



AMERICAN **BAR** ASSOCIATION

Commission on Immigration

**A LEGAL GUIDE FOR ICE
DETAINEES:**

**Applying for a T Visa
(For victims of human trafficking)**

Last Updated March 2020

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¹ Vera Institute of Justice, “LOP Curriculum” (Jan. 2020).

² Northwest Immigrant Rights Project, “T Visas” (2019).

³ Alison Kamhi & Rachel Prandini, “T Visas: What They Are and How They Can Help Your Client,” *Immigrant Legal Resource Center* (Apr. 2017).

⁴ National Human Trafficking Resource Center, “T Nonimmigrant Status and the Trauma Exception,” (May 2015).

⁵ Kids in Need of Defense, “Chapter 7: T Visa Relief {107}.”

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What is a T visa?

A T visa is a temporary immigration status that may be given to victims of **human trafficking**. Human trafficking includes **sex trafficking** (being forced into prostitution or other sex work such as at strip clubs or massage parlors or doing such acts while under 18 years of age) and **labor trafficking** (being forced to work against one's will or without pay). For example, many traffickers lure women to the United States with the promise of a job, such as working as a nanny, and then force them into prostitution. Traffickers may use force by taking away travel documents, withholding pay, and/or threatening the victim or the victim's loved ones.

Human trafficking is different than smuggling. Smuggling involves the transportation of migrants into the United States but does not include forced labor or forced sex work afterwards. Coming to the United States with the help of a smuggler is not trafficking, nor is owing the smuggler money, unless it results in forced labor or forced sex work. For example, if you used a coyote to come to the United States and owe the coyote money, that would not be considered human trafficking unless the coyote forces you into work or prostitution to pay off the debt. Simply coming to the U.S. with the help of a smuggler that demands money does not qualify you for a T visa. Only victims of severe human trafficking may apply for a T visa.

Do I qualify for a T visa?

Not every victim of trafficking will be eligible for a T visa. When assessing your application for a T visa, USCIS will consider a variety of factors.

You are a victim of severe human trafficking, including sex or labor trafficking.

You could be a victim of severe human trafficking if you were lured into **sex trafficking** by *force, fraud, or coercion*, or if you are under 18 years old and engage in commercial sex. You could also be a victim of severe human trafficking if you were lured into **labor trafficking** through the use of *force, fraud, or coercion* for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. For example, labor trafficking may include being forced to work as a maid, in a factory or restaurant, at a farm, or at another job for no pay or in order to "pay off" your "debt" to a trafficker.

"Force, fraud, or coercion," may include situations such as being promised another job before coming to the U.S. but then being forced into prostitution. It may also include threatening the safety of the victim or another person to force the victim into prostitution. Force can include physical force, such as the trafficker holding you captive, assaulting you, restricting your movement, etc. Psychological force, such as threatening to report you to immigration authorities if you do not work for free, threatening you or others with violence, keeping you under surveillance, or psychologically torturing you, may also qualify as *force, fraud, or coercion*.

You are physically present in the United States (or port of entry) due to the trafficking.

If you voluntarily entered the country either legally or illegally for a reason not related to trafficking, but were later trafficked, you may still qualify for a T visa if: (1) you are still being trafficked or (2) you were recently freed from the trafficking. The key factor is whether you remain in the U.S. to assist with the law enforcement investigation. If you become free of the traffickers and do not immediately contact law enforcement or leave the country, that will likely count as a negative factor against you when applying for a T visa and you must explain that you did not have a clear chance to leave the country during that time. If the trafficking was not recent, you must prove that “trauma, injury, lack of resources, or travel documents that have been seized by the traffickers”⁶ kept you from reporting the trafficking or leaving the country immediately.

You reported the trafficking to law enforcement and cooperated with the investigation.

You must submit proof (such as police reports, statement from law enforcement officer, court records, etc.) that you reported the trafficking to law enforcement and complied with reasonable requests for assistance in investigating or prosecuting the trafficking, if you are 18 years or older. You **do not** have to meet this requirement if you are **under 18 years of age** or if you were unable to report the trafficking due to **severe physical or psychological trauma**.

If you are under 18, you must prove your age by providing a copy of your birth certificate, passport, or a certified letter from a doctor. You may also provide secondary evidence such as school records, two sworn affidavits, etc.

If you were unable to report the trafficking due to severe physical or psychological trauma, you should explain the trauma in an affidavit and explain why it has prevented you from reporting the trafficking. You should also submit other evidence of the trauma, such as photographs, medical records, and a statement from a mental health professional.

Qualifying physical trauma can include debilitating injury or illness. Qualifying psychological trauma can include Post-Traumatic Stress Disorder (including flashbacks and/or overwhelming distress when reminded of the trafficking), self-harm and/or suicidal ideation or suicide attempts, inability to cohesively remember and explain the story and memory problems, severe fear of the traffickers, etc.

You can report prior trafficking by calling law enforcement or by calling the non-profit **National Human Trafficking Hotline** at **1-888-373-7888** or the government-affiliated **Trafficking in Persons and Worker Exploitation Task Force Hotline** at **1-888-428-7581**. Both hotlines offer several languages. You are only required to cooperate with “reasonable requests” from law enforcement for assistance with the case.

⁶ 8 CFR §214.11(g)(2) (2002).

You would suffer extreme hardship if forced to leave the U.S.

“**Extreme hardship**” means that you would suffer severe consequences after being removed from the U.S. as a trafficking victim. This **does not** include economic loss such as inability to find a job or loss of social opportunity such as getting a bad reputation. Extreme hardship can include severe situations such as:

- Suffering from extreme physical or mental trauma due to trafficking;
- Revictimization in home country (you are likely be trafficked again);
- Inability to access necessary medical or psychological care in home country;
- Inability to get traffickers prosecuted in home country (loss of access to U.S. criminal justice system and the rule of law);
- Suffering severe social or legal punishment in home country because of trafficking (for instance, if the society in your home country would harm you such as through severe harassment or violence because you are a victim of trafficking);
- Current armed conflict or civil unrest in home country;
- Being over 65 years old or under 18 years old; or
- You have children in the U.S. who are under 21 years of age and are Legal Permanent Residents (LPR) or U.S. citizens.

How do I apply for a T visa?

You must complete **Form I-914, “Application for T Nonimmigrant Status,”** and submit it to the United States Citizenship and Immigration Services (USCIS). **You cannot apply for a T visa in immigration court.** You must file the application with USCIS and then you can ask the immigration judge for more time until your T visa application can be processed by USCIS. **Make sure to provide a response to all required questions, even if the response is “none,” “unknown,” or “n/a.”**

Along with Form I-914, you should also file:

- A **cover letter** (see attached sample) – include a brief summary of why you qualify for a T visa, include biographical info such as birthdate and place of birth, A number; include names of derivative applicants and their biographical information.
- A **table of contents** (list of evidence) for the attached evidence.
- An **affidavit** (applicant’s signed written statement) describing the trafficking and what happened to you. You should describe how you came to the U.S., the abuse that you suffered, how you escaped the trafficking, and how and when you reported to law enforcement.
- **Evidence** such as police reports, court records, medical and mental health records, photos of your injuries, written statements from others who can verify what happened to you, and any news articles about the type of trafficking you endured.
 - You should also include evidence that you are in the U.S. on account of the trafficking including evidence of how and when you entered the country, medical records documenting the trauma making victim unable to leave the U.S. and

affidavits from victim advocates, social workers, community members, family or friends about the trauma or financial inability to leave the U.S.

- ❑ **Form I-914, Supplement B, “Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.”** This form is a written statement from a law enforcement official that investigated or prosecuted the crime stating that you helped the investigation. This form is **not required** but is **strongly recommended!!**
- ❑ **Form I-192, “Application for Advance Permission to Enter as Nonimmigrant.”** This form is necessary if you are considered **“inadmissible,”** meaning you broke U.S. law when entering the country or after being admitted.
 - You are “inadmissible” if you entered the country without valid documents (by coming to the U.S. without a valid visa), returned illegally after being deported, or you committed any other crime under U.S. law. Getting a T visa is unlikely if you committed and aggravated felony (see below).
- ❑ **Filing Fee.** There is no fee to file the T visa application. However, there is a \$930 fee to file the Form I-192. You may request a fee waiver with **Form I-912, “Request for Fee Waiver.”**
- ❑ **Passport copy or Form I-193, Application for Waiver for Passport and/or Visa,** along with the associated fee or a fee waiver request.

Send your completed T visa application to –

Victims and Trafficking Unit
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden St.
Saint Albans, Vermont 05479-0001

You may want to mark the outside of the envelope with “T VISA UNIT” in red pen to ensure that the application is handled with confidentiality by the right department.

What happens after I receive a T visa?

If your T visa is approved, you should immediately notify the immigration court and provide proof of the approval. You will be able to remain in the United States for **four years**, you automatically receive an **Employment Authorization Document** (EAD - work permit), and you can apply for **Lawful Permanent Resident** (LPR) status (green card) **three years** after your T visa is approved. The same applies to any family members who were included on your T visa application (see below section). You may be approved for a green card sooner than three years if the law enforcement case against the traffickers is resolved in less time and you provide a letter to USCIS from law enforcement saying so.

You must apply to adjust your status from T visa holder to LPR within the 90 days before your T visa expires. You can only get a green card if you have been in the U.S. continuously during those three years. You will not get a green card if you left the U.S. for 90 days or more at any time or for 180 days or more combined over those three years. You must submit proof of

continuous presence, such as an I-94 travel document with your history of re-entries, school or work records proving you were in the U.S., rent receipts, etc.⁷ To qualify for LPR status, you must also have continued to assist law enforcement with their trafficking investigation while holding your T visa status if applicable. Finally, you must be “admissible” to the U.S. and have good moral character at the time you seek to adjust status to LPR (see information on “admissibility” above).

A T visa also does not have any “public charge” barriers, meaning you can apply for public benefits such as healthcare and food stamps after receiving a T visa and it will not negatively affect your immigration status. In fact, obtaining T visa status allows for the Office of Refugee Resettlement (ORR) to certify you as a trafficking victim, which allows you to obtain access to public benefits including healthcare, cash assistance, food stamps, English as a Second Language (ESL) classes, and job training.

There are only 5,000 T visas available each year. If the annual cap is met but you qualify for a T visa, you will be placed on a waitlist until a visa becomes available. The cap does not apply for derivative applicants. The same cap applies for adjusting status from T visa holder to LPR (not for derivatives).

Other considerations

Derivative Applications

A T visa applicant (principal applicant) may apply for T visas for certain family members (derivative applicants) either with their own application or after their application is approved. To apply for a family member, you must submit **Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient**. You may apply for family members whether they are already in the U.S. or you would like to bring them to the U.S. If the family member is in the U.S. at the time of filing the application, they must sign the Supplement A form. You may petition for the following family members:

- If you are 21 years old or older, you may apply for your spouse and children who are under 21 years old.
- If you are under 21 years old at the time of filing, you may apply for your spouse, children, parents, and unmarried siblings who are under 18 years old on the date that you apply for the visa.
- Other family members if they can prove that they are in danger of violence or retaliation due to the trafficking you suffered and willing to cooperate with police. Please consult with an attorney or legal representative if that is applicable to your situation.

Each derivative T visa holder must prove that either they or you, the victim, would suffer extreme hardship if denied admission to or removed from the U.S. You must pay an \$85 fingerprint fee (biometrics) for each family member aged 14 years or older, or submit Form I-912, Request for Fee Waiver. Qualifying derivative family members in the U.S. at the time of

⁷ After you apply for a green card, you cannot travel outside of the United States unless you get special permission from DHS, known as “advance parole.” Before traveling outside the U.S., you should consult with an immigration attorney.

filing may also file **Form I-765** to apply for work authorization, along with two passport photos and the filing fee or fee waiver.

Criminal History

You are highly unlikely to receive a T visa if you have committed an “**aggravated felony**” under U.S. immigration law, including but not limited to:

- Drug trafficking
- Firearms or explosives trafficking
- Other firearms or gambling offenses
- Murder, rape, sexual abuse of a minor
- Fraud, Tax Evasion, or Money Laundering over \$10K
- Failure to appear in criminal court
- Crimes with a sentence of one year or more (even if you were released from jail early), including: theft, burglary, violent crime like assault, document fraud, perjury, obstruction of justice, bribery, counterfeiting, and forgery.

Note –There is no federal definition of “aggravated felony” and it is not the same as a felony offense under criminal law. Therefore, a “misdemeanor” crime under criminal law may be considered an “aggravated felony” under immigration law. It is important that you consult an immigration attorney to figure out whether your criminal conviction qualifies as an “aggravated felony” under immigration law. **If you have any criminal history, you should consult an immigration attorney before filing your T visa application.**

Continued Presence

If you are victim of trafficking, you may be entitled to a temporary immigration status called Continued Presence (CP).⁸ CP is intended to allow victims of trafficking to aid in an investigation of the trafficking. A recipient of CP receives one year of work authorization and permission to live in the U.S. and CP can be renewed every year. **CP applications must be submitted by a federal law enforcement officer**, usually ICE. Once you have been identified as a victim of human trafficking and a potential witness in the investigation or prosecution, a federal law enforcement official can request CP.

Bond and Parole

ICE may choose to release you while your case is pending if they are notified of your T visa application, but they are not required to do so. You will need to speak to your deportation officer about release from detention.

You may also request a bond hearing from the immigration judge if you are currently in removal proceedings. For more information on bond, please call our line - 2150# from detention centers and 202-442-3363 from outside detention centers.

⁸ 22 U.S.C. § 7105(c)(3).

SAMPLE COVER LETTER

USCIS Vermont Service Center
75 Lower Welden St
St. Albans, VT 05479-0001

Your Address:

Date:

To whom it may concern,

RE: T Visa Application

I am a *pro se* applicant for the T Visa. I have provided the details of my case below.

Full name:

Date of birth:

Alien number:

Country of origin:

My application and supporting documents are attached below. Thank you for your time and consideration for my application. Please feel free to contact me if you need more information.

Sincerely,

(Signature)

Print full name

SAMPLE FORM I-914 SUPPLEMENT B

Only fill out Part A, except for left column which USCIS will fill out. Certifying law enforcement official should fill out the rest.



**Supplement B, Declaration of Law Enforcement Officer for
Victim of Trafficking in Persons**
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-914
OMB No. 1615-0099
Expires 04/30/2021

START HERE - Type or print in blank ink. This form should be completed by Federal, State, or local law enforcement authorities for victims under the Victims of Trafficking and Violence Protection Act, Public Law 106-386, as amended.

PART A. Victim Information		
Family Name (Last Name) XXXX	Given Name (First Name) XX	Middle Name (if any)
Other Names Used (include maiden name/nickname)		
Date of Birth (mm/dd/yyyy)	Gender	
	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	
A # (if known)	Social Security # (if known)	

Part B. Agency Information		
Name of Certifying Agency Washington DC Police Department		
Name of Certifying Official John R Doe	Title and Division/Office of Certifying Official Senior Sergeant Field Operations	
Agency Address - Street Number and Name Suite Number 300 Indiana Ave NW		
City Washington	State/Province DC	Zip/Postal Code 20001
Daytime Phone # (area code and/or extension) Fax # (with area code) 2027273700 2026450020		
Agency Type <input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local		
Case Status <input checked="" type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> Local		
Certifying Agency Category <input type="checkbox"/> Judge <input checked="" type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other		
Case Number XXXX-XXXX	FBI or SID Number (if applicable)	

For USCIS Use Only	
Returned	Receipt
Date	Remarks
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	

Part C. Statement of Claim
<p>1. The applicant is or has been a victim of a severe form of trafficking in persons. Specifically, he or she is a victim of: <i>(Check all that apply. Base your analysis on the practices to which the victim was subjected rather than on the specific violations charged, the counts on which convictions were obtained, or whether any prosecution resulted in convictions. Note that the definitions that control this analysis are not the elements of criminal offenses, but are those set forth at 8 CFR 214.11(a).)</i></p> <p><input checked="" type="checkbox"/> Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion. Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.</p> <p><input type="checkbox"/> Sex trafficking and the victim is under the age of 18.</p>

Part C. Statement of Claim (Continued)

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery.
- Not applicable.
- Other, specify on attached additional sheets.

2. Please describe the victimization upon which the applicant's claim is based and identify the relationship between that victimization and the crime under investigation/prosecution. Attach the results of any name or database inquiry performed in the investigation of the case, as well as any relevant reports and findings. Include relevant dates, etc. Attach additional sheets, if necessary.

Ms. XXXX was coerced into commercial sex by Mr. XXX who took her passport and threatened to kill her child if she did not comply.

3. Has the applicant expressed any fear of retaliation or revenge if removed from the United States? If yes, explain. Attach additional sheets, if necessary.

Mr. XXX threatened Ms. XXXX that his gang would find her and kill her no matter where she went, especially if she is returned to El Salvador.

4. Provide the date(s) on which the acts of trafficking occurred.

Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)

5. List the statutory citation(s) for the acts of trafficking being investigated or prosecuted, or that were investigated or prosecuted.

6. Provide the date on which the investigation or prosecution was initiated.

Date (mm/dd/yyyy)
[]

7. Provide the date on which the investigation or prosecution was completed (if any).

Date (mm/dd/yyyy)
[]

Part D. Cooperation of Victim *(Attach additional sheets, if necessary)*

The applicant:

- Has complied with requests for assistance in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has failed to comply with requests to assist in the investigation/prosecution of the crime of trafficking. *(Explain below.)*
- Has not been requested to assist in the investigation/prosecution of any crime of trafficking.
- Has not yet attained the age of 18.
- Other, specify on attached additional sheets.

Ms. XXXX reported the crime to law enforcement and has assisted in the investigation. She provided Mr. XXX's last known whereabouts and information about the trafficking ring. She has agreed to testify in court.

Part E. Family Members Implicated In Trafficking

- Yes No Are any of the applicant's family members believed to have been involved in his or her trafficking to the United States? If "Yes," list the relative(s) and describe the involvement. Attach additional sheets if necessary.

Full Name	Relationship	Involvement

Part F. Attestation

Based upon investigation of the facts, I certify, under penalty of perjury, that the above noted individual is or has been a victim of a severe form of trafficking in persons as defined by the VTVPA. I certify that the above information is true and correct to the best of my knowledge, and that I have made, and will make, no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services, based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the acts of trafficking of which he/she is a victim, I will notify USCIS.

Signature of Law Enforcement Officer *(identified in Part B) (sign in ink)*

Date *(mm/dd/yyyy)*

Signature of Supervisor of Certifying Officer *(sign in ink)*

Date *(mm/dd/yyyy)*

Printed Name of Supervisor

SAMPLE REQUEST TO LAW ENFORCEMENT

[Date]

[Official's name (example: Sgt. Samuel Smith)]

[Office Title (example: Broward County Police Department)]

[OFFICE ADDRESS]]

Dear [Official Name],

I am writing to request that you sign the attached Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victims of Trafficking in Persons. This form will be used to support my application for a T visa. In support of this request I state the following:

I am the victim of human trafficking. [Provide details of the trafficking including how you entered the United States through trafficking and the harm you suffered].

I reported the trafficking to law enforcement by [Provide information on how you reported the trafficking and what involvement you had in the investigation and prosecution of the traffickers. If you were unable to report the trafficking, explain why]. I remain available to law enforcement to assist with the investigation or prosecution of the traffickers. [If you cannot assist, explain why].

Due to my status as a trafficking victim and my assistance to law enforcement, I am requesting that you sign the attached Form I-914, Supplement B. USCIS will use this form to determine whether or not they will grant me the T visa. Thank you for your assistance,

Respectfully Yours,

[Your Name]

[Facility Name]

[Facility Address]

SAMPLE AFFIDAVIT

Declaration of [Your Full Name] in Support of Application for T Nonimmigrant Status

1. My name is _____. I was born in (City, State or Province, Country) on (Date of Birth).
2. I first arrived in the United States on (date of entry) through (port of entry or closet city if entered without inspection).
3. (Explain how you came to the U.S. and what extenuating circumstances brought you here, if any.)
4. (Explain the trafficking – explain who was responsible, what they did, how they hurt you, etc. Explain in detail and take as much space as you need.)
5. (Explain how you escaped the trafficking.)
6. (Explain the trafficking's effect on you. Explain any physical or mental injuries you suffered. Explain any medical or psychological treatment that you sought.)
7. (Explain why you were not able to leave the country after escaping the traffickers.)
8. (Explain how and when you reported the trafficking and how you helped the police. If you waited to report the trafficking, explain why.)
9. (Explain why you need a waiver.)

Remember that in addition to the above example documents, you also need to submit the main application form, Form I-914, and if necessary, submit Form I-914 Supplement A for family members, Form I-192 if you need a waiver, and Form I-912 if you need a fee waiver.