



Introduction to Labor Trafficking: The T Visa

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The Advocates for Human Rights

Founded in 1983, The Advocates for Human Rights is an NGO dedicated to the **promotion and protection of internationally recognized human rights** locally, nationally, and internationally.

- Refugee and Immigrant Rights
- International Justice
- Women's Rights
- Research, Education and Advocacy
- Sankhu-Palubari Community School in Nepal



The Naomi Project

A **workers' and immigrants' rights** organization based in Sioux Falls, South Dakota, The Naomi Project reaches out to vulnerable people who may be the victims of labor trafficking and educates workers on their rights by:

- Facilitating workers' rights **trainings** in the community;
- **Accompanying** victims of labor trafficking through the T Visa process; and
- Providing **support services** to help trafficking victims move forward and achieve justice.

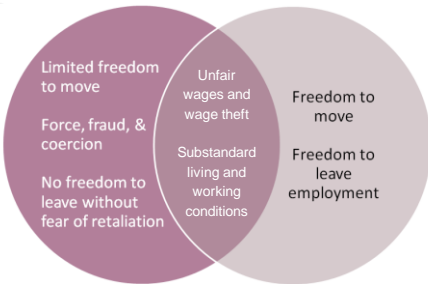


What Is Human Trafficking?

- Human trafficking is slavery in the 21st century
 - 2nd largest criminal enterprise worldwide (\$150 billion dollars per year)
 - An estimated **24.9 million people** are being trafficked at any given time (ILO, 2016)
- Key aspects
 - Freedom curtailed in some way such that the victim cannot leave or feels that s/he cannot leave the situation
 - Services extracted through force, fraud, or coercion
 - Movement is NOT required**
 - Happens everywhere, from the smallest rural community to the largest urban area
- Human trafficking is about power, control, and exploitation



Labor Trafficking vs. Labor Exploitation



Trafficking vs. Smuggling

Trafficking

- No true consent
 - Consent based on false promises is fraud
- Exploitation focused
- Crime against the individual
- Traffickers receive ongoing profits from continued exploitation of victims

Smuggling

- Voluntary (individual asks to be transported)
- Transportation focused
- Crime against the U.S.
- Smugglers get one-time fee

NOTE: smuggling can become trafficking



Human Trafficking in Federal Law

- Trafficking Victims Protection Act (TVPA) and Reauthorization Act (TVPRA)
- 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

→ **AMP Model**



Human Trafficking: The AMP Model

Action

What the trafficker did to get the victim

- Recruitment, transportation, harboring, enticing, or obtaining

Means

How the victim was brought into and kept in the situation

- **Force** – physically/sexually, bodily harm
- **Fraud** – lies, false promises, fake contracts
- **Coercion** – threats of violence, shame, threats of deportation or notifying authorities
- Unless under 18 (for sex trafficking)

Purpose

What purpose/goal?

- Involuntary servitude
- Debt bondage
- Slavery
- Commercial sex act



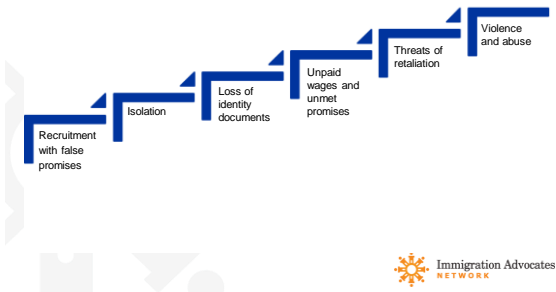
Expanding Identification

Anyone can be recruited, lured, tricked, or enticed into becoming a trafficking victim, most often through a job offer or a trusted relationship.

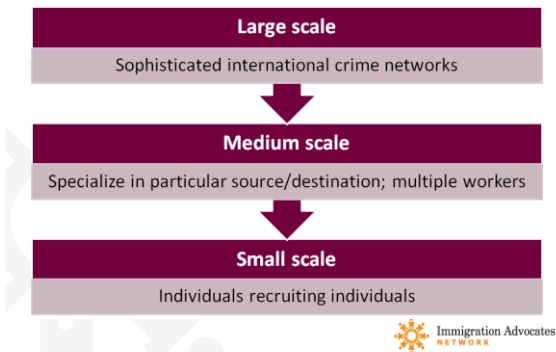
Human trafficking victims include **all demographics**: male and female, children and adults, foreign and domestic survivors, and both sex and labor trafficking.



How Does Labor Trafficking Happen?



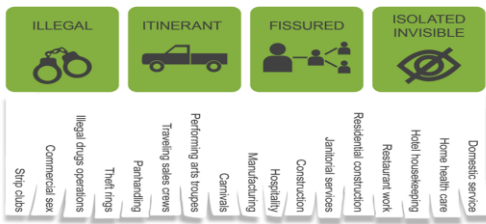
Who Are the Traffickers?



High-Risk Industries

NEED A JOB?

Help wanted in the following high-risk industries:



Human Trafficking Risk Factors



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Potential Signs of Labor Trafficking



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Additional Indicators

Poor Mental Health or Abnormal Behavior

- Is fearful, anxious, depressed, submissive, tense, nervous, or paranoid
- Exhibits unusually fearful or anxious behavior after bringing up law enforcement
- Avoids eye contact

Poor Physical Health

- Lacks medical care or is denied medical services by employer
- Appears malnourished
- Shows signs of repeated exposure to harmful chemicals
- Shows signs of physical or sexual abuse, physical restraint, confinement, or torture

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Key Screening Questions

- **Is someone holding your personal documents for you?**
 - I.D., passport, or papers
- **Does someone else control the decisions you make about your life?**
 - Where you go; where you live; who you talk to; when you see your family; whether you take breaks at work; whether you work when you are sick or injured; or how you spend your money
- **Do you owe money to your boss, the person who hired you, or the person who helped you find the job?**
 - Money is taken directly from your pay to cover a debt or for travel; the amount you owe increases; or the amount you owe does not decrease
- **Are you receiving all of your pay?**
 - Not paid at all; not paid on time; not paid as promised; or paid in housing, food, or other things
- **Are you afraid something bad will happen to you or someone else if you leave your work?**



What Happens Once a Victim Is Identified?

- **Services/Funding**
 - TVAP pre-certification
 - OTIP (minors)
- **Law enforcement involvement**
 - Federal agencies
 - Department of Homeland Security, Homeland Security Investigations
 - State Department, Diplomatic Security Service
 - Federal Bureau of Investigation
 - State agencies
 - Department of Commerce - Fraud Bureau
 - Bureau of Criminal Apprehension
 - State Patrol
 - County Police Office
 - Municipal Police Offices
- **Legal Services**
 - Immigration
 - Workers' Compensation
 - Child Protection



Needs of Trafficking Victims

- Basic needs and housing
- Medical and mental health care
- Education
- Employment
- Belonging and support
- **Advocacy in criminal justice system**
- **Legal status: immigration, expungement of record, identity**
- **Legal services to regain control over life choices: children, marriage, housing, employment, finances**



What Is a T Visa?

- Nonimmigrant visa
 - Allows holder to remain in the U.S. in T nonimmigrant status for up to 4 years
- 5,000 annual cap (has yet to be reached)
- Current processing time ~1 year
- Adjudicated by USCIS Vermont Center



Benefits

- Work permit
- Derivative T visas
- Access to a range of federally funded services
- Permanent resident status



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Key Differences Between T Visa and Asylum

- Eligibility for T Visa is not a defense in removal proceedings
- Traffickers are often in the U.S., increasing fear
- Required to report to law enforcement, increasing trauma
- Not eligible for work permit while waiting, increasing instability
 - Need to seek CP or DA
- Restitution or civil damages may be available



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T Visa Eligibility

Eligibility Criteria

1. Victim of a severe form of human trafficking
 - Must meet federal labor or sex trafficking definition
2. Physically present in the U.S. on account of the trafficking
3. Cooperating with all reasonable requests from law enforcement regarding the investigation of trafficking
4. Would suffer extreme hardship involving unusual and severe harm upon removal

Admissibility and Waiver of Grounds of Inadmissibility

- A T Visa applicant must also be admissible to the U.S. or be eligible for a waiver of applicable grounds of inadmissibility



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Establishing Eligibility

Use AMP Model for Labor Trafficking

- Victim of a Severe Form of Human Trafficking?
 - Action** – Recruiting, harboring, transporting, providing, or obtaining
 - Means** – force, fraud, or coercion.
 - Purpose** – involuntary servitude, slavery, debt bondage, peonage, commercial sex acts.

Fraud → often involves promises related to working conditions, wages, or educational opportunities

Coercion → is statutorily defined as including (22 U.S.C. 7102(2)(C)):

- Threats of serious harm to or physical restraint against any person;
- Scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against the person; and
- The abuse or threatened abuse of the legal process



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)

- "[T]he physical presence requirement reaches an alien who: is present because he or she is being subjected to a severe form of trafficking in persons; was recently liberated from a severe form of trafficking in persons; or was subject to severe forms of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons." 8 CFR § 214.11(g)

Present

- Because s/he was trafficked,
- Because s/he recently escaped from a trafficking scheme, or
- As direct result of past trafficking

Opportunity to Depart? Not required

Even one trip back to home country can eliminate T-visa eligibility

- Unless survivor can establish that return to the U.S. was related to continued or new incident of trafficking or he or she was paroled back in by law enforcement to assist with an investigation into the trafficking



Establishing Eligibility

Cooperation With Law Enforcement

Has the trafficking been reported?

- If yes, has the client cooperated with all reasonable requests from law enforcement regarding investigation of the trafficking?
- If the trafficking has not been reported, is the client willing to report the trafficking?
 - Call the national Trafficking Hotline to report
 - Get your client's permission to report the trafficking on his or her behalf to a law enforcement
 - Report to a local law enforcement agency if appropriate
 - Report to the Human Trafficking Task Force with jurisdiction over the trafficking (federal or state)



Establishing Eligibility

Extreme Hardship on Removal

Extreme hardship involving unusual and severe harm on Removal
(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 her or his 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

Victim of Severe Form of Human Trafficking

- Contract(s)
- Communications regarding arrangement/understanding pre-departure
- Pay stubs/bank records
- Medical records for work related injuries
- Recorded communications regarding threats/abuse
- Psychological evaluation
- Police reports
- Related news articles

Physical Presence

- Proof of address of place of employment
- Much of the evidence for status as victim of HT will be helpful in establishing physical presence



Supporting Evidence

Cooperation with Law Enforcement

- I-914 supplement B - Law Enforcement Certification
 - Helpful, though NOT required
- Records of correspondence or interviews with law enforcement
- Request "Call Notes Release Letter" from National Trafficking Hotline

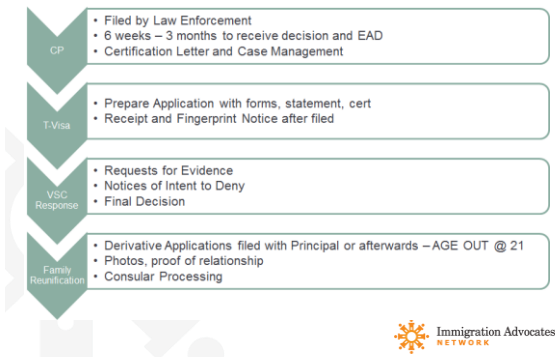
Extreme Hardship on Removal

- 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
- Country conditions
- Specific family circumstances
- Risk of being re-trafficked

Inadmissibility Waiver Request



The T Visa Process



Continued Presence

- Form of Deferred Action for victims of human trafficking
 - 107(c)(3) of the TVPA, codified at 22 U.S.C. 7105(c)(3)
- Can only be requested by a **federal** law enforcement agency
- Allows victims to remain in the U.S. temporarily during the ongoing investigation into the trafficking
 - Usually granted for one year and *may* be renewed in one-year increments

✓ Benefits

- Access to medical assistance, SNAP (food assistance), and Refugee Cash Assistance
- Employment Authorization Document ("EAD")
- Social Security Number



Derivatives

Derivative T Applications

- Principals **21 and older** can include spouses and unmarried children under 21
- Principals **under 21** can also include parents and unmarried siblings under 18
 - IF those family members face a "present danger of retaliation" for the principal's escape from trafficking or helpfulness to law enforcement
 - INA §101(a)(15)(T)(ii)(III)
- May be filed concurrently with or subsequently to the principal's T Visa application
- Annual 5,000 cap does NOT apply to derivatives

Family Reunification

- Consular processing experiences vary by country
- IOM assistance with consular processing and travel
- TVAP eligibility of family members is not guaranteed



What to Expect After Filing

- Requests for Evidence (RFEs)
- Requesting a *bona fide* determination from USCIS
 - May be necessary to seek administrative closure of ongoing removal proceedings
- Notice of Intent to Deny (NOID)
 - Policy Memorandum 602-0050.1, Updated Guidance for the Referral of Cases and Issuances of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, issued June 28, 2018



What to Expect After Filing

Decision (~10-12 months after filing)

- **Granted**
 - Work permit
 - Can begin consular processing for derivatives not already in U.S.
- **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



Removal Proceedings

- Immigration judges do NOT have jurisdiction to adjudicate T Visa applications as a form of relief from removal
- Seek **Administrative Closure**
 - *Bona fide* determination
- Alternatively, seek a **Continuance** to allow an opportunity for USCIS to adjudicate the application
- Once T Visa is granted, move to re-calendar (if administratively closed) and terminate proceedings
- **Removal Orders**
 - Under ICE monitoring
 - Seek a stay of removal or deferred action
 - File a motion to reopen



Adjustment of Status

T visa holders may adjust **after three years** in T status or as soon as their **cases are closed**. INA §245(l), 8 CFR §245.23.

- Continued presence prior to gaining the T visa counts towards the three years otherwise required. INA §245(l)(1)(A), 8 CFR §214.11(p)(1).
- Must provide evidence of case closing for early adjustment (e.g., letter from U.S. Attorney's Office confirming conclusion of case)

Applicants in T nonimmigrant status must show admissibility, good moral character and "extreme hardship involving unusual and severe harm." INA §245(l)(1), 8 CFR §245.23.



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
- Country conditions related to trafficking

Special Immigrant Juvenile Status (SIJS)

- Minors
- Requires final custody determination issued by competent authority

VAWA petition/cancellation

- Especially where trafficker is domestic partner



Questions

Questions?

(Use the chat box on the right of your screen to ask questions.)



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