

9 FAM 41.84 Notes

(TL:VISA-415; 05-23-2002)

9 FAM 41.84 N1 Background

(TL:VISA-415; 05-23-2002)

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 the Attorney General has determined are victims of a "severe form of trafficking in persons". Note that only the Attorney General 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 in the T category unless the officer has received from the Department notification that the INS 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.

9 FAM 41.84 N2 Defining "Severe Form of Trafficking in Persons"

(TL:VISA-413; 05-21-2002)

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; and

(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

(TL:VISA-415; 05-23-2002)

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 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 INS center in the United States (see 9 FAM 41.84 PN1).

9 FAM 41.84 N4 Derivatives of T Visa Holders

(TL:VISA-415; 05-23-2002)

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, 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. 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 INS center in the United States (see 9 FAM 41.84 PN1).

9 FAM 41.84 N5 Eligibility for Family Members

9 FAM 41.84 N5.1 Length of T Status

(TL:VISA-413; 05-21-2002)

Qualifying family members will remain eligible for a visa for as long as the principal applicant is in status. T status is not renewable, but after 3 years may be converted to lawful permanent resident status.

9 FAM 41.84 N5.2 Visa Revocation

(TL:VISA-413; 05-21-2002)

INS may revoke T status at any time. In the event that INS 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, or T-4 application is still awaiting adjudication, it shall be denied.

9 FAM 41.84 N5.3 Evidence of Support

(TL:VISA-413; 05-21-2002)

INS will issue T-1 nonimmigrants employment authorization concurrently with the grant of status. T-2, T-3 and T-4 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 HHS to be certified to receive these benefits and services, including possible cash assistance.

9 FAM 41.84 N6 Study Permitted

(TL:VISA-415; 05-23-2002)

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

(TL:VISA-413; 05-21-2002)

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): The Attorney General 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 Attorney General; 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 Attorney General 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 Attorney General 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 Attorney General'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 INS 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

(TL:VISA-413; 05-21-2002)

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

(TL:VISA-413; 05-21-2002)

Under certain conditions the Attorney General may subsequently adjust the status of an alien in T nonimmigrant status to that of lawful permanent resident. T status is valid for 3 years from the date of approval of the alien's application. 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.