
**REPRESENTING IMMIGRANT SURVIVORS OF
HUMAN TRAFFICKING:
T NONIMMIGRANT STATUS (“T VISA”)
TRAINING MANUAL**

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NIJC would also like to thank the trafficking survivors who demonstrate remarkable strength and courage in the face of hardship. These resilient individuals inspire us to continue the struggle for dignity and human rights.

Please Note: This manual is a brief guide to the T visa and does not purport to discuss all aspects of immigration practice or provide legal advice. Additional sources should be consulted when more complex questions regarding current law and procedure arise. Many of these resources are referenced in this manual. In addition, NIJC maintains an extensive library of immigration law materials, and pro bono attorneys are encouraged to consult these materials.

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Acronyms

AG	Attorney General
AAO	Administrative Appeals Office
ICE	Immigration and Customs Enforcement
CAT	Convention Against Torture
CIR	Comprehensive Immigration Reform
DACA	Deferred Action for Childhood Arrivals
DHS	Department of Homeland Security
EOIR	Executive Office for Immigration Review
FOIA	Freedom of Information Act
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IJ	Immigration Judge
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
LPR	Lawful Permanent Resident
NOID	Notice of Intent to Deny
NTA	Notice to Appear
SSA	Social Security Administration
RFE	Request for Evidence
TA	Trial Attorney
TPS	Temporary Protected Status
TVPRA	Trafficking Victims Protection Reauthorization Act
UAC	Unaccompanied Alien Child
UNHCR	United Nations High Commissioner for Refugees
USC	United States Citizen
USCIS	United States Citizenship & Immigration Services
VAWA	Violence Against Women Act

INFORMATION ON NIJC'S PRO BONO PROGRAM

The National Immigrant Justice Center

The National Immigrant Justice Center (“NIJC”) is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers. With offices in Chicago, Indiana, San Diego, and Washington, D.C., NIJC provides direct [legal services](#) to and [advocates](#) for these populations through policy reform, impact litigation, and public education. Each year, NIJC provides free or low-cost legal immigration services to approximately 10,000 immigrants and asylum seekers from more than 95 countries. NIJC seeks to preserve the civil and human rights of immigrants, refugees, and asylum seekers. Since its founding in 1984, NIJC has been unique in blending individual client advocacy with efforts toward broad-based systemic change.

NIJC’s pro bono program relies on volunteer attorneys, the great majority of whom have no previous experience in immigration law. NIJC assists its volunteers by providing training, materials, technical assistance, and consultation as needed. Largely as a result of the efforts of its volunteers, NIJC has helped thousands of non-citizens begin new lives in the United States and has become a national model for legal clinics providing immigration legal services.

For more information on NIJC, please visit www.immigrantjustice.org.

About NIJC’s Clients

NIJC’s clients come from a wide range of cultural, religious and socioeconomic backgrounds. NIJC’s clients come from regions including from Africa, the Middle East, Europe, Asia, and Latin America. NIJC’s clients speak many different languages, and they have varying levels of English proficiency. Some clients have children and other family members in the United States, whereas others have no relatives in the United States. All of NIJC’s clients are low income.

Many of NIJC’s clients who are survivors of human trafficking contend with severe trauma stemming from their experiences of abuse and may have legal and non-legal needs outside of their immigration case. Some legal needs may be in areas such as: family law (divorce, custody, child support); orders of protection; employment law and wage recovery; and criminal defense. Some social service needs may be in area such as: applying for public benefits; accessing medical and mental health services; counseling/therapy; securing safe and stable housing; and financial and food assistance.

NIJC frequently works with trafficking-specific social service providers—including [Heartland Human Care Services’ Freedom From Trafficking Program](#) and the [Salvation Army’s STOP IT Initiative Against Human Trafficking](#)—that can help address client’s non-legal needs. Recognizing the unique roles and responsibilities of attorneys and social service providers is crucial to successful representation. NIJC finds that clients that have the support of a social service case manager are often better able to engage in their immigration legal case. In some cases, prior to placement with a pro bono attorney, NIJC may have referred the client for social services. Please reach out to your NIJC point of contact if your client has not yet been referred to a social service provider or if new social service needs arise during the course of your representation. Additionally, please contact

NIJC if your client expresses a need for non-immigration-related legal services. NIJC can facilitate a referral to an appropriate service provider.

Additionally, some of our clients are involved as witnesses in criminal proceedings against their traffickers. Thus, it is important for our volunteer attorneys to familiarize themselves with general information about victim's rights.¹ Clients will often look towards their attorney to understand their rights as a victim.

About This Manual

This manual is intended to provide information about and guidance on representing immigrant survivors of labor and sex trafficking who may qualify for T Nonimmigrant Status, or a "T visa." These materials are meant to provide attorneys with the tools necessary to provide quality immigration legal representation and counsel using a comprehensive and culturally appropriate approach. Please note that this manual is **not** intended to substitute for experienced legal counsel and representation. Always consult an immigration expert when legal questions arise.

This manual also addresses some of the socioeconomic, cultural and legal issues that impact NIJC's trafficking clients. It is important for attorneys to understand the dynamics of trafficking in order to provide quality legal representation. To adequately represent clients who are immigrant survivors of trafficking, attorneys must understand relevant immigration laws, regulations, as well as the unique legal and social obstacles facing trafficked immigrants. It is critical to understand the legal and emotional complexities survivors of trafficking may face in the process of participating in the criminal justice system. To fulfill the requirements of the T visa, almost all NIJC clients cooperate in the investigation or prosecution of their trafficker(s). This participation ranges from reporting the crime to testifying against their trafficker(s). It is common that the prosecution or conviction of a perpetrator will not leave the survivor feeling that justice has been served.

The appendices to this manual include various sample documents used by NIJC staff when providing services to immigrant survivors of trafficking. Also included are quick reference guides to review the timeline of the case and tips for working with survivors.

What NIJC Expects from Pro Bono Attorneys

NIJC takes every trafficking case very seriously and asks that volunteers do the same. Prior to accepting a case we ask all pro bono attorneys to review our [Pro Bono Guidelines](#).

NIJC asks that pro bono attorneys and their law firm or corporate employers agree:

- To attend or watch an available NIJC training.
- To provide representation on a case for its duration. This means through completion of adjudication on the merits of the T visa case, including representation in any request for evidence (RFE) or notice of intent to deny (NOID) issued by U.S. Citizenship and Immigration Services (USCIS), and if necessary, before the Administrative Appeals Office (AAO) if the T

¹ For resources on victim's rights, see National Crime Victim Law Institute website at <https://ncvli.org/>.

visa application is denied by USCIS. If federal litigation becomes necessary, NIJC typically asks that the representing firm consider remaining involved.

- To transfer representation of the case to another attorney in the partner firm if the pro bono attorney is compelled to withdraw representation for any reason other than emergence of a conflict of interest or termination of representation due to client misconduct. NIJC is unable to absorb pro bono cases in-house, except in very limited circumstances.
- To inform NIJC of any transfer of representation within the firm or of the addition of attorneys to the legal team assigned to the case.
- To keep NIJC informed of the status of the case. NIJC remains “of counsel” in trafficking matters referred by NIJC for pro bono representation. As such, NIJC needs pro bono teams to provide NIJC with regular case updates and respond to NIJC inquiries.
- To keep NIJC informed of any communication issues with the client. If the client has been nonresponsive or difficult to work with, please notify NIJC as soon as possible so that NIJC can try to facilitate communication.
- To contact NIJC if the client appears eligible for another immigration benefit. Pro bono attorneys should understand that applying for other immigration benefits may impact the client’s case. Although NIJC provides legal services in nearly all areas of immigration law, NIJC’s initial involvement in a pro bono trafficking matter is typically limited to T visa representation. If a client becomes eligible for another immigration benefit, NIJC may execute a supplementary retainer with the client to assist in seeking that benefit.
- To contact NIJC if the client requests assistance regarding other legal matters or has contact with a law enforcement agency. Other legal matters, particularly those involving the criminal justice system, may impact the client’s immigration case. Although NIJC may be unable to provide technical support on non-immigration legal matters, NIJC has relationships with many other legal aid organizations that may be able to assist the client.
- To contact NIJC before speaking with the media or any members of Congress about the case. NIJC is actively involved in immigration policy and advocacy efforts at the state and national levels, and with local and national media. Coordinating with NIJC will ensure that any advocacy efforts achieve the best possible result for the client.

T visa cases are time intensive to prepare. However, as clients are not eligible for work authorization until the T visa is filed, **NIJC requests that all T visa cases be filed within six to nine months of the volunteer attorney signing the engagement letter/retainer with the client.** If over the course of representation, the volunteer attorney finds that this timeline is not feasible, NIJC expects volunteer attorney to contact NIJC to determine an appropriate timeframe to file.

NIJC thanks you for your interest in, and commitment to, assisting immigrant trafficking survivors.

What Pro Bono Attorneys Can Expect from NIJC

NIJC provides pro bono attorneys with comprehensive training and information on how to prepare T visa applications and requests for related benefits.

NIJC does not simply refer out cases, but remains “of counsel” in every case. Pro bono teams are strongly encouraged to call project staff when questions arise or to discuss case theories or interview strategies. NIJC understands that many volunteers have no prior experience in immigration law and provides support and assistance to attorneys with all levels of experience.

Volunteers can expect the experience of representing an immigrant survivor of trafficking to be very rewarding. Securing legal status for an immigrant survivor provides security from deportation, allows for family reunification, enables clients to seek lawful employment and often empowers survivors to permanently break free from the trafficking situation. This work is personally and professionally gratifying. Thank you for joining NIJC in this important effort.

NIJC carries comprehensive professional liability insurance, which specifically covers pro bono attorneys.

UNDERSTANDING HUMAN TRAFFICKING

Understanding Transnational and Cultural Barriers Facing Immigrant Survivors of Trafficking

Human trafficking is a form of modern-day slavery where traffickers profit from the exploitation of others. Because criminal prosecution or civil accountability in these cases is so rare, it is a lucrative industry that incentivizes perpetrators to take advantage of vulnerable individuals. Survivors of trafficking are often fleeing other forms of trauma, persecution, violence and/or poverty, and therefore are more vulnerable to a trafficker's sophisticated manipulation tactics, designed to seize upon a need to escape.

Trafficking in its various forms is a global and pervasive problem that affects individuals of any gender, sexual orientation, race, ethnicity, and age. It affects individuals from many different countries around the world and with varying socioeconomic backgrounds. While traffickers often prey on poor, unemployed victims, individuals across a number of countries and with varying socioeconomic backgrounds are impacted. Although trafficking is a global problem, how survivors experience trafficking and how communities respond to trafficking varies according to cultural and legal traditions as well as political factors. With that being said, immigrant survivors of trafficking continue to struggle with cultural, social, and familial pressures stemming from their countries of origin while trying to adapt to the new culture and systems of the United States.

Accounting for cultural differences among trafficked immigrants is necessary to provide appropriate and sensitive services. It is important to refrain from assuming that trafficking occurs to a greater extent in non-Western cultures. As a social problem, trafficking is not specific to any particular culture or society. While cultural differences must be considered when one looks at the problem of trafficking in various ethnic communities, remember that violence is endemic in all cultures, including the United States. In fact, the Trafficking Victims Protection Act also specifically addresses trafficking of domestic (U.S. citizen) victims.

Certain widely accepted beliefs among some immigrant or refugee communities may make it challenging for trafficked immigrants to obtain needed assistance. For example, in many communities, survivors of sex trafficking keep silent about their victimization in order to avoid being stigmatized or ostracized by others in the community who may view individuals involved in the commercial sex industry as immoral, or willingly committing a crime, and therefore culpable (as the vast majority of jurisdictions in the U.S. criminalize the sale of sex/prostitution as a crime). In some communities, such as communities where rape and other forms of sexual violence are thought to damage the victim's reputation and bring shame upon the victim and their family, outside interference is not encouraged or accepted. Furthermore, even though the trafficking may have occurred in the United States, stigma is common in the survivor's community in the home country as well as within their community in the United States.

Labor trafficking victims also face challenges when seeking assistance. Often, they face physical isolation or restraint and language barriers, making it difficult for them to communicate with others or reach out for help. There are also psychological barriers that may prevent labor trafficking victims from seeking help, including fears instilled by their exploiters or shame and humiliation upon return

to their homes. If the labor trafficking victim is in the United States illegally, they are often afraid of deportation or other legal problems if they try to escape. Traffickers often tell their victims that they owe a debt which, combined with a lack of knowledge about legal rights or available resources, can lead to continued exploitation.

Legal providers must be sensitive to the challenges a trafficked immigrant encounters when coming to the United States, and understand that returning to her home country may not be a viable option. At the same time, the survivor might view escaping their trafficker as a process that is fraught with seemingly insurmountable barriers. Leaving one's trafficker often requires abandoning the only community she knows in the United States, particularly in the context of human trafficking perpetrated by family members. It is especially important to be attuned to cultural barriers at this critical stage when a trafficked individual is considering leaving.

Of course, many of the same barriers and challenges apply to both immigrant and non-immigrant survivors of trafficking. For example, victims of trafficking experience similar issues such as psychological harm, difficulty in finding employment and shelter, concerns about supporting their children and family and safety concerns. The dilemmas facing trafficked immigrants are complex, and the solutions must be comprehensive. It is important for legal and social service providers to view trafficked immigrants both as individuals and as members of a community with their own unique customs, strengths, and pressures.

Stereotypes and Myths

Immigrant survivors of trafficking face many barriers to accessing legal assistance and social services. Societal attitudes towards immigrants may inform how trafficking and legal services are provided. Prejudices towards immigrants based on race and ethnicity are deeply entrenched in our society, and legal service providers must work to overcome this intolerance. Maintaining an awareness of assumptions commonly made about immigrants may help one identify those assumptions when they arise. It is important that the professionals helping immigrant survivors of trafficking make an effort to treat each individual as a unique person, rather than assuming certain character traits based on social categories including ethnicity and immigration status. The following are some assumptions that are commonly made with respect to immigrants generally and immigrant survivors of trafficking in particular.

Prevalent stereotypes include ideas that *all* immigrants:

- are undocumented or have no legal immigration documentation;
- are poor;
- are people of color;
- are of limited English proficiency;
- are heterosexual;
- have many children;
- cannot survive economically without immigration documentation;
- do not want to or will not use the legal system;
- have an immigration status which cannot change; and/or
- come only from certain countries or regions of the world.

Other prevalent stereotypes include ideas that many immigrants:

- have no right to be in the United States;
- came here for welfare benefits;
- are passive;
- are childlike; and/or
- marry solely for immigration purposes.

Stereotypes about immigrants and trafficking include ideas that:

- trafficked immigrants were brought to the U.S. by their trafficker(s);
- trafficked immigrants are only trafficked by other members of their immigrant community;
- trafficked immigrants are only trafficked by people outside of their immigrant community; and/or
- trafficked immigrants can escape their traffickers by returning to their home country.

Stereotypes about all survivors of trafficking include ideas that:

- to establish control, traffickers kidnapped, used physical force or drugged survivors;
- it is easy to leave a trafficking situation;
- sex trafficking only happens to women;
- labor trafficking only happens to men;
- trafficking only happens to people of color, or people who are poor or uneducated; and/or
- trafficking always involves sexual or physical abuse.

Trafficking – Power and Control

Trafficking involves a trafficker’s ongoing conduct of asserting power and control over another person. A number of tactics—some of these specific to immigrants—might be used by traffickers to establish control over their victims, including physical, psychological, and sexual abuse. Though physical and sexual abuse is common, traffickers often use a variety of other subtle, yet sophisticated, methods to assert their dominion over their victims. Whatever the methods used, the hallmark of trafficking and all abusive relationships is the exercise of comprehensive and extensive power and control over the victims.

To complicate matters, many immigrants who experience trafficking are unaware that they are victims of crime who have enforceable rights. This is in part due to the fact that traffickers frequently use a victim’s lack of immigration status as a means to create dependency, shame, or feeling of criminality. Despite the fact that many survivors would not be in the U.S. if not for their trafficker(s), these perpetrators convince victims that because they lack immigration status, they would be incarcerated or deported if they ever reached out for help. A trafficker’s control tactics are reinforced where the trafficked immigrant lacks information about available legal, medical, and social resources. Also, many trafficking victims lack information about how trafficking, domestic violence, and sexual assault are addressed in the United States. In some cases, the trafficking started while they were in their home countries whereas in other cases the abuse began upon their arrival in the United States.

In the area of domestic violence, advocates worldwide have used the Power and Control wheel to describe abusers’ frequently-used tactics. Perpetrators of domestic violence and human trafficking

use similar, and sometimes identical, tactics to establish power and control over victims. The Polaris Project has adapted the Power and Control Wheel to describe traffickers' tactics. This wheel classifies the methods used by traffickers to assert and maintain control over their victims into eight categories: coercion and threats; intimidation; emotional abuse; isolation; minimizing, denying and blaming; children; male privilege; and economic abuse. This wheel can serve as a valuable tool when initiating a discussion with a client about their victimization and the abuse they suffered at the hands of their trafficker and others.

Human Trafficking Power and Control Wheel



Note: this wheel was adapted from the Domestic Abuse Intervention Project's Duluth Model Power and Control Wheel, available at www.theduluthmodel.org

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Immigration Issues Facing Trafficked Immigrants

One of the most salient fears that trafficked immigrants experience is related to their immigration status. Some trafficked immigrants may be reluctant to discuss their immigration status because they fear deportation for themselves or their children. If a trafficked immigrant is removed to their home country, they may face a number of severe impediments and/or be trafficked again. For example, they may lose custody of their children, they may return to poverty, famine, or persecution. Moreover, their country of origin may lack legal protections and social services for trafficking survivors. In the event the trafficker retains connections in the survivor's home country, they could face danger or even death as punishment for escaping, failing to repay a "debt," or participating in the investigation or prosecution of the trafficker. Finally, if a trafficked immigrant is removed to their home country they may be ostracized by friends and family because trafficking, especially sex trafficking, may be stigmatized. If they obtained legal assistance in the United States, such as seeking an order of protection, the trafficker's family or comrades in the survivor's home country may seek retribution against her or her family. In short, removing a trafficking victim to their home country may leave the survivor and their children increasingly isolated and more likely to return to a dangerous situation.

Overcoming Barriers in Working with Trafficked Immigrants

Discussing Trafficking

When assisting an immigrant survivor of trafficking, it is important to be sensitive to language. Every person is unique; with different comfort levels when it comes to discussing the victimization. Some clients will immediately feel comfortable revealing details of their victimization, while others are initially very reluctant to disclose details. It is difficult to talk with survivors of trafficking and sexual assault about such intimate and sensitive issues. Survivors are often embarrassed and ashamed about having been victimized. It takes time to develop a trusting relationship with your client. Avoid asking them to reveal all of the personal details of the victimization during your first meeting. Throughout your legal representation, your client will likely open up to you more and more. Keep in mind language barriers may make it difficult for immigrants to communicate, especially if they are discussing sensitive issues such as physical or sexual abuse.

An effective strategy is to discuss what trafficking is using the "power and control" wheels to avoid personalizing your initial discussion and making your client uncomfortable. You might tell them that different forms of abuse are present in trafficking relationships to varying degrees. For example, some trafficking victims are subjected to physical abuse while others are not. Sexual abuse is a particularly sensitive issue and clients may be reluctant to talk about their experiences with rape or other forms of sexual violence. One way to approach this issue is to inform your client that if she was forced or coerced to do any sexual activity against her will, then she was subjected to sexual abuse. These issues can be tackled in the initial interview without asking the client directly about her experiences.

In most trafficking cases involving immigrant survivors, traffickers will use the individuals' lack of immigration status as a tool of power and control. For example, the trafficker may threaten to report the trafficked immigrant to the immigration authorities if she is undocumented, or he may withhold their passport and other identity documents to prevent them from leaving.

Confidentiality and Immigration Status

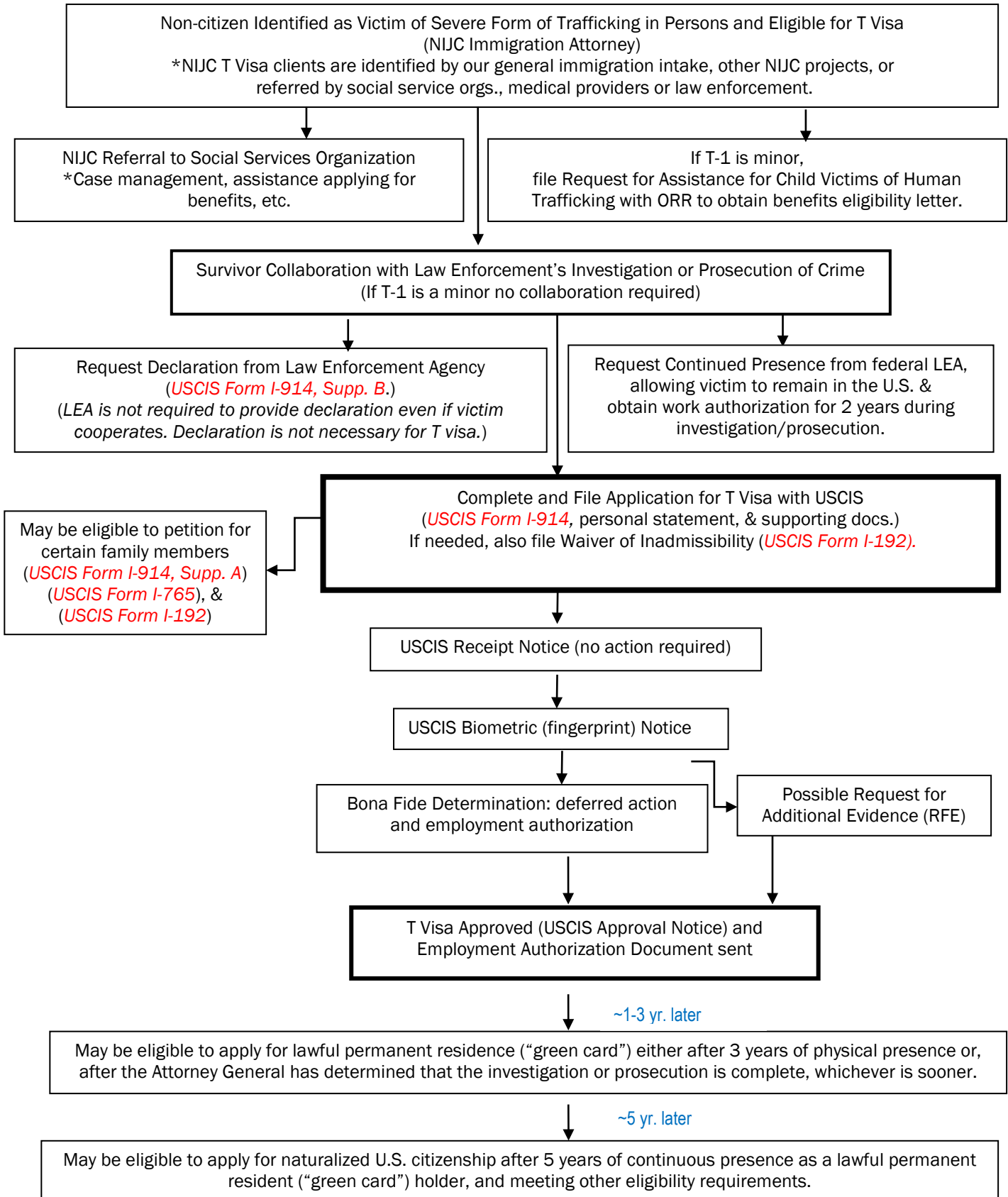
Immigration applications filed on behalf of survivors of trafficking are treated by the Department of Homeland Security (DHS), the Department of State (DOS), and the Department of Justice (DOJ) as confidential. All employees of DHS, DOS, and DOJ are prohibited from disclosing information about a T visa applicant to the trafficker on which the T visa application is based, or to an unauthorized third party.² Moreover, adverse decisions about an immigrant's admissibility or removability cannot be made based solely on information provided by a trafficker, and must be independently verified.³ Violators may be fined up to \$5,000. Attorneys should be aware, however, that in the context of a criminal prosecution of the trafficker, certain information – including some T visa application materials – may be discoverable by the trafficker's defense counsel.

² 8 U.S.C. § 1367(a)(2).

³ 8 U.S.C. § 1367(a)(1)(F).

T NONIMMIGRANT STATUS (“T VISA”) FOR TRAFFICKING VICTIMS

This flowchart provides an estimate of the general timeline of a T Visa case. Each case is unique, however, and government processing times often change. For the most accurate estimates, consult your NIJC contact or USCIS Case Processing Times (<https://egov.uscis.gov/processing-times/>).



Part A. T Visa Basics

I. Background

T nonimmigrant status, commonly called a “T visa,” is a type of temporary immigration status that allows noncitizen survivors of human trafficking and certain qualifying family members to live and work in the United States for up to four years, with extensions in some cases. Distinct from a visa, which is granted to an individual *outside* the U.S. and permits entry, the T visa is not actually a visa, but instead a type of status granted to an individual *inside* the U.S. who meets other eligibility requirements. Although a typical “nonimmigrant” status is temporary in nature, the T visa provides a path to permanent residency. A T visa holder becomes eligible to adjust their status to lawful permanent resident (“green card”) either after three years in T nonimmigrant status or as soon as they obtain a certification from the Attorney General that the trafficking investigation has concluded.⁴ Typically, after five years as a lawful permanent resident, individuals may apply for U.S. citizenship.⁵

The T visa was created by Congress in 2000 through the passage of the Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”).⁶ The TVPA was the first comprehensive federal law to address human trafficking. It uses a three-pronged approach to combat this crime including prevention, protection and prosecution. Since its passage, the TVPA has received consistent bipartisan support and has been reauthorized in 2003, 2005, 2008, 2013, and 2019.⁷ Despite anti-immigrant sentiment held by some members of congress, human trafficking—and by extension the T visa—has benefitted from near universal support.

The T visa is a type of humanitarian relief that congress designed to provide *protection* to survivors. However, the T visa was also designed as a tool for law enforcement’s investigation and *prosecution* of the crime. Therefore, it accomplishes two of the TVPA’s overarching goals. Tantamount to a humanitarian motive, Congress recognized that without victims willing to come forward and cooperate in the investigation of their trafficker, the government would have little success prosecuting these cases. With limited exceptions, T visa applicants are required to prove how they have reported the crime to law enforcement and cooperated with reasonable requests for participation. Therefore, survivors who do not complete this law enforcement cooperation are not eligible for relief unless they meet one of the designated exceptions.⁸

⁴ See 8 U.S.C. § 1255(l)(1)(A); 8 C.F.R. § 245.23(a)(3).

⁵ In some cases, a lawful permanent resident may be eligible to seek citizenship after three years.

⁶ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

⁷ For the 2019 reauthorization, see Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Pub. L. No. 115-425, 132 Stat. 5472 (2019); Abolish Human Trafficking Act of 2017, Pub. L. No. 115-392, 132 Stat. 5250 (2018); Frederick Douglass Trafficking Prevention Act of 2017, Pub. L. No. 115-393, 132 Stat. 5265 (2018); and Trafficking Victims Protection Reauthorization Act of 2017, Pub. L. No. 115-427, 132 Stat. 5503 (2019). For prior reauthorizations, see Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (2013); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003).

⁸ There are limited exemptions to law enforcement cooperation requirement, including minors and those with extreme trauma, beyond that of a typical victim. See later sections on law enforcement cooperation for a discussion of these exemptions.

There is an annual limit of 5,000 T visas per year,⁹ not including spouses and other derivative family members.¹⁰ Since the creation of the T visa, the annual limit has *never* been reached. In fiscal year 2023, only 2,181 T-1 visas were granted to principal victims.¹¹ As of the end of the third quarter of fiscal year 2024, 2,660 applications have been approved thus far in the fiscal year, and 16,646 applications remained pending.¹² Over the past several years, as advocates and community members become more familiar with the T visa, there has been a significant increase in the number T visa applications filed.

Prior to filing for the T visa, victims may receive temporary protection known as “Continued Presence.” For further information on Continued Presence, see below.

II. *Relevant Sources of Law for T Visa Preparation*

The most relevant sources of law for the T visas include **federal statutory provisions**, first codified in the Immigration and Nationality Act (INA), and **federal regulations** in the Code of Federal Regulations. Secondary sources provide helpful guidance on how USCIS has interpreted federal regulations. The following list includes relevant sources of law for preparing a T visa application, however it should not be relied on exclusively.

RELEVANT STATUTORY PROVISIONS

Immigration & Nationality Act (INA) § 101(a)(15)(T); 8 U.S.C § 1101(a)(15)(T)
[statutory definition of T visa eligibility]

Trafficking Victims Protection Act (TVPA), 22 USC § 7102
[statutory definition of T visa terms]

Additional definitions relevant to T visa:

22 USC § 7102(3) [“coercion”]

18 USC § 1589(c)(2), 18 USC § 1591(e)(4) [“serious harm”]

22 USC § 7102(1); 18 USC § 1589(c)(1); 18 USC § 1591(e)(1) [“abuse of the legal process”]

INA § 212(a)
[Grounds of inadmissibility]

INA § 212(d)(13)
[T Visa waiver of inadmissibility]

INA § 212(d)(3)
[National interest waiver of inadmissibility; “*Hranka* waiver”]

⁹ Immigrant and Nationality Act (INA) § 214(o)(2); 8 U.S.C. § 1184(o)(2).

¹⁰ *Id.* § 214(o)(3).

¹¹ USCIS, Number of Form I-914 Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, available at: <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (accessed Oct. 4, 2024).

¹² *Id.*

INA § 245(l)
[Adjustment of Status for T Visa Holders]

INA § 245(o)
[Requirements for T visa]

22 USC § 7105(c)(3)(A)
[Continued Presence for trafficking survivors]

RELEVANT REGULATORY PROVISIONS

8 Code of Federal Regulations (CFR) §§ 214.201–2016
[Guidelines for T visa eligibility elements and application procedures]

8 CFR § 212.16
[Treatment of T Visa Waiver of Inadmissibility]

8 CFR § 245.23
[Adjustment of Status for T visa holders]

8 CFR § 212.18
[Treatment of Waiver of Inadmissibility for T visa holders seeking to adjust status]

8 CFR § 274
[Classes of immigrants authorized to accept employment]

8 CFR § 1214.2 [Review of T visa petitions for petitioners in removal proceedings]

RELEVANT ADMINISTRATIVE RULE AMENDING REGULATIONS AND OTHER DHS GUIDANCE

Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status (Final Rule), 89 Fed. Reg. 34864 (Apr. 30, 2024, eff. Aug. 28, 2024), available at: <https://www.federalregister.gov/documents/2024/04/30/2024-09022/classification-for-victims-of-severe-forms-of-trafficking-in-persons-eligibility-for-t-nonimmigrant>. (The Department of Homeland Security issued a final rule, effective August 28, 2024, replacing 8 C.F.R. § 214.11 with 8 C.F.R. § 214 Subpart C. The new subpart amends the regulations for victims of human trafficking who seek T nonimmigrant status. This rule and its commentary provide helpful clarification on the T visa regulations and how USCIS will apply the regulations.)

United States Citizenship & Immigration Services Policy Manual, Volume 3, Part B, Victims of Trafficking available at <https://www.uscis.gov/policy-manual/volume-3-part-b>. (The policy manual provides additional definitions and clarifications relevant to the T visa.) See also Policy Manual, Vol. 9, Part O for Waivers of Inadmissibility for Victims of Trafficking.

RELEVANT CASE LAW

United States Citizenship & Immigration Services (USCIS), an administrative agency within the Department of Homeland Security, has sole jurisdiction to adjudicate T visa petitions.¹³ Therefore, even if a T visa petitioner is in removal proceedings before an Immigration Judge,¹⁴ the judge cannot rule on the T visa. In this setting, legal representatives must move to continue, or administratively close, or terminate the case until USCIS reaches a final decision on the T visa. If USCIS denies a T visa, the petitioner can appeal the decision to the Administrative Appeals Office (AAO),¹⁵ a component of DHS, which has appellate jurisdiction over T visa cases. After the AAO reviews a case, it will publish a decision. The majority are “non-precedent” decisions, which are not binding on USCIS’ future adjudications.¹⁶ Less frequently, the AAO will publish precedent setting decisions. In addition to AAO decisions, federal appellate or even Supreme Court decisions may be relevant to clarify interpretations of legal terms used in the T visa context.

Administrative Appeals Office (AAO) Non-precedent T Visa Decisions available [here](#).

Administrative Appeals Office (AAO) Precedent Decisions available [here](#).

[Note: Precedent cases are not sorted by category of relief]

Matter of Hranka, 16 I&N Dec. 491 (BIA 1978) (explaining treatment of waiver of inadmissibility under INA § 212(d)(3))

RELATED ILLINOIS STATUTE

Public Act 099-0870 Survivor Support and Trafficking Prevention Act

[IL Public Benefits for T visa/U visa/Asylum Applicants, effective Jan. 2018]

III. *T Visa Eligibility Requirements*

a. T Visa Essential Elements

A noncitizen may be eligible for a T visa if she can demonstrate the following four eligibility requirements¹⁷ and establishes that she is admissible or merits a waiver of inadmissibility.¹⁸

An applicant for T-1 nonimmigrant status must prove that she:

1. VICTIM: is or has been a victim of “a severe form of trafficking in persons”;

¹³ 8 C.F.R § 214.204(a).

¹⁴ Immigration judges are within the Executive Office of Immigration Review (EOIR), which is under the executive branch and ultimately under the attorney general, as opposed to article three judges under the judicial branch, which are a check on executive power.

¹⁵ 8 C.F.R § 214.204(q) (establishing right to appeal the USCIS denial of a T visa); 8 C.F.R. § 103.3 (regulations describing appeals)

¹⁶ See <https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-aao/administrative-appeals-office-aao> (“We generally issue non-precedent decisions. These apply existing law and policy to the facts of a given case. A non-precedent decision is binding on the parties involved in the case, but does not create or modify agency guidance or practice...As a result, non-precedent decisions do not provide a basis for applying new or alternative interpretations of law or policy.”)

¹⁷ INA § 101(a)(15)(T); 8 U.S.C. § 1101(a)(15)(T).

¹⁸ INA § 212; 8 U.S.C. § 1182; 8 C.F.R § 214.204(d).

2. PHYSICAL PRESENCE: is physically present in the United States “on account” of the trafficking;
3. LAW ENFORCEMENT COOPERATION: has complied with any reasonable requests for assistance in the investigation or prosecution of acts of trafficking, *unless the victim was under the age of eighteen at the time at least one act of trafficking occurred or is unable to cooperate due to physical or psychological trauma*; and
4. EXTREME HARDSHIP: would suffer extreme hardship involving unusual and severe harm if she were removed from the United States.

****In addition to the four required elements, all T visa applicants must be “admissible” to the United States as nonimmigrants under INA § 212(a) or obtain a waiver of admissibility under INA § 212(d)(13) or INA § 212(d)(3)(B). Applicants who have committed certain immigration or criminal violations are deemed inadmissible and must apply for a waiver.**

b. Burden of Proof

The burden of proof is on the applicant to submit evidence that establishes eligibility by a preponderance of the evidence for each element of T nonimmigrant status and admissibility into the United States as a nonimmigrant.¹⁹ USCIS may consider *any credible and relevant evidence* presented in support of the application.²⁰ In adjudicating a T visa application, USCIS conducts a *de novo* review of the materials submitted and may investigate any aspect of the application.²¹ USCIS may also review evidence submitted by the applicant for any other immigration benefit or relief.²² In our experience, we’ve also seen USCIS refer to a client’s interview with U.S. Customs and Border Protection if apprehended at the border or port of entry. If your client submitted a prior immigration application or if they encountered immigration officials at the border, please reach out to your NIJC point of contact to determine if you need to submit a Freedom of Information Act (FOIA) request for these records. In some cases, NIJC may have already filed a FOIA request.

c. Element #1: Victim of a Severe Form of Trafficking

The first, and most essential, element of the T visa requires the applicant to demonstrate that their victimization rises to the level of “severe form of trafficking in persons.”²³ Unlike other crime victims, who may be able to demonstrate a well-known fact pattern to establish they have been a victim of crime, there are few easily recognizable fact patterns for human trafficking. Therefore, to prove this element, the advocate must include a detailed argument as to how the particular applicant’s victimization reaches the level of “severe form of trafficking in persons.”

The federal definition of what constitutes a “severe form of trafficking in persons,” includes two different categories of human trafficking: sex trafficking and labor trafficking. According to the TVPA and federal regulations, “severe form of trafficking in persons” includes:

¹⁹ 8 C.F.R. § 214.204(l)(1).

²⁰ 8 C.F.R. § 214.204(l)(1).

²¹ 8 C.F.R. § 214.204(l)(2).

²² 8 C.F.R. § 214.204(l)(3).

²³ 8 C.F.R. § 214.206(a)(1).

- **Labor trafficking:** 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.²⁴
- **Sex trafficking:** the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act 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*.²⁵

The TVPA’s definition of human trafficking includes three components, which experts have distilled into a framework known as the Act-Means-Purpose model.²⁶ First, in the context of labor or sex trafficking, the perpetrator, or “trafficker” takes any one of five enumerated *actions*, including “the recruitment, harboring, transportation, provision or obtaining.”²⁷ In the case of sex trafficking only, two additional actions include “patronizing, or soliciting.”²⁸ Simultaneously, the trafficker employs any one (or several) *means* of “force, fraud or coercion,”²⁹ for *the purpose of* compelling the victim to provide a commercial sex act³⁰ or “involuntary servitude, peonage, debt bondage, or slavery.”³¹ When the victim is under 18 and induced to perform a commercial sex act force, fraud or coercion need not be proven.³²

Act + Means + Purpose= Human Trafficking <i>Adapted from the NHTRC</i>		
Act	Means**	Purpose
Recruitment Harboring Transportation Provision, Obtaining Patronizing*, <i>or</i> Soliciting*	Force Fraud, <i>or</i> Coercion	Commercial Sex Act (Sex Trafficking) Or Involuntary Servitude, Peonage, Debt Bondage, or Slavery (Labor Trafficking)
*Actions are for sex trafficking only. **If a victim under 18 y.o. is induced to perform a commercial sex act, human trafficking occurs, irrespective of force, fraud or coercion.		

²⁴ 22 U.S.C. § 7102(11)(B); 8 C.F.R. § 214.201.

²⁵ 22 U.S.C. § 7102(11)(A); 22 U.S.C. § 7102(12); 8 C.F.R. § 214.201.

²⁶ NATIONAL HUMAN TRAFFICKING RESOURCE CENTER, *The Action Means Purpose (AMP) Model* (2012), <https://humantraffickinghotline.org/sites/default/files/AMP%20Model.pdf>. See also USCIS Policy Manual, Vol. 3 (Humanitarian Protection and Parole), Part B. (Victims of Trafficking), Chp. 2 (Eligibility Requirements), Sec. B.1 (Victim of a Severe Form of Trafficking in Persons, General Definition).

²⁷ 22 U.S.C. § 7102(11).

²⁸ 22 U.S.C. § 7102(12).

²⁹ 22 U.S.C. § 7102(11)(A) & (B).

³⁰ 22 U.S.C. § 7102(11)(A) & (12); 8 CFR § 214.201.

³¹ 22 U.S.C. § 7102(11)(B); 8 C.F.R. § 214.201.

³² 22 U.S.C. § 7102(11)(A); 8 C.F.R. §214.206(a)(1).

Contrary to common misconception, trafficking in persons does *not* require movement across international or state borders.³³ In addition, it does *not* require a completed act.³⁴ If the applicant can demonstrate that her trafficker intended to compel her to perform a commercial sex act or labor, but the scheme was thwarted, this is sufficient to meet the definition of “severe form of trafficking in persons.”

In general, T visa applicants are required to establish force, fraud, or coercion. Neither force nor fraud are defined in the TVPA or the T visa regulations. Coercion is defined to include: (1) threats of serious harm to or physical restraint against any person; (2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (3) the abuse or threatened abuse of the legal process.³⁵ It is important that practitioners understand the meaning of coercion, as traffickers are often “highly skilled psychological manipulators who rely heavily on coercion.”³⁶ Indeed, focusing too heavily on force or fraud may cause practitioners to overlook details of applicants’ stories that help establish a case for coercion.

Though most applicants are required to establish force, fraud, or coercion, there is one important exception to this requirement. Applicants under the age of eighteen who were trafficked for the purpose of commercial sex acts are not required to establish force, fraud, or coercion.³⁷ Note that this exception does not apply to minors who have been victims of labor trafficking. Sex trafficking victims under the age of eighteen, however, are required to prove their age.

Other terms included in the definition of human trafficking, such as involuntary servitude, debt bondage, and peonage are defined in the TVPA and T visa regulations.³⁸ The USCIS Policy Manual provides additional definition and clarification of labor trafficking concepts, including the definition of harboring,³⁹ when trafficking arises from a voluntary smuggling arrangement,⁴⁰ and when a domestic violence situation rises to the level of human trafficking.⁴¹

³³ NATIONAL HUMAN TRAFFICKING HOTLINE, *Myths and Misconceptions*, <https://humantraffickinghotline.org/what-human-trafficking/myths-misconceptions>.

³⁴ 8 C.F.R. § 214.206(a)(2) (“If the applicant has not performed labor or services, or a commercial sex act, they must establish that they were recruited, transported, harbored, provided, or obtained *for the purposes of* subjection to sex trafficking, involuntary servitude, peonage, debt bondage, or slavery, or patronized or solicited for the purposes of subjection to sex trafficking.”)(emphasis added). See also DHS, *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status* (Final Rule), 89 Fed. Reg. 34864 at 34871 (Apr. 30, 2024) (describing that performing labor, services, or commercial sex is not required to meet the eligibility requirements for a T visa).

³⁵ 22 U.S.C. § 7012(3); 8 C.F.R. 214.201. The USCIS Policy Manual provides further elaboration on the definition of coercion, what constitutes a threat, and examples of coercion. See USCIS Policy Manual, Vol. 3 (Humanitarian Protection and Parole), Part B (Victims of Trafficking), Chp. 2 (Eligibility Requirements, Sec. B.3 (Definition of Coercion).

³⁶ Kathleen Slocum, *Immigration Remedies for Victims of Human Trafficking*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 207, 210 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 2011) available at <http://www.courts.state.ny.us/ip/womeninthecourts/LMHT.pdf>.

³⁷ 22 U.S.C. § 7102(11)(A); 8 C.F.R. § 214.201; 8 C.F.R. 214.206(a)(1).

³⁸ For the definition of involuntary servitude, see 22 U.S.C. § 7102(8) and 8 C.F.R. § 214.201. For the definition of debt bondage, see 22 U.S.C. § 7102(7) and 8 C.F.R. § 214.201. Peonage is defined in the T visa regulations at 8 C.F.R. § 214.201.

³⁹ USCIS Policy Manual, Vol. 3, Part B., Chp. 2, Section B.2 (Definition of Harboring).

⁴⁰ USCIS Policy Manual, Vol. 3, Part B., Chp. 2, Section B.7 (Difference Between Trafficking and Smuggling).

⁴¹ USCIS Policy Manual, Vol. 3, Part B., Chp. 2, Section B.4 (Labor Trafficking Concepts).

d. Element #2: Physically Present in the United States on Account of the Trafficking

An applicant must demonstrate physical presence in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry “on account of the trafficking.”⁴² Under this requirement, applicants do not have to prove that their trafficker recruited and transported them to the U.S. for the purpose of exploitation. Rather, at issue is why the applicant is still in the United States today. Therefore, if the applicant can prove that although she entered the U.S. for an unrelated reason, but subsequently became a victim of trafficking in the U.S. and remains here for a reason that is connected to her victimization, that is sufficient to meet this element.

The regulations set forth five examples of how an applicant may establish that they are physically present on account of trafficking. In your legal argument, you should specify which subsection of the regulation your client qualifies under for the physical presence requirement. These grounds include that they:

- (1) are currently being subjected to a severe form of trafficking in persons;
- (2) were liberated from a severe form of trafficking in persons by an LEA, at any time prior to filing the T visa application;
- (3) escaped a severe form of trafficking in persons before an LEA was involved, at any time prior to filing the T visa application;
- (4) were subject to a severe form of trafficking in persons at some point in the past and their current presence in the United States is directly related to the original trafficking in persons, regardless of time that has passed between the trafficking and the filing of the T visa application; or
- (5) have been allowed entry into the United States for participation in the detection, investigation, prosecution, or judicial processes associated with an act or perpetrator of trafficking.⁴³

Applicants who voluntarily leave or have been removed from the United States after they were trafficked generally cannot satisfy this eligibility requirement.⁴⁴ However, there are exceptions. An applicant who voluntarily leaves or has been removed from the United States after she was trafficked and subsequently returns to the United States is considered to be present on account of the trafficking if her return was the result of: (1) continued victimization; (2) a new incident of a severe form of trafficking; (3) she has been allowed reentry into the U.S. to assist with the investigation of her trafficker or the trafficking scheme; (4) the applicant’s presence is on account of their past or present participation of the investigation; and (5) the applicant returned to the United States and received treatment or services in the United States that cannot be provided in their home country.⁴⁵ If your T visa client left the U.S. after her trafficking victimization and has since re-entered, contact your NIJC contact to strategize about how to approach this element.

⁴² INA § 101(a)(15)(T)(i)(II); 8 C.F.R. § 214.202(b).

⁴³ 8 C.F.R. § 214.207(a).

⁴⁴ 8 C.F.R. § 214.207(b).

⁴⁵ *Id.*

Historically, applicants whose victimization was less recent faced additional scrutiny on this element. However, the new regulations include positive language stating that an applicant may show that their current presence is on account of the trafficking regardless of the time since victimization.⁴⁶ Nonetheless, applicants must show that their presence today is directly related to their original victimization. Arguments to support the presence requirement can include:

- The applicant is present to receive restorative social services, mental health services, and medical services
- The applicant is present to cooperate with law enforcement
- The applicant is present to receive protection from the U.S. legal system (for instance, if a applicant has an order of protection against their trafficker)
- The applicant is present because the trauma continues to have severe adverse consequences on her daily life
- The applicant is present because she does not have the means to leave the United States

The applicant should address presence in their affidavit. Additionally, often NIJC finds that a letter of support from the client's social services case manager is helpful evidence to support the presence requirement.

e. Element #3: Compliance with Reasonable Requests for Assistance from Law Enforcement

Additionally, an applicant must demonstrate that she has cooperated with law enforcement's detection, investigation, or prosecution of the trafficking or related crimes.⁴⁷ To meet this requirement, an applicant must, at a minimum, 1) report the crime⁴⁸ to a local, state or federal law enforcement agency⁴⁹ and 2) comply with law enforcement's "reasonable requests" for assistance in the investigation or prosecution.⁵⁰

While the cooperation requirement is fairly broad, there is one important limitation. Applicants are only required to comply with law enforcement's *reasonable* requests for assistance. Thus, an applicant may demonstrate that she satisfies this requirement by establishing that any unsatisfied requests were unreasonable. Immigration officers with USCIS (not investigating law enforcement agents) are responsible for determining whether a request is reasonable.⁵¹ Reasonableness depends on the totality of the circumstances, the nature of the victimization, and the specific circumstances of the applicant (including, for example, fear, mental and physical trauma, and the age and maturity of young applicants).⁵²

Exemption from Law Enforcement Cooperation

⁴⁶ 8 C.F.R. § 214.207(a)(4).

⁴⁷ 8 C.F.R. § 214.208(a).

⁴⁸ 8 C.F.R. § 214.208(b).

⁴⁹ 8 C.F.R. § 214.201 (providing a list of examples of qualifying law enforcement agencies or actors).

⁵⁰ *Id.* (defining "request for assistance," reasonableness is assessed using § 214.208(c) factors).

⁵¹ See USCIS, Policy Manual, Vol. 3 (Humanitarian Protection and Parole), Part B (Victims of Human Trafficking), Chapter 2 (Eligibility Requirements), Section D.2 (describing the totality of the circumstances USCIS uses to determine if a request is reasonable).

⁵² 8 C.F.R. § 214.208(c) (providing factors to consider to determine the reasonableness of a law enforcement request for assistance).

Two categories of applicants are exempt from the cooperation requirement: (1) applicants who are under the age of eighteen at the time of victimization (this includes applicants who have been victims of sex or labor trafficking)⁵³ and (2) applicants who are unable to cooperate due to physical or psychological trauma.⁵⁴ Applicants under the age of eighteen, are required to prove their age.⁵⁵

Minor victims may not seek legal services or may not be identified as trafficking survivors until they are adults. In the 2024 T visa regulations, DHS has clarified that the law enforcement exemption applies to individuals victimized as minors regardless of when they apply.⁵⁶ However, even if an applicant is exempt from the law enforcement cooperation requirement, they should be aware of how it may impact their T visa application and future eligibility for lawful permanent residence. First, it may limit arguments under both the presence and the extreme hardship elements. Second, applicants who rely on the law enforcement cooperation exemption may not be eligible to file for permanent residency sooner than 3 years. This means they must wait 3 years in T visa status before applying for permanent residency. Attorneys should inform clients of this information so the client can choose whether or not they want to report to law enforcement.

The regulations and policy manual state that an applicant qualifies for the age exemption if at least one act of the trafficking took place while they were under 18.⁵⁷ If the applicant was a minor when the trafficking began and it continued into adulthood, they may still be exempt from the law enforcement cooperation requirement. However, they may still want to report because of the reasons described above. If the applicant was a victim of multiple trafficking victimizations, consider which one is the basis for the T visa in assessing whether the exemption applies. If you have questions about whether your client is exempt from the law enforcement cooperation requirement, please consult with your NIJC contact.

Adult applicants who are unable to cooperate due to physical or psychological trauma are required to provide evidence of their trauma. Evidence of physical trauma may include police reports, photographs of injuries, medical reports, and witnesses' affidavits.⁵⁸ Evidence of psychological trauma may include affidavits by medical personnel or medical reports.⁵⁹ In general, USCIS interprets the trauma exception for law enforcement reporting narrowly, and requires applicants to show how their trauma is greater than other survivors of trafficking. If you feel your client's trauma may rise to this level, please consult your NIJC contact.

In the course of representing a T visa applicant, there is a strong possibility that law enforcement and/or prosecutors will request interviews with the client. Attorneys must accompany clients to these interviews. Further information on representing your client before law enforcement is provided in a later section of this manual, titled "Working with Law Enforcement."

⁵³ 8 C.F.R. § 214.208(e)(2).

⁵⁴ INA §§ 101(a)(15)(T)(i)(III)(bb)-(cc); 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb)-(cc); 8 C.F.R. § 214.208(e)(1).

⁵⁵ 8 C.F.R. § 214.208(e)(2).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 8 C.F.R. § 214.208(e)(1).

⁵⁹ *Id.*

Evidence to Prove Law Enforcement Cooperation

The applicant can submit “any...evidence” to fulfil the law enforcement cooperation requirement.⁶⁰ An signed Form I-914 Supplement B, Declaration of Law Enforcement Officer is optional and “is *not given any special evidentiary weight*.”⁶¹ Therefore, while a law enforcement declaration provides strong evidence of cooperation— because it shows that the applicant’s story has been reported to a law enforcement official, who found the applicant credible and willing to cooperate—it is not essential to the case. In fact, according to recent USCIS data, 84% of T visa cases approved since 2008 were approved without a signed Form I-914 Supplement B.⁶² The regulations give maximum discretion to law enforcement agencies’ decision to sign the form⁶³ and does not require any internal policies that regulate an agency’s standards for responding to requests to sign the declaration. Therefore, in the absence of greater regulations, a particular law enforcement agent’s willingness to sign Form I-914, Supplement B is highly variable.

Under the Illinois VOICES Act and Illinois Way Forward Act, any Illinois agency responsible for investigating or prosecuting T or U visa qualifying crimes is required to develop procedures to review T and U visa certification requests and sign such requests for victims of a T or U visa qualifying crime.⁶⁴ Therefore, if your client reported the trafficking to local or state law enforcement agency, this agency may be required under state law to complete the certification. However, if the agency does not agree that the client is a victim of human trafficking, they are not required to sign. Nonetheless, this may be a helpful tool in obtaining a law enforcement certification from local and state law enforcement agencies. Please consult with your NIJC point of contact.

Under the regulations, USCIS is charged with making an independent assessment of evidence to determine if an applicant is a victim of trafficking and satisfies the cooperation requirement.⁶⁵ Evidence may include, but is not limited to, an applicant’s own affidavit detailing any contacts with law enforcement or an affidavit from her attorney documenting her contact with law enforcement officials and willingness to cooperate.⁶⁶ The majority of NIJC cases do not include a law enforcement certification, and instead rely on the applicant’s statement, attorney affidavit, and email correspondence with law enforcement as evidence of the law enforcement cooperation requirement.

f. Element #4: Extreme Hardship if Removed

Finally, an applicant must demonstrate that she would experience severe hardship involving unusual and severe harm if she were removed from the United States.⁶⁷ In determining whether an

⁶⁰ 8 C.F.R. § 214.208(d)(3).

⁶¹ 8 C.F.R. § 214.204(e)(2) (emphasis added).

⁶² USCIS, *Fact Sheet: Characteristics of T Nonimmigrant Status (T Visa) Applicants* (Jan. 2022), available at https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet.pdf.

⁶³ 8 C.F.R. § 214.204(e)(5) (“An LEA declaration...[i]s completed at the discretion of the certifying official.”).

⁶⁴ See 5 ILCS 825/10(a).

⁶⁵ 8 C.F.R. § 214.204(g)

⁶⁶ 8 C.F.R. § 214.204(f); 8 C.F.R. § 214.208(d)(3)

⁶⁷ INA § 101(a)(15)(T)(i)(IV), 8 U.S.C. § 1101(a)(15)(T)(i)(IV).

applicant satisfies the extreme hardship requirement, immigration authorities will consider the following non-exhaustive list of relevant factors, listed in the regulations:⁶⁸

- the age and personal circumstances of the applicant;
- serious physical or mental illness of the applicant that necessitates medical or psychological attention not available in the foreign country;
- the nature and extent of the physical and psychological consequences of severe forms of trafficking;
- the impact of the loss of access to United States courts and its criminal justice system on the applicant's ability to redress wrongs relating to the trafficking;
- the reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking;
- the likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;
- the likelihood that the traffickers or their associates in the foreign country 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;
- current or likelihood of future economic harm.

According to the regulations, hardship to others may be considered "only if the related evidence demonstrates specifically that the applicant will suffer extreme hardship upon removal as a result of hardship to persons other than the applicant."⁶⁹

Although the regulations also reference the traditional hardship factors (found at 8 C.F.R. § 240.58), in NIJC's experience, USCIS tends to prioritize the trafficking-related hardship factors. Moreover, some of the traditional hardship factors might undercut the argument related to presence. (For example, USCIS might say the applicant is present for family unity instead of as a result of the trafficking.) Therefore, we recommend you primarily rely on the trafficking-specific hardship factors listed in the T visa regulations in your argument.

The regulations encourage applicants to describe and provide documents that relate to all applicable factors because there is no guarantee that a particular factor will result in a finding that removal would cause extreme hardship.⁷⁰ Evidence establishing the applicability of hardship factors may include: country condition reports, such as Trafficking in Persons Annual Reports and Human Rights Reports from the Department of State; letters of support from social workers or mental health providers who are working with the applicant that detail the services the applicant is receiving and the result of discontinuing the services; and any other credible evidence regarding the nature and scope of the hardship the applicant would experience upon removal.⁷¹

⁶⁸ 8 C.F.R. § 214.209(b).

⁶⁹ 8 C.F.R. § 214.209(c)(2).

⁷⁰ 8 C.F.R. § 214.209(c).

⁷¹ *Id.*

g. Admissibility

In addition to establishing eligibility for the T nonimmigrant visa, all T visa applicants (including derivative applicants) must demonstrate they are admissible to the United States as a nonimmigrant or that they merit a waiver of any applicable grounds of inadmissibility.⁷² The statutory grounds of inadmissibility are listed at § 212(a) of the Immigrant and Nationality Act (“INA”). Some common grounds of inadmissibility include:

- lack of a valid passport;
- certain criminal convictions;
- engaged in prostitution;
- security grounds;
- fraud / misrepresentation;
- false claims to U.S. citizenship, including unlawful voting and falsification of I-9 form for employment;
- health conditions or substance abuse;
- likely to become a public charge;
- entering without inspection
- prior deportations; and
- entering without inspection *after* a prior order of deportation or prior unlawful presence of more than one year.⁷³

*****Please note: there is no ground of inadmissibility for individuals who entered the United States lawfully but have remained beyond their authorized period of stay.**⁷⁴ Trafficking victims are exempt from the public charge inadmissibility ground.⁷⁵

h. Waivers of Inadmissibility

Although there are many grounds that may give rise to inadmissibility, trafficking victims may request that these grounds are waived under two main provisions. The waiver of inadmissibility specific to T Visa applicants is codified at **INA § 212(d)(13)**. This waiver requires applicants to prove that the ground(s) giving rise to the inadmissibility was “caused by, or incident to, the victimization,” and it is in the national interest to waive the ground of inadmissibility.⁷⁶ In considering whether it is in the national interest to waive the inadmissibility, USCIS will consider: the details of the victimization, the victim’s cooperation with law enforcement, their contributions to public safety by strengthening law enforcement’s ability to investigate criminal activity, their contributions to the community, family unity, and risk of harm if returned to home country.⁷⁷ Therefore, if the activity giving rise to the inadmissibility is sufficiently related to the trafficking, then it will not prevent the applicant from obtaining T visa status. In addition to this waiver, T visa applicants can also request that grounds of inadmissibility are waived under **INA § 212(d)(3)**, which applies to other

⁷² 8 C.F.R. § 214.204(d); see also *Id* § 214.211(c)(4) (for derivative applicants).

⁷³ INA § 212(a); 8 U.S.C. § 1182(a).

⁷⁴ See INA § 212(a).

⁷⁵ INA § 212(d)(13)(A); 8 U.S.C. § 1182(d)(13)(A); 8 C.F.R. § 212.16(b).

⁷⁶ INA § 212(d)(13)(B)(ii).

⁷⁷ See USCIS Policy Manual Vol. 9 (Waivers), Part O (Victims of Human Trafficking), Cpt. 3 (INA 212(d)(13) Waivers).

nonimmigrant categories and delegates much broader discretion to USCIS to waive these grounds.⁷⁸ If the applicant is seeking a waiver under § 212(d)(3), she must prove that it is in national interest to waive the grounds that give rise to inadmissibility. In considering whether it is in the national interest to grant the waiver, USCIS considers: 1.) the risk of harm to society if the waiver is approved; 2.) the seriousness of the criminal and/or immigration violations; and 2.) the applicant's reasons for wishing to remain in the United States.⁷⁹ NIJC recommends applying for a waiver under both § 212(d)(13) and § 212(d)(3). USCIS will first consider a waiver under (d)(13). If USCIS determines the applicant is not eligible for a (d)(13) waiver, they will consider a waiver under (d)(3).⁸⁰

The regulations⁸¹ clarify USCIS' treatment of the waiver under INA § 212(d)(13). The only inadmissibility grounds that may not be waived are based on sections § 212(a)(3)(security and related grounds), § 212(a)(10)(C)(international child abduction) and § 212(a)(10)(E)(former U.S. citizens who renounced their citizenship to avoid taxation).⁸² An applicant is also ineligible for a T visa if she herself has engaged in the trafficking of others.⁸³

If the T visa applicant's inadmissibility is based on a criminal related ground, USCIS will consider the number and seriousness of the offenses.⁸⁴ If the criminal offense or conviction involved violent or dangerous crimes, USCIS will only exercise favorable discretion only in extraordinary circumstances, unless the criminal activities were caused by or were incident to the victimization.⁸⁵

To request a waiver, the applicant must file **Form I-192, Application for Advance Permission to Enter as Nonimmigrant**.⁸⁶ T visa applicants are exempt from the filing fee associated with the Form I-192.⁸⁷ NIJC pre-screens all clients for possible grounds of inadmissibility before the case is assigned to a *pro bono* attorney. However, it is important that you familiarize yourself with INA § 212(a) and discuss all possible grounds with your client, as facts giving rise to inadmissibility are sometimes not disclosed during NIJC's initial screening. Be cognizant that grounds of inadmissibility may also arise during the course of the representation.

⁷⁸ In the Seventh Circuit, individuals in removal proceedings may also request the (d)(3) waiver from an Immigration Judge. See *L.D.G. v. Holder*, 744 F.3d 1022 (7th Cir. 2014); *Baez-Sanchez v. Barr*, 947 F.3d 1033 (7th Cir. 2020). While the initial case, *Matter of L.D.G.*, was based on a U visa case, NIJC has successfully argued that this also applies to T visa applicants, as it is the same waiver provision that is available to several nonimmigrant categories. If your client is in removal proceedings and needs a waiver of inadmissibility, please consult with your NIJC contact.

⁷⁹ See *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978).

⁸⁰ See USCIS Policy Manual Vol. 9 (Waivers), Part O (Victims of Human Trafficking), Cpt. 3 (INA 212(d)(13) Waivers) and Cpt. 4 (INA 212(d)(3) Waivers).

⁸¹ 8 CFR § 212.16.

⁸² INA § 212(d)(13)(B)(ii); 8 CFR § 212.16(b).

⁸³ 8 C.F.R. § 214.202(e).

⁸⁴ 8 CFR § 212.16(b)(3).

⁸⁵ *Id.*

⁸⁶ 8 C.F.R. § 212.16(a).

⁸⁷ 8 C.F.R. § 106.3(b)(2)(ii).

IV. Working with Law Enforcement

The T visa was designed with the dual objectives of helping survivors secure protection and also help law enforcement investigate and prosecute traffickers.⁸⁸ Applicants are required to comply with any reasonable request of cooperation by law enforcement unless they are subject to an exception due to age, physical, or psychological trauma. Law enforcement agencies investigating and prosecuting trafficking could include: local police, state prosecutors, federal prosecutors, FBI, and/or Immigration and Customs Enforcement (ICE)/Homeland Security Investigations (HSI). Oftentimes, multiple agencies will work together in the investigation and prosecution of a trafficking enterprise.

Most often, a survivor of trafficking will come into contact with NIJC before reporting the crime. Less frequently, a survivor of trafficking will be referred to NIJC by a law enforcement agency that is already investigating a trafficking situation. Once NIJC accepts a trafficking case for representation, NIJC and/or pro bono counsel will assist the trafficking victim report the incident to law enforcement. A pro bono attorney working with a trafficking survivor should be prepared to represent the client at law enforcement interviews. The attorney should insist that law enforcement communicate with the client only through the attorney and ensure that attorney is present at any law enforcement meetings or interviews with the client.

During law enforcement interviews, the victim may be asked to describe the incident of trafficking in detail. They may be asked to identify possible perpetrators or give details about the perpetrators and their associates. At these interviews, the role of the victim's attorney is to ensure that the victim's rights are protected. The attorney should be prepared to ask law enforcement to rephrase inappropriate or overly-invasive questions. Law enforcement agents should not interview trafficking victims as if they are conducting interrogations. A trauma-informed approach requires law enforcement to be more sensitive and attuned to the possible trauma the victim suffered. The attorney should also prepare a client in advance to prevent her from making incriminating or contradictory statements. The client should understand that statements made during law enforcement interviews are not protected by attorney-client privilege.

Trafficking investigations sometimes lead to prosecutions. Law enforcement agents may request that the victims testify in the criminal case against the trafficker. If a client is asked to testify, an attorney should discuss this request with her client to assess whether the client is emotionally and psychologically able to participate. Contact with the trafficker can cause tremendous stress and anxiety. If the request to testify appears unreasonable given the circumstances, the attorney should express these concerns to law enforcement to determine if there are other ways that the client can cooperate.

When communicating with law enforcement, the attorney should advocate for the issuance of continued presence for the victim. Continued presence provides temporary status and employment authorization for a survivor of trafficking. Only a federal law enforcement agent can initiate continued presence.

⁸⁸ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 102(a), 114 Stat. 1464, 1466 (2000).

In many cases, a law enforcement agency may conclude that there is not enough evidence to continue an investigation after an initial interview. In this scenario, the agency may be unlikely to secure continued presence for the client or sign a formal endorsement (Form I-914, Supplement B) of the client's cooperation. This does not render a T visa case nonviable. Although the law enforcement endorsement is strong evidence of cooperation and that the applicant is a victim of a "severe form of trafficking," the law enforcement agency does not determine whether an applicant receives a T visa. That determination rests with USCIS. T visa applicants can submit any other evidence to demonstrate cooperation with law enforcement,⁸⁹ and applications without Form I-914, Supplement B are routinely granted if the applicant establishes all other elements of the T visa. In recent data published by USCIS, near 84% of all T visa applications approved since 2008 did not have a law enforcement certification.⁹⁰

V. *Continued Presence*

Continued presence (CP) is a temporary immigration benefit that was created in the TVPA.⁹¹ Federal law enforcement agents who identify a victim of a severe form of human trafficking and determine that the individual could be a *potential* witness can petition the ICE Law Enforcement Parole Branch (LEPB) to issue CP. The law only allows federal law enforcement to file CP requests, but if local law enforcement is working on an investigation, they can collaborate with their federal counterparts to request CP on behalf of the victim.

CP is normally valid for two years but can be renewed. CP allows a victim to qualify for employment authorization and allows the victim to access certain public benefits. The Department of Health and Human Services: Office of Refugee and Resettlement (ORR) issues an eligibility letter to a victim of human trafficking once CP is approved. This letter is formal proof of CP.

NIJC attorneys and/or pro bono counsel should request that CP is granted after the victim reports the crime to law enforcement and initiates cooperation. For more information on CP visit <https://www.dhs.gov/blue-campaign/materials/pamphlet-continued-presence>.

VI. *Eligibility for Public Benefits and Social Services*

Trafficking survivors often have non-legal social service needs that stem from their victimization and ongoing trauma. For example, these needs may include: accessing medical or mental health care; applying for public benefits when eligible; finding stable and secure housing; and assessing any ongoing safety threats from their trafficker and making a plan to respond to any threats. There are several trafficking-specific social service providers in the Chicago area available to assist survivors with these needs, including [Heartland Human Care Services' Freedom From Trafficking Program](#) and the [Salvation Army's STOP IT Initiative Against Human Trafficking](#).

NIJC frequently refers clients to these agencies, and a collaborative relationship between the legal and social service provider can better support a client as they apply for a T visa. Moreover,

⁸⁹ See 8 C.F.R. § 214.208(d)

⁹⁰ USCIS, *Fact Sheet: Characteristics of T Nonimmigrant Status (T Visa) Applicants* (Jan. 2022), available at https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet.pdf.

⁹¹ 22 U.S.C. § 7105(c)(3) (2012).

enrollment in trafficking-specific social services can strengthen a T visa case by establishing that the client is present on account of the trafficking to access these vital services and would face hardship if removed because they would no longer have access to these restorative services. Indeed, NIJC often includes a letter of support from the client's case manager in the T visa application. Note, due to our confidentiality obligations, NIJC obtains written consent from the client to allow for communication with the social service provider during the duration of the case, or until the client revokes this consent.

Most T visa clients will have been connected to a social service agency before being referred to pro bono partners. If your client expresses a social service need during your representation, the pro bono attorney should encourage the client to contact their social services case manager, or, provided you have the client's consent, the pro bono attorney can contact the social service provider. If your client is not currently enrolled in or on the waiting list for trafficking-specific social services or if new needs arise during your representation, please reach out to your NIJC point of contact.

Individuals in Illinois applying for a T visa may be eligible for state benefits under the Victims of Trafficking, Torture, and Other Serious Crimes (VTTC) program.⁹² Individuals applying for a T visa are exempt from the public charge ground of inadmissibility. Medical benefits are available while the individual is preparing to file and while their T visa application is pending. Cash and food benefits are only available after a person has filed for a T visa and only if they have a derivative family member. Food and cash benefits are also subject to available funds.⁹³ A client's social services case manager can assist in public benefit applications. Alternatively, your client may contact the Legal Aid Chicago Public Benefits hotline at 312-347-8342. To apply for VTTC benefits, the client may need to provide a letter from their attorney stating that the client is preparing a T visa application. Please see the appendix for a sample letter.⁹⁴

Foreign national minors who have experienced human trafficking are eligible for benefits and services under the Trafficking Victims Protection Act.⁹⁵ Foreign national minor victims of trafficking may receive an eligibility letter from the Department of Health and Human Services, Administration for Children and Families, Office on Trafficking in Persons (OTIP).⁹⁶ This eligibility letter allows clients to access trafficking-specific case management and other federal benefits (e.g., food assistance, medical services, health insurance) to the same extent as refugees.⁹⁷ They must request this letter before turning 18 years old.

Once USCIS issues a bona fide determination, adult victims of human trafficking are eligible to receive federal public benefits and social services.⁹⁸ The Administration for Children and Families, Office of Trafficking in Persons issues a certification letter to adult applicants who have: (1) been

⁹² See 305 ILCS 5/16.

⁹³ See 305 ILCS 5/16. See also Illinois Department of Human Services, Policy Memo (Oct. 18, 2024) available at [IDHS: VTTC Cash and State Food Programs Paused Due to Funding](#).

⁹⁴ Minors who are victims of human trafficking are eligible for federal benefits. They should use the process described in the next paragraph to obtain benefits.

⁹⁵ TVPA, Pub. L. No. 106-386, §§ 107(b)(1)(A), 107(b)(1)(E), 114 Stat. 1464, 1475-76 (2000) codified at 22 U.S.C. § 7105(b)(1).

⁹⁶ For more information, see HHS/ACF Office on Trafficking in Persons, Child Eligibility Letters, <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters>.

⁹⁷ *Id.*

⁹⁸ TVPA, Pub. L. No. 106-386, §§ 107(b)(1)(A), 107(b)(1)(E), 114 Stat. 1464, 1475-76 (2000).

granted continued presence; (2) have submitted a *bona fide* T visa application⁹⁹; or (3) been granted a T visa.¹⁰⁰ Such certification renders applicants eligible for the same range of state and federal social services and public benefits as refugees.¹⁰¹

Once an applicant receives certification or eligibility letter from OTIP, additional advocacy is generally required to help the applicant access benefits. Many benefit-issuing agencies may be unfamiliar with ORR certification and many benefits have time-limited eligibility. Thus, it is important to inform the client about this eligibility as soon as possible and make an appropriate referral for social services to navigate benefit eligibility. If the client was enrolled in social services while preparing their T visa application, the same social service provider may be able to continue to provide assistance.

VII. *Derivative Family Members*

A client who is eligible to receive a T visa may also be able to obtain derivative T visa status for her qualifying spouse, child, parent, or sibling, whether in the United States or abroad.¹⁰² The annual limit of 5,000 T visas applies only to principal T visa applicants, and does not apply to derivative family members.¹⁰³ Like principal T visa applicants, derivative applicants: (1) are allowed to remain in the United States for four years (with extensions in some cases);¹⁰⁴ (2) are eligible for work authorization;¹⁰⁵ and (3) may become eligible to adjust their status to legal permanent residents.¹⁰⁶

If the principal applicant is under the age of twenty-one (at the time her application is filed) the following relatives qualify for a T visa:

- parents,
- unmarried siblings under the age of eighteen (at the time the application is filed),
- spouse, and
- children.¹⁰⁷

When the T visa applicant is over the age of twenty-one, the following family members may qualify:

- spouse,
- children, and
- parents or unmarried siblings under the age of eighteen who the Secretary of the Department of Homeland Security (“DHS”) determines face a present danger of retaliation

⁹⁹ Under the new T visa regulations, USCIS will conduct *bona fide* determinations for T visa applications submitted on or after August 28, 2024. See 8 C.F.R. § 214.205

¹⁰⁰ See *id.* § 107(b)(1)(E).

¹⁰¹ *Id.* § 107(b)(1)(A).

¹⁰² INA § 101(a)(15)(T)(ii); 8 U.S.C. § 1101(a)(15)(T)(ii).

¹⁰³ INA § 214(o)(2)-(3); ; 8 U.S.C. § 1184(o)(2)-(3).

¹⁰⁴ INA § 214(o)(7); 8 U.S.C. § 1184(o)(7).

¹⁰⁵ 8 C.F.R. § 214.211(i)(3)

¹⁰⁶ INA § 245(l); 8 U.S.C. § 1255(l).

¹⁰⁷ INA § 101(a)(15)(T)(ii)(I); 8 U.S.C. § 1101(a)(15)(T)(ii)(I); 8 C.F.R. § 214.211(a)(2). An eligible family member will be admitted in one of the following T nonimmigrant statuses: T-2 (spouse), T-3 (child), T-4 (parent), or T-5 (unmarried sibling under the age of 18).

as a result of the applicant's escape from trafficking or cooperation with law enforcement.¹⁰⁸

Except for relationships based on marriage (spouse, stepparent, stepchild), the familial relationship must exist *at the time the principal applicant files her T visa application*, and must continue to exist at the time the derivative applicant files her application, at the time the principal T-1 application is adjudicated, at the time the derivative application is adjudicated and at the time of the derivative applicant's subsequent admission to the United States.¹⁰⁹ For spouses, stepparents, and stepchildren, the familial relationship need not exist at the time the T-1 application is filed, but must exist at the time the T-1 application is adjudicated, at the time the derivative is filed, at the time the derivative's application is adjudicated, and if the family member is abroad, at the time the family member enters the United States. These requirements are subject to age-out protections listed in 8 CFR § 214.211(e). To apply for a derivative T visa, the family member must submit a Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient. A family member's application for a derivative T visa may be filed at the same time as the applicant's application or at a later time.¹¹⁰ If your client gets married or divorced while preparing their T-1 application or while their T-1 application is pending, please contact your NIJC point of contact immediately to assess derivative eligibility.

Additional family members may be eligible to apply if they face a present danger of retaliation as a result of the principal applicant's escape from their trafficking or cooperation with law enforcement.¹¹¹ Prior to placing a case with pro bono attorneys, NIJC screens for eligibility for derivative family members. Please consult with your NIJC contact if your client expresses a fear that their family member would face retaliation.

Derivative Eligibility Chart

T-1 Principal May Apply for Certain Qualifying Relatives	
<p>T-1 <u>under 21 y.o.</u> may apply for the following derivatives¹¹²:</p> <p style="text-align: center;">T-2: Spouse T-3: Child (unmarried and under 21) T-4: Parent T-5: Sibling (unmarried and under 18)</p> <p>Additionally, they may file under the T-6 category for the adult or minor child of a T-2, T-3, T-4, and T-5 if that person faces a present danger of retaliation based on T-1's escape or cooperation with law enforcement.</p>	<p>T-1 who is <u>21 y.o. or older</u> may apply for the following derivatives¹¹³:</p> <p style="text-align: center;">T-2: Spouse T-3: Child (unmarried and under 21)</p> <p>Additionally, they may file for a T-4 parent, T-5 sibling under 18, or T-6 (adult or minor child of a T2, T-3, T-4, T-5) if that family member faces a present danger of retaliation based on T-1's escape from trafficker or cooperation with law enforcement.</p>

¹⁰⁸ INA § 101(a)(15)(T)(ii)(II)-(III); 8 U.S.C. § 1101(a)(15)(T)(ii)(II)-(III)

¹⁰⁹ 8 C.F.R. § 214.211(d), as limited by *Medina Tovar v. Zuchowski*, 982 F.3d 631 (9th Cir. 2020). See note 103, *supra*.

¹¹⁰ 8 C.F.R. § 214.211(b)(1)(i)

¹¹¹ INA § 101(a)(15)(T)(ii)(III); 8 C.F.R. § 214.211(a)(3)

¹¹² 8 C.F.R. § 214.211(a)(2).

¹¹³ *Id.* § 214.211(a)(1).

DERIVATIVE APPLICANTS				
Category	Description	Eligibility for T Nonimmigrant Status		
T-2	T-1's Spouse	<ul style="list-style-type: none"> The spousal relationship must exist when the T-1 application is adjudicated.¹¹⁴ Spouse must be admissible, or file for waiver of inadmissibility.¹¹⁵ 		
T-3	T-1's Children	<ul style="list-style-type: none"> T-1s children must be under 21 y.o. at time of application and unmarried.¹¹⁶ Child must be admissible, or file for waiver of inadmissibility.¹¹⁷ 		
T-4	T-1's Parent	<table border="0"> <tr> <td style="vertical-align: top;"> <p>T-1 <u>is under 21:</u></p> <ul style="list-style-type: none"> Must show legitimacy if petitioning for T-1's father.¹¹⁸ Parent must be admissible, or file for waiver of inadmissibility.¹¹⁹ </td> <td style="vertical-align: top;"> <p>T-1 <u>is over 21:</u></p> <ul style="list-style-type: none"> Must show legitimacy if petitioning for T-1's father.¹²⁰ Parent must show present danger of retaliation based on T-1's escape from trafficker or cooperation with law enforcement.¹²¹ Parent must be admissible, or file waiver of inadmissibility.¹²² </td> </tr> </table>	<p>T-1 <u>is under 21:</u></p> <ul style="list-style-type: none"> Must show legitimacy if petitioning for T-1's father.¹¹⁸ Parent must be admissible, or file for waiver of inadmissibility.¹¹⁹ 	<p>T-1 <u>is over 21:</u></p> <ul style="list-style-type: none"> Must show legitimacy if petitioning for T-1's father.¹²⁰ Parent must show present danger of retaliation based on T-1's escape from trafficker or cooperation with law enforcement.¹²¹ Parent must be admissible, or file waiver of inadmissibility.¹²²
<p>T-1 <u>is under 21:</u></p> <ul style="list-style-type: none"> Must show legitimacy if petitioning for T-1's father.¹¹⁸ Parent must be admissible, or file for waiver of inadmissibility.¹¹⁹ 	<p>T-1 <u>is over 21:</u></p> <ul style="list-style-type: none"> Must show legitimacy if petitioning for T-1's father.¹²⁰ Parent must show present danger of retaliation based on T-1's escape from trafficker or cooperation with law enforcement.¹²¹ Parent must be admissible, or file waiver of inadmissibility.¹²² 			
T-5	T-1's Siblings	<table border="0"> <tr> <td style="vertical-align: top;"> <p>T-1 <u>is under 21:</u></p> <ul style="list-style-type: none"> Sibling is under 18 y.o. at the time of filing.¹²³ Sibling is unmarried at the time of filling and until admitted into the U.S.¹²⁴ Sibling must be admissible, or file for waiver of inadmissibility.¹²⁵ </td> <td style="vertical-align: top;"> <p>T-1 <u>is over 21:</u></p> <ul style="list-style-type: none"> Sibling is under 18 y.o. at the time of filing.¹²⁶ Sibling is unmarried at the time of filing and until admitted into the U.S.¹²⁷ Sibling must show present danger of retaliation based on T-1's escape from trafficker or cooperation with law enforcement.¹²⁸ Sibling must be admissible, or file waiver of inadmissibility.¹²⁹ </td> </tr> </table>	<p>T-1 <u>is under 21:</u></p> <ul style="list-style-type: none"> Sibling is under 18 y.o. at the time of filing.¹²³ Sibling is unmarried at the time of filling and until admitted into the U.S.¹²⁴ Sibling must be admissible, or file for waiver of inadmissibility.¹²⁵ 	<p>T-1 <u>is over 21:</u></p> <ul style="list-style-type: none"> Sibling is under 18 y.o. at the time of filing.¹²⁶ Sibling is unmarried at the time of filing and until admitted into the U.S.¹²⁷ Sibling must show present danger of retaliation based on T-1's escape from trafficker or cooperation with law enforcement.¹²⁸ Sibling must be admissible, or file waiver of inadmissibility.¹²⁹
<p>T-1 <u>is under 21:</u></p> <ul style="list-style-type: none"> Sibling is under 18 y.o. at the time of filing.¹²³ Sibling is unmarried at the time of filling and until admitted into the U.S.¹²⁴ Sibling must be admissible, or file for waiver of inadmissibility.¹²⁵ 	<p>T-1 <u>is over 21:</u></p> <ul style="list-style-type: none"> Sibling is under 18 y.o. at the time of filing.¹²⁶ Sibling is unmarried at the time of filing and until admitted into the U.S.¹²⁷ Sibling must show present danger of retaliation based on T-1's escape from trafficker or cooperation with law enforcement.¹²⁸ Sibling must be admissible, or file waiver of inadmissibility.¹²⁹ 			

¹¹⁴ *Id.* § 214.211(e)(4)(ii) as limited by *Medina Tovar v. Zuchowski*, 982 F.3d 631 (9th Cir. 2020). See also USCIS Policy Manual, Vol. 3, Part B, Chpt. 4, footnote 13 describing that USCIS will apply the *Medina Tovar* decision to T visa adjudications. *Medina Tovar* held invalid the regulatory requirement that a spousal relationship exist at the time of filing an U visa petition. Therefore, when a family relationship (spousal, stepparent, stepchild) is created by marriage, it does not need to exist at the time the applicant submits the application, but must exist when the T-1 petition is adjudicated, when the T derivative petition is filed, when the T derivative petition is adjudicated, and if the family member is residing abroad, when the family member is admitted to the United States.

¹¹⁵ 8 C.F.R. § 214.211(c)(4).

¹¹⁶ *Id.* § 214.201 ; see also *Id.* § 214.211 (e)(3)

¹¹⁷ *Id.* § 214.211

¹¹⁸ See INA § 101(b)(1).

¹¹⁹ 8 C.F.R. § 214.211.

¹²⁰ See INA § 101(b)(1).

¹²¹ 8 C.F.R. § 214.211(a)(3).

¹²² *Id.* § 214.211.

¹²³ *Id.* § 214.211(a)(2); see also *Id.* § 214.211(e)(2)(iii).

¹²⁴ *Id.*

¹²⁵ *Id.* § 214.211

¹²⁶ *Id.* § 214.211(a)(3); see also *Id.* § 214.211(e)(2)(iii).

¹²⁷ *Id.*

¹²⁸ *Id.* § 214.211(a)(3)

¹²⁹ *Id.* § 214.211

T-6	Child of T-2, T-3, T-4, T-5	<ul style="list-style-type: none"> • Applicant is an adult or minor child of any T-1 derivative & in danger of retaliation as a result of T-1's escape from trafficking or cooperation with law enforcement.¹³⁰ • Relative must be admissible, or file for waiver of inadmissibility.
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VIII. *Special Considerations*

a. Criminal History

Many crimes, even relatively minor ones, can render the trafficking victim inadmissible to the United States under INA § 212(a)(2) and necessitate the filing of a Form I-192, waiver of inadmissibility. As such, it is crucial that you carefully review information and documentation regarding any arrest and/or conviction with your client, and remind your client that full and truthful disclosure of her criminal history is necessary for you to properly represent her in her immigration case.

Any arrest, whether or not they occurred incident to the trafficking and whether or not it resulted in a conviction, must be disclosed to USCIS on Form I-914 or I-914A and be accompanied by a certified disposition from the relevant authorities showing the criminal charges, disposition, and sentence. If your client is having trouble locating records for prior arrests, please contact your NIJC contact.

b. Prior Final Orders of Removal

Individuals who are the subject of a final order of removal, deportation, or exclusion are not precluded from filing for T nonimmigrant status.¹³¹ A bona fide determination automatically stays the final removal order until the final adjudication of the T visa, though absent a bona fide determination, the filing of a T visa has no effect on ICE authority to execute a final removal order.¹³² Additionally, one of the significant benefits of the T visa is that any final removal order issued by the Secretary of DHS will be automatically cancelled by operation of law upon approval of the T visa.¹³³ This generally refers to expedited removal orders issued by DHS at a border/port of entry. However, if the client was ordered removed or deported by an immigration judge, the client will have to seek to have her immigration court case reopened and terminated in order to remove the prior order.

It is not uncommon for NIJC's trafficking clients to have been previously stopped or detained by Customs and Border Protection ("CBP") upon an attempted entry into the United States. Individuals stopped at or near the border are frequently removed without ever seeing an immigration judge through a process called "expedited removal." Congress created expedited removal in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") whereby CBP or ICE agents were given authority to expeditiously remove certain inadmissible noncitizens at a port of entry

¹³⁰ *Id.* § 214.211(a)(3) see also *Id.* § 214.211(f)

¹³¹ 8 C.F.R. § 214.204(b)(2).

¹³² 8 C.F.R. § 214.204(b)(2).

¹³³ 8 C.F.R. § 214.204(o)(1).

without referring such individuals to an immigration judge.¹³⁴ Expedited removals began on April 1, 1997. Oftentimes victims do not know whether they were issued a formal order of removal, or were simply allowed to “voluntarily return” to their home country.

Some questions to ask to help determine whether a formal order of removal was entered against the individual and, therefore, whether any ground of inadmissibility is triggered include:

- When did the immigration stop or detention occur?
- Where were you detained?
- How long were you detained?
- Were your fingerprints or photograph taken?
- Did you sign anything?
- Did you appear before an Immigration Judge?
- Did you present false documentation or a false name?
- Did you claim to be a U.S. citizen?

To determine whether your client has an expedited removal order, you may wish to file a Freedom of Information Act (“FOIA”) request with CBP and submit her fingerprints to the FBI to obtain a background check. Note that the responses are not always conclusive. Response time from the agencies can be from two to six months. If your client was previously placed in removal proceedings before an Immigration Judge, you may file a FOIA request with the Executive Office for Immigration Review (“EOIR”) or call EOIR’s automated hotline at (800) 898-7180 if you know your client’s alien registration number. Please contact NIJC if you have questions or need assistance when preparing these requests on behalf of your client.

Pro bono attorneys should contact NIJC if, during the course of representation, it comes to light that a client has a prior order of removal.

IX. Bona Fide Determination

Starting August 28, 2024, USCIS will conduct bona fide reviews of T visa applications and issue deferred action and employment authorization. This is a two-step process. First, USCIS will determine if an application is bona fide – checking that the application is complete and properly filed and ensuring that the initial background checks do not present national security concerns.¹³⁵ Second, USCIS considers whether the applicant merits discretion in the form of deferred action and employment authorization.¹³⁶ The policy manual lays out the discretionary factors that USCIS will consider.

If USCIS finds the applicant merits a bona fide determination and if the applicant filed a Form I-765 Application for Employment Authorization with their application, USCIS will issue an employment authorization document valid for four years. If the applicant did not file an I-765, they will receive notification that they may submit an application for employment authorization. To avoid delay, pro

¹³⁴ INA § 235; 8 U.S.C. § 1225.

¹³⁵ 8 C.F.R. § 214.205(a). See also USCIS Policy Manual, Vol. 3 (Humanitarian Protection and Parole, Part B (Victims of Trafficking), Chapter 6 (Bona Fide Determinations).

¹³⁶ 8 C.F.R. § 214.205(c). See also USCIS Policy Manual, Vol. 3 (Humanitarian Protection and Parole, Part B (Victims of Trafficking), Chapter 6 (Bona Fide Determinations).

bono attorneys should file the Form I-765 along with the initial T visa application, under category (c)(40). Derivative family members present in the United States are also eligible for bona fide determinations and employment authorization documents, though they may only get a bona fide determination if the principal's application is bona fide.¹³⁷

With a bona fide determination, the applicant may obtain a certification letter from HHS to access benefits and services. T visa applicants can also request a social security number on the Form I-765, and their social security card will be issued along with the employment authorization document. Finally, a bona fide determination automatically stays the execution of a final order of removal.¹³⁸

X. After Issuance of the T Visa

a. Employment Authorization

Upon approval of the T visa, the principal applicant will automatically receive an employment authorization document (“EAD” or “work permit”) valid for the duration of T status.¹³⁹

Derivative applicants must file a separate request for employment authorization on Form I-765.¹⁴⁰ This request can be filed concurrently with the derivative's T visa application or anytime thereafter. Due to the new bona fide determination process, derivatives should file two Form I-765s with their application – one under category (c)(40) for the bona fide determination EAD and one under category (c)(25) for the EAD associated with the ultimate T visa grant. Two passport photos must be included with each Form I-765. Derivative applicants who are outside of the United States may only file Form I-765 after admission to the United States in T nonimmigrant status.¹⁴¹

b. Obtaining a Social Security Number

If the applicant requests a social security number via the Form I-765, the number should be automatically created and the card sent to the mailing address listed on the application upon the EAD approval. If the applicant did not request a social security number, upon receipt of a work permit, the client should apply for a social security number at the nearest Social Security Administration office. The Social Security Administration will issue the client a restricted social security number that is only valid for employment with authorization from USCIS. With the valid employment authorization card and social security number, the client can obtain lawful employment. In addition, the client can apply for a state identification and driver's license.

If USCIS later approves the client's application for adjustment of status, she should return to the social security office with her Lawful Permanent Resident (“LPR”) card and request that the restriction requiring employment authorization be removed from the social security card.

c. Driver's Licenses

¹³⁷ 8 C.F.R. § 214.205(b).

¹³⁸ 8 C.F.R. § 214.204(b)(2)(iii).

¹³⁹ 8 C.F.R. § 214.204(o)(3).

¹⁴⁰ 8 C.F.R. § 214.211(i)(3)

¹⁴¹ 8 C.F.R. § 214.211(i)(3)(iii)

Illinois allows undocumented individuals to apply for standard driver's licenses. Additionally, individuals granted a T visa and subsequently, social security numbers are eligible to apply for driver's licenses in all states except Arizona, Nebraska and Michigan.

d. Travel

Although individuals in T nonimmigrant status may be eligible to travel abroad by requesting advance parole, they must request this from USCIS before doing so. If they leave without advance parole, then they will not be permitted to re-enter the United States. **However, NIJC strongly urges all T visa holders to avoid overseas travel until they become lawful permanent residents for the following reasons:**

- There is no guarantee that they will be allowed re-entry as it is a discretionary decision by Customs and Border Protection (CBP), and the officer may inquire into additional inadmissibility issues;
- In the T visa application, the client had to show she would face extreme hardship if removed. In some cases, individuals may need to show hardship again at the time of adjustment. Travel the individual's home country undermines potential hardship arguments; and
- In order for a T visa holder to apply for adjustment of status to lawful permanent resident, she must demonstrate continuous physical presence in the United States. The regulations state that a T visa holder "shall be considered to have failed continuous physical presence" if the T visa holder "has departed from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days."¹⁴²

If a T visa holder must go abroad, she must first file **Form I-131** and obtain advance parole *prior* to leaving the United States.¹⁴³ Such clients should be referred to NIJC for a consultation to assess eligibility. Additionally, NIJC will fully advise the client of possible consequences affecting eligibility for permanent residency and informed that returning to the country of origin could compromise status as it undermines the argument that returning to the home country results in extreme hardship (which is a required showing for T visa applicants). If the T visa holder accrued "unlawful presence" before the T visa approval, departure can trigger a three or ten year bar to reentry. An individual who departs the United States on advance parole does not trigger these bars.¹⁴⁴ Nonetheless, it is crucial that clients consult with an immigration attorney prior to departure to fully assess the impact of departure on their eligibility for permanent residence and any associated risks of traveling outside of the United States.

e. Application for Lawful Permanent Residency

Under the INA, a T visa holder (including those with derivative T visas) may be eligible to adjust status to that of a lawful permanent resident. In order to adjust status, a T visa holder must demonstrate:

¹⁴² 8 C.F.R. § 245.23(a)(3).

¹⁴³ USCIS Policy Manual, Vol. 3, Part B, Chpt. 12, Travel.

¹⁴⁴ *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (2012).

- Continuous physical presence in the United States in T nonimmigrant status for at least three years *or* for a continuous period during the investigation or prosecution of the acts of trafficking if the investigation or prosecution is complete, whichever period is *less*;
- She has been a person of good moral character since receiving the T visa, though this requirement may be waived if the immorality is related to the trafficking;
- She is not inadmissible;
- She satisfies any one of the following three criteria:
 1. She has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;
 2. She would suffer extreme hardship upon removal from the United States; or
 3. She was younger than eighteen at the time of the trafficking.¹⁴⁵

NIJC recommends that T visa holders return to NIJC for an assessment of eligibility for permanent residency.

Part C. Preparing the T Nonimmigrant Application

I. Application Basics

Principal Applicant

The regulations detail what initial evidence must be submitted with the application for the T visa.¹⁴⁶ Please check the USCIS website for all current form versions and filing locations. T visa (principals and derivatives) are exempt from the filing fees.¹⁴⁷ Therefore, they do not need to submit a Form I-912 Request for fee waiver. The following is a list of forms and documents that must be included in the principal application:

- **A cover letter** explaining the client’s legal eligibility. The letter should be a roadmap to the evidence included;¹⁴⁸
- **Form G-28**, Notice of Appearance of Attorney;¹⁴⁹
- **Form I-914**, **Application for T Nonimmigrant Status**, with documentation to establish identity (i.e. copy of the applicant’s birth certificate, biographic page of valid passport, or other identification documents), evidence of lawful entry into the United States (if applicable) and/or any prior lawful immigration status;¹⁵⁰

¹⁴⁵ INA §§ 245(l)(1)-(2); 8 U.S.C. §§ 1255(l)(1)-(2); see also 8 CFR § 245.23.

¹⁴⁶ 8 C.F.R. § 214.204(c)

¹⁴⁷ 8 C.F.R. § 106.3(b)(2).

¹⁴⁸ See Appendix for Sample Cover Letter.

¹⁴⁹ See Appendix for Sample G-28.

¹⁵⁰ See Appendix for Sample I-914.

- **Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (if applicable);** This law enforcement certification is not required, and in fact 84% of T visas approved since 2008 did not include a law enforcement certification.¹⁵¹ If a certification is not available, please provide other evidence of law enforcement cooperation, such as emails with law enforcement agencies or an attorney declaration/affidavit.
- **[Form I-192](#), Application for Advance Permission to Enter as Nonimmigrant** to waive any and all grounds of inadmissibility found under INA § 212(a);¹⁵² The applicant must list the specific grounds of inadmissibility they would like USCIS to waive.
 - Include an additional [G-28](#) for this application.
 - **The Form I-192 should include a separate signed statement.** The statement should include an attestation to the facts giving rise to any ground(s) of inadmissibility, and if a waiver is being sought, the humanitarian and social factors present in the case that show it would be in the national interest for the I-192 waiver to be granted. It is in the interest of the client to specifically list and explain all possible grounds of inadmissibility to ensure that all applicable grounds are waived so as to prevent future problems with adjustment of status and/or removability, and to boost your client's credibility.
- **[Form I-765](#) Application for Employment Authorization** with two passport photos. This should be filed under (c)(40). Principal applicants do not need to submit a second Form I-765 for the EAD associated with the T visa grant, as it is requested on the Form I-914.
 - Include an additional [G-28](#) for this application.
- **A signed personal statement or affidavit of the applicant describing the victimization and addressing each of the four primary requirements for T nonimmigrant status described above, including:** The circumstances of the applicant's entry into the United States; how the applicant become involved in the trafficking situation; when these events took place; who was responsible; how long the trafficking situation lasted; how and when the applicant escaped, were rescued, or otherwise become separated from the traffickers; how the applicant's continued presence in the United States relates to the trafficking she suffered; what harm or mistreatment the applicant fears if removed from the United States; why the applicant fears she would be harmed or mistreated. When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on behalf of the petitioner. A client's credible statement on its own can meet the "any credible evidence" standard. In some cases, it may be helpful to submit additional evidence. The following describes other potential pieces of evidence. However, in deciding to submit additional evidence, please ensure that the other pieces of evidence do not contradict the client statement as this could damage the client's credibility. Moreover, if the piece of evidence is not specific to the client, it holds less value to the adjudicator.

¹⁵¹ USCIS, *Fact Sheet: Characteristics of T Nonimmigrant Status (T Visa) Applicants* (Jan. 2022), available at https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet.pdf.

¹⁵² See Appendix for Sample I-192.

- **Additional evidence supporting the claim, including:**
 - **Evidence that the applicant is a victim of a severe form of trafficking**, including: a law enforcement agency endorsement or documentation that the applicant has been granted continued presence, trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and/or affidavits of other witnesses to the crime;
 - **Evidence that the applicant is physically present in the United States on account of a severe form of trafficking**, including: evidence that the applicant is currently being subjected to trafficking, was freed from trafficking recently, or has suffered severe forms of trafficking in the past and her continued presence in the United States directly relates to the past trafficking, including proof of ongoing impacts of trauma or need to access social service resources. If the applicant departed the United States, include evidence that the applicant returned to the United States as a result of continued victimization, a new incident of a severe form of trafficking, or the applicant's participation in an investigation or prosecution of trafficking;
 - **Case Manager Declaration:** if the applicant is enrolled in trafficking-specific social services, NIJC strongly recommends submitting a declaration from the client's case manager describing the services she is receiving from that agency.
 - **Psychological Evaluation:** to document the ongoing trauma, especially in cases where the trafficking occurred many years ago, it may be helpful to submit a psychological evaluation. Please consult with your NIJC contact to determine if your client should submit a psychological evaluation and when it should be submitted (e.g., with the initial filing or in response to a request for evidence).
 - **Evidence that the applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons**, including: a law enforcement agency endorsement; witnesses' affidavits; media articles or reports; police reports; statements from law enforcement on agency letterhead that endorse the applicant as a victim of trafficking; transcripts; court documents; copies of reimbursement forms for travel to and from court or interviews; an affidavit from the attorney describing the law enforcement cooperation; and emails between the attorney and law enforcement officer scheduling any interviews.
 - **Evidence that the applicant would suffer extreme hardship involving unusual and severe harm if removed from the United States**, including: country condition reports, such as Trafficking in Persons Annual Reports and Human Rights Reports, that would help to demonstrate the extreme hardship the applicant would experience if removed from the United States; letters of support from social workers or mental health providers who are working with the applicant that detail the services the applicant is receiving and the result of discontinuing the services; any other credible evidence regarding the nature and scope of the hardship the applicant would experience upon removal;

- Evidence demonstrating that the grounds giving rise to inadmissibility are caused by or incident to the trafficking (INA § 212(d)(13))
 - Proximity to the trafficking
 - e.g. timeline, individuals involved, whether the client was coerced into participating in the crime or other incident, still recovering from trauma from the trafficking, etc.

- Evidence demonstrating that a waiver of all applicable grounds of inadmissibility would be in the national interest (INA § 212(d)(3)(B)), including:
 - Police clearance letters;
 - Copies of tax returns;
 - Employer letter;
 - Letters of support from community members;
 - Country conditions reports;
 - Ongoing helpfulness to law enforcement;
 - Severity of physical or mental harm as a result of the trafficking and the need for continued medical, social, or supportive services in the United States;
 - The applicant's good moral character;
 - Rehabilitation (if the waiver is based on criminal grounds of inadmissibility);
 - Political, economic, or cultural conditions in home country;
 - Lack of family or community ties to home country;
 - The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);
 - The likelihood that the trafficker's family, friends, or others acting on behalf of the trafficker in the home country would physically or psychologically harm the applicant or the applicant's family;
 - The existence of laws and social practices in the home country that punish the applicant or the applicant's children because they have been victims of trafficking; and/or
 - The trafficker's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's family from future victimization.

All cases are unique and not all of the above factors will apply in each case. An applicant facing more serious grounds of inadmissibility – involving crimes or security grounds of inadmissibility - will require stronger countervailing equities in order to prevail on the waiver. However, it is important that evidence submitted in support of the waiver does not undermine the argument that the applicant's current presence in the United States is directly related to their trafficking.

Derivative Applicant

The following is a list of forms and documents that must be included for each of the derivative application:

- [Form G-28](#), Notice of Appearance of Attorney (*on blue paper*). If the derivative is in the United States, please submit two G-28s, one signed by the principal applicant and one signed by the derivative applicant.
- [Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient \(if applicable\)](#) for each derivative family member, including documents establishing derivative's identity and qualifying relationship to primary applicant (i.e. birth or marriage certificate), and fear of retaliation if required;¹⁵³
 - Derivative applicants do not have to submit their applications concurrently with that of the principal, and may instead submit the application at a later time provided the principal is still in valid T status. Please note that derivative T visa applicants will not be granted status until the primary applicant has been approved.
- [Form I-192, Application for Advance Permission to Enter as Nonimmigrant](#) to waive any and all grounds of inadmissibility found under INA § 212(a);¹⁵⁴ The applicant must list the specific grounds of inadmissibility they would like USCIS to waive.
 - Include an additional form [G-28](#) for this application.
 - **The Form I-192 should include a separate signed statement.** The statement should include an attestation to the facts giving rise to any ground(s) of inadmissibility, and if a waiver is being sought, the humanitarian and social factors present in the case that show it would be in the national interest for the I-192 waiver to be granted. It is in the interest of the client to specifically list and explain all possible grounds of inadmissibility to ensure that all applicable grounds are waived so as to prevent future problems with adjustment of status and/or removability, and to boost your client's credibility.
- **Two Form [I-765](#) for each derivative applicant physically present in the United States** applying for employment authorization and two passport photos per form.¹⁵⁵ One should be submitted under category (c)(40) for the EAD associated with the bona fide determination and one should be submitted under category (c)(25) for the EAD associated with the T visa grant.
 - Include an additional [Form G-28](#) for this application.

II. Practical Considerations

- **Translations:** Any document not in English must be accompanied by a certified translation. The translation must include a signed and dated statement from the translator certifying that she is competent in both languages to render an accurate translation.¹⁵⁶

¹⁵³ 8 C.F.R. § 214.211

¹⁵⁴ See Appendix for Sample I-192.

¹⁵⁵ See Appendix for Sample I-765.

¹⁵⁶ See Appendix for Sample Translation Form/Statement.

- **Original Documents:** All USCIS application forms, affidavits, letters of support, and certified dispositions must be submitted in the original. Please note that submitting photocopies of all other supporting evidence is best, unless otherwise requested by USCIS. USCIS will not return original documents once they are submitted.
- **NIJC Attorney Review of Application:** Please send the cover letter, client personal statement, and all forms and supporting evidence to your NIJC point of contact to review. Please allow at least 10 business days for review.
- **Finalizing the Application Packet:** All supporting documents should be indexed with exhibit labels but *avoid using tabs!* USCIS prefers that documents are identified by page number. Use a two-hole punch at the top of the packet and fasten everything together with a metal two-pronged fastener. **Do not use side-binding or a plastic cover sheet.**
- **Submitting the Application Packet:** All requests for T visas are sent to the USCIS Nebraska Service Center where the application will be adjudicated based on the evidence provided in the T visa application. Requests for a T visa should be sent via certified mail or overnight delivery service to the Nebraska Service Center. Please confirm the filing address on the USCIS website for the Form I-914.¹⁵⁷ The current address (as of October 2024) is:

For FedEx, UPS, and DHL deliveries:
 USCIS Nebraska Service Center
 Attn: I-914
 850 S St.
 Lincoln, NE 68508-1225

For U.S. Postal Service deliveries:
 USCIS Nebraska Service Center
 Attn: I-914
 P.O. Box 87426
 Lincoln, NE 68501-7526

- **Copies of the Application Packet:** Please retain a complete copy of the application for the client file and **send a courtesy electronic copy of the complete and final application to your NIJC contact.**
- **Address Changes:** USCIS must be notified of all address changes within ten days of such change via form AR-11, which can be accessed at [www.USCIS.gov](https://www.uscis.gov/i-914).¹⁵⁸ Applicants for T visas cannot submit the AR-11 online. The change of address form should be sent via certified mail or an overnight delivery service to the Nebraska Service Center so that you can retain proof that the change of address was filed. NIJC recommends sending a copy to the NSC email hotline as well as practitioners have noted inconsistent practices from NSC on address changes.

¹⁵⁷ See <https://www.uscis.gov/i-914>.

¹⁵⁸ INA § 265, 8 U.S.C. § 1305 (2012).

III. What Happens After Filing

- **Receipt Notices:** Receipt notices for each application filed should arrive within approximately two to four weeks. USCIS will send two copies based on the preferences indicated on the forms. If both copies arrive at the attorney's office, please send the client their copy of the receipt notice. Often clients will need to submit the receipt notice to renew their state benefits while the T visa application is pending. Please send your NIJC point of contact a scanned copy of the receipt notice.
- **Biometrics Appointments:** All principal applicants and derivatives over the age of fourteen will receive an appointment notice for biometrics (fingerprinting) at a local USCIS Application Support Center. The appointment notice will have a specific date and time. The attorney of record will likely receive the applicant copy and the courtesy copy. Please send the client their original copy of the biometrics appointment notice. Applicants should bring the original biometrics notice and a government-issued photo I.D. to the appointment.
 - For T visa applicants outside of the United States: the client will receive a Request For Evidence (RFE) for the biometrics, with an attached FBI fingerprint card. The pro bono attorney should send the RFE and fingerprint card to the derivative applicant abroad. Applicants should go to the nearest United States embassy or consular office. The attorney may schedule an appointment for the applicant using the following website: <https://my.uscis.gov/en/appointment/v2>. If the consulate or embassy takes the prints digitally, they will send the results directly to the VSC. If they take the derivative applicants prints on the fingerprint card, the derivative client should send the physical card back to their attorney to send to VSC. In either scenario, the applicant abroad should retain the stamped RFE as proof she attended the appointment (or maintain other proof such as payment for transportation), and send that in response to the RFE. For more information, please reach out to your NIJC point of contact.
- **Processing Times:** USCIS publishes its processing times for the I-914 and I-192. The current processing times can be found at <https://egov.uscis.gov/processing-times/>.
- **Requests For Evidence (RFE):** USCIS may issue a RFE for additional evidence. If the RFE response is insufficient or untimely, USCIS will likely deny the T visa application. *Please contact NIJC immediately upon receipt of an RFE to strategize about how to respond to the RFE.*
- **Approval Notices:** If the T visa application is approved, the following approval notices will arrive (not necessarily at the same time or in this order)¹⁵⁹:

¹⁵⁹ In some cases, the attorney of record may receive an email notification from the Department of Health and Human Services, Administration of Children and Family Services, Office on Trafficking in Persons regarding requesting the OTIP certification letter upon the T visa approval. The attorney may receive this email notification prior to receiving any physical notices related to the client's case.

- EAD issued for duration of status;
- I-914 and/or I-914 Supplement A approval notice, with I-94;
- I-192 approval notice, if filed; and
- I-765 approval notice, if filed (for derivative applicants)

Please carefully review the approval notices to make sure there are no mistakes as to the name, date of birth, or validity period of the T visa. The Form I-192 approval notice will list the specific grounds of inadmissibility waived. If this notice is missing any grounds requested in the original application, the attorney should contact the email hotline to request an amended notice to avoid any issues when the T visa holder applies for permanent residence. If the ground was not disclosed or requested in the initial filing, the applicant will need to submit a new waiver request.

- **Denial:** In the event the T visa application is denied, the pro bono attorney should notify NIJC immediately and no later than three (3) business days. Applicants may challenge a T visa denial via Form I-290B as a motion to reconsider; motion to reopen; or appeal. The deadline will be noted in the denial, but generally the motion or appeal is due within 30 days of the date on the denial notice (or 33 days if the decision was mailed). NIJC's policy is that if USCIS denies a T visa application and a reasonable and non-frivolous ground for appeal exists, the pro bono attorney should pursue it. In the event the T visa application is denied, please contact NIJC immediately to strategize on filing a motion to reopen, motion to reconsider, and/or appeal.
- **Derivatives Abroad:** T nonimmigrant derivatives living abroad will need to apply for the actual T visa at a United States embassy or consulate abroad. This will require, *inter alia*, the submission of an additional form (DS-160) and a visa processing fee. Because T nonimmigrant consular processing is still a relatively recent and constantly evolving process that requires the complex coordination of the DHS and the Department of State, please refer the client back to NIJC for consular processing.

IV. Closing the Pro Bono Case After Approval

NIJC is able to provide technical support to pro bono attorneys and will retain an open client file in a trafficking matter until the tasks identified in NIJC's retainer agreement with the client are completed; excepting circumstances where retainer violations lead to case closure. Typically, this means NIJC will keep a case open until the T visa application is decided and derivative issues are resolved.

Pro bono attorneys typically sign separate retainers with trafficking clients. NIJC invites pro bono attorneys to adopt the same scope of representation as is reflected in NIJC's retainer. NIJC is typically unable to provide technical support for matters outside the scope of the NIJC retainer.

When closing out the matter, NIJC asks attorneys send a clear closing letter to the client. NIJC asks that pro bono attorneys send a copy of the approval notices to NIJC. NIJC will send a separate letter terminating NIJC's representation and advising clients on how to access future NIJC services.

When the case is complete, please consider reviewing [NIJC's case list](#) for additional pro bono opportunities and encouraging colleagues to become involved with NIJC!

IMPORTANT PHONE NUMBERS AND ADDRESSES

*Vermont Service Center (for Attorneys of Record only):**

a. Inquiry Email: HotlineFollowUpI918I914.Vsc@uscis.dhs.gov

* Please attach a G-28 to the inquiry and include your name, organization's name and phone number in addition to the client's name, date of birth, A number, receipt number for the application, and the nature of the inquiry

(Note, the filing location for T visas recently changed, but we have not yet been advised of a new inquiry email. Please confirm the inquiry email address with your NIJC point of contact.)

Immigration Court Automated Case Information (for applicants and attorneys, available in English and Spanish):

a. Phone: 800-898-7180

b. Online: <https://acis.eoir.justice.gov/en/>

GLOSSARY OF IMMIGRATION TERMS

A

“A” Number:	An eight digit number (or nine digits, if the first number is a zero) beginning with the letter "A" that the DHS gives to some non-citizens. (Please note that EOIR now requires all A Numbers to be submitted as nine digit numbers. If your client’s A Number only has eight digits, add a “0” to the beginning of the number.)
Adjustment of Status:	A process by which a non-citizen in the United States becomes a lawful permanent resident without having to leave the United States.
Admission:	The decision of the DHS to allow a non-citizen at the United States border or international airport or seaport to enter the United States.
Admissible:	A non-citizen who may enter the United States because he/she is not among the classes of aliens who are ineligible for admission or has a waiver of inadmissibility.
Affidavit of Support:	A form (I-134) filed by a U.S. citizen or lawful permanent resident for a non-citizen seeking lawful permanent residence.
Aggravated Felon:	One convicted of numerous crimes set forth at INA § 101(a)(43). An aggravated felony includes many crimes, but the most common are: (1) drug trafficking—any crime involving distribution, importation or sale of drugs, no matter the amount or the sentence; (2) the crime of theft, robbery or burglary with one year sentence whether imposed or suspended; and (3) the crime of violence with a one year sentence whether imposed or suspended.
Alien:	A person who is not a citizen or national of the United States.
Alien Registration Receipt Card:	The technical name for a "green card," which identifies an immigrant as having permanent resident status.
Aliens Previously Removed:	Ground of inadmissibility, for persons previously removed for anywhere from five years to twenty years depending on prior circumstances.
Aliens Unlawfully Present:	Ground of inadmissibility for three years for an individual unlawfully present in the United States for more than 180 days but less than one year commencing April 1, 1997 or for ten years if unlawfully present for one year or more.

B

Beneficiary:	A person who will gain legal status in the United States as a result of a visa petition approved by the DHS.
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C

Cancellation of Removal:	Discretionary remedy for an LPR who has been a permanent resident for at least five years and has resided continuously in the United States for at least
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seven years after having been admitted in any status and has not been convicted of an aggravated felony, or anyone physically present in the United States for a continuous period of not less than ten years, who has been a person of good moral character during such period, has not been convicted of certain offenses and who establishes that removal would result in “exceptional and extremely unusual hardship” to the U.S. citizen or LPR spouse, parent, or child.

Child: The term "child" means an unmarried person under twenty-one years of age who is: (1) a legitimated child; (2) a stepchild; (3) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile; (4) an illegitimate child; (5) a child adopted while under the age of sixteen; and (6) a child who is an orphan. There is a significant amount of case law interpreting these categories.

Citizen (USC): Any person born in the fifty United States, Guam, Puerto Rico, or the U.S. Virgin Islands; or a person who has naturalized to become a U.S. citizen. Some people born abroad are also citizens if their parents were citizens.

Conditional Permanent Resident Status: A person who received lawful permanent residency based on a marriage to a U.S. citizen, which was less than two years old at the time. Conditional residents must file a second petition with the U.S. citizen within two years of receiving their conditional resident status in order to retain their U.S. residency.

Consular Processing: The process by which a person outside the United States obtains an immigrant visa at a U.S. consulate in order to travel to the United States and enter as a lawful permanent resident.

Conviction: Formal judgment of guilt entered by a court or, if adjudication of guilt was withheld, if a judge or jury has found the person guilty or the person has entered a plea of guilty or *nolo contendere* and has admitted sufficient facts to warrant a finding of guilt and the judge has ordered some form of punishment, penalty or restraint.

Credible Fear Interview: An interview which takes place if an alien who arrives in the United States with false documents or no documents, and is therefore subject to expedited removal, expresses a fear of persecution or a desire for asylum. The purpose of the interview is to determine if the alien can show that there is a significant possibility that he/she can satisfy the qualifications for asylum.

D

Deferred Action: An exercise of prosecutorial discretion in which DHS will not to pursue removal of a foreign national from the United States for a specified time period. Deferred action is not a legal status, but an alien in deferred action status may apply for employment authorization.

Department of Homeland Security (DHS): The federal department charged, in part, with implementing and enforcing immigration law and policy.

Deportable: Being subject to ejection from the United States for violating an immigration law, such as entering without inspection, overstaying a temporary visa, or being convicted of certain crimes.

Deportation: The ejection of a non-citizen from the United States. Prior to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), non-citizens were ejected from the United States through deportation proceedings. IIRIRA combined what were formerly known as deportation proceedings and exclusions proceedings into once single removal procedure.

Detention: Asylum seekers who enter the United States without documentation may be detained at a DHS detention facility until they pass a credible fear interview or until the completion of their asylum hearing.

Derivative Family Member: An individual who will gain legal status in the United States by virtue of their qualifying relationship to a principal beneficiary of a visa petition or other application for lawful status.

E

Entry: Being physically present in the United States after inspection by the DHS or after entering without inspection.

Entry Without Inspection (EWI): Entering the United States without being inspected by the DHS, such as a person who runs across the border between the United States and Mexico or Canada. This is a violation of the immigration laws.

Employment Authorization Document (EAD): The I-688 card that the DHS issues to a person granted permission to work in the United States. The EAD is a plastic, wallet-sized card.

Excludable: Being inadmissible to the United States for violating an immigration law, such as for not possessing a valid passport or visa, or for having been convicted of certain crimes.

Exclusion: The ejection of a non-citizen who has never gained legal admission to the United States (however, the person may have been physically present in the United States). Prior to IIRIRA, non-citizens who had never gained legal admission to the United States were ejected through exclusion proceedings. IIRIRA combined what were formerly known as deportation proceedings and exclusions proceedings into once single removal procedure

Executive Office for Immigration Review (EOIR): The Immigration Court, the Board of Immigration Appeals, and one other agency within the Department of Justice that decides immigration cases.

Expedited Removal: An abbreviated removal procedure applied to aliens who arrive in the United States with false documents or no documents.

I

I-94 Card:	A small white paper card issued by the DHS to most non-citizens who do not have green cards upon entry to the United States. It is usually stapled to a page of the non-citizen's passport. The DHS may also issue I-94 cards in other circumstances.
Illegal Alien:	See "Undocumented".
Immigration and Customs Enforcement (ICE):	The agency within the Department of Homeland Security responsible for overseeing detention and release of immigrants and the investigation of immigration-related administrative and criminal violations.
Immediate Relative:	The spouse, parent, or unmarried child under 21 of a U.S. citizen. Generally speaking, the immigration laws treat immediate relatives better than other relatives of citizens or legal permanent residents.
Immigrant:	A person who has the intention to reside permanently in the United States; usually a lawful permanent resident.
Immigrant Visa:	A document required by the INA and required and properly issued by a consular office outside of the United States to an eligible immigrant under the provisions of the INA. An immigrant visa has six months validity.
Immigration and Nationality Act (INA):	The immigration law that Congress originally enacted in 1952 and has modified repeatedly.
Immigration and Naturalization Service (INS):	Former branch of the United States Department of Justice charged with enforcing the immigration laws. On March 1, 2003, the INS ceased to exist. Responsibility for immigration policy and immigration functions is now shared between the Department of Justice and the Department of Homeland Security.
Immigration Judge:	Presides over removal proceedings.
Inspection:	The DHS process of inspecting a person's travel documents at the U.S. border or international airport or seaport.
L	
Lawful Permanent Resident (LPR):	A person who has received a "green card" and whom the DHS has decided may live permanently in the United States. LPRs eventually may become citizens, but if they do not, they could be deported from the United States for certain activities, such as drug convictions and certain other crimes.
N	
Native:	A person born in a specific country.
National:	A person owing permanent allegiance to a particular country.

Naturalization:	The process by which an LPR becomes a United States citizen. A person must ordinarily have been an LPR for five years before applying for naturalization. A person who became an LPR through marriage to a U.S. citizen and is still married to that person in most cases may apply for naturalization after three years as an LPR.
Non-citizen:	Any person who is not a citizen of the United States, whether legal or undocumented. Referred to in the INA as an "alien."
Nonimmigrant:	A person who plans to be in the United States only temporarily, such as a person with a tourist or student visa. A nonimmigrant will ordinarily have a visa stamp in his/her passport, and an I-94 card which states how long the person can stay in the United States.
Nonimmigrant Visa:	A document issued by a consular officer signifying that the officer believes that the alien is eligible to apply for admission to the United States for specific limited purposes and does not intend to remain permanently in the United States. Nonimmigrant visas are temporary.
Notice to Appear:	Document issued to commence removal proceedings, effective April 1, 1997.
	O
Order to Show Cause:	Document issued to commence deportation proceedings prior to April 1, 1997.
Overstay:	To fail to leave the United States by the time permitted by the DHS on the nonimmigrant visa (as ordinarily indicated on the I-94 card), or to fail to arrange other legal status by that time.
	P
Parole:	To permit a person to come into the United States who may not actually be eligible to enter, often granted for humanitarian reasons, or to release a person from DHS detention. A person paroled in is known as a "parolee."
Petitioner:	A U.S. citizen or LPR who files a visa petition with the DHS so that his/her family member may immigrate.
	R
Refugee:	A person who is granted permission while outside the United States to enter the United States legally because of harm or feared harm due to his/her race, religion, nationality, political opinion or membership in a particular social group.
Relief:	Term used for a variety of grounds to avoid deportation or exclusion.
Removal:	Proceedings to enforce departure of persons seeking admission to the US who are inadmissible or persons who have been admitted but are removable. After IIRIRA, aliens are placed into removal proceedings instead of deportation or exclusion proceedings.
Rescission:	Cancellation of prior adjustment to permanent resident status.

Residence:	The principal and actual place of dwelling.
Respondent:	The term used for the person in removal proceedings.
S	
Service Centers:	Offices of the DHS that decide most visa petitions. There are four regional Service Centers for the entire United States: the Vermont Service Center (VSC); the Nebraska Service Center (NSC); the Texas Service Center (TSC); and the California Service Center (CSC).
Stowaway:	One who obtains transportation on a vessel or aircraft without consent through concealment.
Suspension of Deportation:	Commonly referred to as "Suspension." A way for a non-citizen to become a lawful permanent resident. Historically, suspension has only been available to a person who is in deportation proceedings. The non-citizen usually must show that he/she has resided continuously in the United States for at least seven years, is a person of good moral character, and either he/she or his/her U.S. citizen or LPR relative will suffer extreme hardship if he/she is deported. In the Violence Against Women Act, Congress created a new "suspension of deportation" for spouses and children of U.S. citizens or LPRs who can show that they have been victims of domestic violence or sexual abuse. These persons need only prove three years of continuous residence in the United States.
T	
Temporary Protected Status (TPS):	A status allowing residence and employment authorization to the nationals of foreign states, for a period of not less than six months or more than eighteen months, when such state (or states) has been appropriately designated by the Attorney General because of extraordinary and temporary conditions in such state (or states).
U	
Undocumented:	A non-citizen whose presence in the United States is not known to the DHS and who is residing here without legal immigration status. Undocumented persons include those who originally entered the United States legally for a temporary stay and overstayed or worked without DHS permission, and those who entered without inspection. Often referred to as "illegal aliens."
United States Citizenship And Immigration Services (USCIS):	The agency within the Department of Homeland Security responsible for adjudicating all applications for immigration benefits.
V	
Visa:	A document (or a stamp placed in a person's passport) issued by a United States consulate abroad to a non-citizen to allow that person to enter the United States. Visas are either nonimmigrant or immigrant visas.

Visa Petition: A form (or series of forms) filed with the DHS by a petitioner, so that the DHS will determine a non-citizen's eligibility to immigrate.

Voluntary Departure: Permission granted to a non-citizen to leave the United States voluntarily. The person must have good moral character and must leave the United States at his/her own expense, within a specified time. A non-citizen granted voluntary departure can reenter the United States legally in the future.

W

Waiver: The excusing of a ground of inadmissibility by the DHS or the Immigration Court.

Work Permit: There is no single document in United States immigration law that is a "work permit." Citizens, nationals, and lawful permanent residents are authorized to be employed in the United States. Certain nonimmigrant visa categories include employment in the United States. Other aliens in the United States may have the right to apply for an Employment Authorization Document (EAD).

INDEX OF APPENDICES

QUICK REFERENCE GUIDES

T Visa Step-By-Step Case Guide
T Visa Application Checklist
Tips for Interviewing Your Client

SAMPLE FORMS

G-28 (Notice of Entry of Appearance)
I-914 (Application for T-1 Nonimmigrant Status) (*Primary Form for T Visa Application*)
I-914, Supplement A (Application for Family Member of T-1 Recipient) (*Derivative Application*)
I-192 (Application for Advance Permission to Enter as a Nonimmigrant)
I-765, (Application for Employment Authorization)
Sample Cover Letter and Client Statement—Labor Trafficking
Sample Cover Letter Client Statement—Sex Trafficking
Sample Law Enforcement Email Report
Sample Attorney Affidavit – Law Enforcement Cooperation
Sample Certificate of Translation
USCIS Notice of Action I-914 Receipt Notice
USCIS Notice of Action I-192 Receipt Notice
USCIS Biometrics Notice
USCIS Notice of Action I-914 Approval Notice
USCIS Notice of Action I-192 Approval Notice
Sample Attorney Certification for IL VTTC Benefit Application

T VISA STEP-BY-STEP CASE GUIDE

Each case and client is different, however this guide will give you an overview of what to expect when preparing an application for T Nonimmigrant Status (“T Visa”).

Step 1: Attend T Visa Training/Clinic

- a. REVIEW CASE FILE
 - a. NIJC will send any relevant case materials to you.
- b. DAY OF CLINIC
 - a. Attend clinic and participate in training.
 - b. Debrief with NIJC staff member to discuss case overview and legal strategy.

Step 2: Case Preparation

- c. REVIEW TRAINING MATERIALS
 - a. Review T Visa Manual.
 - b. Optional:
 - i. 1. Watch relevant webinars from NIJC Pro Bono Webinar Series, available at <http://www.immigrantjustice.org/training-webcasts>
 - 1. Affidavit Writing 101
 - 2. Working with an Interpreter
 - 3. Trauma-Informed Best Practices
- d. COORDINATE INTERPRETER
 - a. If you do not have someone on your team that speaks the client’s language, arrange for an interpreter. Ideally, the interpreter should be the same throughout the case to maintain consistency and avoid the client having to tell their story to multiple new team members.
- e. SCHEDULE FIRST CLIENT MEETING
 - a. Schedule client meeting to introduce yourself to the client, sign an engagement letter, and discuss plan moving forward to work on case

Step 3: Gathering Evidence and Completing Client Personal Statement

- f. REVIEW CLIENT INTERVIEWING TIPS
 - a. See Tips for Interviewing Your Client
- g. MEET ON AN ONGOING BASIS WITH YOUR CLIENT AND BEGIN DRAFTING PERSONAL STATEMENT
 - a. You will need to meet with your client many times to complete the personal statement.
 - b. It is helpful to begin drafting sections of the personal statement soon after you have acquired information from your client. This will allow you to organize the information, identify inconsistencies, and determine what holes still remain in the client statement.
 - c. It is important to have a detailed understanding of your client’s story prior to reporting to law enforcement.
- h. GATHER ANY ADDITIONAL EVIDENCE FROM THE CLIENT
 - a. As you interview your client and listen to their story, consider what additional evidence may be available to include in the application.

- b. Work with client to obtain evidence to support fee waiver request, if needed.
- c. Request letter of support from client's social service case manager.
- i. MAKE SOCIAL SERVICE AND LEGAL SERVICE REFERRALS AS NEEDED
 - a. Prior to pro bono placement, most clients have been referred to a social service agency for support.
 - b. As additional needs arise, please consult with your NIJC point of contact for additional referrals (e.g., family law, etc.).

Step 4: Make Law Enforcement Report and Cooperate with Any Reasonable Requests for Assistance

- j. CONSULT WITH NIJC POINT OF CONTACT RE: LAW ENFORCEMENT COOPERATION
 - a. Identify client goals in law enforcement report: Meet the requirements of the T visa? To see their trafficker investigated/prosecuted? To obtain back wages or restitution?
 - b. Set clear expectations with the client. Once law enforcement cooperation is initiated, to remain eligible for the T visa, the client must cooperate with any reasonable requests for assistance. We cannot guarantee a particular outcome – for example, we cannot guarantee whether or not law enforcement will open an investigation or that prosecutors will charge the case.
 - c. After discussing the law enforcement cooperation strategy with your NIJC point of contact and your client, reach out to the law enforcement agency and assist your client in reporting the crime.
- k. REQUEST FORM I-914 SUPP. B AND/OR CONTINUED PRESENCE
 - a. After an initial report or interview, follow up with the law enforcement agency to reiterate client's willingness to cooperate.
 - b. After the client has been interviewed or provided follow up information, request that the law enforcement officer sign [Form I-914 Supplement B](#).
 - c. If reported to a federal law enforcement agency, request that the agency provide Continued Presence while cooperating and preparing to file the T visa.

Step 5: Draft Cover Letter and Complete Forms and Supplemental Affidavits/Addendums

- l. COMPLETE USCIS FORMS AND EXPLANATORY AFFIDAVITS
 - a. Complete [Form G-28](#) Notice of Entry of Appearance as Attorney, signed by client and only one attorney who will serve as the attorney of record
 - i. The attorney of record does not have to be the same attorney who signs and prepares Forms I-914, I-912, and I-192.
 - b. Complete [Form I-914](#) with your client, and [Form I-914 Supplement A](#), for any derivative family members.
 - i. Explain to them that:
 1. The government requires all T visa applicants to complete this form and while some questions may not apply to them, we are still required to read and respond to every questions.
 2. If your client responds "yes" to any of the questions in Part 4, you must provide an explanation. This can be done via the last page of the form (Part 9, Additional Information) or via a supplementary addendum if it cannot fit on the last page of the form.
 - c. If there are any grounds that give rise to an inadmissibility (consult with your NIJC point of contact), complete [Form I-192](#). The form should include a

- separate signed statement that explains the grounds giving rise to the inadmissibility and why the client merits a waiver.
- d. Complete [Form I-765](#) to request employment authorization. For principals, file one Form I-765 under category code (c)(40). For derivatives in the U.S., file two Form I-765s, under category code (c)(40) and (c)(25).
 - m. DRAFT COVER LETTER & INDEX OF SUPPORTING DOCUMENTS
 - a. Write the cover letter brief, which applies the facts of your client's case to the T visa eligibility grounds. (See samples)
 - b. Draft an index of supporting documents, which lists all piece of evidence in support of each eligibility requirement.
 - n. SEND COMPLETE FILE TO NIJC POINT OF CONTACT FOR REVIEW
 - a. When you have a complete file, email the documents to your NIJC point of contact for review. This includes:
 - i. Forms G-28, I-914, I-765, and if applicable I-192 & I-914 Supplement , and if necessary, supplemental addendums/affidavits that explain answers to these forms.
 - ii. Client's personal statement
 - iii. Cover letter
 - iv. Table of exhibits and copies of all other supporting documents
 - o. FINAL CLIENT MEETING
 - a. After NIJC reviews the application, schedule a final client meeting to sign all necessary forms and affidavits.
 - b. Provide your client with the estimated timeline of filing, adjudication times, and next steps. Check the adjudication times on the [USCIS website](#).
 - p. SEND COMPLETE APPLICATION TO USCIS
 - a. Prior to sending application, make a complete electronic copy of the file and send this PDF to your NIJC point of contact. Retain a file copy for your records as well.
 - b. Send the complete application to the relevant USCIS service center. Check the current filing location and address on the [USCIS website](#).

Step 6: Post-Filing

- q. USCIS NOTICE OF ACTION FORMS
 - a. After you file the application, you will receive the following USCIS Notices. When you receive these forms, send PDF copies of these notices to your NIJC point of contact.
 - b. USCIS Form I-797C, Notice of Action:
 - i. Receipt of I-914, I-192, I-194 Supplement A, & I-765
 - ii. Biometric Appointment:
 - 1. Your client will be scheduled for a biometric (fingerprint) appointment. The appointment notice will have the day, time, and location of the appointment.
 - 2. It is not necessary for you to accompany your client to this appointment, but it is imperative to notify your client of this appointment and provide them with the applicant copy of this notice. They should bring the notice and a photo ID with them to the appointment.
- r. BONA FIDE DETERMINATION

- a. For applications submitted on or after August 28, 2024, USCIS will conduct an initial review to determine if the application is bona fide (complete, properly filed, and no national security flags). If it is bona fide, USCIS will then determine if the applicant merits discretion in the form of deferred action and an employment authorization document. If so, they will issue a notice informing the applicant of the determination and, if a Form I-765 was filed with the initial application, they will issue the employment authorization document.
- s. REQUEST FOR EVIDENCE
 - a. You may receive a Request for Evidence (RFE), which seeks additional information for USCIS to complete their review of the case.
 - b. The RFE will list what specific evidence is needed.
 - c. Notify your NIJC point of contact ASAP after receiving the RFE.
 - d. Be mindful of the RFE deadline.
- t. FINAL DECISION
 - a. USCIS adjudication times varies and may change. As of October 2024, the approximate processing time was 17.5 months.
 - b. For an up-to-date estimate, check <https://egov.uscis.gov/processing-times/>.

Step 7: Post-Decision

- u. APPROVAL
 - a. USCIS will send a written notice of denial or approval. When you receive this form, notify your NIJC point of contact ASAP.
 - b. If the T visa was approved, you will also receive your client's Employment Authorization Document (EAD).
 - c. Notify your client and coordinate a time for them to pick up the EAD and approval notice(s). The originals of these documents should go to the client (e.g., the original EAD; the original T visa approval notice on green paper with the client's I-94 on the bottom).
- v. CLIENT MEETING
 - a. Schedule a client meeting to:
 - i. Provide approval notices & EAD. Alternatively, if you prefer to send to the client, please send certified mail or another trackable service (e.g., FedEx, UPS) as these documents serve as the client's proof of status and proof of employment authorization.
 - ii. Provide information regarding benefits for which they are eligible and adjustment of status after three years, or earlier if they obtain the DOJ close out letter.
 - iii. Sign client termination letter or send client a closing letter.
 - iv. Refer client to NIJC to request the DOJ close out letter.
- w. DENIAL
 - a. Notify your NIJC point of contact ASAP to strategize.
 - b. Denials may be challenged by a motion to reopen, motion to reconsider, or appeal within 30 days of the decision, before the denial becomes final.

T VISA CHECKLIST

The burden of proof is on the applicant to demonstrate eligibility for the T visa and admissibility into the United States as a nonimmigrant. USCIS may consider any credible evidence presented in support of the application.¹ The regulations detail what evidence must be submitted with the T visa application.² The following is a list of forms³ and documents to submit in a T visa case. When considering what additional evidence to submit, consider what value is added by the additional evidence, compared to the potential risks (e.g., potential inconsistencies between the supporting evidence and the applicant's statement, supporting evidence that portrays facts in a less favorable light or in a manner inconsistent with the legal argument).

Principal Applicant

- Cover Letter, on firm letterhead and signed by attorney
- [Form G28](#), Notice of Entry of Appearance as Attorney/Accredited Representative, on blue paper and signed by attorney and applicant
- [Form I-914](#), Application for T Nonimmigrant Status, signed by applicant, interpreter, and preparer
- [Form I-914 Supplement B](#), Declaration of Law Enforcement Officer for Victim of Trafficking in persons (not required)
- [Form I-192](#) Application for Advance Permission to Enter as Nonimmigrant, if required, signed by applicant, interpreter, and preparer
 - This form should include a separate signed addendum listed the grounds of inadmissibility the client would like USCIS to waive and why she merits a waiver of inadmissibility
- [Form I-765](#) Application for Employment Authorization (category (c)(40)) signed by applicant, interpreter, and preparer along with two passport photos
- Identity, Civil, and Immigration documents, if available/applicable
 - Birth certificate with certified English translation
 - Passport
 - Proof of lawful entry
 - Marriage certificate
 - Divorce certificate/judgement
- Evidence of victimization
 - Detailed personal statement signed by applicant and interpreter describing⁴:
 - The circumstances of the applicant's entry into the United States; how the applicant become involved in the trafficking situation; when these events took place; who was responsible; how long the trafficking situation lasted; how and when the applicant escaped, were rescued, or otherwise become separated from the traffickers; how the applicant's continued presence in the United States relates to the

¹ 8 C.F.R. § 214.204(l)(1).

² 8 C.F.R. § 214.204(c)(1); 8 C.F.R. § 214.206(a) (evidence considered for victim of a severe form of trafficking in persons); 8 C.F.R. § 214.207(c) (evidence considered for physical presence); 8 C.F.R. § 214.208(d) (evidence considered for law enforcement cooperation); and 8 C.F.R. § 214.209(c) (evidence considered for hardship).

³ Make sure to down the more recent USCIS forms from their website at <https://www.uscis.gov/forms>.

⁴ See Instructions to Form I-914, pg. 11.

- trafficking she suffered; what harm or mistreatment the applicant fears if removed from the United States; why the applicant fears she would be harmed or mistreated
 - Other supporting evidence as available/needed.
- Evidence of physical presence
 - Case manager declaration, highly recommended
 - Psychological evaluation, optional – consider time since exiting the trafficking
 - Other evidence describing ongoing need to access services or legal system in U.S.
- Evidence of law enforcement cooperation
 - Attorney affidavit describing law enforcement cooperation
 - Emails between attorney and law enforcement
- Evidence of hardship
 - U.S. Department of State [Trafficking in Persons Report](#), country excerpt
 - Other country condition sources or other evidence of hardship
- Certified dispositions for any arrests or convictions
 - If serious crimes or inadmissibility unrelated to the trafficking, consider submitting additional discretionary evidence

Derivative Applicant

- Cover Letter
- [Form G28](#) signed by principal (checking box for “petitioner”)
- [Form G28](#) signed by derivative (checking box for “beneficiary”), if derivative is in the United States.
 - If the derivative is under the age of 14, a parent or guardian may sign on behalf of the derivative
- [Form I-914 Supplement A](#), Application for Family Member of T-1 Recipient, signed by principal and derivative (if derivative in the United States)
- [Form I-192](#), Application for Advance Permission to Enter as Nonimmigrant, if required
 - This form should include a separate signed addendum listed the grounds of inadmissibility the client would like USCIS to waive and why she merits a waiver of inadmissibility
- [Form I-765](#) Application for Employment Authorization, (category (c)(40)) with two passport photos, signed by applicant, interpreter, and preparer
 - Derivatives abroad are not eligible to file a Form I-765
- [Form I-765](#) Application for Employment Authorization, (category (c)(25)) with two passport photos, signed by applicant, interpreter, and preparer
 - Derivatives abroad are not eligible to file a Form I-765
- Evidence of qualifying family relationship
 - Parent/child relationship: birth certificates of parent and child
 - Spouse: marriage certificate
 - Siblings: birth certificates of both siblings showing at least one parent in common
- Certified dispositions for any arrests or convictions
 - If serious crimes or inadmissibility unrelated to the trafficking, consider submitting additional discretionary evidence

TIPS FOR INTERVIEWING YOUR CLIENT

Your client is the most important source of evidence for a T visa case. However, unlike some other clients or victims of crime who are able to clearly articulate the facts that form the basis of a claim, survivors of trafficking often face great barriers to doing the same. Traffickers use sophisticated manipulation tactics to obscure their intentions, which makes it difficult for survivors to clearly articulate how they were victimized. In addition, complex legal definitions of human trafficking prevent many survivors from self-identifying as crime victim with enforceable rights. As their legal advocate, it is your role to i) illicit relevant facts to draft a compelling personal statement and cover letter, as well as ii) think creatively to compile evidence that corroborates your client's story and helps prove the elements of the T visa. This evidence is gained through client interviewing.

The following tips provide suggestions for interviewing trafficking survivors with a trauma-informed approach that will help overcome barriers and prepare a strong T Visa case.

GENERAL INTERVIEWING TIPS

PROVIDE CHOICES AND ALLOW CLIENTS TO MAKE DECISIONS

- Trauma survivors often have control stripped away from them by perpetrators. By providing survivors of trauma with options and allowing them to make small and large decisions, they often feel greater control and safety.
 - Sample statements:
 - *"Where would you like to sit?" (by the window or door)*
 - *"Some of the questions I ask may be difficult to answer. You can decide to skip completely or return to these questions at a later time."*
 - *"We can take breaks at any point in the meeting."* (e.g. bathroom, stretch, water)
 - *Some survivors will not feel comfortable accepting water or food unless you also help yourself. It might be helpful for you to help yourself to water and provide a glass for your client.

PROVIDE CONSISTENCY AND FOLLOW THROUGH

- Many trafficking survivors have had their trust greatly manipulated, which may make it difficult to trust new people. Provide them with reassurance that you are a reliable and trusting advocate.
 - Sample statements:
 - *"There is nothing you can say that will make me not want to help you."*
 - While this statement does not guarantee their application will be granted or make promises about the strength of their case, it assures clients that they need not fear to disclose facts that they think weaken their case.
- Many facts in your client's story may be harrowing or hard to believe. Try to maintain a calm affect while you interview your client and not react with surprise or shock, which may make them feel embarrassed or isolated. Instead, reassure them that they did not deserve the treatment they received and they are not alone.
 - Sample statements:
 - *"Thank you for sharing this very difficult memory. I want to assure you that you did not deserve _____."*
 - *"You are not alone. Unfortunately, these kinds of crimes/events happen to many people around the world. We are here to advocate for you."*

PROVIDE PROGRESS UPDATES ABOUT CASE STATUS

- It can be very difficult for clients to understand the many moving parts (forms, affidavits, documents, etc.) and individuals (e.g. pro bono attorney, NIJC supervisor, social services team, law enforcement agents, etc.) involved in their T visa case.
 - At the beginning of each meeting, share an agenda (can be rough) of what you hope to accomplish at the meeting.
 - At the end of the meeting, remind them of how the information gained at the meeting refers to the case. Ask them if they have any questions for you about the meeting or where they are in the application process.
 - Then, follow-up with next steps. (Even as simple as, *“I will call you soon to schedule our next meeting and discuss next steps.”*)

PROVIDE CLIENT WITH A PAPER AND PEN TO HELP VISUALIZE THE STORY

- Human trafficking schemes involve perpetrators (the “traffickers”), victims (compelled to provide labor and/or commercial sex acts), and in the case of sex trafficking, the buyer/consumer (“John”). The trafficker(s) can be a gang member(s), a family member(s) (such as parents, aunts, uncles, cousins), friends, romantic partners and spouses. They can operate individually or as part of a network of pimps and traffickers. However, the business structure is often concealed from the victim, who may only interact with one pimp/trafficker.
- Allowing your client to write down or draw out these people and places can help make connections for your client. Developing this fact pattern can assist adjudicators to conceive of the crime as human trafficking, which involves deliberate manipulation of victims.
- Advocacy Tip: If a client describes only one individual as the perpetrator, seek to learn more about how this perpetrator might be connected to a larger network of exploiters, whether familial, cultural or otherwise. Drawing a map or family tree connecting everyone in your client’s story can assist your client to make these connections.
 - MAP “CHARACTERS”:
 - As the client shares their story and names different individuals involved, write down the names of these people and draw lines to show how these people are connected.
 - DRAW TIMELINE:
 - Once you begin to learn about the different events throughout the story, start to place them on a rough timeline and go through this with your client. It is OK to have a very rough timeline, and note that it is an estimate of when the events occurred.
 - DRAW MAPS:
 - If the location of an event is important, it can be helpful to draw a map of the neighborhood or the place where they were staying or fled.

REDUCE THE NEED TO RE-TELL TRAUMATIC EVENTS

- Thinking about and re-telling traumatic memories can be very difficult for clients. Try to reduce the number of times the client has to re-tell the story. When you have enough information to prove the element or explain a ground of inadmissibility, do not continue to probe deeper.
- Sometimes when clients re-tell their stories, they feel as if they are re-living them and can start to disassociate. If this happens, pause and re-ground them.
 - Sample statements:
 - *“Thank you for sharing such a difficult memory. I just want to remind you that we are here, in Chicago, and that moment has passed. You are safe and have people, like me, and others who are here to help.”*

DIRECT CLIENT TO APPROPRIATE RESOURCES

- Your client will see you as an authority figure and may not understand the difference between your role and that of a case manager who provides non-legal support, such as referrals for counseling, housing, safety planning, transportation subsidies or applications for public benefits.
- If your client asks you about non-legal questions, direct them to their case worker and explain that you are focusing on the immigration legal case, while there are other members of their support team who are better suited to address non-legal issues.
- If the client continues to reach out to you to fulfil these needs, inform your NIJC supervisor.

IF YOUR CLIENT CALLS YOU WHILE IN CRISIS

- Remind your client to call 911 with any emergencies.
- If this is a social services need, direct your client to their case worker.
- Contact NIJC Supervisor.

FIRST MEETING OVERVIEW

Your client will likely be very nervous about telling their story to a new group of people. They may feel embarrassed about their experiences, education-level or inability to communicate with you in English. It is important to try to put the client at ease and provide them with information to understand your role and the process.

Preparing for the First Meeting:

- When you call your client to set up meeting:
 - Give specific directions to your office & what to do when arrives (e.g. let them know they will need identification for security)
 - Give your client your contact number (or the number of the person who speaks their language) if they get lost or have problems.
- Consider meeting your client in the lobby and accompanying them to the meeting room.

At the First Meeting

- To avoid overwhelming your client, include only the necessary team members at the meeting, or have some team members stop by before the end of the meeting to introduce themselves.
- CLARIFY YOUR ROLE
 - Clients may not fully understand your role as a pro bono attorney, and may think that you are someone connected to law enforcement.
 - Explain that you and NIJC are their attorneys.
 - Sample statements:
 - “I am an attorney and will represent you in your T visa case for free, without any charges. I am not the government and I am not connected to law enforcement.”
 - Introduce all team members present
 - Introduce interpreter and explain interpreter role
- EXPLAIN CONFIDENTIALITY
 - Explain attorney-client privilege and confidentiality in simple terms.
 - Sample statements:
 - “Everything that we talk about is confidential, which means that I will not be sharing any information with law enforcement, the government or anyone else unless you give me specific permission. You are in control of your story.”

- EXPLAIN THE PROCESS
 - In simple terms, go through the parts of the application that you will be working on and rough timeline.
 - Ask if your client has any questions or other goals.
- IF USING A LAPTOP
 - If you use a laptop to take notes during a meeting, explain that you are typing to take down the story more efficiently.
 - Advocacy Tip: Showing your client the screen briefly (that has, for example, a word document for note taking) and explaining that there is nothing secret on the screen, often helps to foster trust and increase transparency.
- OBTAIN BASIC INFORMATION:
 - Current safe telephone number, address, and email (if any)
 - Names and location of any children
 - Best way/time to contact client
 - Alien numbers for client and all family members (if applicable). *If client has never been apprehended by immigration enforcement, applied for any type of immigration remedy, or been placed in removal proceedings, your client will not have an A#.*
 - Social security numbers (if any) for self and family.
 - Make copies of all documents the client has brought with them.
 - Before client leaves, make a list of the documents you are seeking from them and your contact information.

SUBSEQUENT MEETINGS OR FIRST MEETING IF CLIENT IS READY

- TALKING TO YOUR CLIENT ABOUT THEIR TRAFFICKING EXPERIENCE
 - Try to let your client tell their story in the way that is most comfortable for them. Some clients will be very talkative, while others will need many more direct questions.
 - Start with open-ended questions.
 - “Could you tell me about the first time you thought about coming to the U.S.?”
 - Clients will rarely tell their story in chronological order, but you can always go back and approximate the dates later.
 - Make sure to ask non-judgmental questions
 - Rather than, “Why did you stay so long?” “Why didn’t you call the police or your family?” “Why did you trust him?”
 - Try, “Could you tell me about the last time your had contact with _____? Were you able to leave on your own?” “Could you tell me about the relationship you had with _____ prior to _____?”
- THINK CREATIVELY ABOUT SUPPORTING EVIDENCE
 - As you interview your client and listen to their story, consider what additional evidence may be available to include in the application:
 - What pieces of evidence might be helpful to corroborate the personal statement? (E.g. receipts from trafficker, flight ticket, contract or any signed statement from trafficker, photos, screen shots of text messages, social media posts, etc.)
 - Ask client if they have access to this evidence and if so, request they bring it to the next meeting.
 - Who are the people in your client’s story that might be able to write a letter of support?
 - Did your client disclose the victimization to any family/friends/employer during or after the trafficking?
 - Did your client receive any medical/social services from doctor, nurse, counselor, social worker, etc. during or after the trafficking?

- Who (if anyone) helped client exit situation
 - Ask your client if they feel safe to reach out to the individuals who might be able to write a letter of support.
 - Letters of support serve several purposes including: corroborating your client's story of victimization & positive discretionary factors, including ties to the community.
- IF YOUR CLIENT HAS DIFFICULTY UNDERSTANDING A QUESTION OR SHARING INFORMATION
 - Sometimes clients do not understand the particular question you are asking (especially on Form I-914). It can be helpful to re-phrase the question with more simple vocabulary or provide an example of the situation.
 - Sample statement:
 - *"I'm not sure if this happened to you, but I know that some of our other clients (or other people who have been through similar experiences) _____ [insert example]."*
 - This statement both provides an example of the information you are seeking and also makes the client feel they are not alone.