

Advisory on New T Visa Sections of the USCIS Policy Manual

NOVEMBER 2021

Purpose of the Advisory

The [T visa section](#) of the U.S. Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) [Policy Manual](#) (Volume 3, Part B) was released and implemented on October 20, 2021. USCIS also updated [Volume 9, Part O](#) for Waivers of Inadmissibility. This advisory discusses notable highlights from the Policy Manual for Victims of Trafficking (hereinafter “the Manual”) for practitioners representing survivors of trafficking in their immigration matters. The advisory serves as a brief update of the changes and useful guidance now available in the new sections; it does not, however, provide a comprehensive analysis of the changes and does not replace a thorough reading of the Manual, regulations, and relevant statutes.

Overall Considerations about the Manual

- The guidance in the Manual supersedes prior Adjudicator’s Field Manual guidance and policy memoranda relating to T nonimmigrant status.
- The Manual provides USCIS guidance and is distinct from the T visa regulations ([8 CFR § 214.11](#) and [8 CFR § 212.16](#)). The Manual interprets *existing regulations*. Because the regulations are not finalized and are therefore subject to future revision, the Manual may be updated to reflect future regulatory changes.
- Finalization of the T regulations are currently a priority for USCIS as reflected in the [Unified Agenda](#).
- The Manual includes a [Case Law Reference Table](#) that clarify some *severe form of trafficking* concepts.
- The Manual footnotes provide important context and analysis, along with statutory and case citations, and should be read along with the body text.

How to Use this Advisory

- This advisory is organized by chapter, in the order in which the chapters appear in the Manual. Each chapter title links to the corresponding page of USCIS’s website. Links to key statutes, materials, and other sections of the Manual may also be found throughout the advisory.
- The advisory does not address every chapter and subsection of the Manual. It only addresses content we believe is new or notable and is therefore particularly relevant to T visa practice.
- On the left-hand side of the table, we note the term or concept addressed in the right-hand column. The terms and concepts also link to the relevant portion of the Manual. The links will appear when you hover the cursor over the term or concept.
 - Key to terms and concepts:
 - *New concept, definition, or first time addressed by USCIS policy guidance and memoranda*
 - *Clarifying concept*
- Remember that this advisory is current as of November 2021. USCIS may update the Manual or finalize regulations.

Volume 3, Part B – Victims of Trafficking

Chapter 2 - Eligibility Requirements

Severe Form of Trafficking

Term/ Concept	Sect.	Synopsis of Manual Update
<i>Harboring</i>	2.B.2	<i>Harboring</i> was not previously defined in the regulations or statute. In practice, practitioners have relied on the meaning of <i>harboring</i> from other sections of the U.S. Code and Black’s Law Dictionary. The Manual has now integrated guidance on the interpretation of this term with a list of factors to consider in determining whether harboring occurred. Additionally, USCIS notes that the harboring “must endure long enough to substantially limit or restrict the victim’s movement or agency.” USCIS provides a definition of <i>agency</i> in this context.
<i>Serious harm</i>	2.B.3	While <i>serious harm</i> was defined in other parts of the Trafficking Victims Protection Act (TVPA), the T visa regulations did not provide a separate definition. (See 18 U.S.C. §§ 1589 and 1591 .) The manual now includes examples and guidance on how to interpret <i>serious harm</i> that are consistent with the definition elsewhere in the TVPA.
<i>Analyzing whether actions constitute threats</i>	2.B.3	Provides guidance on how to analyze whether the trafficker’s actions constitute a threat. USCIS explicitly states that adjudicators view threats from the victim’s perspective, “considering the victim’s individual circumstances and the totality of the circumstances surrounding the trafficker’s threats.”
<i>Abuse or threatened abuse of the legal process</i>	2.B.3	Clarifies that legal coercion “may occur even when the threatened outcome is not an actual legal possibility.” Notably, the list of threatened harm includes calling immigration to report a worker for absconding.
<i>Slavery</i>	2.B.4	The manual provides a general definition of <i>slavery</i> , which has not been defined in the TVPA or regulations.
<i>Conditions of servitude induced by domestic violence</i>	2.B.4	Provides clarifying language that trafficking can occur alongside intimate partner violence. Adjudicators should evaluate “whether the victimization involves compelled or coerced labor or services or forced sexual activity and is induced by force, fraud, or coercion.” USCIS clarifies that applicants “must demonstrate that the motivation of the perpetrator is or was to subject the applicant to a condition of servitude.” Practitioners should read this section carefully as it includes a handful of examples of situations where domestic violence can also rise to the level of trafficking.
<i>Conditions of servitude induced during a voluntary smuggling arrangement</i>	2.B.4	Confirms that smuggling may develop into trafficking and that a voluntary smuggling agreement does not invalidate the possibility of involuntary servitude within a smuggling situation.
<i>Peonage</i>	2.B.4	Makes a clear distinction between peonage and voluntarily agreeing to perform labor or provide services in payment of a debt.

Term/Concept	Sect.	Synopsis of Manual Update
<i>Attempted trafficking—services need not be performed</i>	2.B.6	As in the preamble to the 2016 regulations , the manual clarifies that the actual labor or commercial sex act need not be completed for trafficking to exist.
<i>Compensation is not determinative</i>	2.B.6	Confirms that compensation is not determinative to establishing whether someone is a victim of trafficking.
<i>No timeframe required</i>	2.B.6	Clarifies that there is no length of time required to establish trafficking victimization. USCIS will evaluate the totality of the circumstances to determine whether the nature of the work created a condition of servitude.
<i>Difference between trafficking and smuggling</i>	2.B.7	Expands on the distinctions between trafficking and smuggling. Notably, USCIS confirms here that the “perpetrator’s motivations can be multifaceted” while simultaneously noting that “a person may be forced to perform certain labor within a smuggling arrangement outside of a condition of servitude that does not rise to trafficking.”

Physical Presence

Term/Concept	Sect.	Synopsis of Manual Update
<i>Establishing liberation by law enforcement</i>	2.C.1	Explains that an applicant can satisfy the physical presence requirement “regardless of the timeline” between when the applicant was liberated by law enforcement and when the T visa application was filed. CAVEAT: in Chapter 3, Section 6 , the manual states that an applicant is not exempt from the statutory requirement to show their presence is on account of trafficking despite liberation by law enforcement.
<i>Establishing law enforcement agency involvement</i>	2.C.1	Clarifies that to establish physical presence as having “escaped a severe form of trafficking in persons before an LEA was involved,” law enforcement must have become actively involved in the investigation or detecting of the trafficking beyond the applicant’s tip.
<i>Establishing the direct relationship between the applicant’s ongoing presence and the original trafficking</i>	2.C.1	Confirms that a T visa application does not need to be filed within a certain amount of time after leaving the trafficking situation. Significantly, the Manual explicitly states that achieving personal and professional milestones (e.g., new employment, marriage, having children, etc.) does not prevent an applicant from establishing ongoing presence on account of the original trafficking.
<i>Establishing Physical Presence when the trafficking ended outside of the United States</i>	2.C.1	Appears to allow for a situation where the trafficking starts in the U.S. but ends abroad or occurred abroad by stating that applicants must show that they are in the U.S. to participate in a trafficking-related investigation or legal process or are now in the U.S. or at a port of entry on account of trafficking.
<i>Reentry due to continued victimization</i>	2.C.2	The Manual now provides clarification on continued victimization by providing a list of factors USCIS will consider when evaluating whether an applicant has entered as a result of continued victimization.

Law Enforcement Cooperation

Term/Concept	Sect.	Synopsis of Manual Update
<i>Comparably-situated crime victim standard</i>	2.D.3	Provides important language regarding its use of a “comparably-situated crime victim standard” in examining the totality of the circumstances, noting that the standard focuses on victim protection and offers “more flexibility than other standards in order to strike the proper balance” between law enforcement investigations and prosecutions and burdening victims.
<i>Contact with law enforcement</i>	2.D.4	Clarifies that applicants can generally satisfy the reporting requirement by an email, letter, or some other reporting mechanism. Confirms that applicants must, at a minimum, have had contact with law enforcement regarding their victimization.
<i>Age-based exemption</i>	2.D.5	USCIS affirms that the applicant need only be under 18 during at least one of the trafficking acts to be able to use the age-based cooperation exemption.
<i>Relationship between assistance with law enforcement and victimization</i>	2.D.6	Confirms that witnessing trafficking alone is insufficient to establishing eligibility for a T visa. Explicitly states that there is no requirement for an investigation or prosecution to satisfy the cooperation requirement. Additionally, the applicant does not need to be directly named in the case to establish cooperation.

Extreme Hardship

Term/Concept	Sect.	Synopsis of Manual Update
<i>Hardship to persons other than the applicant</i>	2.E.2	Clarifies that hardship to a family member or someone close to them may be considered only to the extent that the hardship affects the applicant. NOTE: Regulations state that hardship to other persons cannot be considered when evaluating hardship for the applicant. See 8 CFR § 214.11(i)(3).

Effect of Immigration Status on Application

Term/Concept	Sect.	Synopsis of Manual Update
<i>Effect of immigration status on application</i>	2.E.2	Explicitly states that LPRs, conditional permanent residents, and U.S. citizens are not eligible for T status. The Manual also clarifies that noncitizens cannot hold more than one nonimmigrant status at a time.

Chapter 3 - Documentation and Evidence for Principal Applicants

Any Credible Evidence

Term/Concept	Sect.	Synopsis of Manual Update
<i>Inability to obtain documentation and evidence</i>	3.C.1	Adjudicators “must consider any credible evidence.” Recognizes the difficulty T applicants may have obtaining traditional evidence.
<i>Factual inconsistencies</i>	3.C.1	Adjudicators must consider the impact of trauma and victimization when assessing the credibility of the applicant’s statement and evaluating the sufficiency of the evidence. Recognizes that trauma impacts each person differently and notes that inconsistencies in the applicant’s account of the trafficking victimization do not necessarily indicate fraud or a lack of credibility.

Term/Concept	Sect.	Synopsis of Manual Update
<i>Weighting and determining credibility of the evidence</i>	3.C.1	Explicitly states that officers should not require applicants to submit certain types of evidence and may not deny for failure to submit a particular type of evidence. Officers must also evaluate evidence within the totality of the evidence for relevance, probative value, and credibility.

Evidence from Law Enforcement Agency

Term/Concept	Sect.	Synopsis of Manual Update
<i>Weight of evidence from LEA</i>	3.C.3	Reiterates that evidence from law enforcement is optional and does not receive any special evidentiary weight.

Evidence of Severe Form of Trafficking in Persons

Term/Concept	Sect.	Synopsis of Manual Update
<i>Evidence for victims of attempted trafficking</i>	3.C.5	States that the victim must still establish all the elements of trafficking even if they have not performed the services.
<i>Letter from Department of Health and Human Services for minors</i>	3.C.5	Clarifies that the letter from HHS certifying that the child is a victim of trafficking can be used as evidence of trafficking victimization.

Evidence of Physical Presence

Term/Concept	Sect.	Synopsis of Manual Update
<i>Evidence of physical presence in the U.S.</i>	3.C.6	Clarifies that since the physical presence requirement is phrased in the present tense, USCIS will consider the victim’s current situation, and whether they can establish their current presence in the U.S. on account of trafficking. States that a victim who is liberated from trafficking by law enforcement is not exempt from the statutory requirement to demonstrate physical presence on account of trafficking. CAVEAT: Compare this to the physical presence eligibility section, Chapter 2, Section C.1, which states that an individual liberated by law enforcement under 8 CFR 214.11(g)(1)(ii) <i>can</i> establish physical presence regardless of a lapse of time between liberation and filing the T visa application.
<i>Evidence to establish the direct relationship between the applicant’s ongoing presence and the original trafficking in persons</i>	3.C.6	The adjudicator should “consider all evidence describing ongoing impacts of trafficking on applicant’s life at the time of the filing of the application using a victim-centered approach.” USCIS clarifies that this eligibility requirement cannot be satisfied without showing the connection between the “specific impact of the trauma on the applicant’s life at the time of the filing” and their ongoing presence. This section includes a list of evidence that may be considered. Finally, the guidance clarifies that the record should demonstrate how any past services and benefits relate to the trauma experienced by the applicant at the time of filing.

Evidence of Compliance with Law Enforcement Requests

Term/Concept	Sect.	Synopsis of Manual Update
<i>Evidence to establish compliance</i>	3.C.7	Provides a list of types of evidence that may be submitted to show compliance with law enforcement requests. Clarifies that personal statement should describe what the applicant has done to report the crime. Explicitly states that absence of an I-914B does not adversely affect an applicant who can submit other evidence.
<i>Evidence to establish physical or psychological trauma exception</i>	3.C.7	Clarifies that a victim's statement alone may satisfy the evidentiary burden but encourages submission of additional evidence.

Evidence of Extreme Hardship

Term/Concept	Sect.	Synopsis of Manual Update
<i>Evidence of extreme hardship</i>	3.C.8	As clarified in Chapter 2 , USCIS will not consider evidence of hardship to other persons other than the applicant unless the evidence demonstrates hardship to the applicant. Clarifies that minors are not exempt from the extreme hardship requirement.

Chapter 4 – Family Members

Derivative Status

Term/Concept	Sect.	Synopsis of Manual Update
<i>Derivative status based on relationship to principal</i>	4.B	Provides a useful chart outlining family member eligibility based on their relationship to the principal.
<i>Derivative status based on fear of retaliation</i>	4.C	Provides useful charts outlining family member eligibility based on present danger of retaliation (the T-6 category).

Family Relationship at Time of Filing

Term/Concept	Sect.	Synopsis of Manual Update
<i>Spousal relationship must exist when application is adjudicated</i>	4.D.2	Confirms that USCIS is following the ruling in <i>Medina Tovar v. Zuchowski</i> , 982 F.3d 631 (9th Cir. 2020) that the spousal or step-parent/step-child relationship need not exist at the time of filing the I-914. CAVEAT: The regulatory language has not yet been updated to reflect this change.
<i>Protection for a new child of a principal applicant</i>	4.D.4	Clarifies that a new child of a T-1 may be included as a derivative after filing, whether a biological, step, or adoptive child.
<i>Age-out protections</i>	4.D.4	Confirms age-out protections for derivative family members.
<i>Death of a qualifying relative</i>	4.E	Clarifies that USCIS may not approve derivative status for a surviving relative if the principal dies before the adjudication of the T derivative application. Provides new guidance on how a T-6 applicant may remain eligible in this situation.

Chapter 5 – Documentation and Evidence for Family Members

Evidence

Term/Concept	Sect.	Synopsis of Manual Update
<i>Establishing family relationship</i>	5.A.1	USCIS must consider any credible evidence of familial relationship.
<i>Establishing danger of retaliation</i>	5.A.2	Provides a list of evidence that may be used to demonstrate the basis of the danger of retaliation.

Timeframe for Filing the Application for Derivative Status

Term/Concept	Sect.	Synopsis of Manual Update
<i>Timeframe for filing for a derivative</i>	5.B	Confirms that the derivative application will be denied if the principal applicant no longer holds T-1 status because it expired and was not extended.

Chapter 6 – Bona Fide Determinations

This chapter is currently reserved and unpublished at the time of this publication.

NOTE: At the March 2021 Freedom Network Conference, USCIS confirmed it is not conducting bona fide determinations for T visa applicants.

Chapter 7 – Adjudication

Victim-Centered Approach

Term/Concept	Sect.	Synopsis of Manual Update
<i>Victim-centered approach</i>	7.A	Aligning with the ICE Directive 11005.3 issued on August 10, 2021, the Manual states that USCIS strives to use a victim-centered approach by placing “equal value on stabilizing victims by providing immigration relief and investigating and prosecuting traffickers.” This section also directs adjudicators to be mindful of potential retraumatization in their correspondence with applicants.
<i>Interview</i>	7.B	Recognizes the vulnerable position of T visa applicants and notes that USCIS does not normally require an interview but reserves the right.
<i>Derivative applicants outside the United States</i>	7.E	Notes that a derivative abroad may apply for a discretionary waiver of documentary requirements (i.e., valid passport) in the event of an unforeseen emergency.

Chapter 9 – Applicants in Removal Proceedings

Administrative Closure and Final Orders of Removal

Term/Concept	Sect.	Synopsis of Manual Update
<i>Administrative closure</i>	9.A	Reinforces that DHS may join, in its discretion, a motion to administratively close or terminate proceedings while USCIS adjudicates the application.

Term/Concept	Sect.	Synopsis of Manual Update
<i>Final orders of removal</i>	9.B	Notes that the filing of a T visa application does not automatically stay final orders of removal and has no effect on DHS's authority or discretion to execute the final order of removal. A T applicant with a final order may file a stay of removal with Immigration and Customs Enforcement (ICE).

Chapter 10 – Duration and Extension of Status

Applications for Extensions of Status

Term/Concept	Sect.	Synopsis of Manual Update
<i>Extensions based on adjustment of status application</i>	10.B.1	Reiterates that an applicant who timely files for adjustment of status does not need to file an I-539 application to extend status while noting that an untimely filing of an adjustment application does not operate to extend T status. As a result, the receipt notice by itself does not demonstrate an automatic extension of status and adjustment applicants should use both the I-94 and I-485 receipts as proof of extension of T status.
<i>Proof of employment authorization</i>	10.B.1	Provides guidance that T-1 applicants for adjustment of status can use their I-94 approval notice with their I-485 receipt notice as evidence of employment authorization for 24 months from the expiration of the I-94. This is an update from the one year allowed in the previous U/T Extension memo . CAVEAT: the I-9 Handbook for Employers does not yet reflect these updates.
<i>Exceptional circumstances</i>	10.D.2	Notes that more than one I-539 may be submitted, but a second extension with the same evidence as the first is not guaranteed to be approved. Each extension request is considered on a case-by-case basis and based on the evidence submitted in support of the request.
<i>Considerations for family members</i>	10.E	Encourages principal applicants to file an I-539 to extend status based on exceptional circumstances where an approved derivative is awaiting issuance of the T visa by a consulate abroad, and then to wait for derivatives to consular process and arrive in the U.S. <i>before</i> filing for adjustment. See also Chapter 10, Section B.2 , which notes that “derivative family members who have not previously entered or resided in the United States as a T nonimmigrant cannot receive an extension of status. Instead, USCIS may issue an amended approval notice with updated validity dates.”

Chapter 11 – Federal Benefits and Work Authorization

Employment Authorization

Term/Concept	Sect.	Synopsis of Manual Update
<i>Employment authorization</i>	11.B	Confirms that T derivatives are not eligible for employment authorization incident to status and must file an I-765, while T-1 holders are authorized incident to status.

Chapter 12 – Travel

Travel for T Nonimmigrants

Term/Concept	Sect.	Synopsis of Manual Update
<i>Travel for T nonimmigrants</i>	12.B	Confirms that a T nonimmigrant who departs the U.S. and returns without advance parole does not resume T status and may have to reapply for status.
<i>Travel considerations</i>	12.C	Notes that if a person is granted deferred action and departs the U.S. without advance parole, deferred action is automatically terminated.

Chapter 13 – Revocation of Status

Term/Concept	Sect.	Synopsis of Manual Update
<i>Revocation of T-2, T-3, T-4, or T-5 derivative status</i>	13.C.2	Provides an example of how T-2 revocation due to divorce would not bar the adult or minor child of the T-2 from obtaining T-6 status.

Volume 9, Part O – Victims of Trafficking

Chapter 2 – Waivers for Victims of Trafficking

Term/Concept	Sect.	Synopsis of Manual Update
<i>Waiver authority</i>	2.B.1	Notes that there are two waivers available for T visa applicants under INA § 212(d)(13) and § 212(d)(3). Provides a table of inadmissibility grounds, whether the ground is waivable, and the legal authority for the waiver.

Chapter 3 - INA 212(d)(13) Waivers

Term/Concept	Sect.	Synopsis of Manual Update
<i>Waiver eligibility</i>	3.B	<p>Provides a list of factors in determining whether the inadmissibility will be waived in the national interest under the INA § 212(d)(13) waiver.</p> <p>NOTE: While this list of discretionary factors is not new to immigration practice, this guidance directly connects these factors to T visa waiver adjudications.</p> <p>Reiterates that for violent or dangerous crimes, USCIS will only exercise favorable discretion in extraordinary circumstances unless the criminal activities were caused by or incident to the trafficking victimization.</p>
<i>Ineligible for INA 212(d)(13) waiver</i>	3.C	<p>Clarifies that if the adjudicator determines that the applicant is not eligible for a waiver under INA § 212(d)(13), the adjudicator must then evaluate whether the inadmissibility is waivable under INA § 212(d)(3).</p> <p>NOTE: This and the subsequent section clarify the order of operations in which USCIS evaluates a T applicant’s eligibility for a waiver of inadmissibility. Also note that the adjudicator <i>must</i> consider eligibility under both waiver sections.</p>

Chapter 4 - INA 212(d)(3) Waivers

Term/Concept	Sect.	Synopsis of Manual Update
<i>When to consider INA 212(d)(3) waiver</i>	4.A	Notes that the adjudicator should consider eligibility for a (d)(3) waiver if the inadmissibility is not connected to the trafficking or for grounds that are unwaivable under INA § 212(d)(13).
<i>Discretionary analysis</i>	4.B	Reiterates that a waiver under INA § 212(d)(3) is purely discretionary and involves a balancing of humanitarian and social factors along with the <i>Matter of Hranka</i> factors traditionally considered in (d)(3) waiver adjudication. Note that the adjudicator is directed to consider as a positive factor the fact of a client’s victimization and their cooperation with law enforcement.

Chapter 5 - Adjudication and Post-Adjudication Matters

Term/Concept	Sect.	Synopsis of Manual Update
<i>Appeal of waivers</i>	5.C	Reiterates that denial of a nonimmigrant waiver of inadmissibility is not appealable, but applicants may file a Motion to Reopen, a Motion to Reconsider, or a new waiver application.

Questions?

For technical assistance related to this advisory or an immigration matter for a trafficking survivor, please contact [CAST](#) or [ASISTA](#).

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