additional processing of cases with a BFD to place them on the waiting list, and provide all applications on the waiting list equal status of BFD, instead of some receiving a BFD and others being deemed approvable but for the unavailability of a visa.

This change will not affect the order in which applications are processed. The following fiscal year, when a new statutory cap becomes available, the oldest pending applications that are on the waiting list and have been granted a BFD will be processed first. The oldest application may not necessarily be approved in date-received order depending on updates and additional evidence that may be needed to adjudicate the application to a final decision. The date that applicants receive a BFD will generally not affect

[18] *See* INA 212(a)(6)(C)(i), 8 U.S.C. 1182(a)(6)(C)(i).

the order in which their application will be processed for cap adjudication.

Comment: Several commenters encouraged DHS to add language to the final rule that requires ICE to take affirmative steps to seek a BFD from USCIS for detainees with pending applications for T nonimmigrant status, which commenters note would lead to a stay of removal.

Response: DHS declines to add this language to the final rule as unnecessary, because all applications filed after the effective date of the final rule will receive a BFD review. In addition, in August 2021, ICE issued a Directive that addresses using a victim-centered approach with noncitizen crime victims, including applicants for T nonimmigrant status.[19] The ICE directive specifies that ICE will coordinate with USCIS to ''seek expedited adjudication of victim-based immigration applications and petitions'' and that in the cases of a detained individual with a pending application for a victim-based immigration benefit, ICE will request USCIS expedite the decision.[20] USCIS will continue to coordinate with ICE on this process.

I. Evidence To Establish Trafficking

Comment: Several commenters wrote that they appreciate that 8 CFR 214.11(f)(1) (redesignated here as 8 CFR 214.206(a)) includes examples of evidence that may be submitted to demonstrate a trafficker's purpose in cases where no commercial sex act or forced labor occurred. They also stated that they approve of the non-exhaustive list at 8 CFR 214.11(f)(1) (redesignated 8 CFR 214.206(a)) of examples of evidence that may be submitted to demonstrate the trafficker's purpose in this type of scenario. However, these same commenters also recommended that DHS expand the list of possible evidence and expressed that trafficking victims may not be able to supply the types of evidence in the list. They suggested DHS add additional types of evidence; clarify that all forms of evidence are acceptable; and clarify that no form of evidence is preferred over another. Specifically, commenters wrote that DHS should clarify that a law enforcement declaration or grant of Continued Presence are not required or preferred forms of evidence. The commenters also requested that 8 CFR 214.11(f)(l) (redesignated here as 8 CFR 214.206(a)) be revised to state that a victim's statement alone could be sufficient in proving attempted victimization.

Response: DHS agrees with the commenters' rationale and has amended the list of evidence in new 8 CFR 214.206(a). Although the list is not intended to be exhaustive, the regulation may have unintentionally emphasized certain types of evidence. In amending this list, DHS emphasizes that alternate forms of evidence can be submitted to establish an individual is a victim of a severe form of trafficking, or to establish the trafficker's purpose. DHS acknowledges there are some types of evidence that victims are more likely to have. Each form of evidence alone may be sufficient under the any credible evidence standard, and no form of evidence is preferred over another. As noted above, DHS declines to amend the regulatory text to explicitly state that a victim's statement alone may prove victimization. While DHS may determine, based on the facts and circumstances of a particular case, that a personal statement alone may be sufficient to prove victimization, in such a scenario, the victim's statement would have to be sufficiently detailed, plausible, and consistent in order to satisfy evidentiary requirements. With all T visa applications, DHS makes an individualized determination of whether trafficking has been established based on the evidence in each particular case. However, DHS encourages applicants to submit any additional credible evidence that could help establish their claim.

Comment: One commenter wrote that they were concerned about the statement in the Preamble to the 2016 IFR that a victim can submit any credible evidence from any reliable source that shows the purpose for which the victim was recruited, transported, harbored, provided, or obtained. *See* 81 FR 92272. That commenter requested that DHS clarify that reliable sources could include not only direct evidence, but also circumstantial evidence as well as the victim's own statement. The commenter asked that DHS assess the purpose or motivation of the trafficker in the same way it assesses the motive of a persecutor in asylum cases.

Response: DHS declines to specify in the regulation that circumstantial evidence and the applicant's affidavit can be submitted to establish the trafficker's purpose or motive. The evidentiary standards that DHS applies to all T nonimmigrant status eligibility requirements are based on an understanding that victims of severe forms of trafficking in persons often have difficulty acquiring evidence and that the best available evidence may include circumstantial evidence. But, as noted above, under the regulations an applicant's affidavit may be sufficient if it is sufficiently detailed, plausible, and consistent in order to satisfy evidentiary requirements. DHS declines to adopt asylum standards, as trafficking and asylum are distinct and involve unique forms of relief.

J. Physical Presence [21]

1. Applicability of Physical Presence Requirement

Comment: One commenter requested DHS replace the language in 8 CFR 214.11(g)(1) (redesignated here as 8 CFR 214.207(a)) that reads ''The requirement reaches an alien who'' with ''An applicant must demonstrate one of the following requirements.'' The commenter stated the wording was confusing for applicants and practitioners.

Response: DHS agrees that the language in 8 CFR 214.11(g)(1) caused confusion. DHS revised this section (new 8 CFR 214.207) to make it active tense and clarified the applicability of the physical presence standard, such that it reads: ''An applicant must demonstrate that they are physically present under one of the following grounds . . . .''

2. Passage of Time Between Trafficking and Filing the T Visa

Comment: Commenters stated that DHS has imposed a *de facto* deadline for physical presence, leading adjudicators to erroneously conclude that the mere passage of time signifies that an individual's physical presence in the United States is unrelated to their trafficking. The commenters claim this excludes many bona fide victims, who may file for T nonimmigrant status long after their trafficking. Commenters also recommended DHS explicitly consider when a survivor learned of their status as a victim of trafficking, by modifying § 214.11(g)(4) (redesignated here as 8 CFR 214.207(c)).

Response: DHS acknowledges the commenters' concerns and has clarified in the text of multiple provisions of the regulation that physical presence may be established regardless of the length of time that has passed between the trafficking and filing of the application. For example, DHS has clarified that under 8 CFR 214.207(a)(2) and (3), the applicant may satisfy the physical

[19] U.S. Immigr. & Customs Enforcement, U.S. Dep't of Homeland Security, ''ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims'' (2021), *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf* (ICE Directive).

[20] *Id.*

[21] DHS also received comments regarding physical presence and law enforcement involvement, which are addressed above in Section D, Definitions.

presence requirement if they were liberated from a severe form of trafficking in persons by an LEA at any time prior to filing their T visa application. This is intended to clarify that there is no *de facto* deadline for filing. DHS has also already clarified its interpretation via policy guidance, consistent with the legislative intent behind the program.[22] In addition, under 8 CFR 214.207(a)(4), DHS has added that the current presence may be directly related, ''regardless of the length of time that has passed between the trafficking and filing'' of the applicant's T visa application.

DHS acknowledges that survivors of trafficking experience serious consequences because of their victimization that can delay filing, including lack of access to legal representation, trauma, lack of support, and even lack of knowledge that they are a victim of trafficking. DHS emphasizes that the passage of time alone does not negate an applicant's ability to establish physical presence on account of the trafficking. In addition, DHS has clarified in the regulation that when analyzing physical presence, it will consider when and how an applicant learned that they were a victim of human trafficking.[23] DHS acknowledges that many survivors may delay filing for legitimate reasons; however, the applicant still bears the burden of establishing that their current presence in the United States is on account of trafficking.

3. LEA Liberation and LEA Involvement

Comment: Many commenters requested DHS remove 8 CFR 214.11(g)(1)(ii) and (iii) (redesignated here as 8 CFR 214.207(a)(2) and (3)) because there has been no guidance clarifying the practical distinction between these provisions versus paragraph (g)(1)(iv) (redesignated here as 8 CFR 214.207(a)(5)), and adjudicators have required applicants claiming physical presence under paragraph (g)(1)(ii) or (iii) to also demonstrate their continuing physical presence.

Response: DHS declines to remove the language at new 8 CFR 214.207(a)(2) and (3), as these provisions are important ways applicants can establish their physical presence. DHS acknowledges there has been confusion surrounding these provisions. To establish physical presence under new 8 CFR 214.207(a)(2), an individual must demonstrate that law enforcement assisted in liberating them from their trafficking situation. To satisfy physical presence under new 8 CFR 214.207(a)(3), an individual must demonstrate that law enforcement became actively involved in detecting, investigating, or prosecuting the acts of trafficking. To establish physical presence under new 8 CFR 214.207(a)(5), regardless of where the trafficking occurred, an individual must establish that they have been allowed entry into the United States for the purpose of participating in the detection, investigation, prosecution, or judicial processes associated with an act or perpetrator of trafficking. DHS has retained these provisions as additional means by which an applicant can establish physical presence; however, as discussed above, DHS has updated these sections to clarify that physical presence can be satisfied if the LEA liberated the applicant from the trafficking situation or was involved in detecting, investigating, or prosecuting the acts of trafficking the case at any point prior to the application process.

4. Presumption of Physical Presence

Comment: Several commenters urged DHS to adopt a broader interpretation of ''physical presence on account of trafficking'' such that a presumption of physical presence could apply in various scenarios, including physical presence at the time of filing.

Response: DHS appreciates the commenters' concerns but declines to codify any generalized presumptions of physical presence in the regulations. The applicant bears the burden of establishing that they satisfy each eligibility criteria for T nonimmigrant status, including physical presence on account of trafficking at the time of filing and adjudication. Each application for T nonimmigrant status will be evaluated on its own merits. Although DHS declines to formally codify any presumptions of physical presence, DHS has clarified how physical presence may be satisfied, consistent with many of the commenters' requests. For example, the regulations have expanded the evidence applicants may submit to establish physical presence or overcome the effect of a prior departure. DHS notes that generally, where the applicant provides evidence that they are receiving services in the United States as a trafficking victim or pursuing civil, administrative, or criminal remedies because of the trafficking, this will be considered favorably in the physical presence assessment. Because DHS cannot enumerate all circumstances under which an applicant may satisfy physical presence, DHS declines to codify any presumption.

5. Continuing Presence and Nexus to Trafficking

Comment: Many commenters suggested revising 8 CFR 214.11(g)(1)(iv) (redesignated here as 8 CFR 214.207(a)(4)) to refer to ''current presence'' rather than ''continuing presence.'' One commenter stated that DHS ignores, discounts, or improperly analyzes the impacts of trafficking victimization in analyzing continuing presence. The commenter recommended DHS provide a non-exhaustive list of factors that USCIS will consider in determining whether an applicant has demonstrated continuing presence.

Response: DHS agrees that the ''continuing presence'' terminology at 8 CFR 214.11(g)(1)(iv) has caused confusion for adjudicators and stakeholders. DHS has replaced the phrase with ''current presence.'' This change is intended to clarify that the focus of the evaluation is on the applicant's presence at the time of filing and adjudication, rather than their presence prior to that time. *See* new 8 CFR 214.207(a)(4). DHS has also revised the regulation to include a non-exhaustive list of factors USCIS will consider in analyzing the physical presence requirement, at redesignated 8 CFR 214.207(c) (discussed further below). These updates clarify expectations regarding timeline requirements and bring this provision into present tense.

Commenter: One commenter requested the rule clarify that for an applicant's continuing presence in the United States to be directly related to their original trafficking, it is sufficient that if the applicant were to depart the United States, they would suffer hardship as a result of circumstances caused by their trafficking, regardless of whether such hardship constitutes extreme hardship. The commenter also requested the rule clarify that whether the applicant's continuing presence in the United States is directly related to their original trafficking, and whether the applicant would suffer extreme hardship upon removal are separate requirements that may be supported by the same evidence.

Response: DHS declines to adopt this recommendation. Physical presence is a current assessment of an applicant's experience, whereas extreme hardship

[22] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2* (stating that an individual may satisfy the physical presence requirement regardless of the time that has passed since liberation from the initial trafficking and filing the T visa application) (last updated Oct. 20, 2021).

[23] *See* new 8 CFR 214.207(c)(1)(i).

is a prospective assessment of hardship the applicant may face. Although DHS acknowledges that the same evidence may be presented to satisfy multiple eligibility requirements, an applicant must explain how the evidence satisfies each eligibility requirement. The applicant bears the burden of establishing each eligibility requirement and clearly explaining how the evidence presented addresses each eligibility criteria.

Comment: Another commenter stated that if DHS retains the requirement that certain victims demonstrate that their continuing presence is directly related to trafficking, the rule should provide explicit guidance as to what sort of nexus is and is not required to meet this test. Another commenter indicated that USCIS practice suggests that if a survivor becomes stable at any point after their trafficking victimization, they are no longer present in the United States on account of their trafficking. The commenter emphasized that progress in a victim's life does not negate the ongoing impact of the trafficking victimization.

Response: DHS has revised the regulations to include a more expansive list of scenarios that can establish physical presence on account of trafficking. DHS has also provided significant guidance for adjudicators in its Policy Manual on analyzing whether an applicant's ongoing presence is directly related to their trafficking.[24] The Policy Manual provides that if the applicant has repeatedly traveled outside the United States since the trafficking, and their departures are not the result of continued victimization; or the applicant lacks continued ties to the United States or has established an intent to abandon life in the United States; this may support a finding that their current presence is not directly connected to the original trafficking. On the other hand, developments in an applicant's life following the trafficking do not prevent an applicant from establishing ongoing presence on account of trafficking. An applicant may still demonstrate that their current presence in the United States is directly related to the initial victimization and should not be penalized for stabilizing themselves following their victimization.

USCIS will assess 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.

6. Effect of Departure or Removal

Comment: Commenters asked DHS to eliminate the ''departure from the United States'' language at 8 CFR 214.11(g)(2) (redesignated here as 8 CFR 214.207(b)). Commenters indicated that the departure language prevents trafficking victims from obtaining benefits simply by virtue of their removal, even if they have a pending T application. They requested that DHS update the final rule to clarify that if an individual was in the United States on account of trafficking when they filed the application, subsequent departure or removal should not bar relief.

Response: DHS appreciates the concerns the commenters have raised but declines to eliminate the language describing the effect of departure or removal on physical presence. Instead, DHS has codified additional scenarios by which victims who have departed the United States following their victimization and subsequently re-entered may establish physical presence (including returning to the United States to pursue remedies against their trafficker or returning to seek treatment or services related to victimization they cannot obtain elsewhere). *See* new 8 CFR 214.207(b)(4) and (5). In addition, although DHS appreciates the sensitivities and unique impact removal has on applicants for T nonimmigrant status, T visa applicants must demonstrate physical presence in the United States pursuant to the statute.

Comment: Other commenters suggested that the rule should identify scenarios that may demonstrate that a victim's reentry to the United States is the ''result of continued victimization'' under § 214.11(g)(2)(i) (new 8 CFR 214.207(b)(1)) and would satisfy the physical presence requirement. The commenters proposed the following scenarios be included in the regulations: reentry into the United States (1) due to current fear of the traffickers in the victim's home country or last place of residence; (2) to seek treatment for victimization from trafficking which cannot be provided in the victim's home country or last place of residence; or (3) to pursue civil and criminal remedies against the traffickers in the victim's home country or last place of residence.

Response: DHS agrees with the second and third suggestions and has updated the regulations accordingly, such that both suggestions are encompassed in the new language at 214.207(b)(3)–(5). DHS declines to adopt the first suggestion, as a reentry to the United States due to current fear of the traffickers in the victim's home country or last country of residence would already fall under the ''continued victimization'' scenario articulated in 8 CFR 214.11(g)(2) (redesignated 8 CFR 214.207(b)).

Comment: One commenter requested that if DHS did not remove the departure language from the regulation, it should substantially alter the language found in 8 CFR 214.11(g)(2) (redesignated 8 CFR 214.207(b)), such that the regulation: acknowledges the possibility that a trafficker may have played a role in the survivor's departure from the United States; clarifies that a new incident of trafficking or new attempted incident of trafficking is not required; makes explicit that reentry related to fear of retaliation or re-victimization by the traffickers allows an applicant to meet this requirement; and clarifies that applicants may meet this requirement if, after their return to the United States, regardless of the exact motivation of the reentry, they are actively cooperating with an investigation or prosecution of trafficking.

Response: DHS has clarified how an applicant may establish physical presence after departure from and reentry to the United States by adding additional scenarios that can allow an applicant who has departed and returned to establish physical presence at 8 CFR 214.207(b)(4) and (5). These new provisions aim to provide clarity and reduce barriers for victims. Under new 8 CFR 214.207(b)(4), an applicant may establish physical presence after departure if their current presence in the United States ''is on account of their past or current participation in investigative or judicial processes associated with an act or perpetrator of trafficking, regardless of where such trafficking occurred.'' An applicant may satisfy this provision ''regardless of the length of time that has passed between their participation in an investigative or judicial process associated with an act or perpetrator of trafficking'' and the filing of their application for T nonimmigrant status. *See* new 8 CFR 214.207(b)(4). These new provisions allow individuals who have participated in investigative or judicial processes to establish physical presence following a prior departure, regardless of their manner of entry or where such trafficking occurred. Under new 8 CFR 214.207(b)(5), an applicant may establish physical presence following a

[24] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2* (last updated Oct. 20, 2021).

previous departure if they returned to the United States and received treatment or services related to their victimization that cannot be provided in their home country or last place of residence. These additions support the dual purpose of the T visa, acknowledge there may be various reasons an individual may depart the United States, are consistent with a victim-centered approach to combatting trafficking, and do not require an individual to be revictimized to establish physical presence following a departure.

7. Trafficking That Occurs Outside the United States, and Traveling Outside the United States Following Victimization

Comment: Various commenters wrote that DHS interprets the physical presence requirement too narrowly for victims whose trafficking occurred outside the United States or who traveled outside of the United States after suffering trafficking. They stated that trafficking victims may be present in the United States on account of trafficking in various situations, including those in which they were trafficked in a neighboring country that failed to protect them before fleeing to the United States for protection. Some commenters stated that Congress did not specifically require that the trafficking occur in the United States or have violated U.S. law to qualify for the T visa. One commenter wrote that presence in the United States at the time of filing the application for T nonimmigrant status should be sufficient to meet the requirement, regardless of where the trafficking occurred or the circumstances of the applicant's reentry. Commentors also encouraged DHS to ensure definitions and interpretations acknowledge the global nature of trafficking, such as international child pornography rings and international sex trafficking rings, often with perpetrators based in the United States even if the trafficking occurred abroad.

Response: First, DHS acknowledges that trafficking may have a global nature and include a nexus to the United States even if the trafficking occurred abroad; however, DHS declines to interpret the TVPA to encompass trafficking situations in which a trafficking victim seeks protection in the United States for a trafficking situation that occurred fully outside U.S. borders and for which there is no nexus to the United States—either through presence at a United States port of entry on account of the trafficking or cooperation with U.S. law enforcement.

Congress created T nonimmigrant status with a dual purpose: to protect victims of a severe form of trafficking in persons and to encourage and facilitate assistance to U.S. law enforcement to prosecute and combat human trafficking. *See generally,* TVPA section 102, 22 U.S.C. 7101. Congress provided an incentive for victims of a severe form of trafficking in persons to report their victimization by providing for an immigration benefit contingent upon complying with reasonable requests for assistance to LEAs. *Id.;* new 8 CFR 214.202(c). If DHS adopted the commenters' suggested interpretation of the physical presence requirement, victims who were trafficked anywhere in the world could seek T nonimmigrant status in the United States, although a U.S. law enforcement agency would not necessarily have jurisdiction to investigate or prosecute the trafficking. This result would not be consistent with the dual purposes for which Congress created T nonimmigrant status.

DHS appreciates the difficult circumstances facing victims trafficked outside of the United States, particularly when an applicant is unable to find protection elsewhere; however, DHS does not believe that Congress intended to offer protection in the form of T nonimmigrant status in the United States to victims who suffer trafficking in other countries, who flee to the United States for protection, and whose trafficking has no nexus to the United States. DHS acknowledges, however, there may be situations in which trafficking could have occurred abroad that would make an applicant eligible for T nonimmigrant status; as indicated in the Policy Manual, applicants whose trafficking ended outside of the United States may be able to satisfy physical presence if they can 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. Cases where trafficking occurred abroad require an individualized and nuanced consideration. Consistent with this interpretation, DHS has amended 8 CFR 214.11(g)(1)(v) (redesignated 8 CFR 214.207(a)(5)) to indicate that an applicant may be deemed physically present under this provision regardless of where such trafficking occurred. *See* new 8 CFR 214.207(a)(5)(i). DHS has consolidated the language at 8 CFR 214.11(g)(3) at new 8 CFR 214.207(a)(5)(ii) and (b)(3) to instruct applicants how they may demonstrate physical presence, by showing documentation of valid entry into the United States for purposes of an investigative or judicial process associated with an act or perpetrator of trafficking.

Comment: Another commenter requested that DHS address situations where trafficking occurred abroad, but the applicant can satisfy physical presence because the trafficking is directly the result of U.S. immigration policy.

Response: DHS emphasizes that applicants who are physically present in the United States or at a port of entry on account of trafficking can demonstrate eligibility for T nonimmigrant status even if the trafficking occurred abroad; however, the requirement that an applicant be physically present in the United States or at a port of entry is a statutory requirement that cannot be waived. Eligibility may be established where there exists a nexus between the trafficking and presence in the United States.

8. Opportunity To Depart

Comment: Commenters also requested DHS strike the reference to the ''applicant's ability to leave the United States'' at 8 CFR 214.11(g)(4) because such evidence is unnecessary, and DHS had already removed the requirement for an applicant to prove they had no ''opportunity to depart'' the United States. Another commenter indicated that DHS imposes a de facto ''opportunity to depart'' requirement.

Response: DHS agrees that striking the ''ability to leave'' language is consistent with the prior removal of the ''opportunity to depart'' language and has revised the regulation accordingly. DHS clarifies that an applicant need not show they had no opportunity to depart the United States to establish physical presence.

9. Presence for Participation in Investigative or Judicial Process

Comment: Commenters stated that DHS incorrectly interprets the language in 8 CFR 214.11(g)(3), redesignated as § 214.207(a)(5)(ii) and (b)(3) to require a victim's entry through lawful means. *See* 81 FR 92274. The commenters claim the statute does not indicate that only lawful reentries or those arranged by the government can be used to demonstrate physical presence. The commenters noted that the regulations are not structured to include non-criminal processes, and it is likely that LEAs will not be involved in such proceedings, making it unlikely that a victim would be able to enter the United States through lawful means. The commenters

also stated that it would be unlikely for a victim to have a visa authorized for the purpose of pursuing civil remedies.

Response: DHS maintains that the current interpretation requiring a lawful entry to establish physical presence based on ''having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking,'' remains the best legal reading of the statutory language added by TVPRA 2008, as explained in detail in the 2016 IFR preamble. Where the regulatory provisions focus on the purpose of the entry, for example at 8 CFR 214.11(g)(2)(iii) (new 8 CFR 214.207(b)(3)), the statutory authority comes from the ''allowed entry'' language found in section 101(a)(15)(T)(i)(II) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(II), which includes physical presence on account of an individual ''having been allowed entry.'' DHS therefore is retaining the provisions as drafted, striking 8 CFR 214.11(g)(3), and moving the language to new 8 CFR 214.207(a)(5)(ii) and (b)(3). However, having been allowed entry to participate in investigative or judicial processes is just one example of how an individual can establish they are physically present on account of trafficking, and DHS acknowledges that the requirement of a lawful reentry in 8 CFR 214.11(g)(3) has had unintentional limitations, such that victims of trafficking who departed the United States and reentered unlawfully, but are present in order to participate in an investigative or judicial process associated with the trafficking, were unable to establish eligibility due to their manner of reentry. DHS believes it is consistent with Congressional intent to recognize that such victims may be able to establish that they are physically present on account of trafficking, regardless of the manner of reentry or the time that has passed between cooperation and filing of the T visa application. Accordingly, DHS has added new 8 CFR 214.207(b)(4), which focuses on the reason for the victim's current presence rather than the purpose or means of their entry. DHS maintains that ''allowed entry'' as used in section 101(a)(15)(T)(i)(II) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(II), signifies a ''lawful entry'' for purposes of initial entry and reentry after departure.

Comment: Another commenter requested that DHS revise the language in 8 CFR 214.11(g)(3) (consolidated into 8 CFR 214.207(a)(5)(ii) and (b)(3)) to include civil or administrative investigations, prosecutions, or judicial processes associated with acts or perpetrators of trafficking.

Response: DHS declines to make this edit, as the new language at 8 CFR 214.207(b)(5) encompasses these processes. ''Investigative or judicial processes'' covers all the suggested language from the commenter, and includes criminal, civil, administrative, or other investigations, prosecutions, or judicial processes.

10. Evidence To Establish Physical Presence

Comment: One commenter requested that in determining whether trafficking survivors are present on account of trafficking, DHS should consider the ability or inability of survivors to access legal and social services after escaping a trafficker.

Response: DHS emphasizes that adjudicators consider all evidence presented, including the applicant's ability to access services following victimization. DHS has made several clarifications and amendments to redesignated 8 CFR 214.207(c) to address this concern; however, DHS cannot specifically agree to such a broad request to acknowledge consideration of an applicant's inability to access services if this information is not presented via evidence relevant to a particular case.

Commenter: Another commenter proposed significant revisions to 8 CFR 214.11(g)(4) (redesignated as 8 CFR 214.207(c)). The commenter stated that Requests for Evidence appear to require mental health diagnoses, which places survivors in rural areas at great disadvantage; and current emphasis on law enforcement evidence reinforces that evidence from law enforcement is considered primary evidence and encourages misinterpretation that there is a statute of limitations to file for a T visa.

Response: DHS has updated the evidentiary requirements for how applicants may establish that they are physically present in the United States on account of trafficking in redesignated 8 CFR 214.207(c). The amended section codifies a non-exhaustive list of evidence with the intent of providing clarity to stakeholders and adjudicators around evidentiary expectations. DHS acknowledges that the prior regulation may have inadvertently created confusion surrounding what types of evidence are preferred, rather than underscoring that any credible evidence will be considered in determining whether an applicant has established physical presence in the United States on account of trafficking. Although the list at 8 CFR 214.207(c) has been significantly expanded, DHS again emphasizes that there is no preferred or required type of evidence, and victims may be more likely to have access to certain types of evidence.

K. Compliance With Any Reasonable Request for Assistance

1. Requirement To Comply With Reasonable Request

Comment: One commenter requested DHS rephrase, reconsider, or remove the requirement that an applicant for a T visa cooperate with law enforcement, particularly because of safety considerations for relatives abroad and continued victimization. The commenter also stated that LEAs deport individuals who refuse to cooperate.

Response: DHS declines to adopt this recommendation. Although DHS is sympathetic to these concerns, the statute requires compliance with a reasonable request for assistance in order to be eligible to receive T nonimmigrant status. DHS notes that there is a trauma exception and an age exemption to this eligibility requirement to account for circumstances that may impact an applicant's ability to comply with reasonable requests for assistance. In addition, as discussed above, DHS endeavors not to remove trafficking victims and applicants for T nonimmigrant status outside of exigent circumstances.[25] Moreover, as discussed further below, the statute and regulations provide eligibility for T nonimmigrant status to family members facing a present danger of retaliation as a result of the principal T nonimmigrant's escape from the severe form of trafficking or cooperation with law enforcement. *See* 8 CFR 214.211; INA sec. 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III).

2. Incompetence and Incapacity

Comment: Commenters requested DHS expand the exceptions for compliance with a reasonable request for assistance, including lack of capacity/competency found in the U visa regulations. The commenters proposed including the same exception for individuals lacking capacity or competency even if it is not linked to the trafficking because it often prevents

[25] The White House, ''The National Action Plan to Combat Human Trafficking,'' (2021) *https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf* (National Action Plan); U.S. Dep't of Homeland Security, ''Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation'' (Jan. 2020), *https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf* (DHS Strategy); ''ICE Directive 11005.3,'' *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.*

victims from complying with reasonable requests from law enforcement.

Response: DHS appreciates and shares these concerns about individuals who lack capacity or competency; however, the age exemption and trauma exception are both statutory. There is no statutory authority for an incapacity or incompetence exemption or exception. Instead, DHS has included consideration of an individual's capacity, competency, or lack thereof as factors to be considered when determining whether a request was reasonable. Moreover, the existing age exemption and trauma exception cover incapacity or incompetence due to age or trauma suffered. The existing exemption and exception, coupled with DHS's addition of capacity/competency as a factor to consider will have the same intended effect as a specific exception for incapacity and incompetency.

3. Minimum Contact With Law Enforcement

To meet the requirement that an applicant comply with reasonable LEA requests for assistance, 8 CFR 214.11(h)(1) (redesignated 8 CFR 214.208(b)) mandates that an applicant, at a minimum, has contacted an LEA regarding an act of a severe form of trafficking in persons, unless an exemption or exception applies.

Comment: One commenter requested DHS clarify that an applicant under 18 years of age who reports the trafficking to the National Human Trafficking Hotline or Office of Trafficking in Persons meets the requirement that the person report to LEAs and comply with reasonable requests, including if they make an anonymous report.

Response: DHS emphasizes that applicants who are under the age of 18 at the time of victimization are, by statute, exempt from the requirement to cooperate with any reasonable requests for assistance from law enforcement. Additionally, reports to the National Human Trafficking Hotline or the Office of Trafficking in Persons would generally satisfy the reporting requirement, if the person making the report requested or provided permission for the report to be referred to law enforcement; however, anonymous reports generally do not satisfy the requirement, as they do not meet the required evidentiary standard of proof.

Comment: Some commenters supported DHS' removal of regulatory provisions describing how to obtain an LEA declaration when the victim has not had contact with an LEA. *See* 81 FR 92276. Commenters stated that adjudicators apply inconsistent standards as to what type of contact with an LEA is sufficient. They wrote that some applicants have documented in their T visa applications that they reported to law enforcement, but received no LEA response, and then received RFEs requesting additional documentation of law enforcement contact including a Supplement B or proof of Continued Presence. The commenters recommended that DHS amend 8 CFR 214.11(h)(1) (redesignated 8 CFR 214.208(b)) to provide that a single contact with law enforcement by telephone or electronic means documented by the applicant is sufficient to meet the eligibility requirement. They also recommended that in this same section, DHS repeat aspects of the definition of an LEA to speed responses to RFEs, clarify the minimum amount of LEA contact required, and clarify that it is not necessary that law enforcement respond to the contact. Commenters also requested DHS explicitly clarify in the regulations that participation in civil, family, juvenile, criminal, administrative or any type of court proceedings involving human trafficking or where the victim reveals facts of the trafficking to the court meets the ''contact with an LEA'' requirement.

Response: DHS agrees to adopt this recommendation regarding clarifying what constitutes minimum conduct and has revised the regulation to state that a single contact through telephonic, electronic, or other means may suffice. The means of contact can vary depending on the agency and the facts of the case. Applicants may document whether the LEA responded, and the type of response received. DHS encourages applicants to document all interactions they have had with law enforcement. DHS also clarified that the LEA to which the applicant reports must have jurisdiction over the reported crime. DHS emphasizes that there is no requirement that an individual provide a Supplement B or evidence of a Continued Presence grant, that an investigation or prosecution has been initiated, or that law enforcement respond to the applicant. While an investigation or prosecution is not necessary, the LEA's response to the report of trafficking is helpful to understand LEA involvement in the criminal case and determine whether the applicant meets the requirement to comply with any reasonable LEA requests. DHS does not consider it necessary to repeat the definition of an LEA or to specify every type of contact or the context of that contact that would suffice, given that redesignated 8 CFR 214.201 (defining an LEA) clearly specifies the types of agencies that qualify as LEAs.

4. Determining the Reasonableness of a Request

Comment: Multiple commenters suggested eliminating language in 8 CFR 214.11(a) (redesignated here as 8 CFR 214.201) and 8 CFR 214.11(h)(2) (redesignated as 8 CFR 214.208(c)) referencing the presence of an attorney. The commenters stated that the presence of an attorney should not be evaluated as a factor in whether an LEA request was reasonable and doing so may lead to victims with an attorney being held to higher standards in complying with LEA requests than those without an attorney present. The commenters wrote that the presence of an attorney does not make the law enforcement request more or less reasonable.

Response: DHS declines to adopt this recommendation. Whether an attorney was present during an LEA request is just one of the potentially many factors that DHS considers in examining the totality of the circumstances. Applicants may feel pressured to comply with an LEA request in the absence of an attorney, so DHS believes that it is appropriate to include it as a relevant factor. Furthermore, including an attorney's presence as a factor does not create a higher standard for victims who have attorneys present when requests are made, nor does it put such victims at a relative disadvantage. The presence or absence of an attorney generally will not be dispositive, but is a relevant factor in determining the reasonableness of a request, and will be analyzed on a case-by-case basis.

Comment: Several commenters requested that a ''qualified interpreter'' be added into 8 CFR 214.11(h)(2) (redesignated as 8 CFR 214.208(c)), as language access during LEA interactions is critical to victim protections and is legally required by the Civil Rights Act.

Response: DHS agrees that language access during such interaction is important for victims and has updated the language at new 8 CFR 214.208(c)(11) accordingly.

Comment: Commenters requested DHS add additional factors in determining the reasonableness of a request, including: the circumstances in which a request was made, the ability and health of an applicant, and the nature of trauma suffered. Commenters stated it was critical to understand the context in which requests are made of victims, as well as the circumstances of the victim themselves. The commenters also requested striking ''severe'' from

''severe trauma'' at 8 CFR 214.11(h)(2) (redesignated as § 214.208(c)) because all trauma should be considered.

Response: DHS generally agrees with these comments and has amended the list of factors to consider, by adding the victim's capacity, competency, or lack thereof; removing ''severity'' of trauma; adding ''qualified'' to interpreters; adding the ''health'' of the victim; and adding ''any other relevant circumstances surrounding the request.'' *See* new 8 CFR 214.208(c). DHS believes that these clarifying changes will improve determinations of the applicant's compliance with a reasonable LEA request.

5. Trauma Exception

Comment: Several commenters expressed support for provisions clarifying the types of supporting evidence that applicants can submit to establish that they meet the trauma exception from the general eligibility requirement of compliance with any reasonable LEA request for assistance in 8 CFR 214.11(h)(4)(i) (redesignated here as 8 CFR 214.208(e)(1)). Commenters suggested DHS consider the circumstances of the victim while they were being victimized and the surrounding circumstances, which may have exacerbated the trauma. They also recommended including additional examples of types of evidence that could be submitted to establish that an applicant meets the trauma exception.

Response: DHS has revised the regulations to include additional examples of evidence that may be submitted to establish the applicant qualifies for the trauma exception, to benefit adjudicators and applicants, give applicants additional information, and allow for consistency in adjudications. The updated provision clarifies that an applicant's statement should explain the circumstances surrounding the trauma and includes additional types of credible evidence that may be submitted. *See* 8 CFR 214.208(e)(1).

Comment: One commenter recommended DHS define what constitutes physical or psychological trauma to help applicants determine what evidence to submit when claiming the exception.

Response: DHS declines to include a definition of trauma in the regulatory text, as it could have the unintended effect of restricting access to benefits for victims.

Comment: One commenter stated that requiring an applicant to prove trauma to qualify for the exception risks re-traumatization, and that implicit in the definition of trafficking is some element of trauma. The commenter stated that requiring survivors to retell their experiences could hinder healing, and this could be mitigated by mandating a signed attestation to the psychological trauma from a qualified individual. The commenter stated that not requiring an applicant's affidavit would reduce the risk of re-traumatization.

Response: DHS declines to adopt this recommendation. DHS is sympathetic to the risks of re-traumatization for survivors of trafficking, but the trauma exception is statutory. The personal statement is and will continue to be initial required evidence because it is one of the most important sources of information for adjudicators in determining whether an individual meets the eligibility requirements for T nonimmigrant status. The personal statement also allows an applicant to provide credible evidence of their experiences in their own words, without requiring them to provide other evidence that may be more difficult to obtain. In addition, adjudicators consider the impact of trauma and victimization when evaluating the personal statement.[26] DHS declines to mandate a signed attestation from a medical or other qualified professional, as this would be inconsistent with the ''any credible evidence'' standard and would create a limitation on types of evidence that may be submitted under this standard.

6. DHS Contact With Law Enforcement

Comment: Several commenters requested that DHS amend 8 CFR 214.11(h)(4)(i) (redesignated here as 8 CFR 214.208(e)(1)) to provide that, in cases where an applicant has invoked the trauma exception and is unable to comply with reasonable LEA requests, USCIS will only contact an LEA if the applicant has already had initial contact. These commenters stated that maintaining this provision might discourage applicants who fear that USCIS' discretion to contact an LEA could potentially endanger applicants or their family members. Multiple commenters also requested clarification to ensure adjudicators understand that applicants who qualify for the exception are not required to have any contact with any LEA.

Response: DHS appreciates the sensitivities of applicants who are seeking an exception due to trauma and acknowledges that individuals who qualify for the trauma exception are not required to have had contact with any LEA. However, DHS feels it is important to retain the authority to contact law enforcement agencies for any information that may be necessary to adjudicate an application, in certain limited circumstances, even where an applicant has not already contacted an LEA. This is especially true for T nonimmigrant status, which requires cooperation with law enforcement unless the trauma exception or age exemption applies. *See* 8 CFR 214.208. DHS has stricken the reference to contacting law enforcement in relation to the trauma exception and has created a new section at 8 CFR 214.208(f) indicating that USCIS reserves the authority and discretion to contact an LEA involved in a case where an applicant previously contacted an LEA or when otherwise permitted by law. *See, e.g.,* 8 U.S.C. 1367.

7. Age Exemption

Comment: Several commenters commended DHS for updating its regulations to reflect the statutory provision that minors under 18 years of age are not required to comply with any reasonable law enforcement requests. *See* INA sec. 101(a)(15)(T)(i)(III). Multiple commenters requested that DHS clarify its interpretation of the exemption by amending 8 CFR 214.11(h)(4)(ii) (redesignated here as 8 CFR 214.208(e)(2)) to specify that the relevant age for determining whether this exemption is met is the age at the time of victimization, not the age at the time of application. Commenters stated this change is important because child trafficking victims in particular suffer long-term trauma that may limit their ability to cooperate with law enforcement and to confide in their attorneys. Additionally, commenters noted that attorneys may not identify applicants who suffered trafficking as a minor until after they have turned 18. One commenter requested that DHS consider increasing the age for the minor exemption. Another commenter stated there should be no requirement to comply with reasonable requests for assistance from law enforcement regardless of age, considering that brains are not fully developed until the age of 25. One commenter requested DHS clarify that any credible evidence related to a minor's age be included. The commenter indicated they work with many children who do not have access to birth certificates, passports, or certified medical opinions; whose documents have been withheld by their legal guardians; or do not know their

[26] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 3, Documentation and Evidence for Principal Applicants,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-3* (last updated Oct. 20, 2021).

own birthdates or exactly where they were born.

Response: DHS agrees that suffering human trafficking as a child can be particularly traumatizing and has significant and negative impacts on development. DHS has revised the regulation to clarify that the exemption for minors applies based on the age of the applicant at the time of victimization. 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. This is consistent with longstanding DHS policy and practice. DHS declines to increase the age for the minor exemption above age 18, as this exemption is provided in the statute. Moreover, DHS declines to remove the requirement to comply with reasonable requests for assistance, as it is a statutory requirement, and individuals who were under the age of 18 at the time of at least one of the acts of trafficking or may not be able to comply with reasonable requests for assistance due to trauma qualify for an exemption or exception.

DHS also acknowledges that minors may have difficulty obtaining certain types of evidence to establish their age and has revised the regulation to emphasize that any other credible evidence regarding age will be considered.

L. Extreme Hardship

Comment: One commenter requested DHS remove the extreme hardship requirement altogether. Another commenter wrote that the standard for ''unusual and severe harm'' in 8 CFR 214.11(i) (redesignated here as 8 CFR 214.209) for purposes of evaluating whether an applicant would suffer extreme hardship if removed from the United States is unnecessarily narrow and should include considerations of hardship inflicted on individuals other than the applicant. The commenter also recommended that DHS revise this section to take greater account of economic detriment and financial harm as factors in assessing hardship, particularly when those factors create a risk of re-victimization. The commenter requested DHS add language to 8 CFR 204.11(i) (redesignated here as 8 CFR 214.209) ''indicating that current or economic detriment may be considered as one factor in assessing hardship, particularly when it creates a risk of re-victimization.'' Another commenter supported the broad list of factors that should be considered, but also requested to include financial and support issues, and encouraged DHS to provide a greater list of possible, but not exhaustive factors to be considered.

Response: DHS declines to fully adopt these recommendations. DHS cannot remove the extreme hardship eligibility requirement, as it is required by statute. *See* INA sec. 101(a)(15)(T)(i)(IV), 8 U.S.C. 1101(a)(15)(T)(i)(IV) (''the alien would suffer extreme hardship involving unusual and severe harm upon removal''). The statute is clear that the extreme hardship eligibility requirement refers to hardship that the applicant would suffer and does not include hardship to anyone other than the applicant as a factor. *See* INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T). Accordingly, USCIS will not consider hardship to family members unless the evidence demonstrates specific harms that the applicant will suffer upon removal as a result of hardship to a family member. DHS has amended redesignated 8 CFR 214.209(c)(2) to provide this clarification.

DHS has revised 8 CFR 214.209 to include economic harm as an extreme hardship factor. Economic harm has always been considered a factor; the prior regulation indicated that economic detriment alone could not be the sole basis for a finding of extreme hardship involving unusual and severe harm. Although the revised regulations do not bar economic hardship as the sole basis for such a finding, it must rise to the level of extreme hardship involving unusual and severe harm, and thus, generally, economic hardship alone may not suffice. However, adjudicators will consider the totality of the circumstances and all relevant factors in making an extreme hardship determination. Each case will require an analysis based on the specific facts and circumstances present.

Comment: One commenter requested that DHS clarify whether the hardship must be directly related to trafficking and that it does not need to rise to the level of extreme hardship.

Response: As discussed above, DHS has not removed the reference to extreme hardship in the regulation. DHS clarifies that an applicant's hardship does not need to be directly related to their trafficking. *See* 8 CFR 214.209.

M. Family Members Facing a Present Danger of Retaliation

The regulations at 8 CFR 214.11(k) (redesignated here as 8 CFR 214.211) implement section 101(a)(15)(T)(ii)(III) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(III), to provide that T nonimmigrant status may be available for a parent, unmarried sibling under the age of 18, or the adult or minor child of a derivative of the principal facing a present danger of retaliation as a result of the T–1 nonimmigrant's escape from the severe form of trafficking or cooperation with law enforcement. One commenter expressed support for allowing principal applicants under 21 years of age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years and parents as eligible derivative family members.

Comment: Commenters requested that DHS mandate an expedited adjudication process for these applications, which would protect family members at risk and encourage victims of trafficking to report their victimization. Some commenters recommended a specific 30-day timeline.

Response: DHS shares the commenters' concerns about family members at risk; however, it declines to impose processing deadlines on itself given staffing resources and the case-by-case review required in adjudicating T visa applications. DHS notes that there is already a process in place to request expedited processing based on urgent humanitarian reasons. Guidance for requesting expedited processing can be found on the USCIS website.[27]

Comment: Commenters also wrote that section 101(a)(15)(T)(ii)(III) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(III), does not provide an opportunity to request T nonimmigrant status for a principal's adult children who face a present danger of retaliation. Some commenters indicated they understood that DHS had limited ability to address this statutory gap, while others stated that DHS could construe the statute more broadly to include these adult children but did not provide legal support for this assertion.

Response: DHS acknowledges that the statute omits a principal's adult children who face a present danger of retaliation. However, the statutory language is not ambiguous on this point and a change in the law to include a principal's adult children would be necessary to include adult children of a T–1 nonimmigrant as eligible family members. INA sec. 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III).

Comment: Commenters wrote that family members at risk of retaliation from traffickers have difficulty securing evidence listed in 8 CFR 214.11(k)(6) (redesignated here as 8 CFR 214.211(f)) to prove a present danger of retaliation. They requested that DHS indicate that a victim's statement describing the present danger of retaliation alone would be sufficient or, at a minimum,

[27] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''How to Make an Expedite Request,'' *https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request* (last updated Oct. 20, 2022).

clarify that police reports filed in the home country and affidavits from witnesses in the home country would meet the evidentiary standard. Several commenters requested that DHS consider any credible evidence of the danger of retaliation.

Response: DHS appreciates the difficulties that trafficking victims and their family members may have in obtaining evidence. For this reason, the rule is clear that applicants may submit any credible evidence related to all the eligibility requirements for both principal applicants and derivative applicants. *See, e.g.,* 8 CFR 214.204(c) and (l). The standard also applies specifically to the evidentiary standard for proving that an eligible family member faces a present danger of retaliation. *See* 8 CFR 214.211(a)(3). In cases where the LEA has not investigated the trafficking, USCIS will evaluate any credible evidence demonstrating derivatives' present danger of retaliation. The types of evidence listed at 8 CFR 214.211(f) are non-exhaustive examples, and the inclusion of ''and/or'' at the end of the list before the inclusion of ''any credible evidence'' clarifies that USCIS will consider any credible evidence.

An applicant's personal statement alone could be sufficient to establish a present danger of retaliation, in accordance with the ''any credible evidence'' standard. *See* new 8 CFR 214.211(f). DHS has not specifically revised the rule to state that a statement describing the present danger of retaliation alone would be sufficient, as this is already permitted by the ''any credible evidence'' standard, and referencing one particular piece of evidence in the regulatory text could unintentionally discourage applicants from submitting additional relevant, credible evidence that would assist in the adjudication. DHS encourages applicants to submit additional credible evidence whenever possible to provide USCIS adjudicators with as complete an understanding of the facts of the case as possible.

The ''any credible evidence'' standard also encompasses evidence originating from a family member's home country; however, DHS has clarified that evidence may be from the United States or any country in which an eligible family member faces retaliation at new 8 CFR 214.211(f).

Comment: One commenter requested DHS revise the T–6 regulation to eliminate the policy of requiring that a derivative beneficiary of a T–1 nonimmigrant have already secured T nonimmigrant status before their adult or minor children facing present danger of retaliation become eligible for T–6 status. They stated that DHS's interpretation of ''derivative beneficiary'' is overly narrow, that the interpretation that the term means someone who has ''derived status'' and ''benefited'' from the qualifying relationship has no basis, and that it is inconsistent with DHS's own use of the term ''beneficiary'' elsewhere.

Response: DHS appreciates the commenter's concerns; however, it maintains that its interpretation as presented in the 2014 Policy Memorandum [28] regarding T derivatives (T Derivative Memo) is the correct legal reading of the statute. The commenter's contention that a ''derivative beneficiary'' may include someone who merely ''stands to benefit,'' but has not, at minimum, sought such a benefit, lacks statutory support. DHS maintains that the phrase ''adult or minor children of a derivative beneficiary'' plainly requires the T–6 family member to establish their eligibility through their relationship to the derivative beneficiary of the principal. A plain language reading of ''derivative beneficiary'' is someone who has *derived* a *benefit;* that is, an individual who has derived their nonimmigrant status as a family member, as defined at section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii), and who has benefited from the qualifying relationship to the principal. As noted in the T Derivative Memo, this means that a ''derivative beneficiary'' is a family member described in section 101(a)(15)(T)(ii)(I) and (II) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(I) and (II), who has been granted derivative T nonimmigrant status. Accordingly, a ''derivative beneficiary'' must have been granted T–2, T–3, T–4, or T–5 nonimmigrant status through the principal in order for the derivative beneficiary's adult or minor child to be eligible for T–6 nonimmigrant status. This conclusion is further supported by the requirement under section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii) that any derivatives be ''accompanying, or following to join'' the principal T–1 applicant.

As noted in the T Derivative Memo, Congress created the T–6 classification through a relationship to a derivative, instead of directly to a principal, as it is in other immigration benefits. Therefore, establishing a qualifying relationship between the T–6 family member and their parent is insufficient to derive eligibility as a T–6, if the T–6's parent never held T nonimmigrant status as a T derivative beneficiary. To be eligible for T–6 classification, the adult or minor child must establish the qualifying relationship to their parent who actually derived T nonimmigrant status through the principal beneficiary. Accordingly, DHS declines to make any changes in response to this comment.

N. Marriage of Principal After Principal Files Application for T Nonimmigrant Status

The regulation at redesignated 8 CFR 214.211(g)(4) states that if an applicant marries after filing the application for T–1 nonimmigrant status, USCIS will not consider the spouse eligible for derivative T–2 nonimmigrant status.

Comment: Several commenters wrote that this limitation on eligible derivatives relies on an unnecessarily narrow interpretation of section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii), by requiring that a spousal relationship exist at the time of filing. They suggested that the spouse from a marriage that occurs after the principal applicant applies for T–1 nonimmigrant status should be able to be considered as a T–2 derivative spouse.

Response: The U.S. Court of Appeals for the Ninth Circuit, in *Medina Tovar* v. *Zuchowski,* held that the regulatory requirement at 8 CFR 214.14(f)(4) that a spousal relationship must exist at the time a Petition for U Nonimmigrant Status is filed for the spouse to be eligible for classification as a derivative U–2 nonimmigrant was invalid.[29] As a matter of policy, DHS applies this decision nationwide to spousal and stepparent relationships arising in adjudications of derivative U nonimmigrant status petitions, as well as derivative T nonimmigrant status applications.[30] Accordingly, DHS has amended the regulations in the final rule to adopt the holding in *Medina Tovar* for T nonimmigrant adjudications and has stricken the following language: ''If a T–1 marries subsequent to filing the application for T–1 status, USCIS will not consider the spouse eligible as a T–2 eligible family member.'' DHS has

[28] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands'' (2014), *https://www.uscis.gov/sites/default/files/document/memos/Interim_PM-602-0107.pdf* (T Derivative Memo).

[29] *Medina Tovar* v. *Zuchowski,* 982 F.3d 631 (9th Cir. 2020).

[30] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 4, Family Members, Section D, Family Relationship at the Time of Filing,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-4* (last updated Oct. 20, 2021).

added language that principal applicants who marry while their Application for T Nonimmigrant Status is pending may file an Application for Family Member of T–1 Recipient on behalf of their spouse, even if the relationship did not exist at the time they filed their principal application. *See* new 8 CFR 214.211(e). DHS has also included language allowing for a principal applicant to apply for a stepparent or stepchild if the qualifying relationship was created after they filed their principal application but before it was approved. Finally, DHS has clarified that it will evaluate 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.

Comment: One commenter requested that principal applicants should be permitted to apply for derivative T status for the parent of the principal's derivative children, as many individuals may not formalize their committed relationships through marriage.

Response: Although DHS sympathizes with these situations, the family relationships giving rise to derivative T nonimmigrant status eligibility are set forth at section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii). Thus, DHS declines to add a new standard for derivative benefits for a committed relationship in the T visa context.

O. Relationship and Age-Out Protections

DHS has amended new 8 CFR 214.211(e)(1) to state that if the principal applicant establishes that they have become a parent of a child after filing, the child will be deemed an eligible family member. This new language replaces ''had a child'' because it is more inclusive and accurate, and mirrors similar regulations in the U visa context.

DHS has also amended new 8 CFR 214.211(e)(3) to state that the age-out protections apply to a child who may turn 21 during the pendency of the principal's application for T nonimmigrant status. The prior text erroneously referred to age-out protections for children of principals who were 21 years of age or older.

P. Travel Abroad

Comment: Commenters encouraged DHS to provide advance parole for T nonimmigrants in recognition of the fact that victims' families may remain abroad. They wrote that victims would feel safer and be able to return to the United States without immigration consequences.

Response: DHS notes that T nonimmigrants are already permitted to apply for advance parole, as clarified in both the Form I–914 and Form I–131 form instructions and Policy Manual. Applications for advance parole are evaluated on a case-by-case basis pursuant to section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5). In addition, DHS has clarified that a noncitizen granted T–1 nonimmigrant status or an eligible family member must apply for advance parole to return to the United States after travel abroad. The T nonimmigrant must comply with advance parole requirements to maintain T nonimmigrant status upon return to the United States and remain eligible to adjust status under section 245(l) of the INA, 8 U.S.C. 1255(l). 8 CFR 245.23(j). *See* new 8 CFR 214.204(p), 214.211(i)(4).

Q. Extension of Status

DHS provides in this rule that a derivative T nonimmigrant may file for extension of status independently, if the T–1 nonimmigrant remains in status, or the T–1 nonimmigrant may file for an extension of their own status and request that the extension be applied to their derivative family members. This codifies the current process for derivatives to seek extensions of status. *See* new 8 CFR 214.212(b). In administering the T nonimmigrant program, USCIS found, and stakeholders expressed, that there was a lack of clarity with the extension of status process for T nonimmigrants. USCIS issued a Policy Memorandum in 2016 to clarify requirements for extension of status for T and U nonimmigrants (T/U Extension Memo).[31] DHS is codifying some of the policies in the T/U Extension Memo at new 8 CFR 214.212(f). First, this rule provides that USCIS may approve an extension of status for principal applicants based on exceptional circumstances. Second, when an approved eligible family member is awaiting initial issuance of a T visa by an embassy or a consulate and the principal's T–1 nonimmigrant status will soon expire, USCIS may approve an extension of status for a principal applicant based on exceptional circumstances. *See* new 8 CFR 214.212(f).

Finally, DHS has clarified in the evidence section for extension of status that it will consider affidavits from individuals with direct knowledge of or familiarity with the applicant's circumstances, rather than affidavits of ''witnesses.'' *See* new 8 CFR 214.212(g)(2)(v).

R. Revocation Procedures

DHS has clarified the existing practice that an automatic revocation cannot be appealed. *See* new 8 CFR 214.213(a). DHS has also clarified at § 214.213(c) that if an applicant appeals a (non-automatic) revocation, the decision will not become final until the appeal is decided. *See* 8 CFR 103.3. DHS has revised the language at new 8 CFR 214.213(b)(1) which previously referenced errors that affected the ''outcome'' and now refers to errors that led to an ''approval'' of a case.

Comment: Some commenters expressed concern that 8 CFR 214.11(m) (redesignated here as 8 CFR 214.213)) eliminates a step in the process of revocation, stating that under the prior rule at 8 CFR 214.11(s)(2), a notice of intent to revoke (NOIR) would initiate a 30-day window for the applicant to submit a rebuttal that a district director would then consider as evidence. They proposed that the rule include this prior process and provide individuals with an opportunity of rebuttal.

Response: The removal of this language in the interim rule does not reflect a change in USCIS' revocation procedures. T nonimmigrants who are issued a NOIR are provided 30 days to respond with evidence to rebut the grounds stated for revocation in the notice. These grounds and the deadline to respond are stated in all NOIRs. USCIS will consider all evidence presented in deciding whether to revoke the approved application. The reference to the district director in the 2002 interim rule is outdated, as district offices are no longer involved in revoking T nonimmigrant status. DHS has codified the current procedures for NOIRs, including the time period during which an individual may submit rebuttal evidence at 8 CFR 214.213(c).

S. Waivers of Inadmissibility

DHS has the authority to waive grounds of inadmissibility on a discretionary basis under section 212(d)(3)(A)(ii) or (d)(13) of the INA, 8 U.S.C. 1182(d)(3)(A)(ii), (d)(13).

Comment: Commenters requested that DHS clarify in the regulation that immigration judges have jurisdiction over waiver applications, referencing court decisions in the U visa context.

Response: DHS declines to adopt this recommendation. In the 2002 interim rule, DOJ delegated T-related waiver authority exclusively to the Immigration

[31] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Extension of Status for T and U Nonimmigrants (Corrected and Reissued)'' (2016), *https://www.uscis.gov/sites/default/files/document/memos/2016-1004-T-U-Extension-PM-602-0032-2.pdf* (T/U Extension Memo).

and Naturalization Service (INS), and INS's adjudicative authority transferred to USCIS with the Homeland Security Act.[32]

Comment: In cases involving violent or dangerous crimes, 8 CFR 212.16 specifies that USCIS will only exercise favorable discretion toward the applicant in extraordinary circumstances unless the criminal activities were caused by or were incident to the victimization. *See* 8 CFR 212.16(b)(3). Several commenters wrote that this provision is too stringent in its application. They stated that this language is not statutorily required, that victims of trafficking often have unfavorable criminal histories that are not directly tied to their victimization but are related to their vulnerability that led to their exploitation, and that this provision could have a chilling effect on victims coming forward to report crimes.

Other commenters encouraged DHS to require consideration of the effects and circumstances of the trafficking as they relate to criminal issues. They suggested DHS determine whether the crime occurred before the trafficking situation or is related to the trafficking, including trauma or vulnerabilities in the wake of trafficking. They requested DHS focus not on the seriousness or number of crimes and instead focus on a victim-centered approach using a balancing test.

Response: DHS declines these edits, while recognizing nuances in evaluating an applicant's criminal history and the potential for unique factors related to victimization. DHS believes that 8 CFR 212.16 appropriately informs the exercise of discretion and is fundamental to maintaining the integrity of the T nonimmigrant status program and the ability to adjudicate T visa applications on a case-by-case basis. DHS has broad waiver authority to waive most grounds of inadmissibility under section 212(d)(3)(A)(ii) and (d)(13) of the INA, 8 U.S.C. 1182(d)(3)(A)(ii), (d)(13) (if in the national interest for section 212(a)(1) of the INA, 8 U.S.C. 1182(a)(1), or if in the national interest and caused by or incident to the victimization for most other provisions of subsection 212(a) of the INA, 8 U.S.C. 1182(a) inadmissibility grounds). DHS reserves the ability to evaluate inadmissibility grounds in each individual case to ensure that the waiver is in the national interest and considers a broad variety of factors in doing so. Moreover, DHS already considers all positive and negative factors in the exercise of discretion.

T. Adjustment of Status

DHS has made several changes to the adjustment of status regulations for T nonimmigrants. DHS has stricken from 8 CFR 245.23(a)(3) the requirement that an applicant accrue 4 years in T–1 nonimmigrant status and file a complete application prior to April 13, 2009, as all such applications have been adjudicated.

In addition, DHS has removed the word ''first'' before ''date of lawful admission'' in 8 CFR 245.23(a)(4) to clarify the agency's interpretation of re-accrual of physical presence following a break in presence. This edit clarifies an outstanding legal and policy concern in the program and eliminates barriers for victims of trafficking. The statutes and regulations permit T nonimmigrants to restart the clock after a break in continuous physical presence after the first admission as a T nonimmigrant (including, but not limited to, restarting after a subsequent admission as a T nonimmigrant, or restarting after returning with advance parole after a break in continuous physical presence). This interpretation treats T nonimmigrant adjustment of status applicants and U nonimmigrant adjustment of status applicants the same regarding the requirements for continuous physical presence.

Comment: Commenters encouraged DHS to take a broader approach to adjustment of status eligibility, including allowing derivative family members to adjust independently of the T–1 nonimmigrant, and to evaluate each application on its own merits. One commenter recommended incorporating the policies outlined in the T/U Extension Memo, because it allowed derivatives to adjust independently of principals.

Response: Section 245(l) of the INA, 8 U.S.C. 1255(l), provides that if a T–1 nonimmigrant has been continuously physically present for three years since admission as a T–1 nonimmigrant (or during the investigation or prosecution of trafficking which is complete); establishes good moral character; and has complied with any reasonable request for assistance in the trafficking investigation or prosecution, would suffer extreme hardship involving unusual and severe harm upon removal, or was under age 18 at the time of victimization, the Secretary may adjust the status of the T–1 nonimmigrant and any person admitted under section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii). Thus, a precondition for a derivative T nonimmigrant to adjust status under section 245(l) of the INA, 8 U.S.C. 1255(l) is that the T–1 nonimmigrant has met the above specified requirements (continuous physical presence, good moral character, etc.). For all practical purposes, a derivative T nonimmigrant generally cannot demonstrate that the T–1 nonimmigrant meets the requirements for adjustment of status in the absence of USCIS adjudicating an application for adjustment of status from the T–1 nonimmigrant themself. Therefore, DHS declines to adopt the commenter's recommendation to permit T derivatives to adjust independent of the T–1 principal.

DHS also notes that the T/U Extension Memo says derivative family members with T nonimmigrant status do not lose their status when the T–1 nonimmigrant adjusts status, allowing the derivative to adjust status later. DHS has codified this longstanding policy at 8 CFR 245.23(b)(5).

Comment: Commenters also requested changes to 8 CFR 245.23(a)(6) such that it includes an exemption for trafficking victims under the age of 18 at the time of victimization, to be consistent with the statute at 8 U.S.C. 1255(l)(1)(C).

Response: DHS agrees that Congress intended to exempt trafficking victims who were under the age of 18 at the time of their victimization from being required to contact law enforcement. This exemption should apply at the adjustment of status stage; accordingly, DHS has made this change to the regulation as a technical edit. Similarly, DHS has added reference to the trauma exception, consistent with the statute and congressional intent. *See* new 8 CFR 245.23(a)(7)(iii) and (iv).

Comment: Other commenters requested changes be made to the minimum 3-year continuous physical presence requirement because it punishes trafficking victims by forcing them to wait, and conditions early adjustment eligibility on things outside the victim's control, such as the conclusion of the investigation or prosecution.

Response: DHS is sympathetic to the difficulties victims may face in waiting to adjust status; however, the continuous physical presence period is statutory and cannot be changed by regulation.

Comment: Commenters also requested that DHS implement a process by which principal applicants who obtain lawful permanent residence and subsequently marry may file the equivalent of a Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant on behalf of eligible family members.

[32] 6 U.S.C. 271(b).

Response: DHS is sympathetic to the concerns raised in these comments but declines to adopt a process for certain relatives to apply to adjust status if they have never held T nonimmigrant status. Commenters noted the ability of U–1 nonimmigrants to file for spouses they subsequently marry after receiving U nonimmigrant status; U–1 nonimmigrants are able to do so under 8 U.S.C. 1255(m)(3); however, there is no equivalent statutory basis to create such a process in the T visa context under 8 U.S.C. 1255(l)(1).

U. Applicants and T Nonimmigrants in Removal Proceedings or With Removal Orders

Commenter: One commenter requested DHS acknowledge that trafficking survivors often escape trafficking through arrest or contact with Immigration and Customs Enforcement (ICE), who may later prosecute them without investigating whether they have been trafficked. The commenter requested that special protections be extended to survivors placed in removal proceedings and detention, to ensure survivors have access to due process in requesting a T visa.

Response: DHS acknowledges that many survivors may escape their trafficking through encounters with ICE. Understanding the concern that trafficking victims may require additional protection, DHS has made several changes to the regulation (discussed below) to further its victim-centered approach. In addition, DHS has made significant accomplishments of Priority Actions within the Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation (DHS Strategy). For example, in October 2020, DHS launched the Center for Countering Human Trafficking (CCHT), a DHS-wide effort comprising 16 supporting offices and components, led by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI). The CCHT is the first unified, intercomponent coordination center for countering human trafficking and the importation of goods produced with forced labor. In October 2021, the Secretary directed DHS components to incorporate a victim-centered approach into all policies, programs, and activities governing DHS interactions with victims of crime. Finally, in August 2021, ICE issued Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, which sets forth ICE policy regarding civil immigration enforcement actions involving noncitizen crime victims, including victims of trafficking and Continued Presence recipients.[33] This Directive emphasizes the duty to protect and assist noncitizen crime victims.

Comment: Another commenter requested that in cases where applicants can make a credible showing that they were placed in removal proceedings through retaliatory actions of their trafficker or due to their trafficking, DHS should automatically join in a motion to administratively close or to terminate the removal proceeding for the pendency of the T nonimmigrant application, including through any appeals, and overcoming any applicable time and numerical limitations.

Response: DHS declines to adopt this recommendation. DHS is cognizant that individuals may be placed in removal proceedings because of their trafficking experience and implements a victim-centered approach for all individuals it encounters. DHS believes that the following changes (listed in the subsequent seven numbered paragraphs) made to the regulation will address many of the commenter's concerns.

1. Principal Applicants, T–1 Nonimmigrants, and Derivative Family Members

Comment: Commenters indicated that their clients have faced unnecessary hurdles and additional trauma when seeking to reopen and terminate a prior removal order due to opposition by ICE. Commenters also stated that ICE ''rarely'' joins applicants' motions to administratively close, continue, or terminate proceedings. They emphasized that removal from the United States can render a victim ineligible for a T visa and vulnerable to re-trafficking or retaliation from the trafficker. The commenters suggested that the regulations be amended to mandate ICE's participation in joint motions to reopen upon a grant of T–1 or T derivative nonimmigrant status in these circumstances, or at the respondent's request, ICE should agree to a motion to administratively close, terminate or continue proceedings (if proceedings are ongoing).

Response: DHS values the need to conserve government resources and maintain coordination across the department; however, DHS declines to codify limitations on ICE's ability to make case-by-case determinations. In line with the victim-centered approach, we have revised the regulation to provide that ICE will maintain a policy regarding the exercise of discretion toward all applicants for T nonimmigrant status, and all T nonimmigrants. *See* new 8 CFR 214.214(b). To that end, DHS has also revised the regulation at new 8 CFR 214.204(b)(1)(ii), 214.205(e), and 214.211(b)(2)(ii) to state that ICE may exercise prosecutorial discretion as appropriate.

Comment: Other commenters stated that if DHS disagreed with mandating ICE to join such motions, DHS should add permissive language to this effect, making clear that the language set forth at 8 CFR 214.11(d)(1)(ii) and (k)(2)(i) (redesignated as 8 CFR 214.204(b)(2) and 214.211(b)(2)) applies both to T–1 nonimmigrants as well as T derivatives in pending removal proceedings. Other commenters also requested the regulation address derivative family members in removal proceedings.

Response: DHS agrees with the commenter's suggestion, and as described above, has amended the regulation to state that ICE may exercise prosecutorial discretion, including in cases of T derivatives or eligible family members. *See* new 8 CFR 214.211(b)(2)(ii).

2. Immigration Judges

Comment: Several commenters requested DHS add language to the regulation specifically stating that an immigration judge may terminate removal proceedings once T nonimmigrant status is granted. They requested DHS add language clarifying that an immigration judge can administratively close removal proceedings while USCIS adjudicates an application for T nonimmigrant status.

Response: This rule amends DHS regulations only and is not a joint Department of Justice (DOJ) rule. Accordingly, comments related to the authority of an immigration judge to terminate or administratively close removal proceedings are outside the scope of this rule, which cannot bind DOJ.

Comment: Commenters also suggested that the regulation direct immigration judges to terminate or administratively close proceedings for all T nonimmigrant status applicants and recipients on their own accord without a motion or request from the parties.

Response: DHS declines to adopt this recommendation. This rule amends DHS regulations only and is not a joint Department of Justice (DOJ) rule. Thus, DHS cannot bind DOJ in this rule.

3. Automatic Stays of Removal

Comment: One commenter urged DHS to automatically stay removals of

[33] ''ICE Directive 11005.3,'' *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.*

applicants whose applications are deemed to be properly filed. They request in the alternative that DHS expedite bona fide determinations for applicants with final orders of removal. Other commenters requested that DHS issue a stay of removal to applicants with pending T visa applications until a bona fide determination is made.

One commenter stated that if an application is found to be bona fide, DHS should extend an administrative stay of a final order until a final decision is made on the application for T nonimmigrant status.

Response: DHS declines to adopt these recommendations. DHS acknowledges the commenters' concerns regarding the removal of applicants with pending T visa applications. As a matter of policy, DHS generally will not remove applicants with pending T nonimmigrant status applications; however, there may be situations where it is prudent for DHS to execute removal orders prior to adjudication, and DHS does not intend to limit DHS discretion in this manner. DHS feels that the regulation's language at 8 CFR 214.204(b)(2)(i) and (ii) is sufficient to address these commenter's concerns by providing that, once granted, a stay of removal will remain in effect until a final decision is made on the application for T nonimmigrant status.

4. Unrepresented Applicants

Comment: One commenter requested that in cases where an applicant is unrepresented in proceedings, DHS should be mandated to move for termination, dismissal, administrative closure, or a continuance. The commenter stated that actively pursuing removal cases against survivors of trafficking is inconsistent with ICE's goal of prioritizing limited resources.

Response: DHS declines to adopt these recommendations. Generally, relief from removal has been historically requested by the noncitizen and is not initiated by DHS. DHS does not wish to limit ICE's discretion by mandating specific actions, as each case will present different circumstances. However, DHS agrees that prioritizing the removal of trafficking survivors is generally inconsistent with the victim-centered approach to which DHS adheres.

5. Detained Applicants

Comment: Commenters requested DHS be required to release a detained applicant once a bona fide determination has been made. Some commenters requested that DHS add a provision to the regulation requiring ICE to seek expedited processing for all detained T visa applicants (principals and derivatives). They also stated that ICE should be required to check DHS systems for VAWA confidentiality flags that indicate a pending or approved T, U, or VAWA application or petition for every detainee within 24 hours of detention. Finally, they state the regulation should specify how quickly ICE should make this request and how long USCIS should generally take to respond to the expedite request.

Response: DHS declines to adopt this recommendation. DHS appreciates the commenter's concerns. Existing USCIS and ICE processes already flag protected records via secure methods for information sharing, including through the USCIS Central Index System, which, among other things, includes flags for individuals whose records are protected under 8 U.S.C. 1367.

In addition, there is already a process in place to request expedited processing based on urgent humanitarian reasons, which can be found on the USCIS website.[34] ICE also will request expedited adjudication when necessary and appropriate, including when noncitizens are detained so adjudication of applications for T nonimmigrant status is prioritized. ICE then exercises discretion to defer decisions on enforcement action in compliance with their directives and processes.[35] Finally, although DHS understands the commenter's concerns about detained T applicants, it declines to impose processing deadlines on itself given resource needs and shifting priorities.

6. Reinstatement of Removal

Comment: One commenter requested DHS create a presumption that reinstatement of removal would not occur in cases of T, U, and VAWA eligible victims, to avoid victims being removed from the United States.

Response: DHS declines to adopt this recommendation. This comment is partially out of scope, as DHS can make no changes to VAWA or U regulations in this rule because we made no changes to those programs in the interim rule. In addition, relief from removal has been historically requested by the noncitizen and is not initiated by DHS. Operationally, it would take many resources and considerable infrastructure to create a process in which DHS could actively seek out noncitizens with pending T applications, and who have a prior removal order, just to ensure a reinstatement would not be issued. Furthermore, DHS declines to limit ICE's discretion in this manner, but emphasizes that ICE uses a victim-centered approach in which all relevant circumstances are considered.

7. Issuances of Notices To Appear (NTAs)

Comment: Commenters suggest codifying DHS statements from the 2016 Interim Final Rule preamble language regarding not issuing NTAs to individuals with pending applications for T nonimmigrant status.

Response: DHS agrees to adopt this suggestion and has introduced a new provision at 8 CFR 214.204(b)(3) clarifying that USCIS does not have a policy to refer applicants for T nonimmigrant status for removal proceedings absent serious aggravating circumstances, such as the existence of an egregious criminal history, a threat to national security, or where the applicant is complicit in trafficking. Issuing NTAs to survivors of trafficking outside of these circumstances undermines both the humanitarian and law enforcement purposes of the statute. The new provision at 8 CFR 214.204(b)(3) is consistent with several of the Priority Actions outlined in the White House's 2021 National Action Plan to Combat Human Trafficking[36] as well as several objectives laid out in the DHS Strategy.[37]

V. Notification to ICE of Potential Trafficking Victims

8 CFR 214.11(o) (redesignated here as 8 CFR 214.215) addresses the duty of USCIS employees who encounter potential victims of trafficking to consult with the appropriate ICE officials to initiate law enforcement investigation and assistance to victims.

Comment: Commenters requested that DHS reconsider whether USCIS employees should be making referrals to consult with ICE officials. They wrote

[34] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''How to Make an Expedite Request,'' *https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request* (last updated Oct. 20, 2022).

[35] *See* ''ICE Directive 11005.3,'' *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.*

[36] ''National Action Plan,'' *https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf.* In particular, this aligns with ''Priority Action 2.2.2: Provide human trafficking victims protection from removal'' and ''Priority Action 2.3.2: Provide immigration protections to ensure eligible victims are not removed.''

[37] ''DHS Strategy,'' *https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf.* Specifically, the new regulation is consistent with the priority actions ''Develop Victim-Centered Policies and Procedures for DHS Personnel'' and ''Improve Coordination of Immigration Options for Victims of Human Trafficking.''

that interaction with ICE may put trafficking survivors at risk for criminal liability and potential deportation and that these interactions may harm applicants eligible for the trauma exception or who do not feel comfortable cooperating with LEAs. Commenters suggested instead that USCIS employees should advise potential victims of their possible immigration remedies and provide a referral to the National Human Trafficking Hotline. Some commenters suggested that such a referral would defeat the purpose of the confidentiality protections at 8 U.S.C. 1367. They wrote that USCIS should be especially cautious of such consultations when the potential victim is represented by an attorney or receiving services from a social services agency and recommended that DHS revise the provision to require USCIS to consider such information when consulting with ICE officials.

Response: DHS appreciates concerns about the protection of vulnerable applicants and the potential consequences of LEA intervention, including concerns that represented individuals and those receiving social services may have made an informed decision with regard to reporting to law enforcement in light of the trauma exception; however, referrals to ICE's Homeland Security Investigations (HSI) are important given the role they play in combating criminal organizations that commit human rights violations, including human trafficking. HSI is victim-oriented, has extensive experience handling trafficking cases with sensitivity, and employs victim assistance specialists that work directly with individuals who have experienced trafficking. Sharing information between USCIS and ICE under these circumstances is permitted under 8 U.S.C. 1367 because the referral is within DHS for legitimate Department purposes, including coordination on Continued Presence and expedite requests. Nevertheless, in consideration of these comments, DHS has revised 8 CFR 214.215 to state that USCIS ''may'' consult, rather than ''should'' consult with ICE.

USCIS exercises caution whenever it shares information protected under 8 U.S.C. 1367 with ICE HSI, and evaluates all relevant circumstances in deciding whether to share such information, including whether there is a legitimate Department purpose for sharing. ICE HSI is equally bound by the confidentiality protections of 8 U.S.C. 1367(a)(2), including whether a person is represented by an attorney or accredited representative.

W. Fees

Comment: Commenters stated that T visa applicants incur significant fees in filing related forms and that access to fee waivers is crucial. Some commenters noted that detained trafficking survivors do not have funds to pay filing fees or provide documentation of their financial circumstances. They asked DHS to simplify and streamline the fee waiver request process and consider ''any credible evidence'' in adjudicating fee waiver requests. Other commenters requested that DHS extend the fee exemption to all ancillary applications related to the application for T nonimmigrant status to include motions and appeals. A few commenters noted that DHS has eliminated many of the fees associated with applying for T nonimmigrant status in recognition of the challenges victims of a severe form of trafficking in persons and their family members may face in bearing these costs. Commenters asked that DHS extend the fee exemptions to applications for employment authorization filed by eligible family members in 8 CFR 214.11(k)(10) (redesignated here as 8 CFR 214.211(i)(3)). They proposed that, at a minimum, the rule clarify that family members seeking employment authorization can submit fee waiver requests instead of associated fees. Other commenters requested DHS require that all fee waiver requests be processed within 30 days of receipt.

Response: DHS recognizes the challenges faced by trafficking victims and their family members, including the costs of submitting applications associated with T nonimmigrant status. DHS appreciates the importance of the fee waiver process and takes note of the commenters' concerns. On January 31, 2024, USCIS published a Final Rule (Fee Rule) to adjust certain immigration and naturalization benefit request fees.[38] That rule codified 8 CFR 106.3(b)(2) which exempts persons seeking or granted T nonimmigrant status from the fees for several different USCIS forms. As a result, T nonimmigrants, T nonimmigrant applicants, and their derivatives will generally pay no USCIS fees until they apply for naturalization, at which time they may request a fee waiver or a reduced fee.

Comment: Commenters also requested a presumption in favor of granting fee waivers submitted in association with a T visa application or if the applicant is detained by DHS, in the absence of specific and exceptional circumstances.

Response: Persons seeking or granted T nonimmigrant status are exempt from paying fees for all related forms through adjustment of status. 8 CFR 106.3(b)(2). As a result, T nonimmigrants, T nonimmigrant applicants, and their derivatives will not be required to request a fee waiver until they file Form N–400, Application for Naturalization.[39]

X. Restrictions on Use and Disclosure of Information Relating to T Nonimmigrant Status

Comment: Commenters expressed support for DHS including the reference at 8 CFR 214.11(p) (redesignated as 8 CFR 214.216) in confidentiality provisions and exceptions that specifically apply to human trafficking survivors under 8 U.S.C. 1367(a)(2) and (b). One commenter acknowledged DHS's rationale for not including the entire list of exceptions to the restrictions included in 8 U.S.C. 1367(b) but requested that DHS add language to the provision that would highlight the exceptions on disclosure for law enforcement or national security purposes. The commenter wrote that including these specific examples would help victims make an informed decision of whether to apply for T nonimmigrant status.

Response: DHS recognizes the importance of ensuring that applicants are fully informed of the consequences of applying for immigration benefits. Nevertheless, DHS may share the information with other Federal, State, and local government agencies and other authorized organizations. *See* 5 U.S.C. 552a. DHS regulations already discuss the reasons an applicant's information may be released. *See* 6 CFR part 5, subpart B. In addition, the Form I–914, Application for T Nonimmigrant Status, Instructions clearly state that the information provided may also be made available as appropriate for law enforcement purposes or in the interest of national security as permitted by 8 U.S.C. 1367. Therefore, DHS made no changes in the final rule in response to this comment.

Comment: One commenter requested DHS add to the regulation that upon denial of an application, USCIS will inform an applicant that their privacy protections are void per 8 U.S.C. 1367 and will state the parties with whom the applicant's information may be shared.

Response: DHS declines to adopt this recommendation because protections

[38] *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 89 FR 6194 (Jan. 31, 2024).

[39] DHS published multiple new fee exemptions for T nonimmigrants as part of a comprehensive adjustment to all USCIS fees. *See, e.g.,* 89 FR 6392.

under 8 U.S.C. 1367(a)(2) only end when ''the application for relief is denied and all opportunities for appeal of the denial have been exhausted.'' 8 U.S.C. 1367(a)(2). Therefore, including such a notification in the denial notice would be premature.

Y. Public Comment and Responses on Statutory and Regulatory Requirements

Comment: Some commenters cited statistics on the number and demographics of trafficked victims within the United States. One commenter cited a survey entitled, ''YES Project; Youth Experiences Survey: Exploring the Sex Trafficking Experiences of Arizona's Homeless and Runaway Young Adults,'' conducted by Arizona State University (ASU) School of Social Work in 2014. The results of the survey found that 25 percent of the 246 homeless youth who were surveyed reported being victims of trafficking. Additionally, the commenter cited that the average age of entry to sex trafficking is 14 years old. Another commenter provided data on the total number of human trafficking victims (20.9 million people) as published in a U.S. News and World Reports opinion editorial.

Response: DHS appreciates the commenters' responses and has reviewed the cited data provided by commenters. Although DHS recognizes that the cited data supports the goals of this rule, DHS cannot confirm or deny the data with reliable accuracy and, therefore, does not use it in its analysis. The sampling frame of the YES Project survey included 246 homeless youth who received services from three Arizona-based young adult serving organizations.[40] Because the survey sampled only a small number of homeless youth and a small number of Arizona youth-based programs, DHS did not feel it was appropriate to make any general conclusions from such data.

Z. Biometrics

Comment: One commenter encouraged USCIS to accept biometrics taken by ICE rather than require a detained applicant to submit their biometrics at a USCIS Application Support Center.

Response: DHS appreciates the commenter's goal of increasing efficiency. USCIS is examining whether it has the legal authority and technical capability to submit to the Federal Bureau of Investigation biometrics collected by a criminal justice agency or from a non-criminal justice agency when the biometrics were collected for a different purpose from USCIS' purpose of use. DHS will continue to explore the feasibility of permitting USCIS to use biometrics collected by ICE for adjudication of applications for T nonimmigrant status from detained individuals, but declines to codify any changes at this time.

AA. Trafficking Screening, Training, and Guidance

1. Screening

Comment: One commenter requested that the regulation require DHS to conduct screening for trafficking victims by all levels of DHS, at each stage of the immigration process; require ICE to screen all detained individuals and provide release on bond or parole for anyone identified as a trafficking victim; and require OPLA attorneys to screen for trafficking both before issuing NTAs as well as for each case they prosecute. The commenter also stated that if an NTA has already been issued, the regulation should require that the ICE attorney immediately notify the court and opposing counsel (or, in absence of counsel, the Respondent), request a continuance or administrative closure, and refer the victim for trafficking support services and investigation.

Response: DHS appreciates the commenter's recommendation regarding screening efforts to protect victims of trafficking. In response to the White House National Action Plan to Combat Human Trafficking, there is a government-wide effort to update screening forms and protocols for all Federal officials who have the potential to encounter a human trafficking victim in the course of their regular duties that do not otherwise pertain to human trafficking. In support of this priority action, DHS co-chairs the interagency working group to document promising practices and identify opportunities to strengthen current efforts to screen for victims of human trafficking.[41] DHS declines to impose anything further via regulation at this time, as DHS believes these actions address the commenter's concerns.

2. Training

Comment: Several commenters requested DHS provide additional resources, support, and training to LEAs to help them understanding the nuances of trafficking. Specifically, they stated that LEAs should be trained to recognize the co-existence of trafficking and domestic violence. The commenters encouraged DHS to release a Law Enforcement Declaration Guide. They also suggested that DOJ's Office on Violence Against Women (OVW) should provide training, not DHS.

Response: DHS is committed to providing training and support to certifying officials and stakeholders on trafficking and the T visa program. As discussed extensively above, DHS acknowledges that domestic violence and trafficking may coexist, and has provided significant guidance in the Policy Manual to reflect this.

On October 20, 2021, USCIS published the first ever standalone T Visa Law Enforcement Resource Guide for certifying officials,[42] which clarifies the role and responsibility of certifying agencies in the T visa program, provides certifying officials with best practices for approaching the T visa certification process, and emphasizes that completing the declaration is consistent with a victim-centered approach. In addition, OVW provides leadership in developing the national capacity to ''reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.'' [43] OVW also supports the provision of training and technical assistance to assist service providers and the anti-trafficking field in ensuring successful for survivors of trafficking.[44]

As DHS is responsible for adjudicating T visas, and encounters trafficking victims in various ways, it is imperative DHS continues to train certifying officials and others about trafficking and the T visa.

3. Guidance

Comment: Several commenters requested DHS issue policy guidance to LEAs on referring potential victims to local nongovernmental organizations for assistance to identify, support, and protect trafficking victims.

Response: DHS already works with local governments and NGOs to assist

[40] Dominique Roe-Sepowitz, and Kristen Bracy, ''YES Project; Youth Experiences Survey: Exploring the Sex Trafficking Experiences of Arizona's Homeless and Runaway Young Adults.'' Office of Sex Trafficking Intervention Research (2014): ASU School of Social Work, *http://www.trustaz.org/downloads/rr-stir-youth-experiences-survey-report-nov-2014.pdf.* (Nov. 2014).

[41] ''DHS Strategy,'' *https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf.*

[42] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''T Visa Law Enforcement Resource Guide'' (2021), *https://www.uscis.gov/sites/default/files/document/guides/T-Visa-Law-Enforcement-Resource-Guide.pdf.*

[43] Office on Violence Against Women, U.S. Dep't of Justice, *https://www.justice.gov/ovw* (last visited Apr. 4, 2023).

[44] *See, e.g.,* Office on Violence Against Women, U.S. Dep't of Justice, ''OVW Fiscal Year 2022 Training and Technical Assistance Initiative Solicitation'' (2022), *https://www.justice.gov/ovw/page/file/1484676/download.*

trafficking victims and it is not necessary to address those efforts and guidance in this rule. DHS will consider this comment in future policy-making efforts.

BB. Miscellaneous Comments

1. Cases Involving Multiple Victims

Comment: One commenter requested DHS recognize the complexity and special nature of cases of groups of trafficking victims in an active and ongoing law enforcement investigation. Specifically, the commenter requested DHS create a mechanism to identify cases with multiple victims and to coordinate a streamlined evaluation of these victims' applications.

Response: DHS declines to adopt this recommendation, as each applicant is required to meet their own individual burden of proof, and each case is evaluated based on the evidence presented in that specific application. USCIS adjudicates each case on its own merits and declines to create processes to handle cases as a group. DHS thinks a group application process would be particularly difficult to administer considering the confidentiality protections each member of the group would have as required by 8 U.S.C. 1367.

2. Social Security Cards

Comment: Another commenter requested that DHS revise the Form I–914 and Form I–914, Supplement A, Application for Family Member of T–1 Recipient, to include a checkbox for applicants to indicate they wish to receive a Social Security card, similar to the checkbox for applicants to indicate they wish to receive an Employment Authorization Document (EAD). The commenter stated that it would allow trafficking survivors to obtain their Social Security cards in a more streamlined manner, and this would allow individuals to more easily access important services needed for emotional and financial stability.

Response: DHS acknowledges the concerns of the commenter regarding delays in victims obtaining benefits and appreciates there are significant benefits and efficiencies that could be achieved through this change; however, DHS declines to adopt this recommendation in this final rule. The Social Security Administration (SSA) issues Social Security cards, whereas USCIS issues EADs. Implementing this suggestion would require specific coordination with SSA, as well as updating USCIS systems. At this time, DHS does not have the required infrastructure or resources to adopt this recommendation. Moreover, rulemaking would not be required to implement this recommendation when the capabilities are in place. Therefore, DHS will keep this suggestion under consideration for possible, future form revision efforts and interagency coordination.

3. Victim-Blaming

Comment: One commenter stated that USCIS routinely blames the victim and says in RFE and denial notices that individuals who knowingly undertook the dangerous journey to the United States should have expected to experience forced labor or rape. The commenter wrote that blaming the victim should not be allowed by regulation and this language should be prohibited from RFEs.

Response: DHS appreciates the commenter's concern and has taken these comments into consideration. DHS has implemented a victim-centered approach, which is evident in the language of the regulation. Moreover, adjudicators are specifically trained to write RFEs in a manner that does not revictimize applicants. Officers regularly receive supervisory guidance. USCIS conducts ongoing training to adjudicators, and routinely evaluates trends that may require additional training or recalibration of procedures. As part of this rulemaking, USCIS is also updating related policy guidance on issuance of RFEs and the victim-centered approach. However, DHS declines to adopt the recommendation of including specific language in the regulation about what should be included in RFEs. General guidelines on the contents of official correspondence are more appropriately suited for policy guidance, and DHS feels that prohibiting specific language could unnecessarily restrict discretion to address case-specific circumstances.

4. Processing Times

Comment: One commenter stated that the new regulations should indicate that any case pending for more than 90 days should be considered to be outside an acceptable processing time, to allow attorneys to sue USCIS more easily when it unnecessarily delays adjudication of T visas. The commenter wrote that survivors need status and adjudication quickly.

Response: DHS understands and is sympathetic to the commenter's concern about survivors receiving status as quickly as possible and their frustrations with processing times but declines to implement an ''acceptable processing time'' due to various factors, including USCIS resource constraints. Each case presents a different set of facts that require highly technical analysis, and processing times may differ between cases. Some cases, due to circumstances outside of DHS's control, may not be able to be adjudicated within such a prescribed timeframe. DHS also notes the new BFD provisions address this concern, as their goal is to help stabilize bona fide applicants faster.

5. Motions To Reopen and Reconsider

Comment: One commenter stated that there is a lack of clarity in the regulations as to whether a Motion to Reopen and Reconsider filed by a T visa principal extends to their derivatives' applications. The commenter stated that their clients who were derivatives received NTAs related to denied T visa applications, although the associated T principal applicant had submitted a timely Motion to Reopen and Reconsider. This would indicate that a separate Motion to Reopen and Reconsider should be filed for each individual derivative application, despite the fact that this would be duplicative, and the T–1 application is the decisive factor in the adjudication of the derivative applications. The commenter recommended revising the regulation to state that a denial would not become final for the applicant or their derivatives until the administrative appeal is decided.

Response: DHS declines to adopt this recommendation. Each denied application, Forms I–914 and I–914A, requires a separately filed Form I–290B, Notice of Appeal or Motion as a Form I–290B cannot be filed for multiple receipts or filings. DHS emphasizes that in cases where an appeal of a T–1 application denial has been filed, the case is considered to remain administratively pending until a decision on appeal is made. If an applicant files an appeal for a denied Form I–914A, then that application would also be considered administratively pending until a final decision is rendered by the Administrative Appeals Office (AAO). A decision on appeal is then considered to be administratively final even if a subsequent motion is filed. 8 CFR 214.11(d)(10) (redesignated as 8 CFR 214.204(q)). In this case, an administratively final decision occurs when the AAO issues a decision affirming the denial of the Form I–914. The filing of an appeal of the Form I–914 denial would affect its own administratively pending status and not automatically place any denied Form I–914As in a pending status.

6. HHS Notification

Comment: Other commenters requested that USCIS notify HHS of any applicant on the waiting list.

Response: DHS declines to adopt this recommendation. Such inter-agency communications are generally not appropriate to be mandated in the Code of Federal Regulations. In addition, given the confidentiality protections and sensitive nature of T applications, DHS wishes to avoid mandating any communications that are not required by statute.

7. Program Integrity

Comment: One commenter expressed concern about oversight in the T visa program. They expressed concern that victims could cause harm to themselves and American society. The commenter wondered about vetting and expressed concern about exploitation of loopholes. The commenter also stated that Americans should be receiving the same type of or superior benefits first.

Response: DHS acknowledges the commenter's concerns; however, DHS implements the T visa program as authorized by Congress. Adjudicators evaluate each application on its own merits. DHS remains committed to the fair and just adjudication of all immigration benefit requests. At the same time, DHS vets all immigration benefit requests to ensure they are granted only to those who have established eligibility. This requires DHS to ensure that applicants do not obtain benefits for which they are not eligible under the law.

8. Annual Cap

Commenter: One commenter stated that the annual cap on T visas is inconsistent with Congress' intent when creating T nonimmigrant status relief. They stated DHS should provide comprehensive data about T visa application trends, and other information as necessary, to support any Congressional efforts to eliminate the T visa cap.

Response: DHS provides comprehensive data on the characteristics of T visa applications, and regularly posts quarterly updates on the number of applications received, approved, denied, and pending by fiscal year.[45] In addition, DHS is responsive to Congressional and stakeholder inquiries on T visa filing trends, including questions and concerns about the cap.

9. Continued Presence Adjudication

Comment: Another commenter encouraged DHS to ensure Continued Presence (CP) benefits are not arbitrarily adjudicated or delayed. They suggested DHS create regulations on CP that: direct DHS to grant CP within 60 days of receiving a credible report of human trafficking; detail a uniform, fair, and timely process for granting or denying CP, with a focus on providing the maximum protections envisioned by Congress; and to the extent possible under legislation, allow DHS to receive CP requests from any law enforcement agency.

Response: DHS appreciates the commenter's concerns but declines to address them in this rulemaking effort, particularly because CP was not included in the IFR. The CCHT, which processes all requests for CP, implements a victim-centered approach. DHS declines to impose a deadline on adjudicating CP, given shifting priorities and resource allocations. CP may already be requested by any LEA with the authority to investigate or prosecute human trafficking, including local law enforcement.[46]

10. Comment Period

Comment: One commenter requested that DHS and other agencies allow 60 days for comment on proposed regulations. The commenter also requested that DHS establish a regular schedule for updating regulations when statutory changes are made in order to reflect legislative changes.

Response: DHS generally publishes proposed rules for 60 days of public comments as provided in section 6.(a)(1) of Executive Order 12866, Regulatory Planning and Review, unless exigent circumstances justify a 30-day comment period as permitted by 5 U.S.C. 553. DHS also published regulations as soon as practicable after new legislation is passed that requires a change in the applicable regulations. This comment requires no change to the final rule.

CC. Out of Scope Comments

Several comments were submitted that did not relate to the substance of the Final Rule. One commenter provided a list of general criticisms of USCIS in general and its administration of the T nonimmigrant program as follows:

- USCIS generally ignores expedite requests.
- USCIS regularly dismisses labor trafficking, particularly of men, as ''mere exploitation'' without defining what the difference between that and trafficking may be.
- USCIS uses boilerplate RFEs and denial letters that are victim blaming and dismissive of the survivor's experience.
- USCIS denial notices have stated that less weight would be given where an individual initiated therapy after issuance of an RFE, even though USCIS made it very difficult for a person to be able to pay for therapy, by refusing to review prima facie/bona fides and issue a determination that could help the person access services. The commenter wrote that this blames the victim for something outside their control.

Response: DHS acknowledges the commenter's feedback but notes that their suggestions are not about and do not affect the substantive content of this rulemaking. DHS makes no changes to the final rule in response to these comments.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866, 13563, and 14094

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' as defined under section 3(f) of E.O. 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed $200 million in

[45] *See* U.S. Citizenship and Immig. Servs., U.S. Dep't of Homeland Security, ''Characteristics of T Nonimmigrant Status (T Visa) Applicants Fact Sheet'' (2022), *https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Characteristics of T Nonimmigrant Status (T Visa) Applicants Fact Sheet'' (2023), *https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet_FY08_FY22.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Immigration and Citizenship Data,'' *https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data* (last visited Feb. 15, 2023).

[46] *See* Center for Countering Human Trafficking, U.S. Dep't of Homeland Security, ''Continued Presence Resource Guide'' (2023), *https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf.*

any year of the analysis. Accordingly, OMB has reviewed this rule.

1. Summary

As discussed further in the preamble, this final rule adopts the changes from the 2016 interim rule with some modifications. The rationale for the 2016 interim rule and the reasoning provided in the preamble to the 2016 interim rule remain valid with respect to these regulatory amendments, therefore, DHS adopts such reasoning to support this final rule. In response to the public comments received on the 2016 interim rule, DHS has modified some provisions for the final rule. DHS has also made some technical changes in the final rule.

This final rule clarifies some definitions and amends provisions regarding bona fide determinations (BFD) to implement a new process. This final rule also clarifies evidentiary requirements for hardship, codifies the evidentiary standard, and codifies the standard of proof that applies to the adjudication of an application for T nonimmigrant status. DHS also made technical changes to the organization and terminology of 8 CFR part 214.

For the 10-year period of analysis of the rule using the post-IFR baseline of the rule, DHS estimates the annualized costs of this rule will be $807,314 annualized at 3- and 7 percent. Table 1 provides a more detailed summary of the final rule provisions and their impacts.

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Table 1. Summary of Provisions and Impacts of the Final Rule Using the Post-IFR Baseline			
Final Rule Provisions	Description of Change to Provision	Estimated Costs of Provisions	Estimated Benefits of Provisions
• Bona Fide Determination (BFD) Process Modifications.	• The new streamlined process will include case review and background checks. • Once an individual whose application has been deemed bona fide files a Form I-765, Application for Employment Authorization, DHS will consider whether the applicant warrants a favorable exercise of discretion and will be granted deferred action and a BFD employment authorization document.	Quantitative: Applicants - • None. • DHS estimates the additional cost for completing and filing Form I-765 will be $807,314 annually. DHS/USCIS - • None. Qualitative: Applicants – • None. DHS/USCIS – • DHS may incur additional costs due to the time to review evidence; however, DHS cannot estimate how many applications would take any additional time.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • The primary benefits of this provision to applicants are the opportunity to receive work authorization sooner and the ability to receive forbearance from removal (deferred action) while the T visa application is pending. Likewise, applicants with a final order of removal will receive a stay of removal more quickly. DHS/USCIS – • The benefit of this provision is that it prioritizes efficient T visa BFD review, protects the integrity of the BFD review by requiring review of initial required evidence and assessment of routine background checks.
• Clarifications to eligibility requirements.	• DHS is also clarifying the eligibility requirements that apply to the adjudication of an application for a T visa.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – Based on the additional clarifications regarding eligibility requirements for T	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • None. DHS/USCIS –

		nonimmigrant status, USCIS estimates that there will be a reduction in Requests for Evidence (RFEs). This reduction will save the applicant time and will allow for their application to be adjudicated earlier. DHS/USCIS – • None.	• USCIS estimates that there will be a reduction in RFEs, because applicants will be aware of the evidentiary requirements from the outset, resulting in a decrease in time per adjudication.
• Technical Changes, Clarifying Definitions, and other Qualitative Impacts in this Final Rule.	• This rule moves the regulations for T nonimmigrant status to a separate subpart of 8 CFR part 214 to reduce the length and density of part 214, while making it easier to locate specific provisions. • In addition to the re-numbering and re-designating of paragraphs, the rule has reorganized and modified some sections to improve readability, such as in new sections.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • The benefit of these changes is to make the application process clearer for T visa applicants. DHS/USCIS – • None.

In addition to the impacts summarized above, and as required by OMB Circular A–4, Table 2 presents the prepared accounting statement showing the costs and benefits to each individual affected by this final rule using the post-IFR baseline.[47]

[47] Office of Mgmt. & Budget, Exec. Office of the President, ''OMB Circular A–4'' (2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

Table 2. OMB A-4 Accounting Statement ($ millions, FY 2021) **Time Period: FY 2023 through FY 2032** Post-IFR Baseline				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	N/A			Regulatory Impact Analysis ("RIA")
Annualized quantified, but unmonetized, benefits	N/A			RIA
Unquantified Benefits	This rule will allow certain T visa applicants the opportunity to receive work authorization sooner and to receive forbearance from removal (deferred action) while their T visa applications are pending. This rule prioritizes efficient T visa BFD review and protects the integrity of the BFD review by requiring review of initial required evidence and assessment of routine background checks.			RIA
COSTS				
Annualized monetized costs (7%)	**$0.81**	N/A	N/A	RIA
Annualized monetized costs (3%)	**$0.81**	N/A	N/A	
Annualized quantified, but unmonetized, costs	N/A			
Qualitative (unquantified) costs	USCIS estimates that there will be a reduction in RFEs. This reduction will save the applicant time and will allow USCIS to adjudicate their applications earlier. The reduction in RFEs will also save USCIS adjudicators time because they will more frequently have all required information at the outset of adjudication. This will allow USCIS to adjudicate applications more efficiently. These are all seen as unquantified cost savings. DHS may incur additional costs due to the time to review evidence from the new streamlined process; however, DHS cannot estimate how many applications would take additional time.			RIA
TRANSFERS				
Annualized monetized transfers (7%)	**N/A**	N/A	N/A	
Annualized monetized transfers (3%)	**N/A**	N/A	N/A	
From whom to whom?	From the fee-paying populations to Form I-914 applicants.			
Miscellaneous Analyses/Category	***Effects***			***Source Citation***
Effects on State, local, or tribal governments	None			RIA
Effects on small businesses	None			RIA
Effects on wages	None			None
Effects on growth	None			None

In addition to the impacts summarized above, and as required by OMB Circular A–4, table 3 presents the prepared accounting statement showing the costs and benefits to each individual affected by this final rule using the pre-IFR baseline.[48]

[48] Office of Mgmt. & Budget, Exec. Office of the President, ''OMB Circular A–4'' (2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

Table 3. OMB A-4 Accounting Statement ($ millions, FY 2021) **Time Period: FY 2017 through FY 2032,** Pre-IFR Baseline				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	N/A	Regulatory Impact Analysis ("RIA")		
Annualized quantified, but unmonetized, benefits	N/A	RIA		
Unquantified Benefits	Provided clarity and consistency in DHS practice with DHS regulations will lead to a qualitative benefit providing transparency to both the victims of trafficking and USCIS adjudicators. Provided a broader definition of an eligible family member and may increase the number of eligible family members. Provided a benefit by acknowledging the significance of an applicant's maturity in understanding the importance of participating with an LEA. Victims who are likely to become a public charge are able to apply for T nonimmigrant status and receive the benefits associated with that status. Provided T nonimmigrants status for an additional year with the possibility of extension. Provided a broader definition of physical presence on account of trafficking and may increase the number of eligible applicants. Provided a qualitative benefit by removing an age-out restriction, allowing a principal applicant parent to apply for a child as a derivative beneficiary, even if the child reaches age 21 while the principal's T-1 application is pending. Provided a qualitative benefit by enabling the health and well-being of a minor victimized by trafficking. These victims also obtain federally funded benefits and services.	RIA		
COSTS				
Annualized monetized costs (7%)	N/A	RIA		
Annualized monetized costs (3%)	N/A			
Annualized quantified, but unmonetized, costs	N/A			
Qualitative (unquantified) costs	N/A	RIA		
TRANSFERS				
Annualized monetized transfers (7%)	N/A	RIA		
Annualized monetized transfers (3%)	N/A			

From whom to whom?		
Miscellaneous Analyses/Category	***Effects***	***Source Citation***
Effects on State, local, or tribal governments	None	RIA
Effects on small businesses	None	RIA
Effects on wages	None	None
Effects on growth	None	None

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2. Background and Population

As stated in the 2016 interim final rule, Congress created T nonimmigrant status in the Trafficking Victims Protection Act (TVPA) of 2000. T nonimmigrant status is available to victims of a severe form of trafficking in persons who comply with any reasonable request for assistance from law enforcement agencies (LEAs) in investigating or prosecuting the perpetrators of these crimes and who meet other requirements. T nonimmigrant status provides temporary immigration benefits (nonimmigrant status and employment authorization) and the ability to adjust to lawful permanent resident status, provided that established criteria are met, and a favorable exercise of discretion is warranted. Additionally, if a victim of a severe form of trafficking in persons obtains T nonimmigrant status, then certain eligible family members may also obtain T nonimmigrant status.[49]

Table 4 provides the number of T nonimmigrant application receipts, approvals, and denials for principals and derivative family members for FY 2017 through FY 2022. Although the maximum annual number of T nonimmigrant visas that may be granted is 5,000 for T–1 principal applicants per fiscal year[50] Table 4 shows that based on a 6-year annual average, DHS receives 2,889 Form I–914 applications (both Form I–914 and I–914 Supplement A) per year.

Table 4. USCIS Processing Statistics for Form I-914[1] and Form I-914 Supplement A FY 2017 through FY 2022.

	VICTIMS (T-1), Form I-914			**FAMILY OF VICTIMS (T-2 through T-6), Form I-914A**			**Form I-914 and Form I-914A TOTALS**		
FY	**Receipts**	**Approved**	**Denied**	**Receipts**	**Approved**	**Denied**	**Receipts**	**Approved**	**Denied**
2017	1,141	672	226	1,118	690	115	2,259	1,362	348
2018	1,666	580	310	1,313	698	261	2,979	1,278	571
2019	1,302	495	390	1,029	464	236	2,331	959	626
2020	1,207	1,041	798	992	1,013	526	2,199	2,054	1,324
2021	1,596	826	564	1,033	623	379	2,629	1,449	943
2022	3,070	1,715	389	1,865	1,319	247	4,935	3,034	636
6-year Total	**9,982**	**5,329**	**2,677**	**7,350**	**4,807**	**1,764**	**17,332**	**10,136**	**4,448**
6-year Annual Average	**1,664**	**888**	**446**	**1,225**	**801**	**294**	**2,889**	**1,689**	**741**

Notes:

[1]Approved and denied volumes may not add up to the receipts in a given fiscal year because the processing and final adjudication decision for T nonimmigrant status applications may overlap fiscal years, due to backlogs. USCIS records indicate that processing an application for T nonimmigrant status requires an estimated 6 to 9 months. Data source for the table: Performance Analysis System (PAS), USCIS Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB), March 2023& USCIS Analysis.

Table 5 shows the number of receipts received with and without Form G–28, FY 2017 through FY 2022. Based on a 6-year annual average, DHS estimates the annual average receipts to be 2,909 and the annual average number of Form G–28 receipts to be 2,673. Based on these figures, DHS estimates that 92 percent of Form I–914 receipts are filed by applicants represented by an attorney or accredited representative. The data in table 4 and table 5 differ due to the dates the data were pulled and the different systems from which they were pulled. Both data sources are accurate; however, they use different criteria/assumptions to extract the results from USCIS sources. Estimates in table 4 are based

[49] The current T nonimmigrant categories are T–1 (principal applicant), T–2 (spouse), T–3 (child), T–4 (parent), T–5 (unmarried sibling under 18 years of age); and T–6 (adult or minor child of a principal's derivative beneficiary).

[50] There is no statutory cap for grants of derivative T nonimmigrant status or visas.

on vintage data while results in table 5 continue to fluctuate in real-time, sometimes even in prior fiscal years, as updates are made in the administrative data.

Table 5. Total Form I-914 and Form I-914 Supplement A Receipts with and without Form G-28, FY 2017 through FY 2022.

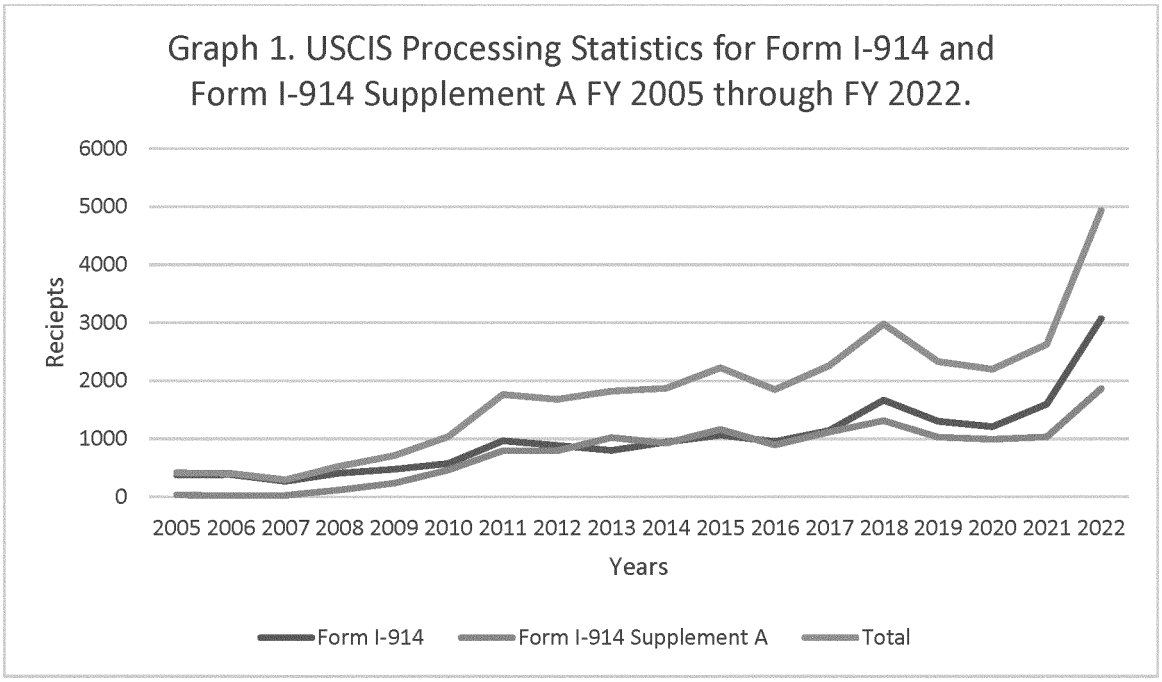
FY	Form G-28 Receipts Received without a Form I-914 and Form I-914 Supplement A	Form G-28 Receipts Received with a Form I-914 and Form I-914 Supplement A	Total Form I-914 and Form I-914 Supplement A Receipts	Percentage of Forms I-914 and Form I-914 Supplement A filed with Form G-28
2017	191	2,128	2,319	92%
2018	415	2,516	2,931	86%
2019	164	2,101	2,265	93%
2020	135	2,010	2,145	94%
2021	166	2,617	2,783	94%
2022	343	4,667	5,010	93%
6-year Total	**1,414**	**16,039**	**17,453**	**92%**
6-year Annual Average	**236**	**2,673**	**2,909**	**92%**

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. May 31, 2023 & USCIS Analysis.

DHS acknowledges that there was a significant increase in receipts in FY 2022 as shown in table 4 and table 5. While there was a sharp increase in this single year, DHS could not build a forecast solely based on the increase during a single year. This analysis uses a 6-year annual average as an estimate to calculate the total costs of this rule.

As Graph 1 shows, since FY 2005 there has been a gradual increase in receipts until FY 2022. On October 20, 2021, USCIS added comprehensive policy guidance on T visas to its Policy Manual.[51] The goal of the Policy Manual Update was to provide consolidated guidance as to how USCIS approaches T visa adjudication and interprets eligibility criteria. The Policy Manual offers more comprehensive guidance than previous USCIS policy sources and provides interpretation and examples of previously undefined terms and concepts. This will hopefully assist practitioners better identify trafficking survivors who are eligible for a T visa. This could be one possible reason that there were increased receipts in FY 2022.

[51] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, PA–2021–22 Policy Alert, ''T Nonimmigrant Status for Victims of Severe Forms of Trafficking in Persons'' (Oct. 20, 2021), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211020-VictimsOfTrafficking.pdf.*



3. Updates to the Economic Analysis Since the 2016 Interim Rule, Pre-IFR Baseline

In this final rule, DHS has updated several definitions to provide clarity and ensure consistency with the Trafficking Victims Protection Act (TVPA) of 2000. DHS has amended provisions regarding bona fide determinations (BFD), which reflect a modified process. This process will now allow applicants for T nonimmigrant status to file a Form I–765, Application for Employment Authorization, concurrently with their Form I–914.

DHS also codified the evidentiary standard and standard of proof that apply to the adjudication of a T visa application. For T nonimmigrants, this rule retains the standard that applicants may submit any credible evidence relating to their T visa applications for USCIS to consider. This is presented as a qualitative benefit to both USCIS and T nonimmigrant applicants.

The pre-IFR baseline is shown below with zero costs to the government or to the applicants. Because the pre-IFR baseline is identical to the post-IFR baseline, consistent with table 7, it is not useful to do a complete pre-IFR baseline and the analysis will focus on the post-IFR baseline.

Congress created the T nonimmigrant status in the TVPA of 2000. The TVPA provides various means to combat trafficking in persons, including tools for LEAs to effectively investigate and prosecute perpetrators of trafficking in persons. The TVPA also provides protection to victims of trafficking through immigration relief and access to Federal public benefits. DHS published an interim final rule on January 31, 2002, implementing the T nonimmigrant status and the provisions put forth by the TVPA 2000.[52] The 2002 interim final rule established the eligibility criteria, application process, evidentiary standards, and benefits associated with obtaining T nonimmigrant status.

T nonimmigrant status is available to eligible victims of severe forms of trafficking in persons who comply with any reasonable request for assistance from LEAs in investigating and prosecuting the perpetrators of these crimes or otherwise meet the statutory criteria. T nonimmigrant status provides temporary immigration benefits (nonimmigrant status and employment authorization) and a pathway to permanent resident status, provided that established criteria are met. Additionally, if a victim obtains T nonimmigrant status, certain eligible family members may also apply to obtain T nonimmigrant status.[53]

[52] *See* 67 FR 4784.

[53] The current T nonimmigrant categories are: T–1 (principal applicant), T–2 (spouse), T–3 (child), T–4 (parent), and T–5 (unmarried sibling under 18 years of age). The interim rule created a new T nonimmigrant category, T–6 (adult or minor child of a principal's derivative).

Table 6. USCIS Processing Statistics for Form I-914[1] and Form I-914 Supplement A FY 2005 through FY 2016.

	VICTIMS (T-1), Form I-914			FAMILY OF VICTIMS (T-2 through T-6), Form I-914 Supplement A			Form I-914 and Form I-914 Supplement A TOTALS		
FY	Receipts	Approved	Denied	Receipts	Approved	Denied	Receipts	Approved	Denied
2005	379	113	321	34	73	21	413	186	342
2006	384	212	127	19	95	45	403	307	172
2007	269	287	106	24	257	64	293	544	170
2008	408	243	78	118	228	40	526	471	118
2009	475	313	77	235	273	54	710	586	131
2010	574	447	138	463	349	105	1,037	796	243
2011	967	557	223	795	722	137	1,762	1,279	360
2012	885	674	194	795	758	117	1,680	1,432	311
2013	799	848	104	1,021	975	91	1,820	1,823	195
2014	944	613	153	925	788	105	1,869	1,401	258
2015	1,062	610	294	1,162	694	192	2,224	1,304	486
2016	953	750	194	895	986	163	1,848	1,736	357

Notes: Approved and denied volumes may not add up to the receipts in a given fiscal year because the processing and final decision for T nonimmigrant status applications may overlap fiscal years. USCIS records indicate that processing an application for T nonimmigrant status requires an estimated 6 to 9 months. Data for T-6 applications has been collected since January 2014 and is included in FY 2014 – FY 2016.

Data source for the table: Performance Analysis System (PAS), USCIS Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB).

Table 6 provides the number of T nonimmigrant application receipts, approvals, and denials for principal victims and derivative family members for FY2005 through FY2016. The maximum annual number of T nonimmigrant visas that may be granted is 5,000 for T–1 principal applicants per fiscal year.

From the publication of the interim final rule in 2002 through 2016, Congress passed various statutes amending the original TVPA 2000. These include: the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). After the passage of each of the statutes, as noted in section I.A.1 of this preamble, USCIS issued policy and guidance memoranda to both implement the provisions of the Acts and to ensure compliance with the legal requirements of the Acts.[54]

The 2016 interim final rule codified DHS policy and guidance from these statutes into the Code of Federal Regulations (CFR). The statutory changes from TVPRA 2003, TVPRA 2008, and VAWA 2005 are reflected in table 7, below. Codifying existing USCIS policy and guidance ensures that the regulations are consistent with the applicable legislation, and that the general public has access to these policies through the CFR without locating and reviewing multiple policy memoranda. DHS provides the impact of these provisions in table 7 assuming a pre-IFR baseline per OMB Circular A–4 requirements.

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[54] See U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Trafficking Victims Protection Reauthorization Act of 2003,'' (2004); *see also* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to AFM Chapters 23.5 and 39 (AFM Update AD10–38)'' (2010), *https://www.uscis.gov/sites/default/files/document/memos/William-Wilberforce-TVPRAct-of-2008-July-212010.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Extension of Status for T and U Nonimmigrants; Revisions to Adjudicator's Field Manual (AFM) Chapter 39.1(g)(3) and Chapter 39.2(g)(3) (AFM Update AD11–28)'' (2011), *https://www.uscis.gov/sites/default/files/document/memos/exten.status-tandu-nonimmigrants.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands'' (2015), *https://www.uscis.gov/sites/default/files/document/memos/2015-0415-TNonimmigrant-TVPRA.pdf.*

Table 7. Summary of Impacts to the Regulated Population of TVPRA 2003, TVPRA 2008 and VAWA 2005 Statutory Changes Codified by this Interim Rule

Provision	Current policy	Expected cost of the interim rule	Expected benefit of the interim rule	Actual Outcome of Changes
Expanding the definition and discussion of LEA (added by VAWA 2005)	LEA includes State and local law enforcement agencies	None	Provides clarity and consistency in DHS practice with DHS regulations will lead to a qualitative benefit providing transparency to both the victims of trafficking and USCIS adjudicators.	There were no costs associated with this change. This provision provided clarity to the victims and adjudicators.
Removing the requirement that eligible family members must face extreme hardship if the family member is not admitted to the United States or was removed from the United States (removed by VAWA 2005)	Family members may be eligible for T nonimmigrant status without having to show extreme hardship	No additional costs, other than the opportunity cost of time to file Form I-914 Supplement A. However, DHS reiterates that this is a voluntary provision	Provides a broader definition of an eligible family member and may increase the number of eligible family members.	There were no costs associated with this change. This provision provided increased the number of eligible family members.
Raising the age at which the applicant must comply with any reasonable request by an LEA for assistance in an investigation or prosecution of acts of trafficking in persons (added by TVPRA 2003)	The provision increased the minimum age requirement from 15 years to 18 years of age	None	Provides a benefit by acknowledging the significance of an applicant's maturity in understanding the importance of participating with an LEA.	There were no costs associated with this change.

Exempting T nonimmigrant applicants from the public charge ground of inadmissibility (added by TVPRA 2003)	DHS may grant T nonimmigrant status to applicants even if they are likely to become a public charge	No additional costs, other than the opportunity cost of time to file Form I-914 and if necessary, Supplement B	Victims who are likely to become a public charge are able to apply for T nonimmigrant status and receive the benefits associated with that status.	There were no costs associated with this change. This provision allowed victims who were likely to become a public charge
Exemptions to an applicant's requirement, to comply with any reasonable request by an LEA (added by TVPRA 2008)	Applicants are exempt from the requirement to comply with any reasonable request by an LEA in cases where the applicant is unable to comply, due to physical or psychological trauma	None	Provides a benefit by acknowledging the significance of an applicant's mental capacity in understanding the importance of participating with an LEA.	There were no costs associated with this change.
Limiting duration of T nonimmigrant status but providing extensions for LEA need, for exceptional circumstances, and for the pendency of an application for adjustment of status (VAWA 2005 and TVPRA 2008)	Extends the duration of T nonimmigrant status from 3 years to 4 years, but limits the status to 4 years unless an applicant can qualify for an extension	None	Provides T nonimmigrants status for an additional year with the possibility of extension.	There were no costs associated with this change.
Expanding the regulatory definition of physical presence on account of trafficking (added by TVPRA 2008)	DHS will consider victims as having met the physical presence requirement if they were allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator trafficking for purposes of eligibility for T nonimmigrant classification	None	Provides a broader definition of physical presence on account of trafficking and may increase the number of eligible applicants.	There were no costs associated with this change. This provision allowed more applicants to be eligible.

Allowing principal applicants under 21 years of age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years and parents as eligible derivative family members (added by TVPRA 2003)	Unmarried siblings under 18 years of age and parents of the principal applicant may now be eligible for T nonimmigrant status under the T-4 and T-5 derivative category, if the principal applicant is under age 21	No additional costs, other than the opportunity cost of time to file Form I-914 Supplement A on behalf of the principal's unmarried siblings under 18 years of age and parents	Provides a broader definition of eligible family member and may increase the number of eligible family members.	There were no costs associated with this change. This provision allowed more family members to be eligible.
Providing age-out protection for child principal applicants to apply for eligible family members (added by TVPRA 2003)	A principal applicant who was under 21 years of age at the time of filing the Form I-914 can file Form I-914 Supplement A on behalf of eligible family members, including parents and unmarried siblings under age 18, even if the principal alien turns 21 years of age before the principal T-1 application is adjudicated	None	Provides a qualitative benefit by removing an age-out restriction, allowing principal applicants to apply for parents and unmarried siblings under age 18, even if the principal applicant turns 21 years of age before the T-1 application is adjudicated.	There were no costs associated with this change. This provision allowed more applicants to be eligible.
Providing age-out protection for child derivatives (added by TVPRA 2003)	An unmarried child of the principal who was under age 21 on the date the principal applied for T-1 nonimmigrant status may continue to qualify as an eligible family member, even if he or she reaches age 21 while the T-1 application is pending	None	Provides a qualitative benefit by removing an age-out restriction, allowing a principal applicant parent to apply for a child as a derivative beneficiary, even if the child reaches age 21 while the principal's T-1 application is pending.	There were no costs associated with this change. This provision allowed more applicants to be eligible.

Allowing principal applicants of any age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years of age and parents as eligible family members if the family member faces a present danger of retaliation as a result of the principal applicant's escape from a severe form of trafficking or cooperation with law enforcement (added by TVPRA 2008)	Allows any principal applicant, regardless of age, to apply for derivative T nonimmigrant status for parents or unmarried siblings under 18 years of age if they face a present danger of retaliation	No additional costs, other than the opportunity cost of time to file Form I-914 Supplement A, on behalf of the derivative's unmarried siblings under 18 years of age and parents	If eligible, unmarried siblings under 18 years of age and parents of principal applicants may qualify for T-4 and T-5 nonimmigrant status and obtain the immigration benefits that accompany that status. In addition, LEAs may benefit if more victims come forward to report trafficking crimes.	There were no costs associated with this change. This provision allowed more applicants to be eligible.
Care and custody of unaccompanied children with the HHS (added by TVPRA 2008)	Federal agencies must notify HHS upon apprehension or discovery of an unaccompanied child or any claim or suspicion that an individual in custody is under 18 years of age. Minors are eligible to receive federally funded benefits and services as soon as they are identified by HHS as a possible victim of trafficking	DHS may have some additional administrative costs associated with informing HHS of unaccompanied children. As a result, HHS may have some additional costs in providing benefits and services to the affected minors	Provides a qualitative benefit by enabling the health and well-being of a minor victimized by trafficking. These victims also obtain federally funded benefits and services.	There were no costs recorded with this change.

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In calculating the additional costs of the increased time burden to Form I–765, DHS uses updated wage and fiscal year data. Wages were updated according to the occupational data released by the Bureau of Labor Statistics (BLS). The 2016 interim rule used 2015 BLS data, and now more current data is available from 2022. The 2016 interim rule used fiscal year filing data from FY 2005 through FY 2015, and DHS has updated this analysis by using filing data from FY 2017 through FY 2022.

DHS is increasing the time burden for Form I–765 by 4 minutes from 4 hours and 30 minutes (4.5 hours) per response to 4 hours and 34 minutes (4.56 hours) to reflect the current Form I–765 estimated time burden. DHS is clarifying the Form I–765 instructions, increasing the time burden of the form, which includes the time for reviewing instructions, gathering the required documentation, and completing and submitting the request.

4. Costs, and Benefits of the Final Rule

(a) Bona Fide Determination Process

Although an extensive BFD process was codified in the 2016 IFR, such a process has not been consistently implemented in the last decade outside of litigation cases due to resource constraints. After this rule takes effect, on a routine basis USCIS will review an applicant's filing for completeness and conduct background checks to determine if the application is bona fide. If an applicant has not already filed a Form I–765, they will be notified that they may do so. Adjudicators will then consider whether an applicant warrants deferred action as a matter of discretion. This process will benefit the applicants with bona fide filings, as they will be invited to apply for an EAD when they receive their bona fide determination letter. Applicants may also choose to apply for an EAD at the same time they submit their Form I–914. USCIS plans to implement a process concurrently with this rule (*see* new 8 CFR 214.205 on the Bona Fide Determination Process) taking effect under which future applicants may file Form I–765 at the same time as their Form I–914. This will benefit the applicants because they will be more likely to apply for an EAD simultaneously and therefore be eligible to work sooner than they would have previously. This concurrent Form I–765 policy could be paused if, in the future, USCIS is able to process Form I–914 from intake to approval within a time frame that obviates the need for employment while the application is being adjudicated.

USCIS estimates that 100 percent of applicants will file Form I–765 concurrently with their Form I–914, so they may receive employment authorization quickly if USCIS determines that their T visa application is bona fide, that they warrant a favorable exercise of discretion to be granted deferred action, and that they warrant a discretionary grant of employment authorization, rather than waiting for USCIS to make a bona fide determination and inviting them to submit a Form I–765. DHS does not expect material impacts to the U.S. labor market from this final rule. DHS believes these impacts would accrue as benefits to the T visa applicants who apply for an EAD and their families.

Table 8 shows that the average adjudication timeframe from FY 2017 through 2022 was around 458 days from the time an applicant submits their T visa application, to the time they receive a final decision. The goal of this rule is that all applicants will apply for their BFD-based EAD at the same time they apply for their T visa. This will allow the applicants with bona fide filings to begin working earlier than they would have previously. DHS uses the 6-year annual average because it typically takes 1.25 years [55] for an adjudicative decision.[56]

Table 8. Average Number of Days for Form I-914 Application to Notice of Decision of Approval or Denial, FY 2017 through FY 2022.

FY	Form I-914	Form I-914A	Average
2017	430	457	444
2018	625	615	620
2019	547	498	523
2020	359	309	334
2021	486	514	500
2022	303	347	325
6-year Total	**2,750**	**2,740**	**2,746**
6-year Annual Average	**458**	**457**	**458**

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. June 07, 2023 & USCIS Analysis.

This new process would not add a large cost to the government because the process has been in place since 2002, when USCIS began adjudicating Form I–914. However, this change could add additional time to review cases. DHS cannot estimate how many additional applications would take additional time to review. DHS anticipates any particular case requiring additional time should not take more than an additional 15 to 30 minutes. This additional time will be a cost to USCIS.

As a part of the BFD process, if the statutory cap prevents further grants of T–1 nonimmigrant status, all BFD recipients will be placed on a waiting list. USCIS is unable to determine if, when, or for what duration T visa approvals will grow to exceed the annual statutory cap, but recent volumes depicted in Chart 1 suggest this occurrence is possible in the future. Past growth in the number of T visa approvals alone is not indicative of continued growth. While DOJ's Bureau of Justice Statistics collects data and reports statistics on human trafficking, they do not forecast trends.[57] Consequently, DHS cannot predict the contribution of growing T visa awareness to future volumes. The placement of individuals on the waiting list results in nominal cost to USCIS, as BFD recipients are simply moved to the waiting list once the cap is reached. In addition, applicants with a favorable BFD may be considered for deferred action and may request employment authorization based on a grant of deferred action. This change will benefit

[55] Calculation: 458 days/365 days in a year = 1.25 years.

[56] This analysis also assumes that the adjudication timeframe for Form I–914 will continue to require several months for the foreseeable future and thus not remove the incentive for simultaneous filing of Form I–765 that the faster EAD provides.

[57] *See* Bureau of Justice Statistics, U.S. Dep't of Justice, ''Human Trafficking Data Collection Activities, 2022,'' *https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/htdca22.pdf* (last visited Sept. 27, 2023).

applicants because if they are unable to be approved for a T visa they may now receive deferred action and have the possibility to request employment authorization, allowing them to stay and lawfully work in the United States.

(b) Additional Time Burden for Form I–765

The revised BFD process allows T visa applicants the opportunity to apply for their BFD EAD concurrently with their T visa application. Under the revised BFD process, USCIS will review an applicant's file for completeness and complete background checks to determine if the applicant is bona fide. If an applicant has not already filed a Form I–765, they will be invited to do so. T visa applicants did not previously file Form I–765 for employment authorization incident to T nonimmigrant status. DHS estimates that all T–1 visa applicants will now apply for a BFD-based EAD with their T visa application. Although T–1 visa applicants pay no fee to file Form I–765, DHS estimates the current public reporting time burden is 4 hours and 30 minutes (4.5 hours) for paper submissions, which includes the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[58] DHS acknowledges that T visa applicants filing Form I–765 may elect to acquire legal representation.

Table 9 shows the total receipts received for Form I–914 for FY 2017 through FY 2022. The table also shows the number of Form I–914 receipts filed with an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the number of Forms I–765 that are filed by an attorney or accredited representative and thus estimate the opportunity costs of time for an applicant, attorney, or accredited representative to file each form. Based on a 6-year annual average, DHS estimates the annual average receipts of Form I–765 to be 2,909, with 92 percent of applications filed by an attorney.

Table 9. Total Form I-914 and Form I-914 Supplement A Receipts with and without Form G-28, FY 2017 through FY 2022.

FY	Form G-28 Receipts Received without a Form I-914 and Form I-914 Supplement A	Form G-28 Receipts Received with a Form I-914 and Form I-914 Supplement A	Total Form I-914 and Form I-914 Supplement A Receipts	Percentage of Forms I-914 and Form I-914 Supplement A filed with Form G-28
2017	191	2,128	2,319	92%
2018	415	2,516	2,931	86%
2019	164	2,101	2,265	93%
2020	135	2,010	2,145	94%
2021	166	2,617	2,783	94%
2022	343	4,667	5,010	93%
6-year Total	**1,414**	**16,039**	**17,453**	**92%**
6-year Annual Average	**236**	**2,673**	**2,909**	**92%**

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. June 07, 2023 & USCIS Analysis.

Table 10 shows the total receipts received for Form I–914 for FY 2017 through FY 2022 for only the T–1 classification. The table also shows the number of Form I–914 receipts filed with an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the number of Form I–765 that are filed by an attorney or accredited representative and thus estimate the opportunity costs of time for an applicant, attorney, or accredited representative to file each form. Based on a 6-year annual average, DHS estimates the annual average receipts of Form I–765 to be 1,664, with 92 percent of applications filed by an attorney.

[58] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Instructions for Application for T Nonimmigrant Status (Form I–914), OMB No. 1615–0020 (expires Dec. 31, 2023) *https://www.uscis.gov/sites/default/files/document/forms/i-914instr.pdf* (time burden estimate in the Paperwork Reduction Act section).

Table 10. Total Form I-914, T-1 Receipts with and without Form G-28, FY 2017 through FY 2022.				
FY	**Form G-28 Receipts Received without a Form I-914**	**Form G-28 Receipts Received with a Form I-914**	**Total Form I-914 Receipts**	**Percentage of Forms I-914 filed with Form G-28**
2017	75	1,102	1,177	94%
2018	295	1,319	1,614	82%
2019	73	1,178	1,251	94%
2020	64	1,082	1,146	94%
2021	93	1,609	1,702	95%
2022	218	2,877	3,095	93%
6-year Total	**818**	**9,167**	**9,985**	**92%**
6-year Annual Average	**136**	**1,528**	**1,664**	**92%**
Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. June 07, 2023& USCIS Analysis.				

In order to estimate the opportunity costs of time for completing and filing Form I–765, DHS assumes that an applicant will use an attorney or accredited representative to prepare Form I–765s or will prepare Form I–765 themselves. DHS estimates the opportunity cost of time for attorneys or accredited representatives using an average hourly wage rate of $78.74 for lawyers to estimate the opportunity cost of the time for preparing and submitting Form I–765.[59]

However, average hourly wage rates do not account for worker benefits such as paid leave, insurance, and retirement. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using a Department of Labor (DOL), Bureau of Labor Statistics (BLS) report detailing average compensation for all civilian workers in major occupational groups and industries. DHS estimates the benefits-to-wage multiplier is 1.45.[60] DHS calculates the average total rate of compensation as 114.17 [61] per hour for a lawyer.

To estimate the new opportunity costs of time, USCIS uses an average total rate of compensation based on the effective minimum wage. DHS assumes that T visa applicants have limited work experience/education and would therefore have lower wages. The Federal minimum wage is currently $7.25 per hour,[62] but many states have implemented higher minimum wage rates.[63] However, the Federal Government does not track a nationwide population-weighted minimum wage estimate. Individuals in the population of interest for an analysis could be located anywhere within the United States and may be subject to a range of minimum wage rates depending on the state or city in which they live.

For this final rule, DHS uses the most recent wage data from DOL, BLS National Occupational Employment and Wage Estimates. More specifically, we use the 10th percentile hourly wage estimate for all occupations as a reasonable proxy for the effective minimum wage when estimating the opportunity cost of time for individuals in populations of interest who are likely to earn an entry-level wage.[64] We also use the 10th percentile hourly wage estimate for individuals who are unemployed, or for individuals who cannot, or choose not to, participate in the labor market as these individuals incur opportunity costs, assign valuation in deciding how to allocate their time, or both.

Due to the wide variety of unpaid activities an individual could pursue, such as childcare, housework, or other activities without paid compensation, it is difficult to estimate the value of that time. Even when an individual is not working for wages, their time has value. In addition, using a percentile of the hourly wage estimate for all occupations allows DHS the flexibility to adjust its estimates, when necessary, depending on the population(s) of interest for regulatory impact analyses. Moreover, BLS estimates account for changes in wages across the United States labor market, which includes any future changes to state minimum wage rates. DHS will continue to evaluate the most appropriate wage assumptions for the populations of interest in its regulatory impact analyses.

The 10th percentile hourly wage estimate for all occupations is currently $13.14, not accounting for worker benefits. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier. The benefits-to-wage multiplier is calculated using the most recent BLS report detailing average total employee compensation for all civilian U.S. workers.[65] DHS estimates the benefits-to-wage multiplier to be 1.45, which incorporates employee wages and salaries and the full cost of benefits,

[59] *See* Bureau of Labor Stat., U.S. Dep't of Labor, ''Occupational Employment Statistics, May 2022, Lawyers,'' *https://www.bls.gov/oes/2022/may/oes231011.htm* (last visited May. 11, 2023).

[60] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) ($42.48 Total Employee Compensation per hour)/($29.32 Wages and Salaries per hour) = 1.44884 = 1.45 (rounded). *See* Bureau of Labor Stat., U.S. Dep't of Labor, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' ''Table 1. Employer Costs for Employee Compensation by ownership [Dec. 2022],'' *https://www.bls.gov/news.release/archives/ecec_03172023.htm* (last updated Mar. 17, 2023). The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[61] Calculation: $78.74 * 1.45 = $114.17 total wage rate for lawyer.

[62] *See* U.S. Dep't of Labor, ''Minimum Wage,'' *https://www.dol.gov/general/topic/wages/minimumwage* (last visited May 17, 2023).

[63] *See* U.S. Dep't of Labor, ''State Minimum Wage Laws,'' *https://www.dol.gov/agencies/whd/minimum-wage/state* (last visited May 17, 2023).

[64] *See* Bureau of Labor Stat., U.S. Dep't of Labor, ''Occupational Employment Statistics,'' *https://www.bls.gov/oes/2022/may/oes_nat.htm#00-0000* (last visited May 15, 2023). The 10th, 25th, 75th and 90th percentile wages are available in the downloadable XLS file link.

[65] *See* Bureau of Labor Stat., U.S. Dep't of Labor, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' ''Table 1. Employer costs for employer compensation by ownership,'' *https://www.bls.gov/news.release/archives/ecec_03172023.pdf* (last updated Mar. 17, 2023).

such as paid leave, insurance, and retirement.[66] Therefore, using the benefits-to-wage multiplier, DHS calculates the total rate of compensation for individuals as $19.05 per hour for this final rule, where the 10th percentile hourly wage estimate is $13.14 per hour and the average benefits are $5.91 per hour.[67]

DHS uses the historical Form G–28 filings of 92 percent by attorneys or accredited representatives accompanying T visa applications as a proxy for how many may accompany Form I–765 applications. The remaining 8 percent [68] of T visa applications are filed without a Form G–28. DHS estimates that a maximum of 1,528 applications annually would be filed with a Form G–28 and 136 applications would be filed by the applicant.

To estimate the opportunity cost of time to file Form I–765, DHS applies the newly estimated time burden 4 hours and 34 minutes (4.56 hours) for to the newly eligible population and compensation rate of who may file the form. Therefore, for those newly eligible, as shown in table 11, DHS estimates the total annual opportunity cost of time to applicants completing and filing Form I–765 applications are estimated to be $795,500 for lawyers and estimates the cost to be $11,814 for applicants who submit their own application. DHS estimates the total additional cost for completing and filing Form I–765 are expected to be $807,314 annually.

Table 11. Average Annual Opportunity Costs of Time to Newly Eligible Form I-914 Applicants applying for Form I-765

	Affected Population	Time Burden to Complete Form I-765 (Hours)	Cost of Time (Hourly)	Annual Opportunity Cost
	A	B	C	D=(AxBxC)
Attorney- Paper Form	1,528	4.56	$114.17	**$795,500**
Applicant- Paper Form	136	4.56	$19.05	**$11,814**
Total	**1,664**			**$807,314**
Source: USCIS Analysis				

(c) Clarifying Eligibility Requirements To Reduce RFEs

DHS is codifying the evidentiary standard and standard of proof that apply to the adjudication of a T visa. For T nonimmigrants, this rule retains the standard that applicants may submit any credible evidence relating to their T applications for USCIS to consider. This expression in the evidentiary standard and standard of proof could affect the number of requests for evidence (RFE) that USCIS must send for Form I–914. DHS is also making clarifications to eligibility requirements. USCIS estimates that there will be a reduction in RFEs. Table 12 shows the total number of requests for evidence (RFE) for FY 2017 through FY 2022. Based on a 6-year annual average, DHS estimates the annual requests for information to be 1,107.

Table 12. Form I-914 Receipts with additional Requests for Evidence (RFEs), FY 2017 through FY 2022.

Reported Fiscal Year	Non-RFE Count	RFE Count	Total
2017	1,343	976	2,319
2018	1,330	1,601	2,931
2019	1,037	1,228	2,265
2020	1,128	1,017	2,145
2021	2,262	521	2,783
2022	3,709	1,301	5,010
6- year Total	**10,809**	**6,644**	**17,453**
6year Annual Average	**1,802**	**1,107**	**2,909**
Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD)/ Data Analysis Branch, Claims 3 database. June 07, 2023 & USCIS Analysis.			

[66] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $42.48/$29.32 = 1.45 (rounded). *See* Bureau of Labor Stat., U.S. Dep't of Labor, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' ''Table 1. Employer costs for employer compensation by ownership,'' *https://www.bls.gov/news.release/archives/ecec_03172023.pdf* (last updated Mar. 17, 2023).

[67] The calculation of the benefits-weighted 10th percentile hourly wage estimate: $13.14 per hour * 1.45 benefits-to-wage multiplier = $19.053 = $19.05 (rounded) per hour.

[68] Calculation: 100 percent—92 percent filing with Form G–28 = 8 percent only filing Form I–914.

Based on the additional information expected to be provided with the initial Form I–914 filing USCIS estimates that there will be a reduction in RFEs. This change will also reduce the burden on applicants because they will be better aware of the evidentiary requirements from the outset, and they will not have to take the time to search for additional information subsequent to the submission of their application. DHS cannot estimate the amount of time each applicant takes to search for additional information. This would then allow the applicant to receive their employment authorization document earlier and allow them to work sooner. The reduction in RFEs will also save USCIS adjudicators time because they will not have to return to a particular application a second time once USCIS receives the additional required evidence. This change will make the overall process faster for applicants and USCIS.

(d) Technical Changes, Clarifying Definitions, and Other Qualitative Impacts in This Final Rules

The remaining changes in this final rule do not add quantifiable implications beyond those already discussed in the 2016 IFR. This rule moves the regulations for T nonimmigrant status to a separate subpart of 8 CFR part 214 to reduce the length and density of part 214, while making it easier to locate specific provisions. In addition to the renumbering and redesignating of paragraphs, the rule has reorganized and reworded some sections to improve readability, such as in new 8 CFR 214.204(d)(1) (discussing the law enforcement agency (LEA) declaration) and 8 CFR 214.208(e)(1) (discussing the trauma exception to the general requirement of compliance with any reasonable law enforcement requests for assistance).

The rule also divides overly long paragraphs into smaller provisions to improve the organization and understanding of the regulations. The reorganization of the rule does not impact the analysis provided in the 2016 IFR. DHS also added clarifying language to support current eligibility and application requirements in response to public comments. These changes are consistent with the Immigration and Nationality Act and the Trafficking Victims Protection Act. The primary benefit of these changes is to make it clearer and easier for T visa applicants to understand and apply for T nonimmigrant status.

DHS is also amending 8 CFR 214.11(k) (redesignated here as 8 CFR 214.211) implementing section 101(a)(15)(T)(ii)(III) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(III), to clarify that, USCIS will evaluate any credible evidence demonstrating the derivative applicant's present danger of retaliation in cases where the LEA has not investigated the acts of trafficking after the applicant reported the crime. This revision benefits the applicant, because it provides greater clarity on the evidence USCIS will consider in determining their eligibility. The ''any credible evidence'' standard also encompasses evidence originating from a family member's home country; however, DHS has clarified that evidence may be from the United States or any country in which an eligible family member faces retaliation. 8 CFR 214.211(g). This flexibility is shown as an unquantified benefit the applicant to provide additional credible evidence in order to establish eligibility.

DHS has also clarified in the preamble that the ''continued victimization'' criteria referenced at 8 CFR 214.207(b)(1) does not require that the applicant is currently a ''victim of a severe form of trafficking in persons,'' but instead may include ongoing victimization that directly results from either ongoing or past trafficking. This will allow applicants who were victims of a severe form of trafficking in persons in the past, departed the United States, and reentered as a result of their continued victimization to establish that they meet the physical presence eligibility requirement without demonstrating that they are currently victims of a severe form of trafficking in persons. DHS cannot estimate how many victims may now be able to establish that they meet the physical presence eligibility requirement due to this change. This clarification benefits applicants who may be able to satisfy the physical presence requirement if their reentry into the United States was the result of continued victimization tied to ongoing or past trafficking.

(e) Alternatives Considered

Where possible, DHS has considered, and incorporated alternatives to maximize net benefits under the rule. For example, DHS considered multiple different elements and the operational considerations for implementing a BFD review. DHS considered conducting a fully electronic T visa BFD review with extremely limited background checks and conducting physical file review with limited background checks. However, DHS chose an approach that accommodated public comments, preserves a good faith review of the initial filing, removes barriers to the immigration process, and prioritizes efficient T visa BFD review. This protects the integrity of the BFD review by requiring review of initial required evidence and assessment of routine background checks.

5. Final Costs of the Final Rule

(a) Undiscounted Costs

Table 13 details the annual costs of this final rule. DHS estimates the annual additional cost for completing and filing Form I–765 are expected to be $807,314.

Table 13. Summary of Costs

Description	**Annual Cost**
Changes to BFD Process	$807,314
Source: USCIS Analysis	

(b) Discounted Costs

Table 14 shows the total cost over the 10-year implementation period of this final rule. DHS estimates the total annualized costs to be $807,314 discounted at 3 and 7 percent.

Table 14. Total Undiscounted and Discounted Costs of this Final Rule Using the Post-IFR Baseline.		
FY	Total Estimated Costs	
	$807,314 (Undiscounted)	
	Discounted at 3 percent	Discounted at 7 percent
2023	$783,800	$754,499
2024	$760,971	$705,139
2025	$738,807	$659,009
2026	$717,288	$615,896
2027	$696,396	$575,604
2028	$676,113	$537,947
2029	$656,420	$502,755
2030	$637,301	$469,864
2031	$618,739	$439,125
2032	$600,717	$410,398
10-year Total	**$6,886,552**	**$5,670,236**
Annualized Cost	**$807,314**	**$807,314**

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000. This final rule does not mandate any actions or requirements for small entities. This final rule regulates individuals and individuals are not defined as a ''small entities'' by the RFA.[69] DHS did not receive any comments on small entities during the previous comment period. A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. The changes made in the interim rule were determined to not require advance notice and opportunity for public comment, because they are (1) required by various legislative revisions, (2) exempt as procedural under 5 U.S.C. 553(b)(A), (3) logical outgrowths of the 2002 interim rule, or (4) exempt from public comment under the ''good cause'' exception to notice-and-comment under 5 U.S.C. 553(b)(B). 81 FR 92288. Therefore, a regulatory flexibility analysis is not required for this rule. Nonetheless, USCIS examined the impact of this rule on small entities under the Regulatory Flexibility Act, 5 U.S.C. 601(6). The individual victims of trafficking and their derivative family members to whom this rules applies are not small entities as that term is defined in 5 U.S.C. 601(6).

C. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

This final rule is not a major rule as defined by section 804 of Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This final rule likely will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This rule is exempt from the written statement requirement because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, the inflation-adjusted value of $100 million in 1995 is approximately $192 million in 2022 based on the Consumer Price Index for All Urban Consumers (CPI–U).[70] This proposed rule does not contain a Federal mandate as the term is defined under UMRA.[71] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will

[69] *See* Public Law 104–121, tit. II, 110 Stat. 847 (5 U.S.C. 601 note). A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act. *See* 15 U.S.C. 632(a)(1).

[70] *See* Bureau of Labor Stat., U.S. Dep't of Labor, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' *www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202212.pdf* (last visited Jan. 19, 2023). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2022); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2022—Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)]*100 = [(292.655 − 152.383)/152.383]*100 = (140.272/152.383)*100 = 0.92052263*100 = 92.05 percent = 92 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars*1.92 = $192 million in 2022 dollars.

[71] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

not result in an annual effect on the economy of $100 million or more. DHS has complied with the reporting requirements of and has sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1). While the Congressional Review Act requires a delay in the effective date of 30 days, this rule has a delayed effective date of 120 days, to provide DHS time to comply with the Paperwork Reduction Act as explained later in this preamble.

F. Executive Order 13132 (Federalism)

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect this rule would impose substantial direct compliance costs on State and local governments or preempt State law. As stated above, neither the proposed rule nor this final rule modifies the extent of State involvement set by statute.

G. Executive Order 12988 (Civil Justice Reform)

This final rule meets the applicable standards set forth in section 3(a) and (b)(2) of E.O. 12988.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have ''tribal implications'' because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) financially impacts families, and whether those impacts are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then the agency must prepare an impact assessment to address criteria specified in the law. As discussed in the interim final rule, DHS assessed this action in accordance with the criteria specified by section 654(c)(1). This final rule will continue to enhance family well-being by aligning the regulation more closely with the statute. This rule will also enhance family well-being by encouraging vulnerable individuals who have been victims of a severe form of trafficking in persons to report the criminal activity and by providing critical assistance and immigration benefits. Additionally, this regulation allows certain family members to obtain T nonimmigrant status once the principal applicant has received status.

J. National Environmental Policy Act

DHS analyzes actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01, Revision 01, ''Implementation of the National Environmental Policy Act,'' and DHS Instruction Manual 023–01–001–01, Revision 01, ''Implementation of the National Environmental Policy Act (NEPA)'' (Instruction Manual), establish the procedures DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA codified at 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') that experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1501.4 and 1507.3(e)(2)(ii). The DHS categorical exclusions are listed in Appendix A of the Instruction Manual. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that demonstrate, or create the potential for, significant environmental impacts. Instruction Manual, section V.B(2)(a–c).

This action amends existing regulations governing requirements and procedures for victims of severe forms of trafficking in persons seeking T Nonimmigrant Status. The amended regulations codify and clarify eligibility criteria and will have no impact on the overall population of the United States and will not increase the number of immigrants allowed into the United States.

DHS analyzed the proposed amendments and has determined that this action clearly fits within categorical exclusion A3(a) in Appendix A of the Instruction Manual because the regulations being promulgated are of a strictly administrative or procedural nature. DHS has also determined that this action clearly fits within categorical exclusion A3(d) because it amends existing regulations without changing their environmental effect. This final rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this final rule is categorically excluded from further NEPA review.

K. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, as amended, 44 U.S.C. 3501–3521, all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. In this final rule, DHS is addressing the public comments received on the revised information collections in the interim rule and also amending the application requirements and procedures that the interim rule provided for individuals to receive T nonimmigrant status. Therefore, DHS is revising Form I–914, Form I–914, Supplement A, Form I–914, Supplement B, and Form I–765, as well as the associated form instructions to conform with the new regulations. These forms are information collections under the PRA.

When DHS published the 2016 interim rule, it revised Form I–914, Form I–914, Supplement A, Form I–914, Supplement B, and the associated form instructions (OMB Control Number 1615–0099). DHS published two versions of the forms and associated instructions for public comment, the first version on December 20, 2016, and the second version on January 20, 2017. *See* DHS Docket No. USCIS–2011–0010 at *www.regulations.gov.* Once OMB approved the forms and the rule became effective, DHS published a final version of the forms and associated instructions, which were dated February 27, 2017.

On December 2, 2021, OMB approved and USCIS issued a revised Form I–914,

Form I–914, Supplement A, Form I–914, Supplement B, with additional changes. The December 2, 2021, changes were independent of the interim rule that is being finalized by this rule, but the changes made in that revision may obviate or address some of the public comments on the information collection requirements for the interim rule. *See* DHS Docket No. USCIS–2006–0059. In this final rule, USCIS is requesting comments for 60 days on this information collection by July 1, 2024. When submitting comments on the information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses.

Table 15 Information Collections, below, lists the information collections that are part of this rulemaking.

Table 15. Information Collections

OMB Control No.	Form No.	Form Name	Type of PRA Action
1615-0099	I-914	Application for Derivative T Nonimmigrant Status, and Declaration for Trafficking Victim	Revision of a Currently Approved Collection
1615-0040	I-765	Application for Employment Authorization	Revision of a Currently Approved Collection
1615-0013	I-539	Application to Extend/Change Nonimmigrant Status	No material change/Non-substantive change to a currently approved collection
1615-0023	I-485	Application to Register Permanent Residence or Adjust Status	No material change/Non-substantive change to a currently approved collection

This final rule requires non-substantive edits to the forms listed above where the Type of PRA Action column states, ''No material change/ Non-substantive change to a currently approved collection.'' USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

USCIS Form I–914; Form I–914, Supplement A; Form I–914, Supplement B (OMB Control Number 1615–0099)

Overview of information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of Form/Collection:* Application for T Nonimmigrant Status, Application for Derivative T Nonimmigrant Status, and Declaration for Trafficking Victim.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Form I–914, Form I–914, Supplement A, and Form I–914, Supplement B; USCIS.

(4) *Affected public who will be asked or required to respond:* Individuals or households. Form I–914 permits victims of a severe form of trafficking in persons and certain eligible family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000, and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914, 1,310 responses at 2.63 hours per response; Form I–914, Supplement A, 1,120 responses at 1.083 hours per response; Form I–914, Supplement B (section that officer completes), 459 responses at 3.58 hours per response; Form I–914, Supplement B (section that respondent completes), 459 responses at .25 hours per response.

Biometric processing 2,430 respondents requiring Biometric Processing at an estimated 1.17 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 9,261 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated annual cost burden associated with this collection of information is $2,532,300.

USCIS Form I–765; I–765WS (OMB Control Number 1615–0040)

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization; I–765 Worksheet.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; I–765WS; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I–765 to collect information needed to determine if a noncitizen is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Noncitizens in many immigration statuses are required to possess an EAD as evidence of work authorization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765 paper filing is 1,830,347 and the estimated hour burden per response is 4.56 hours; the estimated total number of respondents for the information collection I–765 online filing is 455,653 and the estimated hour burden per response is 4.00 hours; the estimated total number of respondents for the information collection I–765WS is 302,000 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection biometrics submission is 302,535 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection passport photos is 2,286,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,816,960 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

1. Comments on the Information Collection Changes to Form I–914 and Related Forms and Instructions Published With the 2016 Interim Rule

Comment: Two commenters on the 2016 interim rule also provided comments on the forms and associated instructions. One of the commenters had a general comment that applied to all the forms and instructions. The commenter wrote that although DHS published a table of changes for each of the forms, advocates and community members had not been able to review the actual forms and instructions with the final changes included. The commenter requested that the proposed forms and instructions with all planned changes be made available to the community and that DHS extend the comment period for the proposed forms to allow the community an opportunity to comment fully.

Response: DHS understands that the table of changes must be used in comparison with the previous versions of the form and instructions to determine the precise impact the changes have on the form and agrees that this comparison requires some effort. Nonetheless, the table of changes clearly indicated where the changes were being made or proposed to a sufficient extent to determine the effects on the form and the changes to the information collection burden.

Commenters also suggested specific revisions to the forms and associated instructions. DHS responds to those recommendations for each form, supplement, or instructions. Following this discussion, DHS explains the changes it is making on its own initiative for legal accuracy, consistency with the 2016 interim rule and the final rule, and enhanced clarity.

Form I–914

Comment: One commenter provided many recommendations to revise Form I–914. The commenter appears to have suggested edits to the version of Form I–914 labeled, ''Form I–914, Application for T Nonimmigrant Status 10.20.16'' published on December 20, 2016, with the 2016 interim rule. Thus, all the commenter's references to content of the form relate to that version. In discussing final changes all references are to the version of the forms published in connection with this final rule.

The commenter recommended that DHS amend the question on page 1, part B, ''General Information About You'' requesting applicants to choose whether their gender is male or female. The commenter suggested including a blank space in which applicants could write in their gender identity. The commenter wrote that an increasing number of its clients who are survivors of trafficking identify as lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) and may identify as non-binary or gender non-conforming. The commenter stated that these clients face heightened vulnerabilities to trafficking and requiring applicants to select from a binary answer option may deter them from representing their preferred gender expression and perpetuate their marginalization.

Response: DHS notes that components across the Department are reviewing forms to pursue more inclusive sex and gender markers that accommodate non-binary and transgender individuals.[72] This will improve DHS's ability to verify identity, as well as to expand access to accurate identity documents, thereby reducing the risk of future harm to LGBTQI+ persons. DHS is also reviewing policy guidance, training materials, and website content to ensure they provide accurate guidance and consistently use appropriate terminology. To support these Department-wide efforts, DHS will revise the forms to include a third gender option, ''Another Gender Identity.'' Including a third option on Form I–914, Form I–914, Supplement A, and Form I–914, Supplement B supports Executive Order 14012 (Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans) to promote inclusion and identify barriers that impede access to immigration benefits.

Comment: Regarding questions related to T nonimmigrant status eligibility requirements in part C (now designated part 3), the commenter suggested that the questions be reordered to match the order that the requirements appear in the statute to facilitate completing and adjudicating the form.

[72] ''Interagency Report on the Implementation of the Presidential Memorandum on Advancing the Human Rights of LGBTQI+ Persons Around the World,'' (2022) *https://www.state.gov/wp-content/uploads/2022/04/Interagency-Report-on-the-Implementation-of-the-Presidential-Memorandum-on-Advancing-the-Human-Rights-of-Lesbian-Gay-Bisexual-Transgender-Queer-and-Intersex-Persons-Around-the-World-2022.pdf.*

Response: DHS understands the commenter's stated rationale, but the commenter did not explain why reordering would make the form easier to complete. Neither adjudicators nor other stakeholders have reported any challenges with the ordering of the questions. DHS believes the suggested change is not essential enough to warrant the burden of reprogramming USCIS Form I–914 related computer systems.

Comment: On page 3, part C, ''Additional Information,'' (now titled ''Part 3. Additional Information About your Application'') the commenter recommended deleting the question regarding whether the applicant's most recent entry was on account of the trafficking that forms the basis for the applicant's claim and requests that the applicant explain the circumstances of their most recent arrival. The commenter stated that to qualify for T nonimmigrant status, an applicant need only show physical presence in the United States on account of trafficking, and there is no requirement an applicant's most recent entry be on account of trafficking.

Response: The commenter is correct with respect to the statutory eligibility requirements; however, including this question does not mean that an applicant must show their last entry was related to their trafficking. *See* INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T). The question (now located at part 3, question 9) helps provide information to adjudicators about the general circumstances of the applicant's most recent arrival, whether related to the trafficking or not, and information regarding the applicant's immigration history. All this information assists adjudicators in understanding the full history and facts of an applicant's claim. Accordingly, DHS declines to delete the question.

Comment: The form at part D, ''Processing Information,'' question 1(a) (now part 4, question 1.A) asked whether the applicant has ever committed a crime or offense for which the applicant has not been arrested. The commenter suggested that DHS clarify the meaning of the question, noting that the question is broadly written and would include even minor criminal activity and behavior (such as jaywalking) that has no effect on the applicant's eligibility for T nonimmigrant status.

Response: DHS will maintain this question as it is useful for adjudicators in gathering relevant information related to determining admissibility and assessing the applicant's truthfulness. In addition, in DHS's experience, answers to the question have provided information relevant to the applicant's trafficking experiences.

Comment: The commenter requested that DHS revise part D ''Processing Information,'' question 3(a) (Now at part 4, question 2.A), regarding whether the applicant has engaged in prostitution or procurement of prostitution or intends to engage in prostitution or procurement of prostitution. The commenter stated that although the referenced conduct renders an applicant inadmissible under section 212(a)(2)(D) of the INA, 8 U.S.C. 1182(a)(2)(D), DHS should explicitly exclude acts of prostitution that occurred during trafficking and should clarify that this question does not apply to sex trafficking. The commenter also stated that this question causes confusion and anxiety for many of its clients who are victims of sex trafficking. The commenter suggested rephrasing the question to read: ''Have you engaged in prostitution that was not related to being a victim of trafficking?''

Response: DHS declines to make the specific suggested change. The question is appropriate as written because engaging in prostitution is a ground of inadmissibility, regardless of whether it is connected to the victimization. If the applicant has engaged in this conduct and the prostitution was connected to the trafficking, the applicant can request a waiver but must still answer the question so that USCIS can assess whether the inadmissibility ground applies in the first instance, and thus whether a waiver is needed. USCIS will examine all the evidence submitted and decide on a case-by-case basis whether to grant any waiver request.

Comment: The commenter requested that DHS revise part D, ''Processing Information,'' question 8, regarding whether the applicant has, ''during the period of March 23, 1933, to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, nationality, membership in a particular social group, or political opinion[.]'' The commenter suggested that DHS delete the question entirely or preface it with the question: ''Were you born before May 8, 1945?,'' followed by ''If no, proceed to the next question.'' The commenter stated that, given the temporal limits, this question applies to an extremely limited number of applicants, and the question as written is confusing and time-consuming to explain to applicants.

Response: DHS declines to make the suggested revision. DHS appreciates the suggestion and will take it under consideration for future revision efforts, but will retain the question as is, to collect information about specific conduct that constitutes a ground of inadmissibility under section 212(a)(3)(E) of the INA, 8 U.S.C. 1182(a)(3)(E).

Comment: The form at part D, ''Processing Information,'' question 8 (now part 4, question 8), asked whether the applicant has ever been present or nearby when a person was: ''(a) intentionally killed, tortured, beaten or injured?; (b) displaced or moved from their residence by force, compulsion, or duress?; or (c) in any way compelled or forced to engage in any kind of sexual contact or relations?.'' The commenter requested that DHS delete the question, and indicated that the question was vague, led to confusion among attorneys and applicants, and did not relate to any particular ground of inadmissibility in section 212(a) of the INA, 8 U.S.C. 1182(a).

Response: DHS declines to delete the question. Although it does not relate to a specific ground of inadmissibility, the question tends to yield information helpful to adjudicators in understanding the details of both the victimization and the applicant's conduct, which are relevant to the adjudication of the claim for T nonimmigrant status.

The following suggestions have already been resolved by revisions to the Form I–914 and are maintained in the version of the form published with this final rule:

- Page 2, part C, ''Additional Information,'' insert a question that allows an applicant to invoke the ''trauma exception'' for cooperation with law enforcement codified in section 101(a)(15)(T)(i)(III)(bb) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb);
- Page 2, part C, ''Additional Information,'' delete the question related to whether the applicant is submitting an LEA declaration on Form I–914, Supplement B and if not, to explain why;
- Page 4, part D, ''Processing Information,'' delete question 2 on whether the applicant has ever received public assistance given that the 2016 interim rule indicates USCIS intends to remove this question on both Form I–914 and Form I–914, Supplement A; and
- Page 10, part H, ''Checklist'':
- Insert language in second box allowing applicants to indicate that they are asserting an exception to the compliance with reasonable law

enforcement requests requirement based on trauma;

- Delete checkbox indicating the applicant has included three photographs of the applicant; and
- Delete checkbox indicating the principal applicant has included three photographs of each family member for whom they are applying.
- DHS has deleted the checklist with the version of the Form I–914 and associated instructions published with this final rule because the instructions are sufficiently clear without the checklist, and it added unnecessary length to the forms. There is a checklist and other filing tips on the Form I–914 forms landing page.

Form I–914, Supplement A

DHS received suggestions from two commenters to revise Form I–914, Supplement A. One commenter proposed edits to the version of the supplemental form entitled, ''Form I–914A, Supplement A, Application for Family Member of T–1 Recipient 10.20.16'' published on December 20, 2016, with the 2016 interim rule. This commenter made several of the same suggestions it made on the Form I–914 in relation to the following questions, which DHS declines for the same reasons discussed above:

- Part E, ''Processing Information,'' delete the question asking whether the family member has committed any offense for which they have not been arrested;
- Part E, ''Processing Information,'' delete or simplify question 8 related to whether the family member has ever engaged in persecutory conduct between March 23, 1933, and May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany;
- Part E, ''Processing Information,'' delete question 9 on whether the applicant has ever been present or nearby during certain conduct.

The commenter also made suggestions that have already been resolved by revisions to Form I–914, Supplement A, and remain resolved with the publication of the Form I–914, Supplement A published with this final rule:

- Page 1, part A (now part 1), ''Family Member Relationship to You,'' insert a box to include the T–6 derivative-of-derivative category; and
- Part E, ''Processing Information,'' delete the question about whether the family member has ever received public assistance.

The other commenter proposed edits to the version of the supplemental form entitled, ''(I–914A) Supplement A, Application for Family Member of T–1 Recipient 1.11.2017.''

Comment: The commenter recommended that on page 1, part B, DHS remove the new additional heading ''Part B. Family Member Relationship to Your Derivative'' and combine the additional checkboxes related to the T–6 derivative category with the existing ''Part A. Family Member Relationship to You.'' The commenter wrote that the new part B heading made it appear as though both parts A and B of Form I–914, Supplement A would need to be completed for all derivatives. The commenter wrote that combining the boxes in one heading would more clearly distinguish how the family member is related to the principal applicant.

Response: To address this concern, DHS has edited the form so that it is no longer divided into two parts with separate headings. The new form includes one part, labeled part 1, which has two items numbered 1 and 2, but do not contain further headings. DHS is removing the parenthetical ''(the derivative)'' in the title to previous part D (renumbered part 3), ''Information About Your Family Member'' consistent with the changes to new part 1. DHS amends the Form I–914 Instructions, as discussed in the next section, to provide further clarification on the questions in new part 1 and the form's references to family members.

Form I–914 Instructions

Commenters provided several comments on the Form I–914 Instructions. With respect to one of the commenters, it is not clear which version of the instructions its comments refer to, as some of the suggestions were already resolved by both versions of the form published in the docket with the 2016 interim rule. The other commenter's proposed edits relate to the version of the instructions entitled, ''(I–914) Instructions for Application for T Nonimmigrant Status 1.11.2017.'' In discussing both commenters' proposed edits, DHS will use references to the January 11, 2017, version.[73]

Comment: One commenter suggested adding the statutory citation of section 103 of the TVPA, as amended, 22 U.S.C. 7102, for the definition of ''a severe form of trafficking in persons'' when explaining that to qualify for T nonimmigrant status, an applicant must meet that definition at page 1, Point 1(A), ''Who May File This Form?''. The commenter explained that including the citation would easily refer applicants and advocates to review the statutory definition of ''a severe form of trafficking in persons.'' *See* 22 U.S.C. 7102. The commenter mentioned that the instructions to Form I–918, Petition for U Nonimmigrant Status, provide references to the relevant designation of qualifying crimes.

Response: DHS agrees that the term ''a severe form of trafficking in persons'' has a specific legal meaning and that applicants may not readily understand the term. DHS has added language at new page 1, ''What Is the Purpose of Form I–914?,'' to refer applicants to the language of the definition of ''a severe form of trafficking'' included in the section ''Evidence to Establish T Nonimmigrant Status,'' which derives from the language in TVPA section 103, the citation suggested by the commenter.[74] This approach will provide applicants with easy reference to the actual definition.

Comment: The commenter recommended changing the description of family members who may be eligible for T nonimmigrant status based on facing a danger of retaliation at page 2, Point 2(C)(3), ''Who May File This Form?'' and at page 4, part B, ''Completing Form I–914, Supplement A, Application for Family Member of T–1 Recipient.'' The commenter requested DHS use the term ''your sibling's children'' rather than the phrase ''niece or nephew,'' which could have a more expansive definition than the regulations have intended. The commenter also recommended using the term ''your parent's adult child'' rather than ''your sibling,'' explaining that the term sibling could include all siblings of a T–1 applicant, which it believed was a broader category than that of the adult or minor children of the parent.

Response: DHS disagrees with the commenter's reasoning. The terms suggested by the commenter would exclude some eligible family members who Congress intended to include in the statute. INA sec. 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III), provides that the ''adult or minor child'' of a

[73] Although it is not clear which version of the forms one commenter reviewed, the commenter's suggestions are consistent with the version dated January 11, 2017.

[74] The page numbers and section headings of the forms and instructions are provided in these comment responses to permit the commenter to find and review precisely how their comment was addressed. However, text may have shifted during final development and publication and DHS does not guarantee that the page numbers in the final version of the form will correspond to the page numbers cited here or as they existed on the forms when they were published for the interim rule or on January 10, 2018.

derivative of the principal who faces a present danger of retaliation may obtain derivative T nonimmigrant status. DHS interprets the term ''adult or minor child'' to encompass both the ''son or daughter'' and ''child'' immigration definitions; therefore, persons of any age and any marital status can be ''adult or minor children.'' *See* USCIS Policy Memorandum, *New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands* (Oct. 30, 2014).[75] Because the term ''child'' is a legal term of art defined as an unmarried person who is under the age of 21, *see* INA sec. 101(b)(1), 8 U.S.C. 1101(b)(1), using the phrase ''your parent's child'' would only include unmarried children under age 21 of the principal's derivative parents. The term ''your parent's child'' would not include the adult children of the principal's derivative parents, or the married children of any age of the principal's derivative parents. The phrase ''your sibling's children'' would be similarly restrictive.

However, as discussed above, to provide greater clarity on the family relationship of the category of adult or minor children who may be eligible for T nonimmigrant status based on facing a danger of retaliation, DHS has revised Form I–914, Supplement A (*see* new page 1, part 1, item 2) and the Form I–914 Instructions (*see* new page 4, ''Completing Form I–914, Supplement A, Application for Derivative T Nonimmigrant Status'').

Comment: The commenter suggested changes to page 2, ''General Instructions,'' part B, ''General Information About You,'' item 1, and page 5, part D, ''Information About Your Family Member (the derivative),'' item 1. Both sections explained that the questions requesting the applicant's or family member's name refer to the name as shown on the individual's ''birth certificate or legal name change document.'' The commenter requested DHS delete these explanations because some trafficking survivors do not have access to identity documents with the applicant's legal name, and such a requirement could create an evidentiary barrier for victims.

Response: It is important to maintain similar language as it provides clear instruction on the name that DHS is requesting. It is essential for DHS to know the name of the applicant or their family member as it appears on official identification documents so that DHS can conduct proper background checks and ensure there is no confusion about the identity of the person receiving the status, if approved. Neither this explanation nor the questions on the form indicate that evidence of a specific document is a requirement to obtaining status. Furthermore, the requirement does not in any way impact an applicant's evidentiary burden. However, DHS has changed the phrasing to ''birth certificate, passport, or other legal document'' to provide more clarity. *See* new part 4, ''Information About your Family Member,'' item 1.

Comment: Regarding the instruction at part D, ''Information About Your Family Member,'' item 3, the commenter opposed the collection of the family member's intended physical street address because the 2016 interim rule states that DHS is allowed to disclose an applicant's information to a law enforcement agency with the authority to detect, investigate, or prosecute severe forms of trafficking in persons. The commenter wrote that disclosing the applicant's physical street address could jeopardize the victim's safety and recommended adding language to clarify that an applicant should only provide this information if it was safe to do so and could instead provide an alternate safe mailing address.

Response: DHS declines to make the change. The request for the applicant's physical street address is distinct from the request for the applicant's mailing address used to provide official correspondence. DHS allows applicants to provide an alternative mailing address if they do not feel it is safe to receive mail at their residence as noted on previous editions of the form as well as at new page 5, part 4, item 4. This provision is to protect against perpetrators having access to USCIS correspondence with the applicant. DHS requests the applicant's physical street address for internal information purposes and consistent with requirements that individuals applying for visas register their presence. *See* INA secs. 221(b), 261, 265, 8 U.S.C. 1201(b), 1301, 1305. Furthermore, while DHS appreciates the commenter's concern that sharing address information with law enforcement agencies could jeopardize an applicant's safety, that authority exists for the purpose of promoting investigation and prosecution of traffickers, not to put victims of trafficking at risk.

Comment: The commenter made a general recommendation that DHS clarify on page 2, ''Completing Form I–914,'' part B, number 3, that an applicant's home address will not be used to contact an applicant if the applicant provides an address in the ''safe mailing address'' space on the Form I–914.

Response: DHS believes that the explanation of the safe mailing address is clear on this point. The language explains that if an applicant does not feel secure in receiving correspondence regarding their application at the applicant's home address, the applicant should provide a safe mailing address. DHS maintains this language in the Form I–914 Instructions. *See* new page 3, part 3, ''General Information About You,'' item 4, and new page 4, ''Completing Form I–914, Supplement A, Application for Derivative T Nonimmigrant Status,'' part 4, item 4, for instructions regarding the safe mailing address.

Comment: The commenter also requested that the instructions at page 3, ''Completing Form I–914,'' part B, number 6, include a clarification that the applicant's home telephone number will not be used to contact an applicant if they provide a telephone number in the ''safe daytime telephone number'' blank on the Form I–914.

Response: Again, DHS believes the explanation of the safe telephone number in the instruction at part 6 is clear and already explains that an applicant may include a safe daytime phone number if they wish. *See* new page 4, part 6, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature'' and new page 6, part 6, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature'' for instructions regarding the safe telephone number.

Comment: The other commenter requested DHS add an instruction to the section, ''General Instructions,'' that applicants represented by an attorney should include on the Notice of Entry of Appearance as Attorney or Accredited Representative (Form G–28) to be filed with Form I–914 that the attorney also represents the applicant with respect to the Form I–765. The commenter reported that attorneys have experienced difficulty communicating with USCIS regarding the status of Employment Authorization Documents (EADs) for approved T–1 nonimmigrants when the attorney has submitted a Form G–28 in connection with the Form I–914.

Response: DHS agrees with the commenter's recommendation. Because USCIS has codified a new, streamlined Bona Fide Determination process, DHS believes it would be helpful for

[75] ''T Derivative Memo,'' *https://www.uscis.gov/sites/default/files/document/memos/Interim_PM-602-0107.pdf.*

attorneys or representatives to include all forms covered by their representation on the Form G–28.

Comment: The commenter requested that in the ''Evidence to Establish T Nonimmigrant Status'' section of the Instructions, DHS delete the phrase ''You must demonstrate that you were brought to the United States'' and replace it with either ''You must demonstrate that you were a victim of a severe form of trafficking as defined by 22 U.S.C. 7102'' or with the full definition of the term ''a severe form of trafficking in persons.'' The other commenter also suggested adding the statutory reference for the definition of ''a severe form of trafficking in persons'' so applicants could easily review the statutory definition.

Response: DHS declines to include the statutory citation but, as recommended, already included the actual language of the definition from 22 U.S.C. 7102 in the revisions to the Form I–914 Instructions published on December 2, 2021, and February 27, 2017, in conjunction with the 2016 interim rule. To provide an even more complete definition, DHS also added further detail from the definition of sex trafficking included at 22 U.S.C. 7102. *See* new page 8, ''Evidence to Establish T Nonimmigrant Status,'' second items 1–2.

Comment: One commenter suggested adding language to the section ''Evidence of Cooperation with Reasonable Requests from Law Enforcement.'' The commenter recommended adding after the statement that USCIS makes the decision of whether the applicant meets the eligibility requirements for T nonimmigrant status: ''regardless of whether LEA chooses to investigate or prosecute the trafficking crime.'' The commenter wrote that the proposed language would further clarify that USCIS makes the final determination about whether an applicant is eligible for T nonimmigrant status and provide additional reassurance to law enforcement agencies that their declarations are not determinations of an individual's eligibility to obtain T nonimmigrant status.

Response: In DHS's view, the proposed language does not achieve the commenter's goal, and DHS believes the existing language is sufficient on this point; therefore, DHS declines to adopt this recommendation.

Comment: One of the commenters recommended deleting from the ''Evidence to Establish T Nonimmigrant Status'' section, language instructing applicants to describe their attempts to obtain a Form I–914, Supplement B if one was not included with their Form I–914. The commenter wrote that there is no requirement in statute or the 2016 interim rule regulations requiring this information and that this instruction is inconsistent with the 2016 interim rule's clarification that Form I–914, Supplement B Declarations will be given ''no special weight.''

Response: This suggestion was resolved by revisions to the Form I–914 Instructions published on February 27, 2017, in conjunction with the 2016 interim rule. To provide additional clarity, however, DHS is adding guidance to the Form I–914 Instructions at new page 8, ''Evidence of Cooperation with Reasonable Requests from Law Enforcement,'' that applicants are not required but may choose to provide evidence of their reasons for not submitting or attempting to obtain a Form I–914, Supplement B. In DHS's experience, if applicants choose to include this information, it can be helpful to adjudicators in understanding the full details of an applicant's claim and their engagement with law enforcement.

Comment: One commenter requested DHS update items 10–11, which directed applicants to discuss the harm or mistreatment they fear if removed from the United States and the reasons for the fear. The commenter stated that the factors detailed in 8 CFR 214.11(a) (redesignated here as 8 CFR 214.201) are broader than ''harm'' or ''mistreatment'' and that the current instructions fail to detail the types of extreme hardship involving unusual and severe harm contemplated by the 2016 interim rule.

Response: DHS acknowledges that this item's phrasing could be revised to ensure that applicants do not believe that USCIS only considers extreme hardship factors related to feared harm or mistreatment. Accordingly, DHS is revising the form to direct applicants to include information on the hardship that they believe they would suffer, including harm or mistreatment as examples. For conciseness, DHS has also combined items 10 and 11. DHS has also revised the other factors for consistency with the new regulatory text, discussed further below. *See* new page 9, ''Personal Statement,'' item 3.

The following suggestions were resolved by subsequent revisions to the Form I–914 Instructions:

- Page 1, ''Who May File this Form?,'' item 1(C), next to ''under the age of 18:'' insert the following text: ''or is asserting an exception due to physical or psychological trauma;''
- Page 1, ''Who May File this Form?,'' number 2, insert language to reflect T–6 classification;
- Page 1, ''Who May File This Form?,'' add language to the heading to clarify that principal applicants can file for their eligible family members at any time after the initial T–1 application has been filed and that the principal applicant need not be granted T–1 nonimmigrant status before they can file for their eligible family members;
- Page 7, ''Initial Evidence'' and throughout the form, delete references to a requirement to submit passport photos;
- Page 7, ''Evidence to Establish T Nonimmigrant Status,'' section 1, delete ''You must demonstrate that you were brought to the United States . . .'';
- Page 8, ''Evidence of Cooperation with Reasonable Requests from Law Enforcement,'' add language that if an applicant does not provide Form I–914, Supplement B, they must provide additional evidence, which can be in the form of a declaration to show victimization and attempted cooperation with law enforcement;
- Page 8, ''Personal Statement,'' delete item 2 that directed applicants to provide information on ''the purpose for which [they] were brought to the United States'';
- Page 8, ''Personal Statement,'' delete item 6 requesting information on the length of time the applicant was detained by the traffickers because there is no requirement that the victim be detained in order to qualify for T nonimmigrant status;
- Page 8, ''Personal Statement,'' delete item 9, instructing applicants to indicate why they were unable to leave the United States after being separated from the traffickers;
- Regarding the discussion of privacy in the instructions, add examples of the entities to which an applicant's information could be disclosed under 8 U.S.C. 1367;
- Throughout the instructions, delete distinctions between primary and secondary evidence, consistent with 2016 interim rule's elimination of this distinction; and
- Throughout the instructions, insert language to include the T–6 classification.

Form I–914, Supplement B

One commenter provided suggested revisions to the Form I–914, Supplement B. It is not clear which version of the form the commenter refers to in its suggestions. In discussing the commenter's proposed edits, DHS will use references to the version of the Form I–914, Supplement B entitled, ''(I–914B) Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons 1.9.2017'' in the

rulemaking docket. The commenter made the same request it made with respect to Form I–914 and Form I–914, Supplement A to expand the options for answering the question on gender on page 1, part A, ''Victim Information.'' DHS will make the suggested revision to the question about gender for the same reasons discussed above in DHS's response to comments to Form I–914.

Comment: The commenter recommended that at page 3, part E, ''Family Members Implicated in Trafficking,'' in the question regarding whether the applicant believes that their family members were involved in the applicant's trafficking to the United States, DHS delete the phrase ''to the United States.'' The commenter noted that the statutory requirement for eligibility is that the victim be physically present on account of trafficking and that there is no requirement that the trafficker trafficked the victim to the United States or brought the person to the United States for the purpose of trafficking.

Response: DHS agrees with the comment and is revising the question accordingly. *See* new page 4, part 5, ''Family Members Implicated in Trafficking,'' question 1.

The following suggestion was resolved by subsequent revisions to the Form I–914, Supplement B and is maintained in the form revision published with this rule:

- Page 2, part C, ''Statement of Claim,'' item 1, add the words ''patronizing, or soliciting'' after ''obtaining'' to reflect statutory changes made by the JVTA to the definition of sex trafficking codified at 22 U.S.C. 7102 and reflected in the definition of sex trafficking in the 2016 interim rule at 8 CFR 214.11(a).

Form I–914, Supplement B Instructions

One commenter made several requests to revise the Form I–914, Supplement B Instructions to the version entitled, ''(I–914B) Instructions for Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons 1.9.2017.''

Commenter: Regarding the first paragraph included on page 1, in the section, ''What is the Purpose of this Form?,'' the commenter recommended DHS add language that ''a formal investigation or prosecution is not required in order for a LEA to complete an endorsement.'' The commenter also suggested that DHS move to the beginning of the second paragraph under this heading the language that USCIS, not the LEA, makes the decision regarding whether the applicant meets the eligibility requirements for T nonimmigrant status. The commenter wrote that some law enforcement officers believed that criminal charges or convictions were needed before Form I–914, Supplement B could be signed and that signing a Supplement B would lead to the automatic approval of an immigration benefit.

Response: The commenter's first suggestion was resolved by revisions to the Form I–914, Supplement B Instructions published on February 27, 2017, in conjunction with the 2016 interim rule. The instructions on page 1 in the third paragraph under the heading, ''When Should I Use Form I–914, Supplement B?'' clearly state that a formal investigation is not a requirement for an LEA to sign the form. The instructions also state in the first paragraph that a formal investigation or prosecution is not required for an LEA to complete the form. DHS declines to make the commenter's recommendation to move the language about USCIS' role in the adjudication process. DHS believes it is appropriate to describe the purpose of Form I–914, Supplement B before clarifying the respective roles of USCIS and the LEA signing the form. *See* new page 1, ''When Should I Use Form I–914, Supplement B?''.

Comment: At page 1 ''When Should I Use Form I–914, Supplement B,'' and at page 2, part C, ''Statement of the Claim,'' item 1, the commenter suggested adding the statutory citation for the definition of ''a severe form of trafficking in persons'' when explaining that to qualify for T nonimmigrant status, an applicant must meet that definition. *See* TVPA 103, 22 U.S.C. 7102. The commenter wrote that some officers interpret ''severe'' as extremely cruel or egregious activity or to mean the length of time in trafficking. The commenter wrote, for example, that a law enforcement officer had stated that 2 months of involuntary servitude was ''not severe enough'' to be trafficking. Other officers, the commenter continued, have stated that human trafficking means sex trafficking and have not recognized labor trafficking survivors as victims.

Response: DHS agrees it is important for LEAs to understand the term but declines to include the statutory citation to TVPA section 103, 22 U.S.C. 7102. The instructions refer the reader to the ''Statement of Claim'' section to read a definition, which includes a plain language definition that incorporates relevant text from the statute. *See* new page 2, part 3, ''Statement of Claim,'' item 1.

Comment: The commenter suggested at page 2, ''General Instructions,'' part A, ''Victim Information,'' number 1, that DHS remove from the instructions the text, ''as shown on his or her birth certificate or legal name change document,'' for the same reasons discussed above in the section on the Form I–914 Instructions.

Response: DHS has revised the language in a similar manner as the Form I–914 Instructions. The language now refers to a ''birth certificate, passport, or other legal document.'' As discussed above in the context of the same suggestion with respect to Form I–914 Instructions, it is important to provide clear instruction on what name USCIS is requesting. Neither this explanation nor the question on Form I–914, Supplement B indicate that the applicant must submit a specific document to obtain T nonimmigrant status or for law enforcement to sign a Form I–914, Supplement B. *See* new page 2, part 1, ''Victim Information,'' item 1.

Comment: The commenter suggested that at page 2, part B, ''Agency Information,'' number 1, DHS revise the discussion of certifying agencies to mirror language in the preamble to the 2016 interim rule and to include other agencies, such as the U.S. Department of Labor, that have the authority to provide a Form I–914, Supplement B.

Response: DHS agrees that the language in this section is inconsistent with the definition of LEA at 8 CFR 214.201 (previously 8 CFR 214.11(a)). Although DHS did not include every example of a certifying agency, DHS revised the Form I–914, Supplement B Instructions for consistency with the language in new 8 CFR 214.201 and included a cite to the new regulation. *See* new page 2, part 2, ''Agency Information,'' item 1.

The following suggestions were resolved by revisions to the Form I–914, Supplement B Instructions published on February 27, 2017, in conjunction with the 2016 interim rule, and/or in the December 2, 2021, publication:

- Page 3, part C.1.D, ''Statement of Claim,'' delete the option for law enforcement officers to certify that they believe the individual is not a victim of trafficking.

- Page 3, part D, ''Cooperation of Victim,'' add language clarifying that if an applicant is unable to cooperate with LEA requests due to physical or psychological trauma or age, ''the applicant must provide additional evidence.''

2. Comments on Information Collection Changes to Form I–914, Application for T Nonimmigrant Status, and Related Forms and Instructions Published With Final Rule (60 Day Notice)

DHS received several comments on the January 10, 2018, **Federal Register** notice, many of which suggested revisions to the forms and associated instructions. DHS responds to those recommendations for each form, supplement, or instructions. DHS does not respond to comments outside the scope of the information collection.

Form I–914

Comment: A few commenters requested that on page 1, part 2, ''U.S. Physical Address,'' the form include instructions informing applicants that they could provide a safe mailing address instead of their physical address. The commenters stated many victims of trafficking are involved in multiple legal systems and are often required to provide the T nonimmigrant status application to the trafficker as part of the criminal or civil discovery process. Additionally, they stated that under this rule, DHS may disclose an applicant's information to an LEA that may be required to share this information with the trafficker to comply with constitutional requirements during criminal prosecution, potentially jeopardizing the applicant's safety. The commenters further suggested that DHS could instruct them to provide just the ZIP code of their physical address to ensure that applicants can have their biometrics appointments scheduled at the nearest ASC.

Response: DHS shares the commenters' goal of ensuring the safety of applicants for T nonimmigrant status; however, DHS declines to make these changes. As discussed previously, DHS requests the applicant's physical street address for internal information purposes and consistent with requirements that individuals applying for visas register their presence. *See* INA secs. 221(b), 261, 265, 8 U.S.C. 1201(b), 1301, 1305. Although DHS appreciates the concern regarding information provided to law enforcement agencies, that authority exists for the purpose of promoting investigation and prosecution of traffickers, not to put victims of trafficking at risk. If law enforcement is obligated to turn over a T nonimmigrant status application in the context of a criminal prosecution, law enforcement and the prosecutor should take steps to ensure the victim's safety.

Comment: The same commenters recommended adding an instruction at page 2, part 2, ''Other Information,'' question 9, for applicants to check the box corresponding to the gender with which they identify. The commenters mentioned USCIS' policy to change the gender on official immigration documents, such as employment authorization cards and documentation of immigration status, if the individual can provide specifically enumerated evidence verifying a change in gender.

Response: DHS appreciates the sensitivity that surrounds the issue of gender identity. Although DHS declines to make universal changes at this time to questions and data collections regarding sex, gender, male, female, mother, father, sister, brother, and other gender-related terms, as discussed above, DHS will add a third gender identity option to the Form I–914 and related forms.

Comment: On page 3, part 4, ''Additional Information About Your Application,'' questions 3.b. and 4.b., commenters suggested changes to the instruction to provide an explanation and supporting documentation for the answers to the questions. The commenters recommended deleting language indicating that the applicant should attach documents in support of their claim to be a victim of a severe form of trafficking in persons and the specific facts supporting the claim. The commenters also suggested deleting instructions in 3.b. and 4.b. to use extra space on the form to provide explanations for affirmative answers to questions regarding the physical presence requirement and the extreme hardship requirement. Finally, they recommended adding an instruction that the personal narrative statement describing the trafficking also address each eligibility requirement for T nonimmigrant status.

Both commenters stated the current language appears to suggest that a one-sentence explanation will be sufficient evidence of the physical presence and extreme hardship eligibility requirements. They also expressed that the recommended additional language would help ensure that the personal narrative sufficiently addresses all eligibility requirements. One of the commenters stated it has observed an increase in RFEs for lack of sufficient information in the initial T visa application on these two eligibility requirements. The commenter stated that the additional language could reduce the number of RFEs and delays in processing time.

Response: DHS agrees that it is important for applicants to provide sufficient information regarding their eligibility for T nonimmigrant status in their initial application. DHS already deleted the instruction included in 3.b. and 4.b., which it agrees may not have encouraged applicants to provide sufficient information as to the physical presence and extreme hardship eligibility requirements. DHS also already included an instruction to address the eligibility requirements in the personal narrative statement. DHS has deleted the instructions in questions 1, 3, and 4 requested the applicant attach evidence or documentation; instead, DHS has included in the introductory paragraph that the applicant should attach evidence and documents to support their claim if they answer ''Yes'' to questions 1–4. The applicant bears the burden of establishing their eligibility for T nonimmigrant status and available documentation corroborating the applicant's claim should be provided.

Comment: About page 3, part 4, ''Additional Information About Your Application,'' question 5, which asks whether the applicant has reported the crime they claim to have suffered, one commenter suggested DHS change the word ''crime'' to ''trafficking.'' The commenter stated this change will clarify that applicants must report a crime that includes trafficking as at least one central reason for the commission of the crime.

Response: DHS agrees and has already changed the wording to ''trafficking crime,'' which is more specific and appropriate, given the requirement that the applicant be a victim of ''a severe form of trafficking in persons'' and comply with any reasonable law enforcement requests for assistance in an investigation or prosecution of a crime involving acts of trafficking in persons. *See* INA sec. 101(a)(15)(T)(i)(I), (III), 8 U.S.C. 1101(a)(15)(T)(i)(I), (III).

Commenter: Regarding page 3, part 4, ''Additional Information About Your Application,'' commenters suggested adding the parenthetical ''(if any)'' after the question requesting the criminal case number. The commenters stated that the recommended language would provide clarification that a police report case number is not required and that it would reinforce that a law enforcement declaration or documentation of criminal investigation is not required to file for a T visa. One of the commenters stated it frequently encounters the misconception that a law enforcement declaration is required to apply for a T visa, causing some survivors and advocates to unnecessarily delay filing their application until a law enforcement report is made or a

criminal investigation is instigated. The commenters also suggested deleting the request for an explanation if the applicant did not report to law enforcement. They instead suggested adding in an instruction to provide the explanation in the applicant's personal narrative. Two commenters stated that question 7 suggests that the explanation of why the survivor has not reported the trafficking crime can be achieved by a brief sentence and makes it appear as if reporting to law enforcement is optional rather than reinforcing the need for the applicant to raise either the trauma-based exception or age-based exemption to the requirement to comply with reasonable law enforcement requests.

Response: DHS agrees with the commenters' suggestion regarding the case number and has already revised the form to state that the applicant should indicate ''the case number assigned, if any.'' *See* new page 3, part 3, question 5. However, DHS declines to remove the requirement that an applicant explain why they did not report the crime. The current form indicates that an applicant should explain the circumstances. Applicants have the option to either provide an explanation on the form or in their personal narrative statement. DHS does not see the need to further specify where the explanation is included.

Comment: Regarding page 3, part 4, ''Additional Information About Your Application,'' questions 8 and 9 (now questions 6 and 7), two commenters recommended deleting the instruction for minors under 18 years of age to skip question 9.b. (now question 7) related to whether the minor reported their trafficking to law enforcement. The commenters stated that although minors are exempt from the general requirement to comply with reasonable law enforcement requests for assistance in the investigation or prosecution of acts of trafficking, many minor applicants do report their trafficking victimization to law enforcement and do not need to skip the question. The commenters further stated that forcing minors to skip question 9.b. regarding cooperation with law enforcement may jeopardize their opportunity to adjust status to lawful permanent residence early based on the criminal investigation or prosecution having been completed. The commenters also stated the language creates unnecessary confusion that only those who are minors at the time of filing Form I–914 are eligible for an exemption to the requirement to comply with reasonable law enforcement requests when USCIS has stated that minors under 18 at the time of the victimization can meet this exemption.

Response: DHS agrees with the commenter's stated rationale and has deleted this instruction.

Comment: At page 4, part 4, ''Additional Information About Your Application (continued),'' questions 14.a.–14.b. (now question 9), commenters suggested deleting both questions regarding the circumstances of the applicant's most recent entry. Two commenters stated that question 3.a. (now question 3) already sufficiently addressed the physical presence eligibility requirement and question 14.a. confuses the physical presence eligibility requirement and reinforces existing physical presence misconceptions. The first misconception is that an applicant's latest entry must be based on the trafficking and does not recognize that there are other alternative exceptions to satisfy the physical presence requirement when the latest entry is not related to the trafficking. Commenters wrote that question 14.a. also reinforces the misconception that a victim of severe form of trafficking in persons is required to be trafficked across the United States border. One commenter stated that question 14.a. misstates the physical presence eligibility requirement. Neither the statutory language nor the regulatory language requires that an applicant's last entry be related to the trafficking.

Response: As discussed previously in response to comments on Form I–914 published with the IFR, the commenters are correct with respect to the statutory eligibility requirements, *see* INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T); however, including these questions does not mean that an applicant must show their last entry was related to the trafficking suffered. The questions help provide information to adjudicators about the general circumstances of the applicant's most recent arrival, whether related to the trafficking or not, and information regarding the applicant's immigration history. All this information assists adjudicators in understanding the full history and facts of an applicant's claim. Accordingly, DHS declines to delete the questions; however, DHS has combined the two into a new question at new page 4, part 3, item 9.

Comment: At page 4, part 5, ''Processing Information,'' the introductory paragraph instructs applicants to answer affirmatively any question that applies even if their records were sealed, otherwise cleared or the applicants have been told they no longer have a record. Commenters requested DHS add an instruction that applicants could answer ''no'' to questions 1.b. through 1.f. and ''n/a'' to questions 2–5 regarding their criminal history if they had been granted vacatur. The commenter stated that vacatur is a form of relief for trafficking survivors who were forced to commit illegal acts by their traffickers and that, unlike expungement, vacatur is the recognition from the criminal justice system that a mistake was made, that the accused was wrongfully accused and in fact is a victim, and that the arrest or conviction should never have occurred. The commenters expressed that vacatur completely eradicates a survivor's criminal history as if the arrest and conviction had not occurred, instead of excusing criminal behavior; vacatur also recognizes that victims who did not have the requisite *mens rea* to commit the criminal act should not be penalized. They also stated that the current instructions are confusing and may lead to the inadvertent or illegal disclosure of state court records where state confidentiality laws may prevent disclosure of juvenile state court files without a court order. One of these commenters also requested that DHS delete instructions to answer each question about the applicant's criminal history regardless of whether the criminal records were sealed or otherwise cleared.

Response: DHS recognizes that victims of human trafficking may be forced to commit illegal acts at the hands of their traffickers; however, DHS declines to make the requested changes because having all information relevant to an applicant's trafficking experience is helpful to the adjudication. Applicants have an opportunity to explain in their personal statement and through their supporting evidence, the circumstances of any criminal activity. As the instructions state, answering ''yes'' to the questions regarding criminal conduct and inadmissibility will not necessarily lead to a denial of the application.

Comment: Another commenter requested DHS add an instruction that applicants could answer questions in the negative if their response related to prostitution that they were forced to engage in by their trafficker. The commenter stated the question could lead to filing unnecessary inadmissibility waivers, fee waivers, and additional explanations.

Response: DHS responded to a similar comment above. As discussed above, the question is appropriate as written because engaging in prostitution is a ground of inadmissibility, whether or not connected to victimization. If the

applicant has engaged in this type of conduct and the prostitution was connected to the trafficking, the applicant can request a waiver but must still answer the question to address possible inadmissibility. USCIS will examine all the evidence submitted and decide on a case-by-case basis whether to grant any waiver request.

Comment: Regarding page 4, part 5, ''Processing Information,'' question 1.a., one commenter requested DHS delete the question which asks whether the applicant has ever committed a crime or offense for which the applicant has not been arrested. The commenter stated the question was vague and overbroad and goes beyond the statutory grounds of inadmissibility at section 212(a)(2) of the INA, 8 U.S.C. 1182(a)(2). The commenter further stated that the question would encompass very minor criminal infractions as well as serious criminal activity, and that the question assumes applicants have sufficient legal knowledge to answer accurately.

Response: DHS declines to delete the question. As discussed previously in response to a similar comment above, answers to this question are useful for adjudicators in gathering relevant information related to determining admissibility and assessing the applicant's truthfulness. In addition, in DHS's experience, answers to the question have provided information relevant to the applicant's trafficking experiences.

Comment: One commenter stated that DHS's changes to the inadmissibility questions dramatically expand the scope of information sought without identifying the need for the expansion. According to the commenter, these changes appear intended to bolster an adjudicator's ability to deny applications on attenuated discretionary grounds. The commenter stated that this was especially troubling given that several of these expanded queries relate to potential inadmissibility grounds or other discretionary concerns that are often incidental to the trafficking or the victim's attendant vulnerabilities that helped precipitate the trafficking victimization.

Response: DHS will not change the wording or delete any of the inadmissibility questions as a result of this comment. The changes to these questions do not change the meaning of any of the statutory grounds of inadmissibility but were meant to make the questions less legalistic and use plain language to facilitate greater understanding of their meaning. The changes were also made to promote consistency with changes to questions on admissibility used in other USCIS forms.

Comment: Regarding page 5, part 5, ''Processing Information,'' question 7, one commenter suggested making a change to the inadmissibility question related to whether the applicant ever imported prostitutes. The commenter stated that the phrase ''imported prostitutes'' was dehumanizing and insensitive, especially because many victims who suffered sex trafficking will be using this form and suggested, in the alternative, the phrase ''prostituted persons'' or ''persons in prostitution.''

Response: DHS declines to make this change. The question uses the statutory language from section 212(a)(2)(D) of the INA, 8 U.S.C. 1182(a)(2)(D) and is not meant to ascribe any characteristics to the people referenced.

Comment: At page 8, part 7, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' commenters requested DHS add to the paragraph on the authorization of release of information that ''any disclosure shall be in accordance with the VAWA confidentiality provisions at 8 U.S.C. 1367 and 8 CFR 214.14(e).'' One commenter stated this inclusion would clarify and reinforce the applicability of these confidentiality provisions.

Response: DHS agrees that it is important that applicants understand that their release of information is subject to the confidentiality provisions at 8 U.S.C. 1367 and is adding in language regarding these provisions.

Comment: One commenter requested DHS not restrict the forms from editing to allow users to make comments directly on the form. The commenter is a national technical assistance provider and uses forms to provide training and technical assistance by creating comments and guidance on how to complete specific sections of the forms.

Response: DHS declines to make any changes in response to the comment. Nevertheless, stakeholders can obtain an unlocked version of the form for training purposes by contacting the information contact for this rule.

The following suggestion was resolved by subsequent revisions to the Form I–914:

- Page 2, part 2, ''General Information About You (Victim),'' ''Information About Your Last Arrival in the United States,'' questions: 14.b.–14.f, add the parenthetical ''(if any)'' after the requests for recent passport or travel document information.

Form I–914, Supplement A

DHS received several comments on Form I–914, Supplement A, some of which were duplicative of comments received on Form I–914. For the following comments, DHS declines to make the requested change for the same rationale stated in response to suggestions to revise Form I–914:

- Page 1, part 2, U.S. Physical Address, 2.a.–2.e, include instructions informing applicants they could provide a safe mailing address instead of their physical address;
- Page 2, part 3, ''Current or Intended U.S. Physical Address,'' 4.a.–4.e., include instructions informing applicants they could provide a safe mailing address instead of their family member's physical address;
- One commenter made a general comment about DHS's proposed changes to the inadmissibility questions, stating that the changes dramatically expand the scope of information sought without identifying the need for the expansion;
- One commenter requested DHS not restrict the forms from editing to allow users to have the capability to make comments directly on the form.

Comment: Two commenters repeated their comment on the Form I–914 that DHS should add language at page 8, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' to the paragraph on the authorization of release of information that ''any disclosure shall be in accordance with the VAWA confidentiality provisions at 8 U.S.C. 1367 and 8 CFR 214.14(e).''

Response: For the reason discussed above, DHS agrees to add language referencing the confidentiality protections included in 8 U.S.C. 1367.

The following suggestions were resolved by subsequent revisions to the Form I–914, Supplement A:

- Page 3, part 3, ''Information About Your Family Member,'' question 16 (asked for ''Your Current Immigration Status or Category''), change the question to add ''Family Member's'' after ''Your'' and delete the reference to ''Category'';
- Page 4, part 3, ''Additional Information About Your Family Member,'' question 37 directs the applicant to answer questions 38–40.g. if the applicant answers question 37 affirmatively and to skip to item 41.a. if the applicant answers question 37 negatively. One commenter stated that it was not clear whether applicants who respond affirmatively to the question must answer question 41.b;
- Page 4, part 3, ''Additional Information About Your Family Member,'' question 41.b., add a space to write that the family member is currently in removal proceedings;

• Page 5, part 4, ''Processing Information,'' question 15 regarding whether the family member has ever ''illicitly (illegally) trafficked or benefited from the trafficking of any controlled substance, such as chemicals, illegal drugs, or narcotics?,'' remove the reference to illegal drugs;

• Page 8, Part 5, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' item 8.a., remove requirement of a signature from an applicant's family members who are not in the United States.

Form I–914 Instructions

DHS received several comments on the Form I–914 Instructions, many of which were duplicative of comments received on the Form I–914. For the following comments, DHS declines to make the requested changes for the same rationale discussed in response to comments on Form I–914:

• Page 4, part 2, ''General Information About You (Victim),'' items 4.a.–4.e., ''U.S. Physical Address,'' and items 5.a.–5.f., ''Safe Mailing Address;'' page 7, ''Specific Instruction for Form I–914, Supplement A,'' part 2, ''General Information About You (Principal Applicant (Victim)),'' items 2.a.–3.e., ''U.S. Physical Mailing Address'' and items 3.a.–3.f., ''Safe Mailing Address,'' commenters requested DHS include instructions informing applicants that could provide a safe mailing address in lieu of their physical address and just provide the ZIP code of their physical address to ensure a biometrics appointment near their physical location.

DHS provides individualized responses to the remaining comments.

Comment: Commenters recommended several changes to the description of the adult or minor children at page 2, item 2.C.3 including deleting the parenthetical phrase specifying the relationship of the adult or minor children to the applicant's family members. The commenters made a similar recommendation at page 14, ''Evidence to Establish T Nonimmigrant Status For Your Family Member,'' item 3.C. The commenters stated that applicants and advocates often struggle with understanding the ''derivative of a derivative'' category and stated that removing this language will simplify the description and avoid confusion.

Response: DHS appreciates the complex nature of this category of eligible family members and the value of simplifying instructions but believes the additional information could be helpful to applicants in confirming the meaning of the description of the eligible family members.

Comment: At page 4, part 2, ''General Information About You (Victim),'' items 1.a.–1.c., ''Your Full Legal Name,'' and page 7, part 2, ''General Information About You (Principal Applicant (Victim)),'' items 1.a.–1.c., ''Your Full Legal Name,'' commenters recommended DHS delete its request for the applicant's and family member's legal name as shown on the individual's ''birth certificate or legal name change document.'' The commenter stated that some trafficking survivors do not have access to identity documents with the applicant's legal name and that the current text could create an evidentiary barrier for victims who do not have these documents.

Response: As discussed previously in response to this same comment to the Form I–914 instructions published on December 20, 2016, it is essential for DHS to know the name of the applicant or their family member as it appears on official identification documents so that DHS can conduct proper background checks and ensure there is no confusion about the identity of the person receiving the status, if approved. Neither this explanation nor the questions on the form indicate that evidence of a birth certificate or legal name change document is a requirement to obtain status. DHS has already amended the language to state ''birth certificate, passport, or other legal document.'' Furthermore, the requirement does not in any way impact an applicant's evidentiary burden.

Comment: At page 4, part 2, ''General Information About You (Victim),'' item 9, which requests the applicant's gender, commenters consistent with comments to Form I–914 and Form I–914, Supplement A, requested an instruction regarding an additional checkbox for applicants who identify as transgender or, as one commenter stated, ''a non-binary option for LGBTQI applicants.'' Another commenter also made a similar comment at page 8, part 3, ''Information about Your Family Member,'' item 8, ''Gender.''

Response: For the rationale discussed above in response to similar comments on Form I–914, DHS will make this change.

Comment: At page 5, items 14.a.–14.f., ''Passport and Travel Document Numbers,'' commenters suggested making changes to this instruction on providing passport and travel document information to take into account the fact that trafficking survivors often do not have these documents and that having a passport is not required to apply for T nonimmigrant status. One of the commenters made a similar comment at page 10, ''Specific Instructions for Form I–914, Supplement A.''

Response: DHS agrees that many trafficking victims may lack access to passports or travel documentation, and, therefore, adds to the instructions at both pages for applicants to provide the passport and travel document information ''if applicable and if known.''

Comment: One commenter requested that DHS add a similar instruction in relation to questions about the applicant's last arrival into the United States and the applicant's current immigration status or category at page 5, item 15.–16.b., ''Information About Your Last Arrival in the United States'' and item 17, ''Current Immigration Status or Category.''

Response: DHS declines to adopt this recommendation. This information should be reasonably available to the applicant, as it does not require the applicant to have particular documents in their possession. If an applicant does not know the information, the applicant can write ''unknown'' and provide an explanation.

Comment: About page 6, part 5, ''Processing Information,'' commenters requested DHS delete instructions to answer each question about the applicant's criminal history regardless of whether the criminal records were sealed or otherwise cleared. One of the commenters also made this suggestion in reference to page 10, ''Specific Instructions for Form I–914, Supplement A,'' part 4, ''Processing Information,'' items 1.a.–44.c. Both commenters stated the language was unduly burdensome, confusing to trafficking survivors, and assumes applicants have sufficient legal knowledge to respond accurately. One of the commenters also recommended deleting the instruction at page 6, part 5, ''Processing Information,'' for applicants to answer affirmatively to the questions about their conduct, regardless of whether the actions or offenses occurred in the United States or anywhere in the world. Another commenter requested DHS add an instruction at page 6, part 5, ''Processing Information,'' that applicants could answer questions about their conduct in the negative if their conduct involved prostitution that they were forced to engage in by their trafficker.

Response: DHS declines to delete any language from these instructions. All of an applicant's prior conduct is relevant to the adjudication of their application and DHS can consider any extenuating circumstances such as forced criminal conduct or other circumstances that

may have led to the applicant's records being sealed or criminal history being cleared.

Comment: At page 7, ''Specific Instructions for Form I–914, Supplement A,'' one commenter recommended throughout that DHS replace the use of the pronouns ''his'' and ''hers'' with ''family member'' or ''derivative'' to provide more clarity to the applicant.

Response: DHS has revised the use of pronouns to be gender neutral throughout but declines to adopt this suggestion because DHS believes the use of pronouns is clear.

Comment: At page 11, ''Specific Instructions for Form I–914, Supplement B,'' one commenter suggested adding an instruction that if applicants do not submit the Form I–914, Supplement B, they should provide alternative evidence to show victimization and cooperation with law enforcement. Another commenter suggested that DHS add a similar instruction but recommended that it state that applicants ''must'' provide additional evidence to show victimization and cooperation with law enforcement. The commenters also suggested referring applicants to the section of the Form I–914, Supplement B Instructions on ''Evidence of Cooperation with Reasonable Requests from Law Enforcement'' for additional information. The commenters expressed that the language would clarify that the I–914 Supplement B is not required and is no longer considered primary evidence and would prompt applicants to consider providing alternate evidence.

Response: DHS had already included an instruction that applicants may provide other evidence and directs applicants to the relevant portion of the Form I–914, Supplement B Instructions; however, to emphasize that applicants must provide evidence to show victimization and cooperation with law enforcement, DHS has revised the language to state that an applicant ''must'' provide other evidence.

Comment: At page 11, ''What Evidence Must You Submit?,'' commenters suggested that the initial paragraph state that applicants may submit ''any credible evidence'' in accordance with 8 CFR 214.11(d)(2)(ii) (new 8 CFR 214.204). In addition, the commenters suggested adding language that the application may not be denied for failure to submit particular evidence, but only if the evidence that was submitted was not credible or otherwise failed to establish eligibility and that the ''any credible evidence'' standard is discretionary. Commenters also suggested including mention of the ''any credible evidence'' standard in the ''General Instructions'' at page 2.

Response: DHS agrees that it is important to mention the ''any credible evidence'' standard and has added language in the form instructions to describe the standard. DHS is not adding language on the standard in the ''General Instructions'' at page 2 as one mention should be sufficient.

Comment: At page 12, ''Evidence of Cooperation with Reasonable Requests from Law Enforcement,'' in the introductory paragraph, commenters requested DHS amend the sentence specifying that it is USCIS' role to decide whether the applicant meets the eligibility requirements for T nonimmigrant status. The commenter suggested DHS include the phrase ''regardless of whether [the] LEA choose[s] to investigate or prosecute the trafficking crime.'' Commenters stated that the proposed language would further clarify that USCIS has the final determination of whether an applicant is eligible for T nonimmigrant status and that this determination is not dependent on a declaration from law enforcement. One commenter added that this proposed language will provide clarity to applicants that an LEA's unwillingness to sign a Form I–914, Supplement B should not be a deterrent to filing the application for T nonimmigrant status and to provide additional reassurance to LEAs that the Form I–914, Supplement B is not a determination of an individual's eligibility to obtain T nonimmigrant status.

Response: DHS declines the suggested change. The introductory paragraph clearly states that Form I–914, Supplement B is not required, and states that eligibility for T nonimmigrant status is not dependent upon whether the LEA pursues an investigation or prosecution. It also already states that USCIS determines whether an applicant meets the eligibility requirements.

Comment: At page 16, ''Waiver of Grounds of Inadmissibility,'' commenters suggested the inclusion of the standards that USCIS uses in determining whether an applicant or their family member is eligible for a waiver of inadmissibility. The commenters stated this addition will provide clarity that the applicant may be eligible to receive a waiver and provides additional guidance on when USCIS will use its discretion to waive grounds of inadmissibility.

Response: DHS declines to make this change. The suggested language conflates two different waiver standards included in section 212(d)(3) and (d)(13) of the INA, 8 U.S.C. 1182(d)(3), (d)(13). The ''Waiver of Grounds of Inadmissibility'' section was added for contextual information. The standards and requirements for a waiver are discussed in detail on the separate inadmissibility waiver application forms. The standards and requirements that apply are too detailed and complex to include in these form instructions.

Comment: At page 16, ''What is the Filing Fee?,'' the Instructions state that there is no fee for the Form I–914 and commenters recommended adding a discussion of fees for other related forms, available fee waivers and where to find more information on these topics, to provide clear guidance on where more information can be obtained.

Response: DHS appreciates the suggestions but declines to adopt them. The information provided on fees and fee waivers for all related forms is sufficiently specified through vehicles such as the USCIS website or Form G–1055, Fee Schedule.

Comment: One commenter requested DHS include information earlier in the ''General Instructions'' on the 8 U.S.C. 1367 protections related to disclosure and to the prohibitions on using information provided solely by a perpetrator. The commenter also requested DHS include information on which agency the applicant should contact with questions or concerns about confidentiality violations.

Response: DHS believes the Instructions only need to mention the 8 U.S.C. 1367 protections once. DHS does not believe it is necessary to include information on which agency to contact if the applicant has questions or concerns about confidentiality violations because that is outside the scope of instructions for completing a form. In addition, USCIS provides information on its website on how to make a complaint about employee misconduct.

The following suggestions were resolved by subsequent revisions to the Form I–914 Instructions:

- Page 1, ''Principal Applicant,'' question 1.C., add language about enforcement agencies with the authority to detect or investigate trafficking crimes.
- Page 1, ''Who May File Form I–914?,'' item 2, ''Principal Applicant Filing for Eligible Family Members at the Same Time,'' delete the phrase ''at the same time'' from this title and the instruction, and add an instruction that the applicant may file a Supplement A with an initial application or at a later time;

• Page 3, ''General Instructions,'' ''Copies,'' delete the statement that USCIS may destroy original documents that are submitted when not required or requested;

• Page 10, part 5, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' ''NOTE;'' page 11, ''Initial Evidence,'' item 4; page 11, ''Initial Evidence,'' second item 1, remove requirement that all eligible family members sign the Supplement A;

• Page 10, part 5, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' ''Note;'' page 11, ''Initial Evidence,'' delete the instruction that all family members must sign Form I–914, Supplement A;

• Page 11, ''What Evidence Must You Submit?,'' delete the first two sentences of the initial paragraph, which instruct applicants to submit all evidence requested in the Instructions and warns that a failure to provide required evidence could result in a rejection or denial of the application;

• Page 15, ''Unavailable Documents,'' delete language that suggests applicants can provide secondary evidence if a required document is not available and that USCIS may require a certification from an appropriate civil authority if a necessary document is unavailable;

• Page 17, ''Processing Information,'' ''Confidentiality,'' add examples of the entities to which an applicant's information could be disclosed under 8 U.S.C. 1367.

Form I–914, Supplement B

DHS received three comments on Form I–914, Supplement B, two of which are similar to comments made on Form I–914 and Form I–914, Supplement A regarding questions about the gender of applicants and family members at page 1, part 1, ''Victim Information,'' ''Other Information About Victim,'' question 8. For the same reasons discussed above, DHS will instruct that responses to questions about the applicant's gender on Form I–914, Supplement B reflect the gender with which the applicant identifies.

The following suggestion was resolved by subsequent revisions to the Form I–914, Supplement B:

• Page 2, part 3, ''Statement of Claim,'' ''Type of Trafficking,'' question 1.e., remove the option for law enforcement to indicate a belief that the applicant is not a victim of trafficking.

Form I–914, Supplement B Instructions

Comment: For page 1, ''What is the Purpose of Form I–914, Supplement B?,'' ''Description,'' commenters suggested DHS move to the beginning of the second paragraph under this heading the language that USCIS, not the LEA, makes the decision regarding whether the applicant meets the eligibility requirements for T nonimmigrant status and add a phrase that signing a Supplement B does not lead to automatic approval of the T visa application. The commenters wrote that the changes would correct the misconception that criminal charges or convictions were needed before Form I–914, Supplement B could be signed and that signing a Supplement B would lead to the automatic approval of an immigration benefit. Another commenter suggested adding language that officers can sign the Form I–914, Supplement B even if there is no investigation opened. That commenter stated that the existing language in the Form I–914, Supplement B Instructions has not been sufficient to empower some law enforcement agents to sign the Form I–914, Supplement B if a prosecuting authority decides not to open a case. The commenter also suggested DHS add detailed language about the compliance with reasonable law enforcement requests requirement to give examples of sufficient cooperation and include language that there is a presumption of compliance for applicants who reported the trafficking incident and had not denied any reasonable requests for assistance.

Response: For reasons discussed previously in response to similar suggestions when the Form I–914, Supplement B Instructions were published on December 20, 2016, DHS declines to make these changes. The instructions on page 1 in the third paragraph under the heading, ''When Should I Use Form I–914, Supplement B?'' clearly state that a formal investigation is not a requirement for an LEA to sign the form. DHS does not believe it is necessary to provide more detail regarding the compliance with reasonable law enforcement requests requirement. Law enforcement decides at its own discretion whether to provide a Form I–914, Supplement B, and an applicant does not have to submit Form I–914, Supplement B to receive T nonimmigrant status. The regulations do not include a presumption of compliance with reasonable law enforcement requests, and DHS declines to include language to that effect in the Form I–914, Supplement B Instructions.

DHS also declines to adopt the recommendation to move the language about USCIS' role in the adjudication process. DHS believes it is appropriate to describe the purpose of Form I–914, Supplement B before clarifying the respective roles of USCIS and the LEA signing the form. DHS also does not believe it is necessary to add a phrase that signing does not lead to automatic approval of the application for T nonimmigrant status. The Form I–914, Supplement B Instructions already state that by providing a Supplement B, the LEA is not giving an immigration benefit.

Comment: For page 1, ''When Should I Use Form I–914, Supplement B?,'' one commenter requested that DHS not use the phrase ''on account of'' but ''as a result of'' when describing the physical presence on account of trafficking eligibility requirement. The commenter stated that the phrase is a legal term of art that will generate confusion and will dissuade law enforcement agents from signing a Form I–914, Supplement B.

Response: DHS agrees with the commenter and has changed this language for consistency.

Comment: Regarding page 3, part 1, ''Victim Information,'' items 1.a.–1.c., ''Full Legal Name of Victim,'' commenters repeated a request made in connection with the Form I–914 and the Form I–914, Supplement A to delete instructions to provide the applicant's name as shown on their birth certificate or legal name change document.

Response: As discussed previously, DHS declines to make this change, but has revised the question to include ''other legal documents.''

Comment: Regarding page 3, part 1, ''Victim Information,'' item 8, ''Gender,'' commenters provided similar suggestions to those made on Form I–914 and Form I–914, Supplement A regarding providing additional options to respond to the question about the applicant's gender.

Response: For the same reasons discussed previously, DHS will instruct that the response reflect the gender with which the applicant identifies.

Comment: For page 4, ''General Instructions,'' items 10.–12.b., one commenter stated that asking for the case number, case status, and, if applicable, the FBI Universal Control Number or State Identification Number is likely to dissuade LEAs from signing a Form I–914 Supplement B because they will believe they need to have an identifying case number associated with the investigation. The commenter suggested adding language that to sign a Form I–914, Supplement B, an investigation consisting of an initial report is sufficient, and no case number is required.

Response: DHS does not believe that asking for this information will dissuade LEAs from providing a Form I–914,

Supplement B. The ''General Instructions'' at page 2 make it clear that if the LEA does not have certain information, the LEA can leave the field blank. The Form I–914, Supplement B Instructions at page 1 clarify that the LEA does not necessarily need to formally launch an investigation or file charges to provide a Form I–914, Supplement B. In addition, the instructions indicate this information should be filled out only if applicable. DHS will retain the question because the case identifying information is helpful if USCIS needs to inquire further with the LEA about the case.

Comment: About page 4, part 3, ''Statement of Claim,'' items 1.a.–1.e., ''Type of Trafficking,'' one commenter stated that the options available to LEAs to choose which type of trafficking occurred do not account for sex or labor trafficking that did not result in a completed sex act or completed labor/service.

Response: DHS agrees and has added a statement clarifying that victims of attempted labor or sex trafficking can be considered victims of a severe form of trafficking in persons.

Comment: Regarding page 4, part 3, ''Statement of Claim,'' item 2, ''Victimization Description,'' LEAs are instructed to identify the relationship between the victimization and the crime under investigation or prosecution. One commenter requested the instructions clarify that the LEA's own investigation independently satisfies the threshold and that a separate investigation opened by a prosecutor is not required.

Response: DHS feels that the Instructions do not suggest the need for a separate investigation or prosecution and do not need to be changed.

Comment: At page 4, part 3, ''Statement of Claim,'' items 3.a.–3.b., ''Fear of Retaliation or Revenge,'' the instruction asks LEAs to indicate whether the applicant has expressed any fear of retaliation or revenge if removed from the United States. One commenter stated that it was unlikely that many victims will feel comfortable enough to provide much detail to LEAs about why they fear returning to their home country but did not recommend any specific changes.

Response: DHS does not believe any change is necessary. In some cases, trafficking victims may share information with LEAs about what they fear will happen to them if removed from the United States. In other cases, as the commenter stated, they may not. The instruction asks for the information if it exists and, if it is shared, it can help adjudicators understand the full facts of a case. If the LEA has no information about this topic and applicants want to show they have such a fear, they can submit other relevant credible evidence.

Comment: Regarding page 5, part 5, ''Family Members Implicated in Trafficking,'' one commenter expressed that requiring LEAs to include the names of family members ''who they believe to be affected by the trafficking may instill fear and uncertainty in a survivor's mind.'' The commenter stated that applicants may not want to disclose this information initially, and it could come out later creating the appearance of an inconsistency and affect their credibility.

Response: DHS understands trafficking victims may be hesitant to admit that a family member was involved in their trafficking; however, DHS will maintain this question. Again, the Form I–914, Supplement B Instructions do not require this information, and whether the information exists does not directly impact an applicant's eligibility for T nonimmigrant status. However, if an LEA has this information, it can help USCIS understand the full facts of an applicant's victimization. The information may also be relevant to the family member's eligibility for derivative T nonimmigrant status, as section 214(o)(1) of the INA, 8 U.S.C. 1184(o)(1), provides that an individual is ineligible for admission to the United States as a T nonimmigrant if there is substantial reason to believe they have committed an act of a severe form of trafficking in persons. If the family member is an immigrant USCIS may be able to use the information provided to deny or revoke immigration status if appropriate.

The following suggestions were resolved by subsequent revisions to the Form I–914, Supplement B Instructions:

- Page 1, ''What is the Purpose of Form I–914, Supplement B?,'' ''Description,'' add language that ''a formal investigation or prosecution is not required in order for a LEA to complete an endorsement'';
- Page 3, part 1, ''Victim Information,'' items 4–6, add that LEAs should provide this information if known;
- Page 4, part 3, ''Statement of Claim,'' items 1.a.-1.e., ''Type of Trafficking,'' remove the option for an LEA to indicate that the applicant for T nonimmigrant status is not a victim of trafficking;
- Page 4, part 4, ''Cooperation of the Victim,'' add that the victim must provide additional evidence if they claim they are unable to cooperate with law enforcement requests for assistance.

3. Changes to Form I–914, Form I–765, and Related Forms and Instructions Published With Final Rule

a. Discretionary and Technical Changes to Form I–914 Package

i. Overarching Changes

To improve readability, DHS made non-substantive edits to questions, headings and narrative in the forms and the associated instructions. DHS revised all forms and associated instructions to use gender neutral language. DHS has also updated all references to the regulations.

Throughout the forms and instructions, DHS has revised the reference to law enforcement officials to match the new definition found at new 8 CFR 214.201.

On the Form I–914 and Form I–914, Supplement A, in the ''For USCIS Use Only'' section, DHS changed its reference from ''Conditional Approval'' to ''Waitlisted,'' which is a more accurate descriptor for this internal process.

ii. Specific Form Changes

Form I–914

At new page 3, part 3, ''Additional Information,'' item 6, DHS has revised the question to read that the applicant *was* under 18 years of age at the time at least one of the acts of trafficking occurred, and as discussed above, has removed the parenthetical instructing the applicant to skip item 7 if they answered yes to item 6. The relevant inquiry is the applicant's age at the time at least one of the acts of trafficking occurred, not at the time of filing, as clarified in the Preamble and the regulations. Similarly, in item 7, DHS has added that an explanation of why an individual did not comply with reasonable requests for assistance is only required if the individual was over the age of 18 at the time one of the acts of trafficking occurred.

At new page 7, part 5, ''Information About Your Family Members,'' DHS has added ''Information About Your Spouse'' to item 1 to clarify that the information being requested (date of birth, country of birth, etc.) is for the applicant's spouse. DHS has also renumbered the items, and under ''Information About Your Children,'' has deleted ''relationship,'' as the relationship should always be ''child.''

DHS deleted language at the end of part 5 of Form I–914 regarding completion of Form I–914, Supplement A. This language is unnecessary to include in the form as the Form I–914 Instructions provide clear guidance on the topic.

As previously discussed, in updating standard language at new page 9, ''Applicant's Declaration and Certification,'' DHS added language so that the applicant understands that any disclosure will be in accordance with the confidentiality protections contained in 8 U.S.C. 1367 and new 8 CFR 214.216.

At new page 11, part 9, ''Additional Information,'' DHS has added ''if any'' after A-Number and instructed the applicant to sign and date each additional sheet of paper included with the application. These additions will help ensure the integrity of additional sheets included with the application.

Form I–914, Supplement A

DHS has revised the name of the Supplement A to ''Application for Derivative T Nonimmigrant Status,'' as the prior title incorrectly implied that the application could only be filed by family members of T–1 recipients, rather than T–1 applicants *or* recipients.

As discussed above, DHS has combined part 1 and part 2, such that they both are now under new part 1, ''Family Members for Whom You Are Filing,''

At new page 2, part 4, ''Information About Your Family Member,'' DHS has revised item 2, ''Other Names Used'' to state that the applicant should provide any other names ''your family member has used'' rather than ''you have used.'' This clarifies the information being sought.

At new page 5, part 5, ''Processing Information,'' DHS has revised the first paragraph for clarity.

DHS made the same additions in the Form I–914, Supplement A regarding release of information to new page 9, ''Applicant's Declaration and Certification'' that it made to the same section in Form I–914 and for the same reasons as discussed in the previous section discussing changes to Form I–914. In the same section, at the end of the paragraph just prior to the signature, DHS has added a note stating that if a family member is in the United States, they must verify the information in Supplement A and sign the Supplement A. Stakeholders had indicated confusion over who was required to sign the form. Finally, in the Applicant's signature block, DHS included ''(if any)'' after the ''Safe Phone Number'' field to indicate the field is not required, and revised item 7, to clarify that the signature is for the family member for whom the applicant is filing (rather than using the less clear terminology of ''derivative'').

Form I–914 Instructions

As noted previously, DHS has added language at new page 1, ''What Is the Purpose of Form I–914?,'' to refer applicants to the language of the definition of ''a severe form of trafficking'' included in the section ''Evidence to Establish T Nonimmigrant Status,'' to provide easy reference to the definition.

DHS added a note regarding filing for adult or minor children of eligible family members at new page 2, ''Who May File Form I–914,'' item 2(C)(3) to clarify that although applications for all eligible family members can be filed concurrently, USCIS will not approve the application for an adult or minor child unless the application for derivative T nonimmigrant status for their parent has already been approved, consistent with existing policy. USCIS Policy Memorandum, *New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands* (Oct. 30, 2014). DHS also added this note at new page 4, ''Completing Form I–914, Supplement A, Application for Derivative T Nonimmigrant Status,'' ''Part 1. Family Member For Whom You Are Filing.''

At new page 2, ''General Instructions,'' DHS has added a note for applicants with attorneys who wish to receive communication from USCIS about filings related to the I–914, they should include those additional form numbers on the Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative.

At new page 3, part 5, ''Information about Your Family Members,'' DHS clarified its guidance that all children regardless of age or marital status should be included, which is consistent with the change made to the Form I–914, Supplement A.

DHS had already included an instruction that applicants may provide other evidence and directs applicants to the relevant portion of the Form I–914, Supplement B Instructions; however, to emphasize that applicants must provide evidence to show victimization and cooperation with law enforcement, DHS has revised the language at new page 7, ''Completing Form I–914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons to state that an applicant ''must'' provide other evidence.

At new page 7, ''Initial Evidence,'' DHS deleted the instruction to submit a copy of the principal applicant's Form I–914 with a Form I–914, Supplement A, due to enhanced processing procedures. DHS has also added an instruction that an applicant must include all evidence at the time of filing, and that any credible evidence can be submitted.

At new page 8, ''Evidence to Establish T Nonimmigrant Status,'' item 2, DHS has replaced ''as a result of'' with ''on account of,'' as discussed above, for consistency with the regulation. DHS has also added a grant of Continued Presence as a type of evidence that can be submitted to establish that an individual is or has been a victim of trafficking. DHS has also added a note that an applicant may explain why they did not provide or attempt to obtain a Supplement B (even though it is not required). In addition, DHS has added a list of evidence that an applicant may submit to establish tier claim that they were unable to cooperate with requests from law enforcement due to trauma, or due to their age.

At new page 9, ''Personal Statement,'' DHS has revised the list of what the applicant's personal statement should include, due to changes in the regulations relating the contents of the statement at new 8 CFR 214.204(c).

At new page 11, DHS has included a personal statement from the principal applicant or a derivative family member as an example of credible evidence describing the danger of retaliation, due to changes in the regulations at new 8 CFR 214.211(f)(3). DHS has also changed the section on this page from ''Unavailable Documents'' to ''Required Evidence.'' DHS has removed any reference to secondary evidence, as well as the list of secondary evidence, and instead instructs that applicants may submit any credible evidence, consistent with the evidentiary standard USCIS applies.

At new page 12, ''Initial Processing,'' DHS has added that a Form I–914 may also be rejected if the form's *required fields* are not completely filled out or the forms do not include *required* initial evidence. This will support timely applicant notification if USCIS determines that they are missing critical information that would otherwise delay processing or result in a denial of their request. As a result, applicants will have an opportunity to resolve the issue(s) with their filing sooner than if USCIS accepted the filing and ultimately issued a Request for Additional Evidence or Notice of Intent to Deny. Additionally, this will allow USCIS to focus its limited resources on cases that are properly completed and filed.

At new page 12, DHS has added a section titled ''Bona Fide Determination Process'' to describe the new, streamlined bona fide determination

process codified at 8 CFR 214.205. At the same page, DHS has also revised ''Employment Authorization'' to include reference to the bona fide determination process.

Form I–914, Supplement B and Form I–914, Supplement B Instructions

DHS has changed the title of Form I–914, Supplement B to ''Declaration for Trafficking Victim'' for simplicity and for ease of reference.

DHS has revised Form I–914, Supplement B at new page 2, part 3, ''Statement of Claim,'' ''Note:'' to reference the correct regulatory provision because USCIS is redesignating these provisions in the final rule. DHS has removed the language from part 3, ''Statement of Claim'' requesting the LEA attach the results of any name or database inquiry, as well as any relevant reports and findings, because this requirement was removed from the regulations.

DHS clarified at new page 4, part 6, ''Attestation,'' that the officer signing Form I–914, Supplement B is certifying their belief that the individual has been a victim of a severe form of trafficking in persons and is not certifying that it is an established fact that the individual is a victim.

DHS has added a new part 7, ''Additional Information,'' and included references throughout Form I–914, Supplement B and its Instructions to use the new part 7 if extra space is needed to complete any section. DHS has revised ''law enforcement officer'' to ''certifying official'' in recognition of the fact that many individuals who complete Supplement B may not consider themselves law enforcement officials.

On new page 2 of the Instructions in the section, ''General Instructions,'' DHS has included guidance to leave a field blank if the answer to a question is unknown. DHS also added a new section below entitled ''Specific Instructions.''

DHS has clarified at new page 3, part 3, ''Statement of Claim,'' item 1, that the official signing the Form I–914, Supplement B should base their analysis as to whether an individual is or has been a victim of a severe form of trafficking in persons based on the practices to which the victim was subjected (as listed in new 8 CFR 214.201), rather than any criminal violations or prosecutions.

At new page 3, part 5, ''Family Members Implicated in Trafficking,'' DHS added a ''NOTE:'' and replaced the word ''principal applicant'' with ''victim'' based on regulatory changes to terminology.

Also at new page 3, ''How Can I Provide Further Information at a Later Date?,'' DHS has replaced the term ''revoke'' with ''withdraw or disavow'' to mirror a change in the wording of the regulations.

At new page 4, under ''DHS Privacy Notice,'' ''PURPOSE:'' and ''DISCLOSURE,'' DHS replaced ''you'' with ''the applicant,'' because Supplement B is filled out by someone other than the applicant. This clarifies that the purpose is to determine the applicant's eligibility, and that failure to provide the applicant's information could result in denial of their application.

Form I–765 Instructions

DHS has revised the Form I–765 Instructions to include a section titled ''Bona Fide Determination Process for T Nonimmigrant Status Principal Applicants and Eligible Family Members.'' This change describes the bona fide determination process, including how to obtain work authorization, codified at new 8 CFR 214.205.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (section 7209 of Pub. L. 108–458, 118 Stat. 3638), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2. Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 2. Revise § 212.16 to read as follows:

§ 212.16 Applications for exercise of discretion relating to T nonimmigrant status.

(a) *Requesting the waiver.* An applicant requesting a waiver of inadmissibility under section 212(d)(3)(A)(ii) or (d)(13) of the Act must submit an Application for Advance Permission to Enter as a Nonimmigrant, or successor form as designated by USCIS in accordance with 8 CFR 103.2.

(b) *Treatment of waiver request.* USCIS, in its discretion, may grant a waiver request based on section 212(d)(13) of the Act of the applicable ground(s) of inadmissibility, except USCIS may not waive a ground of inadmissibility based on section 212(a)(3), (a)(10)(C), or (a)(10)(E) of the Act. An applicant for T nonimmigrant status is not subject to the ground of inadmissibility based on section 212(a)(4) of the Act (public charge) and is not required to file a waiver form for the public charge ground. Waiver requests are subject to a determination of national interest and connection to victimization as follows.

(1) *National interest.* USCIS, in its discretion, may grant a waiver of inadmissibility request if it determines that it is in the national interest to exercise discretion to waive the applicable ground(s) of inadmissibility.

(2) *Connection to victimization.* An applicant requesting a waiver under section 212(d)(13) of the Act on grounds other than the health-related grounds described in section 212(a)(1) of the Act must establish that the activities rendering them inadmissible were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I) of the Act.

(3) *Criminal grounds.* In exercising its discretion, USCIS will consider the number and seriousness of the criminal offenses and convictions that render an applicant inadmissible under the criminal and related grounds in section 212(a)(2) of the Act. In cases involving violent or dangerous crimes, USCIS will only exercise favorable discretion in extraordinary circumstances, unless the criminal activities were caused by, or were incident to, the victimization described under section 101(a)(15)(T)(i)(I) of the Act.

(c) *No appeal.* There is no appeal of a decision to deny a waiver request. Nothing in this section is intended to prevent an applicant from re-filing a

request for a waiver of a ground of inadmissibility in appropriate cases.

(d) *Revocation.* USCIS, at any time, may revoke a waiver previously authorized under section 212(d) of the Act. There is no appeal of a decision to revoke a waiver.

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

§§ 214.1 through 214.15 [Designated as Subpart A]

■ 4. Designate §§ 214.1 through 214.15 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Classes A through S

■ 5. Revise § 214.11 to read as follows:

§ 214.11 Former regulations for noncitizen victims of severe forms of trafficking in persons.

For DHS and USCIS regulations governing Noncitizen Victims of Severe Forms of Trafficking in Persons, see subpart C of this part.

Subpart B—[Added and Reserved]

■ 6. Add and reserve subpart B.

■ 7. Add subpart C to read as follows:

Subpart C—Noncitizen Victims of Severe Forms of Trafficking in Persons

Sec.

§ 214.200 Scope of this subpart.

This subpart governs the submission and adjudication of an Application for T Nonimmigrant Status, including a request by a principal applicant on behalf of an eligible family member for derivative status.

§ 214.201 Definitions.

Where applicable, USCIS will apply the definitions provided in section 103 and 107(e) of the Trafficking Victims Protection Act (TVPA), 22 U.S.C. 7102, and 8 U.S.C. 1101, 1182(d), and 1184, with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of 18 U.S.C. 77. As used in this section the term:

Abuse or threatened abuse of the legal process means the use or threatened use of a 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.

Application for Derivative T Nonimmigrant Status means a request by a principal applicant on behalf of an eligible family member for derivative T–2, T–3, T–4, T–5, or T–6 nonimmigrant status on an Application for T Nonimmigrant Status.

Application for T Nonimmigrant Status means a request by a principal applicant for T–1 nonimmigrant status on the form designated by USCIS for that purpose.

Child means a person described in section 101(b)(1) of the Act.

Coercion means 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 the abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of their personal services or those of a person under their 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 respectively limited and defined.

Derivative T nonimmigrant means an eligible family member who has been granted T–2, T–3, T–4, T–5, or T–6 derivative status. A family member outside of the United States is not a derivative T nonimmigrant until they are issued a T–2, T–3, T–4, T–5, or T–6 visa by the Department of State and they are admitted to the United States in derivative T nonimmigrant status.

Eligible family member means:

(1) A family member eligible for derivative T nonimmigrant status based on their relationship to a principal applicant or T–1 nonimmigrant and, if required, upon a showing of a present danger of retaliation;

(2) In the case of a principal applicant or T–1 nonimmigrant who is 21 years of age or older, the spouse and children of such applicant;

(3) In the case of a principal applicant or T–1 nonimmigrant under 21 years of age, the spouse, children, unmarried siblings under 18 years of age, and parents of such applicant; and

(4) Regardless of the age of a principal applicant or T–1 nonimmigrant, any parent or unmarried sibling under 18 years of age, or adult or minor child of a derivative of such principal applicant or T–1 nonimmigrant where the family member faces a present danger of retaliation as a result of the principal applicant or T–1 nonimmigrant's escape from a severe form of trafficking in persons or cooperation with law enforcement.

Involuntary servitude, for the purposes of this part:

(1) Means 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 a condition of servitude induced by the abuse or threatened abuse of legal process; and

(2) Includes a condition of servitude in which the victim is forced to work for the trafficker 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 encompasses those cases in which the trafficker holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

Law Enforcement Agency (LEA) means a Federal, State, Tribal, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, adult protective services agency, or other

authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons under any administrative, civil, criminal, or Tribal laws. Federal LEAs include but are not limited to the following: Department of Justice (including U.S. Attorneys' Offices, Civil Rights Division, Criminal Division, U.S. Marshals Service, Federal Bureau of Investigation (FBI)); U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP); Department of State (including Diplomatic Security Service); Department of Labor (DOL); Equal Employment Opportunity Commission (EEOC); National Labor Relations Board (NLRB); Offices of Inspectors General (OIG); Bureau of Indian Affairs (BIA) Police, and Offices for Civil Rights and Civil Liberties.

Law Enforcement Agency (LEA) declaration means an official LEA declaration submitted on the Declaration for Trafficking Victim.

Law enforcement involvement, for purposes of establishing physical presence, means law enforcement action beyond receiving the applicant's reporting and may include the LEA interviewing the applicant or otherwise becoming involved in detecting, investigating, or prosecuting the acts of trafficking.

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

Principal applicant means a noncitizen who has filed an Application for T Nonimmigrant Status.

Request for assistance means a request made by an LEA to a victim to assist in the detection, investigation, or prosecution of the acts of trafficking in persons or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime. The reasonableness of the request is assessed using the factors delineated at § 214.208(c).

Serious harm means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, 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 in order to avoid incurring that harm.

Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or 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, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

T–1 nonimmigrant means the victim of a severe form of trafficking in persons who has been granted T–1 nonimmigrant status.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

Victim of a severe form of trafficking in persons (victim) means a noncitizen who is or has been subjected to a severe form of trafficking in persons.

§ 214.202 Eligibility for T–1 nonimmigrant status.

An applicant is eligible for T–1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act if they demonstrate all of the following, subject to section 214(o) of the Act:

(a) *Victim.* The applicant is or has been a victim of a severe form of trafficking in persons, according to § 214.206.

(b) *Physical presence.* The applicant is physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, according to § 214.207.

(c) *Compliance with any reasonable request for assistance.* The applicant has complied with any reasonable request for assistance from law enforcement or meets one of the conditions described below. The reasonableness of the request is assessed using the factors delineated at § 214.208(c).

(1) *Exemption for minor victims.* An applicant who was under 18 years of age at the time at least one act of trafficking occurred is not required to comply with any reasonable request for assistance.

(2) *Exception for trauma.* An applicant who, due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance from law enforcement is not required to comply with such reasonable request.

(d) *Hardship.* The applicant would suffer extreme hardship involving unusual and severe harm upon removal, according to § 214.209.

(e) *Prohibition against traffickers in persons.* No applicant will be eligible to receive 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.

§ 214.203 Period of admission.

(a) *T–1 Principal.* T–1 nonimmigrant status may be approved for a period not to exceed 4 years, except as provided in section 214(o)(7) of the Act.

(b) *Derivative family members.* A derivative family member who is otherwise eligible for admission may be granted T–2, T–3, T–4, T–5, or T–6 nonimmigrant status for an initial period that does not exceed the expiration date of the initial period approved for the T–1 principal applicant, except as provided in section 214(o)(7) of the Act.

(c) *Notice.* At the time an applicant is approved for T nonimmigrant status or receives an extension of T nonimmigrant status, USCIS will notify the applicant when their T nonimmigrant status will expire. USCIS also will notify the applicant that the failure to apply for adjustment of status to lawful permanent resident during the period of T nonimmigrant status, as set forth in 8 CFR 245.23, will result in termination of the applicant's T nonimmigrant status in the United States at the end of the 4-year period or any extension.

§ 214.204 Application.

(a) *Jurisdiction.* USCIS has sole jurisdiction over all applications for T nonimmigrant status.

(b) *Filing an application.* An applicant seeking T–1 nonimmigrant status must submit an Application for T Nonimmigrant Status on the form designated by USCIS in accordance with 8 CFR 103.2 and with the evidence described in paragraph (c) of this section.

(1) *Applicants in pending immigration proceedings.* (i) An applicant in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), and who wishes to apply for T–1 nonimmigrant status must file an Application for T Nonimmigrant Status directly with USCIS.

(ii) In its discretion, ICE may exercise prosecutorial discretion, as appropriate, while USCIS adjudicates the Application for T Nonimmigrant Status, including applications for derivatives.

(2) *Applicants with final orders of removal, deportation, or exclusion.* An applicant subject to a final order of removal, deportation, or exclusion may file an Application for T Nonimmigrant Status directly with USCIS.

(i) The filing of an Application for T Nonimmigrant Status has no effect on DHS authority or discretion to execute a final order of removal, although the applicant may request an administrative stay of removal pursuant to 8 CFR 241.6(a).

(ii) If the applicant is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the applicant's removal will be extended during the period the stay is in effect.

(iii) If USCIS subsequently determines under the procedures in § 214.205 that the application is bona fide, the final order of removal, deportation, or exclusion will be automatically stayed, and the stay will remain in effect until a final decision is made on the Application for T Nonimmigrant Status.

(3) *Referral of applicants for removal proceedings.* USCIS generally will not refer an applicant for T nonimmigrant status for removal proceedings while the application is pending or following denial of the application, absent serious aggravating circumstances, such as the existence of an egregious criminal history, a threat to national security, or where the applicant is complicit in committing an act of trafficking.

(4) *Minor applicants.* When USCIS receives an application from a principal applicant under the age of 18, USCIS will notify the Department of Health and Human Services to facilitate the provision of interim assistance.

(c) *Initial evidence.* An Application for T Nonimmigrant Status must include:

(1) A detailed, signed personal statement from the applicant, in their own words, addressing:

(i) The circumstances surrounding the applicant's victimization, including:

(A) The nature of the victimization; and

(B) To the extent possible, the following:

(*1*) When the victimization occurred;

(*2*) How long the trafficking lasted;

(*3*) How and when they escaped, were rescued, or otherwise became separated from the traffickers;

(*4*) The events surrounding the trafficking;

(*5*) Who was responsible for the trafficking; and

(*6*) The circumstances surrounding their entry into the United States, if related to the trafficking;

(ii) How the applicant's physical presence in the United States relates to the trafficking; (iii) The hardship, including harm or mistreatment the applicant fears if they are removed from the United States; and

(iv) Whether they have complied with any reasonable law enforcement request for assistance and whether any criminal, civil or administrative records relating to the acts of trafficking exist, if known, (or if applicable, why the age exemption or trauma exception applies); and

(2) Any credible evidence that supports any of the eligibility requirements set out in §§ 214.206 through 214.208.

(d) *Inadmissible applicants.* If an applicant is inadmissible to the United States, they must submit a request for a waiver of inadmissibility on the Application for Advance Permission to Enter as a Nonimmigrant, or successor form as designated by USCIS accordance with 8 CFR 103.2, in accordance with form instructions and 8 CFR 212.16, and accompanied by supporting evidence.

(e) *Evidence from law enforcement.* An applicant may wish to submit evidence from an LEA to help establish eligibility, including victimization and the compliance with reasonable requests for assistance. An LEA declaration:

(1) Is optional evidence;

(2) Is not given any special evidentiary weight;

(3) Does not grant an immigration benefit and does not lead to automatic approval of the Application for T Nonimmigrant Status;

(4) Must be submitted on the ''Declaration for Trafficking Victim,'' and must be signed by a supervising official responsible for the detection, investigation, or prosecution of severe forms of trafficking in persons;

(5) Is completed at the discretion of the certifying official; and

(6) Does not require that a formal investigation or prosecution be initiated.

(f) *Any credible evidence.* All evidence demonstrating cooperation with law enforcement will be considered under the any credible evidence standard.

(g) *USCIS determination.* USCIS, not the LEA, will determine 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.

(h) *Disavowed or withdrawn LEA declaration.* An LEA may disavow or withdraw the contents of a previously submitted declaration and should provide a detailed explanation of its reasoning in writing. After disavowal or withdrawal, the LEA declaration generally will no longer be considered as evidence of the applicant's compliance with requests for assistance in the LEA's detection, investigation, or prosecution, but may be considered for other purposes.

(i) *Continued Presence.* An applicant granted Continued Presence under 28 CFR 1100.35 should submit documentation of the grant of Continued Presence. If revoked, the grant of Continued Presence will generally no longer be considered as evidence of the applicant's compliance with requests for assistance in the LEA's investigation or prosecution but may be considered for other purposes.

(j) *Other evidence.* An applicant may also submit any evidence regarding entry or admission into the United States or permission to remain in the United States. An applicant may also note that such evidence is contained in their immigration file.

(k) *Biometric services.* All applicants for T–1 nonimmigrant status must submit biometrics in accordance with 8 CFR 103.16.

(l) *Evidentiary standards, standard of proof, and burden of proof.* (1) The burden is on the applicant to demonstrate eligibility for T–1 nonimmigrant status by a preponderance of the evidence. The applicant may submit any credible evidence relating to a T nonimmigrant application for consideration by USCIS.

(2) USCIS will conduct a review of all evidence and may investigate any aspect of the application.

(3) Evidence previously submitted by the applicant for any immigration benefit request or relief may be used by USCIS in evaluating the eligibility of an applicant for T–1 nonimmigrant status. USCIS will not be bound by previous factual determinations made in connection with a prior application or petition for any immigration benefit or relief. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(4) USCIS will consider the totality of the evidence the applicant submitted and other evidence available to USCIS in evaluating an Application for T Nonimmigrant Status.

(m) *Bona fide determination.* Once an applicant submits an Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status, USCIS will conduct an initial review to determine if the application is bona fide under the provisions of § 214.205. USCIS will conduct an initial review of an eligible family member's Application for Derivative T Nonimmigrant Status to determine if the application is bona fide if the principal's Application for T Nonimmigrant Status has been deemed bona fide.

(n) *Decision.* After completing its review of the application and evidence, USCIS will issue a decision approving

or denying the application in accordance with 8 CFR 103.3.

(o) *Approval.* If USCIS determines that the applicant is eligible for T–1 nonimmigrant status, USCIS will approve the application and grant T–1 nonimmigrant status, subject to the annual limitation as provided in § 214.210. USCIS will provide the applicant with evidence of T–1 nonimmigrant status. USCIS may also notify other parties and entities of the approval as it determines appropriate, including any LEA providing an LEA declaration and the Department of Health and Human Service's Office of Refugee Resettlement, consistent with 8 U.S.C. 1367.

(1) *Applicants with an outstanding order of removal, deportation, or exclusion issued by DHS.* For an applicant who is the subject of an order of removal, deportation, or exclusion issued by DHS, the order will be deemed cancelled by operation of law as of the date of the USCIS approval of the application.

(2) *Applicants with an outstanding order of removal, deportation, or exclusion issued by the Department of Justice.* An applicant who is the subject of an order of removal, deportation or exclusion issued by an immigration judge or the Board of Immigration Appeals (Board) may seek rescission of such order by filing a motion to reopen and terminate removal proceedings with the immigration judge or the Board. ICE may agree, as a matter of discretion, to join such motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(3) *Employment authorization.* An individual granted T–1 nonimmigrant status is authorized to work incident to status. An applicant does not need to file a separate Application for Employment Authorization to be granted employment authorization. USCIS will issue an initial Employment Authorization Document (EAD) to such T–1 nonimmigrants for the duration of the T–1 nonimmigrant status. An applicant granted T–1 nonimmigrant status seeking to replace an EAD that was lost, stolen, or destroyed must file an Application for Employment Authorization in accordance with form instructions.

(p) *Travel abroad.* In order to return to the United States after travel abroad and continue to hold T–1 nonimmigrant status, a T–1 nonimmigrant must be granted advance parole pursuant to section 212(d)(5) of the Act prior to departing the United States.

(q) *Denial.* Upon denial of an application, USCIS will notify the applicant in accordance with 8 CFR 103.3. USCIS may also notify any LEA providing an LEA declaration and the Department of Health and Human Service's Office of Refugee Resettlement. If an applicant appeals a denial in accordance with 8 CFR 103.3, the denial will not become final until the administrative appeal is decided.

(1) *Effect on bona fide determination.* Upon denial of an application, any benefits derived from a bona fide determination will automatically be revoked when the denial becomes final.

(2) *Applicants previously in removal proceedings.* In the case of an applicant who was previously in removal proceedings that were terminated on the basis of a pending Application for T Nonimmigrant Status, once a denial becomes final, DHS may file a new Notice to Appear to place the individual in removal proceedings again.

(3) *Applicants subject to an order of removal, deportation, or exclusion.* In the case of an applicant who is subject to an order of removal, deportation, or exclusion that had been stayed due to the pending Application for T Nonimmigrant Status, the stay will be automatically lifted as of the date the denial becomes final.

§ 214.205 Bona fide determination.

(a) *Bona fide determinations for principal applicants for T nonimmigrant status.* If an Application for T Nonimmigrant Status is submitted after August 28, 2024, USCIS will conduct an initial review to determine if the application is bona fide.

(1) *Request for evidence.* If an Application for T Nonimmigrant Status was pending as of August 28, 2024, and additional evidence is required to establish eligibility for principal T nonimmigrant status, USCIS will issue a request for evidence, and conduct a bona fide review based on available evidence.

(2) *Initial review criteria.* After initial review, USCIS will deem an Application for T Nonimmigrant Status bona fide if:

(i) The applicant has submitted a properly filed and complete Application for T Nonimmigrant Status;

(ii) The applicant has submitted a signed personal statement; and

(iii) The results of initial background checks are complete, have been reviewed, and do not present national security concerns.

(3) *Secondary review criteria.* If initial review does not establish an Application for T Nonimmigrant Status is bona fide, USCIS will conduct a full T nonimmigrant status eligibility review. An Application for T Nonimmigrant Status that meets all eligibility requirements will be approved, or if the statutory cap has been reached, will receive a bona fide determination.

(b) *Bona fide determinations for eligible family members in the United States.* Once a principal applicant's application has been deemed bona fide, USCIS will conduct an initial review for any eligible family members in the United States who have filed an Application for Derivative T Nonimmigrant Status to determine whether their applications are bona fide.

(1) If an Application for Derivative T Nonimmigrant Status was pending as of August 28, 2024, and additional evidence is required to establish eligibility for derivative T nonimmigrant status, USCIS will issue a request for evidence and conduct a bona fide review based on available evidence.

(2) After initial review, USCIS will determine an Application for Derivative T Nonimmigrant Status is bona fide if:

(i) The eligible family member is in the United States at the time of the bona fide determination;

(ii) The principal applicant or T–1 nonimmigrant has submitted a properly filed and complete Application for Derivative T Nonimmigrant Status;

(iii) The Application for Derivative T Nonimmigrant Status is supported by credible evidence that the derivative applicant qualifies as an eligible family member; and

(iv) Initial background checks are complete, have been reviewed, and do not present national security concerns.

(3) If initial review does not establish an Application for Derivative T Nonimmigrant Status is bona fide, USCIS will conduct a full T nonimmigrant status eligibility review. An Application for Derivative T Nonimmigrant Status that meets all eligibility requirements during this secondary review will be approved, or if the statutory cap has been reached, will receive a bona fide determination.

(c) *Notice of USCIS determination.* If USCIS determines that the Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status is bona fide under this section, USCIS will issue written notice of that determination, and inform the applicant that they may be considered for deferred action and may file an Application for Employment Authorization if they have not already filed one. The notice will also inform the applicant that any final order of removal, deportation, or exclusion is automatically stayed as set forth in paragraph (g) of this section. An

application will be treated as a bona fide application as of the date of the notice.

(d) *Not considered bona fide.* If an application is incomplete or presents national security concerns, it will not be considered bona fide. There are no motion or appeal rights for a bona fide determination upon initial review under this section.

(1) For applications found not to be bona fide upon initial review, USCIS will proceed to full T nonimmigrant status eligibility review as described in paragraphs (a)(3) and (b)(3) of this section, generally in order of application receipt date.

(2) If an application is found through this review not to establish eligibility for T nonimmigrant status, the application will be denied in accordance with § 214.204(q).

(e) *Exercise of discretion.* (1) Once USCIS deems an Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status bona fide, USCIS may consider the applicant for deferred action.

(2) If, after review of the available information including background checks, USCIS determines that deferred action is warranted in a particular case as an exercise of enforcement discretion, USCIS will then proceed to adjudication of the Application for Employment Authorization, if one has been filed.

(3) There are no motion or appeal rights for the exercise of enforcement discretion under this section.

(f) *Bona fide determinations for applicants in removal proceedings.* This section applies to applicants whose Applications for T Nonimmigrant Status or Applications for Derivative T Nonimmigrant Status have been deemed bona fide and who are in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997). In such cases, ICE may exercise prosecutorial discretion, as appropriate, while USCIS adjudicates an Application for Derivative T Nonimmigrant Status.

(g) *Stay of final order of removal, deportation, or exclusion.* (1) If USCIS determines that an application is bona fide it automatically stays the execution of any final order of removal, deportation, or exclusion.

(2) This administrative stay will remain in effect until any adverse decision becomes final.

(3) Neither an immigration judge nor the Board has jurisdiction to adjudicate an application for a stay of removal, deportation, or exclusion on the basis of the filing of an Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status.

§ 214.206 Victim of a severe form of trafficking in persons.

(a) *Evidence.* The applicant must submit evidence that demonstrates:

(1) That they are or have been a victim of a severe form of trafficking in persons. Except in instances of sex trafficking involving victims under 18 years of age, severe forms of trafficking in persons must involve both a particular means (force, fraud, or coercion) and a particular end or a particular intended end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery); or

(2) If an applicant has not performed labor or services, or a commercial sex act, they must establish that they were recruited, transported, harbored, provided, or obtained for the purposes of subjection to sex trafficking, involuntary servitude, peonage, debt bondage, or slavery, or patronized or solicited for the purposes of subjection to sex trafficking.

(3) The applicant may satisfy the requirements under paragraph (a)(1) or (2) of this section by submitting:

(i) The applicant's personal statement, which should describe the circumstances of the victimization suffered. For more information regarding the personal statement, see § 214.204(c).

(ii) Any other credible evidence, including but not limited to:

(A) Trial transcripts;

(B) Court documents;

(C) Police reports or other documentation from an LEA;

(D) News articles;

(E) Copies of reimbursement forms for travel to and from court;

(F) Affidavits from case managers, therapists, medical professionals, witnesses, or other victims in the same trafficking scheme;

(G) Correspondence or other documentation from the trafficker;

(H) Documents used in furtherance of the trafficking scheme such as recruitment materials, advertisements, pay stubs, logbooks, or contracts;

(I) Photographs or images;

(J) An LEA declaration as described in § 214.204(c); or

(K) Documentation of a grant of Continued Presence under 28 CFR 1100.35.

(b) [Reserved]

§ 214.207 Physical presence.

(a) *Requirement.* To be eligible for T–1 nonimmigrant status, an applicant must be physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto on account of such trafficking. USCIS considers the applicant's presence in the United States at the time of application. An applicant must demonstrate that they are physically present under one of the following grounds:

(1) Are currently being subjected to a severe form of trafficking in persons;

(2) Were liberated from a severe form of trafficking in persons by an LEA, at any time prior to filing the Application for T Nonimmigrant Status;

(3) Escaped a severe form of trafficking in persons before an LEA was involved, at any time prior to filing the Application for T Nonimmigrant Status;

(4) Were subject to a severe form of trafficking in persons at some point in the past and their current presence in the United States is directly related to the original trafficking in persons, regardless of the length of time that has passed between the trafficking and filing of the Application for T Nonimmigrant Status; or

(5) Have been allowed entry into the United States for participation in the detection, investigation, prosecution, or judicial processes associated with an act or perpetrator of trafficking.

(i) An applicant will be deemed physically present under this provision regardless of where such trafficking occurred.

(ii) To demonstrate that the applicant's physical presence is for participation in an investigative or judicial process, the applicant must submit documentation to show valid entry into the United States and evidence that this valid entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.

(b) *Departure from the United States.* An applicant who has voluntarily departed from or has been removed from the United States at any time after the act of a severe form of trafficking in persons is deemed not to be present in the United States as a result of such trafficking in persons unless:

(1) The applicant's reentry into the United States was the result of the continued victimization of the applicant;

(2) The applicant is a victim of a new incident of a severe form of trafficking in persons;

(3) The applicant has been allowed reentry into the United States for participation in the detection, investigation, prosecution, or judicial process associated with an act or a perpetrator of trafficking. An applicant will be deemed physically present

under this provision regardless of where such trafficking occurred. To demonstrate that the applicant's physical presence is for participation in an investigative or judicial process, the applicant must submit documentation to show valid entry into the United States and evidence that this valid entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking;

(4) The applicant's presence in the United States is on account of their past or current participation in investigative or judicial processes associated with an act or perpetrator of trafficking, regardless of where such trafficking occurred. The applicant may satisfy physical presence under this provision regardless of the length of time that has passed between their participation in an investigative or judicial process associated with an act or perpetrator of trafficking and the filing of the Application for T Nonimmigrant Status; or

(5) The applicant returned to the United States and received treatment or services related to their victimization that cannot be provided in their home country or last place of residence outside the United States.

(c) *Evidence.* The applicant must submit evidence that demonstrates that their physical presence in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, is on account of trafficking in persons. USCIS will consider any credible evidence presented to determine the physical presence requirement, including but not limited to:

(1) A detailed personal statement describing the applicant's current presence in the United States on account of the trafficking, including:

(i) The circumstances describing the victimization, including when the events took place, the length and severity of the trafficking, how and when the applicant escaped, was rescued, or otherwise became separated from the traffickers, when the trafficking ended, and when and how the applicant learned that they were a victim of human trafficking;

(ii) An explanation of any 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;

(iii) The financial impact of the victimization;

(iv) The applicant's ability to access mental health services, social services, and legal services;

(v) Any relevant description of the applicant's cooperation with law enforcement at the time of filing;

(vi) A description of how the victimization relates to the applicant's current presence in the U.S., if relevant.

(2) 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, and describing any mental health conditions resulting from the trafficking;

(3) Documentation of any 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;

(4) An LEA declaration as described in § 214.204(c) or other statements from LEAs documenting the cooperation between the applicant and the LEA or law enforcement involvement in liberating the applicant;

(5) Documentation of a grant of Continued Presence under 28 CFR 1100.35;

(6) Any other documentation of entry into the United States or permission to remain in the United States, such as parole under section 212(d)(5) of the Act, or a notation that such evidence is contained in the applicant's immigration file;

(7) Copies of news reports, law enforcement records, or court records; or

(8) Any other credible evidence to establish the applicant's current presence in the United States is on account of the trafficking victimization.

§ 214.208 Compliance with any reasonable request for assistance in the detection, investigation, or prosecution of an act of trafficking.

(a) *Requirement.* To be eligible for T–1 nonimmigrant status, an applicant must have complied with any reasonable request for assistance from an LEA in the detection, investigation, or prosecution of 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, unless the applicant meets an exception or exemption described in paragraph (e) of this section.

(b) *Applicability.* An applicant must, at a minimum, contact an LEA with proper jurisdiction to report the acts of a severe form of trafficking in persons. Credible evidence documenting a single contact with an LEA may suffice. Reporting may be telephonic, electronic, or through other means. An applicant who has never had contact with an LEA regarding the acts of a severe form of trafficking in persons will not be eligible for T–1 nonimmigrant status, unless they meet an exemption or exception as described in paragraph (e) of this section.

(c) *Reasonable requests.* An applicant need only show compliance with reasonable requests made by an LEA for assistance in the investigation or prosecution of the acts of trafficking in persons. The reasonableness of the request depends on the totality of the circumstances. Factors to consider include, but are not limited to:

(1) General law enforcement and prosecutorial practices;

(2) The nature of the victimization;

(3) The specific circumstances of the victim;

(4) The victim's capacity, competency, or lack thereof;

(5) Trauma suffered (both mental and physical) or whether the request would cause further trauma;

(6) Access to support services;

(7) The safety of the victim or the victim's family;

(8) Compliance with previous requests and the extent of such compliance;

(9) Whether the request would yield essential information;

(10) Whether the information could be obtained without the victim's compliance;

(11) Whether a qualified interpreter or attorney was present to ensure the victim understood the request;

(12) Cultural, religious, or moral objections to the request;

(13) The time the victim had to comply with the request;

(14) The age, health, and maturity of the victim; and

(15) Any other relevant circumstances surrounding the request.

(d) *Evidence.* An applicant must submit evidence that demonstrates that they have complied with any reasonable request for assistance in a Federal, State, Tribal, or local detection, investigation, or prosecution of trafficking in persons, or a crime where trafficking in persons is at least one central reason for the commission of that crime. In the alternative, an applicant can submit evidence to demonstrate that they should be exempt under paragraph (e) of this section. If USCIS has any question

about whether the applicant has complied with a reasonable request for assistance, USCIS may contact the LEA. The applicant may satisfy this requirement by submitting any of the following:

(1) An LEA declaration as described in § 214.204(c);

(2) Documentation of a grant of Continued Presence under 28 CFR 1100.35; or

(3) Any other evidence, including affidavits of witnesses. In the victim's statement prescribed by § 214.204(c), the applicant should show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime, why the crime was not previously reported.

(e) *Exception or exemption.* An applicant who has not had contact with an LEA or who has not complied with any reasonable request may be excepted or exempt from the requirement to comply with any reasonable request for assistance in an investigation or prosecution if either of the following circumstances apply:

(1) *Trauma.* The applicant is unable to cooperate with a reasonable request for assistance from an LEA in the detection, investigation, or prosecution of acts of trafficking in persons due to physical or psychological trauma. An applicant must submit credible evidence of the trauma experienced. The applicant may satisfy this exception by submitting:

(i) A personal statement describing the trauma and explaining the circumstances surrounding the trauma the applicant experienced, including their age, background, maturity, health, disability, and any history of abuse or exploitation;

(ii) A signed statement from a qualified professional, such as a medical professional, mental health professional, social worker, or victim advocate, who attests to the victim's mental state or medical condition;

(iii) Medical or psychological records documenting the trauma or its impact;

(iv) Witness statements;

(v) Photographs;

(vi) Police reports;

(vii) Court records and court orders;

(viii) Disability determinations;

(ix) Government agency findings; or

(x) Any other credible evidence.

(2) *Age.* The applicant was under 18 years of age at the time of victimization. An applicant who was under 18 years of age at the time at least one of the acts of trafficking occurred is exempt from the requirement to comply with any reasonable request for assistance in the detection, investigation, or prosecution, but they must submit evidence of their age at the time of the victimization. Where available, an applicant should include an official copy of their birth certificate, a passport, or a certified medical opinion. USCIS will also consider any other credible evidence submitted regarding the age of the applicant.

(f) *Exception or exemption established.* When an applicant has established that the exception or exemption applies, they are not required to have had any contact with law enforcement or comply with future requests for assistance, including reporting the trafficking. USCIS reserves the authority and discretion to contact the LEA involved in the case, if appropriate.

§ 214.209 Extreme hardship involving unusual and severe harm.

To be eligible for T–1 nonimmigrant status, an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(a) *Standard.* A finding of extreme hardship involving unusual and severe harm may be based on the following factors.

(b) *Factors.* Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should include both traditional extreme hardship factors and factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to:

(1) The age, maturity, and personal circumstances of the applicant;

(2) Any physical or psychological issues the applicant has that necessitate medical or psychological care not reasonably available in the foreign country to which the applicant would be returned;

(3) The nature and extent of the physical and psychological consequences of having been a victim of a severe form of trafficking in persons;

(4) The impact of the loss of access to the United States courts and the 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;

(5) 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;

(6) The likelihood of re-victimization and the need, ability, and willingness of foreign authorities to protect the applicant;

(7) The likelihood that the trafficker or others acting on behalf of the trafficker in the foreign country would cause the applicant harm;

(8) The likelihood that the applicant's individual safety would be threatened by the existence of civil unrest or armed conflict; or

(9) Current or likelihood of future economic harm.

(c) *Evidence.* (1) An applicant is encouraged to describe and document all factors that may be relevant to the case, as there is no guarantee that a particular reason(s) will satisfy the requirement.

(2) Hardship to persons other than the applicant may be considered in determining whether an applicant will suffer the requisite hardship only if the related evidence demonstrates specifically that the applicant will suffer extreme hardship upon removal as a result of hardship to persons other than the applicant.

(3) The applicant may satisfy this requirement by submitting any credible evidence regarding the nature and scope of the hardship if the applicant was removed from the United States, including evidence of hardship arising from circumstances surrounding the victimization and any other circumstances.

(4) An applicant may submit a personal statement or other evidence, including evidence from relevant country condition reports and any other public or private sources of information.

§ 214.210 Annual numerical limit.

(a) *5,000 per fiscal year.* DHS may not grant T–1 nonimmigrant status to more than 5,000 principal applicants in any fiscal year.

(b) *Waiting list.* If the numerical limit prevents further grants of T–1 nonimmigrant status, USCIS will place applicants who receive a bona fide determination pursuant to § 214.205 on a waiting list. USCIS:

(1) Will assign priority on the waiting list based on the date the application was properly filed, with the oldest applications receiving the highest priority for processing;

(2) Will in the next fiscal year, issue a number to each application on the waiting list, in the order of the highest priority; and

(3) After T–1 nonimmigrant status has been issued to eligible applicants on the waiting list, USCIS will issue any remaining T–1 nonimmigrant numbers for that fiscal year to new eligible applicants in the order the applications were filed.

(c) *Unlawful presence.* While an applicant for T nonimmigrant status in the United States is on the waiting list, the applicant will not accrue unlawful presence under section 212(a)(9)(B) of the Act.

(d) *Removal from the waiting list.* An applicant may be removed from the waiting list consistent with law and policy. Applicants on the waiting list must remain admissible to the United States and otherwise eligible for T nonimmigrant status. If at any time prior to final adjudication USCIS receives information that an applicant is no longer eligible for T nonimmigrant status, the applicant may be removed from the waiting list. USCIS will provide notice to the applicant of that decision.

§ 214.211 Application for eligible family members.

(a) *Eligibility.* Subject to section 214(o) of the Act, an applicant who has applied for or has been granted T–1 nonimmigrant status (principal applicant) may apply for the admission of an eligible family member, who is otherwise admissible to the United States, in derivative T nonimmigrant status if accompanying or following to join the principal applicant.

(1) *Principal applicant 21 years of age or older.* For a principal applicant who is 21 years of age or over, eligible family member means a T–2 (spouse) or T–3 (child).

(2) *Principal applicant under 21 years of age.* For a principal applicant who is under 21 years of age, eligible family member means a T–2 (spouse), T–3 (child), T–4 (parent), or T–5 (unmarried sibling under the age of 18).

(3) *Family member facing danger of retaliation.* Regardless of the age of the principal applicant, if the eligible family member faces a present danger of retaliation as a result of the principal applicant's escape from the severe form of trafficking or cooperation with law enforcement, in consultation with the law enforcement agency investigating a severe form of trafficking, eligible family member means a T–4 (parent), T–5 (unmarried sibling under the age of 18), or T–6 (adult or minor child of a derivative of the principal applicant). In cases where the LEA has not investigated the acts of trafficking after the applicant has reported the crime, USCIS will evaluate any credible evidence demonstrating derivatives' present danger of retaliation.

(4) *Admission requirements.* The principal applicant must demonstrate that the applicant for whom derivative T nonimmigrant status is being sought is an eligible family member of the T–1 principal applicant, as defined in § 214.201, and is otherwise eligible for that status.

(b) *Application.* (1) *Application submission.* A T–1 principal applicant may submit an Application for Derivative T Nonimmigrant Status in accordance with the form instructions.

(i) The Application for Derivative T Nonimmigrant Status for an eligible family member may be filed with the T–1 application, or separately.

(ii) T nonimmigrant status for eligible family members is dependent on the principal applicant having been granted T–1 nonimmigrant status and the principal applicant maintaining T–1 nonimmigrant status.

(iii) If a T–1 nonimmigrant cannot maintain status due to their death, the provisions of section 204(l) of the Act may apply.

(2) *Eligible family members in pending immigration proceedings.* (i) If an eligible family member is in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), the principal applicant or T–1 nonimmigrant must file an Application for Derivative T Nonimmigrant Status directly with USCIS.

(ii) At the request of the eligible family member, ICE may exercise prosecutorial discretion, as appropriate, while USCIS adjudicates an Application for Derivative T Nonimmigrant Status.

(3) *Eligible family members with final orders of removal, deportation, or exclusion.* (i) If an eligible family member is the subject of a final order of removal, deportation, or exclusion, the principal applicant must file an Application for Derivative T Nonimmigrant Status directly with USCIS.

(ii) The filing of an Application for Derivative T Nonimmigrant Status has no effect on ICE's authority or discretion to execute a final order, although the applicant may file a request for an administrative stay of removal pursuant to 8 CFR 241.6(a).

(iii) If the eligible family member is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) will be extended while a stay is in effect for the period reasonably necessary to bring about the applicant's removal.

(c) *Required supporting evidence.* In addition to the form, an Application for Derivative T Nonimmigrant Status must include the following:

(1) Biometrics.

(2) Evidence demonstrating the relationship of an eligible family member, as provided in § 214.211(d).

(3) In the case of an applicant seeking derivative T nonimmigrant status based on danger of retaliation, evidence demonstrating this danger as provided in § 214.211.

(4) If an eligible family member is inadmissible based on a ground that may be waived, a request for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with § 212.16 of this subchapter and submitted with the completed application package.

(d) *Relationship.* Except as described in paragraph (e) of this section, the family relationship must exist at the time:

(1) The Application for T Nonimmigrant Status is filed;

(2) The Application for T Nonimmigrant Status is adjudicated;

(3) The Application for Derivative T Nonimmigrant Status is filed;

(4) The Application for Derivative T Nonimmigrant Status is adjudicated; and

(5) The eligible family member is admitted to the United States if residing abroad.

(e) *Relationship and age-out protections*—(1) *Protection for new child of a principal applicant.* If the T–1 principal applicant establishes that they have become a parent of a child after filing the application for T–1 nonimmigrant status, the child will be deemed to be an eligible family member eligible to accompany or follow to join the T–1 principal applicant.

(2) *Age-out protection for eligible family members of a principal applicant under 21 years of age.* (i) If the T–1 principal applicant was under 21 years of age when they applied for T–1 nonimmigrant status, USCIS will continue to consider a parent or unmarried sibling as an eligible family member.

(ii) A parent or unmarried sibling will remain eligible even if the principal applicant turns 21 years of age before adjudication of the application for T–1 nonimmigrant status.

(iii) An unmarried sibling will remain eligible even if the unmarried sibling is over 18 years of age at the time of

adjudication of the T–1 application, so long as the unmarried sibling was under 18 years of age at the time the T–1 application was filed.

(iv) The age of an unmarried sibling when USCIS adjudicates the T–1 application, when the principal applicant or T–1 nonimmigrant files the Application for Derivative T Nonimmigrant Status, when USCIS adjudicates the derivative application, or when the unmarried sibling is admitted to the United States does not affect eligibility.

(3) *Age-out protection for child of a principal applicant.* (i) USCIS will continue to consider a child as an eligible family member if the child was under 21 years of age at the time the principal filed the Application for T Nonimmigrant Status, but reached 21 years of age while the principal's application was still pending.

(ii) The child will remain eligible even if the child is over 21 years of age at the time of adjudication of the T–1 application.

(iii) As long as the child is under age 21 when the Application for T Nonimmigrant Status is filed and reaches age 21 while such application is pending, the age of the child when the principal applicant or T–1 nonimmigrant files the Application for Derivative T Nonimmigrant Status, when USCIS adjudicates the Application for Derivative T Nonimmigrant Status, or when the child is admitted to the United States does not affect eligibility.

(4) *Marriage of an eligible family member.* (i) An eligible family member seeking T–3 or T–5 status must be unmarried when the principal applicant files an Application for T Nonimmigrant Status, when USCIS adjudicates the Application for T Nonimmigrant Status, when the principal applicant or T–1 nonimmigrant files the Application for Derivative T Nonimmigrant Status, when USCIS adjudicates the Derivative T Nonimmigrant Status, and if relevant, when the family member is admitted to the United States.

(ii) Principal applicants who marry while their Application for T Nonimmigrant Status is pending may file an Application for Derivative T Nonimmigrant Status on behalf of their spouse, even if the relationship did not exist at the time they filed their Application for T Nonimmigrant Status.

(iii) Similarly, the principal applicant may apply for a stepparent or stepchild if the qualifying relationship was created after they filed their Application for T Nonimmigrant Status but before it was approved.

(iv) 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 through completion of the adjudication of the derivative's application.

(f) *Evidence demonstrating a present danger of retaliation.* A principal applicant or T–1 nonimmigrant seeking derivative T nonimmigrant status for an eligible family member on the basis of facing a present danger of retaliation as a result of the principal applicant's or T–1 nonimmigrant's escape from a severe form of trafficking or cooperation with law enforcement, must demonstrate the basis of this danger. USCIS may contact the LEA involved, if appropriate. An applicant may satisfy this requirement by submitting:

(1) Documentation of a previous grant of advance parole to an eligible family member;

(2) A signed statement from a law enforcement agency describing the danger of retaliation;

(3) A personal statement from the principal applicant or derivative applicant describing the danger the family member faces and how the danger is linked to the victim's escape or cooperation with law enforcement; and/or

(4) 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. This evidence may be from the United States or any country in which the eligible family member is facing danger of retaliation.

(g) *Biometric submission; evidentiary standards.* The provisions for biometric submission and evidentiary standards described in § 214.204(b) and (d) apply to an eligible family member's Application for Derivative T Nonimmigrant Status.

(h) *Review and decision.* USCIS will review the application and issue a decision in accordance with paragraph (d) of this section.

(i) *Derivative approvals.* A noncitizen whose Application for Derivative T Nonimmigrant Status is approved is not subject to the annual limit described in § 214.210. USCIS will not approve an Application for Derivative T Nonimmigrant Status unless and until it has approved T–1 nonimmigrant status for the principal applicant.

(1) *Approvals for eligible family members in the United States.* When USCIS approves an Application for Derivative T Nonimmigrant Status for an eligible family member in the United States, USCIS will concurrently approve T nonimmigrant status for the eligible family member. USCIS will notify the T–1 nonimmigrant of such approval and provide evidence of T nonimmigrant status to the derivative.

(2) *Approvals for eligible family members outside the United States.* When USCIS approves an application for an eligible family member outside the United States, USCIS will notify the T–1 nonimmigrant of such approval and provide the necessary documentation to the Department of State for consideration of visa issuance.

(3) *Employment authorization.* (i) A noncitizen granted derivative T nonimmigrant status may apply for employment authorization by filing an Application for Employment Authorization in accordance with form instructions.

(ii) For derivatives in the United States, the Application for Employment Authorization may be filed concurrently with the Application for Derivative T Nonimmigrant Status or at any later time.

(iii) For derivatives outside the United States, an Application for Employment Authorization based on their T nonimmigrant status may only be filed after admission to the United States in T nonimmigrant status.

(iv) If the Application for Employment Authorization is approved, the derivative T nonimmigrant will be granted employment authorization pursuant to 8 CFR 274a.12(c)(25) for the period remaining in derivative T nonimmigrant status.

(4) *Travel abroad.* In order to return to the United States after travel abroad and continue to hold derivative T nonimmigrant status, a noncitizen granted derivative T nonimmigrant status must either be granted advance parole pursuant to section 212(d)(5) of the Act and 8 CFR 223 or obtain a T nonimmigrant visa (unless visa exempt under 8 CFR 212.1) and be admitted as a T nonimmigrant at a designated port of entry.

§ 214.212 Extension of T nonimmigrant status.

(a) *Eligibility.* USCIS may grant extensions of T–1 nonimmigrant status beyond 4 years from the date of approval in 1-year periods from the date the T–1 nonimmigrant status ends if:

(1) An LEA detecting, investigating, or prosecuting activity related to acts of trafficking certifies that the presence of the applicant in the United States is necessary to assist in the detection, investigation, or prosecution of such activity; or

(2) USCIS determines that an extension is warranted due to exceptional circumstances.

(b) *Application for a discretionary extension of status.* Upon application, USCIS may extend T–1 nonimmigrant status based on law enforcement need or exceptional circumstances. A T–1 nonimmigrant may apply for an extension by submitting the form designated by USCIS in accordance with form instructions. A derivative T nonimmigrant may file for an extension of status independently if the T–1 nonimmigrant remains in valid T nonimmigrant status, or the T–1 nonimmigrant may file for an extension of T–1 status and request that this extension be applied to the derivative family members in accordance with the form instructions.

(c) *Timely filing.* An applicant should file the application to extend nonimmigrant status before the expiration of T nonimmigrant status. If T nonimmigrant status has expired, the applicant must explain in writing the reason for the untimely filing. USCIS may exercise its discretion to approve an untimely filed application for extension of T nonimmigrant status.

(d) *Evidence.* In addition to the application, a T nonimmigrant must include evidence to support why USCIS should grant an extension of T nonimmigrant status. The nonimmigrant bears the burden of establishing eligibility for an extension of status and that a favorable exercise of discretion is warranted.

(e) *Evidence of law enforcement need.* An applicant may demonstrate law enforcement need by submitting evidence that comes directly from an LEA, including:

(1) A new LEA declaration;

(2) Evidence from a law enforcement official, prosecutor, judge, or other authority who can detect, investigate, or prosecute acts of trafficking, such as a letter on the agency's letterhead, email, or fax; or

(3) Any other credible evidence.

(f) *Exceptional circumstances.* (1) USCIS may, in its discretion, extend status beyond the 4-year period if it determines the extension of the period of such nonimmigrant status is warranted due to exceptional circumstances as described in section 214(o)(7)(iii) of the Act. (2) USCIS may approve an extension of status for a principal applicant, based on exceptional circumstances, when an approved eligible family member is awaiting initial issuance of a T visa by an embassy or consulate and the principal applicant's T–1 nonimmigrant status is soon to expire.

(g) *Evidence of exceptional circumstances.* An applicant may demonstrate exceptional circumstances by submitting:

(1) The applicant's affirmative statement; or

(2) Any other credible evidence, including but not limited to:

(i) Medical records;

(ii) Police or court records;

(iii) News articles;

(iv) Correspondence with an embassy or consulate; and

(v) Affidavits from individuals with direct knowledge of or familiarity with the applicant's circumstances.

(h) *Mandatory extensions of status for adjustment of status applicants.* USCIS will automatically extend T nonimmigrant status when a T nonimmigrant properly files an application for adjustment of status during the period of T nonimmigrant status, in accordance with 8 CFR 245.23. No separate application for extension of T nonimmigrant status, or supporting evidence, is required.

§ 214.213 Revocation of approved T nonimmigrant status.

(a) *Automatic revocation of derivative status.* An approved Application for Derivative T Nonimmigrant Status will be revoked automatically if the family member with an approved derivative application notifies USCIS that they will not apply for admission to the United States. An automatic revocation cannot be appealed.

(b) *Revocation on notice/grounds for revocation.* USCIS may revoke an approved Application for T Nonimmigrant Status following issuance of a notice of intent to revoke if:

(1) The approval of the application violated the requirements of section 101(a)(15)(T) of the Act or this subpart or involved error in preparation, procedure, or adjudication that led to the approval;

(2) In the case of a T–2 spouse, the applicant's divorce from the T–1 principal applicant has become final;

(3) In the case of a T–1 principal applicant, an LEA with jurisdiction to detect, investigate, or prosecute the acts of severe forms of trafficking in persons notifies USCIS that the applicant has refused to comply with a reasonable request to assist with the detection, investigation, or prosecution of the trafficking in persons and provides USCIS with a detailed explanation in writing; or

(4) The LEA that signed the LEA declaration withdraws it or disavows its contents and notifies USCIS and provides a detailed explanation of its reasoning in writing.

(c) *Procedures.* (1) USCIS may revoke an approved application for T nonimmigrant status following a notice of intent to revoke.

(i) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the T nonimmigrant's rebuttal.

(ii) The T nonimmigrant may submit evidence in rebuttal within 30 days of the notice.

(iii) USCIS will consider all relevant evidence in determining whether to revoke the approved application for T nonimmigrant status.

(2) If USCIS revokes approval of the previously granted T nonimmigrant status application, USCIS:

(i) Will provide written notice to the applicant; and

(ii) May notify the LEA who signed the LEA declaration, any consular officer having jurisdiction over the applicant, or the Office of Refugee Resettlement of the Department of Health and Human Services.

(3) If an applicant appeals the revocation, the decision will not become final until the administrative appeal is decided in accordance with 8 CFR 103.3.

(d) *Effect of revocation.* Revocation of T–1 nonimmigrant status will terminate the principal's status as a T nonimmigrant and result in automatic termination of any derivative T nonimmigrant status. If a derivative application is pending at the time of revocation of T–1 nonimmigrant status, such pending applications will be denied. Revocation of a T–1 nonimmigrant status or derivative T nonimmigrant status also revokes any waiver of inadmissibility granted in conjunction with such application. The revocation of T–1 nonimmigrant status will have no effect on the annual numerical limit described in § 214.210.

§ 214.214 Removal proceedings.

(a) Nothing in this section prohibits DHS from instituting removal proceedings for conduct committed after admission, or for conduct or a condition that was not disclosed prior to the granting of T nonimmigrant status, including misrepresentations of material facts in the Application for T–1 Nonimmigrant Status or in an Application for Derivative T Nonimmigrant Status, or after revocation of T nonimmigrant status.

(b) ICE will maintain a policy regarding the exercise of discretion toward all applicants for T nonimmigrant status and T nonimmigrants. This policy will address, but need not be limited to,

ICE's discretionary decision-making in proceedings before the Executive Office for Immigration Review and considerations related to ICE's immigration enforcement actions involving T visa applicants and T nonimmigrants.

§ 214.215 USCIS employee referral.

(a) Any USCIS employee who, while carrying out their official duties, comes into contact with a noncitizen believed to be a victim of a severe form of trafficking in persons and is not already working with an LEA may consult, as necessary, with the ICE officials responsible for victim protection, trafficking investigations and prevention, and deterrence.

(b) The ICE office may, in turn, refer the victim to another LEA with responsibility for detecting, investigating, or prosecuting acts of trafficking.

(c) If the noncitizen has a credible claim to victimization, USCIS may advise the individual that they can submit an Application for T Nonimmigrant Status and seek any other benefit or protection for which they may be eligible, provided doing so would not compromise the noncitizen's safety.

§ 214.216 Restrictions on use and disclosure of information relating to applicants for T nonimmigrant classification.

(a) The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved Application for T Nonimmigrant Status is prohibited unless the disclosure is made in accordance with an exception described in 8 U.S.C. 1367(b).

(b) Information protected under 8 U.S.C. 1367(a)(2) may be disclosed to Federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending Federal criminal proceedings.

(c) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(d) DHS officials are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the trafficker, unless the applicant has been convicted of a crime or crimes listed in section 237(a)(2) of the Act.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1252, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 9. Revise § 245.23 to read as follows:

§ 245.23 Adjustment of noncitizens in T nonimmigrant classification.

(a) *Eligibility of principal T–1 applicants.* Except as described in paragraph (c) of this section, a noncitizen may be granted adjustment of status to that of a noncitizen lawfully admitted for permanent residence, provided the noncitizen:

(1) Applies for such adjustment.

(2) Was lawfully admitted to the United States as a T–1 nonimmigrant, as defined in 8 CFR 214.201.

(3) Continues to hold T–1 nonimmigrant status at the time of application.

(4) Has been physically present in the United States for a continuous period of at least 3 years since the date of lawful admission as a T–1 nonimmigrant, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period is less; except

(i) If the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain continuous physical presence in the United States for purposes of section 245(l)(1)(A) of the Act; and

(ii) If the noncitizen was granted T nonimmigrant status, such noncitizen's physical presence in the CNMI before, on, or after November 28, 2009, and subsequent to the grant of T nonimmigrant status, is considered as equivalent to presence in the United States pursuant to an admission in T nonimmigrant status.

(5) Is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment.

(6) Has been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of the application for adjustment of status.

(7)(i) Has, since first being lawfully admitted as a T–1 nonimmigrant, and until the conclusion of adjudication of the application, complied with any reasonable request for assistance in the detection, investigation or prosecution of acts of trafficking, as defined in § 8 CFR 214.201; or

(ii) Would suffer extreme hardship involving unusual and severe harm upon removal from the United States, as provided in 8 CFR 214.209; or

(iii) Was younger than 18 years of age at the time of the victimization that qualified the T nonimmigrant for relief under section 101(a)(15)(T) of the Act, 8 U.S.C. 1101(a)(15)(T); or

(iv) Established an inability to cooperate with a reasonable request for assistance at the time their Application for T Nonimmigrant Status was approved, as defined in 8 CFR 214.202(c)(1) and (2).

(b) *Eligibility of derivative family members.* A derivative family member of a T–1 nonimmigrant status holder may be granted adjustment of status to that of a noncitizen lawfully admitted for permanent residence, provided:

(1) The T–1 nonimmigrant has applied for adjustment of status under this section and meets the eligibility requirements described under paragraph (a) of this section;

(2) The derivative family member was lawfully admitted to the United States in derivative T nonimmigrant status under section 101(a)(15)(T)(ii) of the Act, and continues to hold such status at the time of application;

(3) The derivative family member has applied for such adjustment; and

(4) The derivative family member is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment.

(5) The derivative family member does not automatically lose T nonimmigrant status when the T–1 nonimmigrant adjusts status.

(c) *Exceptions.* A noncitizen is not eligible for adjustment of status under paragraph (a) or (b) of this section if:

(1) Their T nonimmigrant status has been revoked pursuant to 8 CFR 214.213;

(2) They are described in section 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E) of the Act; or

(3) They are inadmissible under any other provisions of section 212(a) of the Act and have not obtained a waiver of

inadmissibility in accordance with 8 CFR 212.18 or 214.210.

(4) Where the applicant establishes that the victimization was a central reason for their unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable, and the applicant need not obtain a waiver of that ground of inadmissibility. The applicant, however, must submit with their application for adjustment of status evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. To qualify for this exception, the victimization need not be the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

(d) *Jurisdiction.* (1) USCIS shall determine whether a T–1 applicant for adjustment of status under this section was lawfully admitted as a T–1 nonimmigrant and continues to hold such status, has been physically present in the United States during the requisite period, is admissible to the United States or has otherwise been granted a waiver of any applicable ground of inadmissibility, and has been a person of good moral character during the requisite period.

(2) USCIS shall determine whether the applicant received a reasonable request for assistance in the investigation or prosecution of acts of trafficking as defined in 8 CFR 214.201 and 214.208(c), and, if so, whether the applicant complied in such request.

(3) If USCIS determines that the applicant failed to comply with any reasonable request for assistance, USCIS shall deny the application for adjustment of status unless USCIS finds that the applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(e) *Application*—(1) *Filing requirements.* Each T–1 principal applicant and each derivative family member who is applying for adjustment of status must file an Application to Register Permanent Residence or Adjust Status; and

(i) Accompanying documents, in accordance with the form instructions;

(ii) A photocopy of the applicant's Notice of Action, granting T nonimmigrant status;

(iii) A photocopy of all pages of their most recent passport or an explanation of why they do not have a passport;

(iv) A copy of the applicant's Arrival-Departure Record; and

(v) Evidence that the applicant was lawfully admitted in T nonimmigrant status and continues to hold such status at the time of application. For T nonimmigrants who traveled outside the United States and returned to the United States after presenting an Advance Parole Document issued while the adjustment of status application was pending, the date that the applicant was first admitted in lawful T status will be the date of admission for purposes of this section, regardless of how the applicant's Arrival-Departure Record is annotated.

(2) *T–1 principal applicants.* In addition to the items in paragraph (e)(1) of this section, T–1 principal applicants must submit:

(i) Evidence, including an affidavit from the applicant and a photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport), that they have been continuously physically present in the United States for the requisite period as described in paragraph (a)(2) of this section. Applicants should submit evidence described in § 245.22. A signed statement from the applicant attesting to the applicant's continuous physical presence alone will not be sufficient to establish this eligibility requirement. If additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts.

(A) If the applicant has departed from and returned to the United States while in T–1 nonimmigrant status, the applicant must submit supporting evidence showing the dates of each departure from the United States and the date, manner, and place of each return to the United States.

(B) Applicants applying for adjustment of status under this section who have less than 3 years of continuous physical presence while in T–1 nonimmigrant status must submit a document signed by the Attorney General or their designee, attesting that the investigation or prosecution is complete.

(ii) Evidence of good moral character in accordance with paragraph (g) of this section; and

(A) Evidence that the applicant has complied with any reasonable request for assistance in the investigation or prosecution of the trafficking as described in paragraph (f)(1) of this section since having first been lawfully admitted in T–1 nonimmigrant status and until the adjudication of the application; or

(B) Evidence that the applicant would suffer extreme hardship involving unusual and severe harm if removed from the United States as described in paragraph (f)(2) of this section.

(3) *Evidence relating to discretion.* Each applicant seeking adjustment under section 245(l) of the Act bears the burden of showing that discretion should be exercised in their favor. Where adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider. Depending on the nature of adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(f) *Assistance in the investigation or prosecution or a showing of extreme hardship.* Each T–1 principal applicant must establish that since having been lawfully admitted as a T–1 nonimmigrant and up until the adjudication of the application, they complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking, as defined in 8 CFR 214.201, or establish that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(1) Each T–1 applicant for adjustment of status under section 245(l) of the Act must submit evidence demonstrating that the applicant has complied with any reasonable requests for assistance in the investigation or prosecution of the human trafficking offenses during the requisite period; or

(2) In lieu of showing continued compliance with requests for assistance, an applicant may establish that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(i) The hardship determination will be evaluated on a case-by-case basis, in accordance with the factors described in 8 CFR 214.209.

(ii) Where the basis for the hardship claim represents a continuation of the hardship claimed in the Application for

T Nonimmigrant Status, the applicant need not re-document the entire claim, but rather may submit evidence to establish that the previously established hardship is ongoing. However, in reaching its decision regarding hardship under this section, USCIS is not bound by its previous hardship determination made under 8 CFR 214.209.

(g) *Good moral character.* A T–1 nonimmigrant applicant for adjustment of status under this section must demonstrate that they have been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of their applications for adjustment of status. Claims of good moral character will be evaluated on a case-by-case basis, taking into account section 101(f) of the Act and the standards of the community. The applicant must submit evidence of good moral character as follows:

(1) An affidavit from the applicant attesting to their good moral character, accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the applicant has resided for 6 or more months during the requisite period in continued presence or T–1 nonimmigrant status.

(2) If police clearances, criminal background checks, or similar reports are not available for some or all locations, the applicant may include an explanation and submit other evidence with their affidavit.

(3) USCIS will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the applicant's good moral character.

(4) An applicant who is under 14 years of age is generally presumed to be a person of good moral character and is not required to submit evidence of good moral character. However, if there is reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require evidence of good moral character.

(h) *Filing and decision.* An application for adjustment of status from a T nonimmigrant under section 245(l) of the Act shall be filed with the USCIS office identified in the instructions to the Application to Register Permanent Residence or Adjust Status. Upon approval of adjustment of status under this section, USCIS will record the noncitizen's lawful admission for permanent residence as of the date of such approval and will notify the applicant in writing. Derivative family members' applications may not be approved before the principal applicant's application is approved.

(i) *Denial.* If the application for adjustment of status or the application for a waiver of inadmissibility is denied, USCIS will notify the applicant in writing of the reasons for the denial and of the right to appeal the decision to the Administrative Appeals Office (AAO) pursuant to the AAO appeal procedures found at 8 CFR 103.3. Denial of the T–1 principal applicant's application will result in the automatic denial of a derivative family member's application.

(j) *Effect of Departure.* (1) If an applicant for adjustment of status under this section departs the United States, they shall be deemed to have abandoned the application, and it will be denied.

(2) If, however, the applicant is not under exclusion, deportation, or removal proceedings, and they filed an Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, and was granted advance parole by USCIS for such absences, and was inspected and paroled upon returning to the United States, they will not be deemed to have abandoned the application.

(3) If the adjustment of status application of such an individual is subsequently denied, they will be treated as an applicant for admission subject to sections 212 and 235 of the Act. If an applicant for adjustment of status under this section is under exclusion, deportation, or removal proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States.

(k) *Inapplicability.* Sections 245.1 and 245.2 do not apply to noncitizens seeking adjustment of status under this section.

(l) *Annual limit of T–1 principal applicant adjustments*—(1) *General.* The total number of T–1 principal applicants whose status is adjusted to that of lawful permanent residents under this section may not exceed the statutory limit in any fiscal year.

(2) *Waiting list.* (i) All eligible applicants who, due solely to the limit imposed in section 245(l)(4) of the Act and paragraph (l)(1) of this section, are not granted adjustment of status will be placed on a waiting list. USCIS will send the applicant written notice of such placement.

(ii) Priority on the waiting list will be determined by the date the application was properly filed, with the oldest applications receiving the highest priority.

(iii) In the following fiscal year, USCIS will proceed with granting adjustment of status to applicants on the waiting list who remain admissible and eligible for adjustment of status in order of highest priority until the available numbers are exhausted for the given fiscal year.

(iv) After the status of qualifying applicants on the waiting list has been adjusted, any remaining numbers for that fiscal year will be issued to new qualifying applicants in the order that the applications were properly filed.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 10. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 8 CFR part 2.

■ 11. Amend § 274a.12 by reserving paragraphs (c)(37) through (39) and adding paragraph (c)(40) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(40) A noncitizen applicant for T nonimmigrant status, and eligible family members, who have pending, bona fide applications, and who merit a favorable exercise of discretion.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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