

9 FAM 41.84 NOTES

*(CT:VISA-1762; 10-27-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.84 N1 BACKGROUND

(CT:VISA-1577; 10-04-2010)

Section 107 of Public Law 106-386, the Victims of Trafficking and Violence Protection Act (VTVPA) created a new nonimmigrant category (T) for aliens who are victims of a "severe form of trafficking in persons." The term has the meaning given in Section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102). Note that only the Department of Homeland Security (DHS) can place an alien, principals as well as derivatives, in this category. Consequently, a consular officer must not accept an application for a nonimmigrant visa (NIV) in the T category unless the officer has received from the Department notification that DHS has approved that alien for T status. The category is limited to 5,000 principal aliens per year. The law was amended by the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Public Law 108-193, which provided age-out protection (see 9 FAM 41.84 N5.3) and public charge exemption (see 9 FAM 41.84 N5.4), and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA), Public Law 110-457.

9 FAM 41.84 N2 DEFINING "SEVERE *FORMS* OF TRAFFICKING IN PERSONS"

(CT:VISA-1762; 10-27-2011)

Severe *forms* of trafficking in persons is defined in 8 CFR 214.11(a) as "sex trafficking in which a commercial sex act is induced by fraud, force, or coercion, or in which the person induced to perform such act has not attained 18 years of age; 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."

9 FAM 41.84 N3 QUALIFYING FOR T VISA STATUS

(CT:VISA-1577; 10-04-2010)

To qualify for status as a T-1 nonimmigrant, a person must:

- (1) Be a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22 of the U.S. Code (22 U.S.C. 7102);
- (2) Be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
- (3) Be likely to suffer extreme hardship involving unusual and severe harm upon removal; and
- (4) Have complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime.

NOTE: If, in consultation with the Attorney General, a person is found to be unable to cooperate with a request described in (4) due to physical or psychological trauma; or if the person has not yet attained 18 years of age then the requirement described in (4) may be waived).

- (5) An alien seeking T-1 status must file the Form I-914 at the DHS Vermont Service Center. If a waiver of ineligibility is needed, the applicant must also file the Form I-192. Any alien seeking T-1 status would, by definition, be physically present in the United States already. Therefore, posts may not issue a T-1 visa.

9 FAM 41.84 N4 DERIVATIVES OF T VISA HOLDERS: CONSULAR OFFICER'S RESPONSIBILITIES

(CT:VISA-1762; 10-27-2011)

- a. Eligible immediate family members of a T-1 principal alien may receive

derivative T-2 (spouse) or T-3 (child) status. Children born after their parent filed an application for T-1 status may be eligible for derivative status if the parent T-1 nonimmigrant proves that he or she became the parent of the child after the application was filed. In cases where the T-1 alien is under the age of 21, or in which the Secretary of Homeland Security has found that a parent or sibling faces a present danger , parents T-4 or siblings T-5 may accompany or follow to join the principal alien. Siblings must be unmarried and under the age of 18 on the date on which the principal alien applies for T-1 status.

NOTE: The Department of Homeland Security may adjust up to 5,00 principal T status holders per year. The annual numerical limitations do not apply to derivative visa applicants.

- b. All applications for classification of a relative for derivative T status must be filed by the principal alien at the designated DHS center in the United States.
- c. Consular processing of derivative T visas centers on verifying the identity of the applicants and the relationship between the T-1 principal alien and T beneficiaries. It is the responsibility of the T visa beneficiaries to demonstrate their familial relationship with the T-1 principal to the best of their ability. Consular officers should be sensitive to the fact that many of these families have been separated for many years as a result of an act of trafficking, and consequently may find it difficult to document their family relationship. Consular officers should use every avenue, including requesting correspondence, school records, and interviews with persons in a position to have direct knowledge of the relationship, as well as investigatory efforts, to verify the familial relationship. As for most other nonimmigrant visa (NIV) categories, no medical exam is normally required for derivative T applicants.
- d. In cases where the parents of T-3 beneficiaries are divorced or separated and custody of the children is being maintained by the alien parent abroad, there is no requirement to verify custody by the T-1 parent in the United States when processing a visa application. If only one parent is present in the visa interview, a letter from the other parent expressing consent to the visa issuance may be necessary. The fact that the T-3 beneficiary children have received passports in order to travel can be taken as a sign of consent by the other parent as well. If there are questions or difficulties concerning the willingness of the parent abroad to permit the departure of such children, the consular officer should contact the Post *Operations* Division (CA/VO/F/P) for guidance.
- e. It should not be necessary for the T-1 parent to be present at the interview for visas for family members. Consular officers should

remember that T-1 beneficiaries do not have visas that would allow them to freely depart and return to the United States.

9 FAM 41.84 N5 ELIGIBILITY FOR FAMILY MEMBERS

9 FAM 41.84 N5.1 Length of T Status

(CT:VISA-1762; 10-27-2011)

- a. Qualifying family members will remain eligible for a visa only as long as the principal applicant is in T-1 status. A T-1 is given for a maximum period of 4 years. T status is not renewable, but within the 90 day period before the three-year anniversary of the grant of the T-1, the alien may apply for adjustment of status to that of a legal permanent resident (LPR). If the T-1 does not apply to adjust status, his or her T-1 is terminated.
- b. INA 214(o)(7) limits the authorized period of T nonimmigrant status to not more than four years, but provides for extensions in the following circumstances:
 - (1) A Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity related to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity;
 - (2) The alien is eligible for adjustment of status under INA 245(I) and is unable to obtain such relief because Federal regulations had not been issued to implement the adjustment of status provisions of INA 245(I);
 - (3) The Secretary of Homeland Security is authorized on a discretionary basis to extend periods of nonimmigrant status if warranted in exceptional circumstances; and
 - (4) T Nonimmigrant status *must* be extended during the pendency of an application for adjustment of status under INA 245(I).

9 FAM 41.84 N5.2 Visa Revocation

(CT:VISA-1762; 10-27-2011)

Department of Homeland Security (DHS) may revoke T status at any time. In the event that DHS revokes a principal applicant's T-1 status, all family members deriving T nonimmigrant status from the revoked T-1 nonimmigrant status *must* have their status revoked. In a case in which the T-2, T-3, T-4, or T-5 application is still awaiting adjudication, it *must* be denied.

9 FAM 41.84 N5.3 Aging Out Protection

(CT:VISA-1346; 10-14-2009)

The Victims of Trafficking and Violence Protection Act (VTVPA) amended the INA to provide, in section 214(o), that a child who attained the age of 21 while the principal alien's T-1 case was still pending received age-out protection, by which the derivative applicant maintains his or her status. Also, parents or siblings of an alien who applies for T-1 status but attains the age of 21 while the application is pending do not lose their T-4 or T-5 status because of the age of the T-1 principal applicant.

9 FAM 41.84 N5.4 Public Charge Ineligibility Inapplicable

(CT:VISA-819; 07-14-2006)

The public charge ground of inadmissibility (INA 212(a)(4)) does not apply to applicants for T visas.

9 FAM 41.84 N5.5 Employment Authorization

(CT:VISA-1058; 10-07-2008)

DHS will issue T-1 nonimmigrants employment authorization concurrently with the grant of status. T-2, T-3, T-4, and T-5 nonimmigrants may apply for employment authorization once in the United States by filing a Form I-765, Application for Employment Authorization. Employment authorization, if granted, will last for the length of the duration of the T-1 nonimmigrant status. Individuals under the age of 18 who have been determined to have been subjected to a severe form of trafficking in persons are eligible to receive benefits and services to the same extent that refugees are eligible for such benefits and services. Persons over the age of 18 with bona fide T applications may apply to the Department of Health and Human Services (HHS) to be certified to receive these benefits and services, including possible cash assistance.

9 FAM 41.84 N6 STUDY PERMITTED

(CT:VISA-1058; 10-07-2008)

Family members who are issued T visas and will study in the United States are not required to provide Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student States – for Academic and Language Students, or apply for F-1 status.

9 FAM 41.84 N7 WAIVER OF GROUNDS OF INADMISSIBILITY

(CT:VISA-1346; 10-14-2009)

- a. T visa applicants may be granted waivers of 212(a) ineligibilities under one of two waiver authorities: INA 212(d)(13) or INA 212(d)(3)(A).
- b. INA 212(d)(13): DHS may approve a waiver under the special waiver authority relating to T visa applicants provided for in INA 212(d)(13). Unlike the normal 212(d)(3)(A) waiver for nonimmigrants generally, which requires concurrence of the consular officer or the Department, the decision to grant a waiver under 212(d)(13) for T visa applicants is within the exclusive authority of the Secretary of Homeland Security; no consular or Department recommendation or input in the decision is necessary. Only certain ineligibilities may be waived under the special authority of INA 212(d)(13), and under specified criteria. Specifically, the Secretary of Homeland Security may in his or her discretion waive a T visa applicant's inadmissibility under INA 212(a)(1) or 212(a)(4) if he or she considers it to be in the national interest to do so. In addition, with the exception of INA 212(a)(3), (10)(C), and (10)(E), which are not waivable under INA 212(d)(13), the Secretary of Homeland Security may also exercise his and/or her special authority under INA 212(d)(13) to waive other inadmissibility grounds besides 212(a)(1) and (a)(4), provided the particular inadmissibility to be waived was caused by an incident to the alien's victimization.
- c. INA 212(d)(3)(A): In addition to waivers that may be available under the Secretary of Homeland Security's exclusive waiver authority under INA 212(d)(13), a T visa applicant remains eligible for the general 212(d)(3)(A) waiver provision available to nonimmigrants generally. Under 212(d)(3)(A), a T visa applicant may obtain a waiver of any ground of inadmissibility, other than 212(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), and (3)(E), provided the consular officer or the Department favorably recommends such a waiver and the Secretary of Homeland

Security approves the waiver. Such waivers should be processed according to the standard rules, set forth in 9 FAM 40.301.

9 FAM 41.84 N8 ALIENS INELIGIBLE FOR T NONIMMIGRANT STATUS

(CT:VISA-819; 07-14-2006)

Public Law 106-386 also amended INA 214 by adding a new subsection (n) that prohibits a person who has engaged in a severe act of trafficking in persons from benefiting from the T nonimmigrant category.