

9 FAM 41.84 NOTES

(CT:VISA-819; 07-14-2006)
(Office of Origin: CA/VO/L/R)

9 FAM 41.84 N1 BACKGROUND

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

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". 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 (see 9 FAM 41.84 PN1 and PN2). 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 (9 FAM 41.84 N5.3) and public charge exemption (9 FAM 41.84 N5.4).

9 FAM 41.84 N2 DEFINING "SEVERE FORM OF TRAFFICKING IN PERSONS"

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To be a "victim of a severe form of trafficking in persons," an individual must:

- (1) Have been recruited, harbored, transported, provided, or obtained for labor or services, or the purposes of a commercial sex act;
- (2) There must have been some force, fraud, or coercion involved to make the victim engage in the labor or services or the commercial sex act; and
- (3) For situations involving labor or services, the use of force, fraud, or coercion must be for the purpose of subjecting the victim to involuntary servitude, peonage, debt bondage, or slavery.

9 FAM 41.84 N3 QUALIFYING FOR T VISA STATUS

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- a. To qualify for status as a T-1 nonimmigrant, a person must:
 - (1) Be a victim of a severe form of trafficking in persons;
 - (2) Be physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or a U.S. port of entry (POE) on account of such trafficking;
 - (3) If 15 years of age or older, have complied with any reasonable request for assistance to law enforcement in the investigation or prosecution of acts of trafficking in persons; and
 - (4) Be likely to suffer extreme hardship involving unusual and severe harm upon removal.
- b. An alien seeking T-1 status must file the application for classification in such status at the designated DHS center in the United States (see 9 FAM 41.84 PN1).

9 FAM 41.84 N4 DERIVATIVES OF T VISA HOLDERS: CONSULAR OFFICER RESPONSIBILITY

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- a. In order to avoid extreme hardship, eligible immediate family members of a T-1 principal alien may receive derivative T-2 (spouse) or T-3 (child) status, and, in the case of a T-1 principal under the age of 21, T-4 (parent) status and T-5 (sibling) status, to accompany or follow to join the principal alien. 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. Siblings must be unmarried and under the age of 18 on the date on which the principal alien applies for T-1 status. Numerical limitations do not apply to immediate family members.
- 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 (see 9 FAM 41.84 PN1).

- 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 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. T-1 beneficiaries would have to apply for advance parole in order to depart the country while remaining in that status.

9 FAM 41.84 N5 ELIGIBILITY FOR FAMILY MEMBERS

9 FAM 41.84 N5.1 Length of T Status

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Qualifying family members will remain eligible for a visa only as long as the principal applicant is in T-1 status. T status is not renewable, but after 4 years may be converted to lawful permanent resident status.

9 FAM 41.84 N5.2 Visa Revocation

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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 shall 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 shall be denied.

9 FAM 41.84 N5.3 Aging out protection

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The TVPRA 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. Similarly, parents or siblings of an alien who applies for T-1 status but attain 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

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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

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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 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

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Family members who are issued T visas and will study in the U.S. are not required to provide Form I-20, Certificate of Eligibility for Nonimmigrant Student Status or apply for F-1 status.

9 FAM 41.84 N7 WAIVER OF GROUNDS OF INADMISSIBILITY

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- 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 or 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

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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.

9 FAM 41.84 N9 ADJUSTMENT OF STATUS

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Under certain conditions the Secretary of Homeland Security may subsequently adjust the status of an alien in T nonimmigrant status to that of lawful permanent resident. If the alien wishes to apply to adjust status, he or she must apply within the 90-day period immediately preceding the expiration of T nonimmigrant status.