

Coming To America

Human Trafficking and Immigration

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Coming To America:

Human Trafficking and Immigration Law in America

An Analysis of the Immigration Remedies for Trafficking Victims

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When Americans think of slavery, we usually conjure some image of Uncle Tom's Cabin or possibly even go to a mental image as late as the Civil Rights Movement. What we do not think of is the current problem of slavery, the fact is that slavery has not even come close to eradication. Since we do not think of the slavery as an ongoing problem, the only laws associated with slavery that most Americans are aware of are the Reconstruction Era Amendments such as the 13th Amendments abolition of slavery. Far from complete abolition, the number of slaves in the United States and the world in general is actually increasing.¹ What some may think of as the "traditional" slavery such as the Trans Atlantic Slave Trade has transformed into "modern slavery" with the traditional "slave trade" similarly developing into the modern "human trafficking." The United States Department of Health and Human Services estimates that anywhere between 14,500 and 17,500 people are trafficked into the United States through force, fraud, or coercion made to provide either sexual or labor services.² The hallmark of traditional slavery was ownership of another person, while the essence of human trafficking is characterized by the complete control over another being.³ The basic element that makes an act considered human trafficking is the deprivation of an individual's right to liberty.⁴ This paper will take an extensive look at the Victims of Trafficking and Violence Protection Act of 2000 (2000 VTVPA) which was later subsumed by the Victims of Trafficking and Violence Protection Reauthorization Act (2005 VTVPRA) in the context of United States policy against Human

¹ James C. Hathaway, *The Human Rights Quagmire of "Human Trafficking,"* 49 Va. J. Int'l L. 1, 17 (2000).

² Marisa Silenzi Cianciarulo, *Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking,* 7 Nev. L.J. 826, 827 (2007).

³ *Id.*

⁴ Melanie Adams and Brian Iselin, *Distinguishing between Human Trafficking and People Smuggling,* UN Office on Drugs and Crime, Regional Centre for East Asia and the Pacific, Bangkok, 7 (Apr. 10, 2003).

Trafficking. The paper will focus primarily on the effects that these policies have on the immigration status of trafficking victims brought into the United States.

Overview of Victims of Trafficking Violence Protection Act:

Because of the increase in trafficking and the lack of a comprehensive law in the United States to combat trafficking, the legislature passed the Victims of Trafficking Violence Protection Act in 2000 (VTVPA), a comprehensive law to fight human trafficking and support the victims of severe trafficking.⁵ The act represents a paradigm shift in human trafficking law for the United States.⁶ Since the recent proliferation of trafficking across the United States, there was a necessity for the VTVPA to bring together several different government agencies and nongovernmental organizations to effectively combat trafficking.⁷ The VTVPA defined human trafficking crimes, strengthened penalties against traffickers, and also institutionalized the initiative into US foreign policy.⁸

The basic factors that drive human trafficking have not changed since the Trans-Atlantic Slave Trade; they remain forced labor and the sex trade.⁹ Therefore, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) defines “Severe forms of Trafficking in Persons” as,

⁵Government Accountability Office, Human Trafficking Crimes p.104 (Nova Science, 2008).

⁶ *Id.* at 10.

⁷ *Id.* at 2.

⁸ *Id.* at 74.

⁹ Cianciarulo, *supra* note 13 at 377.

Sex Trafficking: the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act induced by force, fraud or coercion, or in which the person is forced to perform such an act is under the age of 18 years; or

Labor Trafficking: 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.¹⁰

Benefits to Non-Citizen Victims of Trafficking

The United States has been somewhat proactive in the field of victim protections for individuals that have been trafficked. However, for those that have been trafficked across national borders, as opposed to those trafficked within the United States, the process of securing a safe and stable environment is somewhat checkered. Victims of trafficking may only stay within the United States if certain conditions are met. As discussed above, when many trafficking victims are sent back to their source country, they have a significant chance of being trafficked once again. Of course, many if not an overwhelming majority, of trafficked individuals are illegally present within the United States. Therefore, the VTVPA provides assistance for the nonimmigrant status of the trafficking victims. To get the benefits that are offered through the VTVPA, the victim must prove the severity of the trafficking crime along

¹⁰ 22 USCS § 7105.

with their willingness to cooperate with law enforcement agencies.¹¹ There are three types of immigration benefits provided by the VTVPA that are available non-citizen victims including continued presence, the T visa status, and lawful permanent residence status.¹²

Continued Presence

One of the benefits available to noncitizen trafficking victims is continued presence in the United States. The benefit of continued presence is codified under the Trafficking Victims Protection Act in 22 USCS § 7105 by providing the noncitizens certification. Under 22 USCS § 7105 (b)(1)(C)(i) a certification of continued presence is granted by the Secretary of Health and Human Services after consulting with the Attorney General and the Secretary of Homeland Security providing that the victim is,

“(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons *or is unable to cooperate with such a request due to physical or psychological trauma* [emphasis added]; and

(II)

(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act [8 USCS § 1101(a)(15)(T)], as added by subsection (e), that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General

¹¹ Hussein Sadruddin, Natalia Walter, & Jose Hidalgo, *Globalization, Security & Human Rights: Immigration In The Twenty-First Century: Human Trafficking In The United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 Stan. L. & Pol'y Rev 379, 387 (2005).

¹² *Id.*

and the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.”

The Secretary of Health and Human Services, in determining certification, must consider statements from State and local law enforcement officials that victim has been willing to assist in “every reasonable way” in regards to the prosecution and investigation of State or local crimes including rape, slavery, kidnapping, and forced labor where severe forms of trafficking may have been involved.¹³ However, the certification requirements may not be required if the victim is unable to cooperate with the requests for assistance from law enforcement agencies because of physical or psychological trauma.¹⁴ The continued presence is effective when certified but will only last as long as the Attorney General and Secretary of Homeland Security determines that the continued presence of such person is necessary to assist in the prosecution and investigation of their traffickers.¹⁵ Investigation as defined by the act includes the identification of traffickers, the location and apprehension of traffickers, testifying at the proceedings against traffickers, and cooperating with requests for evidence and information.¹⁶ Once certified, the victims of trafficking who are not United States citizens can be eligible for certain benefits and services under state or Federal programs to the same extent as a refugee.¹⁷ This certification, officially

¹³ 22 USCS § 7105 (B)(1)(E)(iv)

¹⁴ 22 USCS § 7105 (b)(1)(E)(i)(I)

¹⁵ 22 USCS § 7105 (B) (1)(E)(ii)

¹⁶ 22 USCS § 7105 (B)(1)(E)(iii)

¹⁷ United States Department of Health and Human Services – Administration for Children and Families, The Campaign to Rescue and Restore Victims of Human Trafficking, *Certification For Victims Of Trafficking*, accessed at http://www.acf.hhs.gov/trafficking/about/cert_victims.html.

given by the Department of Health and Human Services provides victims documentation necessary to receive those benefits and services.¹⁸

Nonimmigrant Status T Visa

Beyond continued presence in the United States as an aid to the trafficking victim, the TVTVA provides a temporary remedy to victims in the form of a T Nonimmigrant Status (T-Visa).¹⁹ The T Visa was created specifically for the victims of international human trafficking.²⁰ Named for its subsection, the requirements for obtaining a T visa are codified at 8 USCS § 1101(a)(15)(T). In order to be eligible for the T Visa the alien must have been determined to be a victim of severe trafficking as defined by 22 USCS § 7102.

The victim must also be physically present in the US or its territories or at a port of entry because of their trafficking.²¹ In addition to physical presence in the United States due to being trafficked, the victim must have complied with any reasonable request for assistance from law enforcement agencies (federal, state, or local) investigation or prosecution of trafficking.²² The trafficking victim may not have to have cooperated with the law enforcement agencies if, in consulting with the Attorney General, is not able to cooperate with the requests because of physical or psychological trauma.²³ The victims are also not required to cooperate with the

¹⁸ *Id.*

¹⁹ Cianciarulo, *supra* note 2 at 827.

²⁰ Cianciarulo, *supra* note 2 at 831.

²¹ 8 USCS § 1101(a)(15)(T)(i)(II).

²² 8 USCS § 1101(a)(15)(T)(i)(III)(aa).

²³ 8 USCS § 1101(a)(15)(T)(i)(III)(bb).

requests of the law enforcement agencies if they are under 18 in order to receive the T visa.²⁴

Therefore, if the victim is either a minor or is unable to cooperate because of physical or psychological trauma, then they may not have to meet this criteria. If the applicant is a minor, they must provide evidence of their age to be eligible for lawful status.²⁵ Additionally, in order to be eligible for the T visa, the underage alien must still show they would suffer severe and unusual harm if they are removed from the United States.²⁶

Accordingly, the trafficked person has to demonstrate that they would “suffer extreme hardship involving unusual and severe harm” if they were not allowed to stay in the United States. Once again, demonstrating this may not be easy to prove. This standard of extreme hardship is a higher burden of proof for the applicant to meet compared with the burden required of applicants for deportation suspension.²⁷ In 2002, additional guidance was given on what was required of an applicant of a trafficking victim to show extreme hardship in order to gain nonimmigrant status under a T Visa.²⁸ The 2002 guidance states, “A finding of extreme hardship involving unusual and severe harm may not be based upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities.”²⁹ At the time the guidance was released, the Immigration and Naturalization Service was the agency responsible for making a

²⁴ 8 USCS § 1101(a)(15)(T)(i)(III)(cc).

²⁵ Cianciarulo, *supra* note 2. – “T visa applicants who are under 15 years of age need not have assisted with an investigation or prosecution in order to be eligible for lawful status. However, such applicants must provide evidence of their age. Primary evidence of age includes a birth certificate, passport, or certified medical opinion. Secondary evidence includes documents described in 8 C.F.R. section 103.2(6)(2)(i), such as church or school records.”

²⁶ 8 USCS § 1101(a)(15)(T)(i)(IV).

²⁷ National Immigration Law Center (NILC), *DOJ issues regulations for T visas, available to victims of trafficking Immigrants' Rights Update*, Vol. 16, No. 1, (February 28, 2002).

²⁸ *Id.*

²⁹ *Id.*

determination of whether the applicant would suffer extreme hardship if removed.³⁰ However, after the attacks of 9/11, the agency of ICE- Immigration and Customs Enforcement was developed and some of its responsibilities, in this case the certification of trafficking victims, concerning human trafficking were passed to other agencies.³¹ The agency that determines this is now the Department of Health and Human Services in certifying victims. In order to determine whether the trafficking victim would suffer extreme hardship, Health and Human Services uses factors that it would have traditionally taken into account before the new guidance, but with the onset of the guidance, the agency now takes considers any additional factors that could be associated with the applicant's experience in being a victim of severe trafficking in persons.³² These extreme hardship factors now taken into account can be considered a showing of good cause why the trafficking victim may stay in the United States. Therefore, in determining the whether or not an applicant would suffer extreme hardship upon removal, the Department of Health and Human Services now considers age and personal circumstances of the applicant. Health and Human Services will also consider whether the applicant is suffering from any mental or physical illness in which treatment in the country of origin would be reasonably available.³³ Along with the physical benefits or detriments the victim may incur by being removed or allowed to remain in the United States, the agency also examines the social justice afforded to the trafficking victim in their country of origin. Tying in the social justice with the physical state of the victim, the agency will consider the nature and extent of any psychological or physical

³⁰ *Id.*

³¹ Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today*, p. 234 (University of California Press, 2009).

³² *Supra* note 27.

³³ *Supra* note 27.

consequences the applicant may face as having been the victim of severe trafficking in their source country.³⁴ For example, in some cultures, being raped (the result of sex trafficking) can be a criminal offense in itself or have drastic social consequences on the victim. A case involving a Saudi girl made international headlines when she was punished by the Kingdom of Saudi Arabia with 200 lashes in response to her being gang raped.³⁵ This would be a social consequence in a source country that could lead to physical harm if the applicant were to be removed and thus evidence of this nature would be considered in determining whether the applicant would face extreme hardship. Another factor taken into account when determining if an extreme hardship exists for an applicant is examining the impact of losing access to the United States criminal justice system may have upon the witness.³⁶ In the same vein, the agency would also look to whether or not there was adequate access in the source country to justice in both the civil and criminal arena for victims of trafficking crimes because, "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."³⁷ In deciding upon the existence of an extreme hardship for the applicant, the agency now takes notice of the likelihood of the applicant to fall prey to becoming a trafficking victim once again if they were removed, the agency would look to the source country's government to see if they were willing and able to protect the applicant from being trafficked again.³⁸ The safety of the applicant in their source country is one of the

³⁴ *Supra* note 27.

³⁵ David Howden, *In the name of God: the Saudi rape victim's tale*, The Independent, November 29, 2007.

³⁶ *Supra* note 27.

³⁷ *Supra* note 27.

³⁸ *Supra* note 27.

chief issues considered in deciding whether an applicant should be removed. Other safety features the agency now takes into account are the likelihood that the individual would be harmed or have their safety threatened by the trafficker or traffickers' agents in the source country.³⁹ Therefore, even if the burden of proof is higher for showing an extreme hardship would exist to the T Visa applicant if they were removed, the factors that can be considered by the judge being broader in scope will ultimately help the victim in their request for approval of a T Visa.

Not only are the victims of trafficking themselves eligible for the T Visas if they have met all of the requirements, their family may be able to join them as nonimmigrant residents under the T Visa. In filing for a T Visa, the principal applicant simply files the normal T Visa's I-914 form and attaches Supplement A to apply for their family members. Depending upon the age of the principal alien (the trafficking victim), different family members may apply for nonimmigrant status as well.⁴⁰ If the alien is under 21, they may also have their spouse, children, and unmarried siblings under 18 years old when the principal alien applied for their visa.⁴¹ If the principal alien is over 21 years old when their children and spouse will also be eligible for the T Visa.⁴² If the Secretary of Homeland security determines a principal's parents or minor siblings are in danger because of retaliation of the alien's escape or cooperation with law enforcement from their captors, they will be eligible for the T Visa as well.⁴³

³⁹ *Supra* note 27.

⁴⁰ *Supra* note 27.

⁴¹ 8 USCS § 1101(a)(15)(T)(ii)(I),(III).

⁴² 8 USCS § 1101(a)(15)(T)(ii)(II).

⁴³ 8 USCS § 1101(a)(15)(T)(ii)(III).

The best way to satisfy this requirement is through a Law Enforcement Agency endorsement (LEA). This LEA endorsement describes how the victim applying for the T visa assisted the agency in investigating or prosecuting a trafficking crime.⁴⁴ The LEA Endorsement is used as primary evidence in the T Visa's I-914 Supplement B.

T Visas are subject to 8 USCS § 1184(o) which provides regulations for the admission of non-immigrants in respect to trafficking. Under §1184(o) no alien is eligible for a T visa if there is a reasonable belief that the alien has committed severe trafficking in persons.⁴⁵ There is also a limitation on the number of aliens that may be given nonimmigrant status under §1101(a)(15)(T). During any fiscal year, the number of principal T Visas given may not exceed 5,000.⁴⁶ The limit of 5,000 per annum does not apply to the spouses, children, siblings, or parents of the principal aliens.⁴⁷ This 5,000 quota allows a “fairly robust safe haven” each year for trafficking victims. Not only does the T Visa allow the beneficiary a four year nonimmigrant status, but also permission to work, the ability to transfer the T Visa status to certain family members, and a gateway to becoming a lawful permanent resident after three years.⁴⁸ The T Visa nonimmigrant status is not to extend for more than four years but an alien may extend their nonimmigrant status in cases where they are deemed necessary in assisting an investigation or prosecution of trafficking, the Secretary of Homeland Security determines that an exception to the maximum

⁴⁴ *Supra* note 27.

⁴⁵ 8 USCS § 1184(o)(1) – an act of severe trafficking in persons according to the Trafficking Victims Protection Act of 2000 [22 USCS § 7102].

⁴⁶ 8 USCS § 1184(o)(2).

⁴⁷ 8 USCS § 1184(o)(3).

⁴⁸ Bo Cooper, *A New Approach To Protection And Law Enforcement Under The Victims Of Trafficking And Violence Protection Act*, 51 Emory L.J. 1041, 1054 (2002).

period of time is warranted because of exceptional circumstances.⁴⁹ A T Visa nonimmigrant status period may also exceed four years while the alien is applying for an adjustment of status from a nonimmigrant to a lawful permanent resident under 8 USCS §1255(I).⁵⁰

Lawful Permanent Residence Status

In many situations, a trafficking victim will never want to return to their source of trafficking. However, even if all of the criteria are met for gaining nonimmigrant status under a T Visa, the alien is only allowed four years of lawful presence. The TVPA provided a final remedy to trafficking victims by allowing a transition from nonimmigrant to lawful permanent resident. Therefore, an alien nonimmigrant status provided under the T Visa for human trafficking victims may apply for lawful permanent residence within the United States. In order for an alien granted nonimmigrant status under the T Visa to become a lawful permanent resident they must meet the requirements set out in 8 USCS § 1255(I). The first requirement for transitioning into a lawful permanent resident is the victim must have been continuously, physically present in the United States for three years since the date of admission of their nonimmigrant status under the T Visa.⁵¹ The three years of continuous and physical presence may not be required if the alien was present for less than three years during the investigation or prosecution of the trafficking and the Attorney General believes the case to be complete.⁵² Other requirements for a transition include good moral character and cooperation with law

⁴⁹ 8 USCS § 1184(o)(7)(A)-(C).

⁵⁰ 8 USCS § 1255(I).

⁵¹ 8 USCS § 1255(I)(1)(A)

⁵² 8 USCS § 1255(I)(1)(A).

enforcement.⁵³ The Secretary of Homeland Security may waive the finding of good moral character if the acts considered against the alien were in connection with the trafficking that led to their nonimmigrant status under their T visa.⁵⁴

Cooperation with law enforcement:

At every step of the process for a trafficking victim, they are required to cooperate with reasonable requests from law enforcement agencies in order to investigate or prosecute their traffickers. Therefore, the continued presence status, the nonimmigrant status under the T Visa, and the lawful permanent residence status are all carrots given to the trafficking victims. The cooperation with law enforcement becomes a daunting “stick” as it may be the only barrier to the trafficking victim gaining residence in the United States. The VTVPA framework is set up to emphasize the importance of trafficking victims providing assistance to law enforcement investigations and prosecutions.⁵⁵ The application for a T Visa in Form I-914 provides a mechanism for law enforcement to supply information that will support the applicant’s request for nonimmigrant status.⁵⁶ The standard of a “complying with a reasonable request from law enforcement agencies” that is used in all of the statutory language seems extremely vague and is hard to prove absent evidence that the victim cooperated with law enforcement. The Department of Justice claims the best way to satisfy the requirement for cooperating with reasonable requests is through obtaining a Law Enforcement Agency endorsement (LEA). This LEA endorsement, the I-914 Supplement B, describes how the victim applying for the T visa assisted the agency in

⁵³ 8 USCS § 1255(I)(1)(B).

⁵⁴ 8 USCS § 1255(I)(6).

⁵⁵ Cooper, *supra* note 46 at 1057.

⁵⁶ Cooper, *supra* note 46 at 1057.

investigating or prosecuting a trafficking crime.⁵⁷ While the form is not required from the victim, it is offered to the victim as a service.⁵⁸ The LEA Endorsement is used as primary evidence in establishing two requirements of eligibility for a T Visa – showing the applicant has the status of a victim and that they have complied with reasonable requests to assist in investigating or prosecuting the trafficking offenses.⁵⁹ If the victims of trafficking do not receive an LEA endorsement on Form I-914 Supplement B, they can submit secondary evidence to show they are eligible for a T Visa.⁶⁰ If the victim is either a minor or is unable to cooperate because of physical or psychological trauma, then (as stated above), the victim may not have to meet this criteria. If the applicant is a minor however, they must again provide evidence of their age in lieu of cooperation with law enforcement agencies to be eligible for lawful status.⁶¹ As a result of the law enforcement tilt of the VTVPA, the victims are given refuge in the United States only if they cooperate with law enforcement agencies (except in cases of minors or traumatized victims).

Comparison to International Law

Because victims must comply with law enforcement requests in order to remain in the United States, considerations for human rights have been subrogated to concerns with prosecuting the trafficking crimes. A problem in focusing on the criminal matter instead of the human rights side of human trafficking is not unique to the United States policy against human

⁵⁷ *Supra* note 27.

⁵⁸ Cooper, *supra* note 46 at 1075.

⁵⁹ Cooper, *supra* note 46 at 1075.

⁶⁰ Cooper, *supra* note 46 at 1075.

⁶¹ *Supra* note 27, “T visa applicants who are under 15 years of age need not have assisted with an investigation or prosecution in order to be eligible for lawful status. However, such applicants must provide evidence of their age. Primary evidence of age includes a birth certificate, passport, or certified medical opinion. Secondary evidence includes documents described in 8 C.F.R. section 103.2(6)(2)(i), such as church or school records.”

trafficking. Even in international law, human rights are overlooked in order to make way for the larger concern of criminal prosecution of traffickers. The International Community passed the Palermo Protocol as a supplement to the Convention on Transnational Organized Crime – the emphasis being on the criminal matters of human trafficking. The Palermo Protocol is primarily a law enforcement instrument; the provisions concerning human rights exist in order to boost the success of the law enforcement efforts.⁶²

Conclusion

The human rights problems with human trafficking laws in the United States and in international law stem from the focus on criminal law instead of victim protection. Even with these drawbacks, the United States law has stayed ahead of the curve in international law by providing remedies and benefits of human trafficking victims.

⁶² Ivy C. Lee and Mie Lewis, *Human Trafficking from a Legal Advocate's Perspective: History, Legal Framework, and Current Anti-Trafficking Efforts*, 10 U.C. Davis J. Int'l L. & Pol'y 169, 187 (2003).

Authorities:

The T Visa:

8 USCS § 1101(a)(15)(T)

(T) (i) subject to section 214(o) [[8 USCS § 1184\(o\)](#)], an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines--

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 [[22 USCS § 7102](#)];

(II) is 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;

(III) (aa) 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 crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)--

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

Protection and assistance for victims of trafficking (part of the Victims of Trafficking Violence and Protection Act)

22 USCS § 7102

(a) Assistance for victims in other countries.

(1) In general. The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children, as identified by the Task Force, and shall be carried out in a manner which takes into account the cross-border, regional, and transnational aspects of trafficking in persons. In addition, such programs and initiatives shall, to the maximum extent practicable, include the following:

(A) Support for local in-country nongovernmental organization-operated hotlines, culturally and linguistically appropriate protective shelters, and regional and international nongovernmental organization networks and databases on trafficking, including support to assist nongovernmental organizations in establishing service centers and systems that are mobile and extend beyond large cities.

(B) Support for nongovernmental organizations and advocates to provide legal, social, and other services and assistance to trafficked individuals, particularly those individuals in detention, and by facilitating contact between relevant foreign government agencies and such nongovernmental organizations to facilitate cooperation between the foreign governments and such organizations.

(C) Education and training for trafficked women and girls.

(D) The safe integration or reintegration of trafficked individuals into an appropriate community or family, with full respect for the wishes, dignity, and safety of the trafficked individual.

(E) Support for developing or increasing programs to assist families of victims in locating, repatriating, and treating their trafficked family members, in assisting the voluntary repatriation of these family members or their integration or resettlement into appropriate communities, and in providing them with treatment.

(F) In cooperation and coordination with relevant organizations, such as the United Nations High Commissioner for Refugees, the International Organization for Migration, and private nongovernmental organizations that contract with, or receive grants from, the United States Government to assist refugees and internally displaced persons, support for--

(i) increased protections for refugees and internally displaced persons, including outreach and education efforts to prevent such refugees and internally displaced persons from being exploited by traffickers; and

(ii) performance of best interest determinations for unaccompanied and separated children who come to the attention of the United Nations High Commissioner for Refugees, its partner

organizations, or any organization that contracts with the Department of State in order to identify child trafficking victims and to assist their safe integration, reintegration, and resettlement.

(2) Additional requirement. In establishing and conducting programs and initiatives described in paragraph (1), the Secretary of State and the Administrator of the United States Agency for International Development shall take all appropriate steps to enhance cooperative efforts among foreign countries, including countries of origin of victims of trafficking, to assist in the integration, reintegration, or resettlement, as appropriate, of victims of trafficking, including stateless victims. In carrying out this paragraph, the Secretary and the Administrator shall take all appropriate steps to ensure that cooperative efforts among foreign countries are undertaken on a regional basis.

(b) Victims in the United States.

(1) Assistance.

(A) Eligibility for benefits and services. Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 101(a)(15)(T)(ii) [of the Immigration and Nationality Act] [8 USCS § 1101(a)(15)(T)(ii)], shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157].

(B) Requirement to expand benefits and services. Subject to subparagraph (C) and, in the case of nonentitlement programs, to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, and aliens classified as a nonimmigrant under section 101(a)(15)(T)(ii) [of the Immigration and Nationality Act] [8 USCS § 1101(a)(15)(T)(ii)], without regard to the immigration status of such victims. In the case of nonentitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.

(C) Definition of victim of a severe form of trafficking in persons. For the purposes of this paragraph, the term "victim of a severe form of trafficking in persons" means only a person--

(i) who has been subjected to an act or practice described in section 103(8) [22 USCS § 7102(8)] as in effect on the date of the enactment of this Act [enacted Oct. 28, 2000]; and

(ii) (I) who has not attained 18 years of age; or

(II) who is the subject of a certification under subparagraph (E).

(D) [Deleted]

(E) Certification.

(i) In general. Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Attorney General and the Secretary of Homeland Security, that the person referred to in subparagraph

(C)(ii)(II)--

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma; and

(II)

(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act [8 USCS § 1101(a)(15)(T)], as added by subsection (e), that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General and the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.

(ii) Period of effectiveness. A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Attorney General [and the] Secretary of Homeland Security determines [determine] that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.

(iii) Investigation and prosecution defined. For the purpose of a certification under this subparagraph, the term "investigation and prosecution" includes--

(I) identification of a person or persons who have committed severe forms of trafficking in persons;

(II) location and apprehension of such persons;

(III) testimony at proceedings against such persons; or

(IV) responding to and cooperating with requests for evidence and information.

(iv) Assistance to investigations. In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.

(F) Eligibility for interim assistance of children.

(i) Determination. Upon receiving credible information that a child described in subparagraph (C)(ii)(I) who is seeking assistance under this paragraph may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance under this paragraph. The Secretary shall have exclusive authority to make interim eligibility determinations under this clause. A determination of interim eligibility under this clause shall not affect the independent determination whether a child is a victim of a severe form of trafficking.

(ii) Notification. The Secretary of Health and Human Services shall notify the Attorney General and the Secretary of Homeland Security not later than 24 hours after all interim eligibility determinations have been made under clause (i).

(iii) Duration. Assistance under this paragraph may be provided to individuals determined to be eligible under clause (i) for a period of up to 90 days and may be extended for an additional 30 days.

(iv) Long-term assistance for children.

(I) Eligibility determination. Before the expiration of the period for interim assistance under clause (iii), the Secretary of Health and Human Services shall determine if the child referred to in clause (i) is eligible for assistance under this paragraph.

(II) Consultation. In making a determination under subclause (I), the Secretary shall consult with the Attorney General, the Secretary of Homeland Security, and nongovernmental organizations with expertise on victims of severe form of trafficking.

(III) Letter of eligibility. If the Secretary, after receiving information the Secretary believes, taken as a whole, indicates that the child is eligible for assistance under this paragraph, the Secretary shall issue a letter of eligibility. The Secretary may not require that the child cooperate with law enforcement as a condition for receiving such letter of eligibility.

(G) Notification of children for interim assistance. Not later than 24 hours after a Federal, State, or local official discovers that a person who is under 18 years of age may be a victim of a severe form of trafficking in persons, the official shall notify the Secretary of Health and Human Services to facilitate the provision of interim assistance under subparagraph (F).

(2) Grants.

(A) In general. Subject to the availability of appropriations, the Attorney General may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.

(B) Allocation of grant funds. Of amounts made available for grants under this paragraph, there shall be set aside--

(i) three percent for research, evaluation, and statistics;

(ii) 5 percent for training and technical assistance, including increasing capacity and expertise on security for and protection of service providers from intimidation or retaliation for their activities.

(iii) one percent for management and administration.

(C) Limitation on Federal share. The Federal share of a grant made under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted.

(c) Trafficking victim regulations. Not later than 180 days after the date of the enactment of this Act [enacted Oct. 28, 2000], the Attorney General, the Secretary of Homeland Security and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) Protections while in custody. Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall--

(A) not be detained in facilities inappropriate to their status as crime victims;

(B) receive necessary medical care and other assistance; and

(C) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including--

(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and

(ii) ensuring that the names and identifying information of trafficked persons and their

family members are not disclosed to the public.

(2) Access to information. Victims of severe forms of trafficking shall have access to information about their rights and translation services. To the extent practicable, victims of severe forms of trafficking shall have access to information about federally funded or administered anti-trafficking programs that provide services to victims of severe forms of trafficking.

(3) Authority to permit continued presence in the United States.

(A) Trafficking victims.

(i) In general. If a Federal law enforcement official files an application stating that an alien is a victim of a severe form of trafficking and may be a potential witness to such trafficking, the Secretary of Homeland Security may permit the alien to remain in the United States to facilitate the investigation and prosecution of those responsible for such crime.

(ii) Safety. While investigating and prosecuting suspected traffickers, Federal law enforcement officials described in clause (i) shall endeavor to make reasonable efforts to protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

(iii) Continuation of presence. The Secretary shall permit an alien described in clause (i) who has filed a civil action under section 1595 of title 18, United States Code, to remain in the United States until such action is concluded. If the Secretary, in consultation with the Attorney General, determines that the alien has failed to exercise due diligence in pursuing such action, the Secretary may revoke the order permitting the alien to remain in the United States.

(iv) Exception. Notwithstanding clause (iii), an alien described in such clause may be deported before the conclusion of the administrative and legal proceedings related to a complaint described in such clause if such alien is inadmissible under paragraph (2)(A)(i)(II), (2)(B), (2)(C), (2)(E), (2)(H), (2)(I), (3)(A)(i), (3)(A)(iii), (3)(B), or (3)(C) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)).

(B) Parole for relatives. Law enforcement officials may submit written requests to the Secretary of Homeland Security, in accordance with section 240A(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(6)), to permit the parole into the United States of certain relatives of an alien described in subparagraph (A)(i).

(C) State and local law enforcement. The Secretary of Homeland Security, in consultation with the Attorney General, shall--

(i) develop materials to assist State and local law enforcement officials in working with Federal law enforcement to obtain continued presence for victims of a severe form of trafficking in cases investigated or prosecuted at the State or local level; and

(ii) distribute the materials developed under clause (i) to State and local law enforcement officials.

(4) Training of government personnel. Appropriate personnel of the Department of State, the Department of Homeland Security, the Department of Health and Human Services, and the Department of Justice shall be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims, including juvenile victims. The Attorney General and the Secretary of Health and Human Services shall provide training to State and local officials

to improve the identification and protection of such victims.

(d) Construction. Nothing in subsection (c) shall be construed as creating any private cause of action against the United States or its officers or employees.

(e) Protection from removal of certain crime victims.

(1)--(4) [Omitted]

(5) Statutory construction. Nothing in this section, or in the amendments made by this section, shall be construed as prohibiting the Secretary of Homeland Security from instituting removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) against an alien admitted as a nonimmigrant under section 101(a)(15)(T)(i) of that Act [8 USC § 1101(a)(15)(T)(i)], as added by subsection (e), for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Secretary of Homeland Security prior to the alien's admission as a nonimmigrant under such section 101(a)(15)(T)(i).

(f) Assistance for United States citizens and lawful permanent residents.

(1) In general. The Secretary of Health and Human Services and the Attorney General, in consultation with the Secretary of Labor, shall establish a program to assist United States citizens and aliens lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))) who are victims of severe forms of trafficking. In determining the assistance that would be most beneficial for such victims, the Secretary and the Attorney General shall consult with nongovernmental organizations that provide services to victims of severe forms of trafficking in the United States.

(2) Use of existing programs. In addition to specialized services required for victims described in paragraph (1), the program established pursuant to paragraph (1) shall--

(A) facilitate communication and coordination between the providers of assistance to such victims;

(B) provide a means to identify such providers; and

(C) provide a means to make referrals to programs for which such victims are already eligible, including programs administered by the Department of Justice and the Department of Health and Human Services.

(3) Grants.

(A) In general. The Secretary of Health and Human Services and the Attorney General may award grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victim service organizations to develop, expand, and strengthen victim service programs authorized under this subsection.

(B) Maximum federal share. The Federal share of a grant awarded under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted by the grantee.