T VISAS: WHAT THEY ARE AND HOW THEY CAN HELP YOUR CLIENTS

By Alison Kamhi & Rachel Prandini

I. What is a T Visa?[1]

In October 2000, Congress created T nonimmigrant status (often referred to as the "T Visa") to combat human trafficking and to provide immigration relief for those who are trafficked into the United States.[2] The T Visa is a type of humanitarian immigration relief allowing survivors of human trafficking and their immediate family members to remain and work temporarily in the United States. The T Visa also creates a path to a green card. This practice advisory explains the benefits and advantages of T Visas, as well as the requirements for applying for T Visas.

A. Why Should Your Client Apply for a T Visa?

- T Visa benefits include:
  - Four years of lawful immigration status;
  - Four years of employment authorization;
  - The opportunity to apply for lawful permanent residency if the T visa holder meets certain criteria;
  - Federal refugee benefits, including cash assistance, food stamps, and job training;
  - Public benefits in some states; and
  - The ability to petition for T visas for certain family members in the United States or abroad.[3]

> - For applicants over 21 years old, derivatives can include spouses and children.
> - For applicants under 21 years of age, derivatives can include spouses, children, parents, and unmarried siblings less than 18 years old.
> - For applicants of any age, if there is present danger to family members due to the trafficking or the survivor's cooperation with law enforcement, derivatives can include parents and unmarried siblings under 18 years old, as well as adult or minor children of derivatives.

B. Who Is Eligible for a T Visa?

A T visa is a form of immigration relief available to an applicant who can show that he or she:

- Is a survivor of a severe form of trafficking or attempted trafficking.[4] Trafficking includes both labor trafficking and sex trafficking;
- Is physically present in the United States or at a port of entry (i.e. border) on account of the trafficking. The applicant must have remained in the United States since the most recent act of trafficking;
- Has complied with any reasonable request for assistance in investigating or prosecuting the trafficking (if eighteen years of age or older); and
- Is at risk of suffering extreme hardship upon removal from the United States.[5]

C. What Are Some Advantages of T Visas over Other Forms of Immigration Relief?

- Some survivors of trafficking do not wish to relive their experiences by cooperating with law enforcement. In the case of T Visas, cooperation with law enforcement is not required if the applicant is under eighteen, or if the request for cooperation is not reasonable. There is also a cooperation exception for survivors who have experienced physical or psychological trauma that prevents them from complying with a reasonable request from law enforcement. This is more generous than what is required in connection with a U visa.
- The T Visa does not necessarily require a law enforcement certification. A T Visa applicant can provide other substantial evidence and documentation of cooperation if law enforcement does not respond to or denies a certification request. Because applicants who were under 18 at the time of the trafficking are not required to cooperate with law enforcement, they need not submit a law enforcement certification (although it will bolster their application if available). This is a major difference from the U visa, which always requires a law enforcement certification.
- T Visas may be more widely, and more quickly, available than other forms of immigration relief; there is a cap of 5,000 T Visas to be issued per year, but the cap has never been met. Clients who are eligible for asylum, the U visa, VAWA, or other forms of humanitarian relief may be able to obtain a T visa faster than those forms of relief.
- The T Visa has one of the most generous waivers in all of immigration law. Prior criminal or immigration violations that may bar other forms of immigration relief may be waived in connection with the T visa if they were caused by or incident to the trafficking or if it is in the national interest to do so.[6]
- T Visa holders are eligible for the same federal benefits as refugees, including cash assistance, food stamps, and job training. U visa holders are not eligible for federal benefits.
- Trafficking survivors are eligible for benefits in California as soon as they are taking steps to get a T Visa (in other words, even prior to filing the T visa application). In contast, U visa applicants are eligible for benefits in California only *after* their application is filed.

In California, trafficking survivors who are taking steps to pursue a T visa are eligible for state benefits including eight months of cash assistance, Medi-Cal, and food stamps. Evidence that the survivor is taking steps to obtain a T Visa can include a statement by the survivor, an advocate, or a law enforcement official; a receipt or copy of the T Visa application; or proof that law enforcement has requested Continued Presence (CP) authorization for the survivor. (CP allows trafficked persons to work, live, and receive certain benefits and services while the trafficking investigation is ongoing. CP can only be requested by law enforcement on behalf of the survivor.)

D. Has the T Visa Changed Under the Trump Administration?

No, the T Visa was created by Congress, and the legal requirements cannot be modified or eliminated without Congress. However, just as they are impacting all immigrants in the United States, some of President Trump's immigration policies affect T Visa applicants. The Executive Order on Interior Enforcement expanded enforcement priorities to include any immigrant charged or convicted of a criminal offense, or who has committed "acts" that constitute a "chargeable criminal offense."[7]

These expanded enforcement priorities may impact clients who are eligible for T visas. For example, any potential applicants who have been involved with the criminal justice system or have a removal order are now classified as "enforcement priorities." As a result of the criminal nature of trafficking, survivors of trafficking frequently come into contact with the criminal justice system because they are often arrested as allegedly complicit in the trafficking or related activities. More specifically, sex trafficking survivors who have been forced to engage in prostitution would fall under the enforcement priorities, as the executive order does not mention any exceptions for trafficking survivors.

The heightened threat of deportation under the Trump Administration makes it more crucial for trafficking survivors to avail themselves of temporary and long-term immigration protection, such as the T Visa, if they are eligible. Securing immigration status will not only help trafficking survivors achieve lawful status, employment authorization, benefits, and overall stability, but will also help prevent possible immigration detention and deportation.

E. What Are Some Additional T Visa Resources?

1) U.S. Department of Labor, *Toolkit on Reducing Child Labor and Forced Labor*: https://www.dol.gov/ilab/child-forced-labor/
2) U.S. Department of Homeland Security, *Information For Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and Other Crimes*, https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf

3) U.S. Department of Health & Human Services, *Fact Sheet: Victim Assistance*, https://www.acf.hhs.gov/orr/resource/fact-sheet-victim-assistance-english
4) U.S. Department of State, *2016 Trafficking in Persons Report*, https://www.state.gov/documents/organization/258876.pdf
5) U.S. Department of Homeland Security, *Blue Campaign*, https://www.dhs.gov/blue-campaign.
6) Kids in Need of Defense, *T Visa Relief*, https://supportkind.org/wp-content/uploads/2015/04/Chapter-7-T-Visa-Relief-107.pdf.
7) National Immigrant Women's Advocacy Project, *T Visa Resources*, http://niwaplibrary.wcl.american.edu/topic/immigration/t-visa/.
8) Coalition to Abolish Slavery and Trafficking, *Legal Resources*, http://www.castla.org/legal-resources.
9) National Immigration Law Center, *Benefits for Immigrant Survivors of Trafficking, Domestic Violence, and Other Serious Crimes in California*, https://www.nilc.org/wp-content/uploads/2015/11/TraffickingReport-2015-09.pdf
10) Immigrant Justice Network, *FAQ for Community Groups: Immigration Enforcement Executive Actions:* https://www.ilrc.org/sites/default/files/resources/community-advisory-exec-orders-interior-ijn-final_002.pdf

End Notes

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[2] Survivors of Trafficking and Violence Protection Act of 2000 (VTVPA); INA § 101(a)(15)(T); 8 CFR § 214.11.

[3] *See* 8 CFR § 214.11(k); see also 9 FAM 402.6-5(E)(1).

[4] Congress has defined "severe form of trafficking in persons" as either 1) sex trafficking, in which a commercial sex act is induced from a person under 18 years of age, or induced from anyone by force, fraud, or coercion, or 2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 USC § 7102(9)(a)-(b).

[5] Factors include: the age, maturity, and personal circumstances of the applicant; any physical or psychological issues the applicant has which necessitates medical or psychological care not reasonably available in the foreign country; the nature and extent of the physical and psychological consequences of having been a victim of a severe form of trafficking in persons; the impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of a severe form of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection; 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 in persons; the likelihood of re-victimization and the need, ability, and willingness of foreign authorities to protect the applicant; the likelihood of harm that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would cause the applicant; or the likelihood that the applicant's individual safety would be threatened by the existence of civil unrest or armed conflict. See 8 C.F.R. § 214.11 (i)(1)(i-viii) (non-exhaustive list).

[6] *See* INA § 212(d)(13); INA § 212(d)(3).

[7] *Id*.