

PENN STATE LAW

Immigration Law and Policy for Trafficking Victims

AAUW-State College

April 11, 2015



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My research and teaching

- Immigration Prosecutorial Discretion
- Center for Immigrants' Rights Clinic
- Immigration Law
- Asylum & Refugee Law



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Disclaimer

- This presentation does NOT serve as legal advice
- This presentation is not a substitute for consulting the Immigration & Nationality Act (INA), the regulations, and the case law or the latest developments from the agencies.



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T Visa Eligibility

- Are or were a **victim of a severe form of trafficking**
- Are **in the U.S.** or at a port of entry **due to trafficking**.
- **Comply with any reasonable request** from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (unless under the age of 18, or unable to cooperate due to physical or psychological trauma)
- Would suffer **extreme hardship involving unusual and severe harm** if you were removed from the U.S.
- **Admissible** to the U.S. (or eligible for a waiver)

<http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-immigrant-status>



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What is a “severe form” of trafficking

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- [T]he 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

22 U.S.C. §7102(8) (2008).



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Victim of a severe form of trafficking

- Law enforcement endorsement
- “[S]ufficient credible secondary evidence describing the nature and scope” of the trafficking
- Statement from the applicant describing the victimization



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Physical Presence

- Present because he or she is being subjected to a severe form of trafficking (SFT) in persons
- Was recently liberated from a SFT in persons
- Was subject to SFT at some point in the past and whose continuing presence in the U.S. is directly related to the original trafficking in persons
- Gap between escape and contact with law enforcement – “no clear chance to leave the U.S. in the interim”

8 C.F.R. 214.11(g)



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Compliance with law enforcement

- How might you document if compliance is reasonable?
- How might you prove you meet the exception due to age or physical/psychological trauma?



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Extreme Hardship Involving Severe and Unusual Harm

- Age and personal circumstances
- Serious physical or mental illness
- Nature and extend of physical and psychological consequences
- Impact of the loss of access to U.S. legal system
- Likelihood of re-victimization
- Likelihood that individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by a TPS or related protection

8 C.F.Š. 241.11(i)(1)(2013)



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Admissibility or Overcoming Inadmissibility



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Benefits of a T Visa

- Legal status in the United States
Eligibility for work authorization
Derivative status for certain family members
Pathway to a green card (lawful permanent resident status) after three years in T visa status



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Applying for T Nonimmigrant Status

- To apply for a T visa, submit:
Form I-914, Application for T Nonimmigrant Status
Three passport size photographs
A personal statement explaining how you were a victim of trafficking (on the Form I-914)
Evidence to show you the meet eligibility requirements



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**T Visa Statistics
(applications received/approved)**

- 2014: 944/613
- 2013: 799/848
- 2012: 855/674
- 2011: 967/557
- 2010: 574/447

http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2015_qtr1.pdf



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Policy Questions

- Why are so few T- visas utilized?
- What are the reasons why a trafficking victim will not report abuse?



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**Beyond the T Visa:
Related Immigration Relief**

- U Visa for victims of crime
- Asylum and Withholding of Removal
- Special Immigrant Juvenile Status
- Deferred Action for Childhood Arrivals
- Prosecutorial Discretion (Morton Memo 2)



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U Visa for Victims of Crime

- The foreign national [FN] has suffered substantial physical or mental abuse as a result of having been a victim of crime
- The FN possesses information concerning the crime
- The FN has been, is being or is likely to be helpful to law enforcement investigating or prosecuting the crime
- The criminal activity violated the laws of the U.S.

INA 101(a)(15)(U)



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Qualifying Crimes for U Visa Related to Trafficking

- Trafficking
- Prostitution
- Involuntary servitude
- Slave trade
- “Forced labor” (not in statute but recognized by Department of Labor)

*similar application procedure and benefits to the T-visa, but larger statutory cap (10,000)



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Human Trafficking Indicators

- Does the victim possess identification and travel documents? If not, who has control of these documents?
- Did the victim travel to a destination country for a specific job or purpose and is victim engaged in different employment than expected?
- Is victim forced to perform sexual acts as part of employment?
- Is the victim a juvenile engaged in commercial sex?
- Does the victim owe money to an employer or does the employer hold wages?
- Did the employer instruct the victim on what to say to law enforcement or immigration officials?
- Can the victim freely leave employment or the situation?
- Does the victim have freedom of movement? Can they freely contact family and friends? Can they socialize or attend religious services?



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Resources

- USCIS: www.uscis.gov
- ICE: <http://www.ice.gov/human-trafficking/>
- Polaris Project: <http://www.polarisproject.org/>
- National Immigrant Women's Assistance Project: <http://niwaplibrary.wcl.american.edu/>
- Penn State Law's Center for Immigrants' Rights



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Questions?





Thank you!

