U Visas at a Glance:

Introduction:
U visas confer upon eligible noncitizens and certain family members the right to stay in the U.S. The federal government, through the United States Citizenship and Immigration Service (USCIS), determines eligibility based on an application filed by the alien. The first part of this chapter elaborates on the details of the eligibility elements and application procedures summarized here.

Eligibility:
To qualify for a U visa, an applicant must establish in an application to the USCIS victimization and helpfulness in the investigation or prosecution of the crime.

<table>
<thead>
<tr>
<th>Victimization</th>
<th>Helpfulness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victimization includes the following elements:</td>
<td>Helpfulness is established by obtaining a completed Form I-918 Supplement B from a law enforcement official. Any of the following officials can certify helpfulness by completing the form:</td>
</tr>
<tr>
<td>• the applicant has suffered substantial physical or mental abuse</td>
<td>• a Federal, State, or local law enforcement</td>
</tr>
<tr>
<td>• as a result of having been a victim</td>
<td>• a prosecutor,</td>
</tr>
<tr>
<td>• of one of the enumerated qualifying criminal activities</td>
<td>• a judge,</td>
</tr>
<tr>
<td>• which (criminal activity) violated the laws of the US or occurred in the US.</td>
<td>• Federal, State, or local authority</td>
</tr>
<tr>
<td></td>
<td>investigating the criminal activity.</td>
</tr>
</tbody>
</table>

Application Checklist:
The USCIS determines, based on an application packet alone (and, if necessary, subsequent requests for evidence), whether an applicant qualifies for a U visa. The particular items included will depend on the applicant’s unique situation and the judgment of client and counsel, but the regulations require most of the following in most cases:

- **Form I-918**, Petition for U Nonimmigrant Status
- **Form I-918 Supplement B**, U Nonimmigrant Status Certification
- **Initial evidence**, including:
  - Evidence supporting each element of eligibility
  - A personal narrative statement (in the client’s own words) containing the required information
- **Form I-918 Supplement A** (if applying for a qualifying family member)
- **Form I-192**, Application for Advance Permission to Enter as Non-Immigrant
- **Form I-601**, Application for Waiver of Grounds of Inadmissibility (and fee of $585)
- **Form I-193**, Application for Waiver of Passport and/or Visa (and fee of $585)
- **Form I-912**, Request for a Fee Waiver, to waive the fees listed above
- **Form G-28**, Notice of Appearance, to let USCIS know that you are the attorney for your client
- **Other evidence** in order to establish eligibility for U-1 nonimmigrant status
T Visas at a Glance:

Introduction:
T visas confer upon eligible noncitizens and certain family members, among other things, the right to stay in the U.S. The federal government, through the United States Citizenship and Immigration Service (USCIS), determines eligibility based on an application filed by the alien. The second part of this chapter elaborates on the details of the eligibility elements and application procedures summarized here.

Eligibility:
To qualify for a T visa, an applicant must establish in an application to the USCIS victimization, physical presence, and helpfulness in the investigation or prosecution of the crime or an exemption to the helpfulness requirement.

<table>
<thead>
<tr>
<th>Victimization</th>
<th>Physical Presence</th>
<th>Helpfulness</th>
</tr>
</thead>
<tbody>
<tr>
<td>A noncitizen can establish victimization if he or she is (or has been) a victim of a severe form of trafficking in persons.</td>
<td>The noncitizen is: Physically present in the United States or certain U.S. territories, or a port of entry to any of these, On account of such trafficking (including where entry is granted in order to participate in the investigation or prosecution of the trafficking or trafficker).</td>
<td>Applicants who have not attained the age of 18 do not have to meet this requirement. It is most likely that clients served by KIND will be exempt from this requirement, but more details are available in the chapter.</td>
</tr>
</tbody>
</table>

Application Checklist:
The USCIS determines, based on an application packet alone, whether an applicant qualifies for a T visa. The regulations require that the application contain the following documents (but the particular items of evidence included will depend on the applicant’s unique situation and the judgment of client and counsel, as not all documents will be necessary in all cases):

- **Form I-914**, Application for T Nonimmigrant Status, including all necessary supporting documentation
- **Form I-914 Supplement A** for any family members seeking derivative status
- **Form I-914 Supplement B** for any law enforcement agency endorsements
- **Three current photographs**
- **Form I-912** application for fee waiver.
- **Form I-601**, Application for Waiver of Grounds of Inadmissibility, as necessary
  - Applications for fee-waivers will be accepted from T-visa petitioners
- **Form I-192**, Application for Advance Permission to Enter as a Nonimmigrant, as necessary
- **Form G-28**, Notice of Appearance, to let USCIS know that you are the attorney for your client
- **Any other necessary applications or documentation**
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II.G.2. How long does T-visa status last, if approved?

II.G.3. Can T-visa status be revoked once approved? If so, under what circumstances?

II.G.4. Can I check on the status of my client’s case while it is pending? If so, how?

II.G.5. How long should the application/adjudication process for a T visa take? Is expedited adjudication available under any circumstances?

II.H. What are the benefits of being granted a T visa?

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Appendix 1: Other Useful Resources
Acknowledgments:

This chapter was authored by Nick Quesenberry and Tayler Summers, students at Penn State Law’s Center for Immigrants’ Rights, under the supervision of Clinical Professor Shoba S. Wadhia, Esq. on behalf of Kids In Need of Defense (KIND). Invaluable guidance was provided by Abigail Price and Anna Gallagher. This chapter was also made possible, in substantial part, due to the advice and assistance of the following practitioners, whose help the authors gratefully acknowledge:

- Rená Cutlip-Mason, Senior Advisor, Office of the Citizenship and Immigration Service Ombudsman.
- Leslye Orloff, Vice President and Director, Immigrant Women Program, Legal Momentum.
- Gail Pendleton, Co-Director, ASISTA Immigration Assistance
- Katie Resendiz, Anti-Trafficking Supervisor, Arizona League to End Regional Trafficking, International Rescue Committee.
- David Thronson, Professor of Law and co-founder of the Immigration Law Clinic, Michigan State University College of Law.
- Suzanne Tomatore, Director, Immigrant Women and Children Project, New York City Bar Justice Center.

Formatting Legend:

In order to maximize the user-friendliness of this chapter, different items are formatted in different ways, according to the system outlined below:

- Bulleted items lifted or paraphrased from the statute are formatted in Arial font.
- **Bulleted items lifted or paraphrased from the regulations are formatted in Arial Italic font.**
- **Practitioner tips are bolded, in boxes, and are in Calibri (Body) font.**
- General discussion is in Calibri (Body) font.

Disclaimer:

This chapter is provided for informational purposes only, and does not constitute legal advice of any kind. Before proceeding with any legal matters under U.S. immigration law, please be sure to consult, as needed, with both the primary source documents referenced in this chapter (statutes, regulations, cases, etc.) and with an experienced U.S. immigration attorney.

Introduction:

Undocumented noncitizens often face great hardship upon entry into the United States. Often, the threat of apprehension and removal casts such a long and deep shadow over their lives that they fear to contact any arm of United States (US) federal, state, or local law enforcement—even to
report that they are victims of serious crimes.\(^1\) Further, the thought of doing anything to benefit an undocumented noncitizen, even a vulnerable minor who has come to the US with no resources and no one to provide care, control, or custody, is anathema to an increasing segment of the US population.\(^2\)

Nonetheless, Congress took such action in the year 2000 by way of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). Congress found that noncitizen victims of trafficking and other crimes in the United States were often punished more harshly than their victimizers due to their undocumented status and to the failure of prior laws to distinguish meaningfully between victims and perpetrators.\(^3\) The prior “S” visa, or “snitch” visa, did little to address these humanitarian concerns, especially in the context of unaccompanied minors (UAM), who, due to their age and vulnerability, could do little, if anything, to aid in the prosecution of criminals. Congress thus created what is commonly known as the “U visa” in the Battered Immigrant Women Protection Act (Title V of VTVPA).\(^4\) It also created the “T visa” in the Trafficking and Violence Protection Act.\(^5\)

Both of these nonimmigrant visas reflect two distinct but related policy concerns. Firstly, these visas were created to facilitate the prosecution of certain victimizing and exploitative crimes by eliminating, to an extent, the threat of removal that undocumented noncitizens would otherwise face upon coming forward to assist law enforcement. Secondly, they were created to provide noncitizen victims of crimes with both protection from their victimizers and immigration relief in the United States.

Moreover, Congress recognized the special vulnerabilities of UAM when it: 1. amended the T visa statute to make the less stringent eligibility requirements for minors more broadly applicable; and 2. made the T visa more widely available to family members of the primary visa-seeker. One groundbreaking innovation in the U and T visa legislation is the inclusion of parents of child crime victims among those eligible for derivative visas.\(^6\)

While the U and T visas represent potentially powerful forms of relief for UAM, they will not be appropriate in all cases, as the discussion below indicates. Thus, the practitioner is encouraged to explore other forms of relief, whose treatment is beyond the scope of this chapter, including Special Immigrant Juvenile (SIJ) Status, asylum, withholding of removal, cancellation of removal, and similar forms of relief.

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2. See Hanson, supra, at 181-182.
3. See Hanson, supra, at 200.
4. Hanson, supra, at 185.
The materials that follow explore in some depth the legal requirements for obtaining both U and T visas. Many of these requirements are complex and intricate, so the practitioner should be familiar with the primary sources of law referenced in this chapter. In addition to the legal requirements, these materials also provide, where appropriate, insights from experienced practitioners, non-governmental organizations (NGO’s), government personnel, and other contributors who are knowledgeable about the practical concerns of pursuing U and T visas. Additionally, while much of the most fundamental information pertaining to U and T visas is located in the main text of these materials, in the interest of user-friendliness a great deal of useful and important information is included in the footnotes.

- **Note:** At the outset, it is worth noting that, likely for political reasons, Congress made much more of the law-enforcement side of the U-and-T-visa policy coin than the humanitarian, aid-to-victim-noncitizens side. Similarly, the practitioner is advised to illustrate, wherever possible, how that a grant of U or T nonimmigrant status in a particular case will aid in fulfilling law enforcement objectives.

### General tips for working with unaccompanied minors: Suggestions from our contributing practitioners

Providing the evidence required to establish U-visa eligibility can be difficult; often, only the client has primary knowledge of the underlying victimization, but the client might be unwilling or unable to disclose the needed information because of the trauma of the experience. Our contributors offer the following (paraphrased) tips when dealing with vulnerable, unaccompanied children:

- The trauma of the underlying victimization often leads clients to remember and recite events inconsistently. Further, the client, especially initially, may simply be unable or unwilling to speak of the underlying victimization. It is thus often best to conduct a series of interviews, without treating one interview as a revision of the prior one, and then walk the client through an account based on the total information gleaned from all the interviews.
  - It is often very helpful to enlist the aid of a social worker, case manager, or other professional, if resources permit, in order to help the client work through, and to feel comfortable talking about, the underlying victimization. Ideally, the professional will be from a victims’-advocacy organization experienced in working with victims of trafficking and other crimes (such as domestic violence).

- Be mindful of the way in which you dress. Often, for example, suits represent authority, and authority figures may have been the primary victimizers of young clients. A good approach is to create, at least at first, a casual atmosphere with things likely to make the child comfortable, such as treats and toys. Meeting outside the office, when appropriate, can also help.

- Though an interpreter is often needed, it is advisable to refrain from utilizing a family

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7 See Hanson, *supra*, at 188.
member, or anyone with a stake in the final outcome of the visa adjudication, if resources permit. The family member may have been the victimizer, and even if not, their inherent stake in the matter may lead them to skew the client’s words.

- Rely on documentary evidence, rather than the client’s own account, whenever possible, in order to minimize the need for the client to discuss painful past incidents repeatedly. Documentary evidence may include medical records, a social worker’s affidavit, child protective services records, etc.

- Be certain that the client perceives your role clearly.
  - You do not work for the government, the police, or any such entity, but you are there to serve the client. Make sure the client knows that s/he has a lawyer.
  - Make sure that the client understands the scope of your representation: for example, you are the client’s lawyer for immigration matters, but that may not necessarily entail your representing the client in other, unrelated matters like juvenile delinquency.

- Be patient and understanding.
  - Take pains to make sure that the client understands what is happening at every step in the legal process, accounting for the fact that the client is a child who is unschooled in the law. For example, if the client needs to take some action or furnish some information to the government, make sure that he or she clearly understands why, even if you have already explained it.
  - Again, given the unfortunate background of many UAM clients, eliciting the necessary information from them might be difficult. Patience is key.

I. U Visas

I.A. Introduction

Congress created what is commonly known as the U visa as part of the Battered Immigrant Women Protection Act of 2000, to serve two important functions: 1. To assist law enforcement officials in the investigation and prosecution of a panoply of victimizing crimes; 2. To protect noncitizen victims of crimes from deportation as a consequence of coming forward to report their victimization. This was to be accomplished by according noncitizens lawful immigration status in exchange for their cooperation with law enforcement. 8

- From the Experts: According to many of our contributors, the U (and T) visa’s primary weakness seems to be a pervasive lack of awareness of its benefits among practitioners, victims, and law enforcement personnel. This, of course, can be remedied through the diligent efforts of practitioners and advocacy organizations. 9

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9 See also Tool Kit, supra.
The United States Citizenship and Immigration Service (USCIS) has sole jurisdiction over all petitions for U visas, also known as “U nonimmigrant status”; no Immigration Judge (IJ) can grant or deny a U visa.\(^\text{10}\)

### I.B. What are the eligibility requirements for a U visa?

At every stage of the U-visa application process, it is always the noncitizen seeking a U visa who bears the burden to prove to USCIS that he or she meets the following requirements, which are set out in **INA § 101(a)(15)(U)/8 U.S.C. § 1101(a)(15)(U)**.\(^\text{11}\)

It should be noted that the statute sets out the requirements only in a skeletal fashion; in order to fully understand these requirements, it is critical that the practitioner become very familiar with the U-visa regulations, codified at **8 C.F.R. § 214.14** and referenced throughout this segment.\(^\text{12}\) After the initial outline, each eligibility requirement is discussed in detail.

- **The noncitizen has suffered substantial physical or mental abuse** as a result of having been a victim of one of the kinds of “criminal activity” enumerated under **INA § 101(a)(15)(U)/(iii)/8 U.S.C. § 1101(a)(15)(U)/(iii)** (see infra at I.B.3. for a complete list).
- **The noncitizen possesses information** concerning the criminal activity.
- **The noncitizen has been helpful, is being helpful, or is likely to be helpful** to any federal, state, or local law enforcement official, judge, prosecutor, or other such authority which is investigating or prosecuting the criminal activity.
  - If the person applying for a U visa is a minor under the age of 16, then a “parent, guardian, or next friend” can possess the information and provide the required assistance in place of the minor.\(^\text{13}\)
  - A “next friend” is one who:
    - **Appears in a lawsuit to act for the benefit of a noncitizen under 16 years of age**;
    - **Has himself/herself suffered substantial physical or mental abuse as a result of being a victim of “qualifying criminal activity”;** and
    - **Is neither a party to the legal proceeding nor appointed as a guardian.**
- **AND the criminal activity either:**
  - **Violated the laws of the United States,**
  - **OR occurred in the United States, on an Indian reservation, on a military installation, or in any territory or possession of the United States.**\(^\text{15}\)

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\(^{10}\) 8 C.F.R. § 214.14 (c)(1). See also Lee v. Holder, 599 F.3d 973 (9th Cir. 2010).


\(^{12}\) On September 17, 2007, the USCIS issued long-awaited interim regulations implementing the U-visa legislation. In the 7-year absence of such regulations, immigration officials developed a deferred-action system to benefit noncitizens who established prima facie qualification for U-visa status; this system was termed “U interim relief”. With the issuance of the new interim regulations, USCIS no longer considers applications for interim relief, but has indicated that there is no deadline for those granted interim relief to apply for “official” U-nonimmigrant status.\(^\text{12}\)

\(^{13}\) 8 C.F.R. § 214.14 (a)(7).
I.B.1. What does it mean to suffer “substantial physical or mental abuse”?

The regulations elaborate on what it means to suffer “substantial mental or physical abuse”.

- “Physical or mental abuse” is injury or harm to the victim’s person, or harm to or
impairment of the emotional or psychological soundness of the victim.\textsuperscript{16}
- **Substantiality** of the abuse:
  - In evaluating whether the abuse was substantial, the USCIS considers a number
  of factors, including (but not limited to):\textsuperscript{17}
    - The nature of the injury inflicted or suffered;
    - The severity of the perpetrator’s conduct;
    - The severity of the harm inflicted;
    - The duration of the infliction of the harm;
    - The extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions.
  - No single factor is a prerequisite to establish that the abuse suffered was
  substantial.
    - Also, the existence of one or more of the factors automatically
does not create a presumption that the abuse suffered was
  substantial.
    - A series of acts taken together may be considered to constitute
  substantial physical or mental abuse even where no single act
  alone rises to that level.\textsuperscript{18}

I.B.2. Who is a “victim” of “qualifying criminal activity”?

Under the regulations, a qualifying “victim” is one who “has suffered direct and proximate harm as
a result of the commission of qualifying criminal activity”.\textsuperscript{19}

Mere conclusory allegations that the noncitizen was subject to, for example, “false imprisonment”
are not enough; rather, the U-visa petitioner should supply evidence and specific facts from which
the decision-maker at USCIS may reasonably conclude that s/he “has suffered direct and proximate
harm as a result of the commission of qualifying criminal activity”.\textsuperscript{20}

\textsuperscript{15} The term “United States”, as a geographical term, generally includes Guam and the Commonwealth of the
Northern Mariana Islands, in addition to Puerto Rico and the Virgin Islands. INA § 101 (a)(38)/8 U.S.C. § 1101
(a)(38).
\textsuperscript{16} 8 C.F.R. § 214.14 (a)(8).
\textsuperscript{17} 8 C.F.R. § 214.14 (b)(1).
\textsuperscript{18} 8 C.F.R. § 214.14 (b)(1).
\textsuperscript{19} 8 C.F.R. § 214.14 (a)(14).
\textsuperscript{20} See \textit{In re Petitioner (name redacted)}, No. EAC 09 080 50515, 2010 WL 4088659 (Administrative Appeals Unit,
March 3, 2010).
I.B.2.a. Does the principal U-visa petitioner always need to be the direct victim of the underlying criminal activity?

Not always. The regulations provide that the following family members of the direct victims of criminal activity are still considered primary “victims” for U-visa purposes, thus enabling them to apply directly for U-visa relief, even though the underlying criminal activity was not perpetrated directly upon them. These persons are often referred to as "indirect victims."\(^{21}\)

- A noncitizen spouse of the direct victim.
- A child of the direct victim who is under the age of 21.
  - The child must also be unmarried.\(^{22}\)
- If the direct victim is under 21 years of age:
  - A parent of the direct victim.
  - A sibling of the direct victim who is
    - Unmarried and
    - Under 18 years of age.

I.B.2.b. May just any family member of the direct victim be a “victim” for U-visa purposes?

Family members of the direct victim may only be “indirect victims” where the direct victim is:\(^{23}\)

- Either
  - Dead due to murder or manslaughter (i.e. homicide),
  - Or incompetent or incapacitated for any reason
- And is by reason of such death or incapacity unable to
  - Provide information concerning the criminal activity,
  - Or be helpful in the investigation or prosecution of the criminal activity.

I.B.2.c. Can a bystander ever be the indirect victim of “criminal activity”, even if unrelated to the direct victim?

Yes. USCIS may treat as indirect victims, on a case-by-case basis, bystanders who suffer unusually direct injuries, such as a pregnant bystander who suffers a miscarriage for fright over witnessing a violent crime.\(^{24}\)

\(^{21}\) For example, a living child might be an “indirect victim” of manslaughter where his parents were killed by vehicular homicide; the child would thus be able to apply directly for a U visa, as a principal petitioner, instead of a derivative one, even though the child was not the direct victim of the manslaughter.

\(^{22}\) New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,017 at n.5 (Sept. 17, 2007).


\(^{24}\) New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,016-53,017.
From the Experts: Though the Federal Register only provides the pregnant-woman example to illustrate the concept of “bystander-as-indirect-victim”, our contributors indicate that, for example, anyone who suffered compensable injury as a bystander witness might be eligible for “indirect victim” status. Always bear in mind that this “bystander-victim” concept is a corollary to the statutory requirement that the principal U-visa applicant suffer substantial abuse as a result of criminal activity.

I.B.2.d. When is a U-visa petitioner a victim of witness tampering, obstruction of justice, or perjury?

Sometimes, criminals victimize noncitizens in order to interfere with the investigation or prosecution of crimes that may fall outside the statutory list of “criminal activities” which can underlie a U-visa application (see infra at I.B.3.). So that the U-visa provisions can cover these situations, the regulations provide that a U-visa petitioner is a victim of witness tampering, obstruction of justice, perjury (or attempt, solicitation, or conspiracy to commit these criminal activities) if:

25 See 8 C.F.R. § 214.14(a)(14)(ii)(A-B). An example of such a situation would be where the perpetrator committed a bank robbery where the U-visa applicant somehow saw the perpetrator’s face, and where the perpetrator later threatened to kill or harm the applicant if the applicant ever told anyone his identity. The “criminal activity” creating U-visa eligibility here would be the later threats, which would amount to witness tampering, etc. under the statute.

- The petitioner has been directly and proximately harmed by the perpetrator of the criminal activity (i.e. by the would-be witness-tamperer), and
- There are reasonable grounds to conclude that the perpetrator committed the criminal activity (i.e. harmed the petitioner), at least in principal part, as a means to:
  - Avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring to justice the perpetrator for other criminal activity (i.e. criminal activity other than the witness tampering, obstruction of justice, or perjury of which the petitioner was a direct victim),
  - Or further the perpetrator’s abuse or exploitation of, or undue control over, the petitioner through manipulation of the legal system.

I.B.3. What kinds of activities are “criminal activity” for U-visa purposes?

Not just any crime is “criminal activity” under the U-visa statute: “criminal activity” includes only one or more of the following enumerated criminal acts, or any similar activity, which must actually violate federal, state, or local criminal law:

- Rape.
- Torture.


27
• Trafficking.\footnote{Defined for federal criminal purposes at 18 U.S.C. § 2340 (1-2). See also United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, §1, Jun. 26, 1987, 1465 UNTS 85.}
• Incest.
• Domestic violence.
• Sexual assault.
• Abusive sexual contact.
• Prostitution.
• Sexual exploitation.
• Female genital mutilation.
• Being held hostage.
• Peonage.\footnote{Federally criminalized at 18 U.S.C. § 1581. “Peonage” essentially means a condition where a debtor is compelled to work for a creditor in order to pay off his debt to the creditor. \textit{Bailey v. Alabama}, 219 U.S. 219 (1911).}
• Involuntary servitude.\footnote{Defined and criminalized at 18 U.S.C. §§ 1582, 1590.}
• Slave trade.\footnote{Defined at 22 U.S.C. § 7102 (5).}
• Kidnapping.
• Abduction.
• Unlawful criminal restraint.
• False imprisonment.
• Blackmail.
• Extortion.
• Manslaughter.
• Murder.
• Felonious assault.
• Witness tampering.
• Obstruction of justice.
• Perjury.
• Attempt, conspiracy, or solicitation to commit any of the above.

For U-Visa purposes, no one actually needs to be officially charged with committing any of these crimes.\footnote{Sanchez v. Mukasey, 508 F.3d 1254 (9th Cir. 2007).} The criminal activity also does not need to be the subject of any active investigation or prosecution at the time the U-visa petition is filed.\footnote{See generally 18 U.S.C. §§ 1581-1596.} A plain reading of the statute and regulations

\footnote{Defined and criminalized at 18 U.S.C. §§ 1582, 1590.}
seems to require that the petitioner be the victim of some unlawful activity, which amounts in substance to one of the criminal activities listed in INA § 101 (a)(15)(U)(iii).

I.B.4: Must the U-visa applicant obtain any certification from law enforcement or similar personnel?

INA § 214(p)/8 U.S.C. § 1184(p) requires that the U-visa petition contain a certification from a federal, state, or local law enforcement official who is investigating or prosecuting the criminal activity; the certification must state that the noncitizen has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity.

A certifying official can also include a federal, state, or local judge.

The certifying official must complete USCIS Form I-918, Supplement B. The regulations set out further requirements of both the certifying official and of the corresponding law enforcement agency:

- Agencies whose law enforcement officials may provide the required certification include those agencies which have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor. (These may also include any local district attorney’s office or police office, or the state police, for example).
- The official actually providing the certification must be:
  - The head of the certifying agency,
  - OR someone in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency,
  - OR a federal, state, or local judge.

Moreover, the decision of whether to certify helpfulness is solely at the discretion of law enforcement, which may deny certification for any reason or no reason at all. No court can compel law enforcement to certify helpfulness.

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34 See New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. at 53,018. A crime can, of course, be the subject of an investigation before any charges are filed, and investigation alone will suffice for U-visa purposes. See INA § 101 (a)(15)(U).
35 This is an important contrast to the T-visa requirements; in the T-visa context, any law enforcement endorsement must come only from a federal agency. See 8 C.F.R. § 214.11 (a).
36 See INA § 214 (p)(1); 8 U.S.C. § 1184 (p)(1).
38 8 C.F.R. § 214.14 (a)(2).
39 See INA § 214 (p)(1); 8 U.S.C. § 1184 (p)(1).
41 See, e.g., Ordonez Orosco v. Napolitano, 598 F.3d 222 (5th Cir. 2010).
From the Experts: The law enforcement certification is an absolute prerequisite for U-visa eligibility, one on which USCIS will not budge. Obtaining the certification is often the single most difficult part of the U-visa application process, such that many practitioners do not even start the application process until they have already secured the certification.

- You need not seek the certification alone; in many communities, there are organizations whose personnel regularly seek U-visa certifications from law enforcement, and these will have an array of helpful resources and information at their disposal, so it is most advisable to seek them out. Also, these organizations have a stake in making sure the relationships they have fostered with law enforcement are maintained.
  - It is also advisable to reach out to national organizations with expertise on U-visa certifications.
- Often, the single biggest obstacle to gaining the law enforcement certification is unfamiliarity on the part of law enforcement with both the existence and nature of the U visa. This highlights the need for practitioners to work closely with law enforcement and to educate them about this important tool in their own crime-fighting arsenal. For instance, the practitioner might proactively work with a law enforcement agency’s leadership in order to help them implement an institutional U-visa certification protocol, if none exists. This will help streamline the process for future cases.
- Relationship-building is key.
- Another obstacle that our contributors noticed was a perception amongst certifying law enforcement officials that they were conferring a “benefit” upon an “illegal alien” by supplying the certification. It becomes important here to remind officials that they are not conferring a benefit; rather, they are just certifying helpfulness, and the noncitizen has many other requirements to meet before getting the U visa.
- Make the process as easy for law enforcement as possible, as by filling out the I-918B yourself, to the greatest extent possible. This will avoid the problem of having incorrect facts placed on the form and then needing to return to the certifying official to ask for corrections.

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42 See, e.g., In re Petitioner (name redacted), No. EAC 09 094 50933, 2010 WL 4088057 (Administrative Appeals Office, April 15, 2010).
I.B.5. When does a crime “occur in” or “violate the laws of” the United States?

A crime occurs “in the United States” if it occurs in any of the 50 states, or in “Indian country”, military installations, or territories and possessions of the United States.44

If the underlying “criminal activity” did not occur in the United States, then the regulations require that the criminal activity violate a federal law that provides for extraterritorial jurisdiction to prosecute the offense in a federal court.45

I.B.6. Admissibility: Must my client be admissible to the United States in order to receive a U visa?

Yes. All U-visa applicants must either be admissible to the United States or receive a waiver of inadmissibility, which the Secretary of Homeland Security may grant in most cases if s/he considers it to be in the public or national interest; it is important to understand that each and every ground of inadmissibility is potentially in play in the U-visa context.46 While thorough treatment of the grounds of inadmissibility is beyond the scope of these materials, for more information, see generally INA § 212/8 U.S.C. § 1182 and 8 C.F.R. § 212.17.47

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47 There is no appeal of a decision to deny a waiver of inadmissibility for a U-visa petitioner, but an applicant may re-file a request for waiver in “appropriate cases”. 8 C.F.R. § 212.17 (b)(3). Moreover, in cases involving “violent or
From the Experts: It is critical to obtain waivers for all inadmissibility grounds at the application stage, lest an overlooked ground at the application stage become an impediment to adjustment of status to LPR in the future.

I.B.7. Who else besides the victim of “criminal activity” is eligible for a U visa: Derivative applications.

Certain family members of the U-visa applicant are eligible for “derivative” relief, meaning that they get U-nonimmigrant status because of their relationship to the principal applicant. Be careful not to confuse “derivative” applicants with the “indirect victims” discussed infra, who may apply for U visas on their own. Eligible family members include:48

- If the applicant is under the age of 21:
  - Spouse.
  - Children.
  - Siblings who are
    - Unmarried
    - AND under 18 years of age on the date that the victim noncitizen applies for U nonimmigrant status.
    - For purposes of this determination, USCIS will continue to consider the principal victim to be under 21, and the sibling to be under 18, even if either or both grow older than these ages before or during the adjudication of the petitions, so long as they were under the age limits when the principal U visa application was filed.49
  - Parents.50
- If the applicant is 21 or older:
  - Spouse.
  - Children.

The regulations classify applicants for U visas in the following ways, depending on the applicant’s relationship with, or status as, the principal victim of the underlying criminal activity.51

- The U-1 is the principal petitioner, the direct or indirect victim of the criminal activity.52
- The U-2 is the spouse of a U-1 petitioner.
- The U-3 is the child of a U-1 petitioner.
- The U-4 is the parent of a U-1 petitioner.

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dangerous crimes or inadmissibility based on the security and related grounds in section 212(a)(3) of the (INA), USCIS will only exercise favorable discretion (i.e. will only waive the ground of inadmissibility) in extraordinary circumstances.” 8 C.F.R. § 212.17 (b)(2).
52 Immigration Law and Procedure § 28.02 (2)(a)(i).
• The U-5 is the unmarried, minor sibling of a U-1 petitioner under age 21.

The regulations expound upon when the necessary relationship must exist between the “derivative” petitioner and the principal victim.

• The family relationship must exist when the principal and family-member petitions are filed, and must continue to exist until the family member’s ultimate admission to the United States.83

  If the principal petitioner proves that he or she became a parent of a child sometime after the filing of the petition, then the child is eligible for derivative relief.84

I.B.8. Who is not eligible for a U visa?

I.B.8.a. The perpetrator of the underlying criminal activity is ineligible.

A noncitizen is not eligible for a U visa if he or she is culpable for the qualifying criminal activity being investigated.85

I.B.8.b. Persons subject to un-waived grounds of inadmissibility to the United States are ineligible.

Again, all U visa applicants must either be admissible to the United States or receive a waiver of inadmissibility, which the Secretary of Homeland Security may grant in most cases if s/he considers it to be in the public or national interest.86

I.B.9. Is there a limit to the number of U visas that can be granted in a given year?

Yes. The number of noncitizen victims who may receive U visas in any fiscal year is limited to 10,000. However, that limitation does not apply to family members who attain derivative U visas, but only to principal victims, including indirect victims.87

If the number of approvable U-visa applications in a given year exceeds 10,000, then the regulations prescribe a waiting list where the excess applicants are officially granted U visas in subsequent years, with priority going to those who filed their applications the earliest. Applicants on the waiting

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85 See 8 C.F.R. § 214.14 (a)(14)(iii). Note: This exclusion does not apply to a noncitizen who has committed a crime other than the one underlying the U-visa application. See 72 Fed. Reg. 53,018. However, bear in mind that certain crimes can render a noncitizen inadmissible to the United States. See generally INA § 212/8 U.S.C. § 1182.
86 INA § 212 (a)(1)(E), (d)(14); 8 U.S.C. § 1182 (a)(1)(E), (d)(14). See also, Form I-192 Instructions; and Form I-918 Instructions.
list in any year are approved before any new applications are approved. The applicant on the waiting list must remain admissible to the United States throughout this process. 58

In FY 2010, the number of U-visa applications approved by USCIS reached 10,000 for the first time. 59 USCIS receives about 1,000 applications per month.

I.C. How does my client apply for a U visa?

A U-visa applicant should send a completed application packet to the USCIS Vermont Service Center, 75 Lower Welden St., St. Albans, VT 05479.

➢ From the Experts: Our contributors offer the following advice when completing the U-Visa application:

- Always include any necessary fees or a corresponding request for a fee waiver, lest the application be rejected before it even gets to the adjudicators.
- The applicant’s original signature (no photocopies) is needed on the application, or that of a parent if the child is under age 14.
  - To make it easier for USCIS to verify that the signature is original, have the applicant/parent sign in blue ink.
- If, after sending the application, you feel additional evidence or documentation is needed, wait until USCIS sends a Request for Evidence before sending any additional materials. This makes it easier for USCIS to keep the client’s file organized.
- Never tab your files on the sides—that just makes more work for USCIS.
- Include the applicant’s name and date of birth on the back of any photographs submitted.
- Use a two-hole punch on the top of every piece of paper submitted. This makes it easier for USCIS to assemble the applicant’s file.
- There are two ways you can communicate with the Vermont Service Center if you have questions regarding filing or other case-related matters. You can call the Center’s VAWA Hotline at 1-802-527-4888. They ask that you leave a detailed message, and someone will call you back. Questions with detailed specifics can also be sent via email to Hotlinefollowup9181914.vsc@uscis.dhs.gov. Email turnaround time is typically 72 hours, according to our contributors. It is requested that you use only one of the methods.

58 8 C.F.R. § 214.14 (d).
I.C.1. What must the application packet contain?

The regulations require that the application packet contain the following:

- **Note:** Although links to the most important forms are provided, bear in mind that USCIS often updates its forms and instructions, and it is important to use the most current version when submitting any application for immigration relief, often by clicking a button provided on the form for the purpose (online version only).

- **Completed Form I-918 Petition for U Nonimmigrant Status.**
  - **Note:** There is currently no application fee for Form I-918.  
  - **Note:** It is of **critical** importance that the practitioner pay exacting attention to the official instructions for Form I-918, as they contain a wealth of vital information, including examples of relevant initial evidence and guidance on personal narrative statements. [Click here](#) to access them.

- **Form I-918 Supplement B, U Nonimmigrant Status Certification** (law enforcement certification) (Included online with the full Form I-918).

- **Initial evidence, including:**
  - Relevant documents in support of the noncitizen’s claims that he or she was a victim of “criminal activity” under **INA § 101(a)(15)(U)(iii)/8 U.S.C. § 1101(a)(15)(U)(iii).**
    - A personal narrative statement from the petitioner describing the criminal activity.
      - The statement should be signed by the petitioner.
      - The statement may also contain information supporting any of the eligibility requirements for U nonimmigrant status.
      - If the petitioner is under 16 years of age, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement on petitioner’s behalf.
  - While biometrics (fingerprints, etc.) are required, USCIS charges no biometric fee for U-visa applications.

  ➢ **From the Experts:** Our contributors recommend physically accompanying the applicant through the biometrics process so as to ensure that the client has all necessary identification and other documents.

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60 Check Filing Fees, USCIS, [http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD&vgnextchannel=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD&vgnextchannel=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD) (last visited Apr. 16, 2011) ([hereinafter](#) USCIS Fee Webpage).
61 8 C.F.R. § 214.14 (c)(1).
63 8 C.F.R. § 214.14 (c)(2)(iii).
64 8 C.F.R. § 214.14 (c)(2)(iii).
65 8 C.F.R. § 214.14 (c)(1). The regulations require that “(a)ll petitioners for U-1 nonimmigrant status must submit to biometric capture and pay a biometric capture fee. USCIS will notify the petitioner of the proper time and location to appear for biometric capture after the petitioner files **Form I-918.**” 8 C.F.R. § 214.14 (c)(3).
66 USCIS Fee Webpage.
• **Form I-918 Supplement A** (if applying for derivative status on behalf of a qualifying family member) (included online with full Form I-918).

• **Form I-192 Application for Advance Permission to Enter as Non-Immigrant**, as necessary.  
  - Note: The fee for this form is $585.00.

• **I-601 Application for Waiver of Grounds of Inadmissibility**, as necessary.
  - Note: The fee for this form is $585.00.

• **Form I-193 Application for Waiver of Passport and/or Visa**, as necessary.
  - Note: The fee for this form is $545.00.

• **Form G-28, Notice of Appearance**, to let USCIS know that you are the attorney for your client.
  - Your client must sign the form.
  - If your client is under 14, generally the parent or guardian (or other legal representative) must sign the form.

• **Form I-912, Request for Fee Waiver**, as necessary. This is the new “global” fee waiver form, which can be used to request a waiver for all USCIS filing fees. Be sure to keep abreast of any updates or changes to this form.

• Any other evidence that the petitioner would like for USCIS to consider, in order to establish eligibility for U-1 nonimmigrant status.

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67 8 C.F.R. § 214.14 (c)(2)(iv). The Form I-192 is not useful in most immigration cases where the applicant is physically present in the United States. However, in the context of applications for U and T visas approval by USCIS of Form I-192 allows applicants who are physically present in the United States but subject to un-waived grounds of inadmissibility to remain in the United States. See I-192, Application for Advance Permission to Enter as Nonimmigrant, USCIS, http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=68db2c1a6855d010VgnVCM10000048f3d6a1RCRD (last visited Apr. 16, 2011).

The general subject of inadmissibility and waivers is well beyond the scope of these materials, but see generally INA § 212/8 U.S.C. § 1182.

68 USCIS Fee Webpage.

69 Cf. 8 C.F.R. § 214.11 (j). From the Experts: Our contributors indicate that the function of the I-601 in the U-visa context, in practice, is to allow U-visa applicants who are outside the United States to obtain waivers of the various grounds of inadmissibility and thus enter the United States.

70 USCIS Fee Webpage.

71 *Immigration Law and Procedure* § 28.02 (3)(b). This will be necessary if the applicant is inadmissible for lack of a valid passport or visa.

72 See *Signature Requirements for USCIS Forms*, USCIS, http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9453d59ae8a8e010VgnVCM100000edc190aRCD&vgnextchannel=f6529c7755cb9010VgnVCM10000045f3d6a1RCRD (last visited Apr. 16, 2011).

73 8 C.F.R. § 214.14 (c)(2)(ii). Petitioner bears the burden to demonstrate eligibility for U-1 nonimmigrant status, and may submit all credible evidence relating to the petition for USCIS’ consideration. USCIS conducts a *de novo* review of submitted evidence and may investigate any aspect of the petition as it chooses. USCIS determines the evidentiary value of all evidence, including the law enforcement certification, at its own sole discretion. 8 C.F.R. § 214.14 (c)(4). In the event that the decision-maker at the Vermont Service Center concludes that additional evidence would be helpful in adjudicating the application, he or she may send a Request for Evidence, or RFE, to
I.C.2. How does my client apply for a U visa on behalf of family members?

Generally, only either successful or pending principal U-visa applicants may apply for “derivative” U-visa status on behalf of family members, either contemporaneously with the initial U-visa application or sometime later. Application packets for family members must contain generally the same materials as the application for the principal victim, plus a separate Form I-918 Supplement A for each family member for whom derivative U-visa status is sought.

The initial evidence submitted with the application for a relative must include:

- Evidence which demonstrates that the (derivative) applicant bears the relationship of a “qualifying family member” to the principal applicant.
- If the qualifying family member is inadmissible, Form I-192 “Application for Advance Permission to Enter as a Non-Immigrant” in accordance with the rules outlined in 8 C.F.R. § 212.17.

I.D. What happens if my client is already in removal proceedings?

If your client is already in removal proceedings, then the client must still file the application directly with USCIS, as discussed above. The government lawyer seeking your client’s removal, exclusion, or deportation before the Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) may, but need not, join you in a motion to terminate the removal proceedings without prejudice, in order to give USCIS time to decide whether to grant your client a U visa.

Alternatively, you may move the IJ/BIA to grant your client a continuance, which effectively pauses the proceedings long enough for USCIS to decide the application.

If a family member seeking a derivative U visa is in removal proceedings, then the procedure is generally the same, except that the principal petitioner, not the family member, must still file the Form I-918 Supplement A directly with USCIS.

If the U-visa application is ultimately denied, then the government can put your client (or family members, as the case may be) back into removal proceedings.

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75 8 C.F.R. § 214.14 (f)(2).
77 I.e. proceedings for deportation, exclusion, or removal. The treatment of such proceedings is beyond the scope of this chapter.
78 8 C.F.R. § 214.14 (c)(1)(i).
79 Sanchez v. Mukasey, 508 F.3d 1254 (9th Cir. 2007).
80 See 8 C.F.R. § 214.14 (f).
81 8 C.F.R. § 214.14 (c)(5)(ii).
I.E. What happens if my client has already been ordered removed or deported from the United States?

If your client has already been ordered removed from the United States, he or she still may file a U-visa application directly with USCIS, and may also file with DHS a request for a (non-automatic) stay of removal under the rules spelled out in 8 C.F.R. §§ 241.6(a) and 1241.6(a). If the request is granted, then DHS will hold off on removing your client from the United States long enough for USCIS to adjudicate the U-visa application. 82

Granting the stay is not mandatory; DHS has discretion to grant the stay if the applicant establishes *prima facie* eligibility for U-visa status to the USCIS, and DHS will “consider favorably any humanitarian factors” related to either the noncitizen or to any close relatives who rely on the noncitizen for support. 83 If the U-visa application is ultimately denied, then the stay will be lifted once the denial becomes administratively final—i.e. when all administrative appeals are exhausted. 84

If the application is ultimately approved, then the outcome depends on which government agency initially ordered your client to be removed: 85

- *If DHS issued the order of removal, then the removal order is deemed cancelled by operation of law upon approval of the U-visa petition.*
- *If the removal order issued from an IJ or the BIA, then the petitioner may file, with the IJ/BIA, a motion to reopen and terminate removal proceedings. ICE counsel may, but need not, join this motion to overcome certain time and numerical limitations under 8 C.F.R. §§ 1003.2 and 1003.23.*

Again, these procedures are generally the same for family members seeking derivative U visas, except that here, unlike in other cases, the regulations seem to allow a derivative applicant who has been ordered removed to file an application directly with USCIS. 86

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82 8 C.F.R. § 214.14 (c)(1)(ii).
83 See USCIS, Adjudicator's Field Manual, Appendix 39-1, Guidance: Adjudicating Stay Requests Filed by U Nonimmigrant Status (U-Visa) Applicants, Memorandum from David J. Venturella, Acting Director, ICE (Sept. 24, 2009) (hereinafter Venturella Memo). According to this Memorandum, upon receiving the stay request, ICE will contact its local OCC to request a *prima facie* determination from the USCIS Vermont Service Center; if USCIS determines that *prima facie* eligibility exists, USCIS will so notify ICE, which will grant the stay of removal unless “serious adverse factors” are present. The stay may remain effective for up to 180 days, but if at the end of that time USCIS has not finished adjudicating the U Visa application, and no new adverse factors have emerged, ICE will extend the stay as needed for USCIS to finish adjudicating the petition.
84 8 C.F.R. § 214.14 (c)(5)(ii).
85 8 C.F.R. § 214.14 (c)(5)(i).
86 See 8 C.F.R. § 214.14 (f).
I.F. How will I know whether USCIS has granted my client’s U-visa application?

USCIS will issue a written decision either approving or denying both the principal application and any derivative applications, sending notice of the decision to the principal petitioner and/or his or her attorney.87

I.F.1. Can a U-visa denial be appealed? If so, how?

U-visa denials can be appealed only to the Administrative Appeals Office (AAO), formerly known as the Administrative Appeals Unit of USCIS; the procedures for the appeal are set forth in 8 C.F.R. § 103.3.88

I.F.2. How long does U-visa status last, if approved?

Generally, the maximum duration of U-visa status is 4 years from the date of approval. A qualifying family member may not be approved for derivative U status, for any period that extends beyond the expiration date of the principal’s status.89 U-visa status may be extended past four years under certain very specific circumstances.90

I.F.3. Can U-visa status be revoked once approved? If so, under what circumstances?

USCIS may revoke an approved U-Visa petition for any of the following reasons:91

- The official certifying “helpfulness” pursuant to INA § 214(p)(1)/8 U.S.C. § 1184(p)(1) either withdraws the certification or disavows the contents in writing.
- Approval of the petition was in error.

87 8 C.F.R. § 214.14 (c)(5), (f)(6).
88 8 C.F.R. § 214.14 (c)(5)(ii).
89 See 8 C.F.R. § 214.14 (g)(1). If this rule has the effect of limiting the derivative’s initial approved period to less than four years, then s/he may file Form I-539 Application to Extend/Change Nonimmigrant Status to request an extension of U nonimmigrant status for a period up to four years total. Approval may extend beyond the expiration date of the U-1 principal’s status, but only if: 1. The derivative cannot enter the United States timely because of delays in consular processing; 2. The extension is necessary to assure that the derivative can attain at least 3 years in nonimmigrant status for purposes of adjusting status under INA § 245 (m)/8 U.S.C. § 1255 (m). 8 C.F.R. § 214.14 (g)(2)(i).
90 8 C.F.R. § 214.11 (g)(2)(ii), explaining that “(e)xtensions of U nonimmigrant status beyond the 4-year period are available upon attestation by the certifying official that the alien’s presence in the United States continues to be necessary to assist in the investigation or prosecution of qualifying criminal activity. In order to obtain an extension of U nonimmigrant status based upon such an attestation, the alien must file Form I-539 and a newly executed Form I-918, Supplement B in accordance with the instructions to Form I-539.”
91 8 C.F.R. § 214.14 (h)(2)(i)(A-C). Revocation of a U-1 nonimmigrant’s approval results in both termination of status for the principal and any derivatives, and in denial of any pending derivative petitions for the U-1’s qualifying family members (but revocation of a derivative’s approval only results in termination of status for the derivative). 8 C.F.R. § 214.14 (h)(4). Revocations, like denials, can be appealed to Administrative Appeals Office.
There was fraud in the petition.

If a qualifying family member has obtained derivative U status, then that family member’s status may also be revoked for any of the above reasons, and also if either of the following apply:

- The relationship to the principal U-visa recipient has terminated (e.g. by divorce).
- The principal U-visa recipient’s U-visa status is revoked (e.g. because the law enforcement officer withdrew the initial certification of helpfulness).

I.F.4. How can I check the status of my client’s case while it is pending?

You can check the status of your client’s case once your client receives a “Notice of Action” from USCIS, which will contain a 13-digit “receipt number”. One you have the receipt number, you may go to the USCIS website (www.uscis.gov), enter the receipt number in the designated field, and then you will be able to see the status of your client’s case. You might also call the USCIS Vermont Service Center’s VAWA Hotline at 1-802-527-4888. Questions can also be sent via email to Hotlinefollowup19181914.vsc@uscis.dhs.gov. Email turnaround time is typically 72 hours, according to our contributors.

I.F.5. How long should the U-visa application/adjudication process take? Is expedited adjudication available under any circumstances?

As of this writing, the application/adjudication timeframe for a U-visa application is not posted on the USCIS website. Expedited processing for U-visa applications is available based on humanitarian conditions involving exceptional circumstances; to request expedited adjudication, call USCIS Vermont Service Center’s VAWA Hotline (1-802-527-4888). Otherwise, average processing time has tended to be around 6 months or so, according to USCIS (but see the “From the Experts” comment immediately below).

➢ From the Experts: Our contributors indicate that, depending upon the complexities of a particular case, including Requests for Evidence, the adjudication process can take anywhere from 6 months to 1 year.

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I.G. What are the benefits of being granted a U visa?

Several very important benefits accrue to those who are granted U visas, including:

- Lawful presence in the United States.96
- Eventual eligibility to apply for Lawful Permanent Residence (LPR) status, under the conditions set forth in INA § 245(m)/8 U.S.C. § 1255(m) and 8 C.F.R. §§ 245.1, 245.24, 1245.1.
- Employment authorization.97
- Ability to apply for derivative relief on behalf of certain family members, including the parents of U-visa recipients who are children.98

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97 8 C.F.R. § 274a.12 (a)(19-20). A noncitizen who is granted U-1 nonimmigrant status does not need to apply for employment authorization, nor pay a fee for the initial EAD (Employment Authorization Documents), but if the U-1 nonimmigrant is outside the United States, then he or she must request EAD on admission to the United States and file the appropriate documentation. 8 C.F.R. § 214.14 (c)(7). In any case, the derivative U nonimmigrant must file an I-765 Application for Employment Authorization in order to receive his/her EAD. 8 C.F.R. § 214.14 (f)(7). The fee to apply for employment authorization is $380.00. USCIS fee webpage.
II. T Visas.

II.A. Introduction

Human trafficking is a significant global problem; annually, about 700,000 people are trafficked internationally, and about 50,000 of these arrive in the United States. Congress created the “T visa” (also known as “T nonimmigrant status”) under the Victims of Trafficking and Violence Protection Act of 2000, primarily to aid the prosecution of criminal human trafficking by removing the threat of deportation as an impediment to trafficking victims’ willingness to come forward and report these crimes. Since 2000, the statute has been amended in ways that make the T visa substantially more accessible to children who have been victimized by trafficking.

As with U visas, United States Citizenship and Immigration Services (USCIS) has sole jurisdiction over all petitions for T visas, and no Immigration Judge (IJ) nor the Board of Immigration Appeals (BIA) has the authority to consider, grant, or deny a T-visa application.

These materials will guide you through the eligibility requirements and application process for T visas, in addition to providing valuable insights from our contributors, where appropriate.

II.B. What are the eligibility requirements for T visas?

The basic requirements are set forth in INA § 101 (a)(15)(T)/8 U.S.C. § 1101 (a)(15)(T). A noncitizen is eligible for a T visa if USCIS determines that the noncitizen:

1. Is (or has been) a victim of a severe form of trafficking in persons (as defined under 22 U.S.C. § 7102);
2. Is:
   - Physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or a port of entry to any of these,
   - On account of such trafficking, including cases where the noncitizen was allowed entry into the United States in order to participate in investigative or judicial processes associated with an act or perpetrator of trafficking.

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99 Immigration Law and Procedure at § 28.01 (b).
102 The term “United States”, as used in the INA in a geographical sense, generally includes Guam and the Commonwealth of the Northern Mariana Islands, in addition to Puerto Rico and the Virgin Islands. INA § 101 (a)(38)/8 U.S.C. § 1101 (a)(38).
And either:

- Has complied with any reasonable request for assistance in the federal, state, or local investigation or prosecution of
  - Acts of trafficking, or
  - The investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime.
- Or is unable so to cooperate because of physical or psychological trauma,
- Or has not attained 18 years of age.

From the Experts: This provision makes it much less difficult to utilize the T visa in the course of representing UAM’s, as they are not required actually to assist in the investigation or prosecution of the underlying human trafficking.

And would suffer “extreme hardship involving unusual and severe harm” upon removal.

Bear in mind that, as with U visas, the statute only sets forth the most basic requirements. The practitioner should therefore become thoroughly familiar with the T-visa regulations, found at 8 C.F.R. § 214.11. At every stage of the process, it is the applicant who bears the burden to prove eligibility for a T visa.

II.B.1. What does it mean to be a victim of a severe form of trafficking in persons?

The regulations define a “victim of a severe form of trafficking in persons” as “someone who is or has been subject to a severe form of trafficking in persons”.

II.B.1.a. What is a “severe form of trafficking in persons”?

Congress has defined “severe form of trafficking in persons” as comprising either of two different acts:

- Sex trafficking in which:
  - A commercial sex act is induced by force, fraud, or coercion, or
  - In which the person induced to perform the act is not yet 18 years of age.

103 The Secretary of Homeland Security, in making the determinations required under this bullet heading, must consult with the Attorney General as directed by statute. See INA § 101 (a)(15)(T)(i)(III)(aa-bb).
104 8 C.F.R. § 214.11 (l)(2).
105 8 C.F.R. § 214.11 (a).
107 “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. § 7102 (9).
108 Commercial sex act means any sex act on account of which anything of value is given to or received by any person. 8 C.F.R. § 214.11 (a).
From the Experts: The statutory definition of “sex trafficking” has the effect of creating an irrefutable presumption that a minor who was induced to perform a commercial sex act was so induced by force, fraud or coercion. This lessens the overall evidentiary burden in the context of a minor induced to perform commercial sex acts.

- Or the 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.
    - Moreover, where an alleged trafficking victim is not actually forced to perform a commercial sex act or labor services, as where she escapes her traffickers before they can begin to exploit her, the alleged traffickers’ intentions must be examined to see whether the traffickers obtained the applicant for the purpose of forcing her to perform either commercial sex acts or labor.

Cases from the Administrative Appeals Office provide examples of when an applicant was found to be a victim of severe human trafficking, and when the applicant was not found to be a victim of severe human trafficking.

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109 Involuntary servitude means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. 8 C.F.R. § 214.11 (a). See also United States v. Kozminski, 487 U.S. 931, 952 (1988). This regulation parrots the definition of “coercion”, also found in 8 C.F.R. § 214.11 (a).

110 “Peonage” means a status or condition of involuntary servitude based upon real or alleged indebtedness. 8 C.F.R. § 214.11 (a).

111 “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. Id. In order for the applicant to be in debt bondage, the debt owed must be to the alleged trafficker, not an unaffiliated third party. See In re Applicant (Name Redacted), File No. Redacted, 2007 WL 5328555 (Admin. App. Office, February 21, 2007).

112 The Administrative Appeals Office defines “slavery” as the applicant’s being “held in a condition that involved his (or her) involuntary labor”. In Re Applicant (Name Redacted), No. Redacted, 2008 WL 3990097 (Admin. App. Office, Feb. 1, 2008).


114 See, e.g.: In re Applicant (Name Redacted), No. EAC 06 220 50603, 2009 WL 3065611 (Admin. App. Office, June 5, 2009) (A Liberian juvenile whose parents sold her into prostitution for money and food; applicant ultimately denied relief because she was not present in the US on account of the trafficking); In re Applicant (Name Redacted), No. EAC 07 120 50062, 2009 WL 1742163 (Admin. App. Office, March 4, 2009) (A native Korean was forced into prostitution in exchange for a bailout from immigration custody; traffickers took away her immigration papers, thus forcing her to remain with them; applicant had been lured into the US by Korean brokers who promised her non-sexual employment here); United States v. Cadena, 207 F.3d 663 (11th Cir. 2001) (Young Mexican girls brought to the United States with promises of respectable employment; held instead as sex slaves); United
A recurring theme in the cases is the need for some coercion, some act on the part of the traffickers to *force* the applicant to participate in either the commercial sex act (unless the victim is a minor) or the labor; thus, no matter how harsh the conditions under which the T-visa applicant worked or performed sexual acts, if the participation never was *forced*, then no trafficking took place.\(^{116}\) Along these lines, the cases also illustrate the difference between “smuggling” and “trafficking”.\(^{117}\)

**II.B.1.b. What documentation is required in order to prove that a T-visa applicant was a victim of a severe form of trafficking in persons?**

The T-visa applicant must provide extensive and clear evidence establishing his or her status as a victim of a severe form of human trafficking in persons.\(^{118}\) The applicant may satisfy these evidentiary requirements in one of two ways:\(^{119}\)

- **By submitting “primary evidence”, which can be done by either:**\(^{120}\)
  - Submitting an endorsement from a “law enforcement agency” on Form I-914 Supplement B.\(^{121}\)

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\(^{115}\) See *In re: Applicant (Name Redacted)*, File No. Redacted, 2008 WL 3990096 (Admin. App. Office, Feb. 1, 2008) (Applicant was a native Indian indicating that her former fiancée’s family tried to make her marry a man against her will, and in the process held her captive and physically mistreated her. This arrangement involved no underlying commercial transaction, and was thus not a “commercial sex act” under the statute. Moreover, since no forced labor was involved, she was not “the victim of servitude, peonage, debt bondage, or slavery, as contemplated” by the statute); *In Re Applicant (Name Redacted)*, No. Redacted, 2008 WL 3990097 (Admin. App. Office, Feb. 1, 2008) (A native Chinese woman who contracted with smugglers to get her into the United States so that she could escape a forced marriage arranged by her father, and who would have to work for a long time in the United States in order to repay the smugglers’ fees, was not a victim of severe human trafficking; there was no indication that the smugglers wanted anything but her payments, and she did not establish that she was forced or coerced into participating in the smuggling scheme or into working to pay off the debt).

\(^{116}\) See *In re Applicant (Name Redacted)*, File No. Redacted, 2007 WL 5360868 (Admin. App. Off. Nov. 29, 2007)(no trafficking, because at the “formation” of the labor “contract”, applicant could have anticipated working on a remote ranch under Spartan conditions for extended periods of time, all while pocketing virtually no money for his labors due to employer deductions and withholding).

\(^{117}\) Smuggling involves the transportation of a person, often illegally, across the borders of a country, and may or may not involve coercion on the part of the smuggler. Trafficking, however, involves forcing or coercing a person into performing labor or sexual services, and may or may not involve the illegal transportation of a person across a country’s borders. Compare *In re Applicant (Name Redacted)*, No. EAC 07 120 50062, 2009 WL 1742163 (Admin. App. Office, April 21, 2009) with *In re Applicant (Name Redacted)*, No. EAC 07 120 50062, 2009 WL 1742163 (Admin. App. Office, April 21, 2009).

\(^{118}\) See 8 C.F.R. § 214.11 (f). **Note:** § 214.11 is in need of amending on several fronts to keep pace with changes in US immigration law since the creation of the Department of Homeland Security; thus, the practitioner should not be confused by certain seemingly inappropriate references to the Attorney General in that section. For one example of this need for amending, see the discussion of the “youth exception” to the compliance requirement, *infra*.

\(^{119}\) 8 C.F.R. § 214.11 (f).

\(^{120}\) 8 C.F.R. § 214.11 (f)(2).

\(^{121}\) 8 C.F.R. § 214.11 (f)(1).
OR demonstrating that the applicant’s continued presence has been arranged in accordance with the rules under 28 C.F.R. § 1100.35\(^\text{122}\).

- By submitting sufficient credible “secondary evidence” describing the nature and scope of any force, fraud, or coercion used against the victim.
  - Unless the person induced to perform a commercial sex act is under age 18.

### From the Experts

Our contributors indicate that it is often exceedingly difficult for minor children who have been victims of trafficking to discuss the experience; therefore, though the law enforcement agency endorsement and continued presence are not necessary to establishing eligibility, they can inestimably lessen the ultimate burden of proving victimization. Even so, one contributor said she often proceeds without certification (where it is unnecessary for a minor).

Another contributor indicated that, in the case of trafficking victims, law enforcement agencies are often very much willing to supply these endorsements once they become intimately involved with the cases and witness the profound degree to which child trafficking victims are exploited.

- **Note:** Bear in mind that, even if “primary evidence” is submitted, it is good practice to submit all available evidence in support of the client’s claim.

#### II.B.1.b.i. If a law enforcement agency endorsement is submitted as primary evidence, what requirements must it meet?

Firstly, the regulations limit the definition of “law enforcement agency” (LEA) for all T-visa purposes to “any federal\(^\text{123}\) (sic) law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons.”\(^\text{124}\)

Next, the LEA endorsement (if submitted) must meet the following requirements:\(^\text{125}\)

- **In order for USCIS to consider the LEA endorsement to be persuasive evidence, the endorsement must:**
  - Contain a description of the victimization upon which the application is based (including the dates on which the severe forms of trafficking in persons and victimization occurred),

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\(^{122}\) There is no one mechanism for implementing continued presence; rather, continued presence is a discretionary remedy whereby DHS can employ a variety of statutory and administrative mechanisms to ensure a noncitizen’s continued presence in the United States. Such measures can include parole, stay of final order, deferred-action, or any other authorized means. The specific mechanism used will depend on the noncitizen’s current immigration status and “other relevant facts”. 28 C.F.R. § 1100.35(b). “Continued presence”, whatever the form it finally takes, allows individuals otherwise illegally present in the United States to remain here legally for a time in order to assist federal law enforcement officials in the investigation or prosecution of severe human trafficking. 28 C.F.R. § 1100.35(b). DHS guidance on continued presence can be found at [Continued Presence](http://www.dhs.gov/files/programs/gc_1284411607501.shtm) (last visited Apr. 16, 2011).

\(^{123}\) Contrast this with the U-visa law-enforcement certification, which can come from state or local law enforcement agencies in addition to federal agencies. See INA § 214 (p)/8 U.S.C. § 1184 (p).

\(^{124}\) 8 C.F.R. § 214.11 (a).

\(^{125}\) 8 C.F.R. § 214.11 (f)(1).
And be signed by a supervising official responsible for the investigation or prosecution of severe forms of trafficking in persons.

The endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act.

The endorsement must show that:

- The traffickers have used force, fraud, or coercion to make the victim engage in the intended labor or services, or (for those 18 or older) the intended commercial sex act.
- The situations which involve labor or (non-sexual) services rise to the level of involuntary servitude, peonage, debt bondage, or slavery.

The regulations and the cases place great weight on the LEA endorsement; indeed, though theoretically optional, the LEA endorsement often proves practically necessary.\(^\text{126}\)

II.B.1.b.ii. If I must submit secondary evidence in lieu of the LEA endorsement or continued presence, what requirements must the secondary evidence meet?

The secondary evidence must meet the following requirements:\(^\text{127}\)

- It must include:
  - An original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons;
  - Credible evidence of victimization and cooperation (if cooperation is necessary), describing what the (applicant) has done to report the crime to an LEA;
  - A statement indicating whether similar records for the time and place of the crime are available.
- The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts.

The secondary evidence should also explain the nonexistence or unavailability of the primary evidence and otherwise establish the applicant’s status as a victim of a severe form of trafficking in persons.\(^\text{128}\)


\(^{127}\) 8 C.F.R. § 214.11 (f)(3) (indicating that secondary evidence can include trial transcripts, court documents, police reports, news articles, and copies of reimbursement forms for travel to and from court. The applicant may also submit his or her own affidavits and those of other witnesses. In any case, USCIS encourages applicants to “provide and document all credible evidence, because there is no guarantee that a particular piece of evidence will result in a finding that the applicant was a victim of a severe form of trafficking in persons.”).

\(^{128}\) 8 C.F.R. § 214.11 (f)(3).
II.B.2. What does it mean to be physically present in the United States on account of the underlying severe form of trafficking in persons?

The following noncitizens are considered present in the United States on account of the underlying severe human trafficking:¹²⁹

- Those present because they are currently being subjected to severe human trafficking.
- Those who were recently liberated from severe human trafficking in the United States.
- Those who were subject to severe human trafficking sometime in the past and whose sustained presence in the United States is directly related to the original trafficking.

The T-visa applicant is not present “on account of” the severe human trafficking if he or she:

- Escaped the traffickers before law enforcement got involved with the matter,
- And fails to show that he or she did not have a “clear chance”¹³², in light of his or her individual circumstances, to leave the United States in the time between the escape and the filing of the T-visa petition.

The cases indicate the importance of submitting the T-visa application as soon as possible after the victim’s liberation from the traffickers; the longer the delay, the lesser the all-important causal connection between the trafficking and the victim’s sustained presence in the United States.¹³³

II.B.2.a. What documentation is required to establish presence in the United States on account of the underlying severe form of trafficking in persons?

The applicant must include in his or her application statements and evidence that both “state the date and place (if known) and the manner and purpose (if known) for which the applicant entered the United States”.¹³⁴ The materials submitted must demonstrate that the applicant meets the criteria, discussed supra at II.B.2, for presence in the United States on account of severe human trafficking.¹³⁵

¹²⁹ USCIS officials are instructed to use “existing authority and mechanisms” to ensure continued presence in the United States of possible victims of severe human trafficking, including parole, deferred action, continuance, and stays of removal. Current practice is to grant continued presence on a yearly basis if a trafficked person is still involved in an investigation or prosecution. *Immigration Law and Procedure* § 28.01 (2)(c)(i).

¹³⁰ 8 C.F.R. § 214.11 (g).

¹³¹ 8 C.F.R. § 214.11 (g)(2).

¹³² In making the “clear chance” determination, USCIS considers all evidence presented. Information relevant to the determination includes, but is not limited to, trauma, injury, low resources, and seized travel documents which resulted from the trafficking. The “clear chance” determination reaches both noncitizens which are legally present in the United States and those who are not. 8 C.F.R. § 214.11 (g)(2).


¹³⁴ 8 C.F.R. § 214.11 (g)(1).

¹³⁵ 8 C.F.R. § 214.11 (g)(1).
II.B.3. To what extent, if any, must the T-visa applicant cooperate with or assist law enforcement?

If the applicant is under the age of 18, or is unable to cooperate because of physical or psychological trauma, then he or she need not cooperate with law enforcement in any way. If the applicant is over the age of 18, then he or she must not refuse any reasonable request for assistance from law enforcement.\(^{136}\) \(8\) C.F.R. § 214.14 (a), (g-h) sets out detailed requirements both for cooperation with law enforcement and for the documentation of such cooperation, if required.

A minor child who does not cooperate with law enforcement must submit proof of his or her age, which can consist of an official copy of the applicant’s birth certificate, a passport, or a certified medical opinion, and these things constitute “primary evidence” of age. Failing this, the child may submit “secondary evidence” of age in accordance with the rules under \(8\) C.F.R. § 103.2 (b)(2)(i).\(^{137}\)

Bear in mind that, even if an applicant under age 18 decides not to cooperate with law enforcement, he or she must still have some contact with law enforcement, e.g. to seek assistance or to report the trafficking, or else the applicant is categorically ineligible for a T visa.\(^{138}\)

II.B.4. When would a T-visa applicant suffer “extreme hardship involving unusual and severe harm upon removal” from the United States?

The threshold for “extreme hardship involving unusual and severe harm upon removal” is higher than the traditional standard of “extreme hardship”\(^ {139}\) as used elsewhere in the INA and regulations.\(^ {140}\) The regulations elaborate on the standard:

- \( \text{The requisite finding may not be predicated upon any current or future economic detriment; nor may it be predicated upon any lack of, or disruption to, any social or economic opportunities.}\)\(^ {141}\)

\(^{136}\) INA § 101 (a)(15)(T)(i)(III)(aa-cc); 8 U.S.C. § 1101 (a)(15)(T)(i)(III)(aa-cc). \textbf{Note:} The regulations set the age maximum for non-cooperation at 15 years of age, not 18. \(8\) C.F.R. 214.11 (h)(3). This disparity between the statute and the regulations can be explained. Before 2003, the INA itself limited this “youth exception” to the compliance requirement to children who had not attained the age of 15; the regulations presumably tracked this requirement. Over time, Congress came to realize that requiring children 15 years and over to cooperate with law enforcement was problematic, because they were often simply unable to provide any meaningful assistance. Thus, in 2003, Congress increased the eligible age for the “youth exception” from under-15 to under-18 years of age. The regulations never were amended to reflect this change in the INA. Sally Terry Green, \textit{Protection for the Victims of Child Sex Trafficking in the United States: Forging the Gap Between U.S. Immigration Laws and Human Trafficking Laws}, 12 U.C. Davis J. Juv. L. & Pol. 309, 332-337 (2008) (\textit{hereinafter Green}).

\(^{137}\) \(8\) C.F.R. § 214.14 (h)(3).

\(^{138}\) \(8\) C.F.R. § 214.11 (h)(2).

\(^{139}\) The threshold for the traditional “extreme hardship” standard is a degree of hardship beyond that typically associated with deportation. \(8\) C.F.R. § 1240.58 (b).

\(^{140}\) \(8\) C.F.R. § 214.11 (i)(1). The pertinent legislative history expressly indicates that Congress meant for “extreme hardship involving unusual and severe harm” to set a higher threshold than “extreme hardship” used elsewhere in the INA. \textit{Immigration Law and Procedure}, § 28.01 (2)(a)(ii) (citing H.R. Conf. Rep. No. 106-939, at 95 (2000)).
• The analysis should take into account both the factors pertinent to the traditional “extreme hardship” analysis and factors associated with the applicant’s status as a victim of severe human trafficking.\textsuperscript{142}

• USCIS is likely to give special weight to the following factors:\textsuperscript{143}
  - The age and personal circumstances of the applicant;
  - Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
  - The nature and extent of the physical and psychological consequences of severe forms 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 severe forms of trafficking in persons or other crimes perpetrated against the applicant, including civil and criminal 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, or willingness of foreign authorities to protect the applicant;
  - The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant;
  - And the likelihood that the applicant’s individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under INA § 244/8 U.S.C. § 1254, or the granting of other relevant protections.

• USCIS will not consider hardship to persons other than the applicant in making the required hardship determination.\textsuperscript{144}

Cases from the Administrative Appeals Office provide guidance on when an applicant would be subjected\textsuperscript{145} to extreme hardship involving unusual and severe harm upon removal, and when he or she would not.\textsuperscript{146}

\textsuperscript{141} 8 C.F.R. § 214.11 (i)(1).
\textsuperscript{142} 8 C.F.R. § 214.11 (i)(1). The 14 non-exclusive, traditional “extreme hardship” factors can be found in 8 C.F.R. § 1240.58 (b)(1-14).
\textsuperscript{143} See 8 C.F.R. § 214.11 (i)(1)(i-viii) (non-exclusive list).
\textsuperscript{144} 8 C.F.R. § 214.11 (i)(2). The regulations advise the applicant to describe and document all factors that may be relevant to his or her case, since there is no guarantee that a particular reason or reasons will result in a finding that removal would cause “extreme hardship involving unusual and severe harm to the applicant.” 8 C.F.R. § 214.14 (i)(2).
From the Experts: Our contributors indicate that this “extreme hardship involving unusual and severe harm” standard is often the most difficult hurdle to overcome in a T-visa application, but is often made less difficult in the context of unaccompanied minors because of their tender age and vulnerability.

II.B.5. Admissibility: Must my client be admissible to the United States in order to receive a T visa?

Yes. All T-visa applicants must either be admissible to the United States or receive a waiver of inadmissibility, which the Secretary of Homeland Security may grant in most cases if s/he considers it to be in the public or national interest. While thorough treatment of the grounds of inadmissibility is beyond the scope of these materials, for more information, see generally INA § 212/8 U.S.C. § 1182.

II.B.6. Who else besides the direct victim of human trafficking is eligible for a T visa?

The following family members may obtain “derivative” T visas if accompanying, or following to join, the principal T-visa petitioner:

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145 See, e.g.: In re Applicant (Name Redacted), No. EAC 06 220 50603, 2009 WL 3065611 (Admin. App. Office, June 5, 2009) (applicant would be subjected to extreme hardship involving unusual and severe harm upon removal where: Her parents, in her native Liberia, had sold her into prostitution as a child; the man to whom she was sold treated her in a very degrading and abusive fashion; she feared to return to Liberia because of a factually credible fear that her parents would sell her to this man again, and that she would be beaten and ostracized for reaching out for help; she also feared to return to Liberia because of “all the wars” there).

146 See, e.g. In re Applicant (Name Redacted), No. EAC 07 236 50177, 2009 WL 2748434 (Admin. App. Office, April 21, 2009) (applicant would not be subjected to extreme hardship involving unusual and severe harm upon removal where: she was 38 years old and described herself as a “very independent woman who (could) work very hard to earn an honest living” and was working two jobs at the time her T-visa application was being adjudicated; she feared losing her family due to prolonged separation; she asserted that, were she sent back to her native China, she would have no therapists to treat her depression and insomnia, but provided no documentary evidence to support this assertion; she sought no legal redress against her alleged trafficker; she expressed fear that she would be punished in China for prostitution, but did not explain that fear in any probative detail, and the record contained no evidence of how the Chinese legal system dealt with prostitution).


148 The INA specifically exempts T-nonimmigrants from the “public charge” ground of inadmissibility, so that even noncitizens who are likely to become public charges are admissible to the United States as T nonimmigrants. INA § 212 (d)(13)(A)/8 U.S.C. § 1182 (d)(13)(A). DHS may also waive any of the health-related grounds of inadmissibility under INA § 212 (a)(1) at its discretion, and may waive almost any other ground if the activities that rendered the nonimmigrant inadmissible were either caused by or incident to the underlying human trafficking. In all cases, however, DHS may waive inadmissibility only if such is in the national interest. INA § 212 (d)(13)(B)(i-ii)/8 U.S.C. § 1182 (d)(13)(B)(i-ii).

149 “Derivative” meaning obtained by virtue of the applicant’s relationship with the principal petitioner.

• If the principal T-visa petitioner is under 21\textsuperscript{151} years of age, his or her:
  o Spouse.
  o Children.
  o Siblings who are:
    ▪ Unmarried.
    ▪ Under the age of 18 on the date that the principal T petitioner applies for T nonimmigrant status.
  o Parents.\textsuperscript{152}

• If the principal T-visa petitioner is age 21 or older, his or her:
  o Spouse.
  o Children.\textsuperscript{153}

• The following family members of those eligible for derivative T nonimmigrant status, but only if, in consultation with the law enforcement officer investigating a severe form of trafficking, the Secretary of Homeland Security determines that they face present danger of retaliation as a result of either the derivative applicant’s escape from the severe form of trafficking or his or her cooperation with law enforcement:
  o Parent.
  o Sibling who is:
    ▪ Unmarried.
    ▪ Under 18 years of age.

Under the regulations, any family member seeking a derivative T visa must demonstrate that: \textsuperscript{154}

• \textbf{Either}
  o The family member seeking derivative status or
  o The principal victim of trafficking (principal applicant)

• \textbf{Would suffer extreme hardship}\textsuperscript{155} if the family member seeking derivative status were either
  o Denied admission to the United States (if absent) or
  o Removed from the United States (if present).

\textsuperscript{151} If the T-1 petitioner is under 21 at the time his or her application for a T visa is filed with USCIS, then the petitioner will continue to be considered a “child” for T-visa purposes even if the petitioner reaches the age of 21 while the petition is pending before USCIS. INA § 214 (o)(5); 8 U.S.C. § 1184 (o)(5).


\textsuperscript{153} The INA contains “age-out” protections where children who are still minors at the time of the parent’s T-Visa application continue to be considered children even if they later become adults. INA § 214 (o)(4). It seems, however, that children who are adults at the time of their parents’ T-Visa application simply are not eligible for derivative T visas. Immigration Law and Procedure, § 28.01 (2)(b).

\textsuperscript{154} 8 C.F.R. § 214.11 (o)(5).

\textsuperscript{155} “Extreme hardship” in this context is not the higher standard of “extreme hardship involving unusual and severe harm”, but is more akin to the traditional standard of “extreme hardship” under 8 C.F.R. § 1240.58 (hardship beyond that typically caused by deportation). Further, the extreme hardship must be substantially different than the hardship generally experienced by other residents of their country of origin who are not victims of a severe form of trafficking in persons. 8 C.F.R. § 214.11 (o)(5).
Further, the regulations provide that the necessary relationship between the family member seeking derivative status and the principal applicant must exist at the time the principal applicant’s petition was filed, and that it must continue to exist until the derivative applicant is admitted to the United States. ¹⁵⁶

**II.B.7. Who is not eligible for a T visa?**

The following are ineligible for a T visa:

- **Applicants who have never had contact** (not to be confused with cooperation¹⁵⁷) with an LEA regarding the underlying severe form of trafficking in persons.¹⁵⁸
  - **Note:** The plain language of the regulations makes no exception for minors on this point.

- **Applicants who are subject to un-waived grounds of inadmissibility to the United States.**¹⁵⁹
  - The INA specifically exempts T-visa recipients from the “public charge” ground of inadmissibility, so that even noncitizens who are likely to become public charges are eligible for T visas.¹⁶⁰
  - **INA § 212(a)/8 U.S.C. § 1182(a)** discusses the various grounds of inadmissibility and the circumstances under which they can be waived.

- **Applicants who themselves have committed an act of severe trafficking in persons.**¹⁶¹

**II.B.8 Is there a limit to the number of T visas that can be granted in a given year?**

Yes. The maximum number of noncitizens who may receive principal T visas is 5,000; this limitation applies only to principal T-visa applicants and has no bearing on the number of family members who can receive derivative T visas.¹⁶²

¹⁵⁶ 8 C.F.R. § 214.11 (o)(4). Bear in mind that INA § 101 (a)(15)(T) contains age-out protection, so that no one who is initially eligible for derivative relief by virtue of her own age and the principal’s age will lose it because one or both of them grow older than the age limits.

¹⁵⁷ For example, if the applicant is under 18, he or she can flatly refuse a request for assistance from law enforcement; however, if the applicant has not at least contacted a law enforcement agency, e.g. to report that the trafficking took place or to seek assistance from law enforcement, then he or she is categorically ineligible for a T visa.

¹⁵⁸ 8 C.F.R. § 214.11 (h)(2). **Note:** 8 C.F.R. § 214.11, in multiple places, improperly refers to 8 C.F.R. § 240.58 as containing the traditional definition and factors for “extreme hardship”. However, § 240.58 does not exist; rather, it is 8 C.F.R. § 1240.58 that contains the current definition and factors for “extreme hardship”.

¹⁵⁹ 8 C.F.R. § 214.11 (j).


¹⁶¹INA § 214 (o)(1); 8 U.S.C. § 1184 (o)(1).

¹⁶²INA § 214 (o)(2-3); 8 U.S.C. § 1184 (o)(2-3). This numerical limitation is unlikely to have much practical impact; for example, in FY 2009, there were only 390 total T visa applications. **Visa Statistics for VAWA, T, and U**, Immigration Road, [http://immigrationroad.com/visa/visa-statistics-for-VAWA-U-T.php](http://immigrationroad.com/visa/visa-statistics-for-VAWA-U-T.php) (last visited Apr. 16, 2011).
Once the annual cap of 5,000 is reached in any fiscal year, USCIS will continue to review and consider applications in the order received, though no further T visas will issue during that year. \(^{163}\) Anyone denied a T visa solely because of the annual limitation of 5,000 will be placed on a waiting list, where priority is governed by the order in which applications were filed. \(^{164}\) The applicant on the waiting list must remain admissible to the United States throughout this process. \(^{165}\)

This discussion of the T-visa numerical limitation is largely academic, however, because of the low grant rates for T visas. Between FY 2000 and November 1, 2008, a span of nearly 8 years, only 1,318 T visas were granted—an average of less than 165 grants per year. However, grant rates have increased slightly in recent years. \(^{166}\)

### II.C. How does my client apply for a T visa?

A T-visa applicant should send a completed application packet to the USCIS Vermont Service Center, 75 Lower Welden St., St. Albans, VT 05479.

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**From the Experts: Our contributors offer the following advice when completing the T-Visa application:**

- Always include any necessary fees or a corresponding request for a fee waiver, lest the application be rejected before it even gets to the adjudicators.
- The applicant’s *original signature (no photocopies)* is needed on the application, or that of a parent if the child is under age 14.
  - To make it easier for USCIS to verify that the signature is original, have the applicant/parent sign in blue ink.
- If, after sending the application, you feel additional evidence or documentation is needed, wait until USCIS sends a Request for Evidence before sending any additional materials. This makes it easier for USCIS to keep the client’s file organized.
- Never tab your files on the sides—that just makes more work for USCIS.
- Include the applicant’s name and date of birth on the back of any photographs submitted.
- Use a two-hole punch on the top of every piece of paper submitted. This makes it easier for USCIS to assemble the applicant’s file.
- There are two ways you can communicate with the Vermont Service Center if you have questions regarding filing or other case-related matters. You can call the Center’s VAWA Hotline at 1-802-527-4888 and leave a detailed message. Someone will call you back. Questions with details can also be sent via email to *HotlinefollowupI918I914.vsc@uscis.dhs.gov*. Email turnaround time is typically 72 hours. It is requested that you use only one of the methods.

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\(^{163}\) 8 C.F.R. § 214.11 (m)(1).

\(^{164}\) 8 C.F.R. § 214.11 (m)(2).

\(^{165}\) 8 C.F.R. § 214.11 (m)(2).

II.C.1. What must the application packet contain?

The regulations specify that the application packet must contain the following items:

- A complete **Form I-914, Application for T Nonimmigrant Status** (Form I-914), along with all necessary supporting documentation.
  - Form I-914 Supplement A for any family members seeking derivative status.
  - Form I-914 Supplement B for any LEA endorsements.
  - **Note**: There is no application fee for Form I-914.\(^{168}\)
  - **Note**: It is of critical importance that the practitioner pay exacting attention to the official instructions for Form I-914, since they contain a wealth of vital information. [Click here](http://www.uscis.gov/files/form/m-603.pdf) to access them.

- **Three current photographs**.
  - The photos should be full-frontal, color, passport-style photos.\(^{169}\)

- **The fingerprint fee**, if applicable (as of this writing, USCIS charges no fingerprint fee for T-visa applications).\(^{170}\)

- **Evidence that the applicant meets the eligibility requirements for a T visa**—e.g. the required supporting documentation discussed *supra*.

- **I-601 Application for Waiver of Grounds of Inadmissibility**, as necessary.\(^{171}\)
  - Applications for fee-waivers will be accepted from T-visa petitioners.\(^{172}\)
  - **Note**: The fee for this form is $585.00.\(^{173}\)

- **I-192 Application for Advance Permission to Enter as a Nonimmigrant**, as necessary.\(^{174}\)
  - **Note**: The fee for this form is $585.00.\(^{175}\)

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\(^{167}\) [See 8 C.F.R. § 214.11 (d)(1), (2)(i-vi)].

\(^{168}\) USCIS Fee Webpage.


\(^{170}\) The regulations state that "(a) all applicants for T nonimmigrant status must be fingerprinted for the purpose of conducting a criminal background check." Once the application is submitted, USCIS will notify the applicant of the proper time and place to appear for fingerprinting. 8 C.F.R. § 214.11 (d)(5). Currently, USCIS charges no fingerprint fee for T-Visa applicants. USCIS Fee Webpage.

\(^{171}\) 8 C.F.R. § 214.11 (j). From the Experts: Our contributors indicate that the function of the I-601 in the U-visa context, in practice, is to allow T-visa applicants who are outside the United States to obtain waivers of the various grounds of inadmissibility and thus enter the United States.

\(^{172}\) [I-601 Application for Waiver of Grounds of Inadmissibility, USCIS, [http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=bb515f56ff55d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=6ca66d26d17df110VgnVCM1000004718190aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=bb515f56ff55d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=6ca66d26d17df110VgnVCM1000004718190aRCRD) (last visited Apr. 16, 2011)].

\(^{173}\) USCIS Fee Webpage.

\(^{174}\) The Form I-192 is not useful in most immigration cases where the applicant is physically present in the United States. However, in the context of applications for U and T visas approval by USCIS of Form I-192 allows applicants who are physically present in the United States, but subject to un-waived grounds of inadmissibility, to remain in the United States. See USCIS, *I-192, Application for Advance Permission to Enter as Nonimmigrant*,[http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=68db2c1a6855d010VgnVCM10000048f3d6a1RCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=68db2c1a6855d010VgnVCM10000048f3d6a1RCRD).

\(^{175}\) USCIS Fee Webpage.
• **Form G-28, Notice of Appearance**, to let USCIS know that you are the attorney for your client.
  o Your client must sign the form.
  o If your client is under 14, generally the parent or guardian (or other legal representative) must sign the form.  
• **Form I-912, Request for Fee Waiver**, as necessary to waive fees above.
• Any other necessary applications or documentation.

### II.C.2. Will my client have to talk with a representative of USCIS in order to obtain a T visa?

Possibly. Once the application is filed, USCIS may require the applicant to participate in a personal interview, at the sole discretion of USCIS. USCIS will make every effort to assure a convenient interview location for the applicant.  

If the applicant fails to appear for the personal interview, the application may be denied, unless USCIS excuses the failure to appear for “exceptional circumstances”.

### II.C.3. How does my client apply on behalf of family members?

The application requirements for family members are essentially the same as those for principal victims of human trafficking, including the contents of the application packet and separate copies of any necessary documentation. The principal T-Visa Applicant must file a separate **Form I-914 Supplement A** for each family member, either concurrently with or subsequent to the initial principal application.

### II.D. What happens if my client is already in proceedings to determine whether he or she can remain in the United States?

If a noncitizen who is already in proceedings for deportation, exclusion, or removal believes himself or herself to be a victim of severe human trafficking, s/he must notify USCIS s/he intends to apply for a T visa; this should be done by actually filing the application and then so notifying the government lawyer seeking removal. In proceedings before an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), the applicant may request certain relief from the adjudicator that will allow the proceedings to essentially be paused long enough for USCIS to decide the T visa

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176 See Signature Requirements for USCIS Forms, USCIS, http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9453d59ae8a8e010VgnVCM1000000ecd190aRCRD&vgnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD (last visited Apr. 16, 2011).
177 8 C.F.R. § 214.11 (d)(6).
178 8 C.F.R. § 214.11 (d)(7)(i-iii).
179 See 8 C.F.R. § 214.11 (o)(3)(i-v).
180 8 C.F.R. § 214.11 (o)(2).
application. Proceedings may be paused, however, only if the government lawyer seeking removal concurs in the motion—the IJ/BIA has no authority to grant this relief otherwise. Even if the government lawyer concurs, the decision whether to “pause” the proceedings is discretionary on the part of the IJ/BIA.

Generally, the same principles apply where a family member seeking a derivative T visa is in proceedings before an IJ or the BIA. In either case, if USCIS ultimately denies the application, then any “paused” proceedings may be reopened once administrative appeals are concluded.

II.E. What happens if my client has already been ordered removed or deported from the United States?

The client may still file an application for a T visa with USCIS; this will not automatically stay removal by itself, but the client may request a stay of removal from DHS, which, if granted, means that DHS will hold off on removing the applicant from the US until USCIS decides upon the T-visa application. If USCIS determines that the application is bona fide (see discussion infra at II.F.1.), then removal is automatically stayed until USCIS can finish deciding the T-visa application.

If the application is ultimately denied, the stay of the removal order is deemed lifted as of the date of denial, whether or not the applicant appeals the decision. If the application is granted, then the removal order is deemed cancelled by operation of law as of the approval date.

The same general principles apply in the context of family members seeking derivative T visas who are subject to final removal orders.

II.F. What is USCIS’ adjudication process for a T-Visa application? Does it differ from the U-visa process?

Yes, the T-visa adjudication process differs from the U-visa process, primarily because, unlike the U visa, USCIS adjudicates the T visa in two steps.

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181 See 8 C.F.R. § 214.11 (d)(8), explaining that if the noncitizen is in proceedings before an IJ or the BIA, then with the concurrence of DHS counsel, he or she may request that the proceedings be administratively closed, or that a motion to reopen/reconsider be indefinitely continued, in order to allow the noncitizen to pursue an application for T nonimmigrant status with USCIS. 8 C.F.R. § 214.11 (d)(8).


183 8 C.F.R. § 214.11 (d)(8).

184 See 8 C.F.R. § 214.11 (d)(8-9), (o)(8); see also USCIS Adjudicator’s Field Manual § 39.2 (c)(1)(C).

185 See 8 C.F.R. § 214.11 (d)(8), (o)(8).

186 8 C.F.R. § 214.11 (d)(9).

187 8 C.F.R. § 214.11 (d)(9).

188 8 C.F.R. § 214.11 (d)(9).

189 See 8 C.F.R. § 214.11 (d)(8-9), (o)(8); see also USCIS Adjudicator’s Field Manual § 39.2 (c)(1)(C).

190 Immigration Law and Procedure, § 28.01 (3)(d).
II.F.1. What does T-visa adjudication stage 1, *bona fide* application, entail?

USCIS will consider an application to be *bona fide* if it meets the following requirements:

- The application is properly filed.
- No instance of fraud appears in the application.
- The application is complete, including any LEA endorsements or secondary evidence.
- The application presents *prima facie* evidence that the applicant has met each element of eligibility for a T visa.
- USCIS has completed the necessary fingerprinting and criminal background checks.
- If the applicant is inadmissible under *INA § 212(a)* *U.S.C. § 1182(a)*, then the application is not *bona fide* unless either the ground is waived or the ground falls under *INA § 212 (d)(13)* *U.S.C. § 1182(d)(13).*
  - The “public charge” ground is inapplicable to T-visa recipients.
  - An application can be deemed *bona fide* before waiver is actually granted, but only if the particular ground of inadmissibility is described in *INA § 212 (d)(13)* *U.S.C. § 1182(d)(13).*
  - For more on inadmissibility in the context of T-visa applications, see *INA § 212(a)* *U.S.C. § 1182(a).*

II.F.2. What does T-visa adjudication stage 2, *de novo* review and final adjudication, entail?

Right after determining whether the application is *bona fide*, USCIS conducts a *de novo* review of all evidence submitted with Form I-914, together with both evidence submitted post-application, where appropriate, and evidence that the applicant may have submitted in connection with other immigration proceedings, like asylum applications.

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191 *Note:* USCIS is not, at this time, putting out information concerning the length of time between a determination of “*bona fide application*” and final adjudication of the application. USCIS, *Questions and Answers: Filing U, T, and VAWA Petitions with USCIS* (Aug. 3, 2009), http://www.uscis.gov/USCIS/Office%20of%20Communications/Community%20Relations/t_u_faq_final_for_website_8_24_09.pdf. However, the status of individual cases can be checked on USCIS’ website. See My Case Status, USCIS, https://egov.uscis.gov/cris/Dashboard.do (last visited Apr. 16, 2011).

192 8 C.F.R. § 214.11 (k)(1). A determination that a T-visa application is “*bona fide*” entails significant advantages for the client, including an automatic stay of removal (if your client has been ordered removed from the United States) under 8 C.F.R. § 214.11 (d)(9) and access to certain protections specifically designed for trafficking victims under 22 U.S.C. § 7105.


194 8 C.F.R. § 214.11 (l)(1) (explaining also that USCIS is not bound by any previous factual determinations, and USCIS determines at its sole discretion the value of any evidence submitted).
At all times, the applicant bears the burden to provide evidence that fully establishes his or her eligibility for any benefits under T-visa status.  

**II.G. How will I know whether USCIS has granted my client’s T-visa application?**

USCIS will issue to the applicant (and/or to you, the attorney) a written decision granting or denying the T-visa application.

**II.G.1. Can a T-visa denial be appealed? If so, how?**

Any appeal of a T-visa denial must be taken to the Administrative Appeals Office (AAO) of DHS. AAO has plenary power to review every appeal on a *de novo* basis. For more information, see the webpage of the Administrative Appeals Office.

**II.G.2. How long does T-visa status last, if approved?**

Generally, T-visa status lasts for a maximum of four years from the date the application is approved, but may be extended if one of the following criteria is met:

- A federal, state, or local law enforcement official, prosecutor, judge, or other authority which is investigating or prosecuting any activity relating to human trafficking certifies that the T nonimmigrant’s presence in the United States is necessary to assist in the investigation or prosecution of the trafficking-related activity.
- The noncitizen is eligible for adjustment of status under INA § 245(l)/8 U.S.C. § 1255(l) and is unable to obtain such adjustment because no implementing regulations have been issued.
- The Secretary of Homeland Security determines that an extension of status past four years is warranted due to exceptional circumstances.

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195 8 C.F.R. § 214.11 (l)(2).
198 8 C.F.R. § 214.11 (p)(1).
II.G.3. Can T-visa status be revoked once approved? If so, under what circumstances?

Any approved T visa may be revoked on any of the following grounds: 200

- The T nonimmigrant violated the requirements of T-visa eligibility.
- The approval of the application itself either:
  - Violated 8 C.F.R. § 214.11, or
  - Involved error in preparation, procedure, or adjudication which affected the outcome of the application.
- In the case of a spouse having obtained derivative relief, his or her divorce from the principal T-visa recipient becoming a finalized divorce.
- In the case of the principal T-visa recipient:
  - An LEA which has jurisdiction regarding the severe human trafficking to which the T nonimmigrant was subjected:
    - Notifies USCIS that the T nonimmigrant has unreasonably refused to cooperate with the investigation or prosecution of the trafficking,
    - And provides USCIS with a detailed explanation of its assertion in writing.201
  - The LEA providing any endorsement either withdraws the endorsement or disavows the statements in it and notifies USCIS with a detailed explanation in writing.

Generally, revocation procedures are set out in 8 C.F.R. § 214.11 (s).

II.G.4. Can I check on the status of my client’s case while it is pending? If so, how?

Yes, you can check on the status of your client’s case once your client receives a “Notice of Action” from USCIS, which will contain a 13-digit “receipt number”. Once you have the receipt number, you may go to the USCIS website (www.uscis.gov), enter the receipt number in the designated field, and then you will be able to see the status of your client’s case.202 You might also call the USCIS Vermont Service Center’s VAWA Hotline at 1-802-527-4888. Questions can also be sent via email to HotlinefollowupI918I914.vsc@uscis.dhs.gov. Email turnaround time is typically 72 hours, according to our contributors.

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200 8 C.F.R. § 214.11 (s)(1)(i)-(v). If a T-1 nonimmigrant’s status is revoked, all family members deriving T nonimmigrant status from the T-1 will have their status revoked automatically; alternatively, if derivative applications are still being adjudicated, such applications will automatically be denied. 8 C.F.R. § 214.11 (s)(5).
201 The plain language of the regulations does not seem to limit the “un-helpfulness” ground of revocation to instances occurring after the T-visa application is filed.
II.G.5. How long should the application/adjudication process for a T Visa take? Is expedited adjudication available under any circumstances?

The adjudication timeframes for T visas are not currently posted on USCIS’ website. However, expedited adjudication is available where the circumstances indicate there are urgent humanitarian considerations involving exceptional circumstances. Expedited adjudication can be requested by calling the USCIS Vermont Service Center’s VAWA Hotline at 1-802-527-4888.

➢ From the Experts: Our contributors indicate that, depending upon the complexities of a particular case, including for example instances where VSC sends a Request for Evidence, the adjudication process can take anywhere from 6 months to 1 year.

II.H. What are the benefits of being granted a T Visa?

T visa recipients are eligible for several important protections, including:

- Many of the same benefits accorded to noncitizens granted asylum as refugees.
- Public benefits for trafficking victims, which are provided now in many states.
- For trafficked children, access to the Office of Refugee Resettlement’s Unaccompanied Refugee Minor Program.
- Eventual eligibility to apply for Lawful Permanent Resident (LPR) status under certain conditions, set forth under INA § 245(l)/8 U.S.C. § 1255 and 8 C.F.R. § 245.23(e).
- Employment authorization (for principal victims of trafficking).

II.I. Are trafficking victims, as such, eligible for any benefits before being formally granted a T visa?

Yes. Once a trafficking victim has been granted continued presence, is deemed to have submitted a bona fide T-visa application, or has been approved for T-nonimmigrant status, he or she is issued a

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207 INA § 101 (i)(2); 8 U.S.C. § 101 (i)(2). Principal victims of trafficking get employment authorization automatically, and in most cases the necessary documents will be forwarded to the victim at no fee; family members getting derivative T status must apply for employment authorization. See 8 C.F.R. § 214.11 (o)(10). The fee to apply for employment authorization is $380.00. USCIS Fee Webpage.
letter of certification from Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS) entitling him or her to multiple protections, most of which are specifically geared towards aiding trafficking victims.\textsuperscript{208} 1,379 foreign nationals were certified as victims of human trafficking by HHS from October 2000 through FY 2007. 1,248 were adults, and 131 were minors.\textsuperscript{209}

\textbf{22 U.S.C. § 7105} governs access to these benefits, which include:

- Access to interim assistance from the Department of Health and Human Services under the conditions prescribed under \textbf{22 U.S.C. § 7105 (b)(1)}.
- Access to the Unaccompanied Refugee Minor Program.\textsuperscript{210}
- If the trafficking victim is in the custody of the federal government, then s/he must:\textsuperscript{211}
  - Not be detained in a facility inappropriate to his or her status as a crime victim.
  - Receive necessary medical care and other assistance.
  - Be provided protection if his/her safety is at risk, or if there is danger that he or she will suffer harm due to recapture by the traffickers, including:
    - Protection of the victim and his or her family from intimidation and threats of reprisals, and from actual reprisal, from the traffickers and their associates.
    - Assurance that the names and other identifying information of the victims and their relatives are not publicly disclosed.
- Access to:\textsuperscript{212}
  - Information about their rights.
  - Translation services.

  ➢ \textbf{From the Experts: Our contributing practitioners emphasize that these translation services are often vital where the applicant speaks no English.}

  - To the extent practicable, information about federally-funded or administered anti-trafficking programs that provide services to victims of severe forms of trafficking.

\textsuperscript{208} See 22 U.S.C. § 7105 (a-b).
\textsuperscript{210} For more information, see \textit{Unaccompanied Refugee Minors}, Office of Refugee Resettlement, \url{http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_refugee_minors.htm} (last visited Apr. 16, 2011).
\textsuperscript{211} 22 U.S.C. § 7105 (c)(1).
\textsuperscript{212} 22 U.S.C. § 7105 (c)(2).
Appendix 1: Other Useful Resources

Below are various resources, many of which were helpful to the authors in the preparation of this chapter, and which should also prove helpful to the practitioner. Links are embedded in the text where appropriate.

**Disclaimer:** The links and references below are included for informational purposes only. Nothing included in this appendix is meant to express or to imply any involvement or affiliation between KIND and any other entity, nor an endorsement by KIND of any entity’s views or activities.

Furthermore, any sample briefs or other filing documents below are for example purposes only. Practitioners are discouraged from using language from the documents since boilerplate-type language in application materials is one of the first red flags for fraud at the Vermont Service Center.

- KIND’s website.
- Government websites:
  - USCIS website.
    - The text of the Immigration and Nationality Act.
    - Title 8 of the Code of Federal Regulations.
    - USCIS’ table of fees.
      - List of immigration forms and corresponding filing fees.
        - Click here for a printable .pdf fee schedule.
    - USCIS has published guidance on the following topics, among others:
      - Obtaining fee waivers.
      - Assembling applications for mailing (as must be done, of course, for both U and T visas).
      - Signature requirements.
      - Which USCIS services centers process which kinds of applications.
      - Requests for expedition.
    - Noncitizens can notify USCIS of any changes in address online.
  - Forms:
    - Form I-918, U-visa petition.
      - Official instructions.
    - Form I-914, T-visa petition.
      - Official instructions.
    - I-601 Application for Waiver of Grounds of Inadmissibility.
• I-192 Application for Advance Permission to Enter as a Nonimmigrant.
• Form G-28, Notice of Appearance.
• Click here to access other forms used to obtain humanitarian-based benefits, like asylum, etc.
• Click here to access various employment-based immigration forms.

- Administrative Appeals Office Website.
  • This website contains a great deal of very helpful information regarding the appeals process for U and T visas, including links to administrative decisions on various topics.
  • AILA’s website also provides links to AAO decisions.
    o Office of Refugee Resettlement website.
    o DHS guidance on continued presence.
    o DHS Ombudsman’s Office.
      • If you are experiencing problems during the adjudication of an immigration benefit with U.S. Citizenship and Immigration Services (USCIS), you can submit a case problem to the CIS Ombudsman using DHS Form 7001 (CIS Ombudsman Case Problem Submission Form). See link for more information.

  o Note: if you have the proper subscription to LexisNexis®, then you can access this article for free. Otherwise, click here to download the article for a nominal fee.

  o Note: If you have the proper subscription to Westlaw®, then you can access this article for free. Otherwise, click here to purchase.

  o Note: if you have the proper subscription to LexisNexis®, then you can access this treatise for free. Otherwise, click here to purchase.

- Legal Momentum:
  o Toolkit for Law Enforcement Use of the U Visa.
  o Links to Organizations that Work with Women Victims of Violence.
  o Links to Organizations that Work with Immigrant Women Victims of Violence.

- ASISTA Information Clearinghouse.
This website contains many documents that will be helpful as you help your client apply for a U or T visa. Some relevant documents include:

- **I-192 Inadmissibility Waivers.**
  - Gail Pendleton, *Overcoming Inadmissibility for U-Visa Applicants.*
- **Sample request for fee waiver.**
- **Showing Eligibility for U Visas.**

**New York Anti-Trafficking Network:**

- **Publications.**
  - Includes links to NYATN U and T visa manuals, training presentations, and other resources.