

T Visa Overview

1. What is a T Visa?

A T Visa is a visa available to survivors of human trafficking. It is valid for four years and individuals may be able to later acquire lawful permanent residence status after three years have passed or the investigation has been completed / closed. The T Visa also has a waiver available that may allow otherwise inadmissible individuals to obtain lawful status in the United States.

2. What are the requirements for a T Visa?

There are four elements that must be shown in order for an individual to qualify for the T Visa:

1. Is or has been a victim of a severe form of trafficking in persons;
2. Is present in the United States, American Samoa, or Northern Marianas on account of trafficking;
3. Has complied with reasonable requests for assistance in investigation or prosecution of acts of trafficking. (Applicants under the age of 18 do not need to report the trafficking to law enforcement).
4. Would suffer extreme hardship involving unusual and severe harm upon removal.¹

If you believe a survivor is eligible for a T Visa you must follow the Form I-914 instructions, as well as any additional forms or waivers necessary, and submit a complete application to the Vermont Service Center. Just like the U Visa, the visa available for victims of crime, there is a T Certification available. However, unlike the U Visa, this certification is not required to apply for a T Visa. Please note that unless a survivor qualifies for and needs an exception the survivor should report to law enforcement and you should request a T Certification.

3. What is a severe form of trafficking in persons?

To meet the first requirement consideration should be paid to both the state's anti-trafficking statute as well as the federal definition of human trafficking.² The federal definition of human trafficking states:

Severe forms of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, 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 (22 U.S.C. 7102).

The T Visa regulations divide the identification of survivors of severe forms of trafficking into three elements, commonly referred to as the Process – Means – Ends test. A three column test is typically used to identify survivors of severe forms of trafficking, with one thing from each column necessary, except in the case of a minor. In the case of a minor who has been sex trafficked you do not need to show the use of force, fraud, or coercion because a minor cannot give consent. Thus, inducement of a minor into a commercial sex act alone is sufficient to qualify him or her as a survivor of a severe form of trafficking.

¹ 8 CFR § 214.11

² 8 CFR § 214.11(a)

Process	Means	End
Recruiting Harboring Moving / Transporting Obtaining Providing	Force Fraud Coercion	Involuntary Servitude Debt Bondage Slavery Sex Trafficking

4. What is “Physical Presence on Account of Trafficking?”

The Department of Homeland Security (DHS) has historically interpreted this element to require two things. First, the trafficking must occur in the United States. Secondly, that the victim has not left the United States since the trafficking occurred.³ In 2017 the T Visa regulations were expanded by DHS to include situations where the applicant departed the United States or the trafficking happened entirely abroad if evidence demonstrates that the applicant has come to the United States for the purpose of participating in an investigation or judicial process related to the trafficking.⁴

Because many survivors of trafficking do not come forward until years after the trafficking has occurred, many applicants face the burden of showing not only that they were victims of a severe form of trafficking, but also that they are still present in the United States today in direct connection with the trafficking. Common physical presence arguments include:

1. Currently in the United States to receive victim services for injuries or trauma suffered from the trafficking.
2. Currently in the United States to cooperate with law enforcement with criminal investigation or prosecution of the trafficker.
3. Currently in the United States to access legal remedies, such as protection against the trafficker or civil damages.
4. Currently in the United States because unable to return to home country because of fear of retaliation from trafficker(s).
5. Otherwise unable to leave the United States because of lack of resources, trauma, or injury.

Even if an individual is apprehended at the border and no trafficking occurs in the United States, an individual may still qualify for a T Visa if they can show that they were going to be a victim of a severe form of trafficking in the United States. T Visas are available in both cases where trafficking has occurred, as well as attempted trafficking.

Note: I would strongly encourage anyone wanting to learn more about T Visas and helping survivors of trafficking to check out anti-trafficking organizations such as CAST (the Coalition to Abolish Slavery and Trafficking), which have incredibly useful resources available for attorneys wanting to learn more and get involved to help survivors of trafficking. Any mistakes in this handout are my own.

³ 8 CFR § 214.11(g) (2002)

⁴ 8 CFR § 214.11(g)(1)(v) and 8 CFR § 214.11(g)(3) (2017)