



# BEST PRACTICES FOR T VISAS

Lindsey Greising  
Staff Attorney, The Advocates for Human Rights

This PowerPoint is funded through a grant from the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, under award #2018-MU-MU-K153. The opinions, findings and conclusions or recommendations expressed in this presentation are those of the contributors and do not necessarily represent the official position of the U.S. Department of Justice.

---

---

---

---

---

---

---

---

---

---

# What is Human Trafficking?

- Human trafficking is about power, control, and exploitation
- It is estimated that there are **An Estimated 24.9 Million People Trapped In Forced Labor Via Human Trafficking Worldwide** (ILO, 2017)
- **In the U.S., 23,000 survivors** were identified in 2018 (Polaris, 2018)
- Movement/crossing borders is **NOT** required

---

---

---

---

---

---

---

---

---

---

# Identifying Trafficking

- ✓ Be especially vigilant when dealing with individuals working in "high-risk" industries
- ✓ Was the individual recruited, forced, or coerced into migrating?
- ✓ Has an employer, spouse, loan shark, "broker", or smuggler threatened her/him or her/his family with serious physical harm?
- ✓ Has someone threatened her/his immigration status to compel work?
- ✓ Does the employer exerts substantial control over her/his life outside of work (e.g. housing, relationships, communications)?
- ✓ Is he/she isolated from "the outside world"?
- ✓ Is he/she not being paid directly or working to pay off a debt?
- ✓ Are there indications of severe labor law violations? (e.d. safety, overtime)
- ✓ Are there signs of abuse –physical or psychological?
- ✓ Does the individual have legitimate identification? Has he/she been given fraudulent documents to use or has his/her passport been taken away or held by someone else?
- ✓ Did the employer arrange or is the employer somehow connected to the individual's method of transport and migration?
- ✓ Is the individual always accompanied by another person who seems controlling?

---

---

---

---

---

---

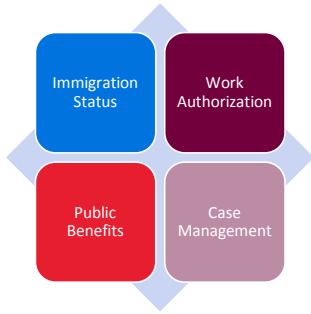
---

---

---

---

## How Federal Law Protects Victims




---

---

---

---

---

---

---

---

The Advocates for Human Rights, 2020

### What is a T Visa?

- Non-immigrant visa for victims of trafficking
  - Allows holder to remain in the U.S. in T non-immigrant status for up to four years
- 5,000 annual cap (has yet to be reached)
- Current processing time 1.5 years
- Adjudicated by USCIS Vermont Service Center

**Benefits**

- Employment eligibility once approved
- Generous waiver of inadmissibility
- Broad class of derivative T visas for family
- Access to a range of federally-funded services
- Permanent resident status after 3 years or earlier

---

---

---

---

---

---

---

---

The Advocates for Human Rights, 2020

### Who is eligible?

1. Victim of a severe form of **human trafficking**
  - Must meet *federal* labor or sex trafficking definition
2. Physically present in the United States **on account of** the trafficking
3. Cooperating with all **reasonable requests from law enforcement** regarding the investigation of the trafficking
4. Would suffer **extreme hardship** involving unusual and severe harm upon removal
5. Is **admissible**, or is granted a waiver of inadmissibility

---

---

---

---

---

---

---

---

# ESTABLISHING ELIGIBILITY:

## Victim of a Severe Form of Human Trafficking?

---

---

---

---

---

---

---

---

## Human Trafficking in Federal Law

- Statutory Definition of Human Trafficking (22 USC § 7102 (9)&(10)) :
  - Sex Trafficking – recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act in which the commercial sex act is induced by force, fraud, or coercion or in which the person induced is under 18
  - Labor Trafficking – recruitment, harboring, transportation, provision, or obtaining of a person through force, fraud, or coercion for the purposes of involuntary servitude, debt bondage, peonage, or slavery

---

---

---

---

---

---

---

---

## Human Trafficking: Federal Breakdown

<p><b>Action</b></p> <p>What the trafficker did to get the victim</p>	<ul style="list-style-type: none"> <li>• Recruitment, transportation, harboring, enticing, or obtaining</li> </ul>
<p><b>Means</b></p> <p>How the victim was brought into and kept in the situation</p>	<ul style="list-style-type: none"> <li>• <b>Force</b> – physically/sexually, bodily harm</li> <li>• <b>Fraud</b> – lies, false promises, fake contracts</li> <li>• <b>Coercion</b> – threats of violence, shame, threats of abuse of legal process</li> <li>• Unless under 18 (for sex trafficking only)</li> </ul>
<p><b>Purpose</b></p> <p>What purpose/goal?</p>	<ul style="list-style-type: none"> <li>• Involuntary servitude (22 U.S.C. § 7102(8))</li> <li>• Debt bondage (22 U.S.C. § 7102(5))</li> <li>• Slavery (common law)</li> <li>• Peonage (42 U.S.C. § 1994)</li> <li>• Commercial sex act</li> </ul>

---

---

---

---

---

---

---

---

## Supporting Evidence- Victim of Trafficking

- Types of Suggested evidence:
  - Form I-914, Supplement B (not required)
  - Contract(s)
  - Communications regarding arrangement/understanding of the job
  - Pay stubs/bank records/handwritten notes
  - Medical records for work-related injuries
  - Recorded communications regarding threats/abuse
  - Psychological evaluation
  - Police reports/criminal records
  - Related news articles

---

---

---

---

---

---

---

---

---

---

## ESTABLISHING ELIGIBILITY:

In the U.S. On Account of the Trafficking

---

---

---

---

---

---

---

---

---

---

- “[I]s physically present in the United States...on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking” INA § 101(a)(15)(T)(i)(II)
  - NOTE: 8 CFR § 214.11(g) take a narrow approach to this
- Opportunity to Depart? **Not required**
- **Travel or removal** can affect eligibility (based on the regulations)
  - Instead, show **parole** by law enforcement or **continuation of trafficking**
- **Learn more!**
  - March 10 CLE in Minneapolis

---

---

---

---

---

---

---

---

---

---

### Supporting Evidence- Physical Presence

- Types of Suggested evidence:
  - Overlap with evidence showing status of victim of trafficking
  - Proof of address or place of employment
  - Parole by law enforcement
  - Mental/physical health records
  - Text messages/social media
  - Parole by law enforcement




---

---

---

---

---

---

---

---

## ESTABLISHING ELIGIBILITY:

Cooperation With Law Enforcement

---

---

---

---

---

---

---

---

### Step 1: Reporting the crime

- **Where to report**
  - **State/Local:** taskforce, Dep't of Labor, attorney general, etc.
  - **Federal:** HSI, FBI, Dept of State, AUSA, DEA, CBP, etc.
  - National Human Trafficking Hotline
- **Strategic considerations**
  - Type of case and location
  - Local/State v. Federal
  - Client comfort
  - Immigration status concerns
  - Urgency/harms




---

---

---

---

---

---

---

---

### Step 2: Comply with reasonable requests

- **If no investigation/no request**
  - Not required to comply if no request (*must still report*)
- **If request and client is able to comply**
  - Confirm the request is **reasonable**
    - **totality** of the circumstances test **8 CFR 214.11(h)(2)**.
    - **"comparably situated crime victims"** standard; not a "subjective trafficked person"
    - whether the LEA request was reasonable, **not whether the victim's refusal was unreasonable, 8 CFR 214.11(m)(2)(ii)**.
  - Must comply through adjustment
- **If request but client is unable to comply**
  - Not required to comply if **under 18 or cannot due to mental/physical illness**
    - See INA section 101(a)(15)(T)(i)(III)(bb)-(cc), 8 CFR 214.11(b)(3)(i)-(ii) and (h)(4)(i)-(ii).
  - Document willingness to assist in other regards and inability

---

---

---

---

---

---

---

---

---

---

---

### Supporting Evidence- Compliance with LEA Requests

- Types of Suggested Evidence:
  - I-914, Supplement B
  - Records of correspondence or interviews with law enforcement
    - Emails requesting investigation/interview
    - Business cards
    - Call logs
  - Call Notes Release Letter from National Trafficking Hotline
  - Expert reports showing inability to comply, if applicable
  - Trial transcripts
  - Media/press releases

---

---

---

---

---

---

---

---

---

---

---

## ESTABLISHING ELIGIBILITY:

Extreme Hardship on Removal

---

---

---

---

---

---

---

---

---

---

---

- Extreme hardship involving unusual and severe harm on Removal considering: (8 C.F.R. § 214.11(i) (2008))
  - Age and Personal Circumstances
  - Physical or Mental Illness
  - Trafficking-Related Physical or Psychological Consequences
  - Loss of Courts
  - Laws, Social Practices, or Customs of Home Country that might penalize the applicant for his or her victimization
  - Risk to Physical Safety (from trafficker(s) or general country conditions)
  - Risk of Being Re-Trafficked
- Financial and economic hardship alone are NOT sufficient

---

---

---

---

---

---

---

---

---

---

### Supporting Evidence- Hardship

- Types of Suggested Evidence:
  - Documentation regarding psychological or medical care necessitated by trafficking related abuse or injuries especially where ongoing care needs could not be met in home country
  - Specific family circumstances
  - Risk of bring re-trafficked
  - U.S. Dept of State TiP Report
  - Reports showing lack of access to justice abroad
  - Statement by client
  - Letters of support/statements by others

---

---

---

---

---

---

---

---

---

---

## ESTABLISHING ELIGIBILITY:

Inadmissibility waivers

---

---

---

---

---

---

---

---

---

---

## Admissibility

- Inadmissibility grounds in INA 212
  - EXCEPT public charge (no waiver required)
- Broad waiver available for:
  - Anything *related to the trafficking*
  - Anything not related but in the interest of discretion
  - EXCEPT tax evasion, terrorism, or international child abduction
- See 8 C.F.R. 212.16(b)

---

---

---

---

---

---

---

---

---

---

## Supporting evidence- admissibility

- Proof of admissibility (if no inadmissibility grounds apply)
- Waiver of Inadmissibility (Form I-192)
- Payment or Fee Waiver (Form I-912)
  - Current fee: \$930
  - Fee waiver requires evidence of taxes, bills, assets, bank statements, and/or financial hardship grounds (medical bills, etc.)
  - **NOTE:** USCIS is summarily denying fee waiver requests in many cases– risks if responding to an RFE
- Evidence in support
  - Letters of good moral character
  - Affidavit of client regarding grounds
  - Proof of relationship to trafficking and/or national interest

---

---

---

---

---

---

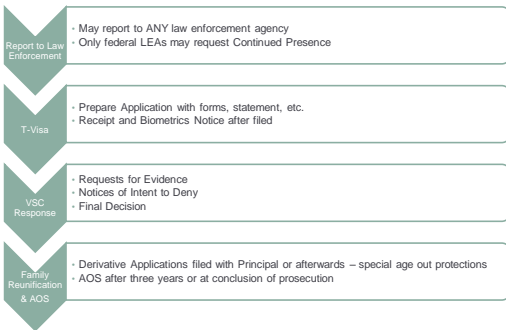
---

---

---

---

## T Visa Process




---

---

---

---

---

---

---

---

---

---



## How to apply for a T Visa?

- Application packet
  - **Forms:**
    - I-28 (if represented);
    - I-914, Application for T nonimmigrant Status;
    - I-914 supp. A (if family members);
    - I-914 supp.B, Law Enforcement Cert. (if available);
    - I-192 (if applicable) and I-912 (if needed)
  - **Identity Documents:** passport\*; birth certificate (if available); driver's license, etc., birth certificates and/or marriage licenses of family
  - **Supporting Evidence:** as discussed above
  - **Where to file:** USCIS- VSC, 75 Lower Welden St, St. Albans, VT 05479
  - **Transmittal letter:** Concisely detailing your client's eligibility

---

---

---

---

---

---

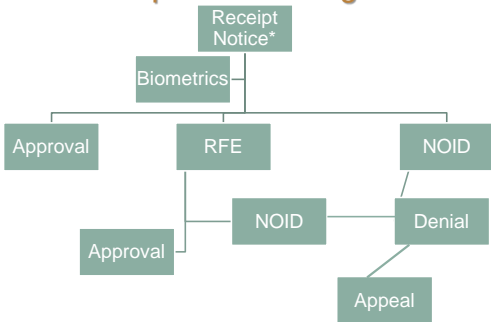
---

---

---

---

## What to Expect After Filing?




---

---

---

---

---

---

---

---

---

---

### • Decision (~18 months from filing)



- **Granted**
  - Work permit
  - Can begin consular processing for derivatives not already in U.S.
  - Access to broad range of public benefits



- **Denied**
  - Appeal to AAO
  - NTA memo – implementation currently postponed– requires negatively adjudicated applications be referred by USCIS to ICE for initiation of removal proceedings if applicant is inadmissible
  - Usually applicable to T Visa applicants due to unlawful presence and/or entry without inspection

---

---

---

---

---

---

---

---

---

---



# OTHER CONSIDERATIONS

---

---

---

---

---

---

---

---

## Continued Presence

- Provides victims access to benefits before T approved
- Can only be requested by Federal agencies
  - Granted by ICE Law Enforcement Parole Branch
- Issued for one-year periods; renewable
- Can be approved with uncorroborated statements and submitted before investigation begins
- <https://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>
- Lesser alternative: deferred action

---

---

---

---

---

---

---

---

## Office of Trafficking in Persons (OTIP)

- Housed within the Administration for Children and Families (ACF)
- **Eligible even if trafficking only occurred outside the U.S.**
  - So long as victim is a minor
- RFA – request for assistance – **can be submitted by anyone on behalf of minor human trafficking survivor**
  - Age out of eligibility to apply at 18, but as long as RFA is submitted before 18<sup>th</sup> birthday, applicant will remain eligible
- OTIP determination of eligibility **may be submitted as evidence that client is a severe form of human trafficking**
  - BUT eligibility determination is in no way dispositive and is often rejected as persuasive absent other evidence establishing severe form of human trafficking element by USCIS
- **Make determinations regarding eligibility for support services**
  - Access to all services available to refugees

---

---

---

---

---

---

---

---

## Derivatives



- **Derivative T applications**
  - **Broad category of family included:**
    - See INA §101(a)(15)(T)(ii)(III) and [https://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/Interim\\_PM-602-0107.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/Interim_PM-602-0107.pdf)
  - Filed concurrently with or subsequently to the principal's T Visa application
  - May process inside or outside the U.S.
  - Annual 5,000 cap does NOT apply to derivatives
- **Family Reunification**
  - Consular processing experiences vary by country
  - IOM assistance with consular processing and travel– request before beginning consular processing

---

---

---

---

---

---

---

---

---

---

## Other Immigration Remedies

- **U Visa – victims of qualifying crimes**
  - 12 year wait (10,000 annual cap, waitlist at 122,000+)
  - Deferred action can be granted if U Visa application is approved to allow for employment authorization while waiting to get U status
  - Requires law enforcement certification
  - Requires substantial physical or mental abuse
  - Can be processed from outside of the U.S.
- **Asylum**
  - Defensive or Affirmative
  - Note one-year bar timing considerations
- **Special Immigrant Juvenile Status (SIJS)**
  - Minors (under 18)
  - Requires final custody determination issued by competent authority
- **VAWA petition/cancellation**
  - Especially where trafficker is a family member

---

---

---

---

---

---

---

---

---

---

## Upcoming Trainings



- **February 11-12** (Brainard, MN) – Minnesota Conference on Trafficking
- **March 10** (Minneapolis) – Defining “on account of” in T visa cases
  - Expert practitioner training on this important T visa component with best practices and tricks
- **April 4** (IAN) – Humanitarian Asylum
- **June 4** (IAN) – Best Practices for Detained Representation
- **Hands-on Learning is the Best!** –
  - Contact The Advocates to represent a human trafficking survivor!
    - We have opportunities for remote assistance!

---

---

---

---

---

---

---

---

---

---

## QUESTIONS?

---

Lindsey Greising  
Staff Attorney  
The Advocates for Human Rights  
[lgreising@advrights.org](mailto:lgreising@advrights.org); 612-746-4691



---

---

---

---

---

---

---

---