

**A GUIDE FOR  
LEGAL ADVOCATES  
PROVIDING SERVICES  
TO VICTIMS OF HUMAN  
TRAFFICKING**

**The United States Conference of Catholic Bishops,  
Migration and Refugee Services, Catholic Legal  
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Foundation of Los Angeles**

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## CHAPTER 1 AN OVERVIEW OF HUMAN TRAFFICKING

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### § 1.1 What is Human Trafficking?

Trafficking in human beings is a growing scourge around the world. Briefly defined, it is the use of coercion or deception to move men, women, and children from one location to another, in order to place them into slavery or slavery-like conditions. These conditions include forced labor, domestic servitude, debt bondage, and forced commercial sexual exploitation, among others.<sup>1</sup> Many trafficking victims are forced to work in the sex trade, but trafficking also takes place in labor situations, such as domestic service, prison-like factories, migrant agricultural work, and forced marriage.<sup>2</sup>

Trafficking is an underground crime, making it difficult to determine how many people are actually trafficked. The United States government estimates that between 800,000 and 900,000 people are trafficked worldwide within and across international

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<sup>1</sup> From the remarks of Ambassador Nancy Ely-Raphael, U.S. State Department Office to Monitor and Combat Trafficking in Persons, at the Fifth Annual Youth Town Meeting, <http://www.youthworldlink.org/Events/YTM/Nancy%20Speech.htm>.

<sup>2</sup> United States Department of Justice, Assessment of U.S. Activities to Combat Trafficking in Persons (August 2003) (hereinafter "Assessment"), at 1.

borders each year.<sup>3</sup> Almost every country is affected, either as a destination, transit, or origin country or as a combination of those. Between 18,000 and 20,000 people are trafficked into the United States annually.<sup>4</sup>

Trafficking has grown because of a combination of root causes, profit, and impunity. Human traffickers prey on the most vulnerable – people living in abject poverty, persons unable to find work in their countries, persons living in desperate situations such as refugee camps, and children without adult protection. Global economic inequality, the feminization of poverty, a general movement from the countryside to cities and resulting unemployment, restrictions on lawful immigration, war, civil unrest and environmental disasters, the demand for cheap labor, and the lack of educational and professional opportunities -- all of these are root causes of trafficking.<sup>5</sup>

Also contributing to the risk in human trafficking are its lucrateness and relative impunity. Trafficking is a transnational criminal enterprise,<sup>6</sup> generating billions of dollars each year.<sup>7</sup> Some traffickers are individuals or a small group of people, but others are part of large criminal organizations that use the routes and procedures set up for trafficking in illicit items such as drugs and arms to traffic human beings. The victims of human trafficking can make large sums of money for their traffickers, in part because they can be sold over and over. In addition, until recently, punishment for traffickers was not severe, and the large trafficking organizations operated outside the reach of the law. Trafficking is also linked to other criminal activities, such as document fraud, money laundering, and migrant smuggling.<sup>8</sup>

Being the victim of human trafficking has a severe impact on the individual. Victims may suffer from physical injuries or infections stemming from mistreatment or unhealthy work environments. A large number suffer from emotional or psychological injury resulting from methods used by their captors. These methods can take the form of physical mistreatment, threats, confiscation of passports and other documents, threats of injury to family members, and threats of criminal prosecution. Victims may be disoriented at being separated from family members in a country whose language they do not speak. They may feel that they cannot return to their home country for fear of being victimized again or of public humiliation or ostracism because of the type of work they have performed.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See, United States Department of State, *2003 Trafficking in Persons Report*; Jenna Shearer Demir, *The Trafficking of Women for Sexual Exploitation: a Gender-based and Well-founded Fear of Persecution?*, Working Paper No. 80, New Issues in Refugee Research, UNHCR Evaluation and Policy Analysis Unit; European Union, Justice and Home Affairs Commission, 2000 report.

<sup>6</sup> Assessment, at 1.

<sup>7</sup> Melanie Orhant, "Trafficking in Persons: Myths, Methods, and Human Rights."

<sup>8</sup> Assessment, at 1.

## 1.2 Some Illustrations

Victims of human trafficking come from a broad spectrum of backgrounds. Some may be from rural areas or without a formal education. Others may be educated men and women who live in countries where there are very few employment possibilities. The victims may be lured into slavery through advertisements or offers promising good jobs in other countries or perhaps marriage, or they may be forced into slavery through physical or psychological coercion. Once in the trafficker's possession, they find that they are actually working in slavery-like conditions in sweatshops, farms, or domestic servitude, or are being sexually exploited. A few examples illustrate the broad range of individuals who fall victim to traffickers and the sorts of horrific circumstances in which trafficking victims find themselves.

- Ana, Marta, and Lucia are under 18 and from poor villages in Mexico. Each of them were romanced by one of two men, who promised to marry them, but told them that they must first be smuggled into the United States to stay with the men's sisters and earn some money until their fiances could join them. Once in the United States, the men's sisters beat the girls, forced them to work as prostitutes, and isolated them from one another and from other people. The men's sisters have been convicted of trafficking under U.S. federal law and sentenced to 17 ½ yrs. in prison. The girls will seek T nonimmigrant visas in the United States.
- Adey was brought to the United States to work for relatives of the family she worked for in her native Ethiopia. The family kept her hidden inside the house for about five years. She could leave the house only to help with shopping. She worked 18-hour days with no breaks or days off. The family told her that the money she was earning was being put into an account for her, but this was not true. After five years, the family sent her to other relatives, who mistreated her physically. She was told that the immigration authorities would come take her and deport her if she contacted anyone outside the home.
- The Daewoosa case involved over 200 Vietnamese and Chinese garment workers who were threatened with arrest, deportation, food deprivation, and beatings as a means of obtaining their labor at a garment factory in American Samoa. In March 1999, after months of mistreatment, the workers contacted local residents, who notified the DOJ. The DOJ prosecuted the owner of the factory and obtained a conviction in February 2003. The workers have been certified as victims of human trafficking.
- Phanupong, a Thai boy, arrived at the Los Angeles airport when he was two years old with two adults who claimed to be his parents. The adults were in fact using him as a decoy to smuggle a woman into the United States. He has been granted a T nonimmigrant visa as a victim of human trafficking.
- Sumitra was placed into debt bondage when she was 8 years old. Her family owed a debt to a moneylender and was unable to pay it off. She was taken as

collateral and forced to work off the debt. She was forced to work five days a week from 6 a.m. to 7 p.m. rolling 1,500 cigarettes per day. She earned 75 cents a day and was allowed one 30-minute break per day. If she failed to make her quota, she was beaten.

### § 1.3 Definitions

Under U.S. law, “severe forms of trafficking in persons” include:

- 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.<sup>9</sup>

Some of the terms used in this definition are defined in interim regulations issued by the Department of State and Department of Justice. Thus,

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for purposes of a commercial sex act.<sup>10</sup>
- Commercial sex act means any sex act on account of which anything of value is given to or received by any person.<sup>11</sup>
- Coercion means threats of serious harm to or physical restraint against any person; any scheme 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.<sup>12</sup> It is important to note that coercion is interpreted according to the victim’s subjective perception. Thus, a subtle threat or culturally sensitive comment may constitute coercion for purposes of human trafficking.<sup>13</sup>
- Debt bondage means the status of a debtor arising from the debtor’s pledge of his or her personal services or the services of a person under the debtor’s control as a security for debt, if the value of those services is not applied to satisfy the debt or if the length and nature of the services are not appropriately limited and defined.<sup>14</sup>

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<sup>9</sup> 22 U.S.C. § 7102.

<sup>10</sup> 8 C.F.R. § 214.11(a).

<sup>11</sup> 22 U.S.C. § 7102; 28 C.F.R. § 1100.25.

<sup>12</sup> 8 C.F.R. § 214.11(a); 28 C.F.R. § 1100.25.

<sup>13</sup> See, 146 Cong. Rec. H8855-02, H8881 (Oct. 5, 2000) (conference report and statement of Rep. Christopher Smith).

<sup>14</sup> *Id.*

- Involuntary servitude means a condition of servitude induced by causing a person to believe that the person or another would be seriously harmed, physically restrained, or subjected to abuse or threatened abuse of legal process if the person did not enter into or remain in the servitude.<sup>15</sup>

#### § 1.4 Human Trafficking and People Smuggling

Human trafficking and people smuggling sound similar, but they actually represent two quite different activities. If a person hires another to take him across a border illegally, that person has been smuggled. In contrast, a victim of human trafficking is either brought into the country or recruited after arrival through force, fraud, or coercion. When the person being smuggled arrives at the destination, the business relationship ends, and the smuggler and the individual go their separate ways. In human trafficking, however, the victim is brought into the country, often illegally, in order to be exploited inside the country.

It sometimes happens that a smuggling arrangement turns into human trafficking. For example, the victim may have arranged with the smuggler to bring the victim into the United States. Once here, however, the smuggler increases the price and forces the victim to work in slavery-like conditions if the victim cannot pay. Or the smuggler may have actually intended to enslave the victim upon arrival in the United States. It is important to remember that a victim's initial agreement to travel or perform labor does not allow an employer to later restrict that person's freedom or use force or threats to obtain repayment.<sup>16</sup>

#### § 1.5 International Efforts

International human rights treaties prohibit trafficking in persons. These include the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the United Nations Convention on the Elimination of All Forms of Discrimination against Women; and the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the UN General Assembly in November 2000.<sup>17</sup>

The definition of trafficking in the United Nations documents is:

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<sup>15</sup> *Id.*

<sup>16</sup> United States Government, *Trafficking in Persons: a Guide for Non-Governmental Organizations*, at 1; *see also*, Preamble, *New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status*, 67 Fed. Reg. 4784 at 4786 (Jan. 31, 2002).

<sup>17</sup> *See*, [www.unodc.org/crime\\_cicp\\_convention.html#final](http://www.unodc.org/crime_cicp_convention.html#final). The Protocol will not come into effect until it has been ratified by 40 nations.

The recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>18</sup>

There are also efforts by regional international organizations to prevent human trafficking and protect its victims.

### **§ 1.6 What the United States Is Doing to Combat Human Trafficking**

Of course, the Thirteenth Amendment to the United States Constitution outlaws slavery and involuntary servitude, and it is a criminal offense under U.S. law to enslave someone or hold them in slavery or slavery-like situations. In addition, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)<sup>19</sup> supplemented existing laws through a three-prong approach of prevention, protection, and prosecution.

In terms of prevention, the VTVPA provides for assistance to foreign countries in drafting laws to prohibit and punish acts of trafficking, strengthening investigation and prosecution of traffickers, and creating programs to assist victims. It requires the State Department to prepare an annual report on Trafficking in Persons<sup>20</sup> and provides for assistance to foreign countries for the combating of trafficking.<sup>21</sup> Conversely, the law provides for foreign sanctions against countries that are determined not to be making sufficient efforts to combat human trafficking.<sup>22</sup>

The VTVPA provides protection to victims of human trafficking in a number of ways.<sup>23</sup> The first of these is provision of victim services. For this purpose, trafficking victims receive the same victim services provided to other victims of crime.<sup>24</sup> These include the right to be reasonably protected from harm or intimidation by the accused offender, notification of the status of the criminal case against the suspected trafficker, scheduling of court proceedings, the outcome of the court proceedings, and the offender's

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<sup>18</sup> Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime.

<sup>19</sup> Pub. L. No. 106-386 (Oct. 28, 2000).

<sup>20</sup> 22 U.S.C. § 7170(b).

<sup>21</sup> 22 U.S.C. §§ 7103, 7104, 7110.

<sup>22</sup> 22 U.S.C. § 7107(c).

<sup>23</sup> 22 U.S.C. § 7105(c); 28 C.F.R. §§ 1100.25 – 1100.37

<sup>24</sup> 22 C.F.R. §§ 1100.29., 1100.31, 1100.33 (providing that victims services specified in 42 U.S.C. § 10606 and 10607 extend to victims of human trafficking).



release from custody, and the right to restitution.<sup>25</sup> In addition, the VTVPA regulations require federal officials to provide specific information to trafficking victims about their rights and applicable services, including:

- immigration benefits,
- federal and state benefits and services, such as assistance following certification by the Department of Health and Human Services,
- medical services,
- pro bono and low-cost legal services, including immigration services,
- federal and state benefits and services,
- victim service organizations,
- protections and remedies available,
- victim compensation and assistance programs,
- the right to restitution,
- the right to notification of case status, and
- rights of individual privacy and confidentiality.<sup>26</sup>

If the victim cannot communicate in English, the federal authorities must also ensure reasonable access to translation services and oral interpreter services.<sup>27</sup>

In addition to the victim services listed above, the regulations provide that to the extent possible, alternatives to formal detention trafficking victims should be considered, but that, even where detention is required, trafficking victims should be housed in facilities appropriate to their status as victims.<sup>28</sup> While in federal custody, trafficking victims must be given necessary medical care and other assistance, including mental health counseling or social services where appropriate.<sup>29</sup> Moreover, if the victim's safety is at risk or there is danger of recapture by the traffickers, federal law enforcement agencies should protect trafficking victims and their family members from harm, intimidation, and threats of harm from the traffickers and should ensure that the names and identifying information of the victims and their family members are not disclosed to the public.<sup>30</sup>

A second element of protection under the VTVPA is protection against removal and valid immigration status. The Department of Homeland Security may grant immigration relief to certain trafficking victims who provide assistance to law enforcement in the investigation or prosecution of trafficking crimes, in the form of "continued presence" status and T nonimmigrant and immigrant visas. In certain cases, this immigration relief can also be granted to the families of trafficking victims. These immigration benefits are discussed in chapters 4 and 5 of this manual.

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<sup>25</sup> 42 U.S.C. §§ 10606, 10607.

<sup>26</sup> 28 C.F.R. § 1100.33(a).

<sup>27</sup> 28 C.F.R. § 1100.33(b).

<sup>28</sup> 28 C.F.R. § 1100.31(b).

<sup>29</sup> 28 C.F.R. § 1100.3(c).

<sup>30</sup> 28 C.F.R. § 1100.31(d).

A third protection for victims of human trafficking is public assistance. Trafficking victims who have filed bona fide applications for T visas or who have been granted “continued presence” are eligible for public benefits to the same extent as refugees. These benefits are discussed in chapter 6 of this manual.

In terms of prosecution, the VTVPA mandated tougher penalties for peonage, slavery, and involuntary servitude offenses and provided for the prosecution of additional trafficking-related offenses, thus giving prosecutors new tools.<sup>31</sup> These new offenses include 18 U.S.C. § 1589 (forced labor), § 1590 (human trafficking), § 1591 (sex trafficking), and § 1592 (unlawful conduct with respect to documents). The VTVPA also provides for mandatory restitution, under 18 U.S.C. § 1593, and forfeiture of traffickers’ property, under 18 U.S.C. § 1594, and states that violation of the VTVPA is considered organized criminal activity, under 18 U.S.C. § 1594.

These measures under federal law have been strengthened by the reauthorization of the Trafficking Victims Protection Act in December 2003,<sup>32</sup> which, among its provisions, added a private right of action for trafficking victims against their enslavers,<sup>33</sup> stayed any civil action filed under that section during the pendency of a criminal prosecution against the trafficker,<sup>34</sup> and expanded the immigration benefits available to trafficking victims and their families.<sup>35</sup>

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### **Key United States Agencies Working to Combat Human Trafficking**

- The Department of Justice, through the FBI and the Criminal Section of the Civil Rights Division, investigates and prosecutes criminal offenses involving human trafficking. Through its Office for Victims of Crime, the Department of Justice also awards grants to state and nongovernmental organizations to provide outreach, technical assistance, and services to trafficking victims.
- The Department of State, through its Office to Monitor and Combat Trafficking in Persons, interacts with foreign governments to combat trafficking, prepares the annual Trafficking in Persons report, and coordinates the efforts of the various U.S. government agencies.
- The Department of Labor, through the Wage and Hour Division of its Employment Standards Administration, enforces laws that establish minimum standards for wages and working conditions in the United States. These laws carry civil and criminal penalties and include the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act. The laws apply without regard to immigration status.

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<sup>31</sup> 22 U.S.C. § 7109.

<sup>32</sup> Pub. L. No. 108-193 (Dec. 19, 2003).

<sup>33</sup> Pub. L. No. 108-193, § 4(a)(4) (adding 18 U.S.C. § 1595).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, §§ 4(a)(2) and (3) and (b) (discussed in Chapter 4 of this manual).

- The Department of Health and Human Services, through the Office of Refugee Resettlement, provides certification and eligibility letters for victims to allow them to access benefits and services comparable to those provided to refugees, including cash assistance, medical care, food stamps, and housing. It also provides funding to state and nongovernmental agencies to provide outreach, technical assistance, and services specific to the needs of trafficking victims, including temporary housing, independent living skills, cultural orientation, transportation needs, education programs, legal assistance and referrals.
  - The Department of Homeland Security, through the U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, assists in investigations of suspected trafficking and issues grants of continued presence. Through the Vermont Service Center of the U.S. Citizenship and Immigration Services, the DHS adjudicates applications for T and U visas.
  - The U.S. Agency for International Development implements anti-trafficking programs abroad, including public education, victim protection through shelters and counseling, and efforts to reform legislative to strengthen prosecution of trafficking criminals.
  - The U.S. Interagency Task Force on Trafficking in Persons and its Senior Policy Operating Group.
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### **§ 1.7 Community-Based Organizations and Services for Victims of Human Trafficking**

The U.S. government has recognized the need for collaboration between federal and state law enforcement, social service providers, nongovernmental agencies, and other offices, and has awarded funding to a number of non-governmental organizations, including the Legal Aid Foundation of Los Angeles (LAFLA) and the U.S. Conference of Catholic Bishops' Migration and Refugee Services (MRS) to provide outreach, technical assistance to advocates, and services to victims of human trafficking. This manual is prepared with funds from the Department of Health and Human Services' Office of Refugee Resettlement, under a grant to MRS, and with funds from the Department of Justice's Office for Victims of Crime, under a grant to LAFLA.

### **§ 1.8 For Further Reading:**

- Amy O'Neill Richard, *International Trafficking in Women to the United States: a Contemporary Manifestation of Slavery and Organized Crime* (2000), <http://www.cia.gov/csi/monograph/women/trafficking.pdf>

- U. S. Department of State, *Assessment of U.S. Activities to Combat Trafficking in Persons*, August 2003, <http://www.state.gov/g/tip/rls/rpt/23495.htm>
- U.S. Department of State, *2003 Trafficking in Persons Report*, <http://www.state.gov/g/tip/rls/tiprpt/2003/>
- Melanie Orhant, “Trafficking in Persons: Myths, Methods, and Human Rights,” <http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=5261>
- Ann Jordan, “Trafficking in Human Beings: the Slavery that Surrounds Us,” at <http://usinfo.state.gov/journals/itgic/0801/ijge/gj05.htm>
- U.S. Government, *Trafficking in Persons: a Guide for Non-Governmental Organizations*, downloadable from <http://www.usdoj.gov/trafficking.htm>.
- Sheila Neville and Susana Martinez, “The Law of Human Trafficking: what Legal Aid Providers Should Know,” *Clearinghouse Review Journal of Poverty Law and Policy* (March – April 2004).
- Donna M. Hughes, *Hiding in Plain Sight: A Practical Guide to Identifying Victims of Trafficking in the U.S.* [http://www.acf.hhs.gov/trafficking/resources/plain\\_site.html](http://www.acf.hhs.gov/trafficking/resources/plain_site.html)
- Kelly E. Hyland, “Protecting Human Victims of Trafficking: An American Framework,” 16 *Berkeley Women’s L. J.* 29 (2001).

#### § 1.9 Some Useful Websites:

- United States Department of State, Trafficking in Persons page <http://www.state.gov/g/tip/>
- United States Department of Justice information on human trafficking, <http://www.usdoj.gov/trafficking.htm>
- U.S. Department of Health and Human Services, The Campaign to Rescue and Restore Victims of Human Trafficking (clearinghouse website), [www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking)
- HumanTrafficking.org, <http://www.humantrafficking.org>
- The Freedom Network (USA) to Empower Trafficked and Enslaved Persons, <http://www.freedomnetworkusa.org>

- Stop Trafficking of People: An Introductory Resource, U.S. Conference of Catholic Bishops, [www.usccb.org/mrs](http://www.usccb.org/mrs)
- The United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region, <http://www.un.or.th/TraffickingProject/TraffickIntro.html>
- Human Rights Watch, Women's Rights Project, [http://hrw.org/doc/?t=women\\_trafficking&document\\_limit=20,20](http://hrw.org/doc/?t=women_trafficking&document_limit=20,20)
- International Human Rights Law Group, Initiative Against Trafficking in Persons, [http://www.hrlawgroup.org/initiatives/trafficking\\_persons/](http://www.hrlawgroup.org/initiatives/trafficking_persons/)
- United Nations General Assembly, Report of the Secretary-General on Trafficking in Women and Girls, at <http://www.un.org/womenwatch/daw/followup/trafficking.html>.
- Anti-Slavery, at <http://www.antislavery.org/homepage/resources/PDFpublication.htm>

**U. S. Department of Justice****Civil Rights Division**

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*Office of the Assistant Attorney General**Washington, D.C. 20530*

July 29, 2003

Dear Colleague:

The Criminal Section of the Civil Rights Division, in conjunction with the Office of Legal Policy, developed the attached reference sheet in an effort to respond to concerns raised by representatives of the United States Conference of Catholic Bishops in a meeting with former Assistant Attorney General Viet Dinh. We hope this quick guide will demystify the process we follow to investigate trafficking cases and assist victims. This reference sheet also identifies points of contact within the various federal agencies who may be able to assist you in resolving case-specific issues.

The process of ensuring a coordinated federal-state-nongovernmental organization (NGO) approach is crucial to successful prosecution of these important cases and is a priority for the Criminal Section. Recent examples of successful coordinated efforts on the part of government personnel and their NGO partners include United States v. Kil Soo Lee, where the Criminal Section secured convictions in one of the largest-ever trafficking prosecutions in U.S. history. We appreciate the unwavering assistance of several NGOs around the country who worked extensively with Lorna Grenadier, our Victim-Witness Coordinator, to provide victim assistance in this important case.

In another recent case, federal prosecutors from the Criminal Section and the U.S. Attorney's Office for the District of Maryland obtained the first conviction at trial under the new forced labor statute, 18 U.S.C. § 1589. This case came to light after a West African community group called the Trafficking in Persons and Worker Exploitation (TPWETF) complaint line to report the enslavement of a Ghanaian woman in Maryland. Criminal Section personnel immediately interviewed the victim and arranged for her continued presence. The victim, who had been tricked and trafficked by politically powerful Ghanaian defendants to work as a domestic servant in their home, was assisted by a Northern Virginia NGO to secure refugee benefits. Largely as a result of the victim's courageous efforts, two of her captors were convicted and a third, a high-level Ghanaian government official who has not yet been extradited, was stripped of her Cabinet post in Ghana.

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Close working relationships with our NGO partners have also resulted in the liberation of several trafficking victims recently: In 2003, an attorney with an NGO in New York called our Complaint Line to report that the wife of one of his clients was being held hostage by alien smugglers on the west coast. Criminal Section attorneys immediately put together an investigative strategy with the Federal Bureau of Investigation (FBI) and Department of Homeland Security/ Bureau of Immigration and Customs Enforcement. Within 36 hours, the victim was freed and two men were arrested on alien smuggling charges. In 2002, an NGO from Los Angeles called the TPWETF Complaint Line to report that a Cambodian woman had been subjected to rapes and beatings during her voyage from Cambodia. Criminal Section attorneys and FBI agents interviewed the victim and, despite concluding that a prosecution could not be undertaken because the woman was unable to identify the ship or her captors, determined that the woman was a victim of a severe form of trafficking. Criminal Section staff worked to obtain Continued Presence and certification by the Department of Health and Human Services, and eventually provided an I-914B Law Enforcement Agency Declaration that ultimately led to her receiving a T visa. In yet another recent case, a representative of a New York City NGO called the TPWETF Complaint Line in June of this year with information from the family member of an Eritrean domestic worker. The allegations suggested that the worker had been held captive in the home of suspected traffickers for approximately twelve years. Within three weeks, Criminal Section personnel, with FBI and NGO partners, conducted an operation to secure the victim's liberation. While the criminal investigation proceeds, the victim is being safely housed in a hotel and government personnel are working on family reunification efforts.

Since the passage of the TVPA, you have worked with the Criminal Section and its federal government partners to obtain certification for over 400 victims of trafficking. With your invaluable assistance and cooperation, the Section has been able to use the TVPA to assist victims who have helped to prosecute approximately 100 traffickers. In the spirit of our recent meeting with members of the Freedom Network at our offices, we remain committed to being responsive to your questions and concerns. Please review the attached document, distribute it liberally, and call us with feedback, questions or victim information. Although many of you will be familiar with the information contained in this document, we ask that you make this information available to your sister organizations who may be relatively new to the NGO anti-trafficking effort. You can reach us by calling or emailing Special Counsel Bharathi Venkatraman (202/616-3925; [bharathi.a.venkatraman@usdoj.gov](mailto:bharathi.a.venkatraman@usdoj.gov)), or by calling our Trafficking in Persons and Worker Exploitation complaint line at 888/428-7581.

Thank you for your commitment and your tireless efforts. We look forward to continuing to work with you.

Sincerely,



J. Michael Wiggins  
Acting Assistant Attorney General

## **OVERVIEW OF DEPARTMENT OF JUSTICE PROCEDURES REGARDING CASES INVOLVING TRAFFICKING IN PERSONS**

This fact sheet presents an overview of the ways in which the various parts of the Department of Justice work together with other federal agencies and non-governmental organizations ("NGOs") to handle cases involving trafficking in persons. It is intended to provide a quick reference tool for NGOs and others seeking appropriate points of contact within the Department.

Also note that the U.S. Departments of Justice, State, Labor, and Health and Human Services have jointly prepared a brochure on trafficking matters that provides more comprehensive information for NGOs ("*NGO Brochure*"). The brochure is available at [www.usdoj.gov/crt/crim/tpwetf.htm](http://www.usdoj.gov/crt/crim/tpwetf.htm).

### **I. INVESTIGATION AND PROSECUTION PROCEDURES**

#### ***How are trafficking complaints brought to the Department's attention, and who investigates them?***

- *Trafficking-related complaints should be made to the toll-free Trafficking in Persons and Worker Exploitation Task Force ("TPWETF") complaint line. The complaint line is run by the Criminal Section of the Civil Rights Division ("Criminal Section"), the component within the Department that prosecutes most trafficking matters. Telephone interpretation is available for non-English speakers in 150 languages and for those who are hearing impaired; complaints are considered confidential.*

#### **TPWETF Complaint Line: 1-888-428-7581**

Complaints received on the complaint line are forwarded immediately to a Deputy Chief of the Criminal Section responsible for the geographic area in which the incident occurred. The Deputy Chief determines whether a trafficking investigation is appropriate, assigns a line prosecutor to the matter, and supervises any ensuing investigation and/or prosecution.

TPWETF telephone complaints that do not constitute a potential federal criminal civil rights violation, but nonetheless reveal possible worker exploitation or other abuse, are referred to the appropriate TPWETF member agency most pertinent to the allegations. These agencies include the U.S. Department of Labor, the Equal Employment Opportunity Commission, and the Office of Special Counsel for Immigration Related Unfair Employment Practices in the Justice Department. Please see the *NGO Brochure* for contact information for those agencies.

- *Field offices of various federal law enforcement agencies can themselves initiate trafficking investigations. These investigations are based on information developed by local offices from local sources, including newspaper accounts and private contacts. Those offices report to their respective headquarters, which in turn notify the Criminal Section.*



- Federal Bureau of Investigation  
Civil Rights Unit  
202-324-3000  
[www.fbi.gov/hq/cid/civilrights/civilrts.htm](http://www.fbi.gov/hq/cid/civilrights/civilrts.htm)  
[www.fbi.gov/contact/fo/fo.htm](http://www.fbi.gov/contact/fo/fo.htm) (listing of FBI field offices)
- Department of Homeland Security  
Bureau of Immigration and Customs Enforcement  
(Formerly INS' investigations functions)  
202-514-1900  
[www.immigration.gov/graphics/fieldoffices/index.htm](http://www.immigration.gov/graphics/fieldoffices/index.htm)
- U.S. Department of Labor  
Wage and Hour Division  
866-487-9243  
[www.dol.gov/esa/whd](http://www.dol.gov/esa/whd)
- U.S. Department of State  
Diplomatic Security Service  
202 663-0067  
[www.state.gov/m/ds/about/c8849.htm](http://www.state.gov/m/ds/about/c8849.htm)

**Who should be contacted to find out the status of a criminal prosecution?**

- The Criminal Section of the Civil Rights Division tracks all federal criminal civil rights investigations involving human trafficking. To find out the status of a federal case involving human trafficking, call the Special Counsels for Human Trafficking in the Criminal Section.

**Bharathi Venkatraman**  
**Special Counsel for Trafficking in Persons**  
Criminal Section, Civil Rights Division  
202-514-3204

**Lou deBaca**  
**Special Litigation Counsel**  
Criminal Section, Civil Rights Division  
202-514-3204

Note that federal law requires that victims be informed of the progress of a case from its initiation through sentencing and incarceration of the defendant. Notification responsibilities lie with the FBI or other investigative agency during the investigation, with the Criminal Section or other prosecuting office upon indictment, and with the Bureau of Prisons upon incarceration.

If a matter is being prosecuted by the Child Exploitation and Obscenity Section within the Department's Criminal Division, or by a local U.S. Attorney's Office without assistance from the Criminal Section, the Criminal Section's Special Counsel will assist the caller with the appropriate contact number. The Special Counsel also will refer the caller to the FBI, another

federal investigative agency, or Bureau of Prisons, as appropriate. The general contact numbers are:

- Child Exploitation and Obscenity Section  
Criminal Division  
202-514-5780
- Executive Office of U.S. Attorneys  
202-514-1023  
[www.usdoj.gov/usao/offices](http://www.usdoj.gov/usao/offices) (listing of U.S. Attorney's Offices)

## **VICTIM SERVICES AND ISSUES**

### **What services are available to trafficking victims?**

- All victims of trafficking are eligible for victim services upon their identification by federal law enforcement. The type of services available depends on
  - whether a determination has been made as to whether the victim meets the definition of having been subjected to a severe form of trafficking set out in the Trafficking Victims Protection Act ("TVPA");
  - the victim's immigration status; and
  - the victim's willingness to assist with an investigation.

Victims are eligible for services even if the violations occurred before the TVPA was passed (October 28, 2000), so long as the five-year statute of limitations on the trafficking offense has not passed. Victim services are also often available if the investigation does not result in an indictment, or if the indictment does not include specific trafficking charges.

### **Services available to all victims (regardless of immigration status)**

- Certain government-funded programs, services, and assistance necessary for the protection of life and safety (e.g., crisis counseling, short-term shelter, mental health assistance) are available to all victims of crime.
- State crime victim compensation programs administered independently by states and U.S. territories may reimburse crime victims for crime-related expenses.
- Victims can be repatriated to their home country if they desire, usually with assistance from the Department of State, the government of their country of origin, and NGOs.

### **Services available when a victim is deemed a victim of a severe form of trafficking (VSFT)**

- Victims who are considered to have been subjected to a severe form of trafficking are eligible for immigration relief (i.e., "continued presence" and the T-visa – explained further below). If granted that relief, the victim also receives an authorization permit to work in the United States ("EAD"). The Bureau of Citizenship and Immigration Services

(BCIS) processes T visas and continued presence requests. For more information on available immigration relief, see the *NGO Brochure*.

- Minor victims can participate in the Unaccompanied Refugee Minor Program run by the Department of Health and Human Services. In addition, victims between the ages of 16 and 24 who have work permits may be eligible for Job Corps, a program run by the U.S. Department of Labor.
- Also note that the Justice Department's Office for Victims of Crime (202-305-1715) provides grants to certain NGOs that provide victim services. (See [www.ojp.usdoj.gov/press.htm](http://www.ojp.usdoj.gov/press.htm) for a list of grantees.)
- If NGOs or others are unable to assist a particular victim, the Criminal Section, the Executive Office of U.S. Attorneys, the FBI, and BICE have interim emergency funds that may be available.

#### **Additional services available to VSFTs who are willing to assist in investigation**

- The Office of Refugee Resettlement at HHS may issue a letter certifying or declaring a trafficking victim to be eligible for refugee benefits administered through state programs, which vary from state to state.
- HHS also funds NGOs and match grant programs that provide services specifically for trafficking victims eligible for refugee programs. (Call 202-401-4825 for a current list of grantees.)

#### **Useful Contact Numbers for Victim Services**

##### **Investigative Agencies**

- BICE  
Department of Homeland Security  
Victim Witness Headquarters  
[www.immigration.gov/graphics/fieldoffices/index.htm](http://www.immigration.gov/graphics/fieldoffices/index.htm) 202-616-8737
- FBI  
Victim Witness Headquarters  
[www.fbi.gov/hq/cid/victimassist/fbiresources/resources.htm](http://www.fbi.gov/hq/cid/victimassist/fbiresources/resources.htm) 202-324-1339

##### **Prosecuting Agencies**

- Criminal Section  
Victim Witness Civil Rights Division  
[www.usdoj.gov/crt/crim/tpwetf.htm](http://www.usdoj.gov/crt/crim/tpwetf.htm) 202-616-3807
- Executive Office of U.S. Attorneys  
Victim Witness/ Law Enforcement Coordinating Committee  
[www.usdoj.gov/usao/offices](http://www.usdoj.gov/usao/offices) 202-616-6792

*Victim Services Funding Agencies*

- Office for Victims of Crime 202-305-1715  
Department of Justice  
[www.ojp.usdoj.gov/ovc](http://www.ojp.usdoj.gov/ovc)
- Office of Refugee Resettlement 202-401-9246  
Department of Health and Human Services  
[www.acf.hhs.gov/programs/orr/index.htm](http://www.acf.hhs.gov/programs/orr/index.htm)

*Who provides immigration relief and when?*

- TVPA immigration relief includes the T visa, for which victims themselves apply (usually with the assistance of an attorney or NGO), and continued presence, which must be requested by a federal law enforcement agency on behalf of the victim. Continued presence and T-visas are administered by BCIS (formerly INS). Both types of immigration relief are only available if the victim was subjected to a severe form of trafficking in persons.
- Continued presence may be sought by federal law enforcement agents as soon as a victim is determined to have been subjected to a severe form of trafficking. A victim may apply for a T visa at any time and may do so without a certification from law enforcement. Many victims, however, request a law enforcement certification to accompany their T visa applications. A request for a certification can be made of either the investigative agent or the prosecuting attorney; the appropriate office can be determined by contacting the Criminal Section in the Civil Rights Division (202-616-3807).
- Victims may also independently seek other immigration relief for which they may be eligible (e.g., asylum, a U visa) by contacting an immigration attorney. Government victim specialists can provide attorney referrals to the Legal Services Corporation or other organizations – see [www.usdoj.gov/eoir/probono/states.htm](http://www.usdoj.gov/eoir/probono/states.htm).

*Who should be contacted to find out the immigration status of a victim who has applied for a T visa?*

- The Vermont Service Center of BCIS adjudicates applications for T visas. Federal law enforcement agencies do not have access to information regarding pending applications. Victims and/or their representatives can also check the status of T applications by searching BCIS' website ([www.immigration.gov](http://www.immigration.gov) at "case status online") or by calling 802-527-4913.

*Who certifies victims for federal services and benefits, and how does that happen?*

- The Office of Refugee Resettlement at HHS has been designated as the agency that certifies victims of trafficking, in consultation with the Attorney General. Certification is the process set out in the TVPA by which a victim of a severe form of trafficking who is assisting law enforcement gains access to refugee benefits. A victim is eligible for certification if he or she has (1) made a bona fide application for, or been granted, a T visa, or is a person who has been granted continued presence in the United States, and (2) is willing to assist federal law enforcement.

- Office of Refugee Resettlement  
Dept. of Health and Human Services  
202-401-9246  
[www.acf.dhhs.gov/programs/orr](http://www.acf.dhhs.gov/programs/orr)
  
- When federal law enforcement agents or prosecutors have sought continued presence for a victim that has been granted, and have determined that the victim is willing to assist in an investigation, they may submit a letter requesting certification for refugee benefits to ORR for approval. Similarly, when a victim has applied for a T visa, and that application has been determined by BCIS to be bona fide or has been granted, BCIS then informs ORR, which then issues the victim a letter of certification.
  
- Note that, to be eligible for services, minor victims need not demonstrate a willingness to assist law enforcement nor to have been granted continued presence (continued presence, however, is generally sought for minor victims for other purposes).
  
- See attachment for comparison of TVPA immigration relief and HHS certification.

**ATTACHMENT**

**Comparison of Available Immigration Relief and HHS Certification**

**CONDITIONS**

**CONTINUED PRESENCE**

**T-VISA**

*Who Requests*

-Federal law enforcement agency

-Victim applies

*Eligibility criteria*

-Victim of "severe form of trafficking"  
-Potential witness in case

-Victim of "severe form of trafficking"  
-Available to assist law enforcement  
-In US because trafficked here  
-Extreme hardship or severe harm if removed

*Assisting law enforcement agency  
Minors exempt if under*

-Federal law enforcement agency only  
-18

-Federal, state, or local law enforcement agency  
-15

*Duration of relief*

-One year, renewable annually

-Three years

*Adjustment of immigration status*

-No, temporary

-Yes, may adjust to permanent resident after three years

*Number available per year*

-Unlimited

-5,000 per year

*To whom available*

-Victim only\*

-Victim and immediate family

*Authorized to work?*

-EAD available, for which victim applies

-EAD available, for which victim applies

*How application adjudicated*

-One stage determination

-Two-stage determination

-(1) bona fide application; (2) final determination

*Fees required?*

-No

-Yes (but all but \$50 fingerprint may be waived)

*When is the victim certified by HHS?* -Law enforcement agency makes request while victim is assisting\*\*

-ORR/HHS issues certification when informed by BCIS that victim has been granted T-visa or has submitted bona fide application.

\* If the victim's family is threatened, other immigration relief may be available.  
\*\* Minors under 18 are not required to assist.



Compensation Program Directory  
Federal Statutes and Legislation | National Victim Serving Organizations  
Victim Assistance & Compensation Programs | What Can You Do?

Welcome

What's New

Grants & Funding

Help for Victims

Publications

OVC Resource Center

Training &  
Technical Assistance

Resources for  
International Victims

## Trafficking in Persons

*OVC does not exercise control over external Web sites.  
Read the [Web site links disclaimer](#).*

### What Is Trafficking in Persons?

To report suspected cases of trafficking or worker exploitation, call 1-888-428-7581 (voice and TTY). This OVC cofunded complaint line is toll free and offers foreign language translation services.

These Web sites provide information on trafficking in persons, including victim support and protection services, prosecutorial and law enforcement strategies, and educational resources.

### Know More... Ask OVC

**Learn of Your Area's Resources.** Browse the [Victim Assistance & Compensation Programs](#), or [Ask OVC](#).

See also: [Related Publications](#)

- [Background of OVC-Funded Programs](#)
- [OVC and OJP Resources](#)
- [Government Resources](#)
- [Nongovernmental Organizations \(NGOs\)](#)

## Background of OVC-Funded Programs

In 2000, Congress enacted the [Trafficking Victims Protection Act \(TVPA\)](#), which authorized the provision of a number of benefits and services now available to victims of trafficking. Under this legislation, OVC received government funds to support the development or enhancement of victim service programs for alien victims trafficked into or within the United States who require emergency services. These services may include:

- Shelter.
- Medical care.
- Crisis counseling.
- Legal assistance.
- Advocacy.

OVC services are intended to assist victims between the period of time they are encountered by law enforcement, and when they are "certified" to receive other benefits through the Department of Health and Human Services. This period of time is referred to as "precertification."

In FY 2002, OVC awarded funding to 11 nongovernmental organizations (NGOs) for the purpose of providing trafficking victims with comprehensive or specialized services, as well as an additional grant for the purpose of providing these grantees training and technical assistance for program support and enhancement. (See [OVC-Funded Grantee Programs to Assist Victims of Trafficking](#).)

## OVC and OJP Resources

**Attorney General Guidelines for Victim and Witness Assistance 2000 (January 2000)**—Victims of severe form of trafficking are eligible for services and benefits available to federal victims of crime.

Guidelines for Department of Justice personnel on how to treat crime victims and witnesses based on the federal victims' rights laws and Department policy.

**Available to federal victim service providers only.**

**Needs Assessment for Service Providers and Trafficking Victims (2003)**

Prepared by Caliber Associates for the National Institute of Justice, OJP, U.S. Department of Justice, it is the first-ever assessment on the needs of trafficking victims and the domestic service providers who work with them. The report, complete with survey instruments and focus group protocols, should help educate the field at large on meeting the specialized and complex needs of trafficking victims.

**Victims of Trafficking: Far From Home and Helpless (video) (August 2000)**

This 17.5-minute video (NCJ 182334) introduces issues in trafficking and case studies of victims of forced prostitution, forced labor, and indentured servitude that serve to highlight the different forms of trafficking and how to recognize victims. The video covers victim referral services, problems associated with trafficking and slavery, how to treat the victims, the importance of agency partnerships, and developing a case against a defendant. **Available to federal victim service providers only.**

**NCJRS Criminal Justice Library**

Additional resources about trafficking in persons are available through the National Criminal Justice Reference Service (NCJRS) criminal justice library. View listings or conduct your own customized search.

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## **Government Resources**

**Bureau of Citizenship and Immigration Services (BCIS), formerly the INS**

The BCIS within the Department of Homeland Security (DHS) offers this Web page of federal agency links to information about the Victims of Trafficking and Violence Protection Act of 2000, implementation of the law, and victim benefits and services. For more information on the transition from the Immigration and Naturalization Service (INS) to BCIS, read the **BCIS overview and fact sheet**.

**Child Exploitation and Obscenity Section (CEOS), U.S. Department of Justice Criminal Division**

CEOS works to combat incidences of child exploitation and trafficking of women and children. Issues under the CEOS umbrella include child pornography, illegal interstate or international transportation of women and children, international parental abduction, computer-related exploitation of children, and child victimization on federal and Indian lands.

**International Information Programs: Human Trafficking, U.S. Department of State**

This comprehensive Web site provides updates on antitrafficking activities and initiatives around the world, fact sheets, transcripts of relevant U.S. Congressional testimony, and links to other governmental and nongovernmental organizations that address trafficking. U.S. Department of State publications and resources include—

- *Be Smart, Be Safe... Don't Become of Victim of the Trade in People*
- *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*



- *Fact Sheet on U.S. Efforts to Combat Trafficking in Persons*
- *Fact Sheet on Future U.S. Activities Against Trafficking in Persons*
- *President's Interagency Task Force to Monitor and Combat Trafficking in Persons*
- *Trafficking in Persons Report*
- *Victims of Trafficking and Violence Protection Act of 2000*

**Office of Refugee Resettlement (ORR), U.S. Department of Health and Human Services**

ORR helps refugees and other special populations (such as adult victims of severe forms of trafficking) obtain economic and social self-sufficiency in the United States. See a list of their [ongoing programs](#).

**Office of Women in Development (WID), United States Agency for International Development (USAID)**

USAID's WID program supports the education of girls and fosters economic and political opportunities for women. These programs help create conditions that lessen the vulnerability of women and children to traffickers. USAID also funds direct anti-trafficking programs, which are described in more detail in [Trafficking in Persons: USAID's Response](#).

**Trafficking in Persons and Worker Exploitation Task Force (TPWETF), U.S. Department of Justice Civil Rights Division**

TPWETF works to prevent trafficking in persons and worker exploitation throughout the United States and investigates and prosecutes cases when such violations occur.

**Office on Violence Against Women (OVW), U.S. Department of Justice**

OVW provides national and international leadership on legal and policy issues regarding violence against women, including trafficking in persons and worker exploitation. OVW publications on this topic include [Information for Victims of Trafficking in Persons and Forced Labor](#), and chapter 16 of the [Toolkit To End Violence Against Women](#).

**Women's Bureau, U.S. Department of Labor**

The Women's Bureau promotes profitable employment opportunities for women and advocates skills development, improvements in working conditions, and equitable employment standards, policies, and programs.

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## **Nongovernmental Organizations (NGOs)**

**Action to Counter Trafficking (ACT), U.S. Association for International Migration**

The ACT project provides community outreach and education and offers social service providers training, networking, and financial and technical expertise to combat trafficking in the United States.

**Anti-Slavery International (ASI)**

ASI works to end slavery and related abuses, including trafficking in persons and forced prostitution, focusing on the rights of people who are particularly vulnerable to exploitation, notably women, children, migrant workers, and indigenous peoples.

**Free the Slaves**

This nonprofit organization works to end slavery worldwide. Their Web site offers resources for education, taking action, and reference books and links to related organizations and legal issues.

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**Freedom Network (USA)**

The Freedom Network develops local and national networks in the U.S. and links to international networks to carry out its mission of empowering trafficked and enslaved persons. Mission objectives include raising public awareness and advocating for victims at all levels (local or international).

**The Global Alliance Against Traffic in Women (GAATW)**

GAATW promotes grassroots involvement in all work against trafficking in persons, seeking the ongoing development of discourse and action on related human rights issues.

**Human Rights Watch (HRW) Campaign Against the Trafficking of Women and Girls**

HRW works to protect the human rights of people around the world and campaigns against trafficking. The Web site provides research reports and other publications, news and current events, and strategies for organizational and individual activism.

**International Organization for Migration (IOM)**

This international organization works with migrants and governments to provide humane responses to migration challenges. IOM's activities range from providing training to officials, aid to migrants in distress, to measures to counter trafficking in persons.

**The Protection Project**

The Protection Project gathers and disseminates information about worldwide trafficking in persons, focusing on national and international laws, legal cases, and implications of trafficking in other areas of U.S. and international foreign policy. The project is a 5-year research project based at the School of Advanced International Studies, Johns Hopkins University, Washington, D.C.

**Safe Horizon**

Safe Horizon's mission is to provide support, prevent violence, and promote justice for victims of crime and abuse, their families, and communities. [Safe Horizon's program](#) to assist victims and survivors of human trafficking helps deliver intensive case management, shelter, legal services, and mental health care to survivors of trafficking.

**United Nations Global Programme against Trafficking in Human Beings**

Programme efforts to end trafficking in persons include helping policymakers and practitioners collect and assess data; promoting public awareness; training law enforcement officers, prosecutors, and judges; strengthening victim and witness support; and encouraging national and international collaboration to design effective strategies against trafficking in persons.

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This document was last updated on November 20, 2003



FOR IMMEDIATE RELEASE

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TUESDAY, MARCH 27, 2001

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**FACT SHEET**

**WORKER EXPLOITATION**

**STATUTES**

- Trafficking Victims Protection Act, enacted by Congress in October of 2000
- The law creates a new "forced labor" felony that gives federal law enforcement the authority to prosecute the sophisticated forms of nonphysical coercion that traffickers use today to exploit their victims. It also requires traffickers to pay full restitution to victims and forfeit certain assets.
- Involuntary Servitude, Title 18, U.S.C., Section 1584
- Peonage, Title 18, U.S.C., Section 1581

**WORKER EXPLOITATION CASES**

- On Friday, March 23, 2001, Mr. Kill Soo Lee was arrested in American Samoa on a two count federal complaint charging violations of the slavery statutes. These charges are based on allegations that Mr. Lee held mostly female workers from Vietnam in involuntary servitude at his garment factory by threatening to enslave them over the next 20 years. This is the second case brought under the Victims of Trafficking of Violence Protection Act. *U.S. v. Soo Lee*
- In March of 2001, Lakireddy Bali Reddy, a landlord in Berkeley, California, pleaded guilty to trafficking women into the United States and placing them into sexual servitude. An expanded investigation revealed that Reddy and certain family members conspired to bring at least 25 Indian laborers into the United States by conspiring to commit immigration fraud. *U.S. v. Reddy*

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- In February of 2001, Michael Allen Lee pleaded guilty to using cocaine, threats and beatings to force homeless African-Americans to work in his agricultural fields in Florida. He indebted the workers through short-term loans and compelled them to harvest his land against their will. *U.S. v. Lee*
- In February of 2001, Jose Tecum, an Immokalee, Florida man, was sentenced to nine years in prison for felony counts including kidnaping, slavery, and immigration violations. The defendant was found guilty by a jury of illegally smuggling a young woman from Guatemala and forcing her to work in the migrant fields of Florida and engage in sex acts. *U.S. v. Tecum*

**STATISTICS**

- Trafficking of persons is the modern form of slavery and it is the largest manifestation of slavery today. At 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-Congressional Findings of the Trafficking Victims Protection Act*)
- The Justice Department has prosecuted 16 cases since 1999.

**IMPLEMENTATION**

- **OUTREACH**

Today, the Worker Exploitation Task Force Complaint Line will be permanently funded to receive complaints of suspected worker exploitation and abuse. The hotline was temporarily funded during 2000, its first year in existence.

**NATIONAL WORKER EXPLOITATION COMPLAINT LINE  
1-888-428-7581**

The toll-free line is staffed by the Civil Rights Division's Criminal Section and offers foreign language translation services in numerous languages including English, Spanish, Russian, and Mandarin. There were a total of 75 criminal investigations opened during the hotline's first year compared with 27 criminal matters opened in 1999. The hotline, staffed from 9:00 a.m. to 5:00 p.m. EDT, will be advertised in informational packets to be distributed to poor and immigrant communities.

The Attorney General will launch an outreach program that will work with victims' and immigrants' rights organizations, shelters, and local community groups to coordinate victims' services and prosecutorial efforts.

- **PROSECUTION**

Today, *The Guidance on New Law Concerning Trafficking in Persons* will be provided to all federal prosecutors.

The Civil Rights Division's two new attorney hires will work on outreach and help train federal prosecutors on implementation of the new trafficking law, victim protection issues, and civil considerations for victims of worker exploitation.

- **COOPERATION**

The Attorney General directs the Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service (INS) to further work with the Civil Rights Division to increase investigative and referral efforts.

**OTHER ONGOING EFFORTS**

- **PILOT PROJECT**

The Department's Office of Victims of Crime (OVC) is funding a pilot project headed by the Coalition to Abolish Slavery and Trafficking (CAST), a private organization offering assistance to victims of trafficking in Los Angeles.

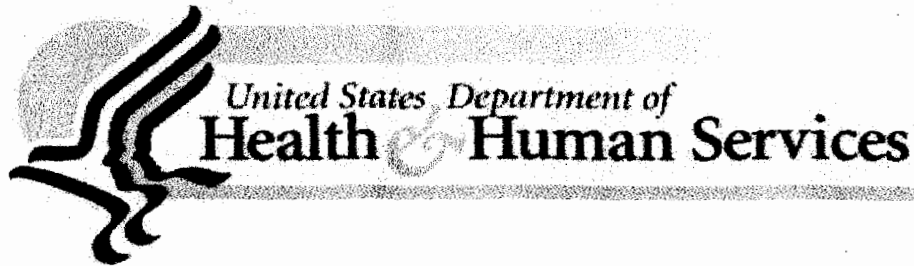
**BACKGROUND**

- The National Worker Exploitation Task force (WETF) is an inter-agency task force created in 1998 to investigate and prosecute cases of worker exploitation and modern day slavery in the United States.
- The WETF is comprised of the Department of Justice and the Department of Labor. The task force is co-chaired by the Assistant Attorney General of the Civil Rights Division and the Solicitor of the Department of Labor and reports to the Attorney General and the Secretary of Labor. Department of Justice components include the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS), U.S. Attorneys' offices, the Office of Policy Development (OPD), the Office of Victims of Crime, and the Violence Against Women Office (VAWO).

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## News Release

FOR IMMEDIATE RELEASE  
Thursday, March 11, 2004

Contact: ACF Press Office  
(202)401-9215

### **HHS Announces Anti-Trafficking Hotline, Awareness Effort**

HHS Secretary Tommy G. Thompson today announced a major public awareness effort to combat human trafficking and help its victims, including a toll-free hotline.

"Today we are announcing four tools to help crack down on the evil practice of human trafficking, as well as assist those who have been victimized," Secretary Thompson said.

The federal government estimates that between 18,000 and 20,000 men, women and children are trafficked to the U.S. each year, part of a worldwide problem affecting between 800,000 and 900,000 people. Often, victims' passports, money and identification are confiscated by their traffickers as they are forced into prostitution, pornography and sweatshop labor. This modern-day form of slavery has become a \$13 billion per year global industry.

President Bush will address the issue of human trafficking as part of a speech at the White House tomorrow on violence against women. The actions announced today follow a law the President signed on December 19, 2003, the Trafficking Victims Protection Reauthorization Act, designed to step up U.S. efforts against human trafficking.

The new tools include:

- A toll-free number (888-373-7888) run by the Covenant House, sponsored by HHS in collaboration with the Department of Justice, to allow victims of trafficking to be instantly referred to a pre-screened aid organization in the victim's area. The number will become active by next week.
- A Web site ([www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking)) that serves as a clearinghouse on helping victims of human trafficking.
- Initially, a three-city public awareness effort (Philadelphia, Atlanta and Phoenix) to educate Americans on the problem of human trafficking and how they can help victims in their community.
- A public service television announcement, shared by HHS and the United Nations, to educate the public, on a national level, on the issue of human trafficking.

"Victims of trafficking require fast, safe and reliable help," said Wade F. Horn, Ph.D., assistant secretary for children and families. "The effort we are unveiling today will educate the public on

how they can assist, while giving those marred by human trafficking the immediate aid they need."

The initiative is administered by HHS' Administration for Children and Families and its Office of Refugee Resettlement.

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**Note:** All HHS press releases, fact sheets and other press materials are available at <http://www.hhs.gov/news>.

Last Revised: March 11, 2004

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**CHAPTER 2  
ASSESSING AND RESPONDING TO THE NEEDS OF  
VICTIMS OF HUMAN TRAFFICKING**

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- Trafficking Referral Form, prepared by the Coalition to Abolish Slavery and Trafficking.....App. 2-2
- Guidance for Identifying a Child Victim of Trafficking, by the USCCB Migration and Refugee Services (MRS) and the Lutheran Immigration and Refugee Service (LIRS).....App. 2-3
- Frequently Asked Questions about Services to Trafficked Children, by MRS and LIRS.....App. 2-5

**§ 2.1 The Complex Needs of Trafficking Victims and the Need for Collaboration**

The advocate working with a victim of human trafficking will invariably be confronted with a wide range of client needs to assess and respond to. Victims may have been physically injured or have infections resulting from mistreatment or unhealthy work environments. They may be suffering from malnutrition. They may also suffer from emotional or psychological injury, resulting from the methods used by their captors to subjugate them. These methods may have taken the form of physical mistreatment, threats, confiscation of passports and other documents, threats of injury to family members, and threats of criminal prosecution. Victims may also be disoriented, as a result of being separated from family members and finding themselves in a country and culture with which they are not familiar and whose language they do not speak. In addition, victims may suffer from a range of feelings related to their culture. For example, a victim may feel that he or she cannot return to the home country for fear of



being victimized again or of public humiliation or ostracism because of the type of work he or she has performed for the traffickers.

This wide range of needs is one of the characteristics that distinguishes a trafficking victim and makes the provision of services both so essential and such a challenge. In most cases, the advocate alone will not be able to respond to all of the victim's needs, which may require many types of professional services, including social services, immigration, legal services, health care, mental health services, and language and job training. Moreover, because victims come from many geographic regions, religions, and cultures, services must be provided through linguistically and culturally appropriate means. The advocate must be able to both identify the victim's various needs and refer the victim for services that the advocate himself or herself cannot provide. For this reason, it is essential that the advocate develop a working relationship with other professionals who may be able to provide services to trafficking victims.

---

### **Trafficking Victims Require a Network of Culturally and Linguistically Appropriate Services<sup>1</sup>**

- Protection against traffickers
- Assistance in certification by the Office of Refugee Resettlement
- Interpretation
- Shelter
- Food
- Clothing
- Medical and dental care
- Mental health care
- Civil legal services
- Criminal defense legal services
- Representation in immigration proceedings
- Language training
- Job placement
- Independent living skills
- Employment education
- Assistance in working with law enforcement
- Safety planning and protection from renewed victimization

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Thus, part of the advocate's work on behalf of the trafficking victim begins before the advocate ever meets the victim, in the form of putting together a group of agencies interested in assisting trafficking victims. In response to the need for collaboration in meeting the needs of trafficking victims, many major cities have formed citywide task

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<sup>1</sup> From "Trafficking Basics," by the Coalition to Abolish Slavery and Trafficking (CAST).

forces or formal collaborations to address the trafficking problem in their particular locale or region. The Coalition of Catholic Organizations Against Human Trafficking is a national organization whose members work together to combat trafficking and to provide assistance to victims. The Freedom Network is another national coalition of non-governmental agencies dedicated to advocating for and empowering trafficking victims. A list of regional and national organizations, with contact information, is included in Chapter 12 of this manual.

A second reason for working in a coalition is that, practically speaking, most trafficking victims are referred to advocates by other agencies, particularly law enforcement. Thus, having a referral system in place is invaluable should law enforcement or another agency discover a trafficking victim.

Assembling a local coalition requires a considerable amount of effort in the form of outreach, as many of the agencies or departments who may come into contact with trafficking victims may not be aware of the extent of the problem or of the clues that might enable them to identify a trafficking victim.

---

**Members of a local coalition on behalf of trafficking victims might include:**

- Non-governmental agencies
- Faith-based organizations, such as churches
- Interpreters
- Public and private hospitals and clinics
- State and local mental health offices
- Representatives of the school board
- Shelters and domestic abuse counseling centers
- Local police
- Local FBI
- Local and federal prosecutors
- State and local public benefits agencies
- Social services agencies
- State refugee coordinator
- Legal aid programs, including Legal Services Corporation grantees<sup>2</sup>
- Civil, criminal, and juvenile court judges

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<sup>2</sup> Under 22 U.S.C. § 7105, Legal Service Corporation grantees may represent trafficking victims, with certain limitations. These are explained in the LSC Program Letter 2002-5, Eligibility of Immigrant Victims of Severe Forms of Trafficking for Legal Services (May 15, 2002), available at <http://www.lsc.gov/foia/pl/02-5.htm>. § 7105 was added by § 107(b) of the Trafficking Victims Protection Act and expanded by § 4(a)(2) of the Trafficking Victims Protection Reauthorization Act.

## **§ 2.2 Considerations in Interviewing Victims of Human Trafficking**

The traumatic experience of trafficking, combined with the variety of needs a trafficking victim presents, can create a challenge for the advocate conducting initial interviews of the client. The following is a list of some considerations to keep in mind when preparing for and conducting interviews with the client:

- The client may come from a culture different from that existing in the United States.
- Clients will have a wide variety of levels of education.
- The client may not speak the same language as the advocate, requiring arranging for an interpreter to be present and, if the interpreter is not familiar with the issue of human trafficking, working with the interpreter to familiarize him or her with the vulnerable condition of trafficking victims.
- The client may be suffering from physical and/or emotional trauma, which may affect his or her ability to communicate with the advocate, to recall the facts of the experience, or to assist in gathering evidence.
- The client may be fearful -- of revictimization, of retaliation from the traffickers, of deportation.
- The client may come from a country where lawyers and/or law enforcement may be corrupt or even involved in human trafficking, resulting in a distrust of lawyers and the legal system in general.
- The client will likely have a variety of needs, including regularization of immigration status, protection from the traffickers, family reunification, shelter, and medical care, making it difficult for the client to sort through those needs.
- If the victim is a child, there are additional considerations, given the victim's age and special vulnerability.

---

### **Practice tip: Working with interpreters**

If the service provider does not speak the client's language, then it will be necessary to use an interpreter. The interpreter is a crucial part of the client's service team and may be able to provide important cultural information as well as interpretation. One caveat, however: before engaging the interpreter, the service provider should ensure that the interpreter has no connection with the trafficker.

If possible, the service provider should also consider using an interpreter of the client's gender, since the client may feel more secure speaking with a person of the same gender. This is especially important if the service provider is of the other gender.

Because the interpreter is such an important part of the service team, the service provider should spend some time with the interpreter prior to meeting with the client, to give the interpreter some information about human trafficking, if the interpreter is not

already familiar with it, and to discuss the interview process and the mechanics of the interpretation, so that the interpreter and service provider can work easily together.

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At all times, clients must be treated with dignity, respect, and compassion. In addition, advocates should bear in mind two important principles when working with trafficking victims. First, it is essential that the advocate provide the client with all necessary information so that the client, not the advocate, makes the decisions concerning the case. Second, the advocate must ensure that communications with the client, as well as the client's location and contact information, are kept in confidence unless the client authorizes the information to be given to someone other than the advocate. Even where authorized, the recipients of information should be limited as much as possible, since released information may be subject to discovery in civil proceedings against the trafficker or to subpoena in criminal proceedings against the trafficker. The advocate must also ensure that all other persons working with the advocate on the client's case are aware of the need for confidentiality and will protect the confidentiality of the client's information.

---

### **Red flag: Relationship Between Confidentiality and Privilege**

Confidentiality applies to information communicated by a client to a variety of service providers—lawyers, social workers, doctors, etc.—with the expectation that it will not be disclosed without the client's consent and encompasses all information related to working with the client. Confidentiality can be invoked by service providers to avoid disclosing client communications in the absence of a court order or waiver by the client.

Privilege applies in legal proceedings in which a service provider may be called as a witness or otherwise be required to produce evidence concerning the client. Privilege is an evidentiary rule subsumed within the ethical principle of confidentiality. Confidential client communication directly related to the reasons for seeing the professional may be privileged. If opposing counsel seeks to disclose client communications as part of a legal proceeding, invoking privilege prevents disclosure. However, courts generally recognize a limited number of privileges including: attorney-client, social worker-client, doctor-patient, and priest-penitent.

In the context of attorney-client privilege, the presence of third-parties during meetings between lawyers and clients, with the exception of interpreters, can and will often break attorney-client privilege. This means that if a client chooses to communicate with a lawyer in the presence and hearing of a third person, the communication is not confidential and is not entitled to the protection afforded by privilege. Third parties may include, but are not limited to: family members, companions, friends, confidants, human services workers, other attorneys, court attendants, court reporters, law officers, jailers, telephone operators.

While service providers may contract to uphold confidentiality amongst themselves and to limit disclosure of confidential communications, in the absence of an applicable privilege, service providers should not assume that a contract based on preserving confidential communications will be honored by a court.

**NOTE:** The scope of confidentiality and privilege rules vary by jurisdiction. Check your local laws.

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### **§ 2.3 Assessing the Needs of the Client Who Is a Victim of Human Trafficking**

Each trafficking case is different, and the plan for assisting a victim of human trafficking should be constructed for the individual. Nonetheless, there are certain best practices that should generally be employed in each case. These are set out very generally in the following list. One caveat is that services needed by the client may not follow a logical chronology, but may instead overlap between categories. The client should be the primary planner and the ultimate decision maker in these assessments and plans.

1. Immediate assessment of emergency needs and a plan for resolving them. Each victim's case is different, but the types of emergency needs that may arise include protection from the trafficker, shelter, and medical care. It may also be that the victim is actually in law enforcement custody, arrested for a crime. This can happen, for example, when law enforcement raids a brothel and arrests the persons working there. In this case, part of the emergency needs may be helping the victim arrange for bond, ensuring that the victim has representation in the criminal proceeding, and working with the criminal defense counsel to educate local law enforcement and the court as to the true nature of the situation.

One other consideration in assessing immediate needs is determining the "statute of limitations" for any civil lawsuit the client may be able to bring against the traffickers. The statute of limitations is the amount of time allowed under state or federal law for the bringing of a civil lawsuit or a claim for relief. The client may have a cause of action for money damages, Department of Labor wage and hour claims, or other relief against the trafficker, but it will have to be brought within the time allowed by the relevant state or federal statute of limitations. If the statute of limitations is close to expiration, then the advocate should assist the client in finding legal representation so that the lawsuit can be filed before the expiration date. If the advocate is a lawyer, the advocate may prefer to file the lawsuit himself or herself.

2. Assessment of less immediate needs and a plan for resolving those. These might include longer-range housing, food stamps, family reunification, counseling, medical care, and for children, school placement.

3. A determination of whether the client has been certified for benefits by the Office of Refugee Resettlement and, if not, whether it is appropriate to request certification.
4. A determination of the client's immigration status. This will generally overlap with the determination of whether the client has been certified, since certification is based upon the client's either having been granted continued presence by a federal agency or having made a bona fide application for T nonimmigrant status. If the client is not in valid immigration status and wishes to obtain valid status, then the advocate should investigate with the client the most appropriate form or forms of regularizing the status.
5. If the client has neither been granted continued presence nor filed an application for a T visa, is not otherwise in valid immigration status, and meets the definition of a victim of human trafficking, then the advocate should explain the possibility of beginning this process by reporting the trafficking to the Trafficking in Persons and Worker Exploitation Task Force complaint line, at 888-428-7581, or by contacting the Office of Refugee Resettlement. Once again, the client is the decision maker in this process.
6. Implementation of a long-term services plan. For adult victims, the goal is to assist the client in achieving self-sufficiency. For children, however, the goal would be appropriate permanent placement, whether family reunification or otherwise. This might include independent living skills, language training, job skills, obtaining employment authorization if not already granted, and protection against re-victimization. Special programs are available for unaccompanied trafficked children determined eligible.
7. Claims for civil damages and wage and hour violations, as well as any other possible means of redress, brought before the expiration of the relevant statute of limitations. The Legal Aid Foundation of Los Angeles (LAFLA) has published an excellent and comprehensive manual on civil remedies for victims of human trafficking, entitled *Civil Litigation on Behalf of Victims of Human Trafficking* and written by Kathleen Kim and Dan Werner. Advocates can download this manual free of charge from the LAFLA website at [www.lafla.org](http://www.lafla.org).

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**Practice tip in helping client decide whether to contact federal authorities**

If the advocate does not have experience in working with victims of human trafficking and with law enforcement prosecuting human trafficking, we recommend that the advocate contact USCCB, CLINIC, LAFLA, or one of the other non-governmental agencies listed in § 12.4 of this manual to discuss the case.

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## What will happen when a victim or other person contacts the Trafficking in Persons and Worker Exploitation Task Force?

The Trafficking in Persons and Worker Exploitation Task Force, run by the Criminal Section of the Civil Rights Division of the Department of Justice, is staffed by personnel who have access to interpreters and can speak with callers in many languages. Complaint line staff handles initial reports of trafficking situations and refer complaints immediately to a Deputy Chief of the Criminal Section responsible for the geographic area in which the incident occurred. The deputy Chief determines whether a trafficking investigation is appropriate, assigns a line prosecutor to the matter and supervises any ensuing investigation and/or prosecution. In making this determination, the deputy chief will delegate someone, generally either an Assistant U.S. Attorney or an FBI agent, to interview the victim. This may happen very quickly, perhaps within a day or a few days after the victim's report.

Complaints that do not constitute a potential federal criminal civil rights violation, but nonetheless reveal possible worker exploitation or other abuse, are referred to the appropriate agency, including the U.S. Department of Labor, the Equal Employment Opportunity Commission, and the Office of Special Counsel for Immigration Related Unfair Employment Practices in the Justice Department.

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### § 2.4 Certification for Benefits

Trafficking victims are eligible for the same public benefits available to refugees.<sup>3</sup> The process of authorizing these benefits is called "certification" and is carried out by the Office of Refugee Resettlement (ORR). ORR will certify a trafficking victim who

- is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons, and
- (a) has made a bona fide application for a visa under INA § 101(a)(15)(T) that has not been denied, or (b) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectual prosecution of traffickers in persons.<sup>4</sup> (T visas and continued presence are discussed in chapters 4 and 5, respectively.)

Victims who are under 18 years of age who are deemed eligible by ORR receive benefits without being certified.<sup>5</sup>

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<sup>3</sup> VTVPA, section 107(b)(1)(E)(1).

<sup>4</sup> Carmel Clay-Thompson, Acting Director, Office of Refugee Resettlement, State Letter SL01-13 to State Refugee Coordinators, National Voluntary Agencies, and other Interested Parties, re: The Trafficking Victims Protection Act of 2000 (May 3, 2001), available on the ORR website, at <http://www.acf.hhs.gov/programs/orr/policy/s101-13.htm>.

<sup>5</sup> *Id.*

Once a victim has been certified by the ORR, he or she becomes eligible for federal benefits to assist with housing, food, medical care, mental health care, and job and language training. These benefits are explained more fully in Chapter 6 of this manual.

When ORR certifies a victim of a severe form of trafficking, the person receives a notarized letter on Department of Health & Human Services letterhead with his or her date of eligibility included in the text of the letter. The ORR Trafficking Specialist usually refers the case to an ORR grantee to provide case management and to coordinate social services. It is imperative that a victim be referred immediately to a social service agency for case management, since some public or refugee benefits programs are time sensitive. For example, a victim of trafficking is eligible for Refugee Medical Assistance for only eight months following the date of certification. In addition, if he or she needs job development, he or she can enroll in the Match-Grant employment program, but must do so within 31 days of certification.

Legal advocates should ensure that, when their client is certified, if he or she is not already being served by a social service agency, that the client is immediately referred to a social service professional familiar with trafficking victims or refugee benefits and local public benefit programs to develop an individualized service plan.

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**Practice tip:** Covenant House maintains a toll-free number (888-373-7888), sponsored by the U.S. Department of Health and Human Services, in collaboration with the Department of Justice, to allow victims of human trafficking to be instantly referred to a pre-screened aid organization in the victim's area.

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The ORR has granted funds to the United States Conference of Catholic Bishops (USCCB), in partnership with Catholic Charities USA and the Catholic Legal Immigration Network, Inc., to provide services to victims of severe forms of human trafficking whenever they are identified in a location without another funded service provider. When a victim of human trafficking is certified by ORR, if he or she is located in an area without another ORR-funded service provider, USCCB provides training and funding to the local Catholic social service agency to provide case management and social services. The local case manager will conduct an initial intake and assessment to develop, with the client, an individualized service plan. The plan may include any combination of housing, mental health counseling, transportation, employment assistance, and/or assistance with applying for social services such as Refugee Medical Assistance or food stamps. The case manager will also make referrals for medical services, or help to identify local pro-bono legal services to handle immigration relief or employment compensation claims if the victim is not already represented by an attorney. For more information on accessing social services for adult victims of trafficking, contact Nyssa Mestas, Grants & Programs Administrator for Services to Victims of Human Trafficking, USCCB, at 202-541-3366, nmestas@usccb.org.



Benefit granting agencies must call the ORR trafficking verification line, at 866-401-5510, for verification of certification before providing benefits.<sup>6</sup> For questions concerning the certification process or public benefits for trafficking victims, benefit granting agencies may contact Antoinette AQUI, ORR's Trafficking Specialist, at 202-401-4825.

## **§ 2.5 Benefits for Victims of Human Trafficking Prior to Certification**

Before a victim is certified, he or she must fulfill basic needs from sources other than the Office of Refugee Resettlement. The U.S. Department of Justice's Office of Victims of Crime makes some funds available for services for trafficking victims between the time the crime is reported and the time the victim is certified by ORR ("the pre-certification period"). In addition, certain public benefits in the United States are available to all persons, regardless of their immigration status. These benefits include crisis counseling and intervention programs for victims of criminal activity, short-term shelter or housing assistance, and mental health assistance. Trafficking victims may also be eligible for services and benefits that are available to federal crime victims. The FBI, CIS, and U.S. Attorney's offices have victim witness specialists who are directed to ensure that victims receive information about their rights and referrals to necessary services.

If you are working with a trafficking victim who has not yet been certified and is in need of social services, you may want to refer your client to the funded provider in your area for social services. For assistance locating service providers for victims prior to certification or referring victims for certification, advocates can contact the Trafficking Information and Referral Hotline (1-888-373-7888) or Lorna Grenadier, Victim Witness Coordinator for the Department of Justice's Criminal Section of the Civil Rights Division, 202-616-3807.<sup>7</sup>

## **§ 2.6 Special Considerations Where the Victim Is a Child**

Where the trafficking victim is a minor, special considerations arise because of the special vulnerability and needs of children. Some of these considerations are addressed in the *Guidance for Identifying a Child Victim of Trafficking*, found at Appendix 2-3, and the *Frequently Asked Questions about Services to Trafficked Children*, found at Appendix 2-5.

Unaccompanied trafficked children may be eligible for placement in specialized programs, called Unaccompanied Refugee Minor programs, that provide foster care, group homes, or independent living arrangements appropriate to the youth's developmental needs. These services are provided by two voluntary agencies, Lutheran Immigration and Refugee Service and the United States Conference of Catholic Bishops/Migration and Refugee Services, that have worked with unaccompanied refugee

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

youth for more than 25 years. These agencies work through a network of licensed child welfare agencies to provide appropriate support services, including:

- indirect financial support for housing, food, clothing, and other necessities
- medical care
- mental health services
- intensive case management by a social worker
- independent living skills training
- education such as English as a Second Language (ESL)
- tutoring/mentoring
- special educational services, where needed
- job skills training and career/college counseling
- family reunification, where possible
- cultural activities/recreation
- legal assistance

For more information on accessing specialized services for child victims of trafficking, contact Margaret MacDonnell, Children's Services Specialist at USCCB, at 202-541-3462.

## **§ 2.7 Interacting with Law Enforcement on Behalf of the Trafficking Victim**

Human trafficking victims and law enforcement have a unique connection, both because trafficking victims may be essential witnesses in prosecutions for trafficking and related crimes and because of the important role played by law enforcement in applications for immigration relief for trafficking victims. Law enforcement authorities may be the first persons to encounter the victim and assist in his or her rescue, and are a crucial link to obtaining services for the victim. Tensions may be present between the interests of the victim and law enforcement's obligation to bring offenders to justice, however, however, and the advocate may be called upon to help the victim and law enforcement work together. The following paragraphs discuss some situations in which these tensions may arise.

First, the trafficking victim may be reluctant or afraid to interact with law enforcement, perhaps because of unfamiliarity with the U.S. legal system, perhaps because of having had negative experiences with law enforcement in other countries, or perhaps because of fear that the traffickers may retaliate against the victim if he or she cooperates with law enforcement. The advocate can assist here by explaining the U.S. legal system and the criminal justice process, and what law enforcement may expect of the victim. The advocate can also work with the law enforcement authorities, particularly prosecution victim-witness advocates, to ensure that all available protections are put in place for the trafficking victim.

Second, law enforcement authorities may be unaware of the particular vulnerability and needs of trafficking victims and, in trying to fulfill law enforcement

obligations to bring perpetrators of crime to justice, may exert pressure on the victim to testify or assist in the prosecution in other ways, despite the victim's fears and concerns. The advocate can work with law enforcement to insist that law enforcement request from the victim only such assistance as is reasonable under the victim's particular circumstances.

Third, law enforcement may encounter the victim during an arrest or at a crime scene, for example, in a raid on a brothel where a victim has been held involuntarily. Instead of recognizing the individual as a victim of trafficking, the law enforcement authorities may arrest him or her on a criminal charge. Here, advocates can work with law enforcement to educate them and provide information on the causes and extent of human trafficking, the immigration and other relief available to victims, and in particular, how to identify a victim of human trafficking.

Finally, the advocate may be essential in assisting the victim to obtain a law enforcement endorsement for the T nonimmigrant visa or continued presence authorization. T visas are discussed in Chapter 4 of this manual, and continued presence is discussed in Chapter 5.

A more extensive discussion on working with parallel criminal prosecutions is found at § 4.5 of this manual.<sup>8</sup>

## § 2.8 For Further Reading

- Caliber Associates, Inc., for the U.S. Department of Justice, National Institute of Justice, *Needs Assessment for Service Providers and Trafficking Victims* (2003). Downloadable from [http://www.calib.com/home/practice\\_areas/cfcs/pubs.cfm#pubjuvandcrijussysenh](http://www.calib.com/home/practice_areas/cfcs/pubs.cfm#pubjuvandcrijussysenh)
- World Health Organization, the London School of Hygiene and Tropical Medicine, and the Daphne Programme of the European Commission, *Ethical and Safety Recommendations for Interviewing Trafficked Women* (2003), <http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf>
- Kathleen Kim and Dan Werner, *Civil Litigation on Behalf of Victims of Human Trafficking*, published by the Legal Aid Foundation of Los Angeles (LAFLA) and available for download free of charge at the LAFLA website, [www.lafla.org](http://www.lafla.org).

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<sup>8</sup> In addition, the LAFLA manual *Civil Litigation on Behalf of Victims of Human Trafficking* addresses working with law enforcement on behalf of trafficking victims.

**Confidential**

**Anti-Trafficking Program Screening and Referral Form**

Date of referral \_\_\_\_\_ Safe Horizon Staff \_\_\_\_\_

Referral origin (Name and agency) \_\_\_\_\_ Tel: \_\_\_\_\_

Client Name(s) _____	
DOB/Age _____	Gender: F M
Country of Citizenship _____	Ethnicity _____
Languages _____	Interpreter Required? Y N
Current Address/Living Situation _____	
Telephone _____	Safe to call? Y N
Other contacts _____	
Immigration Status _____	

<b>Reason for Referral:</b>
<input type="checkbox"/> Limits to freedom of movement or choices
<input type="checkbox"/> Issue of access to personal documents
<input type="checkbox"/> Indication of abuse or threats of abuse
<input type="checkbox"/> Other
<b>Description of working/living conditions:</b>
<b>Name/Location of alleged trafficker:</b>
<b>Current threats/fears:</b>
<b>Immediate needs:</b>

<b>Initial Assessment of Type of Case</b>		
<input type="checkbox"/> Forced Labor	<input type="checkbox"/> Forced Prostitution	<input type="checkbox"/> Servile Marriage

**Internal Referral Decision**

Follow up required assigned to \_\_\_\_\_  Consultation completed referred to \_\_\_\_\_

# Trafficking Referral Form

Date of referral : \_\_\_\_\_ Referent Name: \_\_\_\_\_ Tel: \_\_\_\_\_  
Advocate Name: \_\_\_\_\_ Org: \_\_\_\_\_ Tel: \_\_\_\_\_  
CAST Staff: \_\_\_\_\_ Intake Information from: \_\_\_\_\_

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
Children/Spouse Names: \_\_\_\_\_  
DOB: \_\_\_\_\_ Age: \_\_\_\_\_ Gender: M F Nationality: \_\_\_\_\_  
Ethnicity: \_\_\_\_\_ Languages: \_\_\_\_\_ Interpreter Required: Y N  
Current Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Date of Escape: \_\_\_\_\_ From Who/Where: \_\_\_\_\_  
Type of Employment: \_\_\_\_\_  
Length of Servitude: \_\_\_\_\_ Date of Entry: \_\_\_\_\_  
How Recruited: \_\_\_\_\_  
Transportation to US/fee: \_\_\_\_\_  
Restriction of Movement: \_\_\_\_\_  
Physical/Emotional Abuse: \_\_\_\_\_  
Agreed Fees/Actual Debt: \_\_\_\_\_  
Agreed Payment: \_\_\_\_\_  
Actual Payment (or debt incurred): \_\_\_\_\_  
Agreed Conditions: \_\_\_\_\_  
Actual Conditions: \_\_\_\_\_  
Passport Withheld/Visa: \_\_\_\_\_  
Want to remain in US or return to home country? \_\_\_\_\_  
Any Current Threats/Fears: \_\_\_\_\_  
Current Social Service Needs: \_\_\_\_\_

**Additional Notes:**

Trafficking/Forced Labor    Smuggling    Labor Exploitation    Servile Marriage Referred  
To: \_\_\_\_\_

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**USCCB Migration  
and Refugee Services**  
3211 4th Street, NE  
Washington DC 20017-1194  
Phone: (202) 541-3352  
Fax: (202) 722-8747

**Lutheran Immigration  
and Refugee Service**  
700 Light Street  
Baltimore, MD 21230-3850  
Phone: (410) 230-2700  
Fax: (410) 230-2723



## Guidance for identifying a child victim of trafficking

Human trafficking is modern day slavery. Every day, men, women, and children are trafficked into the U.S. for forced labor in homes, farms, commercial sex, sweatshops, and other work. Traffickers prey on the emotional and physical vulnerability of children, who are brutally held captive while they receive little or no pay for their labor. Human trafficking is punishable as a serious crime under U.S. law. The *Trafficking Victims Protection Act of 2000 (TVPA)* defines "severe forms of trafficking in persons" as:

- 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.

A child will rarely identify him/herself as a victim of trafficking. Therefore, it is crucial that those agencies and service providers most likely to encounter a child victim have a heightened sense of awareness of trafficking. If a child presents any indication that s/he may have been trafficked, providers should pursue further screening. We strongly recommend that you collaborate with a licensed clinician, psychologist, or a professional with relevant child welfare experience to conduct such interviews. The child should be approached in a manner that reflects his/her age, development, culture, language, and what is known about the nature of their experience.

**These questions offer guidance for interviewers to consider with children who may be victims of trafficking. They do *not* purport to be a conclusive list. Child victims of trafficking may instinctively not establish trust easily due to their experiences and may even have been coached by their trafficker to answer questions in a certain way. The questions and explanations are intended to assist service providers in creating a framework to consider whether or not a child they serve could be a victim of trafficking.**

***While every child's case is unique, some signs that may indicate the need for further screening are:***

- |  |   |
|--|---|
| • Evidence of abuse (physical, mental or sexual)             | • Living at workplace or with employer  |
| • Employer is holding identity and/or travel documents       | • Living with multiple people in a cramped space  |
| • Working unusually long hours                               | • Heightened sense of general fear (for self and family), unusual distrust of law enforcement |
| • Unpaid or paid very little                                 | • Inability to speak to child alone   |
| • Not in school or significant gaps in schooling in the U.S. | • Engaged in prostitution or induced to perform a commercial sex act                          |

It does not matter how the child entered the U.S., whether they initially consented to being brought here for a job or school, or whether their current employment activity is illegal (such as prostitution). If at any time the child was deceived or coerced into forced labor or is being held against his/her will in some sort or debt bondage or peonage, s/he is a victim of trafficking.

<b>RECRUITMENT/ MIGRATION</b>	<p><i>Why did you come to the U.S.?</i>  <i>Who arranged your travel?</i>  <i>How did you get here?</i>  <i>Do you owe money for your trip?</i>  <i>What did you expect when you came?</i>  <i>What did you end up doing?</i>  <i>Were you scared?</i></p>	<p>Many child trafficking victims are smuggled into the U.S. or come on valid visas with the promise of being united with family, going to school or getting a legitimate job. Once here, they may be forced into exploitative work and/or forced to work off a travel "debt." Children may also be kidnapped and/or sold. Many trafficking victims are recruited by acquaintances or people of their own ethnic group, while some are trafficked by family members or friends. Traffickers use the emotional vulnerability of children to recruit and retain them. Their expectations of what they are going to do are often vague and they are surprised to find that they owe exorbitant debts for their travel, lodging, food, etc. Some children may come through fraudulent mail-order bride or matchmaking schemes.</p>
<b>ID</b>	<p><i>Do you have any papers?</i>  <i>Who has them?</i></p>	<p>Immigration and identity documents, such as passports, birth certificates, or school IDs, have frequently been seized by victims' traffickers or employers. The original documents may have been legitimate or fraudulently provided by the traffickers.</p>
<b>WORKING CONDITIONS</b>	<p><i>Are you in school?</i>  <i>Are you working?</i>  <i>What kind of work do you do?</i>  <i>Are you paid?</i>  <i>Do you owe money to your boss or someone else?</i>  <i>Can you leave your job if you want?</i></p>	<p>Most child victims of trafficking are not allowed to go to school while in the trafficking situation. Children may have been promised they could go to school and/or get a job with good pay but found instead that they must first work to pay off their travel debt. While doing so, they may be charged exorbitant fees for rent, food, and clothes leading them into a cycle of debt to their employer. Note how many hours a day/week the child works and how s/he is compensated or if earnings go directly to the employer.</p> <p><b>REMEMBER:</b> Any child under the age of 18 who is induced to perform a <u>commercial sex act</u> is a victim of a severe form of trafficking, as a minor cannot consent.</p>
<b>LIVING ENVIRONMENT</b>	<p><i>Where do you live?</i>  <i>Who else lives there?</i>  <i>Where do you sleep?</i>  <i>Are you scared to leave?</i></p>	<p>Although many people receive unjustly low wages, victims of trafficking have their freedom restricted as well. They may be forced to live in the same place they work. They may not be allowed to leave the premises, and are sometimes guarded and/or their doors are locked. Traffickers may threaten their victims with deportation or arrest if they try to escape.</p>
<b>COERCION</b>	<p><i>Has anybody ever threatened you to keep you from running away?</i>  <i>Has anybody ever hurt you to make you stay?</i>  <i>Has your family been threatened?</i></p>	<p>In addition to physical harm, a child may also have been subject to psychological intimidation and/or coercion through threats to the child or his/her family members if s/he tries to escape. Victims of trafficking may also be frightened into staying with the trafficker due to their immigration status and lack of documents (if their trafficker has taken them).</p>

**If you believe you have encountered a possible victim of trafficking, call the Trafficking Information and Referral Hotline: 1-888-3737-888**

Child victims of trafficking may be eligible for federally funded, specialized services. Lutheran Immigration and Refugee Service (LIRS) and the U.S. Conference of Catholic Bishops (USCCB) are non-profit voluntary agencies that work with the Office of Refugee Resettlement to place eligible child trafficking victims in culturally-appropriate family foster care, small group care, or independent living, appropriate to the youth's developmental needs. LIRS and USCCB also work to train providers to meet the special needs of trafficked children, and conduct outreach and education efforts regarding this gross violation of human rights.

**For more information about child victims of trafficking and services available to them, contact:**

Charu N. al-Sahli, Program Coordinator  
LIRS Trafficked Children Initiative  
410/230-2758, [cal-sahli@lirs.org](mailto:cal-sahli@lirs.org)

Margaret MacDonnell  
Children's Services Specialist, USCCB/MRS  
202/541-3462, [mmacdonnell@usccb.org](mailto:mmacdonnell@usccb.org)



## Frequently Asked Questions About Services to Trafficked Children

### ***What is trafficking?***

The federal Trafficking Victims Protection Act of 2000 defines severe forms of trafficking in persons as...

- 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.

### ***Is immigration relief available for child victims of trafficking?***

If the victim was born outside the United States and does not have immigration status, she or he may be eligible for a number of different forms of relief from removal. Once identified as a victim of trafficking by law enforcement, she or he may be granted continued presence, a temporary legal status, by the Department of Homeland Security. She or he might be eligible for the T visa, which allows victims of severe forms of trafficking to remain in the United States if they can demonstrate that they would suffer extreme hardship upon removal. Children do not have to cooperate with the prosecution in order to be granted a T visa. Recipients of T visas are eligible for work authorization and may adjust their status to lawful permanent resident after three years. An immigration attorney may also explore other forms of immigration relief that may be appropriate for a child victim of trafficking, including the U-visa, Special Immigrant Juvenile Status, political asylum or a self-petition under the Violence Against Women Act (VAWA).

### ***How are child victims referred for services?***

When a federal law enforcement agency determines that a child is a victim of trafficking, this agency can make a referral to the Department of Health and Human Services/Office of Refugee Resettlement (ORR). ORR will then issue a determination of eligibility for benefits, which means a child is eligible for benefits and services to the same extent as a refugee. This letter of eligibility is typically issued within 48 hours. For unaccompanied children, ORR also contacts Lutheran Immigration and Refugee Service (LIRS) or the United States Conference of Catholic Bishops (USCCB) to provide specialized services to the child.

Unfortunately, in the time before federal law enforcement refers the child to ORR, there are no specialized services

funded specifically for child trafficking victims. However, there is a Trafficking in Persons Information and Referral Hotline (1-888-373-7888) funded by ORR that can direct service providers and victims to services available in the area where the victim is located. Calling this hotline does *not* initiate an investigation. The U.S. Departments of Justice and Labor sponsor the Trafficking in Persons and Worker Exploitation Task Force complaint line—1-888-428-7581 voice and TTY—which can be called to begin an investigation of a suspected case by federal law enforcement authorities.

### ***What if a child needs immediate attention?***

If the child needs immediate shelter or other emergency assistance, it may be necessary to contact the local child protective services agency or assist the child to find an emergency youth shelter for immediate housing and services.

If there are emergency medical issues, a person can not be denied emergency room care or other life saving services due to immigration status. If a trafficked child needs immediate medical attention, you should not hesitate to seek medical attention.

You can also contact the Trafficking in Persons Information and Referral Hotline—1-888-373-7888—for assistance with urgent situations.

### ***What services are provided to unaccompanied child victims of trafficking?***

LIRS and USCCB are responsible for coordinating with local specialized foster care programs to place unaccompanied trafficked children in culturally appropriate foster homes, group homes, or independent living arrangements, appropriate to the youth's developmental needs. These programs were established to serve unaccompanied refugee minors and are funded by the Office of Refugee Resettlement (ORR). These foster care programs, therefore, are referred to as the Unaccompanied Refugee Minor programs (URM). Through the URM programs, these children will receive intensive case management, education, health care, mental health counseling, legal assistance, independent living skills training, and many other services. They are eligible to remain in foster care until they turn 20 or 21 years old, depending on the foster care rules of the state.

In order for a trafficked child to enter a URM program, a federal law enforcement agency must send a referral to the Office of Refugee Resettlement. Staff at LIRS and USCCB are also willing to assist service providers with guidance in navigating law enforcement referrals and eligibility for services. For assistance,



contact Charu Newhouse al-Sahli at LIRS—410/230-2758 or cal-sahli@lirs.org, or Margaret MacDonnell at USCCB—202/541-3462 or mmacdonnell@usccb.org.

### ***Where are these Foster Care Programs located?***

LIRS is headquartered in Baltimore and USCCB in Washington, D.C. These agencies work with 16 local service providers in 18 cities across the United States. Once ORR determines that an unaccompanied child is eligible for these services, he or she can be placed in one of these programs, regardless of where in the United States the child is identified.

### ***How do LIRS and USCCB decide where to place a child?***

Decisions take into account any special needs of the child, security concerns, availability of space in the local program, and requests from law enforcement or prosecution involved in the trafficking case. In most cases, a social worker will contact the child (if she or he is available) to discuss placement and answer any questions the child may have.

### ***How will the child receive medical care?***

Children placed in specialized foster care are eligible for medical care funded by Medicaid. The program staff or the child's foster parents will be responsible for finding a health care provider for the child.

### ***Who will have legal custody of the child?***

In most cases, the local URM program will petition the court to declare that the child is dependent based on abuse, neglect or abandonment and ask the court to appoint the agency as the custodian of the child. In some states, it is the county or the state where the foster program is located that petitions the court for custody of the child. The agency or county or state will have the authority to seek medical treatment and other services for the child.

### ***Will the child's parents lose their parental rights?***

This is very unlikely. The agency awarded custody of a child trafficking victim must make a case plan that complies with local child welfare laws. These laws require that the agency make a permanency plan that considers the following options: family reunification, long-term foster care or guardianship and adoption. However, the termination of parental rights is a lengthy process usually requiring the biological parents to be present to answer allegations and mount a legal defense. Therefore it is unlikely that this will occur. For a teenager, unless family reunification is successful, long-term foster care is the most likely long-term plan.

### ***Can a child be reunited with family?***

The URM programs are required by law to consider family reunification. If a child has parents or relatives in the United States, LIRS or USCCB has the ability to contract with local providers to conduct home studies with the family to ensure that it is in the best interest of the child to be reunited with her or his relatives. If the child's family is in a different country, LIRS or USCCB will attempt to arrange a home study by an agency in that country to ensure that it is safe for the child to return.

However, repatriation is a complex process and LIRS and USCCB are working on protocols to ensure any repatriations are done safely. LIRS and USCCB will work with law enforcement to the greatest extent possible to ensure that reunification in the United States or abroad is safe for the child.

### ***Will the child have legal representation?***

The child's social worker will arrange for a pro bono attorney to help with the child's immigration case. She or he will also have a court appointed attorney or guardian ad litem to represent her or him in dependency proceedings.

However, when a child is first identified, before entry into care, she or he may need help from a reputable attorney with experience in immigration law to help ensure the youth's rights are protected.

### ***Is it advantageous for the child trafficking victim to be placed with local Child Protective Services?***

Most social service providers are required to report any suspicion of child abuse and neglect. Federal law enforcement involvement notwithstanding, it would be incumbent on social workers to report to local child protection authorities whenever they come into contact with a child they suspect to be abused or neglected.

There are pros and cons for the child to enter the local child welfare system. Child Protective Services (CPS) is usually able to place a child on short notice in a licensed foster home. In the period immediately after a child has been identified until she or he is referred by federal law enforcement to ORR, this may be the best and only option for shelter for a trafficked child.

However, in the long term, there will be no guarantee that the child will be granted special attention to cultural and linguistic needs or the intensive and specialized services provided by a URM program. Moreover, the CPS system may not be equipped to deal with the complexities of a trafficking case, including security and immigration issues. A child placed by CPS will be in dependency proceedings in juvenile court. If the child is eventually referred to LIRS or USCCB, they will work with the CPS agency on the possibility of transfer into one of the URM programs, including navigating the possibly lengthy process of moving a child from one state to another.

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## **CHAPTER 3**

### **INTRODUCTION TO IMMIGRATION LAW**

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#### **§ 3.1 Introduction**

If you are a U.S. citizen, you may have traveled abroad and presented a U.S. passport to a U.S. government official upon your return. Or perhaps you filed a petition on behalf of a family member from another country, to enable that family member to live and work in the United States. Or you may have met tourists from another country visiting the United States or doctors from another country doing a residency in the United States.

If you are not a U.S. citizen, you may have settled in the United States after entering as a refugee. Or you may have gained lawful resident status through a petition filed by an employer or family member. Or perhaps you came to the United States with authorization to remain here while engaged in full-time studies.

All of these scenarios involve U.S. immigration law, which has probably played some role in your life even if you weren’t aware of it at the time. U.S. immigration law regulates who can legally enter the United States and who may be required to depart. Within these two major concepts are thousands of detailed legal provisions relating to categories of non-citizens eligible to come to the United States on a temporary or permanent basis, and categories of bars or obstacles to admission or authorization to remain after arrival.

#### **§ 3.1 First Steps: Vocabulary**

Immigration law includes many specialized terms that are important to know in order to assist a potential applicant for an immigration benefit. These terms include:

- U.S. citizen: All persons born in the United States are U.S. citizens regardless of the status of the parents (with the exception of children of some highly ranked

diplomats). In addition, some persons born outside the United States are U.S. citizens where one or both parents were a citizen at the time of the child's birth. This is called acquired citizenship. Yet another form of citizenship – through derivation – occurs when a lawful permanent resident under age 18 has a U.S. citizen parent or parents.

- Lawful permanent resident: A permanent resident is a person who is authorized to live and work permanently in the United States. Permanent residents may legally travel from the United States and return, and they may petition for their spouses, children, and unmarried sons and daughters to gain residency status. Permanent residents receive a permanent resident card as evidence of their status; this card is often referred to as a “green card.”
- Nonimmigrant: Persons in this category have received permission to come to the United States for a temporary period and for a specific purpose, even if that temporary period might be several years. Examples of nonimmigrants include tourists, persons attending school with student visas, and certain temporary workers, athletes and entertainers. Non-immigrant categories are identified by letters, for example B for tourist, F for student, J for exchange visitors, P for athletes, R for religious workers.
- Visa: This is a document issued to a non-citizen at a U.S. Consulate or Embassy abroad to come to the United States.
- Undocumented: A person is undocumented if he or she entered the United States without authorization. In addition, persons become undocumented if they come to the United States with authorization to be here for a certain period of time, for example, as a tourist, and remain beyond the expiration of that period of time. Essentially, this term is used to describe a person in the United States who does not currently have a valid immigration status.
- Removal Proceedings: This term describes immigration court proceedings. In most instances, a person who is determined by immigration officials to be in the United States in violation of law will be served with special immigration court papers to appear before an immigration judge. In removal proceedings, an immigration judge will first decide if the non-citizen is present in the United States in violation of law as charged. In many instances, a non-citizen found removable as charged may be eligible to ask for some remedy or “relief from removal” from the immigration judge.
- Admissible: A non-citizen must be “admissible” to gain admission to the United States or to qualify for many immigration remedies. The grounds of inadmissibility in the immigration law consist of all the reasons why a non-citizen may be refused admission to the United States or removed from the United States after entering without inspection.

- **Deportable:** A non-citizen, including a lawful permanent resident, may be removed from the United States if he or she falls within a ground of deportability. The grounds of deportability apply to non-citizens who are in the United States after inspection by an immigration officer.

### **§ 3.3 Ways of Gaining Legal Permanent Resident Status**

There are many ways that non-citizens may gain lawful permanent resident (LPR) status in the United States. The two major roads to LPR status are family-based immigration, through which nearly 700,000 people immigrate each year, and employment-based immigration, through which approximately 175,000 people immigrate yearly. Non-citizens may also gain LPR status through other means, including applying for residency after first gaining refugee or asylee status, through residency programs created by special laws (like the amnesty and seasonal agricultural programs of the mid-1980s), through the diversity visa lottery, and through certain immigration remedies that may be sought only in immigration court before an immigration judge.

In addition to mechanisms for gaining LPR status, immigration law provides non-permanent types of status that may be a temporary source of legal status for a non-citizen in the United States. In some instances, a temporary status may lead to a path to permanent status. For example, another chapter of this manual discusses the T visa for victims of trafficking, which provides a temporary status to successful applicants but also provides that T visa holders may later petition for residency.

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### **CAUTION: NO REMEDY FOR EVERYONE**

Although there are many immigration remedies and protections that may provide many non-citizens in the United States with a temporary or permanent legal status, there is no remedy for everyone who is in the United States without status and wants to stay.

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### **§ 3.4 Who's in Charge?**

Until recently, immigration law was implemented through the Immigration and Naturalization Service, often referred to as "INS." With the creation of the Department of Homeland Security, however, INS ceased to exist as of February 28, 2003, and its functions were divided among separate divisions as follows:

- U.S. Citizenship and Immigration Services (USCIS) is responsible for handling applications for benefits. This includes, for example, petitions for residence for family members or employees, employment authorization, T and U visa status, asylum, temporary protected status, self-petitions under the Violence Against Women Act, and naturalization.

- U.S. Immigration and Customs Enforcement (USICE) is responsible for the enforcement of customs and immigration laws in the interior of the United States. ICE investigators charge people with being removable, and ICE district counsel represent the government in removal proceedings.
- U.S. Customs and Border Protection (USCBP) is responsible for handling border inspections and protection and the movement of goods and people through the borders of the United States.

In addition to the immigration-related matters handled by these divisions of the Department of Homeland Security, other federal agencies have responsibility for certain immigration law functions. The Department of State is charged with determining the admissibility of non-citizens outside the United States who seek an immigrant or non-immigrant visa to enter the United States. The Department of Justice used to be the home of the INS but, as noted above, INS functions have been transferred to the Department of Homeland Security, and divided into three divisions. However, the Executive Office for Immigration Review, which regulates the immigration court system and the Board of Immigration Appeals, remains part of the Department of Justice. The Office of Refugee Resettlement (ORR), a division of the Department of Health and Human Services, provides services and assistance to refugees and other special populations, including victims of trafficking.

**U.S. Government Agencies Involved with Immigration:**

<p><b>Department of Homeland Security</b></p> <ul style="list-style-type: none"> <li>• U.S. Citizenship and Immigration Services</li> <li>• U.S. Immigration and Customs Enforcement</li> <li>• U.S. Customs and Border Protection</li> </ul>	<p><b>Department of Justice</b></p> <p>Exec. Office for Immigration Review</p> <ul style="list-style-type: none"> <li>• Immigration Courts</li> <li>• Board of Immigration Appeals</li> </ul>
<p><b>Department of Health and Human Services</b></p> <ul style="list-style-type: none"> <li>• Office of Refugee Resettlement</li> </ul>	<p><b>Department of State</b></p> <ul style="list-style-type: none"> <li>• U.S. Consulates</li> </ul> <hr style="width: 20%; margin: 10px auto;"/> <p><b>Department of Labor</b></p> <ul style="list-style-type: none"> <li>• Employment and Training Administration (Alien Labor Certification)</li> </ul>

	<ul style="list-style-type: none"> <li>• Employment Standards Administration, Wage and Hour Division (working conditions)</li> </ul>
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### § 3.5 Impact of Admissibility and Deportability Rules

The immigration rules on admissibility and deportability, mentioned in § 5.1 above, govern who may be admitted to the United States, who may qualify for certain types of immigration status, and who may be subject to expulsion or “removal” from the United States. These rules may prevent, or complicate, the ability of a non-citizen to qualify for different types of immigration status. For example, a non-citizen married to a U.S. citizen falls within a category of individuals eligible to gain lawful permanent residence through family-based immigration. But if that non-citizen spouse has certain criminal convictions, he or she will be “inadmissible” and ineligible to gain resident status, unless a waiver of the inadmissibility ground is available.

There are many similarities between the grounds of inadmissibility and deportability, but there are also some immigration law violations that may constitute a ground of inadmissibility or deportability, but not both. From the following list of inadmissibility and deportability grounds, you can see that some, but not all, categories of immigration law violations are common to both concepts.

Inadmissibility Categories	Deportability Categories
Health related grounds	Inadmissibility at time of entry or adjustment of status; violation of status
Criminal grounds	Criminal grounds
National security grounds	Failure to register and falsification of documents
Public charge	National security grounds
Labor protection grounds	Public charge
Fraud or other immigration violations	
Documentation requirements	
Grounds relating to military service in the United States	
Miscellaneous grounds	

Some of the grounds of inadmissibility and deportability can be waived in certain circumstances, or are considered inapplicable, depending on the specific statutory provision. Where a waiver exists, many waivers require the non-citizen to have a U.S. citizen or lawful permanent resident relative to qualify.

### **§ 3.6 Analyzing Rights and Remedies under Immigration Law**

Because immigration law is a specialized and complex field, and because non-citizens present in the United States unlawfully are vulnerable to expulsion, it is always critical that a non-citizen thinking of applying for some benefit or remedy under immigration law first obtain counseling from an attorney or legal worker competent to analyze immigration law issues. Filing an application with U.S. Citizenship and Immigration Services on behalf of someone who doesn't qualify for the relief sought places that person on the path of removal from the United States.

### **§ 3.7 Who can Represent an Applicant for Immigration Benefits?**

Attorneys admitted to and in good standing with the bar of any U.S. state or territory or the District of Columbia may represent individuals before the Department of Homeland Security agencies, the Immigration Courts, and the Board of Immigration Appeals. Moreover, immigration regulations specifically provide a mechanism for certain non-attorneys to represent non-citizens in immigration related matters. Nonprofit agencies can seek "recognized agency" status and "accredited representative status" for their legal worker staff, enabling them to serve as advocates to the clients they assist. You can read more about the process of seeking recognized agency status and staff accreditation in Chapter 12 of this manual.

#### **CAUTION: DO NOT SEEK THIS SUPPORT FROM CIS OR ANY OTHER BRANCH OF THE DEPARTMENT OF HOMELAND SECURITY.**

This is critical because "enforcement," referring to the removal of certain non-citizens from the United States, is a major component of the work of immigration officers. Even though immigration service and enforcement functions have been separated, a person applying for a benefit for which she or he does not qualify may have his or her case referred for enforcement, which may include the commencement of removal proceedings

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#### **Practice pointer: Where to obtain immigration forms**

U.S. Citizenship and Immigration Services application forms can be downloaded from the agency's website, at [www.uscis.gov](http://www.uscis.gov). Click on "Immigration Forms, Fees, and Fingerprints" in the left-hand column on the home page.

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### **§ 3.8 Immigration Relief for Victims of Human Trafficking**

Congress has recognized that victims of abuse and crime, including victims of human trafficking, victims of domestic abuse, and victims of other sorts of crime, are particularly vulnerable in both the criminal and immigration processes. Uncertainty as to their immigration status, coupled with fear of removal and the resulting separation from family and support networks, frequently make immigrant victims reluctant to report their abusers to the authorities or to seek relief. Over the past decade, through the advocacy of immigrant, domestic abuse, and human rights activists, Congress has implemented a number of special forms of immigration relief for these victims. These include the following:

- T nonimmigrant status for victims of severe forms of human trafficking;
- U nonimmigrant status for persons who have experienced extreme hardship as a result of being the victim of certain crimes;
- Special immigrant juvenile status for children found dependent on a juvenile court;
- Asylum and related protections;
- Self-petitioning for lawful permanent resident status under the Violence Against Women Act (VAWA), available to spouses and children of U.S. citizens and lawful permanent residents;
- VAWA cancellation of removal, available to persons who are the spouse, son, or daughter of a U.S. citizen or lawful permanent resident (or the parent of an abuse child of a U.S. citizen or lawful permanent resident) and have been in the United States for at least three years, and whose removal would cause extreme hardship to themselves or to a U.S. citizen, lawful permanent resident, or qualified alien parent or child.

An important feature of two of these forms of relief, the T and U visas, are that prosecutors and other law enforcement authorities play a crucial role by certifying that the victim has cooperated with law enforcement in investigating and prosecuting the crime in question.

In the next few chapters of this manual, we will explain the requirements and procedure for the types of immigration relief most closely relevant for victims of human trafficking – the T and U visas and Special Immigrant Juvenile Status – and will briefly describe the requirements for the other forms of relief listed above.



## **CHAPTER 4**

### **T NON-IMMIGRANT VISAS**

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- Form I-192, Application for Advance Permission to Enter as Nonimmigrant.....App. 4-25
- William R. Yates, Assoc. Dir. Oper., US CIS, Memo re: Trafficking Victims Protection Reauthorization Act of 2003 (April 15, 2004).....App. 4-27
- William R. Yates, Assoc. Dir. Oper., US CIS, Memo re: Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c).....App. 4-30

## § 4.1 Overview

The Victims of Trafficking and Violence Prevention Act,<sup>1</sup> enacted in October 2000, introduced two new types of nonimmigrant visas: the T and U visas. These visas are intended to protect victims of serious crime who have gathered the courage to come forward, report the crime, and assist in its investigation and prosecution. The T visa applies to victims of severe forms of trafficking in persons<sup>2</sup> and reflects Congress' concern with the growing impact of trafficking and its intention to vigorously pursue the prosecution of traffickers and the protection of victims. The U visa applies to noncitizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including domestic abuse and human trafficking.<sup>3</sup>

Both U and T nonimmigrant visas provide authorized stay in the United States and employment authorization. Moreover, after three years in U or T nonimmigrant status, the nonimmigrant may be able to adjust status from nonimmigrant to permanent resident. There are also provisions to grant U and T nonimmigrant and permanent residence status to certain spouses, children, and parents of U and T nonimmigrants.

The INS issued interim regulations for the T visas in January of 2002.<sup>4</sup> The regulations became effective March 4, 2002, and comments from interested parties were due on April 1, 2002.<sup>5</sup> Because the Department of Homeland Security and the U.S. Citizenship and Immigration Services (CIS) will consider those comments in preparing the final version of the regulations, that final version may differ from the interim regulations.

The Department of Homeland Security has not yet issued regulations implementing the U nonimmigrant visa. It has issued guidance on interim relief for potential U nonimmigrants, however,<sup>6</sup> and a 2005 law requires that DHS issue regulations implementing VAWA 2000 and VAWA 2005 no later than 180 days after the enactment of VAWA 2005.<sup>7</sup> As of the time this chapter was most recently updated (November 2006), the regulations have not been issued.

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<sup>1</sup> Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000) [VTVPA], as amended by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193 (Dec. 19, 2003).

<sup>2</sup> INA §§ 101(a)(15)(T), 214(n), 245(l).

<sup>3</sup> INA §§ 101(a)(15)(U), 214(o), 245(l).

<sup>4</sup> 67 Fed. Reg. 4784 (Jan. 31, 2002).

<sup>5</sup> *Id.*

<sup>6</sup> Cronin, Act'g. Exec. Assoc. Comm'r, Office of Programs, INS Memo HQINV 50/1, re: Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) Policy Memorandum # 2 - "T" and "U" Nonimmigrant Visas (August 30, 2001).

<sup>7</sup> Violence against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, H.R. 3402, § 828.

This chapter will discuss T nonimmigrant visas. Chapter 8 will discuss U nonimmigrant visas and interim relief for potential U nonimmigrants.

## § 4.2 Requirements for T Nonimmigrant Visas

To be eligible for a T nonimmigrant visa, the applicant must be or have been a victim of a “severe form of trafficking in persons.”<sup>8</sup> That term is defined as:

(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 18 years of age, or

(b) 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.<sup>9</sup>

Some of the terms used in the definition of severe forms of trafficking in persons are defined in statutes and regulations. “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act.<sup>10</sup> “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.<sup>11</sup> “Coercion” means threats of serious harm to or physical restraint against any person; any scheme 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.<sup>12</sup> “Debt bondage” means the status of a debtor arising from the debtor’s pledge of his or her personal services or the services of a person under the debtor’s control as a security for debt, if the value of those services is not applied to satisfy the debt or if the length and nature of the services are not appropriately limited and defined.<sup>13</sup> “Involuntary servitude” means a condition of servitude induced by causing a person to believe that the person or another would be seriously harmed, physically restrained, or subjected to abuse or threatened abuse of legal process if the person did not enter into or remain in the servitude.<sup>14</sup> “Peonage” means a status or condition of involuntary servitude based upon a real or alleged indebtedness.<sup>15</sup>

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Practice tip: Where to find the law

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<sup>8</sup> INA § 101(a)(15)(T)(i)(I).

<sup>9</sup> 22 U.S.C. § 7102.

<sup>10</sup> 22 U.S.C. § 7102(9); 8 CFR § 214.11(a).

<sup>11</sup> 22 U.S.C. § 7102(3); 8 CFR § 214.11(a).

<sup>12</sup> 22 U.S.C. § 7102(2); 8 CFR § 214.11(a).

<sup>13</sup> 8 CFR § 214.11(a).

<sup>14</sup> 22 U.S.C. § 7102(5); 8 CFR § 214.11(a).

<sup>15</sup> *Id.*

The Immigration and Nationality Act (Title 8 U.S.C.) and Title 8 of the Code of Federal Regulations (dealing with immigration and nationality) may be viewed and downloaded from the CIS website, at [uscis.gov](http://uscis.gov). You may also obtain them on [www.findlaw.com](http://www.findlaw.com), a free legal information website.

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In addition to showing that the applicant is or was a victim of a severe form of trafficking in persons, the applicant must demonstrate that he or she:

- Is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, on account of the trafficking;<sup>16</sup>
- Has complied with any reasonable request 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, unless he or she is under 18 years of age, in which case compliance is not a requirement;<sup>17</sup>
- Would suffer extreme hardship involving unusual and severe harm if he or she were removed from the United States;<sup>18</sup>
- Has not committed a severe form of trafficking in persons;<sup>19</sup>
- Is not inadmissible under INA § 212. There are special waivers of certain inadmissibility grounds for T nonimmigrants, however.

The CIS will decide the application under the “all credible and relevant evidence” standard already employed in adjudicating self-petitions and applications for cancellation of removal by abused spouses and children of LPRs and USCs.<sup>20</sup> This means that the CIS will consider all credible evidence submitted with the petition before reaching a conclusion. Thus, if primary evidence is not available, credible secondary evidence, such as declarations or affidavits, is acceptable to make out the elements of the claim. Advocates using secondary evidence, however, should document their attempts to obtain primary source evidence and explain why they were unable to do so.

We will discuss these requirements and how to document compliance with them in more detail below.

### **§ 4.3 Establishing that the Applicant is a Victim of a Severe Form of Trafficking in Persons**

The applicant can show that he or she is a victim of a severe form of trafficking in persons by submitting one of the following types of documentation:

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<sup>16</sup> INA § 101(a)(T)(i)(II).

<sup>17</sup> INA § 101(a)(T)(i)(III), amended by § 4(b)(1)(A), Trafficking Victims Protection Act of 2003, Pub. L. 108-193 (Dec. 19, 2003); INA § 101(a)(15)(T)(iii), amended by § 801(a)(3), VAWA 2005.

<sup>18</sup> INA § 101(a)(T)(i)(IV).

<sup>19</sup> INA § 214(o)(1).

<sup>20</sup> 8 CFR § 214.11(f).

- An endorsement from a law enforcement agency (LEA) on Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victims of Trafficking in Persons (discussed below);
- Evidence that the former INS or the DHS or one of its immigration agencies has arranged for the alien’s continued presence in the United States as a victim of trafficking; or
- 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 applicant was induced to perform a commercial sex act while under age 18.<sup>21</sup>

Under these provisions, T applicants are not required to submit an endorsement from a law enforcement agency. Although the prologue to the regulations “strongly encourages” applicants to provide such an endorsement,<sup>22</sup> adjudicators from the Vermont Service Center report that the majority of T applications are adjudicated without a law enforcement endorsement.

If the applicant submits secondary evidence, defined as anything other than an LEA endorsement or government evidence of status as a trafficking victim, that evidence must include the applicant’s statement indicating that he or she is a victim of a severe form of trafficking in persons, credible evidence of victimization and cooperation, a description of what the person has done to report the crime to an LEA, a statement indicating whether similar records for the time and place of the crime are available, and evidence that the applicant made good faith attempts to obtain the LEA endorsement and a description of those efforts.<sup>23</sup> A non-exhaustive list of secondary evidence of victim status includes the victim’s affidavit, affidavits of other witnesses, transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court.<sup>24</sup>

#### **§ 4.4 Establishing Compliance with Reasonable Requests for Assistance**

As originally written, the T visa provisions required that an applicant for a T visa have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, unless he or she has not attained 18 years of age. This provision has been expanded in two ways. First, although the interim T regulations issued 2002 defined the provision narrowly to require a request from a federal law enforcement agency,<sup>25</sup> that provision was superseded by the Trafficking Victims

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<sup>21</sup> 8 CFR § 214.11(f).

<sup>22</sup> 67 Fed. Reg. 4784, 4788 (Jan. 31, 2002).

<sup>23</sup> 8 CFR § 214.11(f)(3).

<sup>24</sup> *Id.*

<sup>25</sup> 8 CFR § 214.11(a), (h). The interim regulations defined the term “law enforcement agency” to mean any federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons. These include the following offices of the Department of Justice: the United States Attorneys’ Offices, the Civil Rights and Criminal Divisions, the FBI, the INS, and the United States Marshals Service. The Diplomatic Security Service of the

Protection Reauthorization Act of 2003. That statute specified that, in determining whether an applicant has complied with law enforcement requests for assistance, the government must consider statements from state and local law enforcement officials confirming the applicant's compliance with any reasonable requests for assistance in the investigation or prosecution of kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons appear to have been involved.<sup>26</sup> This significant change recognizes the crucial roles that state and local law enforcement agencies have in the investigation and prosecution of trafficking-related crimes, as well as in identifying and orienting trafficking victims.<sup>27</sup> In a memorandum of April 15, 2004, however, CIS stated that the change to allow endorsement from state and local law enforcement could not be implemented immediately and would be the subject of future guidance.<sup>28</sup>

Second, VAWA 2005 further broadened the requirement of compliance with reasonable requests for assistance from law enforcement by providing that the trafficking victim, unless under 18 years of age, must have complied with any reasonable request 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.*<sup>29</sup> (Emphasis added.)

The “reasonableness” of a request for assistance 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.<sup>30</sup> The determination of whether a request for assistance is reasonable is made by the USCIS, not the LEA. If the Secretary of Homeland Security, in consultation with the Attorney General, determines that a trafficking victim, due to psychological or physical trauma, is unable to cooperate with a request for assistance, the request is considered unreasonable.<sup>31</sup>

Because of the foregoing requirements that the applicant have complied with any reasonable request for assistance in the investigation or prosecution of the crime, the applicant must have had some contact with a law enforcement agency (LEA), in order to

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Department of State is also an LEA,<sup>25</sup> and the Department of Labor offices charged with investigating employment violations may also be deemed LEAs. Although the interim regulations were issued prior to Department of Homeland Security's assuming immigration responsibility, the Department of Homeland Security and its agencies would presumably be deemed LEAs, as well.

<sup>26</sup> INA § 214(o)(6), added by § 4(b)(2), Trafficking Victims Protection Reauthorization Act of 2003.

<sup>27</sup> H.R. Rep. No. 108-263, pt. 2 (2003).

<sup>28</sup> Memo from William H. Yates, Ass. Dir. Oper. CIS, re: Trafficking Victims Protection Reauthorization Act of 2000, HQOPRD 70..6.2 (April 15, 2004), at 3.

<sup>29</sup> INA § 101(a)(T)(i)(III), amended by § 4(b)(1)(A), Trafficking Victims Protection Act of 2003, Pub. L. 108-193 (Dec. 19, 2003).

<sup>30</sup> 8 CFR § 214.11(a).

<sup>31</sup> INA § 101(a)(15)(T)(iii) (added by VAWA 2005, § 801(a)(3)).

receive the LEA's requests for assistance.<sup>32</sup> The applicant may have had this contact either by reporting the crime or by responding to inquiries from the LEA. If the applicant has not had contact with an LEA regarding the trafficking, he or she may contact the nearest Department of Homeland Security or FBI field office or U.S. Attorney's 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. Alternatively, the applicant may contact the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation Task Force complaint hotline, at (888) 428-7581, to file a complaint and be referred to an LEA.<sup>33</sup> An additional resource is the hotline maintained by Covenant House, sponsored by the U.S. Department of Health and Human Services, in collaboration with the Department of Justice. That hotline allows victims of human trafficking to be referred to a pre-screened aid organization in the victim's area. The hotline number is 888-373-7888.

#### **§ 4.5 Special Issues in Working with Law Enforcement Agencies.**

Advocates report some difficulties in obtaining law enforcement agency endorsements for trafficking victims. Sometimes a law enforcement official may delay issuing a certification until after the investigation or prosecution of a case is complete, in an effort to ensure the victim's continued cooperation. Similarly, the law enforcement official may believe that he or she may issue an endorsement only if he or she decides to proceed with a prosecution against the trafficker.

In response to the first objection, advocates should point out to law enforcement that, in order to adjust status from nonimmigrant to immigrant status, the victim must establish that he or she has either complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or would suffer extreme hardship involving unusual and severe harm if removed from the United States.<sup>34</sup> Thus, there is a continuing requirement of cooperation with law enforcement, unless the victim can satisfy the alternative requirement of showing a very high level of hardship if removed.

In response to the second objection, advocates should point out to law enforcement that there is no requirement under the statute or regulations that an investigation or prosecution actually be commenced. This point was emphasized in the House of Representatives Committee Report on the Trafficking Victims Protection Reauthorization Act of 2003:

Indeed, where Federal, State, or local law enforcement authorities come into contact with a trafficking victim, but decide not to proceed with a formal investigation or prosecution, the committee believes that if the victim is ready to

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<sup>32</sup> 8 CFR § 214.11(h)(2).

<sup>33</sup> 8 CFR § 214.11(f)(4).

<sup>34</sup> INA § 245(l)(1).

comply with a reasonable request for assistance, a law enforcement agency endorsement should be made available to facilitate the victim's application for a T visa.<sup>35</sup>

Thus, even if the law enforcement official does not believe there is sufficient evidence to prosecute the trafficker or does not have sufficient resources to prosecute, the official should still issue a law enforcement endorsement for purposes of the T visa.

Probably the most frequent reason for a law enforcement official's reluctance to issue an endorsement, however, is concern that the issuance of the endorsement itself may affect the prosecution negatively. The official may fear that he or she may be required to provide the accused trafficker with a copy of the endorsement and other information gained from the victim, and that the trafficker may use that information to weaken the significance of the victim's testimony. For example, defense counsel may contend that the victim is testifying in exchange for immigration benefits or may try to make the victim's testimony seem inconsistent with the victim's statements submitted in support of the T visa application.

Prosecutors have a constitutional due process obligation to disclose exculpatory information to defendants, although this duty varies depending on whether and what kind of a request the defendant has made. Where the defense makes a specific request for information, the prosecutor is required to turn over information if there is a substantial basis for claiming that the information is material to guilt or punishment.<sup>36</sup> The mere possibility that an item of undisclosed information might have helped the defense or might have affected the outcome of the trial does not establish materiality for this purpose, however.<sup>37</sup> If, however, the omitted evidence creates a reasonable doubt that did not otherwise exist, a constitutional error has been committed.<sup>38</sup> Even where the defendant makes no request for information or makes a general request for any exculpatory matter, the prosecution must still disclose any information that creates a reasonable doubt of the defendant's guilt if that information does not otherwise exist.<sup>39</sup>

This does not mean, however, that the prosecution must make a complete and detailed accounting to the defense of all police investigatory work on a case.<sup>40</sup> The prosecutor will not have violated his or her constitutional duty of disclosure unless the omission is of sufficient significance to result in the denial of defendant's right to a fair trial.<sup>41</sup>

Should you experience problems in this area, you may wish to contact Sheila Neville, of the Los Angeles Legal Aid Foundation, at [sneville@lafla.org](mailto:sneville@lafla.org), Charles Song,

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<sup>35</sup> H.R. Rep. No. 108-263, pt. 2 (2003).

<sup>36</sup> *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agars*, 427 U.S. 97, 108 (1976).

<sup>37</sup> *Agars*, *supra* n. 32, at 109.

<sup>38</sup> *Id.*, at 112.

<sup>39</sup> *Id.*

<sup>40</sup> *Moore v. Illinois*, 408 U.S. 786, 795 (1972).

<sup>41</sup> *Agars*, *supra* n. 32, at 108.



of the Coalition to Abolish Slavery and Trafficking, at [charles@cast.org](mailto:charles@cast.org), or Gail Pendleton, of the National Immigration Project, at [gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org).

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**Practice tip:** Because of prosecution concerns in issuing certifications for T visas, advocates may make the strategic decision of asking law enforcement to request “continued presence” for their clients and delay application for a T visa and the issuance of a law enforcement certification until the prosecution is completed. In fact, the prosecutor may likely begin the process for requesting continued presence as soon as he or she determines that the individual is a victim of human trafficking. Continued presence is discussed in the next chapter. In addition, advocates should remember that a law enforcement certificate is not required in order to apply for a T visa.

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#### **§ 4.6 Establishing Extreme Hardship Involving Unusual and Severe Harm**

The T visa applicant must show that he or she would suffer “extreme hardship involving unusual and severe harm” if he or she were removed from the United States. This is higher than “extreme hardship,” the standard for other types of immigration relief, such as VAWA cancellation of removal.<sup>42</sup> Factors to consider when evaluating whether removal would result in extreme hardship involving unusual and severe harm include both traditional extreme hardship factors and factors associated with having been a victim of a severe form of trafficking in persons. These include, but are not limited to, the following:

- The applicant’s age and personal circumstances;
- Serious physical or mental illness of the applicant that requires medical or psychological attention not reasonably available in the foreign country;
- The physical and psychological consequences of the trafficking activity;
- The impact on the applicant of loss of access to U.S. courts and criminal justice system for purposes such as protection of the applicant and criminal and civil redress for the acts of trafficking;
- The reasonable expectation that laws, social practices, or customs in the applicant’s country would penalize the applicant severely for having been the victim of trafficking;
- The likelihood of re-victimization and foreign authorities’ ability and willingness to protect the applicant;
- The likelihood that the trafficker or others acting on his or her behalf would severely harm the applicant; and
- The likelihood that the applicant’s individual safety would be seriously threatened by the existence of civil unrest or armed conflict, as demonstrated by a

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<sup>42</sup> 8 CFR § 214.11(l)(1).

designation of Temporary Protected Status under INA § 244 or the granting of other relevant protections.<sup>43</sup>

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.<sup>44</sup>

The types of evidence already used to establish hardship in other immigration law contexts may also be employed to document eligibility for the T nonimmigrant visas. Examples of this type of evidence include a detailed declaration from the victim, declarations or statements from witnesses, law enforcement reports, including the LEA endorsement, photographs, medical records, reports and records from counselors or therapists, and reports from NGOs, government and international agencies, and individuals regarding the current conditions in the home country and the protection or lack of protection likely to be afforded the applicant in the home country. Advocates should remember the general rule that hardship must be considered in the aggregate. Thus, even if an individual hardship factor does not rise to the requisite level, all hardship factors taken together may rise to that level.<sup>45</sup>

#### **§ 4.7 Establishing Physical Presence**

T applicants must be physically present in the United States, American Samoa, or the Northern Marianas on account of the trafficking. An applicant who has left and reentered the United States is not deemed to be present unless the reentry was the result of continued victimization of the alien or a new trafficking incident.<sup>46</sup>

If the applicant has escaped the traffickers before law enforcement became involved in the case, the applicant must show that he or she did not have a clear chance to leave the United States in the interim. The CIS will consider whether an applicant had a clear chance to leave in light of the individual applicant's circumstances. These include circumstances attributable to the trafficking, such as trauma, injury, lack of resources, or seizure of travel documents by the traffickers.<sup>47</sup>

#### **§ 4.8 Overcoming Inadmissibility as a Nonimmigrant**

In order to obtain a visa and admission to the United States, each non-citizen must establish that he or she is admissible. This means that the non-citizen does not fall under any of the inadmissibility grounds listed in INA § 212, or, if he or she does fall under one or more of those grounds, he or she is eligible for a waiver of the inadmissibility ground.

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<sup>43</sup> 8 CFR § 214.11(i)(1).

<sup>44</sup> *Id.*

<sup>45</sup> Matter of L-O-G-, 21 I & N Dec. 413 (BIA 1996).

<sup>46</sup> 8 CFR § 214.11(a)(3).

<sup>47</sup> 8 CFR § 214.11(g)(2).

The inadmissibility grounds are grouped in several major categories, including prior immigration violations, criminal offenses, contagious or dangerous diseases or conditions, and terrorist and national security risks.

Trafficking victims are specifically exempted from two inadmissibility grounds. First, they are exempt from the inadmissibility ground of being likely to become a public charge, under INA § 212(a)(4).<sup>48</sup> This is a significant aid to trafficking victims, who are likely to have been held in conditions in which they had no funds of their own and who may be suffering from trauma or physical or emotional injuries that prevent their being able to work immediately. Second, the unlawful presence inadmissibility ground, under INA § 212(a)(9)(B), does not apply to trafficking victims who demonstrate that at least one central reason for the alien's unlawful presence in the United States was the severe form of trafficking.<sup>49</sup>

In addition to the above-mentioned exemptions, trafficking victims are eligible for special waivers of other inadmissibility grounds. The CIS may waive all of the health-related inadmissibility grounds if the waiver is in the national interest.<sup>50</sup> In addition, if the applicant's inadmissibility is caused by or incident to the victimization, and if it is in the national interest to do so, the CIS may waive any other inadmissibility grounds, except for the security and related grounds, international child abduction, and renunciation of citizenship by a former citizen to avoid taxation.<sup>51</sup> The T nonimmigrant is also eligible for any other waiver that might apply to him or her.<sup>52</sup> The interim regulations provide, however, that if the ground of inadmissibility would prevent or limit the applicant from adjusting to permanent residence, the CIS will grant a nonimmigrant waiver only in exceptional circumstances.<sup>53</sup>

A T visa applicant who is inadmissible must apply for a waiver of inadmissibility on Form I-192.<sup>54</sup> If the client appears clearly inadmissible, then he or she may wish to file Form I-192 with the I-914 application. If there appears to be a good basis for arguing that the applicant is not inadmissible, however, the client may decide not to apply for a waiver unless and until receipt of CIS notification that the client appears to be inadmissible

*Example:*

*Luisa is a victim of human trafficking who has escaped and would like to apply for a T visa. While she was in the trafficker's control, she was forced to work as a*

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<sup>48</sup> INA § 212(d)(13).

<sup>49</sup> INA § 212(a)(9)(B)(iii)(V), added by VAWA 2005, § 802.

<sup>50</sup> *Id.*

<sup>51</sup> INA § 212(d)(13). The security and related inadmissibility grounds are found at INA § 212(a)(3), the international child abduction ground is found at INA § 212(a)(10)(C), and the ground of renunciation of citizenship by a former citizen to avoid taxation is found at INA § 212(a)(10)(E).

<sup>52</sup> INA § 212(d)(13)(B).

<sup>53</sup> 8 CFR § 212.16(b)(3).

<sup>54</sup> 8 CFR § 212.16(a).

*prostitute and has a criminal conviction for prostitution. In addition, while working as a prostitute, she became HIV positive through one of the men with whom she had sex. Both of these facts make Luisa inadmissible under the inadmissibility grounds found in Section 212(a) of the Immigration and Nationality Act. Because of the special provisions for victims of human trafficking, however, the CIS may waive both of the inadmissibility grounds in the exercise of its discretion. CIS may waive the health-related ground if it is in the national interest to do so. It may also waive the prostitution ground, if it is in the national interest and if Luisa's shows that her inadmissibility is caused by or incident to the victimization. Because she was convicted as a prostitute as a result of the trafficker's forcing her to work in prostitution, and because she became HIV positive as a result of this coerced work, she should be able to show that her inadmissibility was caused by the victimization. She must file an application for the waiver on Form I-192 and attach documentation to show the connection between the inadmissibility and the victimization. This evidence may include documents such as Luisa's own statement, the conviction records showing the date of conviction, and medical records showing the date of diagnosis.*

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**Practice tip: Red flags: obtaining information about prior contacts with immigration agencies or law enforcement.**

A client's prior contacts with an immigration agency and prior arrests or convictions are red flags indicating the possibility of an inadmissibility ground and must be investigated.

If the client has had any contact with an immigration agency (the Department of Homeland Security, the U.S. Immigration and Customs Enforcement (ICE), the U.S. Citizenship and Immigration Service (CIS), the U.S. Customs and Border Protection (CBP), or the former Immigration and Naturalization Service (INS) and does not have clear documentation of what happened, then the client should file a Freedom of Information Act (FOIA) request before applying for the T visa. The FOIA request is filed on Form G-629, with the CIS office nearest his or her place of residence. A blank Form G-629 is attached as Appendix 4-21, and the form can be downloaded from the CIS website, at [www.uscis.gov](http://www.uscis.gov). In preparing the FOIA request, the client should use some safe address rather than the address at which the client resides. The FOIA request should be sent by certified mail, return receipt requested, and the client or advocate should keep a copy of the application.

If the client has had any arrests or convictions, then the records of each arrest or conviction must be examined to determine whether they result in a criminal inadmissibility ground. If the client does not have those records and cannot remember the place of the arrest or the court in which the conviction occurred, then an FBI criminal history check should be done. The request is sent to the Federal Bureau of Investigation, Criminal Justice Information Services Division, SCU MOD D2, 1000 Custer Hollow Road, Clarksburg, WV 26301. The following documents should be submitted: a cover

letter requesting the FBI criminal record and giving the individual's name and date and place of birth, a set of rolled-ink fingerprint impressions placed upon fingerprint cards or forms commonly used by law enforcement agencies, satisfactory proof of identity, such as a copy of the individual's driver's license or passport, and the fee (currently \$18.00) in the form of a certified check or money order, made payable to the treasury of the United States. To have the record sent to the advocate instead of to the client, include a letter signed by the client, authorizing the FBI to release the letter to the advocate.

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More detailed information on inadmissibility grounds and waivers is available in manuals published by the Catholic Legal Immigration Network, Inc. (CLINIC). In particular, *The VAWA Manual – Immigration Relief for Abused Immigrants*, written by CLINIC and the Immigrant Legal Resource Center (ILRC) has a detailed chapter on inadmissibility grounds..

Prior to VAWA 2005, one potential bar to obtaining T nonimmigrant status arose under INA § 248(a), which prohibited change of nonimmigrant status if the applicant had previously been in certain other nonimmigrant status. Following VAWA 2005, however, these prohibitions do not apply to individuals seeking to change to T nonimmigrant status from the following nonimmigrant classifications: C (transit without visa), D (crewmembers), J (exchange scholars subject to a two-year foreign residence requirement), K (fiancé, spouse, child), S (criminal informants), and persons admitted without visas or from Guam.<sup>55</sup>

#### **§ 4.9 Annual Limit**

There is an annual limit of 5,000 T visas.<sup>56</sup> This limit applies only to T-1 visas and not to the visas issued to family members.<sup>57</sup> This limit has not yet posed a problem, as relatively few persons have applied for T visas as of the time this manual was written. Should the cap be reached, however, the government has made special provisions to protect applicants. Once the cap is reached in any fiscal year, the CIS will continue to consider applications in the order they are received and will place eligible applicants on a waiting list.<sup>58</sup> The CIS will issue T-1 status to applicants on the waiting list in the order in which the applications were received.<sup>59</sup>

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#### **Practice pointer: Where to obtain immigration forms**

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<sup>55</sup> INA § 248(b), added by VAWA 2005, § 821(c).

<sup>56</sup> INA § 214(o)(2).

<sup>57</sup> INA § 214(o)(3).

<sup>58</sup> 8 CFR § 214.11(m)(2).

<sup>59</sup> *Id.*

U.S. Citizenship and Immigration Services application forms can be downloaded from the agency's website, at [www.uscis.gov](http://www.uscis.gov). Click on "Immigration Forms, Fees, and Fingerprints" in the left-hand column on the home page.

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#### **§ 4.10 The Contents of the T Nonimmigrant Visa Application**

The application for T nonimmigrant status consists of the following documents:

##### **Contents of the application**

- A cover letter, acting as a "roadmap" to the application;
- Form I-914, Application for T Nonimmigrant Status;
- Filing fee or request for fee waiver;
- Fingerprint/biometrics fee (\$70 per person, not waivable);
- Three current photographs (in compliance with USCIS standards);
- Evidence, including a personal statement and, if available, a law enforcement certificate on Form I-914 Supp. B or evidence of a grant of continued presence, to support the following:
  - the applicant is a victim of a severe form of trafficking in persons;
  - the applicant is physically present in the United States on account of the trafficking; and
  - the applicant would suffer extreme hardship involving unusual and severe harm if he or she were removed from the United States.<sup>60</sup> This evidence should always include a personal statement by the applicant, but should also include any other available evidence, including reports by government and nongovernmental agencies on country conditions, medical evidence, statements or letters from witnesses, and reports from counselors.
- Form G-28, notice of appearance as attorney or representative;
- A translation into English of any documents written in a foreign language;

A sample application, including fee waiver request, is included as an appendix to this chapter.

Note that it is not necessary to include a separate application for employment authorization on Form I-765, because form I-914 covers this.

##### **Filing Fees**

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<sup>60</sup> 8 CFR § 214.11(d)(2).

The filing fee for Form I-914 is currently \$255. There is an additional fee of \$105 for each additional immediate family member included on the same application, up to a maximum family fee per application of \$510.<sup>61</sup> If the client needs a fee waiver, the request should be included in the cover letter and highlighted. The fee waiver request itself may be made on a single sheet of paper, listing the applicant's assets, income, and expenses, to show that the applicant does not have sufficient funds to pay the application fee.<sup>62</sup> A sample fee waiver request is included in the appendices to this chapter.

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**Practice Tip: assembling the application:**

Gail Pendleton, of the National Lawyers Guild's National Immigration Project, has provided very useful guidance on how to assemble an application for T nonimmigrant status. Ms. Pendleton recommends that the application be presented with a "road map" cover letter and index to the documents contained in the application. The entire application should be paginated consecutively, and supporting documents should be organized according to the element of proof they establish. Highlighting the relevant portion of the documents will make it easier for the adjudicator to find important sections.<sup>63</sup>

Other tips from advocates and the VSC: Photographs should be placed in a separate clear envelope and attached to the application. The check or money order should be attached to the left-hand upper corner of the application with a paperclip or binder clip. The VSC appreciates the applications being two-hole-punched at the top, for easier insertion in the CIS file. For thicker applications, use Acco fasteners instead of heavy-duty staples. If you tab the application, the tabs should go at the bottom of the pages rather than at the side. The application should be sent by certified mail, return receipt requested. The envelope containing the application should be marked in large red letters "ATTN VAWA UNIT. DO NOT OPEN IN MAIL ROOM," to ensure that it reaches the correct division within the Vermont Service Center.

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**§ 4.11 Completing the Forms<sup>64</sup>**

In general, do not leave any box blank, unless the instructions clearly say to skip to another section of the form. If the question does not pertain to the victim, then complete with box with "N/A." In addition, verify the client's information by checking

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<sup>61</sup> 8 CFR § 103.7(b)(1).

<sup>62</sup> Gail Pendleton, Memorandum re: "Practice Pointers on Filing with VSC," February 27, 2002 (copy on file with CLINIC).

<sup>63</sup> *Id.*

<sup>64</sup> This section on completing the application forms for the T visa was drawn in large part from the excellent publication *Identification and Legal Advocacy for Trafficking Victims*, by the NYC Service Network for Trafficking Persons Legal Subcommittee.

original documents, such as the client's birth certificate, marriage certificate, passport, and immigration documents, if the client has these.

**Form G-28.**

An applicant may be represented by either an attorney or an individual who has been accredited by the Board of Immigration Appeals. (See Chapter 12, on BIA accreditation.) The G-28 must be submitted on light blue paper.

**Form I-914.**

**Part A. Purpose.**

Generally, check the first box, "I am filing an application for T-1 nonimmigrant status and have not previously applied for such status." If the client has family members inside or outside the United States, then also check "I am applying to bring family member(s) to the United States."

**Part B. General information.**

- **Name:** State the client's true name on the first line, as it appears in the client's birth certificate or valid passport. On the next name, put all other names the client has used, including the client's maiden name, any variations of the client's surnames (especially for Hispanic clients, who frequently use the father's surname, followed by the mother's surname); and aliases or false names used.
- **Mailing address:** The form provides a space for both the client's residence address and a safe mailing address. The USCIS will send notifications to the safe mailing address. The safe address may be the advocate's office address.
- **A number,** or "alien number." This is an 8-digit number, preceded by the letter A, assigned to noncitizens by the U.S. immigration authorities. It appears on all immigration documents issued after the client has made an immigration application in the U.S. or been apprehended by the U.S. immigration authorities. It is not customarily assigned to nonimmigrants, so if the client entered on a nonimmigrant visa and has not been apprehended by the immigration authorities, he or she will probably not have an A number. If the client does not have an A number, put "None known" in the box.
- **Social Security number.** Include only real Social Security numbers. Do not include any Social Security numbers used by the client that are not the client's real number. If the client does not have a real Social Security number, enter "None" in the box.



- Date and country of birth. Take this information from the client's birth certificate or passport, if available. Put dates in U.S. format (month/day/year), instead of the European format (day/month/year) used by many countries.
- Questions on immigration status (passport number, I-94 #, place and date of entry, current INS status.)

The I-94 is a sort of entry ticket, usually on white card stock and about the size of a passport page, issued to nonimmigrants when they are admitted to or paroled into the United States. It shows the classification of nonimmigrant status, the date of entry, and the date on which authorized stay ends. It is the I-94, rather than the visa stamp in the passport, that denotes status and authorizes length of stay.

If the client was not inspected and admitted, then he or she will normally not have an I-94. If so, put "none" in the box requesting the I-94 number and ask the client for the date and place of entry. If the client does not remember exactly the date or place of entry, put something like "circa [or c.] 9/19/2003" and "near Brownsville, Texas." If the client does not have a passport, enter "none" in that box as well.

If the client has an I-94 and the authorized stay shown on it is not expired, take the client's current immigration status from the I-94. For example, the client may have entered as a B-1/B-2 visitor, or an F-1 student. If the client does not have an I-94, or if the authorized stay has expired, enter "applicant for T status" in the box. If the client has already been granted T-1 status and is using Form I-912 to apply for his or her family members, enter "T nonimmigrant" in the box.

If your client has been granted continued presence (see Chapter 5), his or immigration status will likely be "deferred action" or "public interest parole." You should be able to find this from the Office of Refugee Resettlement (ORR) certification letter or from the I-94, if the client has been issued one. If these documents do not clearly state the client's immigration status, enter "continued presence granted [give date]."

### **Part C. Details Related to T Nonimmigrant Status**

- Question C-1 (I am a victim of human trafficking), C-3 (I am physically present in the U.S. on account of the trafficking), and C-4 (I fear that I will suffer extreme hardship involving unusual and severe harm upon removal) – check "yes" for each of these.
- Question C-2 (I am submitting Form I-914 Supplement B, Law Enforcement Certificate.) If you have an LEA to attach, or if law enforcement authorities have informed you that it will be sent directly to CIS, check "yes." If you do not have an LEA, then check "no" and attach secondary evidence of the client's victimization and cooperation with law enforcement. One form of this secondary evidence can be the victim's declaration, discussed in section 4.12

below. In addition, be sure to include in the declaration an explanation of why the victim is not submitting an LEA and of the victim's attempts to obtain an LEA.

- Question C-5 – (I have reported the crime.) Some law enforcement agency must be contacted before filing the T application. Enter the name, address, and phone number of the law enforcement agency contacted by the applicant, and give the number assigned to the applicant's case. The interim regulations require contacting a federal law enforcement agency, but with the Trafficking Victims Protection Reauthorization Act of 2003 (see the first section of this chapter), contacting a state or local law enforcement agency should meet the requirement.
- Question C-6. The question instructs the applicant to check "yes" and proceed to question C-8 if the applicant is under 15 years of age. This is because applicants under a certain age are not required to show compliance with law enforcement requests for assistance. This age was raised in the Trafficking Victims Protection Act of 2003 to 18. Until the DHS changes the application form, cross out "15" and write in "18."
- Question C-7 – I have complied with requests from U.S. government authorities for assistance in the investigation or prosecution of acts of trafficking. If the client has not complied, then check "no" and attach an explanation for the failure to comply. If the client has complied, check "yes." Note that victims under age 18 are not required to comply with requests for assistance in investigation or prosecution.
- Question C-8 – Prior entries to the United States. If this is the client's first time in the United States, check "yes." If this is not the client's first time to the United States, then list the date and place of each entry to the United States for the past five years and the immigration status under which the client entered. (VERY IMPORTANT: Be aware that if the client has had a prior removal, has departed after having been in the United States in unlawful status, or has reentered after a removal or unlawful presence, this may make the client inadmissible to the United States, and the client will need to apply for a waiver of the inadmissibility ground. This is discussed in more detail in the next subsection, "Processing Information." In addition, an unlawful reentry after a removal order will subject the client to reinstatement of the prior removal order, meaning that the immigration authorities may remove the person from the United States without further proceedings. If it appears that the client has one of these problems and if you are not an immigration practitioner yourself, you should consult with an immigration practitioner.)
- Question C-9. Entry on account of trafficking. Check "yes." The client should describe the circumstances of the entry in his or her declaration.

- Question C-10. Request for an employment authorization document (EAD). Check “yes.”
  
- Question C-11. Simultaneous application for family members. If the client is also applying for a spouse or child, or, if a child, a parent, then check “yes” and include Form I-914, Supplement A, application for Immediate Family Member.

#### **Part D. Processing Information.**

The questions in this section of the application request information on whether the applicant is “admissible” to the United States. If you check any of the boxes “yes,” then the applicant must also file Form I-192, application for waiver, with supporting documentation. If more space is needed to respond accurately, the advocate should include explanatory language in the margins or, if there is not sufficient space there, on an attached sheet of paper.

**VERY IMPORTANT:** The inadmissibility grounds can be quite complicated and, in addition to being a requirement for admission to the United States, are also grounds of removability. If you are not a BIA-accredited representative or an attorney, you should consult with one before completing a T visa application form for someone who appears to fall under an inadmissibility ground.

- Question D – 1 – criminal history. It is essential that, if the client has ever been arrested, charged, and/or convicted of a crime, the advocate obtain copies of the client’s criminal court records. In particular, the charging document, conviction, guilty plea, or other document showing the disposition of the case, and sentence are necessary to determine whether the offense has any immigration consequences. It is not necessary to have a conviction in order to be inadmissible on a criminal ground, however; an admission of having committing a criminal offense may also result in inadmissibility under certain circumstances.

It is important to remember that inadmissibility based upon a criminal offense may be waived in CIS’ discretion, if the CIS considers it in the national interest to do so and if the inadmissibility was caused by or is incident to the victimization.

- Question D-2, public charge. The question asks whether the client has received any cash assistance from the United States, state, or local government, and, if so, instructs the applicant to check “yes.” This question is designed to determine whether the applicant falls under the inadmissibility ground of being likely to become a public charge, but was written before the 2003 amendments that exempted T visa applicants from that inadmissibility ground. If the client has received public benefits, he or she may respond by either checking “yes” or entering N/A for “not applicable.”

- Question D-3, prostitution and commercial vice. These questions deal with past, present, and future prostitution, as well as having engaged in unlawful commercialized vice, having assisted others to enter the country illegally, or having participated in trafficking of controlled substances, firearms, or persons. Note that these questions request information about conduct, even if it has not resulted in an arrest, prosecution, or conviction.
- Questions D-4 through D-9. These questions ask for information on whether the applicant has engaged or plans to engage in espionage, terrorism, or other activities involving national security.

### **Part E: Information about Family Members**

This section asks for the name, family relationship, date of birth, and current location of the family members the applicant is applying to have join him or her. If the applicant is asking for those family members to join him or her immediately, the applicant must also complete Form I-914 Supplement A. Even if the family members will not be joining the applicant immediately, however, Part E should be completed, with a notation that Form I-914 Supplement A will be filed later.

### **Part F: Attestation and Release**

This section requires the applicant to sign, certifying that he or she has read the application or had it read to him or her and that all the information in it is correct. The applicant's signature also authorizes the immigration authorities to release any information from the client's file necessary to determine the applicant's eligibility and investigate fraudulent claims, and to release information to law enforcement agencies who are investigating or prosecuting crimes of human trafficking or related crimes. There are no provisions in the instructions for signature by other persons where the applicant is a child. If the applicant is too young to intelligibly make this certification, CLINIC recommends that the applicant's parent, guardian, or next friend sign the application.

### **Part G: Preparer and/or Translator Certificate**

If the application was prepared by someone other than the applicant, that person must give his or her name, address, phone number, and relationship to the applicant, and sign, certifying that the he or she assisted in the preparation of the application and that to the best of his or her knowledge, the information is true and correct.

## **§ 4.12 The Victim's Personal Statement or Affidavit**

The applicant's personal statement or affidavit, and possibly the law enforcement certification or evidence of a grant of continued presence, are the two most compelling parts of the application for a T visa. Because the Vermont Service Center generally will adjudicate the application for a T visa on paper, without actually meeting or talking to the client, the client's statement should be detailed and precise and should be written in the client's words. It will normally be several pages long.

Advocates approach the drafting of the personal statement in various ways. If the client is able, some advocates ask the client to draft the statement and then may make some editing suggestions for organization or clarity. Others draft the statement themselves, based upon the information obtained from the client, and then ask the client for review, corrections, and editing. Either method is acceptable, as long as the facts come through accurately, in a detailed manner, and in the client's words.

The advocate and the client should not expect to complete the personal statement in one sitting. This may be because of several factors. For one thing, the client may be afraid to relate the information, so that it may take several meetings before the client feels secure in disclosing all information to the advocate. In addition, the client may suffer from trauma or physical injury that prevents the client from being able to clearly remember, and it may take some time for the client to be able to recall the necessary information. It may also be very emotionally painful for the client to recall his or her victimization, so that writing of the personal statement must proceed in stages. Finally, the client will almost certainly not have had to write a similar statement before, and it may take some time for the client to understand the amount of detail that is required. The writing of the statement will in itself trigger additional memories or thoughts that can be added in to the next draft of the statement.

The personal statement may be written in English or in the client's native language. If written in English and if the client does not speak English, then the final statement should be read to the client in the client's language. A certification should be included at the end of the statement, stating "I certify that I speak and read English and [the client's language] fluently and that I have fully and accurately interpreted the foregoing statement in person to [client's name] from English into [client's language], on [date]." The interpreter should sign the certification and should include his or her full name, address, and telephone number.

If the statement is written in the client's language, a translation of the statement should be attached to it. The translator should include a certificate at the end of the translation. Here is suggested language for the certificate: "I certify that I read and write both English and [client's language] fluently and that the foregoing is a full and accurate translation into English of the original [client's language] document, done to the best of my ability, on [date] at [place]." The translator should sign the certificate and should include his or her full name, address, and telephone number.

The interim regulations require that an application for a T visa include a statement by the applicant describing the facts of his or her victimization,<sup>65</sup> but the statement should also address each of the other elements in a T visa. Thus, the statement should include facts to cover each of the four main elements of the T visa. It is particularly important that the advocate be familiar with the CIS' interpretation of those elements in the interim regulations, at 8 C.F.R. § 214.11.

A. The client is a victim of a severe form of human trafficking

- A statement that the client a victim of a several form of human trafficking
- The circumstances surrounding the victimization;
- The conditions of the victimization;
- Any threats, coercion, physical or mental abuse, or other means used by the traffickers to control the victim;
- The subjective effect that the traffickers' action had upon the victim.

B. Physical presence on account of the trafficking

- When, how, and where the victim entered the United States;
- The purpose of the victim's entry (if known)
- That victim is still present in the U.S., American Samoa, or Northern Mariana Islands;
- When the victim was liberated from enslavement;
- If not recently liberated, how the victim's continuing presence is directly related to the trafficking;
- If the victim escaped the traffickers before law enforcement became involved, the absence of a clear chance to leave the trafficker and the reasons why leaving was not possible (for example, lack of travel documents, lack of resources, trauma, or injury).

C. Compliance with any reasonable request for assistance from a law enforcement authority.

Showing fulfillment of this request may vary, depending on the client's age, whether requests were reasonable, and whether the client was able to obtain an LEA. Only persons who are 18 or older need comply with LEA requests for assistance. Thus, if the client has not yet reached the age of 18, the statement must give that information and attach evidence of age. This could be a birth certificate or statements from persons who know the client's age, as well as the client's own assertion of his or her age, or a certified medical opinion.<sup>66</sup>

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<sup>65</sup> 8 C.F.R. § 214.11(f).

<sup>66</sup> 8 CFR § 214.11(h)(3)

If an LEA certificate has been obtained, or if the CIS has granted the victim continued presence, then the certificate or evidence of continued presence serves as evidence of the victimization and compliance with reasonable requests for assistance by the LEA. It is essential that the victim's personal statement and the LEA certificate or documents supporting the grant of continued presence be compared to make sure that they do not raise inconsistencies.

Where the client is 18 years or older, the statement should include facts to establish the following:

- When and how the client came into contact with a law enforcement agency (for example, through reporting the trafficking or through an arrest);
- The name and address of the responsible law enforcement agency and, if known, the person or agent assigned to the case;
- How the client made himself or herself available for compliance with requests from the law enforcement agency;
- What requests were made by the law enforcement agency, when those requests were made, and how and when the client complied with these requests.

If the victim does not have an LEA certificate, then the regulations require that the victim provide additional information. This can be placed in the personal statement or in a separate statement. The information required by the regulations is, in addition to evidence of victimization and cooperation with any law enforcement requests for assistance: a description of what the person has done to report the crime to an LEA; if the crime was not previously reported, why not; a statement indicating whether similar records for the time and place of the crime are available; and evidence that the applicant made good faith attempts to obtain the LEA endorsement and a description of those efforts.<sup>67</sup>

Some victims may not have complied with law enforcement requests for assistance because those requests were not reasonable, given the victim's particular circumstances. In this case, the personal statement must explain why the requests were not reasonable under the circumstances.

D. Extreme hardship involving unusual and severe harm upon return.

As noted in section 4.6 above, the interim regulations set out a list of non-exhaustive factors to be considered in determining whether the victim would experience extreme hardship involving unusual and severe harm if he or she were removed from the United States. The personal statement should refer to those factors and to any other hardship factors in the applicant's case. Because of the rule that hardship must be considered in the aggregate, it is essential to include all hardship factors in the client's case, even if those factors by themselves would not amount to the required level of hardship.

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<sup>67</sup> 8 C.F.R. § 214.11(f)(3); (h)(2)

**§ 4.13 Form I-914(B) Law Enforcement Declaration**

An example of Form I-914(B) is attached at Appendix 4-19. The advocate may want to complete the form and then provide it to the law enforcement agency for review and any changes.

**§ 4.14 Additional documents**

Applications for waivers of inadmissibility grounds are submitted on Form I-912, with supporting documents, and attached to the Form I-914 packet.

If derivative family members are applying with the principal applicant, Form I-914, Supplement A, Application for Immediate Family Members of T-1 Recipient, should be attached, together with supporting documentation (discussed in section 4.17 below).

**§ 4.15 Filing and Adjudication of the Application**

The application is filed with the Vermont Service Center, at the following address:

U.S. Citizenship and Immigration Services  
Vermont Service Center  
75 Lower Weldon Street  
P.O. Box 9509  
St. Albans, Vermont 05479-0001.

The envelope should be marked in red on the outside “T application,” to ensure that it is sent to the correct department of the Vermont Service Center.

The designation of the Vermont Service Center to adjudicate T nonimmigrant visa applications is significant. That Service Center currently adjudicates all self-petitions filed by abused immigrants under the Violence Against Women Act. Its experience and expertise in dealing with victims of trauma and abuse and with particularly vulnerable individuals should be invaluable in handling T nonimmigrant applications.

After the I-914 is received, the applicant will receive a notice advising him or her to go to a CIS Application Support Center to have fingerprints taken.<sup>68</sup>

In some cases, the CIS will first determine whether an application is bona fide. A bona fide application is one that is complete and properly filed, contains an LEA endorsement or credible secondary evidence, includes completed fingerprint and background checks, presents prima facie evidence to show eligibility for T nonimmigrant

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<sup>68</sup> 8 CFR § 214.11(d)(5).



status, including admissibility, and contains no indication of fraud.<sup>69</sup> If CIS determines that the application is bona fide, it will send a notice to that effect.<sup>70</sup>

A determination that the application is bona fide provides several benefits to the applicant. It establishes eligibility for ORR certification for public benefits. In addition, a determination that an application is bona fide automatically stays execution of any final order of exclusion, deportation, or removal, until there is a final decision on the T application.<sup>71</sup> The CIS will use various means, such as deferred action, parole, and stay of removal, to prevent removal of persons with bona fide applications until the CIS issues a final decision on the application. Persons granted deferred action, parole, or stay of removal may be granted employment authorization by filing Form I-765, Application for Employment Authorization, with the Service.

The CIS may send requests for additional information, referred to as RFEs. It is important to respond to these within the time allotted, although you may request an extension of time. Be careful to request any extension prior to the expiration of the original response time. The responses, like the initial application, should be sent by certified mail.

T nonimmigrant status may be granted for up to four years from the date of approval<sup>72</sup> and is not renewable.<sup>73</sup> However, T nonimmigrant status may be extended beyond four years if an LEA certifies that the presence of the victim in the United States is necessary to assist in the investigation or prosecution of trafficking activity.<sup>74</sup> The CIS will grant the T nonimmigrant employment authorization during his or her T nonimmigrant status.<sup>75</sup>

An applicant may appeal a denial of T-1 status to the CIS Administrative Appeals Office (AAO).<sup>76</sup> The denial does not become final until the AAO makes its decision.<sup>77</sup> There is no appeal from the CIS's decision to deny a waiver, but applicants may refile their request for waiver in appropriate circumstances.<sup>78</sup>

#### **§ 4.16 Special Provisions for Persons in Removal Proceedings or with a Final Order of Removal**

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<sup>69</sup> 8 CFR § 214.11(a).

<sup>70</sup> 8 CFR § 214.11(k)(3).

<sup>71</sup> 8 CFR § 214.11(k)(4).

<sup>72</sup> 8 CFR § 212.11(p).

<sup>73</sup> *Id.*

<sup>74</sup> INA § 214(o)(7), added by VAWA 2005 § 821(a).

<sup>75</sup> 8 CFR § 214.11(l)(4).

<sup>76</sup> 8 CFR § 214.11(r).

<sup>77</sup> *Id.*

<sup>78</sup> 8 CFR § 212.16(b)(4).

There are special provisions for persons who have proceedings pending before the Immigration Court or who have a final order of removal. Persons in pending Immigration Court proceedings must inform the INS (now the U.S. Immigration and Customs Enforcement (ICE)) if they intend to apply for T nonimmigrant status. Upon ICE agreement or the Immigration Court's or BIA's own initiative, the proceedings may be administratively closed in order to allow the person to apply for T nonimmigrant status with the CIS. If T-1 status is denied, ICE may move to reopen the proceedings.<sup>79</sup>

A person with a final order of exclusion, deportation or removal is not precluded from applying for T nonimmigrant status. He or she should file the application directly with the CIS and may also apply for a stay of removal pending the CIS' decision. If the CIS determines that the application is bona fide, it will automatically stay execution of the removal order until it makes a final decision on the T application.<sup>80</sup> If the T visa application is granted, the final order of removal is considered cancelled as of the date of approval.<sup>81</sup>

#### **§ 4.17 Filing Deadline Where Victimization Occurred Prior to October 28, 2000**

There was a filing deadline for cases in which victimization occurred prior to October 28, 2000 (the enactment date of the VTVPA). Persons in this situation must apply for T-1 status within one year of January 31, 2002. There is an exception for children, who may apply within one year of their 21<sup>st</sup> birthday or one year of January 31, 2002, whichever is later. For purposes of this provision, trafficking victimization is deemed to have occurred on the last day in which an act constituting an element of a severe form of trafficking in persons occurred. Even if an applicant missed the deadline, he or she may still apply if he or she can show exceptional circumstances that prevented filing in a timely manner. These exceptional circumstances may include severe trauma, either physical or mental.<sup>82</sup>

#### **§ 4.18 Admission of the T-1 Nonimmigrant's Immediate Family Members**

T visa applicants and holders may apply for T visas for specified family members. VAWA 2005 made an important change in the requirements for T derivatives by eliminating the former requirement that issuance of a visa to the derivative be necessary to avoid extreme hardship.<sup>83</sup> An adult victim of human trafficking who has applied for or been granted T-1 nonimmigrant status may apply for admission of his or her spouse and children. A victim who is under 21 at the time of the application may apply for admission of his or her spouse, children, parent, and unmarried siblings who are under 18

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<sup>79</sup> 8 CFR § 214.11(d)(8).

<sup>80</sup> 8 CFR § 214.11(d)(9).

<sup>81</sup> 8 CFR § 214.11(d)(9).

<sup>82</sup> 8 CFR § 214.11(d)(4).

<sup>83</sup> INA § 101(a)(15)(T)(ii), amended by VAWA 2005 § 801(a)(2).

when the victim applies for his or her T visa.<sup>84</sup> These relatives are granted T-2 (spouse), T-3 (child), or T-4 (parent) nonimmigrant status.<sup>85</sup> CIS has not yet announced what the code will be for the new sibling category, but it is likely to be “T-5.”

The applicant must establish a qualifying relationship to the derivative family member. This relationship must exist when the application for T-1 nonimmigrant status was filed and must continue to exist when the application for T-2, T-3, or T-4 status was applied for and at the time of the family member’s subsequent admission to the United States.<sup>86</sup>

The T-1 nonimmigrant may apply for the family members on his or her own T application or in a separate application filed later.<sup>87</sup> The application consists of the following:

- Form I-914, Supplement A;
- Filing fee (in addition to that of principal applicant);
- Three current photographs;
- Fingerprint/biometrics fee (\$70.00);
- Evidence of relationship; and
- Evidence demonstrating extreme hardship.<sup>88</sup>

The Trafficking Victims Protection Reauthorization Act of 2003 included special protection against “aging out.” Once a person reaches the age of 21, he or she is generally no longer a “child” for purposes of the immigration laws. In order to prevent a derivative child or parent from losing eligibility, or “aging out,” when a child turns 21, the new provisions specify that a son or daughter who turns 21 will continue to be classified as a child for purposes of T derivative status, as long as the person remains unmarried, was under 21 on the date on which the parent applied for a T visa, and turns 21 while the application is still pending.<sup>89</sup> In terms of derivative parents accompanying or joining T visa applicants who are under 21, the parents will continue to be derivatives after the child turns 21, as long as the child applied for a T visa while under 21 and turns 21 while the application is still pending.<sup>90</sup> The divorce of the victim and the victim’s spouse may result in the revocation of the spouse’s T visa.<sup>91</sup>

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<sup>84</sup> INA § 101(a)(15)(T)(ii)(I), added by § 4(b)(1) of the Trafficking Victims Protection Reauthorization Act of 2003.

<sup>85</sup> 8 CFR § 214.11(o).

<sup>86</sup> 8 CFR § 214.11(o)(3) and (4).

<sup>87</sup> 8 CFR § 214.11(o)(1).

<sup>88</sup> 8 C.F.R. § 214.11(o)(3).

<sup>89</sup> § 4(b)(2)(B), Trafficking Victims Protection Reauthorization Act of 2003, adding INA § 214(o)(4).

<sup>90</sup> § 4(b)(2)(B), Trafficking Victims Protection Reauthorization Act of 2003, adding INA § 214(o)(5).

<sup>91</sup> 8 C.F.R. § 214.11(s)(1).

#### **§ 4.19 Adjustment of Status from T Nonimmigrant to Lawful Permanent Resident**

One of the most beneficial aspects of the T visa is that it allows T nonimmigrants who meet the eligibility requirements to adjust status to lawful permanent residence after a certain period in T nonimmigrant status. The T nonimmigrant may apply for adjustment to permanent residence after either three years in T nonimmigrant status or after a continuous period during the investigation or prosecution of acts of trafficking, where the Attorney General deems the investigation or prosecution complete.<sup>92</sup> The government has not yet issued regulations implementing this provision.<sup>93</sup>

CIS' interim regulations imposed a requirement that the T nonimmigrant apply to adjust status to permanent residence within the 90 days preceding the expiration of the three-year period<sup>94</sup> or lose T status. VAWA 2005 supersedes this provision by allowing a maximum of four years in T nonimmigrant status. Even that period may be extended if a federal, state or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the victim's presence is necessary to assist in the investigation or prosecution.<sup>95</sup>

A principal T nonimmigrant, and any person admitted as his or her spouse, parent, or child, may be allowed to adjust status to lawful permanent residence if the following requirements are met:

- The applicant has at least three years of continuous physical presence in the United States after admission as a T nonimmigrant [a single absence of 90 days or aggregate absences of 180 days preclude a finding of continuous physical presence] or has been physically present for a continuous period during the investigation or prosecution of acts of trafficking, where the Attorney General deems the investigation or prosecution complete.<sup>96</sup>
- The applicant has been a person of good moral character throughout that period;
- The applicant has during that period complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or would suffer extreme hardship involving unusual and severe harm if removed from the United States; and
- The applicant is admissible. The same waivers of inadmissibility grounds that apply to T nonimmigrants also apply to those individuals when they apply to adjust status to lawful permanent residence.<sup>97</sup>

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<sup>92</sup> INA § 245(l), amended by VAWA 2005, § 803(a).

<sup>93</sup> 67 Fed. Reg. 4784 (preamble).

<sup>94</sup> 8 C.F.R. § 214.11(p)(2).

<sup>95</sup> INA § 214(o), amended by VAWA 2005 § 821.

<sup>96</sup> INA § 245(l), amended by VAWA 2005, § 803(a).

<sup>97</sup> INA § 245(l)(1).

LEGAL AID FOUNDATION OF LOS ANGELES

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Writer's Direct Dial Number 213-640-3937

January 24, 2003

U.S. Immigration and Naturalization Service  
Vermont Service Center  
75 Lower Weldon Street  
St. Albans, VT 05479-0001

RE: [REDACTED]  
[REDACTED]

**APPLICATION FOR T NON-IMMIGRANT STATUS AND  
REQUEST FOR FEE WAIVER**

[REDACTED]  
**APPLICATION FOR IMMEDIATE FAMILY MEMBER OF T-1  
RECIPIENT, APPLICATION FOR EMPLOYMENT  
AUTHORIZATION AND REQUEST FOR FEE WAIVER**

[REDACTED]  
**APPLICATION FOR IMMEDIATE FAMILY MEMBER OF T-1  
RECIPIENT, APPLICATION FOR EMPLOYMENT  
AUTHORIZATION AND REQUEST FOR FEE WAIVER**

Dear Sir or Madam:

I am representing [REDACTED]. (A form G-28 entering my appearance as the attorney of record for [REDACTED] is attached.) [REDACTED] is hereby applying for a T visa because she is a victim of a severe form of trafficking in persons and because she would face extreme hardship involving severe and unusual harm if the Immigration and Naturalization Service (INS) removed her to [REDACTED]. Furthermore, after her escape back to [REDACTED], the INS and the US Attorney's office requested [REDACTED] to return to the United States to assist in preparing a criminal case against her trafficker. [REDACTED] fully cooperated with the INS and the US Attorney's office and the case resulted in the successful prosecution against her trafficker in US Federal District Court. [REDACTED] help in the case furthered a significant public interest and was done in spite of the risk to herself and her family in [REDACTED].

[REDACTED] is a 46 year old woman from [REDACTED]. She met her trafficker [REDACTED] in 1992 in [REDACTED] when [REDACTED] offered to get her a visa to the United States so that she could work as a housekeeper for the [REDACTED] in Los Angeles, California. Ms. [REDACTED] accepted the job. However, soon after [REDACTED] arrived in Los Angeles, her trafficker confiscated her passport and forced her to work at her restaurant as well as her home. She forced [REDACTED] to work at her restaurant and at her home for up to 17 hours a day, seven days a week. For 15 months, [REDACTED] verbally and psychologically abused [REDACTED] and made her feel that she could not leave or she would be arrested by the authorities. The trafficker also maintained [REDACTED] in a state of isolation so as to prevent her from interacting with anyone outside of the highly controlled environment and thus keeping her ignorant of any remedies available to her in the outside world.

[REDACTED] was only able to escape her trafficker after 15 months of servitude. Despite threats made to herself and her family, [REDACTED] agreed to assist U.S. authorities in the prosecution against her trafficker, [REDACTED], in U.S. District Court. As a result of her cooperation, the trafficker was convicted of involuntary servitude and sentenced to [REDACTED] in prison. This conviction was recently upheld by the Ninth Circuit Court of Appeals and stands as a landmark that will inform other courts in their prosecution of traffickers in similar cases.

[REDACTED] is unable to return to [REDACTED] because she will face extreme hardship and severe and unusual harm in [REDACTED]. [REDACTED] family is wealthy, prominent and well connected to the [REDACTED] authorities as well as criminal gangs. [REDACTED] is afraid for her safety and her life because she knows that the [REDACTED] family will seek revenge; [REDACTED] mother has threatened to come after [REDACTED] if she goes back to [REDACTED]. The [REDACTED] police will not protect her, since the police themselves are often involved in trafficking and women and the poor have little access to protection from the government. In addition, due to [REDACTED] prominent family and high social status, her criminal case received much publicity in [REDACTED] thus making more likely that [REDACTED] will be identified if she is forced to return to [REDACTED].

At this time, [REDACTED] is also applying for derivative T status for her minor child and her husband. [REDACTED] husband and child will face extreme hardship and will suffer severe and unusual harm if they are forced to return to [REDACTED]. As relatives of [REDACTED], it is likely that [REDACTED] would be targeted for revenge. Around the time that [REDACTED] came to the U.S. to testify against her trafficker, her husband found a bullet that someone had placed in their mailbox. In addition, her husband was followed by a car on several occasions. Fearing for their children's safety, [REDACTED] and her husband moved their daughters to another house and changed their schools. Eventually her husband and child joined [REDACTED] here in the U.S.

Please note that [REDACTED] and her spouse and child are requesting fee waivers for all applications enclosed. The only fee that is included is the fingerprint fee for all 3 applicants.

Included please find the following forms and supporting evidentiary documents:

**INS Applications and Fees**

1. Form I-914 Application for T Nonimmigrant Status for [REDACTED] and Application for Fee Waiver
2. [REDACTED] declaration
3. Form I-914 Supplement A Application for Immediate Family Member or T-1 Recipient for [REDACTED] and Application for Fee Waiver
4. Marriage Certificate for [REDACTED] and [REDACTED] and translation
5. Document indicating that [REDACTED] name has been changed to [REDACTED] and translation
6. I-765 Application for Employment Authorization for [REDACTED]
7. Form I-914, Supplement A Application for Immediate Family Member or T-1 Recipient for [REDACTED] and Application for Fee Waiver
8. Birth Certificate for [REDACTED] indicating that her parents are [REDACTED] and [REDACTED] and translation
9. I-765 Application for Employment Authorization for [REDACTED]
10. 3 INS style photos each for the applicant and the two derivatives
11. Check for fingerprints in the amount of \$150 to cover the applicant and two derivatives

**Primary Evidence of Being Victim of Severe Form of Trafficking in Persons**

12. Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, including United States District Court for the Central District of California, Second Superseding [sic] Indictment, United States of America v. [REDACTED] February 1998

**Secondary Evidence of Being Victim of Severe Form of Trafficking in Persons**

**Court documents**

13. United States District Court, Central District of California, Criminal minutes-Sentencing and Judgment, Case number [REDACTED] CM, [REDACTED], 2000
14. United States District Court Central District of California, Judgment and Probation/Commitment Order for defendant [REDACTED], [REDACTED], 2000
15. United States Court of Appeals For the Ninth Circuit, United States of America v. [REDACTED], December [REDACTED] affirming conviction of [REDACTED] for involuntary servitude and the district court's application of the vulnerable victim sentencing enhancement.

**Declarations, Affidavits and Articles**

16. Coalition to Abolish Slavery & Trafficking, letter of support from [REDACTED] and [REDACTED] January 20, 2003
17. Thai Community Development Center, letter of support from [REDACTED] [REDACTED], December 18, 2002

**Documents in Supporting that applicant will face "extreme hardship involving unusual and severe harm" if returned to [REDACTED]**

18. See Declaration of Applicant

19. "Country Reports on Human Rights Practices," US Department of State, 2001

Reporting that the country is a source for trafficking women for indentured servitude and forced labor and that some local officials, immigration officers and police reportedly either are involved in trafficking directly or take bribes to ignore it. Furthermore, the report states that [REDACTED] women are trafficked internationally to countries such as the United States. In addition, reporting that traffickers misrepresent the type of work and working conditions and victims may find themselves forced to remain and work in their trafficked locations. [REDACTED] Also reporting that the government faces severe budgetary limitations on its ability to fight trafficking and to aid its victims. [REDACTED]

20. [REDACTED] Human Rights Watch world Report 2001

Reporting that [REDACTED] continued to be a hub of human trafficking and that enforcement of [REDACTED] laws on trafficking remained weak.

21. "Special Report: Some Foreign Household Workers Face Enslavement," [REDACTED], [REDACTED]

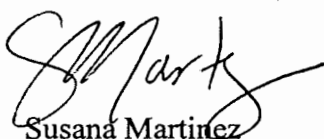
Reporting that [REDACTED] threatened [REDACTED] undocumented [REDACTED] women and their families with harm if they tried to leave.

22. "[REDACTED]" [REDACTED], [REDACTED]

Reporting on [REDACTED] criminal case and describing that she used her political connections for bringing female [REDACTED] workers into the US and forcing them to work as many as 18 hours a day, restricting their contact with the outside world and threatening to harm them and their families.

Thank you for your consideration in this case. Please contact me should you need further documentation.

Sincerely,



Susana Martinez  
Attorney at Law



**Notice of Entry of Appearance  
as Attorney or Representative**

**Appearances** - An appearance shall be filed on this form by the attorney or representative appearing in each case. Thereafter, substitution may be permitted upon the written withdrawal of the attorney or representative of record or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his personal appearance or signature shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. **Availability of Records** - During the time a case is pending, and except as otherwise provided in 8 CFR 103.2(b), a party to a proceeding or his attorney or representative shall be permitted to examine the record of proceeding in a Service office. He may, in conformity with 8 CFR 103.10, obtain copies of Service records or information therefrom and copies of documents or transcripts of evidence furnished by him. Upon request, he/she may, in addition, be loaned a copy of the testimony and exhibits contained in the record of proceeding upon giving his/her receipt for such copies and pledging that it will be surrendered upon final disposition of the case or upon demand. If extra copies of exhibits do not exist, they shall not be furnished free on loan; however, they shall be made available for copying or purchase of copies as provided in 8 CFR 103.10.


In re: [REDACTED]	Date: 1-6-03
	File No. [REDACTED]

I hereby enter my appearance as attorney for (or representative of), and at the request of the following named person(s):

Name: [REDACTED]	<input type="checkbox"/> Petitioner	<input checked="" type="checkbox"/> Applicant
	<input type="checkbox"/> Beneficiary	
Address: (Apt. No.) (Number & Street) (City) (State) (Zip Code)	[REDACTED]	[REDACTED]
Name:	<input type="checkbox"/> Petitioner	<input type="checkbox"/> Applicant
	<input type="checkbox"/> Beneficiary	
Address: (Apt. No.) (Number & Street) (City) (State) (Zip Code)	[REDACTED]	[REDACTED]

Check Applicable Item(s) below:

- 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia California Supreme and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.
- 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:
- 3. I am associated with \_\_\_\_\_ the attorney of record previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)
- 4. Others (Explain Fully.)

SIGNATURE 	COMPLETE ADDRESS 5228 E Whittier Blvd Los Angeles, CA 90022
NAME (Type or Print) Susana Martinez	TELEPHONE NUMBER 213-640-3909

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS.

SUSANA MARTINEZ  
(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSURE IS IN CONNECTION WITH THE FOLLOWING MATTER: Appendix 4-5

Name of Person Consenting [REDACTED]	Signature of Person Consenting [REDACTED]	Date 01/06/2003
---	--	--------------------

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is contained in 8CFR 103.10 and 103.20 Et.SEQ.

# FEE WAIVER REQUEST

Name: \_\_\_\_\_ Alien Number: \_\_\_\_\_

Date: 02/14/2002 Application Form Number: I-765

I am requesting a fee waiver for the attached application as provided by 8 CFR 103.7. I am unable to pay the fee because of the following situation(s), with evidence labeled and included:

- PUBLIC BENEFITS. Within the last 180 days, I qualified for or received the following federal means tested public benefit(s):
- Food Stamps -  Medicaid -  Supplemental Security Income
  - Temporary Assistance to Needy Families
  - Other: \_\_\_\_\_

I am submitting item (A) from the list of evidence.

- INCOME. My household income on which taxes were paid for the most recent tax year is \_\_\_\_\_ which is at or below the poverty level contained in the most recent poverty guidelines revised annually by the Secretary of Health and Human Services. I am submitting the following item(s) from the list of evidence: \_\_\_\_\_

- AGE. I am elderly (aged 65 or older) at this times.

- DISABILITY. I am disabled. I am submitting item (B) from the list of evidence.

- DEPENDENTS. I have 5 (number of) dependents aged 14, 11, 10, 8, 7. Two are seeking derivative status or benefits concurrently with me. I am submitting the following item(s) from the list of evidence: E, F, J

- SPECIAL SITUATION. I am in the following situation which requires humanitarian or compassionate consideration:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I am submitting item (B) from the list of evidence: \_\_\_\_\_

# FEE WAIVER REQUEST

- Page 2 -

Name: \_\_\_\_\_ Alien Number: \_\_\_\_\_

OTHER. Other, explained below:

My I-360 self-petition as an abused spouse was approved on 01/26/2000. Since then I have been supporting my 5 children and myself on my own. I am in a training program to improve my possibility of finding stable employment, but I have no extra money at this time.

I am submitting item (s) from the list of evidence: I: copy of I-360 Approval;  
copy of page from I-360 indicating my 5 children;  
copy of child support check

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## LIST OF EVIDENCE:

(Write "Fee Waiver Request" and item letter at top of each page)

- A. Evidence that I have, within the last 180 days, qualified for or received a federal means tested benefit.
- B. Documentation showing that my disability has been previously determined by the Social Security Administration, Health and Human Services, Veteran's Administration, the Department of Defense, or other appropriate federal agency.
- C. Employment records, pay stubs, W-2 forms, letter(s) from employer(s)
- D. Income tax return (proof of filing a tax return)
- E. Utility bills (such as gas, electricity, telephone, water)
- F. Receipts for rent, food, medical expenses, child care, and/or other essential expenditures
- G. Documentation to show all assets owned, possessed, or controlled by me or my dependents
- H. Evidence of my living arrangements in the United States and whether my spouse, children, or other dependents are living in my household
- I. Evidence of essential, unexpected expenditures made by me or my dependents living in the United States
- J. Other evidence



APPLICATION for FEE WAIVER

I, \_\_\_\_\_, A# \_\_\_\_\_ AM  
REQUESTING A FEE WAIVER FOR THE ATTACHED APPLICATION, PETITION OR  
MOTION AS PROVIDED BY TITLE 8 CFR 103.7. I DO NOT HAVE SUFFICIENT  
FUNDS TO PAY THE FEE, EVEN THOUGH I BELIEVE I AM ENTITLED TO THE  
BENEFIT.

I CANNOT PAY THE FEE BECAUSE I do not have sufficient income  
to pay the fee and also pay for my living expenses.

MY MONTHLY INCOME IS  
\$ 500.00 AND I HAVE 1 DEPENDENTS.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND  
CORRECT.

SIGNATURE \_\_\_\_\_ DATE: \_\_\_\_\_

REFERRED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

(DO NOT WRITE BELOW THIS LINE)

FOR INS USE ONLY  
(VERIFY APPLICANT'S STATUS & INDICATE BELOW)

TYPE OF APPLICATION \_\_\_\_\_

REQUEST:  
APPROVED  
DENIED

SIGNATURE \_\_\_\_\_ DATE: \_\_\_\_\_  
ASSISTANT DISTRICT DIRECTOR

IN ACCORDANCE WITH 8 CFR 103.7

# 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

## 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 <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> 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) ██/██/199█	Place of Issuance ██████████		
I-94 # ██████████	Date of Last Entry into U.S. ██████████			
Place of Last Entry into U.S. LOS ANGELES		Current INS Status		

Bar Code						
Date Stamp						
Remarks						
Bona Fide Application						
<table style="width: 100%; border: none;"> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none; font-size: small;">Initials</td> <td style="border: none; font-size: small;">Stamp #</td> <td style="border: none; font-size: small;">Date</td> </tr> </table>	_____	_____	_____	Initials	Stamp #	Date
_____	_____	_____				
Initials	Stamp #	Date				
Conditional Approval						
<table style="width: 100%; border: none;"> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> <tr> <td style="border: none; font-size: small;">Initials</td> <td style="border: none; font-size: small;">Stamp #</td> <td style="border: none; font-size: small;">Date</td> </tr> </table>	_____	_____	_____	Initials	Stamp #	Date
_____	_____	_____				
Initials	Stamp #	Date				
Action Block						

## 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  U.S. Attorney	Address 312 N. Spring Street 15th Floor Los Angeles, CA	Phone No. [REDACTED]
		Case No. CR [REDACTED]

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
05/15/[REDACTED]	LOS ANGELES	
09/[REDACTED]	LOS ANGELES	Sig. Public Benefit
06/[REDACTED]	LOS ANGELES	Sig. Public Benefit

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 origin 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
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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.









1 take us and pick us up. I was not allowed to use the phone. Whenever I received mail, [REDACTED]  
2 opened and read the mail before she gave it to me. When I complained about this, she cursed at me.  
3 One of the other workers told me that I should be careful about talking back to [REDACTED] because I  
4 may get hit like she had. [REDACTED] hit her in the back and pinched her.

5 7. I was afraid to tell anyone about what was happening. [REDACTED] was the mistress of [REDACTED]  
6 [REDACTED], a [REDACTED]. They have a lot of power and influence. They are rich. [REDACTED] told  
7 me that because I did not have identification that I could not ride the buses and told me that the  
8 police would catch me. Plus, I do not speak English. She threatened that if I caused her any trouble,  
9 I would get 100 times the trouble back.

10 8. Once when I was delivering food, I used a public phone to call the aunt of one of the  
11 workers. I asked her for help in warning other family members not to accept work from [REDACTED].  
12 The lady called my husband and told him this. My husband sent letters to the U.S. embassy  
13 informing them that I had been deceived but the letters were forwarded to the [REDACTED] consulate here in  
14 the U.S. and nothing happened. I suspect that nothing happened because [REDACTED] is the mistress of  
15 [REDACTED] and they used their power and influence to cover up my husband's complaint. Finally,  
16 desperate to get me out of this situation, my husband sent money to [REDACTED] to pay for my airline  
17 ticket back to [REDACTED]. I did not know that he had done this until I returned to [REDACTED].

18 9. One day, I told [REDACTED] that I did not want to work anymore and asked her for my passport.  
19 She told me that she did not have it but that I could leave. I had nowhere to go and only had \$106. I  
20 packed my belongings and as I was leaving, [REDACTED] told me to go to work. She said that I was an  
21 unstable person and that if I went back to work, she would let me go back to [REDACTED]. I went to  
22 work and worked for three more months but [REDACTED] no longer paid me. In the fourth month,  
23 [REDACTED] told me that I did not have to work anymore and that she would send me back to [REDACTED].  
24 That same day, August 1997, [REDACTED] took me to the airport and I went home. I did not have time  
25 to talk to any of the other workers before I left. I believe that [REDACTED] decided to send me back  
26 because she did not want my husband to keep trying to cause trouble for her and because he sent her  
27 money for my airline ticket.

28

DECLARATION OF [REDACTED]

Appendix 4-12

1 10. When I returned to [REDACTED], I did not have any more contact with [REDACTED]. I sent letters to  
2 some of the other workers who were still working for [REDACTED] but I received a letter from one of  
3 them telling me not to write to them anymore. I returned to my old job as a seamstress.

4 11. About three years later, I heard news on the radio and heard that [REDACTED] had escaped from  
5 [REDACTED]. [REDACTED] called me and asked me for help. She told me that an U.S. official named [REDACTED]  
6 would call me. [REDACTED] did call me and asked me to be a witness in the case against [REDACTED]. He  
7 told me that [REDACTED] had been arrested and was in jail.

8 12. I agreed to be a witness and came to the U.S. in September of 1997 for three days. I met  
9 [REDACTED] and made a statement. I told him that I came to the U.S. to be a housekeeper and described  
10 what happened instead. I explained to him how [REDACTED] had taken me to apply for a passport and  
11 for a visa.

12 13. I returned to [REDACTED]. Now, I became more afraid of [REDACTED]. [REDACTED] lawyer came to  
13 my house along with [REDACTED] two sisters. The lawyer was American and did not speak [REDACTED] so  
14 [REDACTED] sister translated for us. At first the lawyer told me that he was an officer of the [REDACTED]  
15 consulate in America. It was not until my husband arrived home and asked him for his business  
16 card, that we discovered he was a lawyer. Once my husband came home, they left but I had already  
17 talked to him because I believed that he was an official of the [REDACTED] consulate. [REDACTED] had sent him  
18 to see me and make sure that I was in [REDACTED]. He took photos of me and recorded our  
19 conversation. I told him the truth about what had happened but he did not seem to be happy with  
20 what I told him.

21 14. In October of 1997, [REDACTED] sister came to my house. [REDACTED] mother's house is close  
22 to where my house is. The sister told me that if anyone contacted me from the U.S. that I should not  
23 go because I would be arrested and put in jail. She also said that if I needed work and needed to  
24 clear debt up with [REDACTED], that she would help me. She said that if I did go to the U.S. that I  
25 should say that I worked as a child care worker and not to say that I worked in the restaurant. She  
26 tried to persuade me to be a witness for [REDACTED]. She tried to convince me not to come to the U.S.  
27 She did not know that I had already returned to the U.S. to help in the case against [REDACTED]. I did  
28

1 not respond but instead just kept quiet. I was afraid and did not know what would happen next. I  
2 felt unsafe. [REDACTED] family has a lot of influence in my hometown of [REDACTED], a suburb of  
3 [REDACTED]. [REDACTED] niece is my next door neighbor. [REDACTED] sister also told me that [REDACTED]  
4 and [REDACTED] were trying to blackmail [REDACTED] to get money from her. While [REDACTED] sister was  
5 at my house, she called her mother and had me talk to her. She told me that [REDACTED] and [REDACTED]  
6 wanted \$10 million but that they were going to get a bullet instead.

7 15. About a week or two later, two of [REDACTED] sisters and her brother-in-law came to my  
8 house. [REDACTED] brother-in-law was a little drunk and indicated to me that he had a gun in his  
9 pocket. He said that if anyone could get his sister-in-law put in jail, then he could kill anyone. They  
10 spoke to me about [REDACTED] and he said that if she came back to [REDACTED] that he would do something  
11 to her. I did not tell anyone about this because I was afraid. [REDACTED] family has connections to  
12 the police and she knows powerful people. I was afraid that they would use their influence against  
13 me. I have two daughters and I was afraid for their safety as well.

14 16. In June of 199[REDACTED], I returned to the U.S. to be a witness against [REDACTED] at her trial. News  
15 was broadcast in [REDACTED] about the trial. [REDACTED] family knew that I was in the U.S. to be a  
16 witness against her. A few days before the trial, my husband found a bullet in our mailbox. We  
17 were very afraid and moved our daughters to another house and changed their schools. Eventually  
18 my youngest daughter and husband came to the U.S. out of fear for their safety. My oldest daughter  
19 is now in [REDACTED]. Before he came to the U.S., my husband was followed by a car on several  
20 occasions. We suspect that it is connected to [REDACTED] because before I decided to testify against  
21 her, we did not have any problems and lived peacefully.

22 17. Since coming to the U.S. in 199[REDACTED], I have not returned to [REDACTED]. After the trial, I lived at a  
23 Temple for a few months and then began working as a live-in babysitter. Although I was still afraid  
24 for my safety, [REDACTED] told me not to be afraid because [REDACTED] was now in jail. My youngest  
25 daughter came to the U.S. in October of 200[REDACTED] and she now attends high school. My husband joined  
26 us in the U.S. in March of 200[REDACTED].

1 18. I am afraid to return to [REDACTED] [REDACTED] is rich and has friends and family in [REDACTED]. I  
2 am afraid that they will kill me. In [REDACTED] it is easy to kill someone and get away with it.  
3 [REDACTED] mother told [REDACTED] (another worker who was held by [REDACTED]) sister that the people  
4 who made her daughter go to jail will be killed within three days of returning to [REDACTED]

5  
6 I declare under penalty of perjury that the foregoing is true and correct.

7  
8 Date: 1/16/08

[REDACTED]  
[REDACTED]

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Appendix 4-15

DECLARATION OF [REDACTED]

**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

NONE

Country of Birth ██████████	Country of Citizenship ██████████	Passport # ██████████	Issue Date (MM/DD/YYYY) ██/██/199█	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.)

VISITOR

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
██/██/199█	LOS ANGELES, CA	Sig. Public Interest
██/██	LOS ANGELES, CA	
██/200█	LOS ANGELES, CA	visitor

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)

April 200█

Appendix 4-16

**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
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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 origin or political opinion?  Yes  No

Appendix 4-17





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:		<input type="checkbox"/> U.S. Marshall's Service, DOJ	<input checked="" type="checkbox"/> U.S. Attorney's Office	Date
<input type="checkbox"/> Immigration and Naturalization Service, DOJ	<input type="checkbox"/> Federal Bureau of Investigation, DOJ	<input type="checkbox"/> Dept. of State Diplomatic Security		11-18-02
<input type="checkbox"/> Civil Rights Division, DOJ	<input type="checkbox"/> Criminal Division, DOJ	<input type="checkbox"/> Other _____		
Address of Agency/Official 312 N. Spring Street, 15th floor			Name and Title of Certifying Officer or Official _____, Asst. U.S. Attorney	
City Los Angeles	State CA	ZIP Code 90012	Phone No. ( 213 ) _____ - _____	Fax No. ( 213 ) _____
Victim's Name _____		Other Names Used	Sex <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	Date of Birth (MM/DD/YYYY) _____
Date of Crime 5/____ to 1/14/____	Charges See attached indictment.			Case No. _____
Date Initiated (MM/DD/YYYY) _____/199____	Case Status <input checked="" type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> N/A	Date Completed (MM/DD/YYYY)		FBI Identification No., if any

### PART B. Statement of Claim

- 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.
- 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.

This case involved the smuggling of women from \_\_\_\_\_ to the United States for the purpose of forcing the women to work at defendant's home and restaurant under harsh conditions. Defendant, a \_\_\_\_\_ national, used her influence with the \_\_\_\_\_ Ministry of foreign affairs to obtain temporary visas for the victims to enter the United States. Defendant enticed the victims by promising them well-paid jobs in the U.S. with benefits. Immediately upon arrival, defendant threatened the workers with physical violence and legal coercion, forced them to perform demeaning tasks at her home and restaurant and denied medical care. Each of the victims were repeatedly warned that disobedience would endanger their lives and the lives of their families in \_\_\_\_\_ and that defendant had the ability to carry out the threat. The victims face the potential for severe harm if returned to \_\_\_\_\_ based on defendant's previous threats and ability to carry out the threats through her connections in \_\_\_\_\_.

**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.

Each of the victims has been very helpful in the investigation and prosecution of the case. Each of the victims provided critical evidence necessary to secure defendant's convictions and their cooperation placed their families at risk in [REDACTED]. All of the victims were interviewed on numerous occasions by agents of the Federal Bureau of Investigation, U.S. Postal Inspection Service and Immigration and Naturalization Service as well as prosecutors in the United States Attorney's Office. The victims' cooperation resulted in the successful prosecution of defendant who is currently serving a [REDACTED]-month term of imprisonment while her appeal is pending before the Ninth Circuit Court of Appeals.

**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.

[REDACTED SIGNATURE]  
*(Signature of Law Enforcement Officer identified in Box A above)*

[REDACTED] - 07  
Date (Month/Day/Year)

[REDACTED SIGNATURE]  
*(Signature of Supervisor of Certifying Officer)*

[REDACTED], Chief  
*(Printed Name of Supervisor)*

[REDACTED] - 07  
Date (Month/Day/Year)

Appendix 4-20

# Freedom of Information/Privacy Act Request

## INSTRUCTIONS

Please read ALL Instructions carefully before completing this form.

Applicants making false statements are subject to criminal penalties (Pub.L. 93-579.99 Stat. (5 U.S.C. 552a(i)(3)).

### Are There Cases When You do not Use This Form?

Do not use this form:

- (1) To determine status of pending applications, write to the office where the application was filed or call the nearest INS office;
- (2) For Consular notification of visa petition approval, use Form I-824 (Application for Action on an Approved Application or Petition);
- (3) For the return of original documents, use Form G-884 (Request for Return of Original Documents);
- (4) For records of naturalization prior to September 27, 1906, write to the clerk of court where naturalization occurred; or
- (5) For information on INS manifest arrivals prior to December 1982, write to the National Archives.

### How Can You Obtain Copies of Records from INS?

Persons requesting a search for access to INS records under the Freedom of Information or Privacy Acts may submit the completed application to the INS office nearest the applicant's place of residence. Requests may be submitted in person or by mail. If an application is mailed, the envelope should be clearly marked "Freedom of Information" or "Privacy Act Request." The INS Internet address is:  
<http://www.ins.usdoj.gov>.

### What Information is Needed to Search for Records?

*Please Note:* Failure to provide complete and specific information as requested in Item 5 of the form, may result in a delay in processing or inability to locate the record(s) or information requested. You may access "<http://www.access.gpo.gov/su-docs>" for a description of DOJ/INS systems of records.

### Verification of Identity in Person.

Requesters appearing in person for access to their records may identify themselves by showing a document bearing a photograph (such as an Alien Registration Card, Form I-551, Citizen Identification Card, Naturalization Certificate, or passport) or two items which bear their name and address (such as a driver's license and voter's registration).

### Verification of Identity by Mail.

Requesters wanting access to their records shall identify themselves by name, current address, date and place of birth, and alien or employee identification number. A notarized example of their signatures or sworn declaration under penalty of perjury must also be provided (this Form G-639 or a DOJ Form 361, Certification of Identity, may be used for this purposes).

### Verification of Identity of Guardians.

Parents or legal guardians must establish their own identity as parents or legal guardians and the identity of the child or other person being represented.

### Authorization or Consent.

Other parties requesting nonpublic information about an individual usually must have the consent of that individual on Form G-639 or by an authorizing letter, together with appropriate verification of identity of the record subject. Notarized or sworn declaration is required from a record subject who is a lawful permanent resident or U.S. citizen, and for access to certain Legalization files.

### Can My Request be Expedited?

To have your request processed ahead of ones received earlier you must show a compelling need for the information.

### How Do You Show a Compelling Need?

A requester who seeks expedited processing must explain in detail the basis of the need and should submit a statement certified to be true and correct to the best of your knowledge and belief. You must also establish one or more of the following exists:

- (1) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or result in the loss of substantial due process rights;
- (2) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; or
- (3) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.

### Fees.

Except for commercial requesters, the first 100 pages of reproduction and two hours of search time will be furnished without charge. Thereafter, for requests processed under the Privacy Act, there may be a fee of \$ .10 per page for photocopy duplication. For requests processed under the Freedom of Information Act, there may be a fee for quarter hours of time spent for searches and for review of records. Search fees are at the following rates per quarter hour: \$4.00 clerical; \$7.00 professional/computer operator; and \$ 10.00 managerial. Other costs for searches and duplication will be charged at the actual direct cost. Fees will only be charged if the aggregate amount of fees for searches, copy and/or review is more than \$14.00. If the total anticipated fees amount to more than \$250.00, or the same requester has failed to pay fees in the past, an advance deposit may be requested. Fee waivers or reductions may be requested for a request that clearly will benefit the public and is not primarily in the personal or commercial interest of the requester. Such requests should include a justification.

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**INSTRUCTIONS** *Continued*

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**When Must I Submit Fees?**

**Do not send money with this request.** When requested to do so, submit fees in the exact amount. Payment may be in the form of a check or a United States Postal money order (or, if form is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States) made payable, in United States currency, to the "Immigration and Naturalization Service". A requester residing in the U.S. Virgin Islands shall make his/her remittance payable to "Commissioner of Finance of the Virgin Islands," and, if residing in Guam, to "Treasurer, Guam". **DO NOT SEND CASH AT ANYTIME.**

A charge of \$30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. Every remittance will be accepted subject to collection.

**Routine Uses.**

Information will be used to comply with requests for information under 5 U.S.C. 552 and 552a; information provided to other agencies may be for referrals, consultations, and/or to answer subsequent inquiries concerning specific requests.

**Effect of Not Providing Requested Information.**

Furnishing the information requested on this form is voluntary. However, failure to furnish the information may result in the inability of INS to comply with a request when compliance will violate other policies or laws.

**General Information.**

The Freedom of Information Act (5 U.S.C. 552) allows requesters to have access to Federal agency records, except those which have been exempted by the Act.

**Privacy Act Statement.**

Authority to collect this information is contained in Title 5 U.S.C. 552 and 552a. The purpose of the collection is to enable INS to locate applicable records and to respond to requests made under the Freedom of Information and Privacy Acts.

**The Privacy Act of 1974. (5 U.S.C. 552a).**

With certain exceptions, the Privacy Act of 1974 permits individuals (U.S. citizens or permanent resident aliens) to gain access to information pertaining to themselves in Federal agency records, to have a copy made of all or any part thereof, to correct or amend such records, and to permit individuals to make requests concerning what records pertaining to themselves, are collected, maintained, used or disseminated. The Act also prohibits disclosure of individuals' records without their written consent, except under certain circumstances as prescribed by the Privacy Act.

**Public Reporting Burden.**

Under the Paperwork Reduction Act (5 U.S.C. 1320), a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is 15 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler you may write to the Immigration and Naturalization Service, HQPDI, 425 I Street, N.W., Room 4307r, Washington, DC 20536; OMB No. 1115-0087.

**Freedom of Information/Privacy Act Request**

The completion of this form is optional.

Any written format for Freedom of Information or Privacy Act requests is acceptable.

**START HERE – Please type or print and read instructions on the reverse before completing this form.**

1. Type of Request: *(Check appropriate box)*

- Freedom of Information Act (FOIA) *(Complete all items except 7)*
- Privacy Act (PA) *(Item 7 must be completed in addition to all other applicable items)*
- Amendment *(PA only, Item 7 must be completed in addition to all other applicable items)*

2. Requester Information:

Name of Requester:		Daytime Telephone:
Address <i>(Street Number and Name)</i> :		Apt. No
City:	State:	Zip Code:

**By my signature, I consent to the following:**

Pay all costs incurred for search, duplication, and review of materials up to \$25.00, when applicable. *(See Instructions)*

**Signature of requester:** \_\_\_\_\_

- Deceased Subject - **Proof of death must be attached.** *(Obituary, Death Certificate or other proof of death required)*

3. Consent to Release Information. *(Complete if name is different from Requester)(Item 7 must be completed)*

Print Name of Person Giving Consent:	Signature of Person Giving Consent:
--------------------------------------	-------------------------------------

**By my signature, I consent to the following:** *(check applicable boxes)*

- Allow the Requester named in item 2 to see  all of my records or  a portion of my record. If a portion, specify what part *(i.e. copy of application)*

*(Consent is required for records for United States Citizens (USC) and Lawful Permanent Residents (LPR))*

4. Action Requested *(Check One)*:  Copy  In-Person Review

5. Information needed to search for records:

Specific information, document(s), or record(s) desired: *(Identify by name, date, subject matter, and location of information)*

\_\_\_\_\_

Purpose: *(Optional: you are not required to state the purpose for your request; however, doing so may assist the INS in locating the records needed to respond to your request.)*

\_\_\_\_\_

6. Data NEEDED on SUBJECT of Record: *(If data marked with asterisk (\*) is not provided records may not be located)*

* Family Name	Given Name:		Middle Initial:
*Other names used, if any:	* Name at time of entry into the U.S.:		I-94 Admissions #:
* Alien Registration #:	* Petition or Claim Receipt #:	* Country of Birth:	*Date of Birth or Appx. Year
Names of other family members that may appear on requested record(s) <i>(i.e., Spouse, Daughter, Son)</i> :			
Country of Origin <i>(Place of Departure)</i> :	Port-of-Entry into the U.S.		Date of Entry:
Manner of Entry: <i>(Air, Sea, Land)</i>	Mode of Travel: <i>(Name of Carrier)</i>		SSN:
Name of Naturalization Certifications:		Certificate #:	Naturalization Date:
Address at the time of Naturalization:		Court and Location:	

7. Verification of Subject's Identity: (See Instructions for Explanation)(Check One Box)

In-Person with ID       Notarized Affidavit of Identity       Other (Specify) \_\_\_\_\_

Signature of Subject of Record: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone No.: (      ) - \_\_\_\_\_

NOTARY (Normally needed from individuals who are the subject of the records sought) (See below)  
or a sworn declaration under penalty of perjury.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ in the Year \_\_\_\_\_

Signature of Notary \_\_\_\_\_ My Commission Expires \_\_\_\_\_

OR

If a declaration is provided in lieu of a notarized signature, it must state, at a minimum, the following: (Include Notary Seal or Stamp in this Space)

If executed outside the United States: "I declare (certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

If executed within the United States, its territories, possessions, or commonwealths: "I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**I-192, Application for Advance  
Permission to Enter as Nonimmigrant  
(Pursuant to Section 212(d)(3) of the Immigration and Nationality Act)**

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

(Pursuant to Section 212(d)(3) of the Immigration and Nationality Act)

Fee Stamp

(Please read instructions on Page 2.)

File No. \_\_\_\_\_

I hereby apply to the Secretary of Homeland Security for permission to enter the United States temporarily under the provisions of section 212(d)(3) of the Immigration and Nationality Act.

1. FULL NAME <i>(Print)</i>		2. DATE OF BIRTH	
3. PLACE OF BIRTH <i>(City-Town, State/Province, Country)</i>		4. PRESENT CITIZENSHIP	
5. PRESENT ADDRESS			
6. ALL ADDRESSES AT WHICH I HAVE RESIDED DURING THE PAST FIVE YEARS <i>(Use separate sheet of paper, if necessary.)</i>			
7. DESIRED PORT OF ENTRY INTO U.S.		8. MEANS OF TRANSPORTATION	
9. PROPOSED DATE OF ENTRY	10. APPROXIMATE LENGTH OF STAY IN THE UNITED STATES:		
11. MY PURPOSE FOR ENTERING THE UNITED STATES IS: <i>(Explain fully)</i>			
12. I BELIEVE I MAY BE INADMISSIBLE TO THE UNITED STATES FOR THE FOLLOWING REASONS AND NO OTHERS:			
13. I <input type="checkbox"/> have <input type="checkbox"/> have not previously filed an application for advance permission to enter as a nonimmigrant on _____ at _____.			
14. I understand that the information herein contained may be used in any proceedings (including civil or criminal judicial proceedings, or deportation or removal proceedings) hereafter instituted against me.  I certify that the statements above and all attachments hereto are true and correct to the best of my knowledge and belief.			
_____ (Signature of Applicant)		_____ (Date)	
15. <b>Signature of person preparing form, if other than applicant.</b>			
I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.			
_____ (Signature)	_____ (Address)	_____ (Date)	

RECEIVED	TRANS. IN	RET'D TRANS. OUT	COMPLETED

**Action by the U.S. Department of Homeland Security**

Granted, subject to revocation at any time, upon the following terms and conditions:

DATE OF ACTION

DD OR OIC

OFFICE

**Instructions**

1. This application must be executed in duplicate and filed with the U.S. Department of Homeland Security (DHS) field office having jurisdiction over the port of entry.

2. A fee of **\$250.00** must be paid for filing this application. It cannot be refunded regardless of the action taken on the application. **Do not mail cash. All fees must be submitted in the exact amount.** Payment by check or money order must be drawn on a bank or other institution located in the United States and be payable in United States currency. If the applicant resides in Guam, the check or money order must be payable to the "Treasurer, Guam." If the applicant resides in the U.S. Virgin Islands, the check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." All other applicants must make the check or money order payable to the **U.S. Department of Homeland Security**. When a check is drawn on an account of a person other than the applicant, the name of the applicant must be entered on the face of the check. If the application is submitted from outside the United States, remittance may be made by a bank international money order or foreign draft drawn on a financial institution in the United States and payable to the **U.S. Department of Homeland Security** in United States currency. Personal checks are accepted subject to collectibility. An uncollectible check will render the application and any document issued pursuant thereto invalid. A charge of \$30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

3. If the application is made because the applicant may be inadmissible due to present or past membership in or affiliation with any Communist or other totalitarian party or organization, there shall be attached to the application a written statement of the history of the applicant's membership or affiliation, including the period of such membership or affiliation, whether the applicant held any office in the organization, and whether membership or affiliation was voluntary or involuntary. If involuntary membership or affiliation is alleged, there shall also be attached to the application a written statement to support said allegation.

4. If the application is made because the applicant may be inadmissible due to disease, mental or physical defect, or disability of any kind, the application shall describe the disease, defect or disability. If the purpose of seeking admission to the United States is for treatment, there shall be attached to the application statements in writing to establish --

- (a) That satisfactory treatment cannot be obtained outside the United States;
- (b) That arrangements have been completed for treatment, and where and from whom treatment will be received;
- (c) What financial arrangements for payment of expenses incurred in connection with the treatment have been made; and
- (d) That a bond will be available if required by the Secretary of Homeland Security.

5. If the application is made because the applicant may be inadmissible due to conviction of crime, the designation of the crime, date and place of its commission and of conviction thereof, and sentence or other judgment of the court shall be stated in the application. In such case the application should be supplemented by an official record of conviction and any other documents relating to commutation of sentence, parole, probation or pardon.

**Paperwork Reduction Act Notice.**

Under the Paperwork reduction Act, an agency may not conduct or sponsor an information collection and a person is not required to respond an information collection unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimate average time to complete and file this application is 15 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you may write to the Bureau of Citizenship and Immigration Services, HQRF5, 425 I Street, N.W., Room 4034, Washington, DC 20529. **(Do not mail your completed application to this address.)**

Appendix 4-26





U.S. Citizenship  
and Immigration  
Services

HQOPRD 70/6.2

## Interoffice Memorandum

To: Paul Novak  
Director  
Vermont Service Center

From: William R. Yates  
Associate Director  
Operations

Date: APR 15 2004

Re: Trafficking Victims Protection Reauthorization Act of 2003

### Purpose

On December 19, 2003, the President signed the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub. L. 108-193. Section 4(b) of the TVPRA contains five provisions amending the Immigration and Nationality Act (INA). These amendments to the INA affect benefits for victims of a severe form of trafficking in persons who are applicants for T nonimmigrant status and their derivative family members. The purpose of this memorandum is to inform the VSC adjudicators working T nonimmigrant status applications of the effects of this legislation on adjudication issues relative to applications filed for T nonimmigrant status. The TVPRA is effective immediately for T nonimmigrant status applications pending on or filed after December 19, 2003.

### Compliance with Reasonable Requests for Assistance

The TVPRA amends the eligibility requirement that T nonimmigrant status applicants demonstrate compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons by increasing from 15 years of age to 18 years of age the minimum age at which a victim of a severe form of trafficking in persons is required to comply with reasonable requests for assistance to be eligible for T nonimmigrant status. Applicants under the age of 18 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 18 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 8 CFR § 103.2(b)(2)(i). An applicant under the age of 18 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.

#### Derivative Family Members

The TVPRA adds unmarried siblings under 18 years of age to the list of family members for whom a principal T nonimmigrant status holder or applicant may apply for derivative status. The unmarried sibling(s) must be under 18 years of age on the date on which the principal filed his or her application for T nonimmigrant status. The principal may apply for derivative T nonimmigrant status at the time of the original T-1 application or may apply at a later date by filing a separate Form I-914 and attachments. The annual limitation of T visas does not apply to an unmarried sibling under 18 years of age. All of the provisions found at 8 CFR § 214.11(o) pertaining to applications for derivative status for spouses, children and parents of the principal apply equally to unmarried siblings under 18 years of age.

#### Age-out Protection

The TVPRA provides age-out protection for unmarried alien children for whom their parents applied for derivative status. An unmarried alien who was under 21 years of age on the date on which his/her parent applied for T-1 status will continue to be classified as a child for derivative status purposes if he/she attains 21 years of age after his/her parent's application was filed but while it was pending. Thus, if a principal applicant properly filed a Form I-914 for derivative status for his/her unmarried child prior to the child's 21<sup>st</sup> birthday and the child turned 21 years of age before the Form I-914 was approved, that alien will remain a "child" for derivative status purposes and eligible to receive T-3 nonimmigrant status.

Similarly, the TVPRA provides age-out protection for principal applicants so that they maintain their eligibility to apply for derivative status for immediate family members. A principal T nonimmigrant status applicant who properly files a Form I-914 on his/her own behalf prior to turning 21 years of age, will continue to be considered under 21 years of age for purposes of any applications he/she has filed for his/her immediate family members if the principal applicant attains 21 years of age after his/her Form I-914 is filed but while it is pending. Thus, a principal applicant who files a Form I-914 on his/her own behalf at 20 years of age who turns 21 years of age while it is pending will remain able to apply for his/her parent(s) and/or unmarried siblings who were under the age of 18 on the date the principal filed his/her Form I-914.

Exemption from Public Charge Ground of Inadmissibility

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. The TVPRA, however, amends the waiver authority found at INA section 212(d)(13) to exempt aliens applying for T nonimmigrant status from the public charge ground of inadmissibility found at INA section 212(a)(4). Therefore, T nonimmigrant status applicants can no longer be found inadmissible (and required to file a waiver application) on the basis that he/she is likely at any time to become a public charge. All other grounds of inadmissibility, however, continue to apply to T nonimmigrant status applicants. If it is determined that an applicant is inadmissible and the ground of inadmissibility is one that can be waived, the applicant should apply for a waiver of the grounds of inadmissibility on Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Pursuant to Section 212(d)(3) of the Immigration and Nationality Act.

Consideration of Declarations from State and Local Law Enforcement Officials

The TVPRA amends the INA to allow adjudicators to consider statements from State and local law enforcement officials regarding compliance with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons appear to have been involved. Unlike the TVPRA amendments previously discussed, this change cannot be implemented immediately and will be the subject of future guidance.

Further Information

Personnel with questions regarding this memorandum or other T nonimmigrant status related issues, please contact Laura Dawkins, Office of Program and Regulation Development, by electronic mail.

**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services

HQ70/5.5

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*425 I Street NW  
Washington, DC 20536*

March 4, 2004

MEMORANDUM FOR: SERVICE CENTER DIRECTORS, CIS  
REGIONAL DIRECTORS, CIS  
DISTRICT DIRECTORS, CIS

FROM: William R. Yates  
Associate Director of Operations  
U.S. Citizenship and Immigration Services

SUBJECT: Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c)

PURPOSE:

This memorandum replaces the October 9, 1998 fee waiver guidance and provides instructions and processing guidance for adjudication of fee waiver requests filed pursuant to 8 CFR 103.7(c). This field guidance should be followed until a final rule amending 8 CFR 103.7(c) becomes effective.

DISCUSSION:

Citizenship and Immigration Services (CIS) Officers retain broad discretionary authority under 8 CFR 103.7(c) in adjudicating fee waiver requests. These guidelines delineate factors CIS Officers may consider in adjudicating waiver requests, many of which are already considered in current practice. The factors noted in this memorandum are not exhaustive and CIS Officers have authority to consider other evidence in determining whether a waiver request can be approved. Each case is unique and should be considered on its own merits. All circumstances and evidence provided by the individual in support of a fee waiver request should be evaluated. A fee waiver request may be granted when it has been established to the satisfaction of the CIS Officer with jurisdiction over the request, that the individual is unable to pay the fee.

IMPLEMENTATION:

A. Guideline Applicability

As of the date of this memo, all pending and newly submitted fee waiver requests should be reviewed under these guidelines. All CIS Officers are asked to facilitate the adjudication of the fee waiver requests and the implementation of these guidelines. These guidelines apply to those applications, petitions, motions, and requests filing fees contained in 8 CFR 103.7(b). There are certain applications and petitions listed in 103.7(b), which are exempt from fee waivers or have specific fee exemptions and therefore would not fall under these fee waiver guidelines.

B. Documentation

Along with the affidavit or unsworn declaration pursuant to 28 U.S.C. 1746, as required by 8 CFR 103.7(c), the applicant *may* submit additional documentation to provide proof of the "inability to pay." Fee waiver requests should be decided based upon the affidavit and any additional documentation submitted in support of the fee waiver request. A fee waiver request may be approved in the absence of such additional documentation *provided* that the applicant's affidavit or unsworn declaration is sufficiently detailed to substantiate his or her inability to pay the fee. If the CIS Officer determines that the individual did not substantiate his or her inability to pay, then the fee waiver request should be denied.

C. Submission of Both Fee and Fee Waiver Request

When a form is submitted with both the appropriate fee for the form and a fee waiver request, the form should be processed, if otherwise acceptable, as properly filed with fee. No subsequent consideration should be given to, nor action taken on the fee waiver request.

GUIDELINES:

A. "Inability to pay"

An individual does not automatically qualify for a fee waiver based on any one particular situation or if he or she meets just one or more of the criteria listed below (e.g. the individual is not automatically qualified for a fee waiver if they are over 65 or if they have qualified for or received a "federal means-tested public benefit"). Each case is unique and should be considered upon its own merits.

A fee waiver request may be granted when it has been established to the satisfaction of the CIS Officer with jurisdiction over the request that the individual is unable to pay the fee. The CIS Officer should look at the individual's overall financial picture and take note of any evidence or documentation regarding the individual's living arrangements in the United States; the individual's extraordinary expenditures or those of his dependents residing in the United States; monetary contributions for the payment of monthly expenses received from adult children, dependents, and other people who are living in the individual's household, etc.; and other expenses for which the individual is responsible.

In determining whether the individual should be granted a fee waiver, the CIS Officer may consider the following situations and criteria, *in addition to the individual's overall financial picture and household situation* when adjudicating the fee waiver request:

- Whether the individual has demonstrated that within the last 180 days, he or she qualified for or received a “federal means-tested public benefit”. A Federal “means-tested public benefits” is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal “means-tested public benefit” under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. This may include, but is not limited to, Food Stamps, Medicaid, Supplemental Security Income, and Temporary Assistance of Needy Families or other public benefit. Keep in mind that state and local public assistance may be based on an amount higher than the “Federal means-tested public benefits”, but both should be considered as income and treated equally.

NOTE: Each agency’s public benefits are determined based on a unique set of criteria. Therefore, even though an individual has qualified for another agency’s benefits, it should only be one of the factors in determining the CIS fee waiver request and should not be used as a definitive factor.

- Whether the individual has demonstrated that his or her household income, on which taxes were paid for the most recent tax year, is at or below the poverty level contained in the most recent poverty guidelines revised annually by the Secretary of Health and Human Services’ “Poverty Guidelines”. (See attached). A household as defined by the Census Bureau, for statistical purposes, consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not.
- Whether the individual is elderly (age 65 and over, at the time the fee request is submitted).
- Whether the individual is disabled. The disability should have been previously determined by the Social Security Administration (SSA), Health and Human Services (HHS), Veteran’s Administration (VA), Department of Defense (DOD) or other appropriate federal agency. An applicant or petitioner may provide verification of his or her disability by submitting documentation showing that the disability has been previously determined by the SSA, HHS, VA, DOD, or other appropriate federal agency.

NOTE: Each agency’s public benefits are determined based on a unique set of criteria. Therefore, even though an individual has qualified for another agency’s benefits, it should only be one of the factors in determining the CIS fee waiver request and should not be used as a definitive factor.

- The age and number of dependents in the individual’s family household who are seeking derivative status or benefits concurrently with the principal applicant or beneficiary.

Subject: Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c)

- Humanitarian or compassionate reasons, either temporary or permanent, which justify a granting of a fee waiver request. For example: the applicant is temporarily destitute; the applicant does not own, possess, or control assets sufficient to pay the fee without causing substantial financial hardship; or an applicant is on a fixed income and confined to a nursing home.
- Any other evidence or factors that the CIS Officer believes establishes an applicant or petitioner's inability to pay the required filing fees.

B. Delegation of Fee Waiver Authority

The authority to grant fee waivers should not be delegated below CIS Supervisory level (i.e. SDAO, SCAO). Initial review may be performed at the Adjudication Officer level with recommendations, however the final decision must be made at the Supervisory level.

C. Documentation

The following is a descriptive list of financial information that, if submitted, should be reviewed in order to obtain a picture of the individual's overall financial situation:

- Proof of living arrangements (i.e. living with relatives, living in the individual's own house, apartment, etc.), and evidence of whether the individual's dependents are residing in his or her household.
- Evidence of current employment or self-employment such as recent pay statements, W-2 forms, statement(s) from the individual's employer(s) on business stationary showing salary or wages paid, income tax returns (proof of filing of a tax return).
- Mortgage payment receipts, rent receipts, food and clothing receipts, utility bills (such as gas, electricity, telephone, water), child or elder care receipts, tuition bills, transportation expense receipts, medical expense receipts, and proof of other essential expenditures.
- Any other proof of essential expenditures.
- Proof that verifies the individual's disability. The individual may provide proof of his or her disability by submitting documentation showing that the disability has been previously determined by the Social Security Administration (SSA), the Department of Health and Human Services (HHS), the Department of Veterans Affairs (VA), the Department of Defense (DOD), or other appropriate federal agency.
- Proof of the individual's extraordinary expenditures or his or her dependents residing in the United States. Essential extraordinary expenses are those which do not occur on a monthly basis but which are necessary for the well being of the individual or his or her dependents.

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- Proof that the individual has, within the last 6 months, qualified for and/or received a Federal “means-tested public benefit”.
- Documentation to show all assets owned, possessed, or controlled by the individual or by his or her dependents.
- Documentation establishing other financial support or subsidies--such as parental support, alimony, child support, educational scholarships, and fellowships, pensions, Social Security or Veterans Benefits, etc. This includes monetary contributions for the payment of monthly expenses received from adult children, dependents, and other people who are living in the individual’s household, etc.
- Documentation of debts and liabilities--what is owed on any outstanding loans, credit cards, etc. by the individual and his or her dependents, and any other expenses the individual is responsible for (i.e. insurance, medical/dental bills, etc.).

D. Issues to be Considered

In considering fee waiver requests, CIS Officers should take into consideration the following issues:

- Incarcerated Individuals Requesting a Fee Waiver – In the case of an incarcerated individual who is requesting a fee waiver, the individual will not automatically qualify for the fee waiver based solely upon his/her incarceration. CIS Officers should consider the overall financial picture of the requestor, including any outside income or assets possessed by the individual and which the individual may have access to by way of spouse or outside family member. A fee waiver request submitted by an incarcerated individual should contain a description of any and all outside income or assets possessed and include any available supporting documentation as is expected of a nonincarcerated person.
- Extraordinary Expenses – The individual requesting the fee waiver has experienced unusual or extraordinary expenses to the degree that his or her financial situation has been significantly impacted and payment of the filing fee would subject the requestor to undue hardship. Examples include: unexpected and uninsured or underinsured medical bills or situations which could not normally be expected in the regular course of life events; a medical emergency or catastrophic illness affecting the individual or the individual’s dependents.
- Frequent or Prolonged Travel Expenses - If the fee waiver request states that the individual is unable to pay the filing fee because of travel expenses and the individual PROVIDES a reasonable explanation and/or supporting documentation regarding the purpose of the travel, the CIS Officer should not refer back to the associated application or petition to substantiate this statement. However, if the fee waiver request states that the individual is unable to pay the filing fee because of travel expenses and DOES NOT PROVIDE any explanation and/or supporting evidence, the associated application or



petition may be examined to determine the manner, amount and reason for the travel. For example: If John Smith is requesting a fee waiver because he used all his funds to travel to Australia several times for pleasure, this situation does not merit a fee waiver unless additional supporting evidence is provided to convince the CIS Officer to the contrary. However, if John states that he traveled to Australia several times in order to care for a dying relative, then travel would not be an appropriate reason to deny the fee waiver request.

- Self-Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Residents applicants and adjustment of status and employment authorization applicants, under the provisions of the Violence Against Women Act (VAWA). (I-360, I-485, and I-765). Due to the sensitive nature of applications and petitions associated with this category, CIS Officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96, 5/6/97 and 5/25/01.
- Nonimmigrant Applications. Generally, nonimmigrants are required to demonstrate sufficient financial support for the duration of their stay in the United States (i.e., sufficient to overcome the public charge grounds of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA)). An example of a type of application for which a demonstration of financial support is required would be an application to extend or change nonimmigrant status (Form I-539). Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications.
- Family-based visa petitions and applications and petitions related to classifying an orphan as an immediate relative. Petitioners for family-based visas must file an enforceable affidavit of support under section 213A of the INA, on behalf of the beneficiaries at the time the beneficiaries are applying for adjustment of status. Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications or petitions. Keep in mind that multiple affidavits of support may be submitted to meet the requirement and may be from persons other than the petitioner or other relatives. In addition, the nature of applications and petitions associated with classifying an orphan as an immediate relative and applying for certificate of citizenship for adopted child (Form N-643) has the same considerations as the family-based petitions. Adoptive parents must demonstrate sufficient financial means to support the child in order to meet home study requirements. They must also file an affidavit of support on behalf of the adopted child. These applications and petitions should be treated the same as family-based visa petitions.
- Employment-based visa petitions and Employment Authorization. Generally, beneficiaries and applicants are entering the United States specifically for employment, with sponsorship from their employer, or are obtaining employment after entering. Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications or petitions.

- Travel Documents and Advance Parole. A fee waiver request made in connection with this type of application should be adjudicated in light of the applicant or petitioner's representations as to the nature and purpose of travel as well as the individual's source of income for the travel requested or proposed.
- Special situations concerning Adjustment of Status Applications (I-485)

Public Charge Concerns. The granting of a fee waiver does not necessarily subject the applicant or petitioner to public charge liability under other provisions of the INA, such as deportability under section 237(a)(5) or inadmissibility under section 212(a)(4).

Exceptions to Public Charge Requirements. Refugees, Asylees, NACARA, HRIFA, Indochinese Parole Adjustment Act, Syrian Asylee Adjustment Act, Special Immigrant Juveniles and Registry applicants are exempt from the Form I-485 requirements to show evidence that they are not likely to become a public charge. Therefore, these categories may be given wider latitude in required income levels when determining fee waivers.

Self Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Residents applicants and Adjustment of Status applicants under the provisions of the Violence Against Women Act (VAWA). This category should be given special consideration when determining whether they should be granted a fee waiver. Due to the sensitive nature of applications and petitions associated with this category, CIS Officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96, 5/6/97 and 5/25/01.

PUBLIC INFORMATION:

The Office of Program and Regulations Development (OPRD) and Public Affairs have prepared an updated fact sheet which will be posted on the CIS webpage. All CBO/NGO and community groups and local Congressional Offices in your area should be re-notified about the fee waiver guidance contained in the Public Affairs Fact Sheet and the suggested documentation that should support the fee waiver requests as well as the method for facilitating the processing of fee waiver requests. The applicants and petitioners should put a large notation "*fee waiver request enclosed*" on the outside of the mailing envelope containing their application or petition and fee waiver request. In addition, a similar notation should be placed on top of the affidavit and supporting information submitted in support of their request.

POINT OF CONTACT:

If you have questions regarding these guidelines or their implementation, please contact Irene Hoffman in OPRD or Paul Pierre in SCOPS through appropriate channels.

Enclosure: Poverty Guidelines

## CHAPTER 5 CONTINUED PRESENCE FOR VICTIMS OF HUMAN TRAFFICKING

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In the previous chapter, we discussed the T visa for victims of human trafficking. In this chapter, we provide materials on another means of obtaining authorized stay and employment authorization on the basis of having been a victim of human trafficking. This alternative means is called “continued presence.”<sup>1</sup> Unlike the T visa, it is a form of interim relief that does not give nonimmigrant status for a certain period of time, nor does it carry the possibility of permanent residence. Like the T visa, however, it makes the beneficiary eligible for employment authorization and public benefits to the same extent as refugees.

Continued presence is used in two major types of situations. First, the victim of human trafficking may not want to remain in the United States, but may need some time here. For example, he or she may need time to arrange his or her affairs, stabilize his or her emotional, mental, or physical condition, assist with the investigation or prosecution of the crime, or seek civil damages against the trafficker or file a wage and hour claim. Second, as mentioned in Chapter 6, prosecutors may be reluctant to assist a victim of human trafficking in obtaining a T visa until after completion of the criminal case against the trafficker, to avoid a defense attempt to show that the victim is testifying in exchange for immigration favors. The prosecutor may be willing to assist in obtaining continued presence, however.

A person granted continued presence is not precluded from seeking a T visa or other immigration relief.

Requests for continued presence may be made by federal law enforcement agencies to the USCIS Office of International Affairs/Parole/Humanitarian Affairs Branch (OIA/PHAB) in Washington, D.C. The OIA/PHAB telephone number is 202-305-2670; fax number is 202-514-0542. Instructions on seeking continued presence are set out in the attached materials, prepared by the Department of Justice and the Coalition to Abolish Slavery and Trafficking (CAST).

### Appendices:

- Coalition to Abolish Slavery and Trafficking (CAST), Continued Presence Checklist.....App. 5-1
- CAST, Continued Presence Process.....App. 5-2

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<sup>1</sup> See, Pearson, Executive Associate Commissioner, INS, Memo re “Victims of Trafficking and Violence Protection Act of 2000 (VTV)PA) Policy Memorandum 1 – Continued Presence, August 20, 2001; 28 C.F.R. § 1100.35.

- CAST, Law Enforcement Agency Certification for Continued Presence..App. 5-3
- U.S. Department of Justice, Request for Continued Presence.....App. 5-5
- U.S. Department of Justice, Instructions Governing “Continued Presence” Requests made by Federal Law Enforcement Agencies to the Immigration and Naturalization Service.....App. 5-9







7. An assessment has been completed and documentation attached certifying the alien is a victim of a severe form of trafficking and a potential witness to that trafficking.
8. No promises have been made to the alien that he or she will remain in the United States beyond the authorized period of continued presence.

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Signature of Authorizing Official

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Date

---

Printed Name of Authorizing Official

---

Title of Authorizing Official





## REQUEST FOR CONTINUED PRESENCE

### -Information on Victim

1. Name:

\_\_\_\_\_  
(Last)

\_\_\_\_\_  
(First)

\_\_\_\_\_  
(Middle)

2. Date of Birth (*mo., day, yr.*)  
Citizenship

3. Country of Birth

4. Country of

5. Aliases  
(A#)

6. Gender (*check one*)

7. Alien Number

Male  Female

A \_\_\_\_\_ -

8. Passport Number  
(*mo., day, yr*)

9. Country of Issuance

10. Expiration Date

11. Social Security Number

### - Requesting Agency Information

*\*Note: This information must be completed in order to receive consideration.*

1. Case Agent (*first, last*)  
3. Fax number

2. Daytime telephone number (*include area code*)

\_\_\_\_\_ ( ) \_\_\_\_\_ - \_\_\_\_\_ Ext. \_\_\_\_\_ ( ) \_\_\_\_\_ - \_\_\_\_\_

**Supplemental Information:**

Requesting Agency: \_\_\_\_\_

Group Supervisor name (*first, last*) \_\_\_\_\_

Daytime telephone number (*including area code*) ( ) \_\_\_\_\_ - \_\_\_\_\_ ext.

Fax number ( ) \_\_\_\_\_ - \_\_\_\_\_

LEA Headquarters reviewing agent name (*first, last*) \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

**- Case Information**

*\*Note: Please complete all information below.*

1. Is Subject currently in the United States: \_\_\_ Yes \_\_\_ No

2. Subject's current Immigration Status:

3. Has Subject ever been deported/presently under deportation proceedings: \_\_\_ Yes

No (*if yes, where and when*)

City, State: \_\_\_\_\_

4. When did Subject enter the United States: \_\_\_\_\_

5. Through which Port of Entry did Subject enter the United States: \_\_\_\_\_

**- Specific Information pertaining to Victim**

*\*Please answer each question as completely as possible (attach additional sheet(s) if necessary)*

1. Significance and value of victim to this case

2. **Victim's criminal involvement in this or any other case: (*Please attach or describe criminal and/or arrest record listing ALL criminal convictions*)**

3. **Risk victim presents to public safety and/or to national security. (*i.e., has the alien ever engaged in a terrorist act, supported terrorist activities, or is a member of a known terrorist group? If so, explain*)**

List and explain proposed security precautions if necessary (*Attach copy of risk assessment report*).

4. **Financial responsibility for subject (*Please explain manner in which victim's living expenses will be met.*)**

5. **Acquaintance/Relatives in the United States (*Please include name(s), relationship and current location, i.e. City and State; attach additional sheet(s) if necessary*)**

6. Is employment authorization requested? Yes \_\_\_ No\_\_\_(if yes please attach completed I-765, Application for Employment Authorization, and I-102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Document.)

**Travel Information**

*\*Note: All information must be completed if the alien is outside the United States*

Expected date of travel to the U.S. (mo., day, and yr.) \_\_\_\_\_

Consulate or issuing Post (Abroad) \_\_\_\_\_

Port of Entry (where subject will enter US; City, State) \_\_\_\_\_

**- Location where victim will reside (city, state, are required at minimum)**

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

Expected Departure Date, if known: (mo., day, yr)\* \_\_\_\_\_

*\*Initial requests are approved for a period of time determined on a case-by-case basis. ALL extensions for continued presence must be submitted to the INS Headquarters Parole and Humanitarian Assistance Branch (HQPHAB). Any change in status is to be reported to the requesting agency headquarters, which in turn will notify the INS HQPHAB. The requesting agency will also notify the HQPHAB immediately if the alien departs the United States.*

**Certification of Reporting Requirements**

*As the requesting agency representative, I understand that, should this continued presence be granted, it is MY responsibility to report the victim's entry, and any subsequent changes in his/her status, (i.e. departure or change in status) to my headquarters-who in turn will notify the INS Headquarters Parole Branch.*

Signature: \_\_\_\_\_

Date: (mo., day, yr) \_\_\_\_\_

Print Name: \_\_\_\_\_

**INSTRUCTIONS GOVERNING "CONTINUED PRESENCE" REQUESTS  
MADE BY FEDERAL LAW ENFORCEMENT AGENCIES TO  
THE IMMIGRATION AND NATURALIZATION SERVICE**

The following requirements and procedures apply to requests made by a Federal Law Enforcement Agency (LEA) to the Immigration and Naturalization Service (INS) pursuant to section 107(c)(3) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) to authorize the "continued presence" of a victim of a severe form of trafficking in persons who is a potential witness to such trafficking (Victim/Witness).<sup>1</sup> VTVPA § 107(c)(3) states, in pertinent part:

Federal law enforcement officials may permit an alien individual's *continued presence* in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible . . . . [Emphasis added.]

The INS may utilize one of several statutory and administrative mechanisms to authorize a Victim/Witness' "continued presence" (Continued Presence), depending on the facts of the case and the Victim/Witness' current immigration status. The mechanisms that are available to the INS for this purpose include Deferred Action, Parole, Voluntary Departure, Stay of Final Removal Order, and any applicable nonimmigrant status.

It is anticipated, however, that in most cases, either Deferred Action based upon section 107(c)(3) of the VTVPA<sup>2</sup> (section 107(c)(3)-based Deferred Action) or Parole<sup>3</sup> will be the most appropriate mechanism by which a Victim/Witness' Continued Presence will be authorized.

Deferred Action is based exclusively in the exercise of prosecutorial discretion.

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<sup>1</sup>These procedures do not apply to requests for parole that are made for "S"-visa parolees. In those cases, the policy and procedures of 8 C.F.R. §§ 212.14 and 214.2(t) will be followed. These procedures also do not apply to aliens subject to prosecution, witnesses entering the United States in the custody of law enforcement officials, or to parole requests made to the Immigration and Naturalization Service (INS) for national security reasons. In case of doubt as to the applicability of these procedures, contact the INS Office of International Affairs, Parole and Humanitarian Assistance Branch (202) 305-2670.

<sup>2</sup>In accordance with the purpose of section 107(c)(3) of the VTVPA (i.e., to authorize the continued presence of alien victims of a severe form of trafficking whom federal law enforcement officials seek to retain in the United States as potential witnesses), Victim/Witnesses granted Deferred Action based upon section 107(c)(3) of the VTVPA are considered to be present in the United States pursuant to a period of stay authorized by the Attorney General for purposes of INA §§ 212(a)(9)(B)(i) and (C). Victim/Witnesses granted Deferred Action based upon section 107(c)(3) of the VTVPA, therefore, do not continue to accrue time unlawfully present for purposes of the 3- and 10-year bars to readmission. [It should be noted that section 107(e)(3) of the VTVPA, which amends INA § 212(d), provides for a waiver of the 3- and 10-year bars to readmission for "T" and "U" visa applicants.]

<sup>3</sup>Victim/Witnesses granted Parole are also considered to be present in the United States pursuant to a period of stay authorized by the Attorney General for purposes of INA §§ 212(a)(9)(B)(i) and (C).

A case may be selected for Deferred Action treatment at any stage of the administrative removal process (e.g., the INS may decline to institute proceedings, seek to terminate proceedings, or decline to execute a final order of deportation, exclusion, or removal).

The authority to parole a Victim/Witness into the United States is contained in Section 212(d)(5)(A) of the Immigration and Nationality Act (INA), which reads as follows:

The Attorney General<sup>4</sup> may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with the same manner as that of any other applicant for admission to the United States.

Victim/Witnesses who are located outside of the United States, or are at a United States port-of-entry (POE), or are present in the United States without having been admitted, are considered to be applicants for admission, and are therefore eligible for parole.<sup>5</sup> On the other hand, Victim/Witnesses who are already present in the United States after being inspected and admitted (e.g., they overstayed their visas or violated the terms and conditions of admission) are *not* considered to be applicants for admission, and are therefore ineligible for parole. However, such individuals may be offered the opportunity to remain in the United States pursuant to a grant of section 107(c)(3)-based Deferred Action (or other statutory or administrative mechanism, depending on the facts of the case).

A grant of section 107(c)(3)-based Deferred Action or Parole does not confer any immigration status on an alien. However, aliens granted section 107(c)(3)-based Deferred Action or Parole may be granted temporary employment authorization.

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<sup>4</sup>The Attorney General has delegated his parole authority to the INS. See 8 C.F.R. § 2.1.

<sup>5</sup>Section 602(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3546, requires that the INS report to Congress on each alien paroled, including the disposition of that parole. Moreover, IIRIRA § 603 amended INA § 201 by charging long-term parolees against the worldwide allocation of visas.

## **APPLICATION AND PAPERWORK REQUIREMENTS FOR CONTINUED PRESENCE REQUESTS**

- **Must Be Submitted Using the *Request for Continued Presence***

The LEA will designate a Headquarters office point-of-contact (POC) for submission of, and coordination on, all Continued Presence requests. The LEA POC will submit Continued Presence requests using the attached *Request for Continued Presence*. A separate request must be completed for each individual applicant and must include fingerprint cards and photographs. Only applicants over the age of 14 will be circulated among the principal Federal LEAs for concurrence. The completed request must also include the following information:

1. The Victim/Witness' name and aliases (if any), date of birth, place of birth, alien number (if any), social security number (if any), photographs, and fingerprints<sup>6</sup>;
2. A written statement from the LEA setting forth the known facts that cause the LEA to believe the Victim/Witness is a victim of a severe form of trafficking and is a potential witness;
3. For Victim/Witnesses located outside the United States, a complete travel itinerary, including arrival at the specified POE and subsequent travel;
4. Any information, including a risk assessment report, assessing the public or national security risk the Victim/Witness may present;
5. Information regarding the security precautions that will be taken or have been taken by the requesting LEA for any Victim/Witness who may pose a potential public or national security threat;
6. Any information regarding security precautions that will be taken or have been taken by the requesting LEA to ensure the safety of the Victim/Witness, including measures to protect the Victim/Witness and his or her family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates;
7. The name, address, fax and telephone number of the LEA agent assigned to be primarily responsible for complying with all supervision and reporting requirements, as specified in these instructions, and for ensuring the safety of the Victim/Witness and his or her family members; and
8. Information relating to the manner in which the Victim/Witness' living expenses will be met.

The completed request will be submitted to the INS Office of International Affairs, Parole and Humanitarian Assistance Branch (HQPHAB) and addressed to the Director. In non-custodial cases, the requesting agency will submit a completed INS Form I-765, *Application for Employment Authorization* and INS Form I-102, *Application for Replacement/Initial Nonimmigrant Arrival/Departure Record* as well as all required

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<sup>6</sup>If it is not possible to provide fingerprint cards or photographs, the responsible official will indicate the reasons for their not being forwarded and provide an approximate date on which they will be made available.

accompanying documents and photos on behalf of the Victim/Witness at the time of request. ***(PLEASE MAKE SURE TO INCLUDE THE CASE AGENT'S ADDRESS ON BOTH THE I-765 AND I-102 FORMS).***

- **Certification and Concurrence by Headquarters LEA Office**

The chief of the designated Headquarters LEA office must concur and certify on the attached *Law Enforcement Agency Certification for Continued Presence* request that all information pertinent to the Continued Presence request is accurate and complete and that photographs, fingerprints, name check, and a summary of database findings have been identified and forwarded to INS HQPHAB.

### **INS HQPHAB REVIEW AND NOTIFICATION OF CONTINUED PRESENCE REQUESTS**

- **Special Conditions or Requirements**

INS HQPHAB will review the request for completeness and conduct appropriate INS database checks. During its review and coordination of requests, INS HQPHAB shall take all necessary steps to safeguard the information provided by the LEA in accordance with appropriate Department of Justice policies and procedures.

INS HQPHAB shall have the discretion to set special conditions or requirements that a requesting LEA must effectuate before INS HQPHAB will approve its request. An example of a special condition or requirement is the need for custodial arrangements for a Victim/Witness with prior criminal convictions or who otherwise poses a threat to public safety or national security. INS HQPHAB will promptly notify the requesting LEA of any special conditions or requirements that have been set relating to its request.

- **Circulation for Comment and Concurrence to the Principal Federal LEAs**

The Director of the HQPHAB will fax copies of the *Notice of Request for Continued Presence* to a designated individual at Headquarters Offices of the principal Federal LEAs (the Federal Bureau of Investigation, Drug Enforcement Administration, United States Marshals' Service, United States Customs Service, and Executive Office for National Security) for comment and concurrence.

The information contained in the *Notice of Request for Continued Presence* will be limited to the prospective Victim/Witness' name (and aliases), date of birth, country of birth, alien number (if any), and social security number (if any). Based on this information, the principal Federal LEAs will conduct appropriate database checks to determine, for example, whether the prospective Victim/Witness is presently an informant in, or the target of, an ongoing investigation that is unrelated to the requesting LEA's Continued Presence request.



The principal Federal LEAs will submit to the INS HQPHAB a written concurrence or objection to the Continued Presence request within the time specified on the *Notice of Request for Continued Presence*, unless extended by INS HQPHAB.

- **Continued Presence Request Approved**

If no dispute exists among the requesting and coordinating agencies as to whether Continued Presence should be approved, INS HQPHAB will generally approve the request.

If INS HQPHAB approves a Continued Presence request, INS HQPHAB will determine, based on the facts of the case, which statutory or administrative mechanism (e.g., section 107(c)(3)-based Deferred Action or Parole) should be used to authorize a Victim/Witness' Continued Presence. HQPHAB will notify the requesting LEA of the approval in writing. Additionally, HQPHAB will review and forward the I-765, *Application for Employment Authorization* and the I-102, *Application for Replacement/Initial Nonimmigrant Arrival/Departure Record* to the designated INS Service Center for final processing. The Service Center will send the I-94 and Employment Authorization Document to the requesting LEA case agent for distribution to the Victim/Witness.

The requesting LEA will notify the Victim/Witness granted Continued Presence of all the rights and responsibilities that flow from a grant of Continued Presence (e.g., the period of stay that is authorized stay and the consequences of failing to abide by the terms and conditions of a grant of Continued Presence). The LEA will deliver the I-94 and (if applicable) the Employment Authorization Document (EAD) to the Victim/Witness ensuring that any old I-94 and EAD is collected in exchange.

A Victim/Witness' Continued Presence (and, in appropriate cases, temporary employment authorization) will be approved for a time the INS HQPHAB deems appropriate. Per the request of the requesting LEA, the INS HQPHAB will extend the initial period, in increments that INS HQPHAB deems appropriate, until the Continued Presence is terminated pursuant to the termination provisions set forth in these instructions.

The requesting LEA will be responsible, to the extent practicable, for taking necessary measures to protect the safety of Victim/Witnesses granted Continued Presence, including measures to protect Victim/Witnesses and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

- **Continued Presence Request Denied**

INS HQPHAB may deny a request despite general concurrence among the coordinating agencies. Examples of the grounds upon which INS HQPHAB may deny a request include:

1. An LEA's failure to provide all necessary documentation, as specified in these instructions;
2. An LEA's refusal to comply with conditions or requirements deemed necessary by the INS HQPHAB; and
3. An LEA's past record of failing to comply with all supervision and reporting requirements, as specified in these instructions.

In the case of denial, INS HQPHAB shall promptly notify the requesting LEA of its decision. The INS and requesting LEA will take all available steps to reach an acceptable resolution. In the event such resolution is not possible, the INS shall promptly forward the request to the Deputy Attorney General, or his designee, for resolution. Final authority to approve or deny a Continued Presence request will lie with the Deputy Attorney General.

### **SUPERVISION AND REPORTING REQUIREMENTS**

The LEA will comply with the following supervision and reporting requirements:

1. Assign an LEA control officer to supervise and report on the Victim/Witness' activities;
2. Ensure that all Continued Presence conditions and requirements set by the INS HQPHAB are met at all times;
3. Take necessary measures to ensure the safety of Victim/Witnesses who are granted Continued Presence, including measures to protect the Victim/Witnesses and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates;
4. Report to the INS HQPHAB regarding the location and current circumstances of the Victim/Witness quarterly, or as otherwise mutually agreed to by the INS HQPHAB and the requesting LEA;
5. Promptly notify the INS HQPHAB when a Victim/Witness departs the United States;
6. Promptly notify the INS HQPHAB when it is determined that a Victim/Witness' assistance in the investigation or prosecution of acts of trafficking in persons is no longer required;
7. Promptly notify the INS HQPHAB when it is determined that a Victim/Witness has absconded or disappeared.

### **TERMINATION OF CONTINUED PRESENCE**

- **Termination "For Cause"**

The INS HQPHAB may terminate a Victim/Witness' Continued Presence for cause at any time and will notify the LEA of this decision in writing. An example where the INS HQPHAB may terminate a Victim/Witness' Continued Presence "for cause" is

when a Victim/Witness, after being granted Continued Presence, is convicted of a crime.

Whenever possible, before terminating a Victim/Witness' Continued Presence for cause, the INS HQPHAB must notify the LEA that it has obtained evidence or information suggesting that the Victim/Witness' Continued Presence should be terminated and request the LEA's comments on whether to terminate the Continued Presence.

Upon termination, the LEA will document to INS HQPHAB the alien's departure from the United States. If the alien has not departed as required, the LEA will notify INS HQPHAB and the local INS District office so that removal proceedings can be initiated. The LEA will assist the local INS District office in locating the alien for removal.

- **Victim/Witness Has Departed the United States**

If a Victim/Witness desires to temporarily leave the United States, the alien should notify the LEA who will forward the Form I-131, *Application for Travel Document*, for advance permission to reenter the United States to HQPHAB for approval.

If a Victim/Witness departs the United States without first obtaining advance permission, his or her Continued Presence will effectively terminate. The LEA will promptly notify INS HQPHAB when it is learned that a Victim/Witness has departed the United States without first obtaining advance permission.

- **Victim/Witness' Assistance is No Longer Required**

The LEA will promptly notify INS HQPHAB once it is determined that a Victim/Witness' assistance in the investigation or prosecution of acts of trafficking in persons is no longer required. Upon receipt of such notice, INS HQPHAB will determine, on a case-by-case basis, when authorization for a Victim/Witness' Continued Presence should be terminated. For example, INS HQPHAB would normally not terminate the section 107(c)(3)-based Deferred Action or Parole of a Victim/Witness while his or her bona fide application for "T" or "U" nonimmigrant status is pending final adjudication.

If the Victim/Witness is ultimately not afforded "T" or "U" nonimmigrant status (or other status authorizing him or her to remain in the United States), the LEA will assist the local INS office in locating the Victim/Witness for removal.

- **Victim/Witness Absconds or Disappears**

The LEA will promptly notify INS HQPHAB once it is determined that a Victim/Witness has absconded or disappeared. Upon receipt of such notice, INS HQPHAB will terminate the Victim/Witness' Continued Presence (and, in relevant cases, temporary employment authorization). The LEA will assist the local INS office in

locating the alien for removal.

## CHAPTER 6

### PUBLIC BENEFITS FOR TRAFFICKING VICTIMS AND THEIR FAMILIES

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## § 6.1 Overview

Under the Trafficking Victims Protection Act (TVPA), trafficking victims and their family members may qualify for public benefits to the same extent as refugees in the United States, regardless of their immigration status.<sup>1</sup> This is significant because the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR) provides special cash and medical benefits to new refugees through state and nonprofit resettlement agencies. In addition, because refugees are among the limited categories of "qualified" immigrants under federal benefits law—and, in fact, are generally treated better than other qualified immigrants for benefits purposes-- trafficking victims and their families are eligible for many other federal benefits programs.<sup>2</sup>

This chapter will focus on benefits that are available to persons designated by the federal government as trafficking victims or the eligible family members of such victims. Certain benefits are "refugee specific," while others are generally available to eligible U.S. citizens and certain qualified immigrants in the United States. Some benefits are available to all eligible persons, regardless of immigration status.

## § 6.2 Establishing Eligibility for Public Benefits as a Trafficking Victim

### Victims

Once ORR issues a certification letter to an adult victim of trafficking or an eligibility letter to a child victim, he or she is eligible to apply for federal public benefits. ORR will certify an adult trafficking victim who:

- Is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in person, and
- (a) has made a bona fide application for a visa under INA § 101(a)(15)(T) that has not been denied, or (b) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons.

Often the fastest way for an adult victim to obtain ORR certification is through a grant of continued presence status. During the course of the victim's assistance in a trafficking investigation or prosecution, the law enforcement agency handling the case can request continued presence for the victim from USCIS' Office of International Affairs. USCIS notifies ORR when it grants continued presence to a victim, and ORR issues the certification letter.

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<sup>1</sup> Trafficking Victims Protection Reauthorization Act (TVPRA) of 2004, 22 U.S.C.S § 7105(b) (2004).

<sup>2</sup> Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 8 U.S.C.S § 1612(a)(2) (2004). *See also* National Immigration Law Center, *Guide to Immigrant Eligibility for Federal Programs* (4<sup>th</sup> ed. 2002) (hereinafter "NILC Guide") (an excellent guide to government benefits available to immigrants available for sale at [www.nilc.org](http://www.nilc.org)).

In cases in which the law enforcement agency handling the victim's case has not applied to immigration authorities for continued presence for the victim, or in which law enforcement has declined to investigate or prosecute the trafficking case, the adult victim may still be able to obtain ORR certification through the T visa application process. After the submission of a T visa application, USCIS' Vermont Service Center conducts an initial review to determine if it is a bona fide application.<sup>3</sup> The application will be determined to be bona fide if it is 1) properly filed; 2) there is no evidence of fraud; and 3) the application is complete, including a law enforcement agency endorsement or other evidence that the victim is willing to assist law enforcement in any reasonable way.<sup>4</sup> Certification letters issued as of November 6, 2001 no longer contain expiration dates.<sup>5</sup>

Trafficking victims who are under age 18 are not subject to the ORR certification process. Instead, ORR issues eligibility letters to minor victims as proof of eligibility for public benefits based on a recommendation from a law enforcement agency.

Benefit granting agencies must accept ORR certification and eligibility letters in place of immigration documentation in determining benefit eligibility. Trafficking victims are not required to provide any proof of their immigration status.<sup>6</sup> In order to verify their status as trafficking victims, benefit granting agencies should call the ORR trafficking verification line.<sup>7</sup> At present, the computerized Systematic Alien Verification for Entitlements (SAVE) -- a system used by some welfare agencies to verify an applicant's immigration status -- does not contain information about trafficking victims.<sup>8</sup> Pending verification, benefit granting agencies cannot deny, delay, reduce or terminate the applicant's eligibility for benefits on the basis of immigration status.<sup>9</sup>

Because many trafficking victims do not have standard identity documents, agencies that have difficulty in confirming identity should not automatically deny benefits, but should call ORR's trafficking verification line.<sup>10</sup> Some victims may have immigration documents that are useful in proving identity, such as an I-94 Arrival/Departure Card with a stamp showing parole under section 212(d)(5) of the INA, an EAD, proof of deferred action, or an order of supervision.<sup>11</sup>

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<sup>3</sup> 8 C.F.R. § 214.11(k)(2004).

<sup>4</sup> 8 C.F.R. § 214.11(a).

<sup>5</sup> Office of Refugee Resettlement, DHHS, State Letter SL#02-01, The Trafficking Victims Protection Act of 2000 - Removal of Expiration Dates from Certification Letters for Adults and Eligibility Letters for Children (Jan. 4, 2002), available at <http://www.acf.dhhs.gov/programs/orr/policy/sl02-01.htm>.

<sup>6</sup> Office of Refugee Resettlement, DHHS, State Letter SL #01-13, The Trafficking Victims Protection Act of 2000 (May 3, 2001), available at <http://www.acf.hhs.gov/programs/ofa/traffic/stateltr.htm>.

<sup>7</sup> Office of Refugee Resettlement, DHHS, State Letter SL #02-25, Toll-Free phone number for Trafficking Victim Verification - 1-866-401-5510 (Sept. 10, 2002), available at <http://www.acf.hhs.gov/programs/orr/policy/sl02-25.htm>.

<sup>8</sup> *Id.*

<sup>9</sup> 42 U.S.C. Sec. 1320b-7(d)(4)(B)(ii).

<sup>10</sup> *Supra* n. 8.

<sup>11</sup> Office of Refugee Resettlement, *supra* n.7.

Agencies may not require applicants for ORR-funded assistance and services to provide social security numbers.<sup>12</sup> While other federal benefits programs, such as Medicaid, Temporary Assistance for Needy Families (TANF), and Food Stamp eligibility rules require applicants who do not have social security numbers to apply for them, a benefits granting agency may not “delay, deny or discontinue assistance pending the issuance of the applicant’s social security number.” Instead, benefit granting agencies should follow ORR instructions to assist victims in obtaining “non-work” social security numbers.<sup>13</sup>

### **Family Members**

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) amended the TVPA to expand access to public benefits to certain family members of trafficking victims.<sup>14</sup> Only family members who have been granted derivative T visa status qualify for these benefits.<sup>15</sup> Persons eligible for derivative T visas include the spouse and children of adult trafficking victims and the spouse, children, parents and unmarried siblings under 18 years of age of child victims.<sup>16</sup> Once granted a T visa, family members may receive the same type of benefits as trafficking victims.

Federal law does not require the family members of victims to obtain ORR certification in order to qualify for benefits. Instead, benefit granting agencies should accept evidence that the applicant has been granted a T-2, T-3, T-4 or T-5 visa as proof of eligibility for benefits.<sup>17</sup> In order to verify their status as derivative T visa holders, such agencies should call the ORR trafficking verification line.<sup>18</sup> At present, SAVE does not contain information about trafficking victims’ family members who have been granted T visas.<sup>19</sup> Pending verification, benefit granting agencies cannot deny, delay, reduce or terminate the applicant’s eligibility for benefits on the basis of immigration status.<sup>20</sup>

## **§ 6.3 Cash Assistance Available to Victims of Human Trafficking**

### **Refugee Cash Assistance (RCA)**

RCA is a refugee-specific program available to trafficked persons who are not eligible for either of two other cash assistance programs, Temporary Assistance for

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<sup>12</sup> Office of Refugee Resettlement, *supra* n.7.

<sup>13</sup> Office of Refugee Resettlement, *supra* n.7.

<sup>14</sup> 22 U.S.C.S. § 7105(b)(1)(B).

<sup>15</sup> *Id.*

<sup>16</sup> INA § 101 (a)(15)(T)(ii), 8 U.S.C.S. § 1101 (a)(15)(T)(ii) (2004) (originally amended by TVPA § 107(e)(1)(C)); 8 C.F.R. § 214.11(a) (2004).

<sup>17</sup> Office of Refugee Resettlement, DHHS, State Letter SL #04-14, The Trafficking Victims Protection Reauthorization Act of 2003 – Eligibility for Federally Funded or Administered Benefits and Services to the Same Extent as Refugees Extended to Certain Family Members of Victims of a Severe Form of Trafficking in Persons (June 18, 2004).

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

<sup>19</sup> *Id.*

<sup>20</sup> *Supra* n. 10.



Needy Families (TANF) and Supplemental Security Income (SSI).<sup>21</sup> Because TANF is for low-income families with dependent children and SSI is for the elderly and persons with disabilities, RCA is primarily available to non-disabled adult applicants who do not have minor children (or whose minor children are residing abroad). Each state sets its income eligibility standards for the RCA program.<sup>22</sup>

The goal of the RCA program is for the recipients to achieve economic self-sufficiency as early as possible. RCA recipients must participate in employability services, although resettlement programs may establish exemptions from this requirement.<sup>23</sup> Full-time students enrolled in higher education programs are not eligible for RCA.<sup>24</sup>

RCA grants are limited to the first eight months of certification,<sup>25</sup> so trafficked persons should apply for these benefits as soon as possible after certification.

### **Voluntary Agency Matching Grant Program**

As an alternative to the RCA welfare assistance available to trafficking survivors during their first eight months of certification, many refugee resettlement programs administer a Matching Grant program funded through private sector and federal government contributions.<sup>26</sup> The goal of the Matching Grant programs is to help recipients achieve economic self-sufficiency within four months of ORR certification.<sup>27</sup>

Enrollment in the Matching Grant program must be within 31 days of the date of the individual's eligibility.<sup>28</sup> During the four months of Matching Grant eligibility, recipients are eligible for a cash allowance and intensive employment training. The Matching Grant program emphasizes employment, English language training, and case management. Participants in the Matching Grant program retain eligibility for Medicaid or Refugee Medical Assistance (RMA), but the private resettlement programs provide income maintenance and social and employment services.<sup>29</sup> Recipients who are unemployed at the end of the four months may be referred to a welfare program such as TANF or General Assistance.

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<sup>21</sup> Refugee Cash Assistance, 45 C.F.R. § 400.51(2004).

<sup>22</sup> 45 C.F.R. §§ 400.59, 400.66.

<sup>23</sup> 45 C.F.R. § 400.176.

<sup>24</sup> 45 C.F.R. § 400.53(a)(4).

<sup>25</sup> See 45 C.F.R. § 400.53(b) (the ORR Director determines the applicable period of time); see also Office of Refugee Resettlement, U.S. Resettlement Program—An Overview, at <http://www.acf.hhs.gov/programs/orr/programs/overviewrp.htm> (explaining the 8 month limitation).

<sup>26</sup> John Fredriksson, *Bridging the Gap Between Rights and Responsibilities: Policy Changes Affecting Refugees and Immigrants in the United States Since 1996*, 14 Geo. Immigr. L.J. 757, 700 (2000).

<sup>27</sup> ORR, Matching Grant Program, at <http://www.acf.hhs.gov/programs/orr/programs/matchgva.htm>.

<sup>28</sup> ORR, Voluntary Agency Match Grant Program Guidelines Effective CY 2003, at <http://www.acf.hhs.gov/programs/orr/policy/sl02-37att2.htm>.

<sup>29</sup> *Id.*

In its first two annual trafficking reports to Congress, ORR statistics reflected that most certified trafficking victims who applied for benefits and also possessed valid EAD's enrolled in the Matching Grant program.<sup>30</sup>

### **Temporary Assistance to Needy Families (TANF)**

TANF is a federal "block grant" that states can use to provide cash assistance and services to low-income families with children.<sup>31</sup> In most states, children must be under age 18 to qualify.<sup>32</sup> To be eligible for TANF, recipients may also have to participate in work, education, or training activities unless an exemption applies.<sup>33</sup> The names of programs and amount of benefits may differ by state.<sup>34</sup> Some states provide state-funded TANF services to immigrants who are ineligible for federally funded TANF.<sup>35</sup>

TANF is a state-administered benefit, but the benefit period varies by state, subject to the overall federal requirement that adult recipients are limited to five years of benefits over their lifetime.<sup>36</sup> Most states exempt certain families from the time limits, such as domestic violence survivors or persons with disabilities.<sup>37</sup>

Because refugees are eligible for the TANF program regardless of their entry date into the U.S., trafficking victims and their families are also eligible for these services.<sup>38</sup> Although it appears that the participation of trafficking victims in TANF programs has been low,<sup>39</sup> the TVPRA's extension of government benefits to victims' family members who have been granted T visas may increase participation.

### **Supplemental Security Income (SSI)**

SSI provides monthly cash assistance to low-income persons who are age 65 or older<sup>40</sup> or are blind or disabled. To be eligible for disability benefits, an individual who is age 18 or older must be unable to do any kind of substantial gainful work because of a physical or mental impairment that has lasted or is expected to last for a continuous

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<sup>30</sup> See Office of Refugee Resettlement, Annual Trafficking Report to Congress – 2001, *available at* [http://www.acf.hhs.gov/programs/orr/policy/atrc\\_01.htm](http://www.acf.hhs.gov/programs/orr/policy/atrc_01.htm); see also Office of Refugee Resettlement, Annual Trafficking Report to Congress – 2002, *available at* [http://www.acf.hhs.gov/programs/orr/policy/atrc\\_02.htm](http://www.acf.hhs.gov/programs/orr/policy/atrc_02.htm).

<sup>31</sup> Social Security Act, 42 U.S.C. §§ 603, 608 (2004).

<sup>32</sup> NILC Guide, *supra* n. 2, at 100.

<sup>33</sup> 45 C.F.R. § 261.10 (2004).

<sup>34</sup> Office of Refugee Resettlement, Annual Trafficking Report to Congress – 2001, *available at* [http://www.acf.hhs.gov/programs/orr/policy/atrc\\_01.htm](http://www.acf.hhs.gov/programs/orr/policy/atrc_01.htm).

<sup>35</sup> NILC Guide, *supra* n. 2, at 100.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Some states limit TANF availability to refugees who entered the U.S. on or after August 22, 1996 to the first five years of refugee status. NILC Guide, *supra* n. 2, at 101.

<sup>39</sup> NILC Guide, *supra* n. 2, at 100.

<sup>40</sup> SSI used the Social Security "full retirement" age requirement. Full retirement age is being gradually raised to age 67 beginning with people born after January 1, 1938. 68 Fed. Reg 4700, 4708 (Jan. 30, 2003).

period of at least 12 months, or that is expected to result in death.<sup>41</sup> A child must have a “marked and severe” physical or mental disability that would keep him or her from working if an adult or would significantly interfere with daily activities.<sup>42</sup>

Because refugees are among the limited categories of immigrants who may qualify for SSI benefits, trafficking victims and their eligible family members who are elderly, blind or disabled may also qualify for them. Victims and their family members—like refugees—are limited to a seven year period of eligibility for these benefits. For trafficking victims, this seven year period starts on the date of the HHS certification letter.<sup>43</sup> For family members present in the U.S. on the date the derivative T visa is issued, this period starts on the notice date on the I-797 Notice of Action of the derivative T visa. For family members who enter the U.S. on the basis of a derivative T visa, this period starts on the date of entry stamped on their passport or I-94 Arrival Record.<sup>44</sup> Although ORR reports that participation in the SSI program by trafficking victims has been quite low, this may change over time since many trafficking survivors suffer significant mental and/or physical trauma at the hands of their traffickers.

Because SSI’s disability determination process can delay benefit receipt for up to 12 months,<sup>45</sup> trafficking victims who apply for SSI during the first eight months of ORR certification are eligible to receive RCA benefits while waiting for an SSI disability determination.<sup>46</sup> If the applicant is outside the RCA eligibility period, he or she may be eligible for General Assistance benefits or a state-funded SSI replacement program, depending on where they live in the United States.

### **General Assistance**

General Assistance programs is a term for a group of programs that are funded and administered entirely by the state, county and/or locality in which they operate, and that provide benefits to low-income persons who are not eligible for federally-funded assistance.<sup>47</sup> Depending on where they reside, unemployed trafficking victims who are able-bodied and without minor children may be eligible for General Assistance benefits once they have exhausted their RCA benefits.

## **§ 6.4 Health Care**

### **Refugee Medical Assistance (RMA)**

RMA is a refugee-specific health insurance program available to trafficked persons who are ineligible for Medicaid or the State Children’s Health Insurance Program

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<sup>41</sup> 42 U.S.C. § 1382c(a)(3).

<sup>42</sup> *Id.* at § 1382c(C).

<sup>43</sup> *Supra* n. 7.

<sup>44</sup> *Supra* n. 10.

<sup>45</sup> Cori E. Uccello and L. Jerome Gallagher, Urban Institute, General Assistance Programs: The State-Based Part of the Safety Net, at 2, Jan. 1, 1997, available at <http://www.urban.org/url.cfm?ID=307036>.

<sup>46</sup> See 45 C.F.R. § 400.51(b)(ii).

<sup>47</sup> Cori E. Uccello and L. Jerome Gallagher, *supra* n. 38, at 1.

(SCHIP).<sup>48</sup> RMA services must be at least the same as those provided under a state's Medicaid program.<sup>49</sup> All RCA recipients who are not eligible for Medicaid or SCHIP are eligible for RMA, although receipt of RCA is not a condition of eligibility for RMA.<sup>50</sup> Like the RCA program, RMA is primarily available to non-disabled adult applicants who do not have dependent children.

States may set the income eligibility standard for RMA at up to 200 per cent of the national poverty level.<sup>51</sup> RMA eligibility is determined based on income and resources on the date of application.<sup>52</sup> A recipient's subsequent earnings do not affect his or her continued eligibility for RMA.<sup>53</sup> Full-time students enrolled in a higher education program are not eligible for RMA unless the enrollment is approved as part of an employability plan or a plan for an unaccompanied minor.<sup>54</sup>

### **Medicaid**

Medicaid is a health insurance program for certain categories of low-income persons, including pregnant women, children and teenagers, and persons who are aged, blind and disabled.<sup>55</sup> Because federally-funded "full-scope" Medicaid services are available to refugees, they are also available to trafficking victims and their family members who meet the other program requirements.<sup>56</sup> Trafficking victims and derivative family members who lose eligibility for Medicaid services due to earnings can transfer to RMA without an income eligibility determination as long as they are still within the eight-month RMA eligibility period.<sup>57</sup>

Emergency Medicaid is available to all immigrants, regardless of status, as long as they meet other Medicaid requirements.<sup>58</sup> The names of Medicaid programs may vary by state.<sup>59</sup> In many states, SSI recipients are automatically eligible for Medicaid<sup>60</sup>

### **State Children's Health Insurance Program (SCHIP)**

SCHIP is a federally funded health-insurance program for children in low-income working families.<sup>61</sup> In most states, a child has to be under age 19 to qualify.<sup>62</sup> In some

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<sup>48</sup> 45 C.F.R. § 400.100(a)(1).

<sup>49</sup> 45 C.F.R. § 400.105.

<sup>50</sup> 45 C.F.R. § 400.100(c)(d).

<sup>51</sup> 45 C.F.R. § 400.101(b)(2).

<sup>52</sup> 45 C.F.R. § 102(d).

<sup>53</sup> 45 C.F.R. § 400.104(a).

<sup>54</sup> 45 C.F.R. § 400.100(a)(5).

<sup>55</sup> NILC *Guide* at 120.

<sup>56</sup> Some states limit Medicaid for refugees to the first seven years after obtaining this status. NILC *Guide, supra* n. 2, at 121.

<sup>57</sup> 45 C.F.R. § 400.104(a).

<sup>58</sup> 8 U.S.C. § 1611(b)(1)(A) (2004).

<sup>59</sup> NILC *Guide, supra* n. 2, at 120.

<sup>60</sup> NILC *Guide supra* n. 2, at 120.

<sup>61</sup> NILC *Guide, supra* n. 2, at 124.

<sup>62</sup> *Id.*

states, the SCHIP program also covers the parents of children enrolled in SCHIP programs.<sup>63</sup> A family pays a small monthly amount for SCHIP coverage. Children eligible for Medicaid cannot be enrolled in an SCHIP program.<sup>64</sup>

Because SCHIP programs are available to all qualified immigrants, including refugees, they are also available to trafficking victims and family members who are otherwise eligible for them.

### **Other Health Care Programs**

Trafficking survivors who do not yet have an ORR certification or eligibility letter may obtain some health care and related benefits that are available to all immigrants, regardless of status:

- Emergency Medicaid (includes labor and delivery)
- Public health programs providing immunizations and/or treatment of communicable disease symptoms (these are separate from the Medicaid program)
- School breakfast and lunch programs for children

In addition, certain types of in-kind benefits and services that are necessary for the protection of life and safety and are available to individuals regardless of income or resources are exempt from the immigrant restrictions in federal welfare law. The Attorney General has designated the following types of community programs as falling within this exemption:

- Child and adult protective services
- Programs addressing weather emergencies and homelessness
- Shelters, soup kitchens, and meals-on-wheels
- Medical, public health, and mental health services necessary to protect life or safety
- Disability or substance abuse services necessary to protect life or safety
- Programs to protect the life or safety of workers, children and youths, or community residents<sup>65</sup>

In some states, immigrants whose status makes them ineligible for federal benefits programs may be able to obtain state-funded benefits.

## **§ 6.5 Social Services**

### **Refugee Social Services (RSS)**

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See 8 U.S.C. § 1641(b)(1)(A); see also 66 Fed. Reg. 3613 (Jan. 16, 2001) (The Attorney General's order is titled "Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation").

As a condition for receipt of RCA assistance, trafficking victims who are RCA recipients must register for employment services and participate in an employability plan intended to result in their earliest possible employment.<sup>66</sup> Each State may determine which RCA recipients are exempt from the employment requirements.<sup>67</sup>

Employability services may include job orientation, aptitude and skills testing, on-the-job training, English-language instruction, day care for children, transportation, case management services, and assistance in obtaining EAD's.<sup>68</sup> Trafficking victims and their families may also be able to take advantage of other refugee social services, including health-related information and counseling, home management services and citizenship and naturalization preparation.<sup>69</sup>

### **Unaccompanied Refugee Minors Program (URM)**

Unaccompanied children under the age of 18 who have been designated as trafficking victims are eligible for foster care and resettlement services through ORR's Unaccompanied Refugee Minors (URM) program. Two voluntary agencies, USCCB/Refugee and Migration Services and Lutheran Immigration and Refugee Services (LIRS), administer the URM program for refugee, asylee and trafficked youth under a contract with the U.S. government.

Depending on the "best interests and needs" of the child, placement can be in foster care, a group home, residential facility or independent living arrangements.<sup>70</sup> Services available through these programs include:

- Indirect financial support for housing, food, clothing, and other necessities
- medical care
- Intensive case management by a social worker
- Independent living skills training (e.g., consumer/budgeting skills, housing, food preparation, social and legal systems, transportation, education, community resources, health and sexuality),
- Education/English as a Second Language (ESL) tutoring/mentoring,
- Job skills training and career/college counseling
- Mental health services
- On-going family tracing, where possible
- Cultural activities/recreation
- Special educational services, where needed
- Legal assistance.<sup>71</sup>

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<sup>66</sup> 45 C.F.R. §§ 400.71 and 400.75.

<sup>67</sup> 45 C.F.R. § 400.76.

<sup>68</sup> 45 C.F.R. § 400.154.

<sup>69</sup> 45 C.F.R. § 400.155.

<sup>70</sup> 45 C.F.R. § 400.118(2).

Foster parents come from a diversity of ethnic and linguistic backgrounds and receive special training on the adjustment needs of refugee youth.<sup>72</sup>

Trafficking victims may also receive other federal welfare benefits, as long as they are otherwise qualified for them. Some of these benefits are available to low-income persons regardless of immigration status, while others are available only to certain categories of immigrants with legal status.

## § 6.6 Food Assistance

### Food Stamps

The Food Stamp program provides electronic benefits cards to low-income families that can be used to buy food at participating stores.<sup>73</sup> Because refugees are eligible for the Food Stamp program, trafficking victims and their family members are also eligible for these benefits. Unlike other federal welfare benefits, food stamps are available to low-income persons regardless of their age, health or household characteristics.<sup>74</sup>

To be eligible, some participants may have to be employed or participate in a work experience or job training program.<sup>75</sup> However, trafficked persons who participate at least half-time in employability programs approved or funded by ORR are exempt from Food Stamp work requirements and time limits.<sup>76</sup>

Trafficking victims and their families benefit, like refugees, are exempt from restrictions on food stamp eligibility that apply to other qualified immigrants.<sup>77</sup>

### Women, Infants and Children (WIC)

The WIC program provides vouchers to pregnant women, new mothers, infants and young children in low-income families who are at nutritional risk.<sup>78</sup> All immigrants are eligible for WIC, regardless of immigration status.<sup>79</sup>

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<sup>71</sup> United States Conference of Catholic Bishops, Migration and Refugee Services, The Unaccompanied Refugee Minors Program of the U.S. Refugee Program: Frequently Asked Questions, at <http://www.usccb.org/mrs/urmdesc.htm>; see also Office of Refugee Resettlement, DHHS, The Unaccompanied Minors Program, at <http://www2.acf.dhhs.gov/programs/orr/programs/urm.htm>.

<sup>72</sup> United States Conference of Catholic Bishops, *supra* n. 63.

<sup>73</sup> Food Research and Action Center, Food Stamp Program: Basic Facts and Benefits, at [http://www.frac.org/html/federal\\_food\\_programs/programs/fsp.html#Benefits](http://www.frac.org/html/federal_food_programs/programs/fsp.html#Benefits).

<sup>74</sup> Cori E. Uccello and L. Jerome Gallagher, *supra* n. 38.

<sup>75</sup> NILC Guide, *supra* n. 2, at 132.

<sup>76</sup> Office of Refugee Resettlement, DHHS, State Letter SL #02-37, Matching Grant Program CY 2003 Continuation Applications, Voluntary Agency Matching Grant Program Guidelines Effective CY app. (Nov. 25, 2002) (citing Office of Refugee Resettlement, DHHS, State Letter SL #97-28 (Dec. 5, 1997)).

<sup>77</sup> U.S. Dept. of Agriculture, Food and Nutrition Service, Non-citizen Requirements in the Food Stamp Program 33 (Jan. 2003), available at

[http://www.fns.usda.gov/fsp/rules/Legislation/pdfs/Non\\_Citizen\\_Guidance.pdf](http://www.fns.usda.gov/fsp/rules/Legislation/pdfs/Non_Citizen_Guidance.pdf).

<sup>78</sup> 7 C.F.R. § 246.7(c)(2004).

## § 6.7 Housing

The U.S. Department of Housing and Urban Development (HUD) funds public housing and “Section 8” rental assistance programs for low-income persons.<sup>80</sup> Local housing authorities administer these programs throughout the United States.<sup>81</sup> Trafficking victims and their families, like refugees, are eligible for this federally subsidized housing assistance. There must be at least one member of a household (adult or minor child) who qualifies for housing assistance based on immigration status.<sup>82</sup> Housing authorities pay households with ineligible immigrants prorated subsidies.<sup>83</sup>

## § 6.8 Legal Services

The Legal Services Corporation (LSC) is a private nonprofit corporation established by Congress that provides funding to over 175 programs throughout the United States that provide free civil legal assistance to low-income persons. The TVPA provides that LSC “shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, without regard to the immigration status of such victims.”<sup>84</sup>

The TVPA provides that LSC grantees may represent any trafficked person for any purpose and without regard to immigration status, as long as he or she

- Meets the statutory definition of “victim of a severe form of trafficking in persons” and
- Is under the age of 18 years *or* is the subject of a victim certification by the U.S. Department of Health and Human Services.

LSC has clarified that LSC-funded programs may represent trafficking victims in the HHS certification process.<sup>85</sup>

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<sup>79</sup> *Id.*

<sup>80</sup> 24 C.F.R. § 982.1.

<sup>81</sup> *Id.*

<sup>82</sup> 24 C.F.R. § 5.520; *see also*, U.S. Dep’t of Housing and Urban Development, Memorandum on Eligibility of Mixed Families for Public and Assisted Housing (March 11, 2004), *available at* [http://www.fairhousing.com/index.cfm?method=page.display&pagename=hud\\_resources\\_russell](http://www.fairhousing.com/index.cfm?method=page.display&pagename=hud_resources_russell)

<sup>83</sup> *Id.*

<sup>84</sup> 22 U.S.C.S. § 7105(b)(1)(B).

<sup>85</sup> LSC Program Letter 2002-5, Eligibility of Immigrant Victims of Severe Forms of Trafficking in Persons for Legal Services (May 15, 2002), *available at* [www.lsc.gov/foia/pl/o/02-5.htm](http://www.lsc.gov/foia/pl/o/02-5.htm); *see also* Letter from Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, to D. Michael Dale, Attorney at Law, (Aug. 2, 2002) (on file with author).





DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

HHS Tracking Number  
[REDACTED]

Ms. [REDACTED]  
c/o U.S. Attorney's Office  
300 Ala Moana Blvd., Room 6-100  
Honolulu, HI 96850

CERTIFICATION LETTER

Dear Ms. [REDACTED]

This letter confirms that you have been certified by the U.S. Department of Health and Human Services (HHS) under section 107(b) of the Trafficking Victims Protection Act of 2000. With this certification, you are eligible for benefits and services under any Federal or State program or activity funded or administered by any Federal agency to the same extent as an individual who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act, provided you meet other eligibility criteria. Certification does not confer immigration status.

Your certification date is 04/13/2001. The benefits outlined in the previous paragraph may offer assistance for only limited time periods that start from the date of this certification.

You should present this letter when you apply for benefits or services. Benefit-issuing agencies must call the trafficking verification line at (202) 401-5510 in the Office of Refugee Resettlement to verify the validity of this document and to inform HHS of the benefits for which you have applied.

Sincerely,

Nguyen Van Hanh, PhD  
Director  
Office of Refugee Resettlement

Washington, District of Columbia

Subscribed and sworn to before me, in my presence,  
this 4<sup>th</sup> day of December, 2001

by Neil S. Kromash Notary Public

My Commission Expires October 19, 2006

**SAMPLE ELIGIBILITY LETTER**

HHS Tracking Number  
05027020050

NAME OF MINOR  
c/o ADVOCATE  
ADDRESS  
CITY, STATE ZIP CODE

Dear NAME OF MINOR:

This letter confirms that under section 107(b) of the Trafficking Victims Protection Act of 2000, you are eligible for benefits and services under any Federal or State program or activity funded or administered by any Federal agency to the same extent as an individual who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act, provided you meet other eligibility criteria. This letter does not confer immigration status.

Your eligibility date is MAY 28, 2002. The benefits outlined in the previous paragraph may offer assistance for only limited time periods that start from the date of this eligibility letter. Therefore, if you wish to seek assistance, *it important that you do so as soon as possible after receipt of this letter.*

You should present this letter when you apply for benefits or services. **Benefit-issuing agencies must call the toll-free trafficking verification line at 1 (866) 401-5510 in the Office of Refugee Resettlement to verify the validity of this document and to inform HHS of the benefits for which you have applied.**

You must notify ORR of your current mailing address. Please send a dated and signed letter with any changes or address to: Trafficking Program Specialist, Office of Refugee Resettlement, 6<sup>th</sup> Floor East, 370 L'Enfant Promenade, SW, Washington DC 20447. We will send all notices to your current mailing address, and any notice mailed to your current mailing address constitutes adequate service. You may also need to share this same information with state and local benefit-issuing agencies.

Sincerely,

Nguyen Van Hanh, Ph.D.  
Director  
Office of Refugee Resettlement

Appendix 6-2

04/15/2003 09:53 FAX

U.S. Department of Justice  
Immigration and Naturalization Service

## Notice of Action

## UNITED STATES OF AMERICA

RECEIPT NUMBER: [REDACTED]		CASE TYPE: I-914 Application, for T Nonimmigrant Status
RECEIPT DATE: February 3, 2003	PRIORITY DATE	PETITIONER: [REDACTED]
NOTICE DATE: April 10, 2003	PAGE: 1 of 1	BENEFICIARY:
[REDACTED] ATTN MONA PATEL-SIKORA ESQ PUBLIC COUNSEL 601 S ARDMORE AVE LOS ANGELES CA 90005		Notice Type: Bona Fide

The Service has determined that the above application is *bona fide*.

You will be notified separately when a decision is reached on your application for T nonimmigrant classification.

**THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.**

**BONA FIDE DETERMINATION:**

A *bona fide* determination is not an approval of your application for T nonimmigrant classification. A *bona fide* determination means that the Service has assessed your application and determined that you have submitted *prima facie* evidence for each eligibility requirement.

**DEFERRED ACTION:**

In the exercise of its prosecutorial discretion, the Service has decided to place this case under deferred action. Deferred action is an administrative choice to give some cases lower priority for removal. The Service does not anticipate instituting action for removal in this case at this time.

Pursuant to 8 CFR 274a.12(c)(14), an alien who is under deferred action is eligible to submit an application for employment authorization, if the applicant establishes an economic necessity for employment. The application, on Form I-765, should be filed with this office along with the required fee or a request for a fee waiver. The applicant must provide information regarding his or her assets, income and expenses in accordance with the instructions on the Form I-765.

Deferred action will remain in effect for twelve months from the date of this notice unless terminated earlier by the Service for reasonable cause and upon notice. Requests for extension of employment authorization, filed on Form I-765, which is based upon deferred action, will be considered to be a request for the extension of the deferred action. If you do not request an extension of an employment authorization document, the request for extension of deferred action must be made in writing in care of the I-914 unit to the address listed at the bottom of this notice.

**THIS FORM DOES NOT CONSTITUTE EMPLOYMENT AUTHORIZATION NOR MAY IT BE USED IN PLACE OF AN EMPLOYMENT AUTHORIZATION DOCUMENT.**

Please see attached additional information on the back. You will be notified separately about other cases you filed.

Immigration & Naturalization Service  
Vermont Service Center  
75 Lower Welden St.  
St. Albans, VT 05479-0001  
Customer Service Telephone Number (802) 527-4913

Appendix 6-3



## Migration and Refugee Services

### Office of Refugee Programs

3211 4th Street NE, Washington, D.C. 20017-1194 Tel. (202) 541-3170 • Fax: (202) 722-8750  
Email: [refprog@uscgb.org](mailto:refprog@uscgb.org) Website: [www.usccb.org/mrs](http://www.usccb.org/mrs)

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## BENEFITS ELIGIBILITY FOR ADULT TRAFFICKING VICTIMS

### Who is a Victim of a Severe Form of Trafficking?

The Victims of Trafficking and Violence Protection Act of 2000 defines “severe forms of trafficking in persons” as:

- A. 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
- B. 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.

### What is the immigration status of a victim of a severe form of trafficking?

Survivors of human trafficking may have any of a variety of immigration statuses when they are first identified. Once identified as victims of trafficking by law enforcement, they may be granted continued presence by BCIS and/or self-petition for the T-visa. A T-visa allows victims of severe forms of trafficking to remain in the U.S. if they have complied with any reasonable request to assist in the investigation or prosecution of their case or are under 15 years of age (*i.e.* minors do not have to cooperate with the prosecution), AND would suffer extreme hardship upon removal. Recipients of T-visas are eligible for work authorization. T-visa recipients may adjust their status to lawful permanent residents after three years. In some cases, the U-visa is also appropriate for a person who has been trafficked.

### What is “Certification” and why is it necessary?

A person in the United States who is identified by law enforcement as a victim of a severe form of trafficking may be referred for certification from the DHHS/Office of Refugee Resettlement (ORR). To receive certification, the person must

1. be willing to assist in every reasonable way in the investigation and prosecution of their case, and
2. have made a bona fide application for a “T-visa” OR be a person whose continued presence the Attorney General is ensuring for the prosecution of traffickers and thus have an INS grant of authorized stay.

Once certified by ORR, the person is eligible for benefits and services to the same extent as a refugee. Therefore, certification allows the person to access resettlement services, public benefits such as Refugee Medical Assistance, etc.

### How does a victim of trafficking access services?

The Department of Justice’s Office for Victims of Crime has funded some grantees to provide social services to victims of trafficking while they await certification. Once certified by the ORR, victims of trafficking are eligible for benefits and services to the same extent as a refugee. USCCB/MRS has a program to provide services through the Catholic social service network to certified victims any time they surface, anywhere in the United States. If there is not an ORR funded provider in your area, contact Laurie Latuda at 202-541-3385 for more information.

**What benefits and services are available to refugees (and therefore to certified victims of trafficking)?**

<b>Type of Assistance</b>	<b>Description</b>	<b>Eligibility Period For Refugees (from date of entry)</b>
Temporary Assistance to Needy Families (TANF)	A monthly case payment to low-income parents with children under 18.	5 years (federal life-time limit)
Medicaid	Reimburses doctor and hospital costs for certain low-income people, primarily pregnant women, families with children, the elderly, and the disabled.	7 years
Social Security Income (SSI)	A monthly case payment to elderly people age 65 and older and to people with certain disabilities that prevent them from working and are certified by the Social Security Administration.	7 years
Refugee Cash and Medical Assistance (RCA & RMA)	A federally funded program available to needy refugees/asylees who are not eligible for other cash or medical assistance programs such as TANF, SSI, or Medicaid.	8 months
Refugee Social Services	Designed to smooth adjustment and facilitate early self-sufficiency. These include job preparation/placement and English language classes. May vary by state.	May vary by state
Match Grant	An early employment program administered by private refugee resettlement agencies as an alternative to public cash assistance. Provides job counseling and placement, case management, cash and living assistance. Selective: only those who are good candidates for early employment are chosen, and it is based on availability of slots.	4 months, but must be enrolled within 31 days of certification.
Health Screening	A preventive health assessment and treatment provided by the State Dept. of Public Health to refugees for early diagnosis and treatment of any illness. Includes screening for TB, parasites, and hepatitis. Also includes school vaccinations for children.	90 days
Food Stamps	Allow low income people to buy food necessary for good health.	No time limit.

*The certification date of the victim of trafficking should be treated like the refugee entry date for purposes of benefits eligibility determination.*



## Migration and Refugee Services

### Office of Refugee Programs

3211 4th Street NE, Washington, D.C. 20017-1194 Tel: (202) 541-3170 • Fax: (202) 722-8750  
Email: [refprog@uscgb.org](mailto:refprog@uscgb.org) Website: [www.usccb.org/mrs](http://www.usccb.org/mrs)

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## Special Benefits for Trafficked Children

Unlike adults, trafficked children are not certified but rather determined eligible. Also unlike adults, trafficked children do not need continued presence or the bona fide T Visa application to be determined eligible.

## Services for Unaccompanied Trafficked Children

Unaccompanied trafficked children may be eligible for placement in specialized programs, called Unaccompanied Refugee Minor programs, which provide foster care, group homes or independent living arrangements. These programs have culturally and linguistically appropriate services in a setting suitable for the special therapeutic needs of a trafficked child. These services are provided by two voluntary agencies, Lutheran Immigration and Refugee Service and the United States Conference of Catholic Bishops/Migration and Refugee Services, which have worked with unaccompanied refugee youth for more than 25 years. These agencies work through a network of licensed child welfare agencies to provide appropriate support services, including:

- indirect financial support for housing, food, clothing, and other necessities
- medical care
- mental health services
- intensive case management by a social worker
- independent living skills training
- education such as English as a Second Language (ESL)
- tutoring/mentoring
- special educational services, where needed
- job skills training and career/college counseling
- family reunification, where possible
- cultural activities/recreation
- legal assistance

## How long are minors eligible for URM care?

Minors must enter refugee foster care prior to their 18<sup>th</sup> birthday. Once in care, the youth can remain in a foster care program until the age of 20 or 21 (depending on particular state child welfare guidelines). After age 18, continued participation in the program is voluntary.

## **How are these programs like or unlike domestic foster care programs, and how are they funded and monitored?**

Refugee foster care programs follow the same state or county laws and regulations that govern domestic foster care. Refugee youth are eligible for all of the same services for which an American youth would be eligible. However, refugee foster care programs are separate from domestic foster care programs in that they have been developed by agencies with expertise in working with refugees. Foster families are oriented towards the particular needs of refugee youth and trafficking victims. Social work staff assist with special services which may be needed by this population (e.g., English as a Second Language or other special educational needs, cultural identity and adjustment, family tracing, trauma, etc).

Refugee foster care programs are funded by the Office of Refugee Resettlement, via State Refugee Coordinator offices. All foster care programs are licensed and monitored regularly by their state child welfare authority. Foster families must go through a background clearance and licensing process. In addition, LIRS and USCCB provide quality control and serve as an on-going resource for these programs.

## **What kind of foster family or other care arrangements will be provided?**

These programs use families from varied backgrounds to foster youth. Programs recruit families from the same ethnic communities represented by minors in their care. Such placements are a priority for younger children. American foster families are also a strong resource for this program, with many families who have fostered children from various ethnic backgrounds and become familiar with the needs of refugee youth. In addition, programs recruit immigrant families from varied ethnic origins, who personally understand the refugee adjustment, even if not from the same ethnic perspective.

In addition to foster care, programs use a mix of supervised, semi-independent, and independent living arrangements. These services are available to older youths (generally 17 and older), and allow them to live with other youths in semi-autonomous arrangements while they receive training and intensive social worker assistance in learning the life skills they will need to live independently. Some programs also utilize group homes or group foster care homes. In a few specialized circumstances, programs have been able to access residential treatment services for severely traumatized or special needs youth.

## **How can a child access URM care?**

In order to enter one of these programs, the child has to be referred to ORR by a federal law enforcement agency. ORR can assist you in locating the proper federal law enforcement representatives so the child may be referred for ORR-funded services. Call the Office of Refugee Resettlement (ORR): Antoinette Aqai, 202/401-4825. For further information:

Margaret MacDonnell  
USCCB/Migration & Refugee Services  
3211 4<sup>th</sup> St., NE  
Washington, D.C. 20017-1194  
Phone: (202-541-3114)

Chak Ng  
Lutheran Immigration and Refugee Service  
700 Light Street  
Baltimore, MD 21230  
Phone: (410) 230-2746

Appendix 6-7

**TABLE 1**  
**Overview of Immigrant Eligibility for Federal Programs**

*This table provides an overview of immigrant eligibility for the major federal public assistance programs. Some states provide assistance to immigrants who are not eligible for federally funded services. (TABLE UPDATED Mar. '04)*

<b>PROGRAM</b>	<b>“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996</b>	<b>“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996</b>	<b>“NOT QUALIFIED” IMMIGRANTS</b>
<b>Supplemental Security Income (SSI)</b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>Receiving SSI (or application pending) on Aug. 22, 1996</li> <li>Qualify as disabled and were lawfully residing in the U.S. on Aug. 22, 1996<sup>1</sup></li> <li>Lawful permanent resident with credit for 40 quarters of work<sup>1,2</sup></li> <li>Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, but only <i>during first 7 years after getting status</i></li> <li>Veteran, active duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>Lawful permanent resident with credit for 40 quarters of work<sup>2</sup> (but must wait until 5 years after entry before applying)</li> <li>Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, but only <i>during first 7 years after getting status</i></li> <li>Veteran, active duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>Receiving SSI (or application pending) on Aug. 22, 1996</li> <li>Certain American Indians born abroad</li> <li>Victims of trafficking and their derivative beneficiaries</li> </ul>
<b>Food Stamps<sup>3</sup></b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>Are under age 18<sup>3</sup></li> <li>Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant</li> <li>Have been in “qualified” immigrant status for 5 years<sup>1</sup></li> <li>Are receiving disability-related assistance<sup>1,4</sup></li> <li>Lawful permanent resident with credit for 40 quarters of work</li> <li>Were 65 years or older and were lawfully residing in the U.S. on Aug. 22, 1996<sup>1</sup></li> <li>Veteran, active duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member<sup>1</sup></li> <li>Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>Are under age 18<sup>3</sup></li> <li>Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant</li> <li>Have been in “qualified” immigrant status for 5 years<sup>1</sup></li> <li>Are receiving disability-related assistance<sup>1,4</sup></li> <li>Lawful permanent resident with credit for 40 quarters of work</li> <li>Veteran, active duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member<sup>1</sup></li> <li>Certain American Indians born abroad</li> </ul>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S., spouse, surviving spouse or child of tribe member, <i>who is lawfully present in the U.S.</i></li> <li>Certain American Indians born abroad</li> <li>Victims of trafficking and their derivative beneficiaries</li> </ul>

(rev. 03/04)

National Immigration Law Center

*table continued next page* ➤



**TABLE 1 (CONTINUED, p. 2 of 3)**  
**Overview of Immigrant Eligibility for Federal Programs**

<b>PROGRAM</b>	<b>"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996</b>	<b>"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996</b>	<b>"NOT QUALIFIED" IMMIGRANTS</b>
<b>Temporary Assistance for Needy Families (TANF)</b>	Eligible <sup>1</sup>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant<sup>5</sup></li> <li>• Veteran, active duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>• Have been in "qualified" immigrant status for 5 years or more<sup>1,5</sup></li> </ul>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Victims of trafficking and their derivative beneficiaries</li> </ul>
<b>Emergency Medicaid (includes labor and delivery)</b>	Eligible	Eligible	Eligible
<b>Full-Scope Medicaid</b>	Eligible <sup>6</sup>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant<sup>7</sup></li> <li>• Veteran, active duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>• Have been in "qualified" immigrant status for 5 years or more<sup>1,7</sup></li> </ul>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Were receiving SSI on Aug. 22, 1996 (in states that link Medicaid to SSI eligibility)</li> <li>• Certain American Indians born abroad</li> <li>• Victims of trafficking and their derivative beneficiaries</li> </ul>
<b>State Children's Health Insurance Program (SCHIP)<sup>8</sup></b>	Eligible	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant</li> <li>• Veteran, active duty military; spouse, unremarried surviving spouse, or child<sup>1</sup></li> <li>• Have been in "qualified" immigrant status for 5 years or more<sup>1</sup></li> </ul>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Victims of trafficking and their derivative beneficiaries</li> </ul>
<b>Medicare "Premium Free" Part A (hospitalization) (eligibility based on work history)</b>	Eligible	Eligible	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Lawfully present, and eligibility for assistance is based on authorized employment</li> </ul>
<b>Premium "Buy-in" Medicare</b>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Lawful permanent resident who has resided continuously in the U.S. for at least 5 years</li> </ul>	<b>Eligible only if:</b> <ul style="list-style-type: none"> <li>• Lawful permanent resident who has resided continuously in the U.S. for at least 5 years</li> </ul>	<b>Not Eligible</b>

(rev. 03/04)

*table continued next page >*

**TABLE 1 (CONTINUED, p. 3 of 3)**  
**Overview of Immigrant Eligibility for Federal Programs**

<b>PROGRAM</b>	<b>"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996</b>	<b>"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996</b>	<b>"NOT QUALIFIED" IMMIGRANTS</b>
<b>HUD Public Housing and Section 8 Programs</b>	<p><b>Eligible except:</b></p> <ul style="list-style-type: none"> <li>• Certain Cuban/Haitian entrants and "qualified" abused spouses and children</li> </ul> <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p>	<p><b>Eligible except:</b></p> <ul style="list-style-type: none"> <li>• Certain Cuban/Haitian entrants and "qualified" abused spouses and children</li> </ul> <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>• Temporary resident under IRCA general amnesty, or paroled into the U.S. for less than 1 year</li> <li>• Victims of trafficking and their derivative beneficiaries</li> <li>• Citizens of Micronesia, the Marshall Islands, and Palau</li> </ul> <p>Note: For other immigrants, eligibility may depend on the date the family began receiving housing assistance, the immigration status of other household members, and the household composition.</p> <p>Also note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p>
<b>Title XX Block Grants</b>	<b>Eligible</b>	<b>Eligible</b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>• Victims of trafficking and their derivative beneficiaries</li> <li>• Program or service funded by the block grant is exempt from the welfare law's restrictions</li> </ul>
<b>Social Security</b>	<b>Eligible<sup>9</sup></b>	<b>Eligible<sup>9</sup></b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>• Lawfully present<sup>9</sup></li> <li>• Were receiving assistance based on an application filed before Dec. 1, 1996</li> <li>• Eligibility required by certain international agreements</li> </ul>
<b>Other Federal Public Benefits</b> Subject to welfare law's restrictions	<b>Eligible</b>	<b>Eligible</b>	<p><b>Eligible only if:</b></p> <ul style="list-style-type: none"> <li>• Victims of trafficking and their derivative beneficiaries</li> </ul>
<b>Benefits</b> Exempt from welfare law's restrictions	<b>Eligible</b>	<b>Eligible</b>	<b>Eligible</b>

(rev. 3/04)

Notes appear on next page ➤

## KEY TERMS USED IN TABLE (*IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS*)

**“Qualified” immigrants** are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/ suspension

of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also “qualified.” Victims of trafficking (who are not included in the “qualified” immigrant definition) and their derivative beneficiaries are eligible for benefits funded or administered by federal agencies, without regard to their immigration status. **“Not qualified” immigrants** include all noncitizens who do not fall under the “qualified” immigrant categories.

## ENDNOTES

- 1 Eligibility may be affected by deeming: a sponsor’s income/resources may be added to the immigrant’s in determining eligibility. Exemptions from deeming may apply.
- 2 LPRs are eligible if they have worked 40 qualifying quarters in the U.S. Immigrants also get credit toward their 40 quarters for work performed (1) by parents when the immigrant was under 18; and (2) by spouse during the marriage (unless the marriage ended in divorce or annulment). No credit is given for a quarter worked after Dec. 31, 1996, if a federal means-tested public benefit (SSI, food stamps, TANF, Medicaid, or SCHIP) was received in that quarter.
- 3 Children are not subject to sponsor deeming in the food stamp program.
- 4 Disability-related benefits include SSI, Social Security disability, state disability or retirement pension, railroad retirement disability, veteran’s disability, disability-based Medicaid, and disability-related General Assistance if the disability determination uses criteria as stringent as those used by federal SSI.
- 5 In Indiana, Mississippi, Ohio, South Carolina, and Texas, TANF is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the five years after obtaining this status. Indiana provides TANF to “refugees” listed in (3) regardless of the date they obtained that status. Mississippi does not address eligibility for Cuban/Haitian entrants or Amerasian immigrants.
- 6 In Wyoming, only LPRs with 40 quarters of work credit, abused immigrants, parolees, veterans, active duty military (and their spouse, unremarried surviving spouse, or child), refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants who entered the U.S. prior to Aug. 22, 1996, are eligible for full-scope Medicaid. Similar restrictions in Colorado are under litigation.
- 7 In Alabama, Mississippi, North Dakota, Ohio, Texas, Virginia, and Wyoming, full-scope Medicaid is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the seven years after obtaining this status. Similar restrictions in Colorado are under litigation. Wyoming provides full-scope Medicaid to “qualified” abused immigrants and persons paroled into the U.S., regardless of their date of entry. In Texas, Amerasian immigrants are eligible only during the five years after obtaining this status; Mississippi, and North Dakota do not address eligibility for Cuban/Haitian entrants or Amerasian immigrants.
- 8 In states that opt to cover fetuses, SCHIP provides prenatal care regardless of the mother’s immigration status. The scope of coverage depends in part on how the option is implemented.
- 9 For applications based on Social Security numbers issued on or after Jan. 1, 2004: must have been assigned a Social Security number that was, at the time assigned or at any later time, valid for work purposes. Alternatively, must have been admitted to the U.S. temporarily for business or as a crewman when the relevant work quarters were earned.



**U.S. Department of Justice  
Immigration and Naturalization Service**

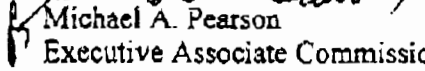
HQOPS 50/18 - C

Office of the Executive Associate Commissioner

425 I Street NW  
Washington, DC 20536

APR 10 2001

MEMORANDUM FOR REGIONAL DIRECTORS  
DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS  
DIRECTOR, OFFICE OF INTELLIGENCE

FROM:   
Michael A. Pearson  
Executive Associate Commissioner  
Office of Field Operations

SUBJECT: Verification of Immigration-Related Elements for Certification for Benefits under the Victims of Trafficking and Violence Protection Act of 2000

The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) Pub.L.106-386 (October 28, 2000) 114 Stat 1464, reflects the United States Government's strong stance against trafficking and its intent to vigorously pursue the prosecution of traffickers and protection for victims of a severe form of trafficking. Under §107(b) of the VTVPA, victims of a severe form of trafficking<sup>1</sup> are eligible to receive Federal and State funded public benefits and services to the same extent as aliens admitted to the United States as refugees under § 207 of the Immigration and Nationality Act (INA). The same section further states that Federal agencies shall expand benefits and services to victims without regard to their immigration status. Those aliens who have been subjected to an act or practice of a severe form of trafficking who are eighteen years of age or older must be the subject of a certification from the U.S. Department of Health and Human Services (HHS) in order to receive the benefits. HHS must consult with the Attorney General before providing each certification. No certification is required for aliens under the age of eighteen who have been subjected to an act or practice of a severe form of trafficking.

1. The VTVPA defines a "victim of a severe form of trafficking" as a victim of:
  - a. 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
  - b. 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.

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Memorandum for All Regional Directors, et al.  
Subject: Verification of Immigration-Related Elements for HHS Certification for  
Benefits under VTVPA

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The statute also provides that the HHS certification shall be effective only for the period that the Attorney General determines that the continued presence of the person is necessary to effectuate prosecution of traffickers in persons.

HHS, in consultation with the Attorney General, is in the process of developing a certification process, so that adult victims of a severe form of trafficking can apply for medical care, housing, and other publicly available benefits and services for which they are eligible. In order to receive the certification from HHS, section 107(b)(1)(E) of VTVPA requires that the adult victim "be willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons." In addition, the alien victim must have either "made a bona fide application for a visa under 101(a)(15)(T) of the INA...that has not been denied "or" "be a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons". See, VTVPA, §107(b)(1)(E)(i).

Immigration and Naturalization Service (INS) personnel are instructed to use existing authority and mechanisms to prevent removal of possible victims. These mechanisms may include parole, deferred action, continuances, and stays of removal. Individuals who are identified as possible victims may be granted work authorization pursuant to existing authority and utilizing existing application procedures. For instance, aliens who are paroled may be granted work authorization pursuant to 8 C.F.R. §274a.12(c)(11), and aliens who are placed on deferred action may be granted work authorization pursuant to 8 C.F.R. §274a.12(c)(14).

Until HHS fully develops its certification process, INS personnel are instructed to use the attached template to provide HHS with verification of the required immigration-related elements necessary to that agency's decision to certify the alien in question for benefits. This template is an internal document to be used by INS personnel only for those adult aliens who have been subjected to an act or practice of severe form of trafficking and who are willing to assist the INS efforts to investigate and prosecute traffickers. For those victim aliens willing to assist other Federal law enforcement agencies engaged in the investigation and prosecution of traffickers, HHS is coordinating directly with those agencies to obtain verification of the alien's willingness to assist. Note, however, that it is anticipated that in every case of an adult alien victim seeking HHS benefits, the INS will be involved in verifying the immigration status of the alien for that agency and will use the existing authority and mechanisms mentioned above to prevent removal of the alien victim. The officials authorized to sign this verification template are the District Director, Chief Patrol Agent, Area Port Director, or designees.

Instructions on how to fill out the template are as follows:

1. Fill in the alien's name where indicated and check off the first box "is willing to assist;"

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Memorandum for All Regional Directors, et al.

Page 3

**Subject: Verification of Immigration-Related Elements for HHS Certification for Benefits under VTVPA**

2. Check the appropriate box indicating whether or not the alien has either filed a bona fide application for a T visa status that has not been denied, or has been granted continued presence pursuant to §107(c)(3) of the VTVPA. Until there is a process in place for the filing of the T visa application, the "continued presence" box will be only applicable selection;
3. If continued presence has already been provided by the INS under some other statutory authority, or in the case of a permanent resident alien or an individual with a valid nonimmigrant visa, the continued presence box should be selected and a notation as to the statutory authority for the alien's status should be written under the continued presence item;
4. Indicate the appropriate mailing address for delivery to the alien. In cases where the alien is in the INS custody, and the INS receives the HHS certification for the alien, the original certification must be given to the alien, and a copy will be kept in the alien's file. For certifications mailed directly to the alien from HHS, a request for a copy of the certification from HHS is addressed in the template;
5. Indicate the appropriate contact person, telephone number, and assigned file control number for the alien victim;
6. Indicate the INS address and contact person for delivery of the copy of the HHS certification;
7. The authorizing official should sign in the space provided;
8. A copy of the document authorizing continued presence should be attached;
9. A copy of the verification letter and attachment should be sent in a facsimile to the Director, Office of Refugee Resettlement as indicated on the cc: portion of the template, and the original should be mailed to the address indicated for the Acting Principal Assistant Secretary.

HHS will send the certification for benefits to the alien at the address supplied. This original certification can be taken by the alien to the local benefits office to apply for benefits under this Act.

Any questions concerning the interim certification request process should be directed to Bonnie Alexander, Headquarters, Office of Field Operations, (202) 305-3295. A copy of this template will be available through your district, sector or regional victim witness coordinator.

Attachment

Appendix 6-14



**U.S. Department of Justice**  
**Immigration and Naturalization Service**

(correspondence control #)

(address)  
 (city, state, zip)

Acting Principal Deputy Assistant Secretary Diann Dawson  
 U.S. Department of Health and Human Services  
 Administration for Children and Families  
 370 L'Enfant Promenade, SW  
 6<sup>th</sup> Floor West  
 Washington, D.C. 20447

Dear Secretary Dawson:

For purposes of certification for benefits under § 107(b)(1) of the Victims of Trafficking and Violence Protection Act of 2000, (VTVPA), Pub.L.No. 106-386, § 103(8) (October 28, 2000). 114 Stat. 1464, the Immigration and Naturalization Service, based on the information available at this time, has made an assessment that **(name of alien)**, has been subjected to an act or practice of a severe form of trafficking as defined in § 107(b)(1)(C)(i) and in accordance with § 107(b)(1)(E)(i), verifies that, **(name of alien)**;

is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons;

and has either

made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act, as added by subsection (e), that has not been denied,

or

is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons, pursuant to Pub.L.No. 106-386. § 107(c)(3) as evidenced by the attachment <sup>1</sup>

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Secretary Dawson  
Page 2

The final decision about the certification for benefits will be made by the Secretary of Health and Human Services in accordance with §107(a)(1)(E) of the VTVPA. Pursuant to that section any such certification shall be effective only for so long as the Attorney General, or his delegate determines that the continued presence of this alien is necessary to effectuate prosecution of traffickers in persons. The certification notice may be sent to the alien's attention at the following address:

(address of alien, if in INS custody c/o USINS)

If you have any additional questions relating to this matter please bring them to the attention of the (case agent or VWC), at (phone number) and refer to file control number (file number of the alien). Please forward a copy of the certification to the agent's attention at the following Service address: (INS OFFICE ADDRESS)

Sincerely,

Title of authorizing official  
(DD, CPA, APD, or person to whom the authority is delegated)

Attachment: Copy of INS verification document of authorized continued presence or filing of T visa application

cc: Director, Office of Refugee Resettlement  
370 L'Enfant Promenade, SW  
6<sup>th</sup> Floor East  
Washington, D.C. 20447  
Fax number: 202-401-0981/5487

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U.S. Department of Health &amp; Human Services

# Administration for Children & Families

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## Office of Refugee Resettlement

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### State Letter SL01-13

May 3, 2001

TO: STATE REFUGEE COORDINATORS  
 NATIONAL VOLUNTARY AGENCIES  
 OTHER INTERESTED PARTIES

FROM: Carmel Clay-Thompson, Acting Director  
 Office of Refugee Resettlement

SUBJECT: The Trafficking Victims Protection Act of 2000

The Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Division A, 114 Stat. 1464 (2000), makes adult victims of severe forms of trafficking who have been certified by the U.S. Department of Health and Human Services (HHS) **eligible for benefits and services to the same extent as refugees**. Victims of severe forms of trafficking who are under 18 years of age are also eligible for benefits to the same extent as refugees but do not need to be certified. The Office of Refugee Resettlement (ORR), which has been delegated the authority to conduct certification activities, is in the process of developing certification procedures. Until formal procedures are developed, benefit-granting agencies should follow the guidance in this State Letter. This State Letter provides background information on the trafficking of human beings into the United States, the requirements for certification, the documents that victims of severe forms of trafficking will present and the procedures agencies should follow in confirming eligibility for benefits. **For a quick guide to the law and agency responsibilities, please see the attached Summary page.**

#### Background

An estimated 700,000 persons, primarily women and children, are trafficked worldwide each year. Approximately 50,000 women and children are trafficked annually into the United States along with an unknown number of men. Traffickers force their victims into the international sex trade, prostitution, slavery and forced labor through coercion, threats of physical violence, psychological abuse, torture and imprisonment. To deter these crimes, Congress passed and the President signed into law the Trafficking Victims Protection Act (the Act) in October 2000. The law aims to combat trafficking through increased law enforcement, to ensure effective punishment of traffickers, to protect victims and to provide Federal and State assistance to victims.

Appendix 6-17

#### GENERAL INFORMATION

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## Requirements for Certification

### Adults

Adult victims of severe forms of trafficking who have been certified by HHS are eligible for benefits to the same extent as refugees. When preparing a certification, ORR reviews whether the individual has been subjected to a severe form of trafficking and whether she or he meets the two certification requirements, which are listed below. In the Act, the term "**severe forms of trafficking in persons**" means

(A) 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

(B) 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.

§103(8)

HHS, after consultation with the Attorney General, may **certify** a victim of a severe form of trafficking who

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and

(II)(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act. . . that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons.

§107(b)(1)(E)

**ORR will make certification determinations and, at this time, issue letters of certification for victims of severe forms of trafficking (see below).** Benefit-issuing agencies are not authorized to issue certifications. Agencies will not need to determine whether someone is a victim of a severe form of trafficking nor will they need to contact the Immigration and Naturalization Service (INS) or any other division of the Department of Justice to consult on certification issues. ORR will conduct these activities.

### Children

Children under 18 years of age who have been subjected to a severe form of trafficking do not need to be certified in order to receive benefits. For the purposes of benefits eligibility, the Act defines a minor victim of a severe form of trafficking as a person who has been subjected to a severe form of trafficking (see the definition above from the Act §103(8)) and who has not attained 18 years of age. ORR will issue letters, which will be similar to the adult certification letters, stating that a child is a victim of a severe form of trafficking (see below). Benefit-granting agencies will not need to evaluate whether a child has been subjected to a severe form of trafficking.

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## Documents and Eligibility Procedures

As mentioned above, ORR will make certification determinations and issue certification letters for adults who meet the requirements for certification. In addition, ORR will issue similar letters for children who have been found to be victims of severe forms of trafficking. **A sample copy of a certification letter and a similar letter for children are attached.** Please note that the signature and make-up of these letters may change in the coming months.

In conducting a benefits eligibility determination for a victim of a severe form of trafficking, benefit-granting agencies should follow their regular procedures for refugees and treat the victim of a severe form of trafficking the same as a refugee. However, instead of requiring Immigration and Naturalization Service (INS) documentation, such as the I-94 Arrival/Departure Card, agencies should **accept the certification letter or letter for children as proof of a status that confers eligibility for benefits.** Applicants must submit the original certification letter. A photocopy should be retained for the files and the original letter returned to the applicant. Victims of severe forms of trafficking are not required to provide any immigration documents to receive benefits. Although they are not required for benefits purposes, victims of severe forms of trafficking may have a variety of immigration documents, including an I-94 Arrival/Departure Card with a stamp showing parole under section 212(d)(5) of the Immigration and Nationality Act, an employment authorization document, or proof of deferred action or an order of supervision. These documents also may be useful in proving identity.

The certification letters for adults and the letters for children have a phone number to call to verify their validity. **Benefit-granting agencies must call the trafficking verification line at (202) 401-5510 for verification before providing benefits.** During this verification phone call, agencies also must notify ORR of the benefits for which the victim of a severe form of trafficking has applied. At this time, the INS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of severe forms of trafficking. ORR is working with the INS on this issue, and further instructions will be released as soon as possible. Until further notice, benefit-issuing agencies should **not** contact the SAVE system to confirm eligibility for benefits for victims of severe forms of trafficking.

When confirming identity, agencies may find that many victims of severe forms of trafficking do not yet possess standard identity documents, such as driver's licenses. If agencies have difficulty confirming identity in these cases, they should not automatically deny the applications but should call the trafficking verification line at (202) 401-5510 for assistance. In addition, for victims of severe forms of trafficking who do not yet have or who are unable to obtain social security numbers for work purposes, agencies should assist these individuals in obtaining non-work social security numbers by following the instructions in ORR State Letter #00-23.

Once an agency has received the certification letter or similar letter for children and verified the validity of the document by calling the trafficking verification line at (202) 401-5510, the agency should note the individual's "entry date" for refugee benefits purposes. The individual's "entry date" for refugee benefits purposes is the date of certification. The certification date appears in the body of the certification letter or letter for children. If an applicant meets other program eligibility criteria (e.g., income levels), the individual then should receive benefits and services to the same extent as a refugee.

Finally, benefit-granting agencies should note that the certification letters and

the letters for children contain expiration dates. At this time, the expiration dates are 8 months from the initial certification date. Benefit-issuing agencies should record the expiration dates so that, if necessary, they can conduct re-determinations of eligibility at that time. The trafficking certification re-determinations **MUST** be conducted at the end of the 8-month period, regardless of other benefits program redetermination schedules. ORR intends to issue follow-up certification letters if individuals continue to meet the statutory certification requirements.

### **Highlights of Eligibility Procedures**

When a victim of a severe form of trafficking applies for benefits, benefit-granting agencies should follow their normal procedures for refugees **except agencies should:**

(1) **Accept the original certification letter** or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation of their immigration status.

(2) **Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter** or similar letter for children and to notify ORR of the benefits for which the individual has applied. (Note: At this time, SAVE does not contain information about victims of severe forms of trafficking. Until further notice, do not contact SAVE concerning victims of severe forms of trafficking.)

(3) **Note the "entry date"** for refugee benefits purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.

(4) **Issue benefits to the same extent as a refugee**, provided the victim of a severe form of trafficking meets other program eligibility criteria (e.g., income levels).

(5) **Record the expiration date** of the certification letter or letter for children so that benefit-granting agencies will be prepared to conduct re-determinations of eligibility at that time.

### **Individuals without Certification**

At this time, ORR is in the process of developing procedures under which an individual may apply for certification as a victim of a severe form of trafficking. Until formal procedures are developed, requests for certification are being handled on a case-by-case basis. If benefit-granting agencies encounter an individual that they believe may meet the definition in the Act, they should call Michael Jewell at (202) 401-4561, Neil Kromash at (202) 401-5702 or their State Analyst. If agencies encounter a child that they believe has been subjected to a severe form of trafficking, they should call Loren Bussert at (202) 401-4732.

Agencies should note that certification is not automatic. ORR must consult with various offices at the Department of Justice (DOJ) prior to a certification. Therefore, in order to expedite the process, agencies may want to contact Lorna Grenadier, DOJ, Criminal Section of the Civil Rights Division at (202) 616-3807.

If you have questions about any of the information in this State Letter, please

call Anna Marie Bena at (202) 260-5186.

**Attachments:**

- (1) [Summary page](#)
- (2) [Frequently Asked Questions](#)
- (3) Sample copy of a certification letter for an adult victim of a severe form of trafficking [E-VERSION NOT AVAILABLE]
- (4) Sample copy of a letter for children [E-VERSION NOT AVAILABLE]

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U.S. Department of Health &amp; Human Services

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## Office of Refugee Resettlement

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### State Letter SL01-13

#### Frequently Asked Questions Benefits for Victims of Trafficking under The Trafficking Victims Protection Act of 2000

##### (1) Are adult victims of trafficking eligible for benefits to the same extent as refugees?

Yes, provided they have been certified and meet other program eligibility requirements (e.g., income levels). Under The Trafficking Victims Protection Act (the Act), adult victims of trafficking who have been certified by the U.S. Department of Health and Human Services (HHS) are **eligible for benefits to the same extent as refugees.**

##### (2) Are children who have been subjected to trafficking eligible for benefits to the same extent as refugees?

Yes. Children who are under 18 years old and who have been subjected to trafficking are eligible for benefits to the same extent as refugees. Children do not need to be certified.

##### (3) What is trafficking?

Under section 103(8) of the Act, the term "severe forms of trafficking in persons" means:

(A) 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

(B) 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.

##### (4) What is certification?

HHS, after consultation with the Attorney General, may certify an adult victim of trafficking who (1) is willing to assist in every reasonable way in the investigation and prosecution of trafficking cases AND (2) has made a bona fide application for a T visa OR is a person whose continued presence the Attorney General is ensuring to effectuate a

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prosecution of traffickers.

**(5) Who conducts certification activities?**

The Office of Refugee Resettlement (ORR) at HHS has been delegated the authority to conduct certification activities. Benefit-issuing agencies are not authorized to issue certifications. Similarly, other federal government agencies are not authorized to issue certifications.

**(6) Does ORR conduct certification activities without consulting the Attorney General?**

No. After consultation with the Attorney General, ORR may certify victims of trafficking who meet the certification requirements.

**(7) Do children who have been subjected to trafficking need certification?**

No. Children who have been subjected to trafficking do NOT need to be certified in order to receive benefits. Minors, under 18 years old, who have been subjected to trafficking are eligible for benefits to the same extent as refugees, without having to be certified. At this time, ORR is issuing letters, similar to adult certification letters (see #8), stating that the child is a victim of a severe form of trafficking and is therefore eligible for benefits to the same extent as a refugee. A sample letter is attached.

**(8) What proof do adult victims have that they have been certified?**

At this time, adult victims of trafficking who have been certified will be issued a certification letter by ORR. A sample certification letter is attached. However, please note that the signature and make-up of this letter may change in the coming months.

**(9) What documents must adult victims of trafficking submit to a benefit-issuing agency when they apply for benefits?**

Adult victims of trafficking must submit their certification letters. To apply for benefits, adult victims do NOT need to provide any immigration documents.

**(10) Will victims of trafficking have standard identity documents?**

When confirming identity, agencies may find that many victims of trafficking do not yet possess standard identity documents, such as driver's licenses. If agencies have difficulty confirming identity in these cases, they should not automatically deny the applications but should call the trafficking verification line at (202) 401-5510 for assistance.

**(11) Will victims of trafficking have social security numbers for work purposes?**

Some victims of trafficking may not yet have or may not be able to obtain social security numbers for work purposes. Agencies

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should assist these individuals in obtaining non-work social security numbers by following the instructions in ORR State Letter #00-23.

**(12) Do victims of trafficking need social security numbers to receive ORR-funded benefits and services?**

No. States cannot require that applicants for ORR-funded assistance and services provide social security numbers. While Medicaid, Temporary Assistance for Needy Families and Food Stamp eligibility rules require applicants for benefits who do not have social security numbers to apply for them, the State may not delay, deny or discontinue assistance pending the issuance of their social security numbers. States and local agencies also must assist applicants to apply for social security numbers. See ORR State Letter #00-23.

**(13) How do victims of trafficking apply for certification?**

At this time, ORR is in the process of developing procedures under which an individual may apply for certification as a victim of trafficking. Until formal procedures are developed, requests for certification are being handled on a case-by-case basis. If benefit-granting agencies encounter an individual that they believe may meet the definition in the Act, they should call Michael Jewell at (202) 401-4561, Neil Kromash at (202) 401-5702 or their State Analyst. If agencies encounter a child that they believe has been subjected to trafficking, they should call Loren Bussert at (202) 401-4732. Agencies should note that certification is not automatic. ORR must consult with various offices at the Department of Justice (DOJ) prior to a certification. Therefore, in order to expedite the process, agencies may want to contact Lorna Grenadier, DOJ, Criminal Section of the Civil Rights Division at (202) 616-3807.

**(14) Does the Act give victims of trafficking refugee status under immigration laws?**

No. The Act does not give victims of trafficking refugee status under immigration laws. The Act makes victims of trafficking eligible for benefits to the same extent as refugees. In other words, victims of trafficking are treated like refugees **for benefits purposes.**

**(15) Do victims of trafficking need to have a certain immigration status in order to receive benefits?**

No. Victims of trafficking do NOT need to hold a certain immigration status in order to receive benefits. (Victims of trafficking need to be certified by HHS in order to receive benefits.) Although they do not need them for benefits purposes, victims of trafficking may hold a variety of immigration documents including an I-94 Arrival/Departure Card with a stamp showing parole under section 212(d)(5) of the Immigration and Nationality Act, an employment authorization document, or proof of deferred action or an order of supervision.



**(16) Should agencies use the INS Systematic Alien Verification for Entitlements (SAVE) system to confirm a trafficking victim's eligibility for benefits?**

Not at this time. The SAVE system does not contain information about victims of trafficking. ORR is working with the INS on this issue and further instructions will be released as soon as possible. Until further notice, benefit-issuing agencies should not contact the SAVE system to confirm eligibility for benefits for victims of trafficking. Agencies should call the trafficking verification line at (202) 401-5510 to confirm the validity of a certification letter.

**(17) Are the certification letters valid indefinitely?**

No. At this time, the certification letters contain expiration dates, which are 8 months from the initial certification date. Benefit-issuing agencies should record the expiration dates so that, if necessary, they can conduct re-determinations of eligibility at that time. ORR intends to issue follow-up certification letters if individuals continue to meet the statutory certification requirements.

**(18) What is the "entry date" for refugee benefits purposes (first day of an individual's eligibility period for refugee benefits) for victims of trafficking?**

A trafficking victim's "entry date" for refugee benefits purposes is the date of certification. The date of certification appears in the body of the certification letter or letter for children.

**(19) What process should benefit-granting agencies follow when a victim of trafficking applies for benefits?**

When a victim of trafficking applies for benefits, benefit-granting agencies should follow their normal procedures for refugees **except agencies should:**

(1) **Accept the certification letter** or letter for children in place of INS documentation. Victims of severe forms of trafficking do not need to provide any documentation of their immigration status.

(2) **Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter** or letter for children and to notify ORR of the benefits for which the individual has applied. (Note: At this time, SAVE does not contain information about victims of severe forms of trafficking. Until further notice, do not contact SAVE concerning victims of severe forms of trafficking.)

(3) **Note the "entry date"** for refugee benefits purposes. The individual's "entry date" is the certification date, which is in the body of the certification letter or letter for children.

(4) **Issue benefits to the same extent as a refugee**, provided the victim of a severe form of trafficking meets other program eligibility criteria (e.g., income levels).

(5) **Record the expiration date** of the certification letter or letter for children so that benefit-granting agencies will be prepared to conduct re-determinations of eligibility at that time.

**(20) Can an adult victim of trafficking be de-certified?**

At this time, there are no formal procedures for de-certification of adult victims of trafficking. However, if an adult victim of trafficking no longer meets the statutory certification requirements at the 8-month re-determination, ORR will not issue a follow-up certification letter and the individual will no longer be eligible for benefits to the same extent as a refugee. In addition, procedures are being considered to address cases where, prior to the end of the 8-month certification period, the Attorney General advises that a victim of trafficking no longer meets the certification requirements.

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► **NOTICE: This website will be down for maintenance activities on October 4-6 and 11-13.** ◀



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## State Letter SL01-13 Summary Page

### Summary: Benefits for Victims of Trafficking under The Trafficking Victims Protection Act of 2000

#### Eligibility

Under the Trafficking Victims Protection Act (the Act), adult victims of trafficking who are certified by the U.S. Department of Health and Human Services (HHS) are eligible for benefits to the same extent as refugees. Children who have been subjected to trafficking are also eligible like refugees but do not need to be certified.

#### Certification

HHS' Office of Refugee Resettlement (ORR) has been delegated the authority to conduct certifications. At this time, ORR will issue certification letters to victims of trafficking who meet the certification requirements. ORR also will issue similar letters for children who have been subjected to trafficking.

To receive a certification, a victim of trafficking must be willing to assist with the investigation and prosecution of trafficking cases AND either (1) have made a bona fide application for a T visa OR (2) be an individual whose continued presence the Attorney General is ensuring to effectuate a trafficking prosecution.

Benefit-issuing agencies do not need to conduct any certification activities.

#### Applications for Benefits

When a victim of trafficking applies for benefits, benefit-granting agencies should follow their normal procedures for refugees **except agencies should:**

- (1) **Accept the original certification letter** or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation of their immigration status.
- (2) **Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter** or letter for children and to notify ORR of the benefits for which the individual has applied. (Note: At this time, SAVE does not contain information about victims

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of severe forms of trafficking. Until further notice, do not contact SAVE concerning victims of severe forms of trafficking.)

(3) **Note the "entry date"** for refugee benefits purposes. The individual's "entry date" is the certification date, which is in the body of the certification letter or letter for children.

(4) **Issue benefits to the same extent as a refugee**, provided the victim of a severe form of trafficking meets other program eligibility criteria (e.g., income levels).

(5) **Record the expiration date** of the certification letter or letter for children so that benefit-granting agencies will be prepared to conduct re-determinations of eligibility at that time.

#### **Individuals without Certification**

If benefit-granting agencies encounter an individual that they believe may meet the definition in the Act, they should call Michael Jewell at (202) 401-4561, Neil Kromash at (202) 401-5702 or their State Analyst. If agencies encounter a child that they believe has been subjected to a severe form of trafficking, they should call Loren Bussert at (202) 401-4732.

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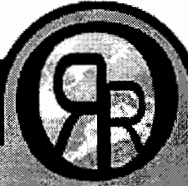
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U.S. Department of Health &amp; Human Services

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### State Letter #02-01

January 4, 2002

**TO:** STATE REFUGEE COORDINATORS  
NATIONAL VOLUNTARY AGENCIES  
OTHER INTERESTED PARTIES

**FROM:** Nguyen Van Hanh, Ph.D., Director  
Office of Refugee Resettlement

**SUBJECT:** The Trafficking Victims Protection Act of 2000 - **Removal of Expiration Dates from Certification Letters for Adults and Eligibility Letters for Children**

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This State Letter modifies information in State Letter #01-13, which provided initial guidance on the Trafficking Victims Protection Act of 2000 (TVPA). The TVPA makes adult victims of a severe form of trafficking who have been certified by the U.S. Department of Health and Human Services (HHS) eligible for certain benefits and services to the same extent as refugees. Victims of a severe form of trafficking who are under 18 years of age are also eligible for certain benefits to the same extent as refugees but do not need to be certified. As discussed in State Letter #01-13, the Office of Refugee Resettlement (ORR) makes certification determinations and issues certification letters for adults who meet the certification requirements. In addition, ORR issues similar eligibility letters for children who have been found to be victims of a severe form of trafficking. The initial certification letters for adults and eligibility letters for children contained eight-month expiration dates. **However, as of November 6, 2001, certification letters for adults and eligibility letters for children no longer contain expiration dates.**

#### Certification Letters

An individual who is certified on or after November 6, 2001 will receive a certification letter without an expiration date. A sample of the new certification letters without expiration dates is attached. Individuals who were certified before November 6, 2001 received certification letters with eight-month expiration dates. As these letters begin to expire, ORR will issue re-certification letters without expiration dates. The re-certification letters will contain a lowercase "r" beside the HHS tracking number. A sample of a re-certification letter is attached.

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## Benefits

Although certain victims of a severe form of trafficking will be receiving re-certification letters, their "entry date" for refugee benefits purposes will not change. Their re-certification letters will contain the same certification date (i.e., "entry date") as the original certification letter. **In other words, the re-certification letter does not grant victims of a severe form of trafficking an additional eligibility period for any benefits and services.** It is simply a re-issuance of the original letter without an expiration date confirming that the individual continues to meet the certification requirements. Standard eligibility and/or re-determination periods under the various benefit programs will continue to apply to these individuals in the same manner as they apply to refugees. If an individual presents an expired certification letter when applying for benefits or an agency attempts to do a benefits program re-determination and finds that a certification letter has expired, call the ORR trafficking verification line at (202) 401-5510 for assistance.

## Re-Certification Process

ORR anticipates that the re-issuance of expiring certification letters will run smoothly. However, ORR is aware that some victims of a severe form of trafficking may have moved since they received their first certification letter. To aid ORR in the re-certification process, benefit-granting agencies are encouraged to call the ORR trafficking verification line at (202) 401-5510 if they are aware of any address changes for victims of a severe form of trafficking.

## State Letter #01-13

Please refer to State Letter #01-13 for background information on the trafficking of human beings into the United States, the requirements for certification, the documents that victims of a severe form of trafficking will present and the procedures agencies should follow in confirming eligibility for benefits. With the exception of the removal of expiration dates from the certification letters, all of the other information in State Letter #01-13 remains accurate. For a copy of State Letter #01-13, access the ORR website at [www.acf.dhhs.gov/programs/orr](http://www.acf.dhhs.gov/programs/orr).

### Attachments:

1. Sample copy of a re-certification letter for an adult victim of a severe form of trafficking
2. Sample copy of a re-issued eligibility letter for a child victim of a severe form of trafficking
3. Sample copy of a new certification letter without an expiration date
4. Sample copy of a new eligibility letter without an expiration date for a child victim of a severe form of trafficking

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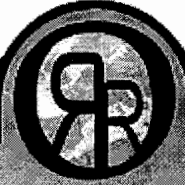
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U.S. Department of Health &amp; Human Services

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**State Letter #02-07**

March 6, 2002

**TO:** STATE REFUGEE COORDINATORS

**FROM:** Nguyen Van Hanh, Ph.D.,  
Director  
Office of Refugee Resettlement

**Re:** Reclassification of Unaccompanied Minors

Over the past year, the number of minors served in Unaccompanied Refugee Minors (URM) program has more than tripled, primarily in the following categories:

- Referrals from overseas, most notably from the Kakuma refugee camp in Kenya, but also from other areas;
- Reclassification requests for minors granted asylum by the Immigration and Naturalization Service (INS) or arriving here as entrants, and
- Reclassification requests for refugee minors who arrived here accompanied by relatives or guardians, but whose family circumstances changed drastically after arrival.

In response to the increase in the latter two categories, ORR is now re-issuing its guidelines for reclassification. ORR previously issued policy guidance in ORR State Letter # 01-27 regarding reclassification in cases where the age of the youth was in dispute. Please refer to that State letter for additional guidance in reclassification requests relating to the age of the youth.

Placement in ORR's unaccompanied minors program is limited to 14 designated programs able to provide refugee-appropriate child welfare services. These specialized services are provided in Boston, Massachusetts; Tacoma and Seattle, Washington; Fargo, North Dakota; Philadelphia, Pennsylvania; Rochester and Syracuse, New York; Jackson, Mississippi; Richmond, Virginia; Newark, New Jersey; Washington, D.C.; Lansing and Grand Rapids, Michigan; and Phoenix, Arizona. If the Director of ORR approves the referral for reclassification from the State Refugee Coordinator administering one of the 14 sites,

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minors residing in other States may be transferred to an above-mentioned State.

When a refugee program official identifies a minor in need of culturally appropriate foster care services, the official should confer with the State Coordinator regarding the referral. The State

Coordinator should then notify the children's services division of either of the two voluntary agencies which coordinate URM services for ORR—the Lutheran Immigration and Refugee Services (LIRS) or the United States Conference of Catholic Bishops (USCCB). The volag will explore the suitability and appropriateness of placement with its affiliates. When an appropriate placement is found, the volag will notify the referring State Refugee Coordinator of the anticipated placement at the preferred site. If the placement is out of State, the volag will work with both the referring State Coordinator and the receiving State Coordinator to ensure that the needs of the minor are met during the transition to the new resettlement site.

When the volag has secured the verbal approval for the placement from both State Refugee Coordinators, the volag will notify the affiliate to send a letter to their State Refugee Coordinator to request reclassification of the child to unaccompanied minor status. The affiliate letter to the receiving State Refugee Coordinator should explain the background of the reclassification request, provide case summary information justifying the request, and address each of the six conditions of reclassification listed below. Voluntary agencies and affiliates may send copies of information to ORR to provide advance notification of a request, but the State agency must initiate requests for reclassification.

The receiving State Coordinator should then prepare a cover letter indicating the State's support of the reclassification request and mail the material to the Director of ORR, along with a copy addressed to the Unaccompanied Refugee Minors team. The State should also fax a copy of the letter to Loren Bussert at (202) 401-5487. This is very important because mail delivery to ORR has been severely impacted by the need to irradiate mail addressed to Federal agencies. Currently, mail is delivered to ORR approximately 45 days after postmark.

ORR will reclassify a minor to unaccompanied status if the following conditions are met:

- The minor is eligible for ORR-funded benefits and services; that is, she must be a refugee, asylee, Amerasian, Cuban or Haitian entrant, or a victim of a severe form of trafficking, as determined by ORR.
- No parent of the minor has lived in the U.S. since the child's arrival here.
- No relative or non-related adult has ever had legal custody of the child in the U.S.
- With respect to a child who entered the U.S. accompanied by a non-parental relative or non-related adult, or who entered the

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U.S. for the purpose of joining a non-parental relative or non-related adult, the child is not currently living in the home of such a relative or adult.

- An appropriate court has placed legal responsibility for the child with the State or local public child welfare agency or with a licensed non-public agency under contract with the State to provide services to unaccompanied minors.
- The State has reported the child to ORR as an unaccompanied minor and as part of the official State program for unaccompanied minors, and the State meets all other program and reporting requirements.

The last two conditions are satisfied if the State includes a statement of assurance in its reclassification request that it will file a petition for custody and submit the proper forms to ORR when reclassification is approved.

Requests for reclassification are considered on a case-by-case basis. Once ORR receives all pertinent information, requests are evaluated and processed promptly. In some cases, the Director may waive one or more conditions of eligibility. For example, ORR has in the past waived the second condition for refugee children whose parents died shortly after arrival in the U.S.

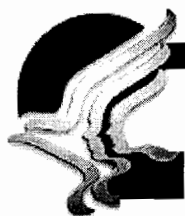
If ORR approves the reclassification request, the determination is effective with the date of the State's request. The receiving State Coordinator is responsible for arranging transit of the minor to the receiving site, and may include the minor's cost of transportation to the new resettlement site in his financial reports.

If you have any questions or comments, please contact Loren Bussert of my staff by telephone at (202) 401-4732, by E-mail at [LBUSSERT@ACF.DHHS.GOV](mailto:LBUSSERT@ACF.DHHS.GOV), or by fax at (202) 401-4587.

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U.S. Department of Health &amp; Human Services

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## State Letter #02-25

**TO:** STATE REFUGEE COORDINATORS  
NATIONAL VOLUNTARY AGENCIES  
MUTUAL ASSISTANCE ASSOCIATIONS  
OTHER INTERESTED PARTIES

**FROM:** Nguyen Van Hanh, Ph.D.  
Director  
Office of Refugee Resettlement

**SUBJECT:** Toll-Free phone number for Trafficking Victim Verification -  
**1-866-401-5510**

The Office of Refugee Resettlement (ORR) is pleased to announce that the trafficking victim verification phone line is now toll-free. This toll-free number maintains the last 7 digits of the old trafficking victim verification phone line and simply replaces the old area code (202) with the toll-free antecedent (866).

Victims of a severe form of trafficking in persons may be eligible to receive a certification or eligibility letter from ORR. This letter makes victims eligible for certain benefits and services under any Federal or State program or activity funded or administered by any Federal agency to the same extent as a refugee. Prior to the provision of benefits, benefit-issuing agencies must call the toll-free trafficking victim verification line **at 1-866-401-5510** in order to verify the validity of ORR-issued letters and also to inform ORR of the benefits for which a victim has applied.

At this time, the INS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of severe forms of trafficking. ORR is working with the INS on this issue, and further instructions will be released as soon as possible. Until further notice, benefit-issuing agencies should **not** contact the SAVE system to confirm eligibility for benefits for victims of severe forms of trafficking.

For further information about the new toll-free number for trafficking victim verification, please contact Antoinette AQUI, telephone: 202-401-4825, Neil Kromash, telephone: 202-401-5702, or Jay Womack, telephone: 202-401-5525.

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The mission of Legal Services Corporation is to promote equal access to the courts by making grants to provide high-quality civil legal assistance for those who would be otherwise unable to afford legal counsel.

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## FOIA

May 15, 2002

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**To** All LSC Program Directors

[1997 FOIA Report](#)

**From** Randi Youells, Vice President for Programs

[1998 FOIA Report](#)

**Date** May 15, 2002

[FOIA FAQ](#)

**Subject** Eligibility of Immigrant Victims of Severe Forms of Trafficking for Legal Services

[LSC Statutes](#)

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The Victims of Trafficking and Violence Protection Act (Pub. L. No. 106-386) allows for the victims of trafficking to be eligible for legal services without regard to their immigration status. Section 107 (b)(1) (B). The trafficking of women, children, and men for sex crimes, sweatshop labor, involuntary domestic servitude, and migrant agricultural labor is estimated to affect 50,000 persons in the United States. Congress enacted this law in October 2000 to address this problem.

LSC intends to incorporate the statutory provision regarding legal services for victims of trafficking into its alien eligibility regulations, 45 C.F.R. part 1626, and is in the process of doing so. In the interim, pursuant to this statutory provision, recipients may represent victims of trafficking without regard to their immigration status.

Who are "victims of trafficking"?

The statute encompasses victims who are trafficked by force or fraud into the commercial sex industry as well as those individuals who are exploited for their labor. Specifically, victims of trafficking are defined as persons who have been subject to sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an 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.

Persons covered by the Act must meet the definition of a victim of trafficking and be under 18 years of age or "subject to certification"

<http://www.lsc.gov/foia/pl/02-5.htm>

5/19/2003

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under the Act.

How does an adult trafficking victim become certified under the Act?

The certification process includes applying for a special immigration visa and obtaining a certification letter from the Department of Health and Human Services' Office of Refugee Resettlement (ORR).

How can programs determine whether ORR has issued a certification letter?

ORR has established a trafficking verification line at (202) 401-5510. ORR can also provide specific guidance on obtaining certification letters. Further, while victims of trafficking under 18 years of age do not need to be certified under the Act to receive benefits, ORR plans to issue certification letters to child victims.

How should programs verify a victim's eligibility for legal services?

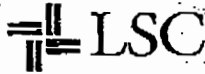
A trafficking victim seeking legal assistance should submit her certification letter as documentation of her eligibility for legal services. In the absence of the certification letter, the intake worker should verify the trafficking victim's status by calling the phone number listed above and noting the call in the casefile.

Can legal services programs represent trafficking victims with the certification process?

Yes.

#### Program Letters

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Legal Services Corporation  
America's Partner for Equal Justice

August 2, 2002

D. Michael Dale, Esq.  
Attorney at law  
P.O. Box 1032  
Cornelius, OR 97113

Dear Mr. Dale:

I write in response to your letter of July 25, 2002, regarding the permissible scope of representation of victims of trafficking.

You are correct in your understanding that an LSC grantee representing a victim of trafficking may, in addition to representing the person in connection with certification of trafficking victim status, proceed to represent that person in connection with other legal matters at the same time, without having the wait for HHS approval of the certification. Thus, to use the example you cite, TRLA could begin representing workers who appear to meet the definition of victims of trafficking on wage claims matters at the same time TRLA was assisting the workers in seeking certification of victim of trafficking status from HHS. Please note that if the person was ultimately denied certification, and the person was not otherwise eligible for legal services under the requirements of 45 CFR Part 1626, representation would have to be discontinued, consistent with local rules of professional responsibility.

I hope this information is helpful. If you have any other questions, please do not hesitate to contact me.

Cordially,

Mattie C. Condray  
Senior Assistant General Counsel

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## ORR State Letter

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# 04-12

Date: June 18, 2004

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TO: STATE REFUGEE COORDINATORS  
NATIONAL VOLUNTARY AGENCIES  
OTHER INTERESTED PARTIES

FROM: Nguyen Van Hanh, Ph.D.  
Director  
Office of Refugee Resettlement

SUBJECT: The Trafficking Victims Protection Reauthorization Act of 2003 –  
Eligibility for Federally Funded or Administered Benefits and Services to  
the Same Extent as Refugees Extended to Certain Family Members of  
Victims of a Severe Form of Trafficking in Persons.

The Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386 (8 U.S.C. 7105(b)(1)) makes victims of a severe form of trafficking in persons eligible for federally funded or administered benefits and services to the same extent as refugees.<sup>1</sup> The TVPA was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub L. No. 108-193. As a result, effective December 19, 2003, certain family members of victims of a severe form of trafficking are eligible for federally funded or administered benefits and services to the same extent as refugees.<sup>2</sup> Specifically, holders of a T-2, T-3, T-4 or T-5 visa (collectively referred to as “Derivative T Visas”) are eligible for federally funded or administered benefits and services (*e.g.*, refugee cash and medical assistance, TANF, Medicaid and food stamps) provided they meet other program criteria (*e.g.*, age or income levels).

In the case of an alien who is awarded a T visa and who was under 21 years of age on the date the T visa application was filed, the Derivative T Visas are available to such alien’s spouse, children, unmarried siblings under 18 years of age on the date on which such alien’s T visa application was filed, and parents.

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<sup>1</sup> For more information on the eligibility of victims of severe forms of trafficking for federally funded or administered benefits and services, see ORR State Letter #01-13 (May 3, 2001), <http://www.acf.dhhs.gov/programs/orr/policy/sl01-12>, as modified by ORR State Letter #02-01 (January 4, 2002), <http://www.acf.dhhs.gov/programs/orr/policy/sl02-01.htm>.

<sup>2</sup> “Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of Title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of Title 8.” 8 U.S.C. 7105(b)(1)(A).

## **CHAPTER 7**

### **U NONIMMIGRANT VISAS AND APPLICATIONS FOR INTERIM RELIEF**

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## § 7.1 Introduction

The U visa<sup>1</sup> is intended to protect victims of serious crime who have gathered the courage to come forward, report the crime, and assist in its investigation and prosecution. Like the T visa, discussed in the preceding chapter, the U visa was introduced in the Victims of Trafficking and Violence Prevention Act of 2000 (VAWA 2000),<sup>2</sup> and Congress expanded protections for U applicants in the Violence against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005).<sup>3</sup> It applies to noncitizens who suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including domestic abuse and human trafficking.<sup>4</sup>

Also like the T visa, the U visa provides nonimmigrant authorized stay in the United States and employment authorization. In addition, after three years in U nonimmigrant status, the nonimmigrant may be able to adjust status from nonimmigrant to permanent resident. There are also provisions to grant U nonimmigrant and permanent residence status to certain spouses, children, and parents of U nonimmigrants.

The Department of Homeland Security has not yet issued regulations implementing the U nonimmigrant visa. However, Congress has instructed the Department of Homeland Security to promulgate regulations implementing VAWA 2000 and VAWA 2005 no later than 180 days after the enactment of VAWA 2005.<sup>5</sup> At the time this chapter was last updated, in November 2006, the regulations have not yet been issued.

In the meantime, DHS has issued guidance on interim relief for potential U nonimmigrants.<sup>6</sup> No visas are being issued yet, but persons who appear eligible may be

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<sup>1</sup> INA § 101 (a)(15)(U).

<sup>2</sup> Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000)

<sup>3</sup> Pub. L. 111-\_\_\_, H.R. 5206, §§ 801-828 (2005)

<sup>4</sup> INA §§ 101(a)(15)(U), 214(o), 245(I).

<sup>5</sup> Violence against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 111-\_\_\_, H.R. 3402, § 828.

<sup>6</sup> Cronin, Act'g. Exec. Assoc. Comm'r, Office of Programs, INS Memo HQINV 50/1, re: Victims of Trafficking and Violence Protection Act of 2000 (VTVOA) Policy Memorandum # 2 - "T" and "U"



allowed to remain in the United States under “interim relief” measures, pending issuance of the regulations. Citizenship and Immigration Services has indicated that, once it begins adjudicating U nonimmigrant visas, U nonimmigrant status for persons who formerly had U interim relief will be recorded as of the date the request for interim relief was approved.<sup>7</sup>

This chapter will set out the requirements for U visa status and the current process for applying for interim relief.

## **§ 7.2 Requirements for the U Nonimmigrant visa**

Under the statute, U visa eligibility requires that:

- The applicant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;<sup>8</sup>
- The applicant (or, if the applicant is under age 16, his or her parent, guardian or next friend) possesses information concerning the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution;<sup>9</sup>
- The criminal activity referred to is rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, FGM, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state or local criminal law;<sup>10</sup>
- The criminal activity violated the laws of the United States or occurred in the United States or its territories or possessions;<sup>11</sup> and
- The visa petition contains a certification from a federal, state, or local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from an DHS official, stating that the applicant “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the criminal activity.<sup>12</sup>

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Nonimmigrant Visas (August 30, 2001).

<sup>7</sup> Michael Aytes, Acting Assoc. Dir., Domestic Relations, US CIS, re: Applications for U Nonimmigrant Status (Jan. 6, 2006).

<sup>8</sup> INA § 101(a)(15)(U)(i)(I).

<sup>9</sup> INA § 101(a)(15)(U)(i)(II).

<sup>10</sup> INA § 101(a)(15)(U)(iii).

<sup>11</sup> INA § 101(a)(15)(U)(i)(II).

<sup>12</sup> INA § 101(a)(15)(U)(iii).

Note that there is no requirement of relationship to a USC or LPR abuser, nor are U visas limited to victims of domestic abuse.

### **§ 7.3 Annual Limit**

There is an annual limit of 10,000 U-1 visas. This limit applies only to U-1 principal applicants, and does not apply to derivative family members.<sup>13</sup> We will not know until the government issues its regulations how CIS will handle applications beyond the first 10,000 in a given year. For a similar annual limit on T visas, however, the T regulations provided that, after the annual limit is reached, subsequent applications will be reviewed for eligibility and, if the applicant is eligible, he or she will be placed on a waiting list until a visa is available. The government may take a similar approach for the U visa annual limit.

### **§ 7.4 Evidentiary Standard**

When adjudicating a U-1 visa application, CIS must use the “any credible evidence” standard already employed in adjudicating self-petitions and applications for cancellation of removal by abused spouses of LPRs and USCs.<sup>14</sup>

### **§ 7.5 Family Members of U Nonimmigrants**

The Department of Homeland Security may issue derivative U nonimmigrant visas to certain family members of the principal U nonimmigrant. For an adult, these derivative family members are the nonimmigrant’s spouse and children. A principal applicant who is under 21 may also obtain nonimmigrant status for his or her parent, while a principal applicant under 18 may include his or her unmarried siblings under 18.<sup>15</sup> VAWA 2005 significantly changed the requirements for U derivatives by eliminating the requirements that issuance of a visa be necessary to avoid extreme hardship to the spouse, child, or parent and that an investigation or prosecution would be harmed without the derivative’s assistance.<sup>16</sup>

### **§ 7.6 Inadmissibility and Nonimmigrant Waivers for U Visa Applicants**

Applicants for U nonimmigrant visas must establish that they are admissible, that is, that they do not fall under any of the inadmissibility grounds under the Immigration

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<sup>13</sup> INA § 214(o)(2).

<sup>14</sup> INA § 214(o)(4).

<sup>15</sup> INA § 101(a)(15)(U), amended by VAWA 2005 § 801(b).

<sup>16</sup> *Id.*

and Nationality Act<sup>17</sup> or, if they do, that there is a waiver available to them. For U nonimmigrants, CIS may waive all inadmissibility grounds, other than INA § 212(a)(3)(E) [genocide and Nazi persecutions], if the waiver is in the public or national interest.<sup>18</sup>

### **§ 7.7 Employment Authorization**

While U nonimmigrants are in lawful nonimmigrant status, CIS must provide them with employment authorization.<sup>19</sup>

### **§ 7.8 Adjustment of Status from U Nonimmigrant to Immigrant.**

U nonimmigrants may be authorized to remain in the United States up to four years, and that period may be extended upon certification of a federal, state, or local law enforcement official, prosecutor, judge or other investigating or prosecuting authority that the victim's presence is necessary to assist in the investigation or prosecution.<sup>20</sup>

A U-1 nonimmigrant may adjust status to lawful permanent residence if he or she meets the following requirements:

- The applicant has been physically present in the United States for a continuous period of at least three years since the date of admission as U nonimmigrant. A single absence of 90 days or aggregate absences of 180 days break the continuous physical presence, unless the absence is in order to assist in investigation or prosecution or unless the official involved in investigation or prosecution certifies that the absence was otherwise justified;
- The applicant has not unreasonably refused to provide assistance in a criminal investigation or prosecution;
- The applicant's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest; and
- The applicant has not engaged in genocide or Nazi persecutions.<sup>21</sup>

Upon approval of adjustment for the principal alien, the immigration authorities may adjust the status of or issue an immigrant visa to the principal's spouse, child, or, for

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<sup>17</sup> INA § 212.

<sup>18</sup> INA § 212(d)(13) [*sic*].

<sup>19</sup> INA § 212(o)(3)(B).

<sup>20</sup> INA § 214(p)(6), added by VAWA 2005 § 821.

<sup>21</sup> INA § 245(l) [*sic*].

a U nonimmigrant under 21, parent who did not receive a nonimmigrant U visa, if the adjustment or visa issuance is necessary to avoid extreme hardship.<sup>22</sup>

Prior to VAWA 2005, one potential bar to obtaining U nonimmigrant status arose under INA § 248(a), which prohibited change of nonimmigrant status if the applicant had previously been in certain other nonimmigrant status. Following VAWA 2005, however, these prohibitions do not apply to individuals seeking to change to U nonimmigrant status from the following nonimmigrant classifications: C (transit without visa), D (crewmembers), J (exchange scholars subject to a two-year foreign residence requirement), K (fiancé, spouse, child), S (criminal informants), and persons admitted without visas or from Guam.<sup>23</sup>

### **§ 7.9 Current Status of the U Nonimmigrant Visa**

To date, the government has not issued regulations that will define the statutory provisions and set out the application process. An October 2001 memorandum issued by INS directed local offices to grant “interim relief” to potential U visa beneficiaries, in the form of parole, deferred action, continuances and stays of removal, and not to remove such individuals from the United States until they have had the opportunity to seek U visa relief. However, this local implementation of interim relief led to vastly different interpretations of eligibility among the local immigration offices, with many offices simply not providing any type of temporary status to potential U visa applicants. As a result, DHS announced in an October 2003 memorandum<sup>24,25</sup> that the process of applying for U visa interim relief will be centralized in the Vermont Service Center. Copies of both the October 2001 memo and the October 2003 memo are attached as appendices to this chapter.

### **§ 7.10 Applications for Interim Relief by Potential U Nonimmigrants**

An applicant for U visa interim relief must provide sufficient evidence to allow a reasonable conclusion that the applicant may be eligible for U nonimmigrant status when implementing regulations are issued. According to the October 2003 memo, a person now seeking interim relief must submit evidence to establish that:

- She or he has suffered substantial physical or mental abuse as a result of having been the victim of certain criminal activity;

---

<sup>22</sup> INA § 245(o)(3).

<sup>23</sup> INA § 248(b), added by VAWA 2005, § 821(c).

<sup>24</sup> William R. Yates, Assoc. Dir. Oper., US CIS, re: Centralization of Interim Relief for U Nonimmigrant Status Applicants (Oct. 8, 2003), attached at appendix 7-21 to this chapter.

- She or he (or if under age 16, his or her parent) possesses information concerning that criminal activity;
- She or he (or his or her parent, if under age 16) has been, is being, or will be helpful to a federal, state or local law enforcement official, prosecutor or judge, to the INS, or to federal, state or local authorities investigating or prosecuting the crime; and
- the criminal activity described violated the laws of the United States or occurred in the United States.

The October 2003 memorandum notes that victims of past crimes, i.e. crimes that occurred prior to U visa enactment, may apply for interim relief. The memorandum also clarifies that the classification of a crime as a felony or misdemeanor is not significant for interim relief eligibility.

U visa applicants must submit a law enforcement certificate as part of the evidence of eligibility for interim relief. Since there is no official DHS form for this purpose, the certification from a law enforcement officer may be in a letter or a form created by a non-governmental organization or an applicant's attorney or representative. A form that may be used for this purpose can be found at the National Immigration Project website at <http://nationalimmigrationproject.org>, under the "Domestic Violence and U" category. Note that any form of law enforcement certification must be signed by a law enforcement official investigating or prosecuting the crime. It should state that the person was a victim of one or more of the crimes listed in the statute, and verify that the victim is, has been, or is likely to be helpful in the investigation or prosecution of the crime. The certification must have been signed within six months of the submission of the request for interim relief.<sup>26</sup>

Although a U visa applicant is required to establish substantial physical or mental abuse to qualify for this status, the October 2003 memo directs that, for interim relief purposes, this term should be broadly interpreted. It is important to note that the abuse is not confined to physical abuse, but also includes mental abuse. While we will not know exactly how the immigration authorities will interpret the term "substantial physical or mental abuse" until the regulations are issued on the U nonimmigrant visa, we can make an educated guess at probative evidence from experience gained in documenting VAWA self-petitions and from the regulations on T nonimmigrant visas. The term "substantial" indicates that the abuse must rise to a certain level of severity. Evidence of physical or mental abuse could include a detailed declaration from the victim, declarations or statements from witnesses, police reports, photographs, medical records, and reports and records from counselors and therapists. Counselors' and therapists' statements should explain why the facts as related to them are credible in light of their experience.

### **§ 7.11 Submission of an Interim Relief Request**

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<sup>26</sup> *Id.* at 4.

Requests for U visa interim relief should be sent to the following address:

USCIS – Vermont Service Center  
Attn: VAWA Unit, Box 1000  
75 Lower Welden St.  
St. Albans, Vermont 05479-0001

The envelope containing the request should be clearly marked in large letters “Attn: VAWA Unit. Do not open in mail room.” This is to ensure that the application reaches the correct division of the Vermont Service Center.

Although there is no official application form for requesting interim relief, requests should include the following types of documents:

- A cover letter requesting that the applicant be granted interim relief pending issuance of U visas. The letter should explain how the applicant meets the requirements for the U visa interim relief listed above. It should also provide necessary identification information, including the applicant’s full name and date and place of birth. If the applicant also seeks interim status for his or her family members, the cover letter should state this and should list identifying information such as the family members’ names, dates of birth, and relationship to the principal applicant. The letter must also explain how the derivative family members would be caused extreme hardship if they were not granted interim relief pending issuance of U visas.
- A copy of each applicant’s birth certificate, passport, or some other form of personal identification.
- A detailed declaration by the applicant, establishing that he or she has suffered substantial physical or mental abuse as a result of the criminal activity. If the applicant’s spouse or children will also request interim relief, the applicant’s affidavit may also detail the extreme hardship that the relative(s) would face if not granted interim relief.
- Any other evidence that the victim has suffered substantial physical or mental abuse as a result of criminal activity. Examples of this type of evidence include, but are not limited to, statements from relatives, friends, and other witnesses, statements, letters, or reports by police, health care workers, shelter care workers, or others, medical reports, and photographs.
- A certificate from a law enforcement officer.
- Police reports on the crime.

- If an accused will be or has been charged with an offense in the matter, a copy of the criminal statute under which he or she will be or has been charged.
- Documentation of the family relationship between the principal applicant and his or her family members who are seeking interim status, such as birth and marriage certificates, if requesting U interim relief for family members
- Application for employment authorization with affidavit setting out economic need to work, and application fee, or fee waiver request
- Form G-28, Notice of Appearance as Attorney of Record, for accredited representatives and lawyers.

### **§ 7.12 Deferred Action for Successful Applicants**

The new interim relief procedures implemented in October 2003 specify that persons receiving interim relief will be granted deferred action status for one year. This status allows the applicant to remain in the United States until she or he can apply for a U visa. A person who has been granted deferred action may also apply for employment authorization on Form I-765, if she or he can establish an economic necessity to work.

Deferred action status may be terminated under certain circumstances, including conduct after the issuance of interim relief (such as a conviction for a violent crime), for conduct or a condition not disclosed prior to issuance of interim relief, or based on affirmative evidence that the applicant unreasonably refused to provide assistance in a criminal investigation or prosecution.

### **§ 7.13 Bars to Interim Relief Eligibility**

The October 2003 memorandum also states that persons with “aggravated felony” convictions are not eligible for interim relief, nor are “absconders” (noncitizens with a final removal order from immigration court). The memo also states that the VSC cannot grant interim relief to potential U visa applicants with pending court proceedings, but this policy was changed recently by a memorandum issued on May 4, 2004, and discussed more fully in the next section.

### **§ 7.14 Interim Relief for Persons in Proceedings before the Immigration Court**

In a significant development, CIS issued a memo, dated May 4, 2004, announcing a procedure for assessing requests for deferred action for potential U nonimmigrants that are in removal proceedings. Prior to this memo, the CIS had determined that it had no jurisdiction to assess claims for persons in this situation, and those persons were thus

precluded from applying for interim relief unless they could successfully apply to have their removal proceedings terminated.

The new procedure is as follows. The individual in removal proceedings files his or her request for U interim relief with the Vermont Service Center (VSC), which is charged with adjudicating all U interim relief requests. The VSC first determines whether the applicant has adequately demonstrated eligibility for U nonimmigrant status. If so, VSC personnel decide whether to exercise discretion and assess deferred action. Before making this determination for an individual in removal proceedings, VSC personnel must contact the ICE Office of Chief Counsel with jurisdiction over the area where the removal proceedings are pending, to determine whether the ICE file contains any adverse information that should be factored into the decision of whether to assess deferred action. ICE has ten business days to respond to the VSC.

If there is no information that would negatively impact the VSC decision and VSC decides to approve interim relief, the VSC must notify the ICE OCC and the Assistant Chief Counsel handling the removal case of its decision through e-mail. The VSC must also send written notice to the alien, which the alien should present to ICE. Although the memo states that ICE will then terminate removal proceedings on the basis of the VSC's approval of interim relief, only the Immigration Judge has the authority to take this action where removal proceedings have commenced. Presumably, however, ICE counsel will join in a motion to terminate proceedings where deferred action has been granted.

If the ICE determines that there is adverse information in the applicant's file, ICE must FedEx the file or copies of relevant documents to the VSC for review. VSC may still decide to grant deferred action status, regardless of the adverse information.

### **§ 7.15 Assessing Risks and Benefits of Applying for U Interim Relief**

Interim relief status, in the form of deferred action, provides applicants with the security of a type of temporary legal status, as well as the very tangible benefit of employment authorization. This may be a very compelling reason for many crime victims to seek this status. However, it is important to note that, in the absence of regulations, there are many issues that remain to be clarified, so that some individuals may find that they qualify for interim relief but are unable to meet eligibility requirements as detailed in regulations once promulgated. The risk for such individuals is that there is no guarantee that CIS will not commence removal proceedings against persons granted interim relief who decide not to apply for U visa status once regulations and an application procedure are established, or who do seek U visa status and are denied. Applicants need to be counseled about this risk as part of the process of deciding whether to pursue this remedy.

### **§ 7.16 Useful manual and websites**

Sally Kinoshita, of the Immigrant Legal Resource Center, has written a comprehensive and very helpful manual, "How to Obtain U Interim Relief: a Brief Manual for Advocates



Assisting Immigrant Victims of Crime,” available for free download at  
<http://www.asistaonline.org/legalresources/LegalResources.html>

Other useful resources may be found at:

The National Immigration Project website, [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).

The Immigrant Legal Resource Center website, <http://www.ilrc.org/resources/U%20Visa/>

ASISTA, at <http://www.asistaonline.org/>, has excellent resources, practice tips, and samples on U interim relief, as well as on VAWA self-petitions and applications for cancellation of removal.

# U VISAS: Immigration Relief for Victims of Certain Crimes

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## FREQUENTLY ASKED QUESTIONS

*Prepared by Nasha Vida, Sally Kinoshita, and Gail Pendleton<sup>1</sup>*

The following provides brief answers to frequently asked questions about U visas. This is only a general summary of information about U visas. If you are considering submitting a request for U visa relief, please visit the National Immigration Project of the National Lawyers Guild website at [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).

### ► **What is a U Visa?**

The U visa was created by the Victims of Trafficking and Violence Prevention Act, enacted in October 2000. It is available to noncitizens who 1) have suffered substantial physical or mental abuse resulting from a wide range of criminal activity, and 2) has been helpful, is being helpful, or is likely to be helpful with the investigation or prosecution of the crime. The U visa provides eligible immigrants with authorized stay in the United States and employment authorization.

### ► **Are U Visas Available?**

Not exactly. U visas cannot be issued until the Department of Homeland Security (DHS) issues regulations making them available. Until then, no one is receiving an actual U visa. However, in the meantime, the DHS has made an interim form of relief available. It is referred to as “U nonimmigrant status interim relief” or “U visa interim relief.” Eligible individuals who request U visa interim relief can receive deferred action, which would also allow them to obtain employment authorization.

### ► **Who Is Eligible For U Visa Interim Relief?**

There are four basic eligibility requirements for U visa interim relief:

- The immigrant has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
- The immigrant possesses information concerning that criminal activity;
- The immigrant has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution the criminal activity; and

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<sup>1</sup> Nasha Vida is the Ralph S. Abascal Fellow at the Immigrant Legal Resource Center. Sally Kinoshita is a staff attorney at the Immigrant Legal Resource Center and technical assistance consultant to the National Immigration Project of the National Lawyers Guild. Gail Pendleton is the Associate Director of the National Immigration Project of the National Lawyers Guild.

- The criminal activity described violated the laws of the United States or occurred in the United States.

► **Who Is NOT Eligible For U Visa Interim Relief?**

- Right now the guidance from DHS states that VSC cannot grant interim relief to noncitizens in immigration proceedings.
- The guidance also suggests that noncitizens with “aggravated felonies,” as defined in immigration law, also are not eligible, nor “absconders” (noncitizens with a final removal order.)
- If a noncitizen is currently in a valid non-immigrant status, she is not eligible for deferred action unless she relinquishes her existing status.

Please contact Sally Kinoshita ([sally@nationalimmigrationproject.org](mailto:sally@nationalimmigrationproject.org)) or Gail Pendleton ([gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org)) if you have clients in these categories to discuss strategies for helping your clients!

► **What Criminal Activities Are Covered By the U Visa Interim Relief?**

In order to qualify for U Visa interim relief, the immigrant must be the victim of one or more of the following crimes or any similar activity in violation of Federal State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

► **What Kind of Documents Should Be Submitted With A U Visa Interim Relief Request?**

As there is no official “form” for requesting U Visa interim relief, each U visa interim relief application will look different and must be tailored to each individual case. However, each application should include the following elements (\* = mandatory):

NOTE: ALWAYS KEEP A COPY FOR YOUR FILE.

- **Cover letter\***  
Every application should include a cover letter summarizing everything included in the application. The cover letter should act as a road map to the entire application.
- **Applicant’s Declaration\***  
Declarations should be detailed, describing the abuse and how the applicant meets each U visa requirement. IT DOES NOT NEED TO BE NOTARIZED.
- **Personal Information\***  
The application should include some form of personal identification (such as translated copy of a birth certificate, an I-94 etc.)

- Documentation Regarding Criminal Activity\*
  - U Visa Certification Form\* (sample form at [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org), go to U Visa section).
  - Police report of crime
  - Copy of the crime as stated in applicable penal code.
  - Restraining Order and related declarations used to obtain the restraining order.
- Documentation of Substantial Physical and/or Mental Abuse\*
  - Detailed in the applicant's declaration\*
  - Declarations of witnesses to abuse
  - Declarations of police, health care workers etc.
  - Medical reports documenting the effects of physical or mental abuse to applicant
  - Reports or evidence of appointment with counselors, shelters etc.
  - Photographs that document the abuse

▶ **What is a Law Enforcement Certification?**

The law enforcement certification is essential to the U visa application. It is best to obtain the certification during the investigation or prosecution of the criminal activity while the evidence is fresh. The certification must come from a Federal, State, or local law enforcement official, prosecutor, judge investigating or prosecuting the criminal activity. There is no official certification form. The certification, which may come in the form of a letter or other form created by the applicant's representative, must be signed by the law enforcement official within the past six months and include the following information:

- it must state that the immigrant was a victim of one or more crimes protected under U visa;
- it must identify the crime(s); and
- it must verify the victim is, has been, or is likely to be helpful to the prosecution or investigation of the criminal activity.

The National Immigration Project of the National Lawyer's Guild has made a sample certification form available online along with an explanation for law enforcement officers of the form and its purpose at [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org). Click on U visa.

▶ **Where Do I Send My Request for U visa Interim Relief?**

Requests for U visa interim relief should be sent to:

U.S. C.I.S. Vermont Service Center  
 VAWA Unit, Box 1000  
 65 Lower Welden Street  
 St. Albans, VT 05479-0001

All Requests Should Be Clearly Marked In Large Letters: DO NOT OPEN IN THE MAILROOM.

▶ **What Form Do I Use To File A U Visa Interim Relief Request?**

There is no official form to apply for U visa interim relief. For a summary of what a U visa interim relief application should include, please see the section above entitled, *What Kind of Documents Should Be Submitted With A U Visa Interim Relief Request?*

► **Is There A Filing Fee For Requesting U Visa Interim Relief?**

No. A filing fee has not been assigned to the U visa interim relief request.

► **Can I Qualify For U Visa Interim Relief If I Was A Victim Of A Past Crime?**

Yes. Victims of past crimes are still eligible for U visa interim relief, assuming that the applicant meets the U visa requirements.

► **Will I Be Eligible For a Work Permit/Employment Authorization If I Am Approved for U Visa Interim Relief?**

Yes. If a U visa interim relief request is approved and deferred action is granted, the applicant will be notified that s/he may submit an I-765, Application for Employment Authorization. The I-765 should be filed with VSC with proof that the applicant has an economic need for employment. The applicant will be required to renew the employment authorization each year. An applicant must submit the appropriate filing fee with the I-765, unless an appropriate request for a fee waiver accompanies the application.

► **Will U Visa Interim Relief Make Me Eligible For Lawful Permanent Residency Status (a Green Card)?**

Not yet, possibly in the future. The U visa interim relief is not an *actual* U visa, it is only *interim relief* until the U visa regulations are written and U visas are issued. Therefore, a U visa interim relief holder is not eligible to apply for lawful permanent residency/green card.

Once the regulations are written and actual U visas are issued, a U visa holder may become eligible for lawful permanent residence. After three years, a U visa holder may apply for lawful permanent residence, (or adjust to lawful permanent resident status), if s/he has maintained continuous residence in the U.S. for at least three years, and if it is determined that his/her continued presence in the U.S. is justified on humanitarian grounds, ensures family unity, or is otherwise in the public interest. The adjustment application will be denied if it is determined that the U visa holder unreasonably refused to assist with a criminal investigation or prosecution.

► **If I am Granted Deferred Action Through a Request for U Visa Interim Relief, Will My Deferred Action Last Indefinitely?**

No. Deferred action is valid for a period of one year unless it is terminated earlier for reasonable cause and upon appropriate notice. A request for an extension of deferred action must be submitted every year before its expiration.

► **IF I HAVE A PENDING OR APPROVED APPLICATION FOR DEFERRED ACTION THROUGH A REQUEST FOR U VISA INTERIM RELIEF, MAY I TRAVEL?**

Not advisable. Travel is always risky. There is no procedure in place at this time for U visa interim relief APPLICANTS or recipients to receive advance parole or some other permission to travel. If someone leaves and comes back, they may not be able to get back into the country.

► **Am I at Risk for Deportation or Removal if I Submit a Request for U Visa Interim Relief?**

Maybe. Anyone who is not in valid status in the United States, who submits an application or request to the DHS, runs the risk of being placed in removal proceedings if they are not eligible for any form of immigration relief.

Those at greatest risk are individuals requesting U visa interim relief who are clearly ineligible for a U visa and individuals with aggravated felonies. Those cases will be referred to Immigration and Customs Enforcement and a possible "Notice to Appear" for removal proceedings may be issued.

In addition, U visa applicants must show they are not "inadmissible" so DHS may deny status to applicants who have committed visa fraud, made false claims to United States citizenship, or been convicted of a crime. These are only examples of things that make applicants inadmissible; even though there is a waiver, you should not file applications in such cases without consulting an experienced U visa mentor. Again, please contact Sally Kinoshita ([sally@nationalimmigrationproject.org](mailto:sally@nationalimmigrationproject.org)) or Gail Pendleton ([gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org)) with these questions.

Finally, until we know what the regulations say, any application for interim relief may expose your client to eventual removal. Although we will challenge the regulations if they deny status to people Congress intended to help, DHS may remove noncitizens before we succeed.

► **Can a U Visa Interim Relief Recipient Obtain Relief For His/Her Family Members?**

Possibly. An immigrant who receives U visa interim relief may be able to obtain relief for his/her spouse, children, and parent (in the case of a child applicant under the age of 16). However, the eligible family member must prove extreme hardship if removed from the United States and provide a certification that states the investigation or prosecution would be harmed without their assistance.

► **Are U Visa Interim Relief Requests Confidential?**

Yes. Information included in the U visa interim relief request may not be disclosed or used by anyone other than sworn officers of the Department of Homeland Security (DHS). Furthermore, determination of a U visa interim relief request cannot be based solely on information provided to the DHS by someone who has battered or abused the applicant.

PREPARED BY THE NATIONAL NETWORK ON BEHALF OF BATTERED  
IMMIGRANT WOMEN  
Used with permission.

## **INSTRUCTIONS FOR COMPLETING THE U VISA CERTIFICATION FORM**

### **Overview of the U Visa**

In October 2000, Congress passed the Victims of Trafficking and Violence Protection Act (the Act). As part of this Act, Congress sought to strengthen the ability of law enforcement agencies to detect, investigate and prosecute crimes against immigrants. In order to do this, Congress recognized that victim cooperation and assistance is often the key to effective detection, investigation and prosecution of crimes. And, where the victims are immigrants, their immigration status in the United States can directly affect their ability to cooperate and assist in these efforts. Thus, Congress provided a specific avenue for immigrant crime victims to obtain lawful immigration status. Congress did this by amending certain sections of the Immigration and Nationality Act (INA) to create the "U visa".

To qualify for a U visa, an applicant must demonstrate that she meets the requirements set forth at INA Sec. 101(a)(15)(U); 8 U.S.C. 1101(a)(15)(U). This provision requires, among other things, that the U visa applicant include with her/his application a certification from a Federal, State or local qualifying official (such as, but not limited to a law enforcement officer, prosecutor or judge). This certification must affirm that the immigrant victim, "has been helpful, is being helpful, or is likely to be helpful" in the investigation of certain criminal activity set forth in the statute. The following completed certification form will be submitted to the Citizenship and Immigration Services section of the Department of Homeland Security (DHS) by the immigrant victim as part of her/his application for a U visa.

If the INS approves the U visa application, the immigrant will be deemed a "lawful temporary resident" of the United States for a period of up to three years. This means that s/he will be permitted to live and work legally in the United States for the duration of the U visa. At the end of three years, an immigrant in U visa status is eligible to apply to become a lawful permanent resident (greencard holder).

### **Instructions for Completing the U Visa Certification**

#### **Question One**

The law requires that the certification be provided by a Federal, State or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority with the power to investigate (or oversee the investigation of) criminal activity. Question one provides DHS with the information to establish that are an official under one of these categories and, thus, qualified to provide the applicant with the requisite certification.

**Question Two**

For purposes of the certification, the law limits the U visa to immigrant victims of certain types of criminal offenses. In this question (statement) you are certifying to DHS that you have the authority and expertise to investigate criminal offenses and that some or all of the criminal offenses you are authorized to investigate fall within the types of offenses listed in Question Two.

**Question Three**

Based on your understanding of the criminal activity in relation to this case, this question asks you to identify specific provisions of Federal, State or local laws that this criminal activity MAY violate. It is important to note that the immigration law governing the U visa and these certifications only requires that there be criminal activity that could be, has been, or is the subject of investigation and that this criminal activity relate to a violation of a criminal law(s) that fall within one of the categories of crimes listed in Question Two. The law does not require that there is presently a pending investigation in relation to this criminal activity. Nor does the law require that the criminal activity at issue be legally sufficient to support the filing of an indictment or to sustain a conviction. Additionally, it is important to note that you do not need to be the official actually conducting an investigation into this criminal activity. In order to complete the U visa certification form, you need only be an official who is authorized to investigate the types of criminal activity listed in Question Two.

*Example:* Officer Hardy is a law enforcement officer with the Yakima County Sheriff Department. An attorney for Ms. Lazarus comes to him and requests that he complete a certification in support of her U visa application. Ms. Lazarus is an immigrant victim of repeated and brutal assaults from her live-in companion, Mr. Lamar. She lives outside the city of Yakima, Washington. Several weeks previously, Ms. Lazarus called the sheriff when Mr. Lamar began assaulting her. Officer Hardy talks with Ms. Lazarus and reviews the police report in relation to the incident that was filed by one of his fellow officers. He determines that the criminal activity at issue here relates to a violation of Washington criminal law that constitute types of offenses listed in Question Two. He then fills in question three with the citation to two sections of Washington criminal law: R.C.W. 9A.36.021 Assault in the second degree and R.C.W. 9A.40.040 Unlawful imprisonment.

**Question Four**

This question asks that you indicate the date and location of the suspected criminal activity. If the criminal activity took place over time and in numerous locations, please indicate as such.

**Question Five**

This question establishes the identity of the primary U visa applicant and asks you to indicate that s/he is, has been, or is likely to be helpful to an investigation into the criminal activity at issue in the case. Again, note that it is not a requirement that there has been or is presently an investigation pending into the criminal activity.



The second part of this question is relevant where the primary applicant/immigrant victim has relatives who may also qualify for U visa status. The law simply requires that you make an assessment as to whether any investigation in relation to the criminal activity would be harmed without the assistance of the parent, spouse or child of the principal immigrant victim. Harm in this instance may include any risk that would compromise an investigation into the criminal activity.

#### **Question Six**

This question asks you to briefly describe the relevant information that the primary applicant possess in relation to this criminal activity.

Continuing with the example used in Question Three: Officer Hardy might complete this section by filling in Ms. Lazarus name and then stating in the space provided:

“Ms. Lazarus is the primary victim of the suspected criminal activity in this case. She, therefore, can provide eye-witness testimony regarding the criminal activity believed to have been committed by Mr. Lamar.”

#### **Question Seven**

The law requires that the criminal activity at issue fall within one of these broad categories.

#### **Completed Certifications**

The applicant is required to submit this form with his/her application. Once you have completed the certification form, return it to the immigrant victim or her/his attorney or advocate. DO NOT mail this form separately to the DHS.

## U VISA CERTIFICATION FORM

I, \_\_\_\_\_, hereby affirm the following:  
(NAME)

1. I am a: (check one)

\_\_\_\_\_ Federal official      \_\_\_\_\_ State official      \_\_\_\_\_ Local official  
(municipal, district, county)

\_\_\_\_\_ DHS officer\* (see 2B below)

Specifically, I am a: (check one)

\_\_\_\_\_ Law Enforcement Officer      \_\_\_\_\_ Prosecutor;  
\_\_\_\_\_ Judge      \_\_\_\_\_ Other Investigating Authority.

\_\_\_\_\_  
(JOB TITLE)

\_\_\_\_\_  
(NAME OF EMPLOYER)

\_\_\_\_\_  
(STREET ADDRESS/LOCATION)

\_\_\_\_\_  
(CITY, STATE & ZIP CODE)

\_\_\_\_\_  
(TELEPHONE)

2A. I am responsible or the agency for which I work is responsible for investigating (or overseeing the investigation of) criminal activity involving or similar to violations of (some or all of) the following types of offenses under Federal, State or local criminal laws: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy or solicitation to commit any of these crimes OR

\*2B. I am an DHS officer with information not limited to immigration violations related to criminal activity described above or similar criminal activity.

3. The criminal activity at issue in this case may involve (but is not limited to) possible violations of the following criminal laws:  
(PROVIDE STATUTE OR CODE CITATION(S) AND OFFENSE NAME(S))

---

and based on my expertise and understanding of these laws, I have determined that these laws fall within the list of offenses set forth in Question #2 or is similar activity violating Federal, State or local criminal law.

4. It is suspected that this criminal activity occurred on or about:  
(SPECIFY AS MUCH AS POSSIBLE DATE(S) AND LOCATION(S) OF CRIMINAL ACTIVITY)

---

5. I affirm that \_\_\_\_\_ : (CHECK ALL THAT APPLY)  
(NAME OF U VISA APPLICANT)\*\*

- has been helpful;
- is being helpful;
- is likely to be helpful

in an/the investigation and/or prosecution of this criminal activity.

6. I affirm that \_\_\_\_\_ possesses relevant information  
(NAME OF U VISA APPLICANT)\*\* relating to this criminal activity. This information includes (but is not limited to) the following: (PROVIDE BRIEF DESCRIPTION OF INFORMATION)

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\*\* If the U visa applicant is under the age of 16, please certify that the applicant's parent, guardian or "next friend" meets these requirements.

7. I affirm that this criminal activity occurred: (CHECK ALL THAT APPLY)

in the United States (including Indian country and military installations);  
 in territories and possessions of the United States; OR  
 outside the United States, but violated United States' laws.

Certification for applicant's spouse, child or parent

8. This investigation and/or prosecution would be harmed without the assistance of

\_\_\_\_\_  
(NAME OF APPLICANT'S SPOUSE, CHILD OR PARENT)

who is the \_\_\_\_ spouse \_\_\_\_ child \_\_\_\_ parent of the applicant listed above.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

## ASIAN PACIFIC ISLANDER LEGAL OUTREACH

(Formerly NIHONMACHI LEGAL OUTREACH)

July 29, 2002

USCIS- Vermont Service Center  
Attn: VAWA Unit, Box 1000  
75 Lower Welden St.  
St. Albans, VT 05479-0001

Re: JANE SMITH:

U visa Interim Relief Pursuant to Section 101(a)(15)(U) of the INA; Michael Cronin's VTVPA Policy Memorandum #2 dated August 30, 2001; William R. Yates Centralization of Interim Relief for U Nonimmigrant Status Applicants dated October 8, 2003

Dear Sir or Madam:

Our office represents JANE SMITH in her immigration case. Ms. SMITH is petitioning for U-visa pursuant to Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). Enclosed please find the Form G-28, and supporting documents demonstrating that Ms. SMITH meets the eligibility requirements for relief under VTVPA.

Ms. SMITH is a 34 year-old Japanese woman who was a victim of continual physical and mental abuse by JOHN LEE. Ms. SMITH currently resides in a domestic violence shelter in California. A warrant of Arrest against Mr. LEE was filed in State of Texas on February 7, 2002 for assault with injury, family violence, a class A misdemeanor. Ms. SMITH is the only witness to the assaults committed upon her. The state of Texas is unable to prosecute Mr. LEE without the testimony of Ms. SMITH. At this time, the whereabouts of Mr. LEE is unknown and the anticipated date to the end of the case is undetermined.

According to the attached memorandum specifications, to be granted non-immigrant status under the VTVPA 2000, a petitioner must meet the following requirements:

**I. The petitioner suffered substantial physical or mental abuse as result of criminal activity in violation of federal, state, or local criminal law.**

<u>Exhibit</u>	<u>Description</u>
1.	Declaration of JANE SMITH
2.	U-visa Certification Form dated July 9, 2002 from JENNY PROSECUTOR, Central County Attorney.
3.	Warrant Of Arrest filed against Mr. LEE on February 7, 2002.
4.	Letter from LISA ADVOCATE of San Francisco Shelter

1188 FRANKLIN STREET, SUITE 202 • SAN FRANCISCO, CALIFORNIA 94109 • 415/567-6255

1212 BROADWAY, SUITE 400 • OAKLAND, CALIFORNIA 94612 • 510/251-2846

Please reply to: SF ☐ Oakland

App. 7-11

5. Medical records of JANE SMITH from General Hospital
6. Letter from Dr. BILL THERAPIST of Mental Health, Inc.
7. photographs of bruises from beatings by JOHN LEE
8. An Application For A Protective Order, Affidavit In Support Of Ex Parte, and Temporary Ex Parte Protective Order And Order Setting Hearing filed on March 19, 2002 with Central County Court in Texas.

**II. The petitioner possesses information concerning the criminal activity.**

<u>Exhibit</u>	<u>Description</u>
1.	Declaration of JANE SMITH
2.	U-visa Certification Form dated July 9, 2002 from JENNY PROSECUTOR, Central County Attorney.
3.	Warrant Of Arrest filed against Mr. LEE on February 7, 2002.
4.	Letter from LISA ADVOCATE of San Francisco Women's Shelter
5.	Medical records of JANE SMITH from General Hospital
6.	Letter from Dr. BILL THERAPIST of Mental Health, Inc.
7.	photographs of bruises from beatings by JOHN LEE
8.	An Application For A Protective Order, Affidavit In Support Of Ex Parte, and Temporary Ex Parte Protective Order And Order Setting Hearing filed on March 19, 2002 with Central County Court in Texas.

**III. The alien has been helpful or is being helpful or is likely to helpful to a Federal, State, or Local law enforcement official; to a Federal, State, or local Prosecutor; to a Federal or State judge, to the Service; or to Federal, State, or Local authorities investigating or prosecuting one of the certain criminal activities listed in the Definitions**

1. Declaration of JANE SMITH
2. U-visa Certification Form dated July 9, 2002 from JENNY PROSECUTOR, Central County Attorney.
3. Warrant Of Arrest filed against Mr. LEE on February 7, 2002.

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Please reply to:  SF  Oakland

**IV. Petitioner was victimized by criminal activity that took place in the United States, which violated the laws of the United States.**

<u>Exhibit</u>	<u>Description</u>
1.	Declaration of JANE SMITH
2.	U-visa Certification Form dated July 9, 2002 from JENNY PROSECUTOR, Central County Attorney.
3.	Warrant Of Arrest filed against Mr. LEE on February 7, 2002.
4.	Letter from LISA ADVOCATE of San Francisco Women's Shelter
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8.	An Application For A Protective Order, Affidavit In Support Of Ex Parte, and Temporary Ex Parte Protective Order And Order Setting Hearing filed on March 19, 2002 with Central County Court in Texas.

**SUMMARY**

Through VTVPA 2000, Congress intended to provide relief for victims of specified criminal activity like Ms. SMITH. We respectfully request that the Immigration and Naturalization Service grant Ms. SMITH deferred action through U visa interim relief status based on the supporting documentation and instructional memorandum.

Please forward a receipt to my office for this application.

If you have any questions or need any further information, please do not hesitate to contact me at (415) 567-625 or by fax at (415) 567-6248.

Sincerely,

KAVITHA SREEHARSHA  
Attorney for JANE SMITH

Enclosures

## SAMPLE INTERIM RELIEF REQUEST

March 25, 2004

U.S. Citizenship & Immigration Service  
Vermont Service Center  
Box 1000  
75 Lower Welden Street  
St. Albans, VT 05479-0001

**Re: RESUBMISSION of U-Visa Interim Relief Request for Applicant, Child 1, Child 2 and Child 3 WITH REQUEST TO EXPEDITE ADJUDICATION OF APPLICATION DUE TO EXIGENT CIRCUMSTANCES**

Dear Adjudicator:

My client, Applicant, is applying for U visa interim relief pursuant to the Victims of Trafficking and Violence Protection Act (VTVPA). Applicant is a 30 year old citizen of the Country A. Applicant has been severely physically and mentally abused by her husband throughout their fourteen years of marriage. Recently Applicant's spouse/abuser threatened to kill Applicant and take their three children, Child 1, Child 2 and Child 3, back to the Country A. On DATE, Applicant's husband physically assaulted her and cut up her work uniform with a pair of scissors. Applicant's spouse/abuser has also taken steps to try to have Applicant fired from her job, by having a friend contact her employer with information that she lacks permission to work in the U.S. Applicant's spouse/abuser is not providing any means of support to his wife and three children. Applicant finally decided to press charges. Her husband is currently facing charges of assault and destruction to property. Applicant has been helpful to the police and the State's Attorney investigating this case. She intends to continue cooperating with law enforcement in the continued investigation and prosecution of this case.

Applicant meets the requirements for U visa interim relief as set forth in William R. Yates Memorandum<sup>1</sup> dated October 8, 2003. Mr. Yates's Memorandum states that four requirements must be met to classify an alien as a principal "U" nonimmigrant:

- (1) The alien has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
- (2) The alien possesses information concerning that certain criminal activity;
- (3) The alien has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official; to a Federal, State, or local prosecutor; to a Federal or State judge; to the INS; or to other Federal, State, or local authorities investigating or prosecuting the criminal activity; and

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<sup>1</sup> Memorandum from William R. Yates, Associate Director of Operations, Office of Associate Director of Operations, Regarding "Centralization of Interim Relief For U Nonimmigrant Status Applicants," October 8, 2003.



- (4) The criminal activity described violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

The criminal activity referred to above is listed at INA § 101(a)(15)(U)(iii). It is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy or solicitation to commit any of the above mentioned crimes.

Pursuant to the Yates Memorandum, when considering whether an alien has presented sufficient evidence demonstrating she may be eligible to apply for U nonimmigrant status and thus eligible to request a form of interim relief, VSC personnel must examine each of the U nonimmigrant status eligibility requirements, taking into consideration the guidance set forth in the Memorandum.

The U nonimmigrant status application must be accompanied by some form of certification form from a law enforcement official attesting to the fact that the alien has been, is likely to be, or is being helpful in the investigation or prosecution of criminal activity designated in the VTVPA. The Memorandum states that whether the level of harm meets the statutory requirement of substantial physical or mental abuse will be a question U.S. Citizenship and Immigration Service (hereinafter "CIS") officers adjudicating the U nonimmigrant status application will decide in accordance with the regulations once they are promulgated. *Therefore, for interim relief purposes, "substantial physical or mental abuse" should be broadly interpreted.* The Memorandum further adds that the fact that the criminal activity involved in the case was classified as a misdemeanor as opposed to a felony should not be a factor in determining eligibility for interim relief.

Applicant is able to show that she meets the aforementioned conditions to be classified as a principal U nonimmigrant.

1. Applicant has suffered substantial physical, sexual and mental abuse as a result of having been a victim of domestic violence for many years. Enclosed with this application please find a criminal order of protection obtained by Applicant against her spouse.
2. The perpetrator of this crime has been charged under Illinois law with domestic assault and criminal damage to property. We are attaching copies of the criminal disposition indicating Child 3 J. Oyales was charged with two criminal counts for domestic assault and criminal damage to property on January 5, 2004.
3. Applicant assisted in the investigation of the crime and is currently prepared to assist in the prosecution of this case by testifying about the case and is prepared to serve as

a witness. Applicant has included a U Visa Certification Form signed by Illinois Assistant State's Attorney Judith Weldon.

4. The criminal activity was committed in the State of Illinois and was in violation of U.S. State law.

Pursuant to the Yates Memorandum, family members who may be eligible to receive derivative U nonimmigrant status and who are present in the United States should not be removed, and shall be eligible for interim relief. Eligible family members must demonstrate extreme hardship if removed from the United States and must also submit a certification of a government official that an investigation or prosecution would be harmed without the spouse, child, or parent of the principal.

Applicant's three children have witnessed their father abusing their mother for years. Moreover, Applicant's spouse/abuser has been abusive to his children. Since Applicant obtained an order of protection, her husband has called the children and told them that he would rather die than go to jail, and that someone will die because of this. The children are scared of their father and do not want to have contact with him at this time. Removing them to the Country A would cause extreme hardship to the children, who, if forced to return without their mother, would be subjected to living with their father. The U.S. State's Attorney has included the three children's names on the U Visa Certification Form. Moreover, the removal of Applicant would cause extreme hardship to herself, because she would not benefit from the domestic violence services and protections afforded her in the U.S.

Finally, the Yates Memorandum states that the Vermont Service Center may exercise its discretion to assess deferred action once an individual is determined to have submitted *prima facie* evidence of her eligibility for U nonimmigrant status. On the basis of this application we are requesting that you grant U visa interim relief to Applicant and her three children, and grant deferred action status.

Thank you for your attention to this application. Enclosed please find supporting documents and Form G-28. If you have any questions I can be reached at (312) 660-1377.

Sincerely,

Sherizaan Minwalla  
Staff Attorney  
Midwest Immigrant & Human Rights Center




U.S. Department of Justice  
Immigration and Naturalization Service

HQINV 50/1

425 I Street NW  
Washington, DC 20536

AUG 30 2001

MEMORANDUM FOR MICHAEL A. PEARSON  
EXECUTIVE ASSOCIATE COMMISSIONER  
OFFICE OF FIELD OPERATIONS

FROM: Michael D. Cronin   
Acting Executive Associate Commissioner  
Office of Programs

SUBJECT: Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) Policy Memorandum #2 - "T" and "U" Nonimmigrant Visas

The following instructions provide interim guidance to INS relating to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) Pub. L. No. 106-386, 114 Stat 1464, (October 28, 2000). This memorandum establishes interim procedures to be followed while the regulations implementing the T and U visa status are being promulgated by INS. The guidance in this memorandum is effective immediately, and will remain in effect until regulations on T and U visa status are in place. This guidance supercedes or augments any previous national or local guidance on T and U visas.

**BACKGROUND**

The VTVPA reflects the United States Government's strong stance against trafficking and its intent to vigorously pursue the prosecution of traffickers and the protection of victims. It provides access to social services and benefits for some victims, creates stronger criminal penalties and enhanced sentencing for traffickers, and creates a new nonimmigrant classification for victims of severe forms of trafficking ("T Visa" or "T").<sup>1</sup> The VTVPA also reauthorizes and amends the Violence Against Women Act (VAWA) and adds a second new nonimmigrant classification for victims of other specific crimes ("U Visa" or "U").<sup>2</sup>

<sup>1</sup> The statutory purposes of the Trafficking Victims Protection division of the VTVPA "are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." VTVPA §102(a)

<sup>2</sup> The "U Visa" related statutory purpose includes the intent "to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes...committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States..."

VTVPA §1513(a)(2)(A)

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Re: VTVPA Policy Memorandum #2 - "T" and "U" Nonimmigrant Visas

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### **DEFINITIONS**

Following are several definitions critical to the understanding of this guidance.

**Severe Forms of Trafficking in Persons** as defined by VTVPA §103(8). The term "severe forms of trafficking in persons" means-

- (A) 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
- (B) 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.

**Certain Criminal Activity for "U Visa" Purposes** as defined by VTVPA §1513 (b)(3) refers to one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

**Possible Victim** is any alien who may be eligible for benefits under the "T" or "U" visa categories.

### **GENERAL GUIDANCE**

The VTVPA creates two new nonimmigrant classifications. These two classifications provide an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and prosecutions and provide humanitarian protection to victims. The "T" classification is available to victims of severe forms of trafficking and their families and is limited to 5,000 principal aliens per year. The "U" classification is available to victims of certain criminal activity (see Definitions) and their families and is limited to 10,000 principals per year.

The "T" and "U" provisions of the VTVPA went into effect upon enactment, but regulations for implementation and for the processing of applications have not yet been finalized. In the interim, aliens who are identified as possible victims in the above categories **should not be removed from the United States until they have had the opportunity to avail themselves of the provisions of the VTVPA.** Existing authority and mechanisms such as parole, deferred action, and stays of removal will be used to achieve this objective, including continued presence for victims of severe forms of trafficking, as described in interim policy guidelines for continued presence and in the regulations implementing Section 107 (c) of the VTVPA.

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Re: VTVPA Policy Memorandum #2 - "T" and "U" Nonimmigrant Visas

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### **IDENTIFICATION OF POSSIBLE VICTIMS**

In the absence of governing regulations, Service personnel should ensure broad interpretation of the guidance to ensure an alien is not removed from the United States if it appears that they fit into one of these victim categories. This guidance is an interim measure aimed only at identifying possible victims who may be eligible for relief under the new nonimmigrant classifications.

Service personnel may encounter possible victims in a variety of circumstances, such as at a Port of Entry (POE), between POEs, in detention, in adjudication processes, in Immigration Court, and/or in the course of investigative activities. At times, Service personnel will be the first point of contact with the possible victim; at other times contact may be established through a prosecutor's office, through a local or federal law enforcement agency, or through an attorney. Regardless of the manner of encounter, if the individual is identified as a possible victim, Service personnel should take the necessary steps to ensure that the individual is not prematurely removed. Circumstances will vary from case to case, and INS personnel should keep in mind that it is better to err on the side of caution than to remove a possible victim to a country where he or she may be harmed by the trafficker or abuser, or by their associates.

**Possible "T" Victims:** The VTVPA specifies that four conditions must be satisfied to classify an alien as a principal "T" nonimmigrant.

1. The alien is or has been a victim of a severe form of trafficking in persons; and
2. The alien is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a POE, on account of such trafficking; and
3. The alien has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking - or - the alien is under the age of 15; and
4. The alien would suffer extreme hardship involving unusual and severe harm upon removal.

Additionally, to avoid extreme hardship, the Attorney General may provide "T" nonimmigrant status to the spouses, children, and, in the case of those under age 21, the parents of "T" nonimmigrants.

**Possible "U" Victims:** The VTVPA specifies that four conditions must be satisfied to classify an alien as a principal "U" nonimmigrant:

1. The alien has suffered substantial physical or mental abuse as a result of having been a victim of the certain criminal activity (see Definitions); and

Memorandum to Michael A. Pearson  
Re: VTVPA Policy Memorandum #2 - "T" and "U" Nonimmigrant Visas

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2. The alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning that certain criminal activity described in Definitions;
3. The alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official; to a Federal, State, or local prosecutor; to a Federal or State judge, to the Service; or to other Federal, State, or local authorities investigating or prosecuting one of the certain criminal activities described in Definitions; and
4. The criminal activity described violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

Additionally, to avoid extreme hardship, the Attorney General may provide "U" nonimmigrant status to the spouses, children, and, in the case of a child under the age of 16, the parents of "U" nonimmigrants. This would require certification by a government official that an investigation or prosecution would be harmed without the assistance of the spouse, the child, or in the case of an alien child, the parent of the alien. It should be noted that trafficking victims might also be eligible for "U" nonimmigrant classification.

#### **WORK AUTHORIZATION**

Service personnel are instructed to use existing authority and mechanisms to prevent removal of possible "T" and "U" victims. These mechanisms include parole, deferred action, continuances, and stays of removal. Individuals who are identified as possible "T" or "U" victims may be granted work authorization pursuant to existing authority and utilizing existing application procedures. For instance, potential applicants that are paroled may be granted work authorization pursuant to 8 C.F.R. §274a.12(c)(11); potential applicants that are placed on deferred action may be granted work authorization pursuant to 8 C.F.R. §274a.12(c)(14); and potential applicants that are granted a stay of removal may be granted work authorization in accordance with the provisions of 8 C.F.R. §274a.12(c)(18). Governing regulations concerning continued presence for victims and other information related to this topic are also contained in the Department of Justice and Department of State interim rule published in the Federal Register on July 24, 2001 concerning the Protection and Assistance for Victims of Trafficking.

#### **JUVENILES**

Each District has a juvenile coordinator who should be contacted regarding juvenile victims.

#### **RECORD KEEPING**

It is imperative that documentation is maintained on possible victims. As such, information about the possible victim including all pertinent information surrounding the possible victim's circumstances must be maintained in the alien's A-file. If no A-file exists for the individual, one should be created. The use of standard sworn statements and/or applicable question and answer

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Re: VTVPA Policy Memorandum #2 - "T" and "U" Nonimmigrant Visas

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forms must be maintained for the record. As evidence of contact with the possible victim, the INS investigator and/or officer will include any necessary notes and memorandum for the record.

### **CONTINUED PRESENCE**

Aliens who are victims of severe forms of trafficking and are potential witnesses may be eligible for a "T" nonimmigrant classification and shall be processed in accordance with the guidance contained in the policy memorandum dated August 20, 2001, entitled Interim Guidance #1 -- Continued Presence. Governing regulations concerning continued presence are also contained in the Department of Justice and Department of State interim rule published in the Federal Register on July 24, 2001 concerning the Protection and Assistance for Victims of Trafficking, as 28 CFR Part 1100.35.

### **LEGAL PROCEEDINGS**

No alien identified as a possible victim eligible for "T" or "U" nonimmigrant classification should be removed from the United States until they have had the opportunity to avail themselves of the provisions of the VTVPA. When a possible "T" or "U" victim is encountered during the course of proceedings, the District Counsel's office should contact the District Victim-Witness Coordinator so that appropriate action can be taken in accordance with the instructions in this memo. The District Counsel's office has the discretion to seek a continuance of the proceedings or to request administrative closure or termination.

### **FEDERAL OBLIGATIONS TO VICTIMS**

Some of the provisions included in the VTVPA replicate INS responsibilities that are currently included in 42 U.S.C. 10606-10607 (the Victim's Rights and Restitution Act) and the *Attorney General Guidelines for Victim and Witness Assistance, 2000 edition*. This includes the referral of victims of Federal crime to medical care and assistance and the provision of reasonable protection. Victims who fall into the statutory definition of victim found in the *Attorney General Guidelines for Victim and Witness Assistance* must be afforded all the rights contained in that directive.<sup>3</sup> Service personnel should continue to involve the District and Sector Victim-Witness Coordinators in referring these victims for services.

This guidance is to be followed until such time as the alien's status has been confirmed, and, where the alien is an actual or possible material witness, the alien has had an opportunity to be considered for a "T" or a "U" nonimmigrant classification, as appropriate.

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<sup>3</sup> For purposes of the Attorney General Guidelines for Victim and Witness Assistance, the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as the result of a (federal) crime, including ...in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, another person or persons as listed in 42 U.S.C. 10607. The Attorney General designated District Directors and Chief Patrol Agents of the office having primary responsibility for conducting a Federal investigation as the responsible officials to identify victims of Federal crime.

**Memorandum to Michael A. Pearson**  
**Re: VTVPA Policy Memorandum #2 - "T" and "U" Nonimmigrant Visas**

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**The principles set forth in this memorandum, and internal office procedures adopted hereto, are intended solely to guide INS personnel in performing their duties. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.**





U.S. DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

ERDIR 70/6.2-P

Office of the Regional Director

Eastern Regional Office  
70 Kimball Avenue  
South Burlington, VT 05403-6813

MAY 23 2002

MEMORANDUM FOR DISTRICT DIRECTORS,  
OFFICERS IN CHARGE  
EASTERN

FROM:   
J. Scott Blackman  
Regional Director

SUBJECT: Automatic Administrative Relief for Aliens Eligible for Nonimmigrant Status under Sections 101(a)(15)(T) and (U) of the Immigration and Nationality Act

Eastern Region Policy Transmittal # 32

The attached memoranda advises field offices on new procedures for handling cases involving aliens that are eligible for status as a nonimmigrant under Sections 101(a)(15)(T) and (U) of the Immigration and Nationality Act (INA), as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, 114 Stat. 1464.

Please note that an alien identified as a possible victim eligible for nonimmigrant status under INA §§ 101(a)(15)(T) and (U) must not be removed from the United States until the alien has had an opportunity to apply for VTVPA benefits.

Please ensure that all offices under your jurisdiction implement this rule immediately. Please provide a consolidated confirmation of receipt for your District by initialing and dating the memo below and faxing it back to RODIR at 802-660-5114. Any questions related to removals may be directed to ERO-DRO, Attn: Michael L. Webster (802) 660-5010, or any questions related to adjudications may be directed to ERO-ADN, Attn: John Bielicki (802)-660-5036.

Attachment(s)

\_\_\_\_\_  
Initials                  District Code                  Date

05/17/2002 08:34 FAX



U.S. Department of Justice  
Immigration and Naturalization Service

HQADN 70/6.2

Office of the Executive Associate Commissioner

425 J Street NW  
Washington, DC 20536

MAY - 8 2002

MEMORANDUM FOR JOHNNY N. WILLIAMS  
EXECUTIVE ASSOCIATE COMMISSIONER  
OFFICE OF FIELD OPERATIONS

FROM: Stuart Anderson *Stuart Anderson*  
Executive Associate Commissioner  
Office of Policy and Planning

SUBJECT: Deferred Action for Aliens with Bona Fide Applications for  
T Nonimmigrant Status

This memorandum outlines changes in Immigration and Naturalization Service (INS) procedures for deferred action determinations on behalf of victims of severe forms of trafficking whose applications for T nonimmigrant status have been determined to be bona fide but are still awaiting final adjudication by the Vermont Service Center (VSC). It should be read as a supplement to guidance issued by the Office of Programs on December 19, 2000, and September 7, 2001, and to a memorandum dated August 30, 2001, that instructed INS offices to utilize deferred action as one means to provide possible victims the opportunity to avail themselves of the provisions of the Victims of Trafficking and Violence Protection Act of 2000, including applying for T or U nonimmigrant status.<sup>1</sup>

Effective the date of this memorandum, the VSC is responsible for assessing deferred action for all applicants whose applications have been determined to be bona fide. The duration of the initial deferred action assessment shall be at the discretion of the Service Center Director but shall not exceed 12 months. The initial assessment may be for less than 12 months if the director determines an application would be adjudicated within that time. Deferred action will not be considered or assessed for a T nonimmigrant status applicant if he or she is currently in

<sup>1</sup> This memorandum does not, however, alter the guidance outlined in those memoranda regarding the interim procedures to be followed while the regulations implementing the U nonimmigrant status are being promulgated. Aliens who are identified as possibly eligible for U nonimmigrant status should not be removed from the United States until they have had the opportunity to apply for such status. Existing authority and mechanisms such as parole, deferred action, and stays of removal should be used to achieve this objective.

05/23/2002 THU 17:16 [TX/RX NO 7498] 004

05/17/2002 08:35 FAX

Memorandum for Johnny N. Williams  
Subject: Deferred Action for Aliens with Bona Fide Applications  
for T Nonimmigrant Status

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removal proceedings unless the case has been administratively closed by the Immigration Judge or the Board of Immigration Appeals. For purposes of this memorandum, removal proceedings are defined as the period between the filing of the Notice to Appear with the Immigration Judge and the issuance of the final decision.

If a deferred action determination is made, the VSC will notify the alien to submit Form I-765, Application for Employment Authorization. Applications for employment authorization based on an assessment of deferred action at the VSC must be filed with the VSC. After the initial deferred action decision and issuance of a one-year Employment Authorization Document, the VSC will hold these files and review each subsequent request for employment authorization and deferred action upon receipt of each application. Requests for extensions of employment authorization and deferred action will be reviewed and granted in increments of twelve months.

Field Offices (and other Service Centers) may continue to receive inquiries from T applicants regarding determinations of deferred action. These may be initial requests or requests for an extension of deferred action. These requests should be mailed to: USINS-Vermont Service Center, ATTN: Keith Canney, Box 1000, 75 Lower Weldon St., St. Albans, VT 05479-0001.

If you have any questions regarding this memorandum or other T nonimmigrant status issues, please contact Laura Dawkins, Office of Adjudications at (202) 514-4754.

U.S. Department of Homeland Security  
Citizenship and Immigration Services

Office of Associate Director of Operations

425 I Street NW  
Washington, DC 20536

OCT 8 2003

MEMORANDUM FOR DIRECTOR, VERMONT SERVICE CENTER

FROM: William R. Yates  
Associate Director of Operations

SUBJECT: Centralization of Interim Relief For  
U Nonimmigrant Status Applicants

**Background**

On October 28, 2000, Congress passed the Victims of Trafficking and Violence Protection Act (VTVPA), Pub. L. 106-386.<sup>1</sup> The VTVPA created the U nonimmigrant status, a new nonimmigrant classification for victims of specific crimes. This nonimmigrant status was created to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other criminal activity of which aliens are victims, while offering protection to victims of such offenses. It provides an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and/or prosecutions. It is available to victims of certain criminal activity and their families, and is limited to 10,000 principals per year.

Regulations implementing this new nonimmigrant status are currently in the clearance process. In an effort to provide interim relief for this vulnerable population, the Office of Programs issued interim guidance in August 2001, which directed that no one who appeared to be eligible to apply for U nonimmigrant status be removed from the United States until he/she has had the opportunity to avail him/herself of the provisions of the VTVPA. It further instructed field offices to use existing mechanisms (parole, deferred action, and stays of removal) to achieve this objective.

<sup>1</sup> The sections of the VTVPA pertaining to U nonimmigrant status are codified at sections 101(a)(15)(U), 214(o), and 245(l) of the Immigration and Nationality Act (INA).

Since this guidance was issued, it has become apparent that until the regulations implementing the U nonimmigrant status are published, a more unified, centralized approach is needed in the interim relief process. Many field offices have been unsure how to proceed in granting interim relief, which has resulted in inconsistent treatment of potential U nonimmigrant status applicants. It is for these reasons that the U nonimmigrant status interim relief process will be centralized at the Vermont Service Center (VSC) effective immediately.

### **Centralization of Interim Relief Process**

The VSC will serve as the “clearinghouse” for early-filed applications and will have jurisdiction to assess deferred action in early-filed U nonimmigrant status cases. Upon receipt of a request for interim relief, the VSC will consider the facts of each case and determine if deferred action is appropriate. Each decision should be considered individually, based on all the facts present. Upon authorizing deferred action, the center director will advise the alien, by letter, of the action taken and advise him or her of eligibility to request employment authorization. The center director will include a copy of a G-312 in the alien’s A file and maintain that file for docket control.

Deferred action shall not be assessed in those cases where the applicant is clearly ineligible for U nonimmigrant status or is an aggravated felon, and those cases should be referred to the Bureau of Immigration and Customs Enforcement (ICE) for possible issuance of a Notice to Appear. If the VSC determines that the case is not suitable for deferred action, the alien should be notified of that decision by letter.

By their nature, U nonimmigrant status cases generally possess factors that warrant consideration for deferred action. In some cases, however, there may be factors present that would militate against deferred action; cases should therefore receive individual scrutiny. The VSC should maintain records of all assessments of deferred action for statistical and tracking purposes. In addition, a process for periodic review of the deferred action decisions made by the VSC is planned. Upon publication of the regulations implementing the U nonimmigrant status, the VSC will send a letter informing early filers to submit an application on the proper form, and monitor the early-filed list to determine whether those assessed deferred action have applied. The VSC will terminate deferred action and refer those who fail to apply within the timeframe established by the regulation to ICE for possible issuance of a Notice to Appear, or for removal.

### **Eligibility to apply for U nonimmigrant status**

Before determining whether to grant a form of interim relief, VSC personnel must first determine whether the alien adequately demonstrates that he/she may possibly be eligible to apply for U nonimmigrant status when regulations are issued. This would be demonstrated by the submission of *prima facie* evidence of each eligibility requirement. In other words, the alien must produce sufficient evidence to render reasonable a conclusion that the alien may be eligible for U nonimmigrant status when regulations are issued implementing that status. This is not a

determination that an alien is or is not eligible to apply, or an adjudication of the claim itself. It is a conclusion reached by examining the documents accompanying the request for interim relief based upon perceived eligibility.

The four basic eligibility requirements that an alien must satisfy in order to be classified as a principal U nonimmigrant are set out in the VTVPA. Therefore, in order to be eligible to apply for interim relief, an alien must present evidence demonstrating that:

1. He/she has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
2. He/she (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning that criminal activity;
3. He/she (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official; to a Federal, State, or local prosecutor; to a Federal or State judge; to the INS; or to other Federal, State, or local authorities investigating or prosecuting the criminal activity; and
4. The criminal activity described violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

The criminal activity referred to above is listed at INA § 101(a)(15)(U)(iii). It is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

When considering whether an alien has presented sufficient evidence demonstrating he/she may be eligible to apply for U nonimmigrant status and thus eligible to request a form of interim relief, VSC personnel must examine each of the U nonimmigrant status eligibility requirements, taking into consideration the guidance below.

#### Law enforcement certification

The possible U nonimmigrant status applicant does not have to be identified to the VSC through a law enforcement official. However, any request for interim relief from a possible U

nonimmigrant status applicant must be accompanied by some form of certification from a law enforcement official attesting to the fact that the alien has been, is likely to be, or is being helpful in the investigation or prosecution of criminal activity designated in the VTVPA. There currently is no official DHS-created law enforcement certification form. Therefore, the law enforcement official certification may be in the form of a letter, or a form created by a non-governmental organization or an applicant's attorney or representative, and should:

- State that the person was a victim of one or more of the crimes listed in the statute;
- Identify the crime(s); and
- Verify the victim is, has been, or is likely to be helpful to the prosecution or investigation of the criminal activity.

Whatever form the certification takes, it must in all cases be signed by the law enforcement official investigating or prosecuting the criminal activity. The certification submitted must have been signed within six months immediately preceding the submission of the request for interim relief. In addition, the VTVPA does not require the U nonimmigrant status applicant to assist in both the investigation and prosecution of the criminal activity; the assistance offered by the possible U nonimmigrant status applicant may be in either the investigation or the prosecution, or both.

It is important to note that the law enforcement certification does not have to come from a Federal law enforcement official. Section 214(o)(1) of the INA identifies from whom a certification may be accepted. The certification may come from a Federal, State or local law enforcement official, prosecutor, judge or other Federal, State, or local authority investigating the criminal activity. Further development of the range of criminal activity involved and the types of certifying government officials will occur in the rulemaking process. At this point, VSC personnel should keep in mind that circumstances will vary from case to case, and it is better to err on the side of caution than to remove a possible U nonimmigrant status applicant.

#### Time element

The fact that the criminal activity occurred a number of years prior to the current request or that the case in which the applicant is the victim is closed is not a determinative factor at this stage. The statute contemplates that a person may be eligible for U nonimmigrant status as a result of having been a victim of a crime that occurred at some point in the past. Until there are regulations interpreting this statutory requirement, VSC personnel should not deny interim relief based on the fact that the criminal activity at issue occurred prior to the enactment date of the VTVPA.

#### Level of harm

The VTVPA does not specifically reserve U nonimmigrant status solely for individuals who have suffered the most harm. As with any form of immigration benefit with a harm component, there are some applicants who present cases with more harm than others. Whether the level of harm meets the statutory requirement of substantial physical or mental abuse will be a question

Bureau of Citizenship and Immigration Services (CIS) officers adjudicating the U nonimmigrant status application will decide in accordance with the regulations once they are promulgated. Therefore, for interim relief purposes, "substantial physical or mental abuse" should be broadly interpreted. Similarly, the fact that the criminal activity involved in the case was classified as a misdemeanor as opposed to a felony should not be a factor in determining eligibility for interim relief.

### **Eligibility for Interim Relief**

Once an individual is determined to have submitted *prima facie* evidence of his/her eligibility for U nonimmigrant status, VSC personnel must then decide whether to exercise discretion and assess deferred action. Absent adverse factors, deferred action will be assessed following established CIS guidelines. Officers should note that if the alien is in removal proceedings or has a final removal order, the VSC does not have jurisdiction to assess deferred action. The applicant shall be notified in writing if his/her submission does not establish a *prima facie* case or if deferred action cannot be assessed due to lack of jurisdiction.

It is important to note that deferred action does not confer any immigration status upon an alien. Since deferred action is not an immigration status, no alien has the right to deferred action. Deferred action does not preclude the CIS from commencing removal proceedings at any time against an alien.

### **Employment Authorization**

Although deferred action is not an immigration status, an alien may be granted work authorization based on deferred action in his or her case pursuant to 8 C.F.R. 274a.12(c)(14). If the alien is placed in deferred action, the VSC will notify the alien that he or she may submit an I-765, Application for Employment Authorization. After the initial deferred action decision and issuance of a one-year employment authorization document, the VSC will hold these files and review the deferred action decision upon each application for extension of work authorization.

### **Derivative U Nonimmigrant Status Applicants**

To avoid extreme hardship, the VTVPA authorizes CIS to provide U nonimmigrant status to the spouses, children, and, in the case of a child under the age of 16, the parents of U nonimmigrants. This would require certification by a government official that an investigation or prosecution would be harmed without the assistance of the spouse, child, or in the case of an alien child, the parent of the alien.

Family members who may be eligible to receive derivative U nonimmigrant status and who are present in the United States should not be removed, and shall be eligible for interim relief. The eligible family member(s) must demonstrate extreme hardship if removed from the United States and must also submit a certification of a government official that an investigation or prosecution would be harmed without the spouse, child, or parent of the principal. This certification must comply with the guidelines outlined in this memo.



### **Reporting Requirements**

Deferred action is a resource utilization tool. Therefore, the VSC should maintain statistics on deferred action cases to ensure that it is being used appropriately. These statistics are to be maintained on a current basis so that data can be readily extracted upon request.

Statistics should be maintained in the following categories:

- number of requests in deferred action category at the beginning of the fiscal year;
- number of requests for which deferred action is assessed;
- number of requests for which deferred action is denied;
- number of requests removed from deferred action category;
- number of deferred action requests pending at the end of the fiscal year.

### **Periodic Review**

The VSC adjudicators assigned to the early-filed U applications should conduct interim reviews to determine whether deferred action cases should be continued or the alien removed from the deferred action category. Reviews must determine if there is any change in the circumstances of the case. Results of the review and a recommendation to continue or terminate deferred action would be reported to the center director via memorandum. The center director should endorse the memorandum with his or her decision and return it for inclusion in the alien's file.

### **Termination of Deferred Action**

During the course of the periodic review, or at any other time if the VSC determines that circumstances of the case no longer warrant deferred action, the VSC should recommend termination. Termination may occur for conduct that occurs after the issuance of interim relief (i.e. conviction of a violent crime), for conduct or a condition not disclosed prior to issuance of interim relief, or based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution. The VSC should notify the alien of the decision to terminate by letter. Such a determination is not appealable. Upon termination of deferred action, any relating employment authorization will be revoked in accordance with the standard revocation procedures set out in 8 CFR § 274a.14(b).

### **Record Keeping And Confidentiality**

It is imperative that documentation be maintained on all U nonimmigrant status applicants. As such, information about the possible applicant, including all pertinent information surrounding the applicant's circumstances, must be maintained in the alien's A-file. If

no A-file exists for the individual, one should be created.

Officers should keep in mind that section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)<sup>3</sup> is applicable to all U nonimmigrant status cases. Section 384 prohibits employees from making an adverse determination of admissibility or deportability of an alien using information provided solely by:

- 1) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty;
- 2) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty;
- 3) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty);
- 4) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty; or
- 5) **in the case of an alien applying for status under section 101(a)(15)(U) of the INA, the perpetrator of the substantial physical or mental abuse and the criminal activity.**<sup>4</sup>

Section 384 of IIRIRA also prohibits employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department of Homeland Security (DHS), or bureau or agency thereof, for legitimate DHS, bureau, or agency purposes) of any information that relates to an alien who has applied for U nonimmigrant status.<sup>5</sup> Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to \$5,000 for each such violation.<sup>6</sup>

When the VSC creates or encounters an A file of an applicant for interim relief based upon eligibility for U nonimmigrant status, the contents of the A file should be placed behind a colored cover sheet that sets out the disclosure parameters and penalties so that the materials are handled with appropriate care.

If you have questions regarding this memorandum or other U nonimmigrant status related issues, please contact Laura Dawkins, Office of Program and Regulation Development, by electronic mail.

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<sup>3</sup> Codified at 8 U.S.C. § 1367.

<sup>4</sup> As amended by VTVPA § 1513(d). For limited exceptions to this prohibition see IIRIRA § 384(b).

<sup>5</sup> See IIRIRA § 384(a)(2) as amended by VTVPA § 1513 (d).

<sup>6</sup> *Id.*

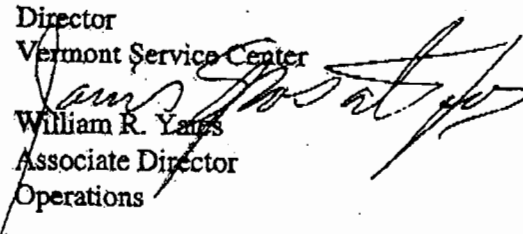


U.S. Citizenship  
and Immigration  
Services

HQOPRD 70/6.2

## Interoffice Memorandum

To: Paul E. Novak  
Director  
Vermont Service Center

From:   
William R. Yates  
Associate Director  
Operations

Date: MAY - 6 2004

Re: Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status  
Eligible Aliens in Removal Proceedings

### Purpose

Through a memorandum entitled, "Centralization of Interim Relief For U Nonimmigrant Status Applicants," issued on October 8, 2003 (Centralization memo), the U nonimmigrant status interim relief process was centralized at the Vermont Service Center (VSC). That memorandum established guidance for adjudicators in determining eligibility for interim relief, and gave VSC jurisdiction to assess deferred action as part of interim relief in early-filed U nonimmigrant status cases. The memorandum stated, however, that VSC did not have jurisdiction to assess deferred action if the alien making the request is in removal proceedings at the time the request for interim relief is made. The purpose of this memorandum is to clarify that pursuant to an agreement with the Bureau of Immigration and Customs Enforcement (ICE) VSC will now have jurisdiction to assess deferred action in cases where an alien requesting interim relief is in removal proceedings, and to establish the procedure to be followed in such circumstances.

### New Procedure

Effective immediately, VSC shall have jurisdiction to assess deferred action for aliens seeking interim relief while in removal proceedings. VSC personnel must continue to first determine whether the alien has adequately demonstrated his/her eligibility to apply for U nonimmigrant status according to the guidelines established in the Centralization memo before determining whether to assess deferred action. Once an individual is determined to have submitted *prima facie* evidence of his/her eligibility to apply for U nonimmigrant status, VSC personnel must then decide whether to exercise discretion and assess deferred action. Prior to making an assessment

**Assessment of Deferred Action in Requests for Interim Relief from U Nonimmigrant Status  
Eligible Aliens in Removal Proceedings**

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of deferred action in a case where the alien is in removal proceedings, VSC personnel must contact through electronic mail the ICE Office of Chief Counsel (OCC) with jurisdiction over the area in which the removal proceedings are being conducted. The ICE Director of Field Legal Operations will provide a list of the points of contact for notification purposes for each Chief Counsel office. These contact lists will be updated on a quarterly basis. The contact shall be made to determine whether there is any adverse information in the alien's file that should be factored into the decision of whether to assess deferred action. The ICE OCC shall review the A-file for any adverse information and respond to VSC within 10 business days. If the ICE OCC determines that the file does not contain information that would factor negatively into a decision whether to assess deferred action and VSC decides to approve interim relief, VSC shall notify the ICE OCC and the Assistant Chief Counsel handling the case of its decision through electronic mail. VSC shall send written notice to the alien, which the alien should present to the appropriate ICE OCC. The ICE OCC shall then terminate removal proceedings on the basis of VSC's approval of interim relief.

If the ICE OCC determines the alien's A-file contains adverse information, the ICE OCC shall FedEx the file or copies of relevant documents to VSC to allow the adjudicating officer to examine that information when determining whether to exercise discretion in an alien's case and assess deferred action. If, after evaluating adverse information, VSC decides deferred action should nevertheless be assessed in the alien's case, VSC shall notify the ICE OCC and the Assistant Chief Counsel handling the case of its decision through electronic mail. The VSC shall notify the alien in writing of its decision. If VSC approves interim relief, the alien should present the written notice to the appropriate ICE OCC. The ICE OCC shall terminate removal proceedings on the basis of VSC's approval of interim relief.

The Office of the Principal Legal Advisor within ICE concurs with this procedure, and will issue written guidance to communicate it to the Offices of Chief Counsel throughout ICE.

**Further Information**

Personnel with questions regarding this memorandum or other U nonimmigrant status related issues, please contact Laura Dawkins, Office of Program and Regulations Development, by electronic mail.

# IMMIGRATION BENEFITS FOR CRIME VICTIMS

## U VISA INFORMATION SHEET FOR IMMIGRANT ADVOCATES

### 1. WHAT IS THE U VISA?

The “U visa” or “U nonimmigrant status” is a temporary permission to be in the U.S. for certain noncitizen crime victims who have suffered substantial mental or physical abuse as a result of the crime.

### 2. WHO IS ELIGIBLE FOR A U VISA?

An applicant for U visa status must show that:

- a. s/he suffered substantial physical or mental abuse as the result of having been the victim of one of the following or similar crimes:

Rape	Abduction	Domestic Violence
Incest	Blackmail	False Imprisonment
Torture	Trafficking	Being Held Hostage
Murder	Manslaughter	Involuntary Servitude
Perjury	Slave Trade	Obstruction of Justice
Peonage	Sexual Assault	Abusive Sexual Contact
Extortion	Felonious Assault	Female Genital Mutilation
Kidnapping	Witness Tampering	Unlawful Criminal Restraint
Prostitution	Sexual Exploitation	

- b. s/he has information concerning the criminal activity;  
c. s/he has been, is being, or is likely to be helpful to a local, state or federal law enforcement official investigating or prosecuting the crime;  
d. the crime (local, state or federal) violated the laws of the United States or occurred in the United States

### 3. WHAT ARE THE BENEFITS OF A U VISA?

Approved U petitioners will be granted temporary legal status and work authorization. After three years in such status, persons granted U visas are eligible to apply for lawful permanent resident status provided (a) they have not unreasonably refused to provide assistance in a criminal investigation or prosecution; (b) they have been continually present for three years; and (c) humanitarian reasons, family unity or public interest justify their continued presence in the United States. Up to 10,000 U visas will be available each year for eligible applicants.

### 4. CAN FAMILY MEMBERS BENEFIT FROM THE U VISA?

Certain family members of persons granted U visa status can also qualify for a U visa. These include the spouse and children of the principal applicant granted U status, and where the applicant is a child crime victim, the parent may qualify as well. To qualify as a family member, a designated government official must certify that an investigation or prosecution would be harmed without the assistance of the qualifying relative, and INS must determine that the qualifying relative would suffer extreme hardship if a U visa is not granted.

### 5. WHAT IS THE APPLICATION PROCESS FOR A U VISA?

Currently there are no regulations to establish a procedure to apply for U visa status, and there is no application form. INS offices have been advised not to remove persons from the United States who appear eligible for U visa status until they have an opportunity to apply. In certain situations, potential U visa applicants may seek some other form of temporary status, or “interim relief,” until they can apply for a U visa.

6. IF A U VISA ISN'T AVAILABLE NOW, IS THERE ANYTHING POTENTIAL APPLICANTS SHOULD DO?

Potential applicants should start gathering documentation to establish eligibility for U visa status. This includes collecting (a) proof victim of a designated crime; (b) proof of suffering substantial physical or mental abuse as a result of the crime; and (c) proof of being law enforcement officials in the investigation and/or prosecution of the crime. It is very important to obtain this certification from law enforcement officials as soon as possible, while the crime victim is involved in providing information and assistance. In this way, the visa applicant will have the documents she or he needs when the application procedure is in place.

7. HOW SHOULD I DECIDE WHETHER TO REFER A U VISA APPLICANT TO INS?

In the absence of regulations, there are many questions about how INS will interpret the eligibility requirements for U visa status. For this reason, many potential U visa applicants should not approach INS for "interim relief" at this stage, because they risk being placed in court removal proceedings if the U visa is ultimately denied. Other potential U visa applicants may have cases where eligibility is clear and there is little risk of removal. *In all cases, advocates should consult with immigration practitioners to assess the strength of the claim and to weigh the interim relief and work authorization against the risk of removal.*

8. IF SOMEONE HAS BEEN THE VICTIM OF DOMESTIC VIOLENCE, SHOULD S/HE APPLY FOR VAWA OR U VISA?

Some victims of domestic violence can seek immigration status under the Violence Against Women Act ("VAWA") and do not need the U visa to be implemented to seek legal status. Under VAWA, abused spouses and children of lawful permanent residents and U.S. citizens may file self-petitions to seek lawful status. Victims of domestic violence who are not married to the abuser, or who have been abused by someone who is not a U.S. citizen or lawful permanent resident, may seek status under the U visa.

9. WHERE CAN I REFER A POTENTIAL U VISA APPLICANT FOR IMMIGRATION COUNSELING?

The following Chicago area agencies are able to assist potential U visa applicants and/or VAWA applicants:

Midwest Immigrant and Human Rights Center (312)660-1370 Lifespan (312)408 1210  
Legal Services Center for Immigrants (312)341-9617 World Relief (773)583-3010  
Prairie State Legal Services (630)232-9415

10. WHERE CAN I GET MORE INFORMATION ABOUT THE U VISA?

The agencies listed above may be able to provide you with more information on the U visa. In addition, you may also contact the following programs for more information and assistance with training and advocacy:

Illinois Coalition for Immigrant and Refugee Rights (312) 332-7360  
Metropolitan Battered Women's Network ( )  
Catholic Legal Immigration Network (CLINIC) (312) 612-6712  
DePaul Legal Clinic (312)362-8292

## CHAPTER 8

# SPECIAL IMMIGRANT JUVENILE STATUS FOR CHILDREN UNDER JUVENILE COURT JURISDICTION

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### § 8.1 Introduction and Overview

Congress created the Special Immigrant Juvenile Status (SIJS) in 1990 to help certain children in the state juvenile justice system (including the dependency/foster care system) gain lawful immigration status. The law permits children who are under 21 years of age and who have been abused, neglected, or abandoned and who meet certain other requirements to obtain lawful permanent residence in the United States.

This chapter provides basic information about SIJS. Detailed information on SIJS, the requirements and the application procedure can be found in the Immigrant Legal Resource Center manual, “Special Immigrant Juvenile Status for Children in the Dependency System.”<sup>1</sup>

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<sup>1</sup> This SIJS manual can be downloaded for free from the ILRC website at [www.ilrc.org](http://www.ilrc.org). Additionally, one can order a hard copy of the manual from the ILRC for \$15.

## § 8.2 Who is Eligible to Become a Permanent Resident Through “Special Immigrant Juvenile” Status?

Persons under the jurisdiction of a juvenile court who are “deemed eligible for long term foster care” may be able to obtain special immigrant juvenile status and, based on that, apply for lawful permanent residency (a green card).<sup>2</sup> To do this, they must submit two applications and meet two sets of requirements:

- 1) They must apply for special immigrant juvenile status by filing Form I-360, Petition for Amerasian, Widow(er), Special Immigrant, with the local USCIS office that has jurisdiction over the juvenile’s place of residence in the United States,<sup>3</sup> and
- 2) Based on the special immigrant juvenile application, they also must apply for permanent residency (the green card) by filing the Form I-485, Application to Register Permanent Residence or to Adjust Status. In immigration terminology, applying for permanent residency is called applying for *adjustment of status* to that of a lawful permanent resident.

The two applications usually are filed at the same time,<sup>4</sup> although in some circumstances the SIJS petition might be submitted first. For example, if a person in removal proceedings appears to be eligible for SIJS, his or her legal representative should request a continuance from the Immigration Judge in order to allow the USCIS to adjudicate a petition for SIJS. Once the USCIS has adjudicated the petition, the Immigration Judge may adjudicate the application for adjustment of status. The Immigration Judge may also either conditionally terminate or administratively close the proceedings to allow the USCIS to adjudicate both the SIJS petition and the adjustment application. The USICE, however, must consent to administrative closure.<sup>5</sup>

## § 8.3 What are the Benefits of Applying for Special Immigrant Juvenile Status?

The most important benefit of applying for SIJS is obtaining lawful permanent resident status -- a green card. A lawful permanent resident has the right to live and work permanently in the United States and to travel in and out of the country. While public benefits (e.g., welfare, Medicare) for permanent residents have been drastically curtailed since 1996,<sup>6</sup> permanent

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<sup>2</sup> INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J). This section was added by section 153 of the Immigration Act of 1990 (ImmAct 90).

<sup>3</sup> INA § 203(b)(4) (regarding special immigrant petitions). 8 CFR § 204.11(b).

<sup>4</sup> William R. Yates, Assoc. Dir. Oper., US CIS, Memorandum # 3 – Field Guidance on Special Immigrant Juvenile Status Petitions (May 27, 2004), attached as appendix 8-7 to this chapter [hereinafter “Yates memo”].

<sup>5</sup> See generally, *Matter of Gutierrez*, 21 I&N Dec. 479, 480 (BIA 1996).

<sup>6</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996) (codified at 8 U.S.C. §§ 1601 *et seq.*)



residents are eligible for some benefits initially and more as time goes on.<sup>7</sup> Also, after five years, permanent residents can apply for U. S. citizenship.<sup>8</sup>

Lawful permanent resident status is permanent<sup>9</sup> -- a special immigrant juvenile who obtains permanent residency will keep it after he or she is no longer under juvenile court jurisdiction. The person remains a permanent resident for his or her entire life, although he or she may become deportable for some reason, such as conviction as an adult of certain criminal offenses or abandoning residency in the United States.<sup>10</sup>

The above benefits come with the green card, but two important benefits come as soon as the person submits the SIJS application forms to the USCIS. Applicants who have submitted the applications for SIJS and adjustment of status and are waiting for an interview are protected against deportation<sup>11</sup> and are eligible for employment authorization<sup>12</sup> until their cases are decided.

Counties benefit when a child wins SIJS because county agencies can access federal foster care matching funds, which they cannot do for undocumented children.

#### **§ 8.4 What are the Risks of Applying?**

The greatest risk to the child is that, if the application is turned down, the Bureau of Immigration and Customs Enforcement (USICE) might attempt to “remove” (deport) the child from the United States.

When a child files a petition for SIJS, the child is alerting the USCIS to the fact that he or she is in the United States. Because these petitions are not confidential, if the SIJS and adjustment of status applications are denied, the USCIS may use the information contained in the petition or application to refer the child to the USICE, which in turn may place the child into removal proceedings for deportation.

It is crucial to make sure that the child is likely to win SIJS status before submitting an application, so that you do not unintentionally cause the child to be deported. Note that children

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<sup>7</sup> For a general discussion of public benefits, see “Immigrant Eligibility for Public Benefits,” Vol. 1 2003-04 *Immigration & Nationality Law Handbook* 324 (updated by Tanya Broder) (AILA 2003).

<sup>8</sup> INA § 316(a).

<sup>9</sup> INA § 101(a)(20) (“The term “lawfully admitted for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.”).

<sup>10</sup> The grounds of deportation appear at INA § 237(a), 8 U.S.C. § 1227(a). The Board of Immigration Appeals discusses abandonment of residency in *Matter of Huang*, 19 I&N Dec. 749 (BIA 1988).

<sup>11</sup> See “Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction,” ILRC (May 2001), *supra* note 1, at 6 & 32.

<sup>12</sup> 8 CFR § 274a.12(c)(9) (an applicant for adjustment of status may apply for an employment authorization document).

who are not eligible for SIJS still may be eligible to get lawful status in some other way, such as through petitions filed by adoptive parents,<sup>13</sup> or through VAWA self-petitions filed because of abuse by a U.S. citizen or permanent resident parent.<sup>14</sup> Family-based petitions and VAWA self-petitions are available even if the child does not come or remain under juvenile court jurisdiction.

## § 8.5 Requirements for Special Immigrant Juvenile Status Petition

The Immigration and Nationality Act (INA) provides that an applicant must meet the following criteria to qualify for SIJS.<sup>15</sup>

### 1. Dependency, Delinquency, or Other Juvenile Court Proceedings

The statute says that the applicant either must be a dependent of a juvenile court, or a juvenile court must have had the applicant legally committed to, or placed under the custody of, an agency or department of a state.<sup>16</sup> The regulations define a juvenile court as “a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.”<sup>17</sup>

For example, in the state of New York, the Family Courts have jurisdiction over, among other things, adoption, custody, foster care proceedings and juvenile delinquency proceedings. Furthermore, the New York State Office of Children and Family Services (OFSC) is an example of “an agency or department of a state” that can take custody of a juvenile.

In Los Angeles and San Francisco, attorneys have argued that probate court is a juvenile court under the Immigration and Nationality Act. Even though it is not considered a “juvenile court” under California law, it makes determinations regarding juveniles. The attorney files a motion requesting that the probate court judge name a guardian for the child – for example, an aunt in the United States -- and sign an order with the requisite findings for SIJS.

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<sup>13</sup> INA § 101(b)(1)(E) and 8 CFR § 204.2(d) (for adopted child); INA § 101(b)(1)(F) and 8 CFR § 204.3 (for orphans).

<sup>14</sup> INA §§ 204(a)(1)(A)(iv) (child of abusive USC parent) and 204(a)(1)(B)(iii) (child of abusive LPR parent) and 8 CFR § 204.2(e).

<sup>15</sup> INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J), which states in part that a special immigrant juvenile is:

(J) An immigrant who is present in the United States –

(i) who has been declared dependent on a juvenile court located in the United States or whom such court has legally committed to, or placed under the custody of, an agency or department of a state, and who has been deemed by the court eligible for long-term foster care due to abuse, neglect or abandonment,

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence, and

(iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status.

<sup>16</sup> INA § 101(a)(27)(J)(i), 8 U.S.C. § 1101(a)(27)(J)(i); 8 CFR § 204.11(c)(3).

<sup>17</sup> 8 CFR § 204.11(a).

Legal representatives should look to the law of their state to determine which court(s) have jurisdiction over proceedings involving juveniles and which agencies have jurisdiction over the custody of juveniles.

While the Department of Homeland Security's immigration agencies have not made a written policy about this, the statutory requirement that the juvenile be dependent on a court or be committed to a state agency should include children in delinquency as well as dependency proceedings.<sup>18</sup> In either delinquency or dependency proceedings, the child applicant must meet all of the requirements for SIJS, including the requirement discussed below that he or she is "deemed eligible" for long term foster care.

***Examples:***

*Samy is a dependent of a juvenile court due to neglect by his parents. Rose is in delinquency proceedings for auto theft, and the court has found that it cannot return her to her parents' custody on probation due to their abuse of her. Both children may be eligible for SIJS.*

Not only must the applicant for SIJS be declared dependent on a juvenile court or be committed or placed under the custody of an authorized agency *at the time of filing* the SIJS petition, the SIJS applicant must also continue to be dependent upon the juvenile court and be eligible for long-term foster care *through the adjudication* of the SIJS petition *and* the adjustment of status application.<sup>19</sup>

## **2. The Applicant Must Have Been "Deemed Eligible For Long Term Foster Care."**

The statute provides that the juvenile court must deem the juvenile "eligible for long-term foster care due to abuse, neglect, or abandonment."<sup>20</sup> The phrase, "*deemed eligible for long-term foster care*," has a specific legal meaning for SIJS. The then-INS defined "deemed eligible for long-term foster care" to mean that the court has found that family reunification is not a viable option.<sup>21</sup> Reunification refers to the process of trying to return the juvenile to the custody of the parent or parents. Usually, when the judge determines that a juvenile is deemed eligible for

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<sup>18</sup> In fact, Thomas E. Cook, the Acting Assistant Commissioner of INS Adjudications, issued a memorandum on August 7, 1998, regarding Interim Field Guidance relating to Special Immigrant Juveniles, in which Mr. Cook advised SIJS applicants to submit evidence of, among other things, "[t]he type of proceeding before the juvenile court, (for example: *juvenile delinquency proceeding*, action to provide temporary care and protection to a juvenile, or action to terminate parental rights)." (emphasis added). The memo is reproduced in 75 Interpreter Releases 1445, 1456, 1458 (Oct. 19, 1998). The Cook memoranda was superseded by a memorandum issued by William R. Yates, Associate Director for Operations of the US CIS (attached as appendix 8-7 to this chapter). That memo does not mention the types of proceedings that can form the basis for an SIJS application, but requires submission of a court order declaring dependency on the juvenile court *or placing the juvenile under (or legally committing the juvenile to) the custody of an agency or department of a State*, implying that there are more than one type of proceeding under which a child may be declared dependent on a court. Yates memo, at 3.

<sup>19</sup> 8 CFR § 205.1(a)(3)(iv).

<sup>20</sup> INA §101(a)(27)(J)(i), 8 U.S.C. §1101(a)(27)(J)(i).

<sup>21</sup> 8 CFR § 204.11(a)(1993).

long-term foster care, the child will go on to foster care and remain there until the age of majority unless the child is adopted or placed in guardianship. Thus, the child generally must be in the permanent placement phase, and not reunified with a parent or still going through the process of reunification. The legal representative must work closely with an attorney experienced in matters of state juvenile dependency/delinquency proceedings in order to understand the requirements under the respective state law to demonstrate that a juvenile is deemed eligible for long-term foster care.

*Example: Sondra is in permanent placement now that reunification efforts with both parents have ended. She is in long-term foster care but might be adopted. She is “deemed eligible for long-term foster care” and therefore eligible for SIJS.*

*Example: Esteban’s mother is being offered reunification services. He has been living in foster care for months, but since the judge has not yet found that reunification is not viable, he is ineligible for SIJS.*

The regulations also provide that if a judge has declared a juvenile dependent on the court and then the juvenile is adopted or placed in a guardianship situation the juvenile remains eligible for long-term foster care for purposes of applying for SIJS.<sup>22</sup>

### **3. The Court or Some Administrative Agency Must Rule that it is Not in the Child’s Best Interest to be Returned to his or her Home Country.**

The statute also requires that administrative or judicial proceedings determine that it is not in the juvenile’s best interest to be returned to his or her home country or country of last habitual residence or to the country of his or her parent or parents’ nationality or country of last habitual residence.<sup>23</sup> The evidence for this finding may range from a home study conducted by a foreign social service agency to determine that a grandparent’s home is not appropriate, to simply interviewing the child to learn that there are no known appropriate family in the home country.

In general, a practitioner will prepare a proposed order stating that all the requisite SIJS findings have been made and then will submit the proposed order to the judge for signature. The practitioner will prepare a memorandum to the judge explaining why the judge should sign the order. It might be helpful to clarify for the judge that by signing the order the judge is not bestowing an immigration benefit upon the child but merely opening the door to the USCIS to adjudicate an SIJS petition. The judge might interview the child before signing the order, or the memorandum in support of the proposed order might be sufficient for the judge. Every jurisdiction is different. Therefore, it is incumbent upon practitioners to determine the local court practice.

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<sup>22</sup> 8 CFR § 204.11(a).

<sup>23</sup> INA §101(a)(27)(j)(ii), 8 U.S.C. § 1101(a)(27)(J)(ii); 8 CFR § 204.11(c)(6).

#### **4. The Court Must Make it Clear that it Made its Findings and Orders Based on Abuse, Neglect or Abandonment of the child, as Opposed to a Desire to Obtain Immigration Status for the Child.**

The requirement of a specific finding about “abuse, neglect and abandonment” was added to the SIJS law in 1997.<sup>24</sup> The juvenile court judge’s order must specifically identify whether abuse, neglect or abandonment was the basis for the dependency or placement order, and for “deeming the child eligible for long term foster care” (i.e., determining that reunion with the parents was not viable). Some states provide legal bases for dependency under different technical categories than abuse, neglect, or abandonment. For example, a court might declare a child a dependent of the court due to “destitution.” The practitioner should prepare the proposed order including the appropriate terms – either “abuse,” “neglect,” or “abandonment” and then ask the judge to sign the order. The judge can use the term that reflects what actually happened to the child. For example, the judge’s order could state, “The minor is deemed eligible by this Court for long term foster care, based on abuse” or “The above orders and findings were made due to abandonment and neglect of the minor.”

The purpose of adding this requirement was to address the concern of Congress that certain juvenile courts were deeming juveniles eligible for long-term foster care merely for purposes of obtaining lawful permanent residency in the United States rather than for the more urgent reason of protecting the juvenile from abuse, neglect, or abandonment.<sup>25</sup>

#### **5. The Juvenile Court Judge Must Sign an Order Making the Above Findings.**

The juvenile court judge must sign a special order, usually prepared by the juvenile’s attorney or other advocate, setting out the required findings of fact and orders for SIJS status.<sup>26</sup> The juvenile will then submit this order to the USCIS as part of the child’s application for special immigrant juvenile status. Thus, the legal representative for the child must obtain the court order *before* filing the petition for SIJS status.

The juvenile court order must establish that:

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<sup>24</sup> Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 113, 111 Stat. 2440, 2460 (1997) (amending INA § 101(a)(27)(J)).

<sup>25</sup> See, House Conf. Report 105-405 (1997) (“The language has been modified in order to limit the beneficiaries of this provision to those juveniles for whom it was created, namely abandoned, neglected, or abused children, by requiring the Attorney General to determine that neither the dependency order nor the administrative or judicial determination of the alien’s best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect.”); See also, Yates memo, *supra* note 4.

<sup>26</sup> See Cook, Thomas E., INS Acting Assist. Comm’r Adjudications, Memorandum, “Special Immigrant Juveniles – Memorandum #2: Clarification of Interim Field Guidance,” (July 9, 1999) [hereinafter “Cook Memorandum #2”] reproduced in 76 *Interpreter Releases* 1414, 1434 (Sept. 27, 1999) (“In order for a statement to serve as acceptable evidence of these elements, the statement should be in the form of an affidavit or other signed, sworn statement, and be prepared by the court or the State agency or department in whose custody the juvenile has been placed.”)

- The juvenile has been declared a dependent of the juvenile court or the court has placed the juvenile under (or legally committed the juvenile to) the custody of an agency or department of a State; and
- The juvenile has been deemed eligible for long-term foster care due to abuse, neglect, or abandonment.<sup>27</sup>

The CIS prefers that the court order also establish:

- Specific findings of fact in support of the order, sufficient to establish a basis for USCIS consent for the dependency order to serve as a precondition to a grant of SIJS status, and
- That it would not be in the child's best interest to be returned to his/her country of nationality or last habitual residence (or his or her parents' country of nationality or last habitual residence).<sup>28</sup>

If these latter items are not established in the court order, they may be established in alternative ways, such as seeking records from the Juvenile Court or an affidavit from the judge.<sup>29</sup>

#### **6. Other Requirements: Juvenile Court Must Retain Jurisdiction, Applicant Must be Under Age 21 and Unmarried**

The government added some SIJS requirements of its own that were not written in the Immigration and Nationality Act. Some of these requirements might be dropped in the future, but they apply to all applications now.

**The Juvenile Court Must Retain Jurisdiction.** Frequently, children become dependents of a juvenile court after being removed from abusive families in the United States. In many cases, however, immigrant children escaped abusive parents or lost parents in the country of origin and came alone to the United States. Current immigration regulations require that the applicant remain under juvenile court jurisdiction until the immigration application is finally decided and the applicant is a lawful permanent resident.<sup>30</sup> *Juvenile court lawyers must ensure that judges retain jurisdiction over applicants until USCIS grants the SIJS application after the interview. Depending on the local office, the USCIS interview may take place from 6 to 36 months, or even longer, after the SIJS application is filed.* Furthermore, there is no guarantee that the USCIS will decide the SIJS petition and adjustment application at the interview. Therefore, the applicant might have to wait after the interview.

Some juvenile court judges will want to, or must under state law, terminate dependency proceedings when the juvenile reaches a certain age. Children's advocates must fight to keep the juvenile under juvenile court jurisdiction during this period. Note that immigration attorneys

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<sup>27</sup> Yates memo, *supra* note 4, at 4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 5.

<sup>30</sup> 8 CFR §§ 204.11(c)(5) & 205.1(a)(3)(iv)(C).

may be able to persuade the USCIS to speed up (“expedite”) the interview if the child is about to age out of the juvenile court system. When the juvenile goes to the interview, he or she should have a copy of the minutes from the most recent court hearing to establish that he or she remains under juvenile court jurisdiction.

The current immigration regulations create a difficult situation and needlessly cost juvenile systems time and energy by requiring children to stay in the juvenile court system longer than they otherwise would. It is possible that better rules will appear in the future. The government is considering regulations that would offer relief to persons who age out of juvenile court jurisdiction before the USCIS makes its final decision.<sup>31</sup> Advocates should keep abreast of developments.

**Applicants who are 18, or who are 21.** State laws generally require that a youth be under age 18 at the time he or she first is declared a juvenile court dependent. State laws vary as to how long a child can remain a juvenile court dependent, once he or she has been declared a dependent. Some states end dependency at age 18, others extend it to age 19 especially if the child must complete high school, and others potentially can extend the age to 21. Similarly, different states have different laws for how old a young person must be to enter or stay under juvenile court jurisdiction in a delinquency case.

Under the immigration regulations, any person under 21 who meets the SIJS requirements can apply for SIJS.<sup>32</sup> Thus as far as the immigration authorities are concerned, a 19-year-old could file a SIJS application and attend the USCIS interview -- *so long as he or she remains under the jurisdiction of a juvenile court, eligible for long term foster care, and the subject of a court order declaring that it is not in his or her best interest to return to the home country.*

***Example:** Julia entered the foster care system when she was 14 years old. Because social workers had not heard about SIJS earlier, Julia did not apply for SIJS until she was 19. The juvenile court retained jurisdiction over Julia until she was 20 and the INS granted her SIJS application.*

**Marriage.** Under the immigration regulations, applicants for SIJS must remain unmarried until the entire process is completed and the USCIS grants permanent residency.<sup>33</sup> If the child marries prior to receiving SIJS, then the USCIS will deny the petition. If the child marries after obtaining SIJS status but before the government grants the adjustment of status application, then the SIJS status will automatically be revoked.<sup>34</sup> The revocation will be considered effective as of the date of the approval of the SIJS petition.

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<sup>31</sup> Readers can periodically refer to Interpreter Releases which publishes updates on the DHS Semiannual Regulatory Agenda. In 81 *Interpreter Releases* 157, 158 (Feb. 2, 2004), *Interpreter Releases* reported that the DHS “proposes to amend its regulations to add eligibility and consent requirements for approval of special immigrant juvenile petitions. . . .”

<sup>32</sup> 8 CFR § 204.11(c)(1).

<sup>33</sup> 8 CFR §§ 204.11(c)(2) & 205.1(a)(3)(iv)(A) & (B).

<sup>34</sup> 8 CFR § 205.1(a)(3)(iv).

## § 8.6 The application for permanent residence status

Besides meeting the above requirements for SIJS, the children must fulfill other requirements that apply to all persons who become lawful permanent residents of the United States (get a green card).

Applicants might be barred from permanent residency if they have a record of involvement with drugs,<sup>35</sup> prostitution,<sup>36</sup> or other crimes,<sup>37</sup> if they are HIV positive,<sup>38</sup> committed visa fraud,<sup>39</sup> were previously deported,<sup>40</sup> or have certain other “bad marks” against them. These children need advice from expert immigration counsel before applying. They may well win their case, but they need to get good advice to make sure of that before they apply. Immigration lawyers should note that special waivers of inadmissibility are available to special immigrant juveniles that do not require a qualifying relative.<sup>41</sup>

When applying for adjustment of status, a foreign national generally has to demonstrate that he or she was either “admitted” or “paroled” into the United States.<sup>42</sup> “Admission” for this purpose means that the foreign national was permitted lawful entry into the United States after inspection and authorization by an immigration officer.<sup>43</sup> “Parole” essentially means that the government permitted the foreign national to physically enter the United States without that foreign national actually making a formal “admission” under the law. In effect, the distinction between foreign nationals who were “admitted” into the United States and foreign nationals who were “paroled” into the United States is a legal construct that affects the extent of their rights under the law.

Many children who will file a self-petition for SIJS will probably be undocumented. In other words, the children will not have been “admitted” or “paroled” into the United States. The statute, however, treats children who have been granted SIJS “to have been paroled into the United States” for purposes of applying for adjustment of status.<sup>44</sup> The SIJS beneficiary, therefore, will be eligible to apply to adjust status regardless of the manner of entry.

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<sup>35</sup> INA §§ 212(a)(2)(A)(i)(II) & 212(a)(2)(C) and 245(h)(2)(B).

<sup>36</sup> INA §§ 212(a)(2)(D) & 245(h)(2)(B).

<sup>37</sup> INA §§ 212(a)(2)(A)(i)(I) [Crimes involving moral turpitude] & 212(a)(2)(B) [multiple criminal convictions].

<sup>38</sup> INA §§ 212(a)(1)(A). & 245(h)(2)(B).

<sup>39</sup> INA § 212(a)(6)(C).

<sup>40</sup> INA § 212(a)(9)(A).

<sup>41</sup> See INA § 245(h)(2)(B), 8 U.S.C. § 1255(h)(2)(B), as amended by the Miscellaneous and Technical Corrections Act of 1991, § 301(a)(2).

<sup>42</sup> INA § 245(a). *But see* INA § 245(i) which permits foreign nationals who entered the United States without inspection or admission or without being paroled to apply to adjust status if they meet certain requirements.

<sup>43</sup> INA § 101(a)(13)(A).

<sup>44</sup> INA § 245(h) and 8 CFR § 245.1(e)(3)



When a foreign national applies for adjustment of status in the United States, he or she must also demonstrate, among other things, that he or she is admissible to the United States. In other words, the applicant must demonstrate that he or she is not subject to any ground of inadmissibility that is listed under INA § 212.

The statute provides that a special immigrant juvenile is not subject to the grounds of inadmissibility under INA § 212(a)(4) for public charge concerns, or under INA § 212(a)(5)(A) for not fulfilling the labor certification requirements, or under INA § 212(a)(7)(A) for failure to have the proper immigration documents at the time of applying for admission to the United States. Moreover, the statute provides that a special immigrant juvenile is not subject to the ground of inadmissibility for entering the United States without inspection or admission.<sup>45</sup>

Apart from these exemptions from certain grounds of inadmissibility, the government also has the discretion to waive other grounds of inadmissibility such as for prostitution, for being HIV positive, or for committing visa fraud.<sup>46</sup> As mentioned above, the applicant for SIJS might be eligible for a waiver of certain grounds of inadmissibility. The government can grant such a waiver for humanitarian purposes, for family unity, or when it is otherwise in the public interest.<sup>47</sup>

*The following types of cases deserve special attention and expert advice because they may be or may become ineligible for SIJS:*

- Children who soon will turn 18, or are over 18,
- Children who soon will be released from juvenile court jurisdiction,
- Children who currently are in deportation (“removal”) proceedings,
- Children who are or have been in juvenile delinquency proceedings or have a juvenile or adult criminal record,
- Children who are or might be HIV positive,
- Children who were “paroled” in to the United States by immigration authorities, and
- Children who have been previously deported or removed.

Once a child obtains special immigrant juvenile status, he or she will not be subject to certain grounds of deportability under INA § 237 as long as those grounds of deportability were based upon circumstances that existed prior to the date the child was granted special immigrant juvenile status.<sup>48</sup> The child who has been granted special immigrant juvenile status *will therefore not be subject to the following grounds of deportability* as long as the circumstances that led to the ground of deportability existed before the child was granted SIJS:

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<sup>45</sup> INA § 245(h)(1); Penca, Jack, INS Office of General Counsel, Legal Opinion Memorandum regarding Special Immigrant Juveniles, dated May 30, 1997, reproduced in 74 *Interpreter Releases* 964, 978 (June 16, 1997).

<sup>46</sup> INA § 245(h)(2)(B).

<sup>47</sup> INA § 245(h)(2)(B).

<sup>48</sup> INA § 237(c).

- Being deportable for being inadmissible at the time of entry to the United States (except for being inadmissible due to certain crimes).<sup>49</sup>
- Being present in the United States in violation of the law.<sup>50</sup>
- Violating nonimmigrant status or condition of entry.<sup>51</sup>
- Having his/her conditional permanent residence terminated.<sup>52</sup>
- Failing to notify the government of change of address.<sup>53</sup>

### § 8.7 Who Should Apply?

Children who will qualify for both special immigrant status and adjustment of status to permanent residency should submit applications. Generally children should not apply under this program if the advocate is not confident that the applications will be granted. In case of doubt, the advocate should be sure to consult with competent immigration counsel. For example, children with juvenile delinquent or adult criminal records, records of extensive immigration violations, or children with HIV should consult with an immigration attorney or expert before filing.

There is one exception to this cautious advice: *children who are already in deportation ("removal") proceedings have nothing to lose by submitting an application*, since USICE is already trying to deport them. They should apply for special immigrant juvenile status if there is any chance of qualifying, so that their deportation is stopped pending the adjudication of the application. Note that if these children are already in actual or constructive custody, juvenile courts will have to get permission from the Office of Juvenile Affairs at USICE to take jurisdiction over the children.<sup>54</sup> (See § 10.9 for more information on actual and constructive custody). At the time of printing, practitioners are advocating that the consent be handled by the Office of Refugee Resettlement rather than through the Office of Juvenile Affairs. Practitioners should contact their local USICE district offices to verify local procedures for submitting requests for consent.

### § 8.8 What is the Application Procedure?

The juvenile or person acting on the juvenile's behalf applies for SIJS status on Form I-360, Petition for Amerasian, Widow(er), Special Immigrant. The person filing the petition does not have to be a citizen nor a lawful permanent resident of the United States.<sup>55</sup> As mentioned

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<sup>49</sup> INA §§ 237(c) & 237(a)(1)(A).

<sup>50</sup> INA §§ 237(c) & 237(a)(1)(B).

<sup>51</sup> INA §§ 237(c) & 237(a)(1)(C).

<sup>52</sup> INA §§ 237(c) & 237(a)(1)(D).

<sup>53</sup> INA §§ 237(c) & 237(a)(3)(A).

<sup>54</sup> INA § 101(a)(27)(J)(iii)(I), 8 U.S.C. § 1101(a)(27)(J)(iii)(I).

<sup>55</sup> 8 CFR § 204.11(b)(1).

previously, the juvenile may file the SIJS petition and the adjustment of status application (Form I-485) concurrently. Both forms are filed at the local USCIS district office with jurisdiction over the child's residence.<sup>56</sup> The applicant does not have to travel outside of the United States.<sup>57</sup>

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**The child will submit two applications at the same time:**

**One for special immigrant juvenile status, and  
One for adjustment of status to permanent resident.**

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The following must be attached to the Form I-360:

- Court order declaring dependency on the juvenile court or placing the juvenile under (or legally committing the juvenile to) the custody of an agency or department of a State.
- Court order deeming the juvenile eligible for long-term foster care due to abuse, neglect, or abandonment.
- Determination from an administrative or judicial proceeding that it is in the juvenile best's interest not to be returned to his/her country of nationality or last habitual residence (or the juvenile's parents' country of nationality or last habitual residence
- Proof of the juvenile's age<sup>58</sup>
- Filing fee of \$185.00, unless waived.<sup>59</sup>

The I-485 must include the following documentation:

- Birth certificate or other proof of identity
- The sealed results of a medical examination conducted by an USCIS-approved doctor (which includes a test for HIV and tests for the presence of some illegal drugs), on Form I-639
- Two color photographs meeting the DHS requirements
- Filing fee of \$315, for persons 14 and older, or \$215, for persons under 14, unless waived
- If available, evidence of inspection, admission, or parole

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<sup>56</sup> In the future, it is possible that the procedure will be changed, so that the applicant will mail the petition for SIJS to a regional immigration office, and once that is approved have the applicant file the application for adjustment of status in person at a local immigration office. Counsel should stay alert for new filing rules.

<sup>57</sup> 8 CFR § 204.11(b)(2). Immigration practitioners should see INA § 245(h), which provides that SIJS applicants are deemed paroled in and therefore eligible for adjustment even if they entered without inspection. They do not have to qualify under § 245(i) or another special program, or pay a penalty fee: they are entitled to adjustment by virtue of their SIJS petition. Otherwise, immigration attorneys should note that an SIJS adjustment procedure is like that of a 245(a) adjustment for an immediate relative.

<sup>58</sup> Yates memo, *supra* note 4, at 3; 8 CFR § 204.11(d)(1). Documentary evidence might also include "passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age[.]"

<sup>59</sup> 8 CFR §§ 103.7(c) and <http://uscis.gov/graphics/formsfee/forms/forminfo.htm#wavier>. Recent CIS guidance on fee waivers is attached as Appendix 4-30 to this manual.

- If the applicant is over 14, Form G-325 A (Biographic Information)
- If the applicant has an arrest record, certified copies of the records of disposition
- If the applicant is inadmissible under some ground that is not automatically waived under INA § 245(h)(2)(A), Form I-601 (Application for Waiver of Ground of Excludability), with filing fee of \$250 (unless waived) and supporting documents to show that the waiver is warranted for humanitarian purposes or family unity or is in the public interest.<sup>60</sup>

As soon as the SIJS application is filed, the applicant can apply for employment authorization.<sup>61</sup> If the child is 14 years old or older, then the USCIS will schedule an appointment for the applicant to get fingerprinted -- generally at an Application Support Center (ASC) -- for an FBI check of any criminal or delinquency record or prior deportation.<sup>62</sup> The wait for the interview itself can be long -- depending on the USCIS office, it may be from six months to three years, or even longer. When the applicant finally gets to the interview, he or she often can have a social worker, and certainly an attorney, attend if desired. The USCIS might approve the case right at the interview, or might request further information.<sup>63</sup>

The USCIS will issue, in writing,<sup>64</sup> a decision on the SIJS petition. If the USCIS denies the self-petition, then the petitioner can appeal to the Associate Commissioner of Examinations.<sup>65</sup> The Administrative Appeals Office (AAO) will consider the appeal.<sup>66</sup> If the USCIS denies the self-petition, then it should provide the appropriate appeal form with the written denial along with instructions on how to file the appeal.<sup>67</sup> The regulations indicate that the appropriate form for the appeal is Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU).<sup>68</sup> The form must be filed, within 30 days of service of the written denial, with the local USCIS office that issued the denial.<sup>69</sup> The appropriate fee must be filed with the appeal form.<sup>70</sup> Checks for the appeal fee must be made payable to "US Citizenship and Immigration Services."<sup>71</sup> According to the regulations, the local office will have 45 days from the date of receipt of the appeal to consider whether to treat the appeal as a motion to reopen or reconsider and to act

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<sup>60</sup> Yates memo, *supra* note 4, at 3.

<sup>61</sup> 8 CFR § 274a.12(c)(9). The application is filed on Form I-765, with a filing fee of \$175 (unless waived).

<sup>62</sup> 8 CFR § 103.2(e). <http://uscis.gov/graphics/formsfee/finger/index.htm>.

<sup>63</sup> 8 CFR § 103.2(b)(8).

<sup>64</sup> 8 CFR § 204.11(e).

<sup>65</sup> 8 CFR §§ 204.11(e) & 103.1(f)(3)(iii)(II).

<sup>66</sup> 8 CFR § 103.3(a)(1)(iv).

<sup>67</sup> 8 CFR § 103.3(a)(1)(iii)(A)

<sup>68</sup> 8 CFR § 103.3(a)(2)(i). Although the list of current forms at 8 CFR § 299.5 does not include Form I-290B, the form is available on the USCIS website.

<sup>69</sup> 8 CFR § 103.3(a)(2)(i).

<sup>70</sup> 8 CFR §§ 103.3(a)(2)(i) and 103.7(b). Check the "forms" page of the USCIS website to make sure you have updated information regarding current filing fees.

<sup>71</sup> <http://uscis.gov/graphics/fieldoffices/fees.htm> last visited on March 1, 2004.

favorably on (i.e., grant) the motion.<sup>72</sup> If this happens, then the appeal will not have to be forwarded to the AAO.

If the local USCIS office does not treat the appeal as a motion to reopen or reconsider, then it will forward the appeal to the AAO in Washington, DC.<sup>73</sup> The AAO will issue a written decision on the appeal.<sup>74</sup>

If the juvenile concurrently files a SIJS self-petition and an application for adjustment of status, and then the USCIS grants the SIJS petition but denies the adjustment of status case, it might issue a Notice to Appear (NTA) to the juvenile and file the NTA in immigration court thereby placing the juvenile into removal proceedings.<sup>75</sup> The juvenile can re-apply for adjustment in front of the immigration judge.<sup>76</sup> If the immigration judge denies the adjustment of status application, then the juvenile may, within 30 days of the immigration judge's decision, file an appeal with the Board of Immigration Appeals (BIA).<sup>77</sup>

### **§ 8.9 Warning: Special Procedures for Children in Actual or Constructive Immigration Custody**

If an immigrant child is *already in actual or constructive immigration custody* before coming to juvenile court, a juvenile court judge cannot make custody decisions about the child without the immigration agency's permission.<sup>78</sup> This is a very unusual federal law, depriving state courts of jurisdiction over children within the state. As amended in 1997, the SIJS statute provides that no state juvenile court:

has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction.<sup>79</sup>

Thus, juveniles who are in actual or constructive immigration custody must obtain the immigration agency's consent before a juvenile court can take jurisdiction over the minor. Juvenile court orders made without this consent are invalid according to immigration standards.<sup>80</sup>

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<sup>72</sup> 8 CFR § 103.3(a)(2)(iii).

<sup>73</sup> 8 CFR § 103.3(a)(2)(iv).

<sup>74</sup> 8 CFR § 103.3(a)(2)(x).

<sup>75</sup> 8 CFR § 239.1 (removal proceedings are "commenced by the filing of a notice to appear with the Immigration Court.").

<sup>76</sup> 8 CFR § 245.2(a)(5)(ii).

<sup>77</sup> 8 CFR § 240.53(a).

<sup>78</sup> INA § 101(a)(27)(J)(iii)(I), 8 U.S.C. § 1101(a)(27)(J)(iii)(I).

<sup>79</sup> *Id.* Although the statutory provision still contains the words "Attorney General," the functions of the Attorney General were transferred to the Secretary of the Department of Homeland Security by the Homeland Security Act. Accordingly, the DHS has the responsibility of determining whether to consent to juvenile court jurisdiction.

<sup>80</sup> INA § 101(a)(27)(J)(iii)(1); 8 CFR § 204.11(c)(3); see Yates memo, *supra* note 4, at 5.

What is “actual or constructive” custody? In the past, actual custody meant that the USICE or other immigration agency has the child in a detention facility. Constructive custody meant that the USICE contracted with an outside agency to take custody of the child. It appears, however, that these two terms have become indistinguishable because USICE generally hands over custody of all children to the Office of Refugee Resettlement (ORR), and ORR, in turn, supervises the custody of the children either through its own agency or by contracting with outside agencies such as Migration and Refugee Services (MRS) of the United States Conference of Catholic Bishops or the Lutheran Immigration & Refugee Service (LIRS). For example, USICE or Border Patrol may arrest a child and turn the child over to the Office of Refugee Resettlement (ORR) for placement. Although the child is in ORR custody, he or she is considered in the “actual” custody of the USICE. The child may be in a juvenile hall or in a shelter contracted by ORR. This includes any agency that has a contract with ORR to hold children in federal custody.

Constructive custody was not defined in official memoranda from the immigration authorities, but the INS appeared to agree that this referred only to children housed in a special foster care setting that immigration authorities created in some states as an alternative to regular detention for children.<sup>81</sup> These contracts with foster care are now contracts with the ORR. It is for this reason that the terms actual and constructive custody appear to be indistinguishable because the government treats children in the custody of either the ORR or agencies contracting with the ORR to require the consent for a juvenile court to take jurisdiction over the child.

In these foster care settings, the ORR pays a private or nonprofit group to run a “soft detention” group home expressly for unaccompanied immigrant children under government authority. On the other hand, the child may be placed in a foster home – where it is just the child and the foster family – and the foster family has a contract with the ORR, the USCCB, or the LIRS. The home must meet state foster care licensing requirements.

If a child is not in such a setting, the child is not in “actual or constructive” custody and a juvenile court judge does not need permission to rule on the child’s placement. The INS did not appear to take the position that a child was in constructive custody if the child once was in immigration custody but had since been released (for example, on bond, parole, own recognizance, or perhaps order of supervision). Thus a child who was arrested by the INS or USICE, but was then released on bond or to a relative and who still must go to immigration court hearings, is not in actual or constructive custody, and a juvenile court should not have to get permission of an immigration agency to take the child.<sup>82</sup>

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<sup>81</sup> See e.g., “Cook, Memorandum #1” *supra* (providing “foster care” as an example of constructive custody – “Juveniles in foster care are still in the legal custody of INS despite the delegation of physical custody to social services agencies who can better accommodate their needs.”) This memorandum was superseded by the memorandum from William R. Yates, *supra* note 4, which appears to define DHS custody as custody by either the U.S. Immigration and Customs Enforcement or the Office of Refugee Resettlement. Yates memo, at 1.

<sup>82</sup> The Department of Homeland Security is expected to make this position explicit in future regulations. This information is based on conversations with national INS officials and Katherine Brady of the ILRC in 2000, as well as on the history leading up to the 1997 amendment. We are not aware of any local immigration offices making any other interpretation, but if it does, please contact immigration or children’s advocates and, if needed, national

Check with the local USICE district office to verify the procedure for submitting a request for consent. In the past, requests for USICE consent for a court to take jurisdiction over a child in immigration custody had to be made in writing to the USICE District Director with jurisdiction over the juvenile's place of residence.<sup>83</sup> Now some district offices require that the request for consent be submitted to the Office of Juvenile Affairs of USICE. In the past, according to an official INS Memorandum, the District Director, in consultation with the District Counsel, should consent to the juvenile court taking jurisdiction over the child if:

- 1) It appears that the juvenile would be eligible for SIJS status if a dependency order is issued; and
- 2) In the judgment of the District Director, the dependency proceeding would be in the best interest of the juvenile.<sup>84</sup>

Since dependency proceedings are expert governmental deliberations dedicated to identifying and implementing a plan that is in the best interests of the child, it should be an extremely rare case where the District Director or Office of Juvenile Affairs decides that holding such proceedings are not in the child's best interest. In practice, however, the vast majority of requests for consent have been denied.

Judges and advocates dealing with children who may be in immigration custody should contact a resource center for information on how best to prepare a request for consent from the District Director or the Office of Juvenile Affairs.

Children *not* in the actual or constructive custody of the Department of Homeland Security still must obtain the consent of the DHS to the dependency order before obtaining SIJS status. In this situation, however, the juvenile court need not obtain the DHS consent before taking jurisdiction over the juvenile. Instead, the DHS consent to the juvenile court taking jurisdiction will be reflected in the decision either to grant or deny SIJS status.<sup>85</sup> *To wit, if the child is not in actual or constructive custody, the child does not have to seek consent before going forward with getting the juvenile court order and filing the Form I-360 self-petition.*

After the DHS consents to the juvenile court jurisdiction over the juvenile, then the DHS must consider whether the juvenile is otherwise eligible for SIJS.

## **§ 8.10 Talking with the Child Applicant and the Child's Attorney about SIJS**

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officials of the Department of Homeland Security. You might start with Michael Biggs, INS Office of Adjudications, 202/353-7707, or Jo Anne London, INS Office of General Counsel, 202/514-0198.

<sup>83</sup> Thomas E. Cook, Acting Assoc. Comm'r Adjudications, INS, Memo re "Interim Field Guidance relating to Special Immigrant Juvenile Status" (July 9, 1999). This memorandum was superseded by the Yates memo of May 27, 2004, but the latter memo does not discuss the criteria or procedure for requests for DHS specific consent for Juvenile Court jurisdiction. Yates memo, at 2.

<sup>84</sup> *Id.*

<sup>85</sup> Yates memo, *supra* note 4, at 5.

Before a petition for special immigrant juvenile status is filed for a child, the child should understand what the application is about and the risks and benefits of filing. Any attorney for the child must be consulted, and the child's social worker, probation officer, Court Appointed Special Advocate (CASA) volunteer, foster parent, or other interested advocate should be involved.

### **§ 8.11 Note: Original Parents, and Maybe Siblings, Cannot Benefit Through Grant of SIJS to Child**

The natural parent or prior adoptive parents of a child who obtains SIJS receive no rights, privileges, or status under the statute.<sup>86</sup> This means that the child will not be able to use her new lawful immigration status to help his or her original parents to get lawful status. For example, a special immigrant juvenile who becomes a permanent resident and then a U.S. citizen will not be able to immigrate his or her natural mother. Usually a U.S. citizen of at least 21 years of age would have that right.<sup>87</sup>

Congress enacted this rule to make sure that parents who abused, neglected or abandoned their children would not benefit from the fact that the children qualified for SIJS. The parents do not lose any immigration benefit that they otherwise would have had, because without SIJS their undocumented child could not have helped his or her parents to immigrate.

Unfortunately, it also may be that the child is barred from using his or her new status to assist a brother or sister to immigrate. Immigration law defines siblings as persons with a common parent.<sup>88</sup> Because the SIJS recipient is in effect no longer the "child" of the abusive parent, the USCIS may assert that he or she no longer has a sibling relationship with brothers and sisters. A U.S. citizen who is at least 21 years old can petition for permanent resident status for a sibling.<sup>89</sup> The main drawback is that sibling or "fourth preference" petitions generally have a long waiting period of from 12 to 20 years after the petition was filed before the sibling receives any legal rights.<sup>90</sup>

### **§ 8.12 Useful website**

- Immigrant Legal Resource Center, at <http://ilrc.org/onlineresource.html>

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<sup>86</sup> INA § 101(a)(27)(J)(iii)(II), 8 U.S.C. § 1101(a)(27)(J)(iii)(II).

<sup>87</sup> INA §§ 201(b)(2)(A)(i) & 204(a)(1)(A)(i).

<sup>88</sup> See generally, *Matter of Garner*, 15 I&N Dec. 215 (BIA 1975) (holding that siblings can petition for one another as long as they can demonstrate that they are each a "child" – as defined under the INA -- of a common parent).

<sup>89</sup> INA §§ 204(a)(1)(A)(i) & 203(a)(4).

<sup>90</sup> See United States Department of State Visa Bulletin, located at [http://travel.state.gov/visa\\_bulletin.html](http://travel.state.gov/visa_bulletin.html) last visited on March 1, 2004 (at which time the bulletin indicated an almost 12 year wait for siblings under the "all chargeability" category and an over 24 year wait for siblings from the Philippines).



This website contains the ILRC's manual Special Immigrant Juvenile Status for Children in the Dependency System.

U.S. Department of Justice  
Immigration and Naturalization Service

# Petition for Amerasian, Widow(er), or Special Immigrant

## START HERE - Please Type or Print

**Part 1. Information about person or organization filing this petition.** (Individuals should use the top name line; organizations should use the second line.) If you are a self-petitioning spouse or child and do not want INS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to part 2.

Family Name	Given Name	Middle Initial
Company or Organization Name		
Address - C/O		
Street Number and Name	Apt. #	
City	State or Province	
Country	Zip/Postal Code	
U.S. Social Security #	A #	IRS Tax # (if any)

## Part 2. Classification Requested (check one):

- a.  Amerasian
- b.  Widow(er) of a U.S. citizen who died within the past two (2) years
- c.  Special Immigrant Juvenile
- d.  Special Immigrant Religious Worker
- e.  Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone
- f.  Special Immigrant Physician
- g.  Special Immigrant International Organization Employee or family member
- h.  Special Immigrant Armed Forces Member
- i.  Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
- j.  Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
- k.  Other, explain:

## Part 3. Information about the person this petition is for.

Family Name	Doe	Given Name	Jane	Middle Initial	X.
Address - C/O					
c/o Ms. Foster Mother					
Street Number and Name	300 Main Street				Apt. #
City	Anywhere	State or Province	CA		
Country	U.S.A.		Zip/Postal Code	10000	
Date of Birth (Month/Day/Year)	10/4/90		Country of Birth	Honduras	
U.S. Social Security #	n/a		A # (if any)	n/a	
Marital Status: <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed					
Complete the items below if this person is in the United States:					
Date of Arrival (Month/Day/Year)	5/5/03		I-94#	n/a	
Current Nonimmigrant Status	E.W.I.		Expires on (Month/Day/Year)	n/a	

## FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
<input type="checkbox"/> Petitioner/ Applicant Interviewed	
<input type="checkbox"/> Beneficiary Interviewed	
<input type="checkbox"/> I-485 Filed Concurrently	
<input type="checkbox"/> Bene "A" File Reviewed	
Classification	
Consulate	
Priority Date	
Remarks:	
Action Block	
<b>To Be Completed by Attorney or Representative, if any</b>	
<input type="checkbox"/> Fill in box if G-28 is attached to represent the applicant	
VOLAG#	
ATTY State License #	

Continued on back.

## Part 4. Processing Information.

Below give to United States Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

American Consulate: City <u>n/a</u>	Country
-------------------------------------	---------

If you gave a United States address in Part 3, print the person's foreign address below. If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name <u>n/a</u>	Address
-----------------	---------

Sex of the person this petition is for.  Male  Female  
Are you filing any other petitions or applications with this one?  No  Yes (How many? \_\_\_\_\_ )  
Is the person this petition is for in exclusion or deportation proceedings?  No  Yes (Explain an a separate sheet of paper)  
Has the person this petition is for ever worked in the U.S. without permission?  No  Yes (Explain an a separate sheet of paper)  
Is an application for adjustment of status attached to this petition?  No  Yes

## Part 5. Complete only if filing for an Amerasian.

### Section A. Information about the mother of the Amerasian

Family Name	Given Name	Middle Initial
Living? <input type="checkbox"/> No (Give date of death _____ ) <input type="checkbox"/> Yes (complete address line below) <input type="checkbox"/> Unknown (attach a full explanation)		
Address		

**Section B. Information about the father of the Amerasian:** If possible, attach a notarized statement from the father regarding parentage. Explain on separate paper any question you cannot fully answer in the space provided on this form.

Family Name	Given Name	Middle Initial
Date of Birth (Month/Day/Year)	Country of Birth	
Living? <input type="checkbox"/> No (give date of death _____ ) <input type="checkbox"/> Yes (complete address line below) <input type="checkbox"/> Unknown (attach a full explanation)		
Home Address		
Home Phone #	Work Phone #	

At the time the Amerasian was conceived:

The father was in the military (indicate branch of service below - and give service number here): \_\_\_\_\_  
 Army  Air Force  Navy  Marine Corps  Coast Guard  
 The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.  
 The father was not in the military, and was not a civilian employed abroad. (Attach a full explanation of the circumstances.)

## Part 6. Complete only if filing for a Special Immigrant Juvenile Court Dependent.

### Section A. Information about the Juvenile

List any other names used. none

Answer the following questions regarding the person this petition is for. If you answer "no," explain on a separate sheet of paper.

Is he or she still dependent upon the juvenile court or still legally committed to or under the custody of an agency or department of a state?  No  Yes  
Does he/she continue to be eligible for long term foster care?  No  Yes

**Part 7. Complete only if filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser.**

**Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser.**

Family Name	Given Name	Middle Initial
Date of Birth (Month/Day/Year)	Country of Birth	Date of Death (Month/Day/Year)
He or she is now, or was at time of death a (check one):		
<input type="checkbox"/> U.S. citizen born in the United States.	<input type="checkbox"/> U.S. citizen through Naturalization (Show A #) _____	
<input type="checkbox"/> U.S. citizen born abroad to U.S. citizen parents.	<input type="checkbox"/> U.S. lawful permanent resident (Show A #) _____	
	<input type="checkbox"/> Other, explain _____	

**Section B. Additional Information about you.**

How many times have you been married?	How many times was the person in Section A married?	Give the date and place you and the person in Section A were married. (If you are a self-petitioning child, write: "N/A")
---------------------------------------	---	---

When did you live with the person named in Section A? From (Month/Year) \_\_\_\_\_ until (Month/Year) \_\_\_\_\_

If you are filing as a widow/widower, were you legally separated at the time of to U.S citizens's death?  No  Yes. (attach explanation).

Give the last address at which you lived together with the person named in Section A, and show the last date that you lived together with that person at that address:

If you we filing as a self-petitioning spouse, have any of your children filed separate self-petitions?  No  Yes (show child(ren)'s full names):

**Part 8. Information about the spouse and children of the person this petition is for.** A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser.

A. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Spouse <input type="checkbox"/> Child		A #
B. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Child		A #
C. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Child		A #
D. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Child		A #
E. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Child		A #
F. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Child		A #

G. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Child		A#
H. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship <input type="checkbox"/> Child		A#

*Read the information on penalties in the instructions before completing this part. If you are going to file this petition at an INS office in the United States, sign below. If you are going to file it at a U.S. consulate or INS office overseas, sign in front of a U.S. INS or consular official.*

**Part 9. Signature.**

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature <i>Jane Doe</i>	Date <i>3/20/04</i>
Signature of INS or Consular Official	Print Name

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for a requested benefit and it may have to be denied.

**Part 10. Signature of person preparing form if other than above. (sign below)**

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date
Firm Name and Address		

(ENDORSED)  
FILED

03 APR 28 AM 9:45

KIM TORINE  
CHIEF EXEC. OFFICER/CLERK  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
BY \_\_\_\_\_

1 Steve Goetze (CBN 178508)  
2 Legal Advocates for Children & Youth  
3 111 West St. John Street, Suite 315  
4 San Jose, California 95113  
5 Telephone: (408) 280-2415  
6 Fax:(408) 293-0106

7 Attorney for [REDACTED]

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA CLARA

10 In re the Guardianship of the Person of:  
11 [REDACTED]  
12 A Minor.

) No. [REDACTED]

) ORDER REGARDING MINOR'S  
) ELIGIBILITY FOR "SPECIAL  
) IMMIGRANT JUVENILE" STATUS

) DEPT. 13  
) Hon. Thomas Edwards

17 THE COURT FINDS that the minor [REDACTED] was born in Honduras and  
18 is a citizen and national of Honduras.

19 THE COURT FURTHER FINDS that this Court has jurisdiction under California law "to  
20 make judicial determinations about the custody and care of juveniles" within the meaning of  
21 Section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(27)(J) (1999)  
22 and 8 C.F.R. §204.11(a) and (d)(2)(i) (1999). The minor remains under this Court's jurisdiction.

23 THE COURT FURTHER FINDS that [REDACTED] is dependent upon this  
24 Court within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act, 8  
25 U.S.C. §101(a)(27)(J) and 8 C.F.R. §204.11(a) and (d)(2)(i).

26 THE COURT FURTHER FINDS that [REDACTED] is eligible for long-term  
27 foster care due to abuse, neglect or abandonment within the meaning of Section 101(a)(27)(J) of  
28

1 the Immigration and Nationality Act, 8 U.S.C. §1101(a)(27)(J) and 8 C.F.R. §204.11(a) and  
2 (d)(2)(ii).

3 THE COURT FURTHER FINDS that it is not in [REDACTED] s best interest  
4 to be returned to his parents' previous country of nationality within the meaning of Section  
5 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(27)(J), and 8 C.F.R.  
6 §204.11(d)(2)(iii). It is in the minor's best interest to remain in the United States.

7  
8 APR 28 2003  
9 DATED: \_\_\_\_\_

10  
11 THOMAS C. EDWARDS  
12 \_\_\_\_\_  
13 HON. THOMAS EDWARDS  
14 Judge of the Superior Court  
15  
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U.S. Citizenship  
and Immigration  
Services

HQADN 70/23

## Interoffice Memorandum

To: Regional Directors  
District Directors

From: William R. Yates (Janis Sposato /s/)  
Associate Director for Operations

Date: May 27, 2004

Re: Memorandum #3 -- Field Guidance on Special Immigrant Juvenile Status Petitions

The purpose of this memorandum is to provide policy and procedural clarification on the adjudication of Special Immigrant Juvenile (SIJ) petitions. This guidance memorandum, the third since the 1997 statutory amendment, consolidates and supercedes all previous guidance issued by the Immigration and Naturalization Service.<sup>1</sup>

### Background

Section 203(b)(4) of the Immigration and Nationality Act (INA) allocates a percentage of immigrant visas to individuals considered "special immigrants" under section 101(a)(27) of the INA, including those aliens classified as special immigrant juveniles under Section 101(a)(27)(J). Section 113 of Pub. L. No. 105-119, 11 Stat. 2440 (November 26, 1997), amended the definition of a "special immigrant juvenile" to include only those juveniles deemed eligible for long-term foster care based on abuse, neglect, or abandonment, and added two provisions that require the consent of the Secretary of the Department of Homeland Security (DHS) (formerly the Attorney General) for SIJ cases. One provision requires *specific* consent to a juvenile court's jurisdiction over dependency proceedings for a juvenile in DHS custody; the other requires *express* consent to the juvenile court's dependency order serving as a precondition to a grant of SIJ status. In the case of juveniles in custody due to their immigration status (either by US Immigration and Customs Enforcement (ICE) or by the Office of Refugee Resettlement (ORR)), the specific consent must be obtained *before* the juvenile may enter juvenile court dependency proceedings; failure to do so will render invalid any order issued as a result of such proceedings.

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<sup>1</sup> Initial guidance was provided by memorandum dated August 7, 1998. That was superceded by Memorandum #2, dated July 9, 1999, which is superceded by this memorandum.



This memorandum addresses only those eligibility issues relating to the actual adjudication of the petition for special immigrant juvenile classification and the application for adjustment of status to that of lawful permanent residence, including the concept of “express consent.” It does not address eligibility criteria relating to “specific consent.”

### **Effect of SIJ approval**

Approval of an SIJ petition (Form I-360) makes a petitioner immediately eligible to adjust status by filing a Form I-485. Once the Form I-485 is filed (either concurrently with the I-360, as is strongly encouraged, or subsequent to approval of an I-360), the juvenile may receive employment authorization pursuant to the pending adjustment application.<sup>2</sup> Juveniles who adjust status as a result of an SIJ classification enjoy all benefits of lawful permanent residence, including eligibility to naturalize after five years; however, they may not seek to confer an immigration benefit to their natural or prior adoptive parents. INA §101(a)(27)(J)(iii)(II). The granting of an SIJ petition or an application for adjustment to a juvenile confers no Federal Government duty or liability toward state child welfare agencies, even for those juveniles placed in foster care.

### **Consent by Department of Homeland Security**

Following the 1997 amendments to Sec. 101(a)(27)(J) and the Homeland Security Act of 2002, a juvenile alien seeking classification as a special immigrant juvenile based on a juvenile court’s dependency order must have, in all cases, the “express consent” of the Secretary of the DHS. In those cases involving a juvenile in the actual or constructive custody of the federal government, the juvenile must first obtain “specific consent” to the juvenile court’s jurisdiction from the Secretary, through ICE, before proceedings on issuing a dependency order for the juvenile may begin. *Specific consent* refers to a determination to permit a juvenile court, which otherwise would have no custody jurisdiction over the juvenile alien, to exercise jurisdiction for purposes of a dependency determination.

*Express consent* means that the Secretary, through the CIS District Director, has “determine[d] that neither the dependency order nor the administrative or judicial determination of the alien’s best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect [or abandonment.]”<sup>3</sup> In other words, express consent is an acknowledgement that the request for SIJ classification is bona fide.

CIS officers adjudicating SIJ petitions need only consider whether the juvenile court order satisfies express consent requirements; however, as discussed below, information relating to a grant of specific consent may also be considered when determining eligibility for express consent.

While this memorandum does not address the criteria for issuing specific consent, officers must be satisfied that specific consent from ICE was timely granted in cases where such consent was required. This is discussed further below.

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<sup>2</sup> 8 CFR 27.12(c)(9)

<sup>3</sup> See H.R. Rep. No. 105-405, at 130 (1997).

## Documentation Requirements for SIJ Petitions

Although current regulations allow for separate filing of the Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) and the Form I-485 (Application To Register Permanent Residence or Adjust Status), USCIS strongly encourages concurrent filing of both forms in order to expedite the completion of the juvenile's application.

The Form I-360 must be supported by:

- Court order declaring dependency on the juvenile court or placing the juvenile under (or legally committing the juvenile to) the custody of an agency or department of a State.
- Court order deeming the juvenile eligible for long-term foster care due to abuse, neglect, or abandonment.<sup>4</sup>
- Determination from an administrative or judicial proceeding that it is in the juvenile's best interest not to be returned to his/her country of nationality or last habitual residence (or the juvenile's parents' country of nationality or last habitual residence)(hereinafter "home country")<sup>5</sup>; and
- Proof of the juvenile's age<sup>6</sup>.

The Form I-485 must also be supported by documentation:

- Birth certificate or other proof of identity in compliance with 8 CFR 103.2;
- A sealed medical examination (Form I-639);
- Two ADIT-style color photographs; and, where applicable, also supported by:
- Evidence of inspection, admission or parole (if available; by law an individual with SIJ classification is deemed to be paroled for purposes of adjustment of status<sup>7</sup>);
- If the applicant is over 14, s/he must also submit a Form G-325A (Biographic Information);
- If the juvenile has an arrest record, s/he must also submit certified copies of the records of disposition; and
- If the juvenile is seeking a waiver of a ground of inadmissibility that is not otherwise automatically waived under INA §245(h)(2)(A), s/he must submit a Form I-601 (Application for Waiver of Ground of Excludability) and supporting documents establishing that waiver is warranted for humanitarian purposes, family unity, or in the public interest (supporting documents could include affidavits, letters, press clippings, etc.).

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<sup>4</sup> The regulations provide: "Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option." 8 C.F.R. § 204.11(a).

<sup>5</sup> INA §101(a)(27)(J)(ii) This requirement can be satisfied through a determination made by the juvenile court and incorporated in the juvenile court order. *See infra*.

<sup>6</sup> Examples include an official birth certificate, passport, or foreign identity document issued by a foreign government, such as a cedula or cartilla. 8 CFR§204.11(d).

<sup>7</sup> INA §245(h)(1). Although deemed paroled as a matter of law, applicants may still be subject to INA §212(a)(2)(A), (B), and (C), §212(a)(3)(A), (B), (C), and (E), and §241(a)(5). See discussion below.

Applicants may also submit a Form I-765 (Application for Employment Authorization) based on the pending Form I-485, if needed.

### **The Court Order**

The Court Order submitted in support of the Form I-360 *must establish*:

- The juvenile has been declared a dependent of the juvenile court or the court has placed the juvenile under (or legally committed the juvenile to) the custody of an agency or department of a State; and

The juvenile has been deemed eligible for long-term foster care due to abuse, neglect, or abandonment<sup>8</sup>

The Court Order will also *preferably establish* the following (these may be established in alternative ways as discussed later):

- Specific findings of fact in support of the Order, sufficient to establish a basis for USCIS express consent; and
- That it would not be in the alien's best interest to be returned to the alien's home country.

### **Evidence to establish the best interests of the child not to return to home country**

As noted above, a petition cannot be granted unless it has been determined in an administrative or judicial proceeding that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence. This determination may be made by the juvenile court. USCIS strongly encourages juvenile courts to address this issue and incorporate a finding into the court order. Nevertheless, the law contemplates that other judicial or administrative bodies authorized or recognized by the juvenile court may make such a determination<sup>9</sup>. If a particular juvenile court establishes or endorses an alternate process for this finding, a ruling from that process may satisfy the requirement.

### **Evidence to establish express consent**

The District Director, in his or her discretion, shall expressly consent to dependency orders that establish -- or are supported by appropriate evidence that establishes -- that the juvenile was deemed eligible for long-term foster care due to abuse, neglect, or abandonment, and that it is in the juvenile's best interest not to be returned to his/her home country. Such express consent should be given only if the adjudicator is aware of the facts that formed the basis for the juvenile court's rulings on dependency (or state custody), eligibility for long-term foster care based on abuse, neglect, or abandonment, and non-viability of family reunification, or the adjudicator determines that a reasonable basis in fact exists for these rulings. The adjudicator generally should not second-guess

<sup>8</sup> The regulation provides: "Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option." 8 C.F.R. § 204.11(a). A child adopted or placed in guardianship after receiving a dependency order continues to be considered eligible for long-term foster care under 8 C.F.R. §204.11(a), and, necessarily, remains considered a juvenile court dependent based on the prior dependency order.

<sup>9</sup> 8 C.F.R. §204.11(c)(6).

the court rulings or question whether the court's order was properly issued. Orders that include or are supplemented by specific findings of fact as to the above-listed rulings will usually be sufficient to establish eligibility for consent. Such findings need not be overly detailed, but must reflect that the juvenile court made an informed decision.

The role of the District Director in determining whether to grant express consent is limited to the purpose of determining special immigrant juvenile status, and not for making determinations of dependency status.<sup>10</sup>

If an order (or order supplemented with findings of fact, as described above) is not sufficient to establish a reasonable basis for consent, the adjudicator must review additional evidence to determine whether a reasonable factual basis exists for the court's rulings. To do so, the adjudicator may request that the petitioner provide actual records from the judicial proceeding; however, adjudicators must be mindful that confidentiality rules often restrict disclosure of records from juvenile-related proceedings, so seeking such records directly from the court may be inappropriate, depending on the applicable State law. In the alternative, the adjudicator may request the petition to provide an affidavit from the Court, or the state agency or department in whose custody the child has been placed, summarizing the evidence presented to the court. Additionally, if the applicant had obtained a grant of specific consent from ICE, the grant should be considered a favorable factor in establishing express consent. The adjudicator may also consider the evidence that provided the foundation for the granting of specific consent.

If an adjudicator encounters what s/he believes to be a fraudulently obtained order s/he should promptly notify a supervisor, who should immediately notify USCIS Headquarters, Office of Field Operations and Office of Program and Regulation Development, through designated channels, to coordinate appropriate follow-up.

Because express consent essentially is a determination that the order reflects a bona fide basis for special immigrant juvenile status, approval of an SIJ application itself shall serve as a grant of express consent.

#### **Validity of Juvenile Court Orders in Previously Detained Cases (Specific Consent)**

The adjudicator must be satisfied that the petitioner obtained specific consent from ICE where necessary. If specific consent was necessary but not timely obtained, a juvenile court dependency order is not valid and the petition must be denied. INA § 101(a)(27)(J)(iii)(I); 8 C.F.R. § 204.11(c)(3). Please check with the local ICE juvenile coordinator who handled the case to determine whether specific consent was required, and if so, whether it was timely granted.

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<sup>10</sup> H.R. Rep. No. 105-405, at 130 (1997)

## Inadmissibility

SIJ beneficiaries are excused from many requirements that other applicants for adjustment must meet. Most notably, SIJ applicants are excused from several grounds of inadmissibility,<sup>11</sup> including provisions prohibiting entry of those likely to become a public charge,<sup>12</sup> those without proper labor certification,<sup>13</sup> and those without a proper immigrant visa.<sup>14</sup> In addition, most other grounds of inadmissibility may be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest. The only grounds of inadmissibility that are not waivable for SIJ applicants are those listed in INA §212(a)(2)(A), (B), and (C)<sup>15</sup> and (3)(A), (B), (C), and (E).

## Aging Out

Current regulations require that an applicant for SIJ adjustment must be under 21 years old, not only at the time of application, but also at the time of adjustment.<sup>16</sup> Failure to adjust prior to age 21 results in denial of the application, regardless of the merits of the underlying dependency order; this is known as “aging out.” Applicants are strongly encouraged to submit petitions and applications in a timely fashion and to notify the agency when the risk of aging out is strong. In addition, District Offices should assess new applications to avoid the risk of SIJ age outs, and take the following precautions to prevent it:

- Schedule SIJ adjustment interviews well in advance of the petitioner’s 21<sup>st</sup> birthday, or in jurisdictions where court dependency terminates before age 21, well in advance of that birth date (e.g. age 18 in New Jersey).
- Ensure proper completion of background checks, including fingerprint clearances and name-checks (this means all clearances should be scheduled no later than 60 days prior to the age-out date).
- Provide for expedited processing of cases at risk of aging out (e.g. in-person filing for applicants who age out within a year; priority interviews and fingerprinting; other appropriate administrative relief).

Officers are also reminded that, in many circumstances, Section 424 of the USAPATRIOT Act provides SIJ beneficiaries limited age-out protection by extending benefits eligibility for 45 days beyond the 21<sup>st</sup> birthday. Pursuant to Section 424(2), an alien who is the beneficiary of a petition or application filed on or before September 11, 2001, whose 21<sup>st</sup> birthday occurs after September 2001 is considered to be a child for 45 days after the alien's 21<sup>st</sup> birthday for purposes of adjudicating such petition or application.<sup>17</sup>

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<sup>11</sup> See INA §245(h)(2)(A). In addition, the corresponding grounds of removal under INA §237(c) are also waived for juveniles granted SIJ.

<sup>12</sup> INA §212(a)(4)

<sup>13</sup> INA §212(a)(5)(A)

<sup>14</sup> INA §212(a)(7)(A)

<sup>15</sup> Except for a single instance of simple possession of 30 grams or less of marijuana.

<sup>16</sup> 8 CFR §205.1(a)(3)(iv)(A).

<sup>17</sup> This provision has been specifically applied to SIJ beneficiaries. See *Pierre v. McElroy*, 200 F.Supp.2d 251 (SDNY 2001). Note: This necessarily includes treating the juvenile as under juvenile court jurisdiction during the 45-day period.

## Fee Waivers

Adjudicators are reminded that, pursuant to 8 CFR 103.7(c), SIJ applicants may be eligible for fee waivers for forms I-360, I-485 and I-765. Requests for fee waivers should be adjudicated expeditiously, and consistent with prevailing policy guidance (see Memorandum from William Yates, Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c), March 4, 2004). In considering the applicant's inability to pay the fee, adjudicators should pay particularly close attention to fee waiver guidance relating to consideration of humanitarian or compassionate reasons in support of a request (Id., at 4). Recommendations on fee waiver requests must be forwarded to the appropriate supervisor for decision.

## Vienna Convention on Consular Relations

Adjudicators should not ask SIJ applicants to provide proof of compliance with the Vienna Convention on Consular Relations (VCCR). The VCCR, which has little or nothing to do with SIJ classification, includes reporting requirements for government agencies encountering foreign citizens, usually in the context of criminal proceedings, but also in guardianship and trusteeship situations. In most cases, if a juvenile was in either the criminal justice system or under the care of a guardian or a trustee, the relevant state agency would have had a duty to report to the juvenile's consulate and afford the juvenile an opportunity to contact the consulate. The VCCR places no burden of reporting on the juvenile, and is therefore outside the scope of USCIS's determination of eligibility for SIJ classification or adjustment.

## Further information

Questions relating to this memorandum should be directed through appropriate channels by phone or e-mail to Steven D. Heller (Operation and Regulations Developments, (202) 616-7435) or Leah Torino (Field Operations, (202) 514-2982).

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## **Chapter 9**

### **Other Forms of Immigration Relief for Immigrant Victims of Abuse and Crime**

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#### **§ 9.1 Introduction**

In earlier chapters, we discussed immigration relief specifically directed towards victims of human trafficking – the T and U visas and Special Immigrant Juvenile Status. There are other forms of immigration relief, however, for which trafficking victims may be eligible and that may actually be less difficult to obtain. In this chapter, we discuss some additional forms of immigration relief geared towards victims of abuse.

The following forms of immigration relief are specifically directed to spouses and children of abusive United States citizens (USCs) and lawful permanent residents (LPRs):

- VAWA self-petitioning for lawful permanent resident (LPR) status;
- VAWA cancellation of removal; and
- The abused spouse waiver for conditional permanent residence.

In addition, the applicant may be eligible for:

- Asylum and
- Relief under the Convention against Torture.

There is no requirement of any relationship with a USC or LPR for asylum or relief under the Convention against Torture.

In addition, victims of abuse and crime may also apply for any other form of immigration relief for which they are eligible.

In this chapter, we briefly describe the forms of relief listed above.

## **§ 9.2 Self-petitioning for Abused Spouses and Children of United States Citizens and lawful permanent residents, under the Violence Against Women Act.**

### **a. Overview**

Under the regular family-based immigration process, the USC or LPR spouse or parent files a visa petition with U.S. Citizenship and Immigration Services (CIS), asking that his or her noncitizen spouse or child be granted permanent resident status. If that petition is approved, then the foreign spouse or child applies for permanent residence, based upon the USC or LPR relative's approved petition. Unfortunately, this process can work great hardship on victims of domestic abuse, because the abuser, who initiates the immigration process, can use that process as a tool to control the victim. For example, the abuser may refuse to begin or continue in the immigration application, or may threaten to report the victim to the immigration authorities if the victim seeks help or attempts to report the abuse to the authorities.

In response to this problem, Congress devised a procedure known as "self-petitioning"<sup>1</sup> in the Violence against Women Act of 1994, updated in the Battered Immigrant Women Protection Act of 2000 (VAWA 2000).<sup>2</sup> "Self-petitioning" allows the foreign spouse or child (defined as unmarried and under 21 years of age)<sup>3</sup> of a USC or LPR abuser to file his or her own petition for a visa (called a "self-petition"), thereby allowing the victim, instead of the abuser, to initiate and control the immigration process. These self-petitions are filed with CIS Vermont Service Center, on CIS Form I-360. An abused spouse or child may file the self-petition even if he or she is in the United States in unlawful status.

If the self-petition is approved, the self-petitioner and his or her children are given permission to remain in the United States, with employment authorization, until a lawful permanent resident visa is available for them. This permission to remain is known as "deferred action status." Status as an abused spouse or child generally also entitles the victim to certain public benefits.<sup>4</sup>

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<sup>1</sup> INA §§ 204(a)(1)(A)(iii - vi), 204(a)(1)(B)(ii-iv), 204(a)(1)(C), 204(a)(1)(D); 8 U.S.C. §§ 1154(a)(1)(A)(iii-vi), 1154(a)(1)(B)(ii - iv), 1154(a)(1)(C), 1154(a)(1)(D).

<sup>2</sup> The Battered Immigrant Women Protection Act of 2000, §§ 1501-1513 of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

<sup>3</sup> INA § 101(b), 8 U.S.C. § 1101(b).

<sup>4</sup> 8 U.S.C. § 1641 (including abused immigrant spouses and children of USCs and LPRs as "qualified aliens" for federal public benefits purposes). While there are certain limitations on public benefits under federal law, even for qualified aliens, many states provide state public benefits to persons meeting the federal qualified alien definition.



The following persons are eligible to self-petition:

- Abused spouses of USC's and LPR's;
- Non-abused spouses whose children have been abused by the USC or LPR spouse, even if the children and abuser are not related;
- Abused persons who believed that they were validly married to a USC or LPR abuser, but whose marriage was invalid solely because the abuser was already married (known as "intended spouses"); and
- Abused children of USC's and LPR's.

Moreover, applicants in each of the above four categories may include their children under their self-petitions. This applies even to those applicants who are themselves children.

A self-petitioning spouse must establish the following:

- Marriage or "intended marriage" to the abuser;
- The abuser is a USC or LPR;
- The victim entered into the marriage in good faith, meaning that he or she intended to establish a life together with the spouse and did not enter into the marriage solely for immigration purposes;
- Battery or extreme cruelty by the USC or LPR spouse during the marriage on the self-petitioner or his or her child;
- Past or present residence with the abuser (but there is no minimum amount of time that the victim must have lived with the abuser);
- Either (a) current residence in the United States or (b) if living abroad, the abuser is an employee of the U.S. government or a member of the U.S. uniformed services or abused the alien spouse or the alien spouse's child in the United States; and
- Good moral character.

A self-petitioning abused child must establish the following:

- Relationship to the abusive parent;
- The self-petitioner is a child, meaning unmarried and under 21, at the time the application is filed;
- The USC or LPR parent battered or inflicted extreme cruelty upon the self-petitioner;
- The self-petitioner is of good moral character (presumed for children under 14);
- Past or present residence with the abuser (visitation is sufficient); and
- Either (a) current residence in the United States or (b) if living abroad, the abusive parent is an employee of the U.S. government or a member of the uniformed services or subjected the applicant to abuse in the U.S.

Prior to VAWA 2000, a VAWA self-petitioner was also required to show that failure to obtain permanent resident status would cause extreme hardship to the victim or his or her child. This requirement was removed by VAWA 2000.

**b. Battery or extreme cruelty**

The term used for abuse under the INA is “battery or extreme cruelty.” This phrase is defined broadly under the INS/CIS regulations and includes both physical and mental abuse. The term includes, but is not limited to:

- acts and threatened acts of violence;
- forceful detention causing physical or mental injury;
- psychological abuse;
- sexual abuse, rape, molestation;
- forced prostitution;
- acts that may not appear violent but are part of an overall pattern of violence;
- social isolation;
- accusations of infidelity;
- stalking;
- interrogating the victim’s friends, family, or coworkers;
- economic abuse (such as not allowing the victim to work outside the home); and
- actions against some other person or thing if these acts were deliberately used to perpetrate extreme cruelty against the self-petitioner or the self-petitioner’s child.

**c. Documenting the abuse**

Congress has imposed a special standard of proof for self-petitions, known as the “all credible evidence” standard.<sup>5</sup> This means that forms of proof that might not necessarily meet the evidentiary standards for introduction into evidence in court must be considered in a VAWA self-petition and may well meet the self-petitioner’s burden of proof. Police reports and law enforcement records of telephone calls or visits to the victim’s address are excellent forms of evidence to support a VAWA self-petition.

**d. Certain changes in status do not affect the self-petition**

Both before a self-petition is filed and while it is pending, a number of changes in status can occur. These might include a child turning 21, or a self-petitioning abused spouse obtaining a divorce from the abuser. There are a number of special provisions under VAWA governing these sorts of changes. A summary of those types of changes and their effect on a self-petition follows:

- An abused spouse may self-petition up to two years after a divorce from the abuser, if the loss of status is related to domestic violence.<sup>16</sup>
- An abused spouse of a USC may self-petition up to two years after the abuser’s death.<sup>7</sup>

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<sup>5</sup> INA § 204(a)(1)(J), 8 U.S.C. § 1154(a)(1)(J).

<sup>6</sup> INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CCC)(bbb) [spouses and children of USCs]; INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa) [spouses and children of LPRs].

- Self-petitioning and derivative children do not “age out” of eligibility, as long as they were under 21 when the self-petition was filed.<sup>8</sup>
- Spouses and children of USCs and LPRs can self-petition up to two years after the USC or LPR loses immigration status, if the loss of status is related to domestic violence.<sup>9</sup>
- A self-petitioner’s remarriage after the self-petition is approved will not revoke the approval.<sup>10</sup>

**e. Benefits for Approved VAWA Self-Petitioners**

Approval of the I-360 means that the self-petitioner is eligible for a number of benefits. These include:

- Deferred action status until the self-petitioner is eligible to adjust status to that of lawful permanent resident.
- Employment authorization.
- Public benefits, generally including medical care, food stamps, and TANF (the self-petitioner is actually eligible for these even before the self-petition is approved, if the self-petition indicates that the self-petitioner is “prima facie” eligible for approval).
- Relaxed requirements for obtaining lawful permanent residence through “adjustment of status.”
- Special waivers of inadmissibility grounds.

**§ 9.3 VAWA Cancellation of Removal for Abused Spouses and Children of USCs and LPRs who Have Been in the United States for Three Years**

Some abused spouses and children of LPRs and USCs may not be eligible to self-petition, but may still be eligible for a related form of relief known as VAWA cancellation of removal.<sup>11</sup> A grant of cancellation of removal gives the recipient lawful permanent resident status, with accompanying employment authorization, and may also make the recipient eligible for public benefits. Unlike self-petitioning, however, cancellation of removal may be applied for only in removal proceedings in the Immigration Court, as a form of relief from removal.<sup>12</sup> Where the cancellation case is very strong, the victim may wish to consider asking Immigration and Customs Enforcement to implement removal proceedings so that the victim may apply for cancellation. Because of the drastic consequences that removal proceedings may have, however, such a decision should be taken only after carefully weighing the likelihood of success and the

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<sup>7</sup> INA § 204(a)(1)(A), 8 U.S.C. § 1154(a)(1)(A).

<sup>8</sup> INA § 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv) [children of USCs], INA § 204(a)(1)(B)(iii), 8 U.S.C. § 1154(a)(1)(B)(iii) [children of LPRs]; INA § 204(a)(1)(D), 8 U.S.C. § 1154(a)(1)(D).

<sup>9</sup> INA § 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb), 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(bbb) [spouses and children of USCs]; INA § 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa), 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa) [spouses and children of LPRs].

<sup>10</sup> INA § 204(a)(1)(G), 8 U.S.C. § 1154(a)(1)(G).

<sup>11</sup> INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2).

<sup>12</sup> “Removal proceedings” is the term used under current law for proceedings to prevent a person from entering the United States or to deport a person from the United States. Prior to 1996, these proceedings were called “exclusion proceedings” and “deportation proceedings.”

risks.

The following persons are eligible to apply for cancellation of removal:

- Abused spouses of USCs and LPRs;
- Abused sons and daughters (both children and persons over 21) of USCs and LPRs;
- Non-abused parents of abused children of USCs or LPRs, even if not married to the abuser; and
- Abused “intended spouses” of USCs or LPRs.

A grant of cancellation does not include the recipient’s children, but the immigration authorities must parole the recipient’s child, or, if the recipient is a child, the recipient’s parent, into the United States until the child or parent is able to obtain a permanent resident visa, based upon a visa petition filed by the recipient, now an LPR.<sup>13</sup> It must also grant employment authorization.<sup>14</sup>

As can be seen from the list of persons eligible to apply for cancellation of removal, that list is wider than the group of persons eligible to self-petition. For example, the following persons are eligible for cancellation, even though they could not self-petition:

- An adult son or daughter of an abusive USC or LPR;
- Spouses of abusive USCs or LPRs who were divorced or widowed more than two years ago;
- Persons who are parents of abused children of USCs or LPRs and who are not married to the abuser; and
- Sons and daughters whose USC or LPR abusive parent died more than two years ago.

An applicant for cancellation must meet the following requirements:

- Three years continuous physical presence in the United States, but brief absences and abuses related to abuse do not interrupt this period;
- Good moral character during that time;
- The USC or LPR spouse or parent has subjected the applicant or the applicant’s child to battery or extreme mental cruelty;
- Removal would cause extreme hardship to the applicant or his or her USC, LPR, or “qualified alien” child or parent;
- The applicant is not inadmissible under the grounds dealing with commissions of crimes or security and related risks, nor deportable under the deportation grounds dealing with marriage fraud, crimes, failure to register, falsification of documents, or security and related issues;<sup>15</sup> and

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<sup>13</sup> INA § 240A(b)(2)(4), 8 U.S.C. § 1229b(b)(2)(4).

<sup>14</sup> *Id.*

<sup>15</sup> INA § 240A(b)(2)(A)(iv), 8 U.S.C. § 1229a(b)(2)(A)(iv).

- The applicant has not been convicted of an aggravated felony, as defined at INA § 101(a)(43).<sup>16</sup>

#### § 9.4 Special Waivers for Conditional Permanent Residents

Persons applying for LPR status based upon marriages that are less than two years old at the time the foreign spouse obtains the status are given conditional, rather than full, permanent residence.<sup>17</sup> Then, when the foreign spouse has been in conditional permanent resident status for two years, the two spouses must file a Joint Petition to Remove the Conditions (on Form I-751) and both must appear for an interview with the CIS. If the joint petition is not filed, or if it is denied, the conditional permanent residence is terminated and the foreign spouse is placed in removal proceedings. Conversely, if the joint petition is granted, the conditions are removed and the foreign spouse obtains full permanent residence.

The conditional permanent residence process can result in the same type of hardship on an abused spouse that may result from the regular family immigration process. That is, the USC or LPR spouse can use the conditional permanent residence process as a means of controlling and intimidating a victim of domestic abuse. In order to remedy this situation, Congress provided that, instead of filing a joint petition to remove the condition, the alien spouse may instead apply for a waiver of that requirement.<sup>18</sup> There are three possible grounds for this waiver:

- Extreme hardship would be caused if the alien spouse were removed from the United States;
- The alien spouse married in good faith, but the marriage has been terminated other than through the death of the spouse; or
- The foreign spouse married in good faith, but during the marriage the foreign spouse or his or her child was abused by USC or LPR spouse or parent.

A conditional resident who realizes that he or she will not be able to file the joint petition with his or her spouse may apply for a waiver of that requirement, based on one or more of the above-listed grounds. Thus, there is no requirement that an abused spouse remain in an abusive situation for the two years of conditional residence before applying for a waiver of the joint petition requirement.

#### § 9.5 Asylum

Asylum is the United States' procedure for on-shore refugee processing. A grant of asylum provides authorized stay, employment authorization, and financial and other assistance. In addition, after one year as an asylee, the asylee may apply to change his or her status to that of lawful permanent resident.<sup>19</sup> A grant of asylum includes the asylee's spouse and children.<sup>20</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> INA § 216, 8 U.S.C. § 1186a.

<sup>18</sup> INA § 216(c)(4), 8 U.S.C. § 1186a(c)(4).

<sup>19</sup> INA § 209(b), 8 U.S.C. § 1159(b).

An applicant for asylum must establish that he or she meets the definition of refugee, incorporated into United States law from the United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Under that definition, a refugee is a person who has experienced persecution or has a well-founded fear of future persecution on account of one of five “Convention grounds.”<sup>21</sup> Those grounds are race, religion, nationality, political opinion, or membership in a particular social group.<sup>22</sup>

Persecution can consist of imprisonment, torture, physical or mental abuse, denial of employment, rations, education, or other basic rights, serious discrimination, or other human rights violations. Not all mistreatment, however, will rise to the level of persecution.

Persecution may be inflicted by the government or by a person or persons the government is unwilling or unable to control. Persecution need not be inflicted with punitive intent. For example, imposition of a cultural practice such as female genital mutilation can constitute persecution.<sup>23</sup>

Persecution will support a claim of asylum only if it is inflicted on account of one of the five Convention grounds. This is sometimes called the “nexus requirement.” The Immigration Courts have granted asylum in some cases based upon domestic abuse and other forms of gender-related persecution, where the abuse has been tied to one of the five Convention grounds.<sup>24</sup>

Asylum applications may be filed either before the CIS or in removal proceedings in Immigration Court, as a form of relief from removal. If filed with the CIS, the CIS may either grant the application or refer the applicant for removal proceedings. Once the applicant is in removal proceedings, the only forum for an asylum application is before the Immigration Judge.

Around the world, many women are subjected to severe abuse, including both physical and psychological attacks by spouses, partners, or male relatives, with little or no recourse in their countries of origin because of laws, customs, religious practices, or government indifference. If a woman is or could be subject to harsh or inhumane treatment in her country because she does not agree with her husband or other male relative on such issues as religious beliefs, beliefs as to the proper role of women, or cultural practices, or because she has left an abusive situation, she may be able to establish this nexus and thus be eligible for asylum.

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<sup>20</sup> INA § 208(b)(3), 8 U.S.C. § 1158(b)(3).

<sup>21</sup> INA § 101(a)(42), 8 USC § 1101(a)(42)

<sup>22</sup> *Id.*

<sup>23</sup> *See, Matter of Kasinga*, 21 I & N Dec. 357 (BIA 1996).

<sup>24</sup> For a detailed description of recent cases dealing with gender-related asylum, see Stephen M. Knight, “Seeking Asylum from Gender Persecution: Progress and Uncertainty,” 79 *Interpreter Releases* 689 (May 13, 2002). The article reports that the INS, the Immigration Courts, and the Board of Immigration Appeals have granted asylum in cases involving honor killings, restriction of religious freedom, domestic violence, forced marriage, restriction of reproductive freedom, forced prostitution as punishment, among others. The majority of these cases are not reported as precedent decisions, however.

The U.S. law on asylum claims is currently in flux. If you are not an immigration practitioner, it is critical that any victim you work with who may have such a claim be referred to an immigration attorney who is experienced in gender-based asylum claims.

## **§ 9.6 Relief under the Convention against Torture**

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was adopted by the United Nations General Assembly in 1984 and entered into force in June, 1987. It became binding on the United States in 1994. The application procedure for relief under the Convention against Torture and definitions of key terms are found at 8 C.F.R. §§ 208.16-18.

Article 3 of the Convention against Torture prohibits its parties from expelling, returning, or extraditing a person to a country where there are substantial grounds for believing that the person would be subjected to torture. Under U.S. law, an applicant who establishes eligibility under the Convention against Torture will be granted either withholding of removal, under 8 C.F.R. § 208.16, or deferral of removal, under 8 C.F.R. § 208.17. Which form of relief is granted depends upon whether the applicant falls under one of four mandatory denial grounds dealing with persecution of others, conviction of serious crimes, or reasons to believe the applicant is a security threat. Applicants who do not fall under a mandatory denial ground will be granted withholding of removal, allowing them to remain in the United States with employment authorization. If the applicant falls under one of the mandatory denial grounds, however, the applicant will be granted deferral of removal, a lesser form of relief because it does not necessarily result in the grantee's being released from detention and is subject to review and termination if it is no longer likely that the person would be tortured in the country to which removal has been deferred.

Neither a grant of withholding nor a grant of deferral of removal extends to the grantee's spouse or children.

An applicant for relief under the Convention against Torture must establish that it is more likely than not that he or she would be tortured if removed. Not all mistreatment constitutes torture. The word torture means an extreme form of cruel and inhuman treatment, which can include mental pain or suffering. In addition, in order for an act to meet the Convention definition of torture, it must be:

- An act causing severe physical or mental pain or suffering
- Intended to inflict severe physical or mental pain or suffering
- By or at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity who has custody or physical control of the victim
- Not arising from lawful sanctions, and
- Inflicted for a purpose such as obtaining from the victim or a third person information or a confession, punishing him or her for an act the victim or a third person has committed or is suspected of having committed, or for discriminatory purposes.

An application for relief under the Convention against Torture is made on Form I-589, the same form used for applications for asylum. It may be made together with an application for asylum. The applicant may apply with CIS, unless he or she is in removal proceedings, in which case jurisdiction lies with the Immigration Judge only.

### § 9.7 Conclusion

Once helpless to regularize their immigration status on their own, abused immigrants, both those lawfully in the United States and those unlawfully present, now have recourse to a number of measures for obtaining lawful status. Law enforcement and prosecutors play a critical role in these immigration measures and in giving victims of domestic abuse and other crimes the opportunity to rebuild their lives and start anew.

### § 9.7 For Further Reading

- Catholic Legal Immigration Network, Inc. and the Immigrant Legal Resource Center, *The VAWA Manual: Immigration Relief for Victims of Abuse and Crime* (2002 and 2003).
- Immigrant Legal Resource Center, *Special Immigrant Juvenile Status Manual* (May 2001), downloadable free of charge at <http://ilrc.org/sijs/sijsmanual.pdf>.
- Stephen M. Knight, "Seeking Asylum from Gender Persecution: Progress and Uncertainty," 79 *Interpreter Releases* 689 (May 13, 2002)
- Jenna Shearer Demir, *The Trafficking of Women for Sexual Exploitation: a Gender-Based and Well-founded Fear of Persecution?*, Working Paper No. 80, New Issues in Refugee Research, United States High Commissioner for Refugees Evaluation and Policy Analysis Unit.

### § 9.8 Useful Websites

- National Immigration Project, at <http://www.nationalimmigrationproject.org>. Includes excellent primary source documents and tips on VAWA self-petitioning and cancellation, as well as the U visa.
- Center for Gender and Refugee Studies, <http://www.uchastings.edu/cgrs/> Includes primary source materials such as treaties, statutes, and cases, as well as policy materials.
- United Nations High Commissioner for Refugees <http://www.unhcr.ch>



**CHAPTER 10**  
**REPRESENTING IMMIGRANT CLIENTS: APPLYING FOR BIA**  
**AGENCY RECOGNITION AND STAFF ACCREDITATION**

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**§ 10.1 Introduction**

You do not have to be a lawyer to represent applicants for immigration benefits or persons in Immigration Court removal proceedings. Immigration law regulations recognize other categories of individuals who can provide representation. In particular, non-lawyers who work for recognized nonprofit agencies may obtain accreditation from the Board of Immigration Appeals (BIA), which allows them to represent clients applying for immigration benefits or appearing before an immigration judge in immigration court. This provision has allowed many programs to provide low-cost immigration services, thus easing the shortage of quality legal services to low-income persons in immigration proceedings.

Individuals who are helping people with immigration matters should seriously consider applying for BIA accreditation for several reasons. First, accreditation officially authorizes the advocate to provide representation and thus prevents the possibility of the advocate or his or her agency being accused of unauthorized practice of law. Secondly, accreditation indicates that the advocate is experienced and knowledgeable and thus provides to the advocate's clients both an assurance that he or she is competent to handle the case and a testimonial to the individual's excellent work.

Once the BIA accredits an individual, he or she may represent people with immigration-related applications and in Immigration Court to the same extent as a lawyer. Accredited representatives are also bound by the BIA's professional conduct rules. This reflects the great responsibility taken on by immigration lawyers and accredited representatives, who must comply with the highest standards of ethics and law while working for their clients.

## **§ 10.2 Agency Recognition**

In order for an individual to be accredited, she or he must work for a “recognized agency.” The immigration regulations that detail the requirements for agency recognition are found at 8 C.F.R. § 292.2. To obtain agency recognition, the organization must:

- Be a nonprofit religious, charitable, social service, or similar organization
- Charge only nominal fees (there is no definition of the term “nominal” for immigration purposes, but it is generally thought of as a low amount)
- Not charge excessive membership dues to persons receiving services
- Have adequate immigration knowledge, information, and resources at its disposal
- Have an independent existence apart from its proposed representative. This means that the organization must be a legitimate nonprofit, charitable organization and not established merely to provide a means through which a non-lawyer can practice law.

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### **What should the application for agency recognition include?**

An agency applying for recognized status will typically submit an application packet including the following types of documents:

- A completed Form EOIR 31, request for recognition
- Copies of the organization’s charter, articles, and bylaws
- A copy of the organization’s fee schedule for immigration services
- Evidence of tax-exempt status, such as a copy of the organization’s 501(c)(3) letter
- A statement of the organization’s sources of funding
- A statement of the organization’s immigration knowledge and experience, including a description of the number of staff, the experience of each staff member, the supervisory system and quality control of staff work, and the technical support organizations to which the organization belongs or has access

- Documents to support the staff's knowledge and experience, including, for example:
    - a list of the organization's library resources, either materials owned by the organization or materials to which the organization has ready access. The library should include at a minimum current editions of the Immigration and Nationality Act and the Code of Federal Regulations and may also include manuals, such as CLINIC's practitioner's guides, and other materials. The statement should include periodicals on immigration law that the organization subscribes to, such as the Catholic Legal Immigration News or Interpreter Releases. If the organization has internet capability, that should be mentioned, since advocates can use the CIS, EOIR, and other websites to locate immigration law regulations, cases, and forms, and other helpful information, and can belong to informative immigration listservs;
    - staff resumes;
    - letters of recommendation; and
    - copies of agendas and certificates of completion for any training sessions staff has attended.
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### **§ 10.3 Accreditation of Representatives**

Once an agency has recognition by the BIA, it may request accreditation of staff members who have "experience and knowledge of immigration law" and "good moral character." 8 CFR § 292.2(d). Note that an individual may not apply for accreditation on his or her own behalf; instead, the recognized agency requests accreditation for its staff. An agency, however, may request recognition of the program and accreditation of staff at the same time.

There are two levels of accreditation: (1) partial accreditation, which allows the advocate to represent people at INS interviews and examinations, and (2) full accreditation, which allows the advocate to represent people before the INS, the Immigration Court, and the Board of Immigration Appeals. Unless an advocate is planning to represent individuals in immigration court, he or she need only seek partial accreditation.

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#### **What should the application for individual accreditation contain?**

An application for individual accreditation should include the following:

- A letter from the agency director requesting partial or full accreditation of the

advocate. This should include a statement that the staff person has adequate experience and knowledge of immigration law and is of good moral character. It is helpful to indicate the name of the person or persons who have supervised the advocate's immigration work and describe the types of immigration work the advocate has done.

- The individual's resume, specifically documenting the individual's experience and knowledge in immigration law. It is helpful to mention all immigration trainings the individual has attended.
- Supporting documentation. This could include any diploma showing graduation from high school, college, or other institution; certificates showing completion of immigration law trainings; letters of support from persons who are willing to serve as a resource or consultant to the individual; and letters of recommendation from persons knowledgeable about the individual's work and capabilities.

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Both the application for agency recognition and the application for individual staff accreditation are filed with the BIA at the following address: Board of Immigration Appeals, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041. There is no fee for either application.

The applications must include a certificate of service, showing that a copy of the application and all attachments have been sent to the District Director having jurisdiction over the geographical area in which the applying organization is located. Within 30 days after receiving the application, the District Director must send the Board a recommendation for approval or disapproval of the application and his or her reasons, or request a specified period of time in which to conduct an investigation or otherwise obtain relevant information. The District Director must send a copy of the recommendation or request to the applicant. The applicant then has 30 days to file a response with the Board, with a certificate showing service upon the District Director.

Recognition of an organization continues unless and until the Board withdraws the recognition. There are detailed provisions for this process. Accreditation of an individual is valid for three years, and the accreditation remains valid pending Board consideration of an application to renew the accreditation if the application is filed at least 60 days before the prior accreditation expires. Accreditation also terminates if the Board terminates recognition of the individual's agency.

When should an advocate apply to be accredited? As soon as the advocate has sufficient experience and training to qualify. This could be as little as a few months of experience, if the advocate has attended trainings and educated himself or herself by reading immigration law manuals and periodicals. Note that it may be helpful to talk to recognized agencies in your area to

find out what their experiences were with the district immigration office when they applied for recognized agency status and accreditation for staff. Although immigration law is national, local offices bring their own views to bear on many issues, and it is useful to find out what concerns, if any, were expressed by the District Director in your region in connection with other recognition and accreditation requests.

## CHAPTER 11 RESOURCES FOR ADVOCATES SERVING VICTIMS OF HUMAN TRAFFICKING AND OTHER FORMS OF ABUSE AND CRIME

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### § 11.1 Written Materials

*Human Trafficking: a Resource Guide to U.S. Law*, by the Legal Aid Foundation of Los Angeles (LAFLA). A free CD-ROM compilation of statutes, regulations, government memoranda, and guidance and community education materials relating to human trafficking and U visas. Available for download free of charge at <http://www.lafla.org/pdf/HmnTrfckngGuide.pdf>.

Kathleen Kim and Dan Werner, *Civil Litigation on Behalf of Victims of Human Trafficking*, published by the Legal Aid Foundation of Los Angeles (LAFLA) and available for download free of charge at the LAFLA website, [www.lafla.org](http://www.lafla.org).

*Identification and Legal Advocacy for Trafficking Victims*, by the NYC Service Network for Trafficking Persons Legal Subcommittee.

*Human Trafficking and Slavery: Basic Tools for an Effective Response: Understanding the Legal Perspective*, by the Freedom Network Institute on Human Trafficking.

*Three Tales of Slavery in the U.S.A.*, by LAFLA, illustrated by Jessica Gao. An outreach comic book on human trafficking, available as a free download in Spanish/English and Korean/English at <http://www.lafla.org/clientservices/specialprojects/trafres.asp>.

*The VAWA Manual: Immigration Relief for Abused Immigrants*, by the Catholic Legal Immigration Network, Inc. (CLINIC) and Immigrant Legal Resource Center (ILRC), under a generous grant from the California Endowment, is a comprehensive guide for advocates working with immigrant survivors of domestic violence. This manual includes in-depth information on the VAWA self-petitioning requirements and process, adjustment of status, inadmissibility and waivers, consular processing, conditional

permanent residency, VAWA cancellation of removal, special immigrant juvenile status, the new T and U visas, gender-related asylum, and public benefits. The manual will be available for download free of charge from the ILRC, 415-255-9499, at <http://ilrc.org/vawamanual.html>. Only the 2002 version is currently available on the website as of this writing, but the 2005 edition is forthcoming in the Spring of 2005. Advocates who would like updated chapters of the manual before it becomes available on the ILRC website may contact Evangeline Abriel, at [eabriel@scu.edu](mailto:eabriel@scu.edu).

*Special Immigrant Juvenile Status for Children in the Dependency System*, by the ILRC. This practical manual includes a clear explanation of the law and a discussion of problem cases, a sample completed application form, sample juvenile court judge's order, and a summary both of immigration adjustment of status applications and other types of immigration relief for children. Available for download without charge from the ILRC website, at <http://www.ilrc.org/resources/sijs/2005%20SIJS%20manual%20complete.pdf>.

Fact sheets on various types of immigration relief, prepared by the Immigrant Legal Resource Center and available at <http://ilrc.org/resources/sijs/Fact%20sheets%20immigrant%20children.pdf>.

Sally Kinoshita, *How to Obtain U Interim Relief: a Brief Manual for Advocates Assisting Immigrant Victims of Crime* (ILRC 2005). Available for download free of charge at <http://ilrc.org/uvisa.html>

## **§ 11.2 Non-governmental Organizations Internet Resources**

### **The Freedom Network**

[www.freedomnetworkusa.org](http://www.freedomnetworkusa.org)

The Freedom Network is a national coalition of 16 organizations whose mission is to work for full access to justice for persons trafficked in the U.S., including the right to compensation and restitution from the traffickers. The website includes relevant trafficking legislation and links to the websites of member organizations.

### **GlobalRights.org**

[www.globalrights.org](http://www.globalrights.org)

Global Rights' Initiative Against Trafficking in Persons link on this website provides access to extensive materials on persons trafficked in the U.S. and abroad. This website includes links to and explanations of international and domestic policies on human trafficking and other resources on human trafficking.

**Stop Trafficking of People: An Introductory Resource**, U.S. Conference of Catholic Bishops, [www.usccb.org/mrs](http://www.usccb.org/mrs)

### **National Immigration Project of the National Lawyers Guild**

[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)

The “domestic violence” link on the website of the National Immigration Project of the National Lawyers Guild contains extensive materials on VAWA, SIJS and U visas, including links to background information, INS and CIS policy memoranda and strategy articles.

**National Immigration Law Center (NILC)**

[www.nilc.org](http://www.nilc.org)

NILC staff specialize in immigration law and the employment and public benefits rights of immigrants. Their website contains very useful information about immigrant eligibility for public benefits, including helpful charts, as well as links to their policy analysis and impact litigation, publications, technical advice, and trainings information.

**Immigrant Legal Resource Center**

[www.ilrc.org](http://www.ilrc.org)

The ILRC website includes information about ongoing ILRC seminars and publications on aspects of immigration law, as well as manuals and materials that can be downloaded and information about the Center’s activities and policy work.

**§ 11.3 U.S. Government Websites**

**U.S. Department of Health and Human Services,**

[www.acf.hhs.gov](http://www.acf.hhs.gov) (clearinghouse website)

Information about human trafficking, special information for law enforcement, social service organizations, and health care providers; fact sheets.

**United States Department of Justice**

[www.usdoj.gov/trafficking.htm](http://www.usdoj.gov/trafficking.htm)

Explanation of the federal government’s activities to combat trafficking in persons, fact sheets, identification of the various federal government departments and agencies engaged in combating trafficking.

**United States Department of State**

[www.state.gov/g/tip/](http://www.state.gov/g/tip/)

Annual State Department Report on Trafficking in Persons, description of international efforts to combat human trafficking and of U.S. government’s role.

**Citizenship and Immigration Services**

[www.cis.gov](http://www.cis.gov)



Description of VAWA self-petitioning, Special Immigrant Juvenile Status, U and T visas, and asylum; forms and instructions.

**United States Office of Refugee Resettlement, Department of Health and Human Services**

<http://www.acf.dhhs.gov/programs/orr/programs/astvict.htm>

Provides resettlement benefits to asylees and victims of human trafficking; instructions for applying for benefits and contact information for state refugee coordinators.

**§ 11.4 Technical Assistance**

**Catholic Legal Immigration Network, Inc. (CLINIC)**

McCormick Pavilion

415 Michigan Avenue NE, Suite 150

Washington, D.C. 20017

(202) 635-2556

[www.cliniclegal.org](http://www.cliniclegal.org)

Evangeline G. Abriel, [eabriel@scu.edu](mailto:eabriel@scu.edu), 408-554-5368

Sarah Bronstein, [sbronstein@cliniclegal.org](mailto:sbronstein@cliniclegal.org), 415-394-5837 (San Francisco)

Susan Schreiber, [clanicss@aol.com](mailto:clanicss@aol.com), 312-612-6712 (Chicago)

Tom Shea, [tshea@cliniclega.org](mailto:tshea@cliniclega.org), 212-826-6251 (New York City)

Provides technical assistance, training, and materials to Catholic and other non-profit organizations representing victims of domestic abuse and crime, on VAWA self-petitioning and cancellation of removal, U visas for victims of crime, T visas for victims of human trafficking, Special Immigrant Juvenile Status for immigrant children, and gender-related asylum. Maintains daily listserv of immigration-related information.

**Legal Aid Foundation of Los Angeles (LAFLA)**

5228 E. Whittier Boulevard

Los Angeles, California 90022-4013

(213) 640-3883

Fax: (213) 640-3929

Sheila Neville, Attorney, [sneville@lafla.org](mailto:sneville@lafla.org)

Provides direct representation to victims and technical assistance and training to advocates providing services to victims of human trafficking.

**The Coalition to Abolish Slavery and Trafficking (CAST), [www.castla.org](http://www.castla.org)**

5042 Wilshire Boulevard, # 586

Los Angeles, California 90036

Phone: 213-385-5584

Charles Song, Attorney, [charles@castla.org](mailto:charles@castla.org)

CAST provides services to victims of human trafficking, provides technical assistance to advocates working on behalf of those victims, and works to combat human trafficking.

**Asian Pacific Islander Legal Outreach**

1188 Franklin Street, Suite 202  
San Francisco, CA 94109  
Tel. (415) 567-6255  
[www.apilegaloutreach.org](http://www.apilegaloutreach.org)  
Ivy Lee, [ilee@apilegaloutreach.org](mailto:ilee@apilegaloutreach.org)  
Kavitha Sreeharsha, [ksreeharsha@apilegaloutreach.org](mailto:ksreeharsha@apilegaloutreach.org)

API Legal Outreach represents individual trafficking victims in their immigration proceedings. In addition, APILO staff conducts community outreach and education, and policy initiatives on behalf of trafficking victims.

**Lawyers' Committee for Civil Rights of the San Francisco Bay Area**

131 Steuart Street, Suite 400  
San Francisco, CA 94105  
Tel. (415) 543-9444  
Fax (415) 543-0296  
[www.lccr.com](http://www.lccr.com)  
Kathleen Kim, [kkim@lccr.com](mailto:kkim@lccr.com)

Provides direct legal representation to victims of human trafficking as well as trainings, community outreach and policy advocacy on behalf of trafficked persons.

**National Immigration Project of the National Lawyers Guild**

Gail Pendleton  
14 Beacon Street, Suite 602  
Boston, MA 02108  
Tel. (617) 227-9727  
[gail@nationalimmigrationproject.org](mailto:gail@nationalimmigrationproject.org)  
[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)

The Project provides technical assistance, advice and resources to legal practitioner and community groups throughout the country with a special emphasis and expertise in the area of VAWA. Maintains very useful website, described above. Sponsors seminars and produces publications on a variety of subjects to develop and improve legal and advocacy skills.

**Immigrant Legal Resource Center**

1663 Mission Street, Suite 602  
San Francisco, CA 94103  
Tel. (415) 255-9499 ext. 6263  
Fax (415) 255-9792  
[aod@ilrc.org](mailto:aod@ilrc.org)  
[www.ilrc.org](http://www.ilrc.org)

The Immigrant Legal Resource Center provides trainings, publications, and technical assistance on VAWA, Special Immigrant Juvenile Status, and other areas of immigration law, and maintains a very useful website..

**National Immigration Law Center**

4535 Wilshire Blvd., Suite 2850  
Los Angeles, CA 90010  
(213) 639-3900, X 200  
Fax: (213) 639-3911  
E-mail: [technicalassistance@nilc.org](mailto:technicalassistance@nilc.org)

The National Immigration Law Center provides trainings, publications, technical assistance, and a very useful website, specializing in public benefits for aliens.

**The Center for Gender and Refugee Studies**

U.C. Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102  
Tel. (415) 565-4791  
Fax (415) 565-4865  
<http://www.uchastings.edu/cgrs/>  
Karen Musalo, [musalok@uchastings.edu](mailto:musalok@uchastings.edu)  
Stephen Knight, [knights@uchastings.edu](mailto:knights@uchastings.edu)

The Center for Gender and Refugee Studies (CGRS) provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender related harm, at both the practice and policy levels, and seeks to track decisions in these cases. CGRS also works to coordinate legal and public policy advocacy efforts through domestic and international networking, and engages in public education efforts in order to educate decision makers and the public and contribute to the formulation of national and international policy and practice.

**American Bar Association**

**Commission on Immigration Policy, Practice and Pro Bono**

740 15th Street, N.W. 9th Floor  
Washington, DC 20005-1022  
Tel. (202) 662-1008  
Fax (202) 638-3844  
[www.abanet.org/immigprobono](http://www.abanet.org/immigprobono)  
[nugentc@staff.abanet.org](mailto:nugentc@staff.abanet.org)

The ABA Commission on Immigration Policy, Practice and Pro Bono provides grants, technical assistance and support for pro bono programs and lawyers working with detained and released children in immigration proceedings and in immigration matters. The Commission works on policy-related issues vis-a-vis children in immigration matters

and is currently undertaking a project to develop model ethical standards for the legal representation, adjudication and detention of children in immigration matters. For further information, please contact Christopher Nugent, Co-Director, ABA Commission on Immigration Policy, Practice and Pro Bono.

**Public Counsel**

601 South Ardmore Avenue  
Los Angeles, CA 90005  
Tel. (213) 385-2977  
Fax (213) 385-9089  
[www.publiccounsel.org](http://www.publiccounsel.org)

Public Counsel provides children's and immigration counsel as well as advice over the telephone and some training in Los Angeles area.

**§ 11.5 Finding Legal Representation**

Catholic Charities offices around the country provide representation in immigration matters to immigrant victims of abuse and crime. A list of these offices appears at [http://cliniclegal.org/member\\_agencies.html](http://cliniclegal.org/member_agencies.html).

The Legal Aid Foundation of Los Angeles (LAFLA) provides free legal representation in Los Angeles and Orange Counties and can assist with referrals in other parts of the United States.

Members of the Freedom Network, [www.freedomnetworkusa.org](http://www.freedomnetworkusa.org), may be able to provide legal representation or to provide referrals for legal representation.

Most cities or metropolitan areas have a legal services office wholly or partially funded by the Legal Services Corporation (LSC). These offices are authorized to provide legal representation to victims of human trafficking. The LSC website includes a map of all LSC grantees, at <http://www.lsc.gov/fundprog.htm>

You may also contact the American Immigration Lawyers Association Immigration Lawyer Referral Service (AILA ILRS). The lawyers participating in the AILA ILRS are licensed to practice law in a state or territory of the United States and are currently a member in good standing of a State Bar Association. The AILA ILRS can be contacted by phone at 1-800-954-0254 or on the web at [www.aila.org](http://www.aila.org).

If you are attempting to find pro bono attorney assistance, a local Bar Association should have a list of low fee or volunteer attorneys specializing in immigration law or in another field. The bar association may also know of other attorney volunteer organizations in the area.

## **§ 11.6 Listservs**

### **VAWA Updates**

The VAWA Updates listserv is maintained by the National Immigration Project of the National Lawyers Guild and provides ongoing updates about changes in VAWA and the new U visa provisions. To join the listserv, contact Sandy Lin at [sandy@nationalimmigrationproject.org](mailto:sandy@nationalimmigrationproject.org).

### **ILRC's Special Immigrant Juvenile Status listserv**

The ILRC SIJS listserv provides periodic legal and policy updates on Special Immigrant Juvenile Status. To join the listserv, go to: <http://ilrc.org/listserv.html>.

### **Traffickinglaw@yahoogroups.com**

Provides periodic news and updates on events related to human trafficking and efforts to prevent and combat trafficking, prosecute traffickers, and protect victims.