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## **USCIS Stakeholder Engagement on the T Visa Final Rule**

Date of Engagement: August 15, 2024

### **Speakers:**

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### **ASISTA Notes:**

#### ***USCIS Presentation***

1. Final Rule: Background
  - a. On April 30, 2024, USCIS published the Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status Final Rule (T Final Rule)
  - b. Applies to all applications pending or filed on or after August 28, 2024
  - c. No pending applicant who filed before August 28, 2024, who would be eligible for a T under the regulations in place before the final rule takes effect will be made ineligible by the final rule taking effect
  - d. The modified BFD process generally does not apply to pending applications
  - e. T final rule:
    - i. Codified existing policies
    - ii. Modified certain provisions to reflect statutory changes; and
    - iii. Clarified eligibility reqs for noncitizens seeking T nonimmigrant status and related adjustment of status

2. T Nonimmigrant Status Criteria
  - a. There are **no** changes to:
    - i. Documents required for submission
    - ii. Rights, benefits, and services that T nonimmigrants receive
    - iii. Duration of the status or eligibility for permanent residence, other than minor changes that reduce barriers and align with the statute

3. Summary of Changes
  - a. Updated and clarified definitions
  - b. Clarified evidentiary standards
  - c. Clarified reporting requirements
  - d. Changed physical presence eligibility requirements
  - e. Modified bona fide determination (BFD) process

4. Definitions

- a.

New Definitions	Modified Definitions
<ul style="list-style-type: none"> <li>- Serious harm</li> <li>- Abuse or threatened abuse of the legal process</li> <li>- Incapacitated or incompetent</li> <li>- Law enforcement involvement</li> </ul>	<ul style="list-style-type: none"> <li>- Involuntary servitude</li> <li>- Law Enforcement Agency</li> <li>- Law Enforcement Agency declaration</li> <li>- Reasonable request for assistance</li> </ul>

5. Evidentiary Standards, Standard of Proof, and Burden of Proof
  - a. Any credible evidence:
    - i. 8 CFR 214.204(l): applicant may submit “any credible evidence”
    - ii. 8 CFR 214.204(f): law enforcement cooperation
    - iii. 8 CFR 214.208(e): any credible evidence of applicant’s age
  - b. **Key takeaway:** no form of evidence is preferred over another, and an applicant’s evidence (regardless of form) may be sufficient if it is detailed, plausible, consistent, and probative
  - c. Standard and burden of proof:
    - i. 8 CFR 214.204(l): burden is on the applicant to establish eligibility *by a preponderance of the evidence*, which means an applicant must establish their claim is ‘*more likely than not*’ true

6. Reporting to Law Enforcement

- a. Single contact to report trafficking may be enough (must provide credible and probative evidence)
  - b. Anonymous reports generally will not satisfy the requirement (they don’t meet the dual purpose of the program)

- c. Reports to National Human Trafficking Hotline (NHTH) may be enough, if the victim requests or consents for a report to be referred to law enforcement
  - d. Report must be made to law enforcement with jurisdiction over the reported crime
7. Establishing Physical Presence
- a. T Final Rule clarifies that applicants may establish physical presence regardless of how much time has passed between the trafficking and when they apply. 8 CFR 214.207(a)(2)-(4)
  - b. Adds scenarios where an individual's departure from the US will not prevent them from establishing physical presence. 8 CFR 214.207(b)(4)-(5)
  - c. Current presence on account of past or current participation in investigative or judicial processes associated with trafficking; and
  - d. Receipt of treatment or services not available in their home country or last place of residence outside the US
    - i. *\*See Policy Manual updates for additional guidance*
    - ii. Generally, expect applicant will provide cannot get treatment/services in home country with relevant, probative, credible evidence
    - iii. Must also provide proactive and sufficient evidence that they actually received treatment/services in the US
8. Modified BFD Process
- a. The T Final Rule modifies the BFD process, which allows individuals with bona fide applications who merit a favorable exercise of discretion to receive deferred action and work authorization before USCIS finishes adjudicating their T visa application
  - b. Generally, only applies to cases filed on or after August 28, 2024
    - i. Pending cases may receive BFD if USCIS issues an RFE in their case and finds their application to be bona fide at that time
  - c. Process:
    - i. Initial case review to determine if the application is bona fide
      - 1. Is the application complete?
        - a. What constitutes a complete app? It's filed in accordance with form instructions, filed in compliance with 8 CFR 103.2(b) (complete form, applicant's signature, all required evidence per the regulations and form instructions)
      - 2. Initial background check results raise no concerns?
    - ii. If yes, does the applicant merit a favorable exercise of discretion to receive deferred action and work authorization?
      - 1. If yes, USCIS may grant deferred action and issue BFD work authorization
9. BFD – Discretionary Factors

- a. If an applicant convicted of or arrested for certain acts, USCIS may not exercise discretion favorably to issue deferred action and a BFD EAD
- b. Instead, USCIS may proceed to secondary review, which involves a full adjudication of T nonimmigrant status eligibility for the principal applicant and any family members
- c. Examples of negative factors:
  - i. Murder, rape, or sexual abuse
  - ii. Offenses involving firearms, explosive materials, or destructive devices
  - iii. Offenses related to trafficking in persons, involuntary servitude, peonage
  - iv. Aggravated assault
  - v. An offense relating to child pornography
  - vi. Manufacturing, distributing, or selling of drugs or narcotics
  - vii. \*\*\* *This is not an exhaustive list!*
- d. A totality of circumstances analysis is applied, so someone could get a BFD, even with a negative factor
- e. Policy Manual updates in coming weeks will have more information on this

#### 10. Best Practices / Filing Tips

- a. New T filers:
  - i. If filing after August 28, 2024, file form I-765 concurrently with Form I-914 or Form I-914A
- b. Pending T applications:
  - i. If you receive notice that you are eligible for a BFD, file your I-765 timely. Follow filing instructions to prevent misrouting of applications and the risk of having the application rejected
  - ii. If you file or filed an I-914 before August 28, 2024, you should NOT refile to seek a BFD. Doing so will extend processing times for T BFDs significantly and delay important benefits for survivors of trafficking
    - 1. Do not refile a form I-914/I-914A to get a BFD review. You could lose your place in line because applications receive adjudication for T nonimmigrant status based on the date USCIS receives them
- c. USCIS generally will not consider derivatives for BFD/EAD before the principal has received a BFD, deferred action, and employment authorization

#### 11. Expanded Access to Contact Center

- a. Protected individuals (including applicants for T visas) can access the USCIS Contact Center for all customer service functions, including but not limited to:
  - i. Case status
  - ii. Outside normal processing times
  - iii. Delivery issues
  - iv. Expedites
  - v. Policy or regulation questions

- vi. Appointment rescheduling
- vii. EAP and ADIT appointments
- viii. Change of address
- ix. Account issues
- b. This is possible because USCIS has enhanced identity verification procedures for those protected under 8 USC 1367 and to meet legal obligations
  - i. Will verify identity of the caller so caller should have documents ready, for reference during the call, such as receipt notice(s) for the application(s) they're asking about
  - ii. This is an additional option for customer service. This is not a replacement for other options, like the email hotline for attorneys and representatives

#### 12. Dedicated T Visa Email Hotline

- a. Attorneys and representatives may use the dedicated email hotline for customer service inquiries. While the Contact Center acclimates to a large, new workload, it will only be available directly to 8 USC 1367-protected individuals, not attorneys and representatives
- b. To support more efficient processing and to avoid duplicate work, attorneys and representatives should avoid submitting the same request that their client is submitting through the USCIS Contact Center

#### 13. Protect Yourself

- a. Before hiring someone to help with your case, do your diligence
- b. Warning signs:
  - i. Money-back guarantees
  - ii. Charging exorbitant fees
  - iii. Asking you to sign a blank piece of paper or not letting you read a doc you sign in a language you can read and understand
  - iv. Not allowing you to view or receive correspondence about your case
  - v. Individuals making promises guaranteeing approvals of T visas or BFDs for EADs
- c. If you are a victim of a scam or aware of a scam, please visit

[uscis.gov/avoid-scams](https://uscis.gov/avoid-scams)

#### 14. USCIS Resources

- a. Victims of Human Trafficking webpage:
  - <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes>
  - i. T Visa Law Enforcement Resource Guide (will be updated)
- b. USCIS Policy Manual: <https://www.uscis.gov/policy-manual>
  - i. Volume 3, Part B – Victims of Trafficking (T Visa) – updated
  - ii. Volume 7, Part J – Trafficking Victim-based Adjustment – update pending
  - iii. Volume 9, Part O – Victims of Trafficking (Waivers) – updated

- c. T visa – [HotlineFollowupI-918I914.vsc@uscis.dhs.gov](mailto:HotlineFollowupI-918I914.vsc@uscis.dhs.gov)
- d. Address changes: [uscis.gov/addresschange](https://uscis.gov/addresschange)
- e. For any additional questions, submit to [public.engagement@uscis.dhs.gov](mailto:public.engagement@uscis.dhs.gov)
  - i. Write “Follow Up to Aug. 15 T Visa Final Rule National Stakeholder Engagement” in subject line

## ***Q&A Portion***

### *Pre-Submitted & Live Questions*

1. **Question:** When a Form I-290B is filed on an I-914 or I-914A that was filed prior to the effective date of the final rule, will the interim or final regulations apply? Additionally, does the answer to the preceding question change depending on whether the I-290B is filed prior to the effective date of the final rule or after?
  - a. **Response:** We will adjudicate the I-290B based on the regulations that were in effect when we adjudicated the I-914 or I-914A, regardless of when the I-290B was filed.
2. **Question:** Will USCIS issue deferred action to T applicants in removal or who have a final order of removal?
  - a. **Response:** The fact that an individual is in removal proceedings or has a final order of removal will not prevent them from receiving deferred action and an EAD under the BFD process.
3. **Question:** In the preamble of the final rule, it indicates that USCIS generally will not grant BFD-based deferred action and EAD to derivative applicants, unless the T-1 applicant has already received a positive BFD. If USCIS does not conduct a BFD review of the T-1’s I-914 and instead grants it, but issues RFE on the I-914A, will USCIS conduct a BFD review of the I-914A?
  - a. **Response:** If we issue an RFE for the 914A and when we review the RFE response, we determine that the I-914A is bona fide and an exercise of discretion is warranted, we will grant deferred action and work authorization. We will only grant a bona fide determination for a derivative after we grant a bona fide determination for the principal. Likewise, if the principal’s I-914 is referred for secondary review, the derivative’s I-914A will also be referred for secondary review.

4. **Question:** If a pending case is issued an RFE, why would they receive a BFD instead of just an approval or denial after the RFE is responded to?
  - a. **Response:** To clarify, a BFD for pending cases is made at time of the RFE issuance, and not at the time we receive the RFE response. So, for cases pending prior to August 28, if an RFE is issued, at the time of RFE issuance, we will determine whether the case is bona fide – not when we receive the RFE response back.
  
5. **Question:** If the I-914A is filed after the effective date of the final rule, in connection with an I-914 filed prior to the effective date, will the I-914A be given a bona fide review?
  - a. **Response:** If the I-914 was filed before the effective date but the I-914A was filed after the effective date, the I-914A will not receive a BFD review. As previously stated, all filings for derivatives must follow the same adjudicative path as the principal's filing.
  
6. **Question:** Does the preamble's recommendation to include a (c)(40) I-765 apply to the I-914 and I-914A applications filed after the publication of the final rule but before its effective date? Or only to those applications filed after the effective date?
  - a. **Response:** The preamble recommendation to file an I-765 under the (c)(40) category for the T bona fide determination applies only to those filed after the effective date.
  
7. **Question:** How will the BFD process impact staffing? And can USCIS provide any insight into whether there will be additional officers hired to process BFDs? Should practitioners expect to see issuance of T BFDs in connection with the final rule this fall?
  - a. **Response:** We are dedicating a group of employees trained in BFD review to conduct this workload. BFD reviews will begin when the T final rule becomes effective on August 28, 2024. Because we can't project receipt volume at this time, we cannot establish when practitioners will begin seeing issuance of T BFDs.
  
8. **Question:** Are applicants below the age of 14 or above the age of 79 required to submit biometrics? The new 8 CFR 214.204(k) and 214.211(c)(1) seem to indicate all T-1 and T derivative applicants must submit biometrics, regardless of age.
  - a. **Response:** A biometrics services appointment for fingerprint collection at an ASC is required for individuals over 14 years of age, but under 79 years of age. If a child is under 14 but is issued a BFD, they may still be required to attend a biometrics services appointment at an ASC in order to submit a photo.

9. **Question:** Can you provide additional guidance regarding the changes in how domestic violence, smuggling, and labor exploitation will be analyzed to determine if they rise to trafficking, based on the final rule?
- a. **Response:** We have seen confusion among practitioners on when these may rise to the level of a severe form of trafficking. In many cases, individuals have conflated these other forms of abuse with trafficking. The T final rule does not fundamentally change how these cases will be analyzed, but the preamble provides additional guidance and examples that we hope will be helpful. That language that was added to the preamble either came from existing published policy manual guidance or is consistent with current process. For example, DHS acknowledged that traffickers may have multiple motives simultaneously and that trafficking rarely occurs in a vacuum. The preamble also discusses some examples of smuggling and when it may constitute trafficking. We also want to note that there will be updates to the Policy Manual that we believe will provide additional clarity to stakeholders on these complex issues.
10. **Question:** Apart from the provisions on BFD evaluations, are there any other provisions among the new regulations that won't be applied retroactively to applications pending before August 28th in the same manner as they are applied to applications filed after the effective date?
- a. **Response:** The regulations apply to all cases pending on or filed on or after August 28th. However, if you have a pending case and that case is pending on the effective date, if it would've been granted under the old regulations but the new regulations would lead to a denial, the new regulations will not apply. If anything makes someone ineligible who was previously eligible, then the new regulations won't apply.
11. **Question:** What are the expected processing times for a T visa application under the new rule?
- a. **Response:** Generally speaking, it's very hard at this point in time to provide processing times. What people do need to do, is go to the processing times tool on the USCIS website and, with the dropdown, find the form and generate the processing times for that form.
- i. *Shared by moderators in the chat:* To find processing times:  
<https://egov.uscis.gov/processing-times/> and  
<https://egov.uscis.gov/processing-times/more-info>



12. **Question:** I'm confused about having to file an I-765 concurrently. The I-914 instructions specifically say that, as a principal applicant, they don't need to file a form I-765. Can you clarify?
- a. **Response:** The principal applicant is not required to submit an I-765 to receive T nonimmigrant status or work authorization pursuant to that. If they want to be considered for BFD and work authorization, they must file an I-765 under the (c)(40) category.
13. **Question:** Assuming a T-1's application is approved, will derivatives be issued a new EAD under (c)(25) or retain the (c)(40) EAD for the 4 years?
- a. **Response:** If the T-1 is approved, the derivative will be issued an EAD under the (c)(25) code for the duration of 4 years.
14. **Question:** Can USCIS discuss what types of national security issues might prevent the agency from determining that an application is bona fide, under 8 CFR 214.204(d)?
- a. **Response:** National security concerns would be those listed in INA 212(a)(3). There will be forthcoming Policy Manual content that will address this.
15. **Question:** When ICE requests that USCIS expedite an application for T nonimmigrant status, in accordance with ICE directive 11005.3 (Victim-Centered Approach memo) after the final rule is effective, will USCIS expedite a full review of the I-914/I-914A or will it instead expedite a bona fide review of the pending application?
- a. **Response:** When ICE requests an expedite for an I-914, we will first conduct a BFD review. If we determine that the application is not bona fide, we will refer the case for secondary review, which will address all the deficiencies in the record.
16. **Question:** Can USCIS provide any information on whether it anticipates reaching the T visa cap this year, based on current processing rates?
- a. **Response:** Unfortunately, we are not able to provide any information about reaching the cap at this time.
17. **Question:** In June 2024, USCIS reported at a stakeholder engagement that the approximate wait time for U/T/VAWA inquiries to the hotline is about 120 days. In April, at the Freedom Network conference, USCIS reported responses were taking closer to 60 days. Can you speak at all to the latest wait times for the hotline inquiries?
- a. **Response:** Currently, hotline response times remain at 120 days. The hotline is used by attorneys and accredited representatives that have questions relating to a T applicant's case. Applicants can contact the USCIS Contact Center directly. We

really stress that attorneys should not be duplicating inquiries that applicants are submitting to the Contact Center. It delays the hotline significantly if we're doing duplicative work.

18. **Question:** Has there been any further consideration of the creation of a hotline specific to T-visa related inquiries, given the growing case numbers?

a. **Response:** At this time, we have not had further discussion regarding an I-914-dedicated hotline account.

19. **Question:** Does 8 CFR 214.211(b)(1)(ii) mean previously-admitted T derivatives whose status has lapsed may not be readmitted into the T nonimmigrant status, if the T principal has already adjusted status?

a. **Response:** A derivative can file for an extension of status, if the T-1 nonimmigrant remains in valid T nonimmigrant status. See 8 CFR 214.212(b). For derivatives outside the US, the Department of State will not issue a T visa to a derivative, if the T-1 has already adjusted status.

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Established in 2008, ASISTA is a national leader in the movement for safety and justice for immigrant survivors of gender-based violence. ASISTA's founders helped write the immigration provisions of the federal Violence Against Women Act (VAWA) and Victims of Trafficking and Violence Prevention Act (TVPA), affording legal status to hundreds of thousands of survivors and their children since 1994. With over 2500 members nationwide, ASISTA's work is focused on 1) providing expert case consultation, training, and resources to attorneys and advocates navigating the complex immigration system on behalf of survivors of gender-based violence, including intervening in specific cases as needed; 2) pushing for federal, state and local policies that ensure safety and justice for immigrant survivors; and 3) coordinating lawsuits to prevent the government from unfairly deporting survivors of violence. To learn more about ASISTA's work, [click here](#).

