DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212, 214, 245, and 274a

[CIS No. 2507–11; DHS Docket No. USCIS–2011–0010]

RIN 1615–AA59

Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On December 19, 2016, the Department of Homeland Security (DHS) published an interim final rule (2016 interim rule) amending its regulations governing the requirements and procedures for victims of a severe form of trafficking in persons seeking T nonimmigrant status. The 2016 interim rule amended the regulations to conform with legislation enacted after the publication of the initial regulations and to codify discretionary changes based on DHS's experience implementing the T nonimmigrant status program since it was established in 2002. DHS is adopting the 2016 interim rule as final with several clarifying changes based on USCIS experience implementing the interim rule, in response to comments received, and due to an organizational change to move the regulations to a separate subpart as explained in the **SUPPLEMENTARY INFORMATION** section below. This final rule is intended to respond to public comments and clarify the eligibility and application requirements so that they conform to current law.

DATES: This rule is effective August 28, 2024.

Comments on the Paperwork Reduction Act section of this final rule must be submitted by July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Rená Cutlip-Mason, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Dr, Camp Springs, MD 20529–2140; or by phone at 240–721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Regulatory Action

The T nonimmigrant status regulations—which include the eligibility criteria, application process, evidentiary standards, and benefits associated with the T nonimmigrant classification (commonly known as the ''T visa'' [1])—have been in effect since a 2002 interim rule. *New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status,* 67 FR 4783 (Jan. 31, 2002) (2002 interim rule). Since the publication of that interim rule, the public submitted comments on the regulations, and Congress enacted numerous pieces of related legislation. DHS published a 2016 interim rule to respond to the public comments, clarify requirements based on statutory changes and its experience operating the program for more than 14 years, and amend provisions as required by legislation. *Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ''T'' Nonimmigrant Status,* 81 FR 92266 (Dec. 19, 2016). In July 2021, DHS reopened the public comment period for the interim rule for 30 days, and subsequently extended the deadline for comments. This final rule adopts the changes in the 2016 interim rule, with some modifications. The rationale for the 2016 interim rule and the reasoning provided in the preamble to the 2016 interim rule remain valid with respect to many of those regulatory amendments, and DHS adopts such reasoning to support this final rule. In response to the public comments received on the 2016 interim rule, DHS has modified some provisions in the final rule. DHS has also made some technical changes in the final rule. The changes are summarized in the following section I.B. Responses to public comments, and substantive changes being made in response, are discussed in detail in section III.

B. Summary of Changes Made in the Final Rule

1. Definitions

In the final rule, DHS has updated several definitions to clarify them and ensure that they are consistent with those in the Trafficking Victims Protection Act of 2000 (TVPA), as amended. *See* 22 U.S.C. 7102; new 8 CFR 214.201. The rule strikes language from the definition of ''involuntary servitude'' which had been derived from the *United States* v. *Kozminski,* 487 U.S. 931 (1988), decision. DHS has also added definitions of the terms ''serious harm'' and ''abuse or threatened abuse of the legal process.'' Additionally, DHS has added a definition of ''incapacitated or incompetent.'' DHS has clarified in the definition of law enforcement agency several additional examples of what may constitute such an agency. In addition, DHS has amended the definition for ''Law Enforcement Agency declaration.'' DHS has also included a new definition for the term ''law enforcement involvement.'' Finally, DHS has struck repetitive language from the definition of ''reasonable request for assistance.''

2. Bona Fide Determination Process

DHS has moved the definition of ''bona fide determination,'' (BFD) to define the process in the relevant provision of the regulations for clarity. *See* new 8 CFR 214.204(m), 214.205.

DHS has also amended provisions regarding BFDs, which reflect a modified process. *See* new 8 CFR 214.204(m), 214.205, and 274a.12(c)(40). The new streamlined process will include case review and background checks. Once an individual whose application has been deemed bona fide files a Form I–765, Application for Employment Authorization under new 8 CFR 274.a12(c)(40), USCIS will consider whether an applicant warrants a favorable exercise of discretion and will be granted deferred action and a BFD employment authorization document.[2]

3. Evidence of Extreme Hardship

In response to comments, DHS is clarifying the regulations to state that hardship to persons other than the applicant will be considered when determining whether an applicant would suffer the requisite hardship, only if the evidence specifically demonstrates that the applicant will suffer hardship upon removal as a result of hardship to a third party. New 8 CFR 214.209(c)(2).

4. Technical Changes

a. Reorganization of 8 CFR Part 214

This rule moves the regulations for T nonimmigrant status to a separate subpart of 8 CFR part 214 to reduce the length and density of part 214 and to make it easier to locate specific provisions. In addition to the renumbering and redesignating of paragraphs, the rule has reorganized and reworded some sections to improve readability, such as in new sections 8 CFR 214.204(d)(1) (discussing the law enforcement agency (LEA) declaration) and 8 CFR 214.208(e)(1) (discussing the trauma exception to the general requirement of compliance with any reasonable law enforcement requests for assistance). The rule also divides overly long paragraphs into smaller provisions to improve the organization of the regulations.

The Administrative Procedure Act (APA) exempts from the prior notice and opportunity for comment requirements, ''. . . rules of agency organization, procedure or practice.'' 5 U.S.C. 553(b)(A). Restructuring the regulations and moving them to a separate subpart resulted in no substantive changes to program requirements. This rule's changes to renumber paragraphs and improve readability affects rules of agency organization, procedure or practice, and those portions of the rule are exempt from the notice-and-comment requirements under 5 U.S.C. 553(b)(A).

Table 1 lists where provisions of 8 CFR 214.11 that were codified in the 2016 interim rule have been moved to in this final rule.

[1] Although T nonimmigrant status is known as the ''T visa'' colloquially, such a classification is not entirely accurate. T–1 applicants must be physically present in the United States or at a port of entry on account of the trafficking in persons to be eligible for T–1 nonimmigrant status, so they do not obtain a ''T visa'' to enter the United States. T–1 nonimmigrants may seek derivative T nonimmigrant status for certain family members. *See* new 8 CFR 214.211(a). Some of these family members may reside outside the United States and, if eligible, can join the T–1 nonimmigrant in the United States. Before family members with approved applications for derivative T nonimmigrant status can enter the United States, the family members must first undergo processing with the Department of State (DOS) at a U.S. Embassy or Consulate to obtain a T visa abroad. This is known as consular processing. USCIS will decide based on the application filed by the T–1 nonimmigrant whether an overseas family member qualifies for derivative T nonimmigrant status. DOS will then separately determine that family member's eligibility to receive a visa to enter the United States. A family member outside of the United States is not a derivative T nonimmigrant until they are granted a T–2, T–3, T–4, T–5, or T–6 visa by the DOS and are admitted to the United States in T nonimmigrant status. *See* new 8 CFR 214.211(a).

[2] Persons seeking or granted T nonimmigrant status pay no fee for Form I–765. *See* 8 CFR 106.3(b)(2)(viii).

Table 1. Redesignation Table	
Previous section	New section
214.11(a)	214.201
214.11(b)	214.202
214.11(c)	214.203
214.11(d)	214.204
214.11(e)	214.205
214.11(f)	214.206
214.11(g)	214.207
214.11(h)	214.208
214.11(i)	214.209
214.11(j)	214.210
214.11(k)	214.211
214.11(l)	214.212
214.11(m)	214.213
214.11(n)	214.214
214.11(o)	214.215
214.11(p)	214.216

b. Terminology Changes

USCIS is making technical clarifications throughout the regulation in amending the use of the term ''alien'' and replacing it with ''victim,'' ''applicant,'' ''survivor,'' or ''noncitizen'' where appropriate. USCIS is also updating terminology to be gender neutral throughout.

Throughout the regulations, DHS has made revisions to reference ''detection, investigation, or prosecution'' rather than just ''investigation or prosecution'' for consistency and accuracy.

DHS has also removed the term ''principal T nonimmigrant'' from the regulations and replaced it with the term ''T–1 nonimmigrant.'' The term ''principal T nonimmigrant'' did not appear elsewhere in the CFR, whereas ''T–1 nonimmigrant'' is used consistently to describe a victim of a severe form of trafficking in persons who has been granted T–1 nonimmigrant status.

c. Definition of Eligible Family Member

DHS has made a technical clarification to the definition of ''eligible family member.'' The 2016 Interim Rule defines this term as a family member who may be eligible for derivative T nonimmigrant status based on their relationship to a noncitizen victim and, if required, upon a showing of a present danger *or* retaliation; however, the statute indicates that the derivative must face a present danger *of* retaliation as a result of escape from the severe form of trafficking or cooperation with law enforcement. INA sec. 101(a)(15)(T)(ii)(III). As such, DHS has made a technical revision to the regulatory text to comply with Congressional intent. *See* new 8 CFR 214.201.

d. Clarification To Address T Visa Evidentiary Standard and Standard of Proof

DHS is also clarifying the evidentiary standard and standard of proof that apply to the adjudication of a T visa application. This rule retains the standard that applicants may submit any credible evidence relating to their T visa applications for USCIS to consider. *See* new 8 CFR 214.204(l).

e. Interview Authority

DHS is removing the interview provision at former 8 CFR 214.11(d)(6) to avoid redundancy. This section indicated that USCIS may require an applicant for T nonimmigrant status to participate in a personal interview. USCIS is removing this provision, because USCIS authority to require any individual filing a benefit request to appear for an interview is already covered at 8 CFR 103.2(b)(9).

f. USCIS Review

DHS has stricken ''de novo'' from 8 CFR 214.11(d)(5) and (8) (redesignated as 8 CFR 214.204(l)(2) and (n)) to reflect that USCIS conducts an initial review, not a ''de novo'' review.

g. Travel Authority

DHS has clarified that a noncitizen granted T nonimmigrant status must apply for advance parole to return to the United States after travel abroad pursuant to section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5). Compliance with advance parole procedures is required to maintain T nonimmigrant status upon return to the United States and remain eligible to adjust status under section 245(l) of the INA, 8 U.S.C. 1255(l). *See* new 8 CFR 214.204(p), 214.211(i)(4); 8 CFR 245.23(j).

h. Departure From the United States as a Result of Continued Victimization

DHS wishes to clarify that the ''continued victimization'' criteria referenced at 8 CFR 214.207(b)(1) does not require that the applicant is currently a ''victim of a severe form of trafficking in persons.'' Instead, continued victimization can include ongoing victimization that directly results from past trafficking. For example, if an applicant experienced harm such as abduction, abuse, threats, or other trauma that resulted in continuing harm, that applicant's reentry could be a result of their continued victimization, even though they were not trafficked upon reentry. As such, the applicant may be able to satisfy the physical presence requirement if they establish that their reentry into the United States was the result of continued victimization tied to ongoing or past trafficking. *See* new 8 CFR 214.207(b)(1).

i. Severe Form of Trafficking in Persons

DHS has revised the regulatory text so that references to ''trafficking'' and ''acts of trafficking'' are consistent with the INA, for consistency and clarity. These changes are intended to clarify for applicants when ''a severe form of trafficking in persons'' applies to a particular eligibility requirement and when instead ''trafficking'' or ''acts of trafficking'' apply to an eligibility requirement. For example, applicants must demonstrate that they have complied with reasonable requests for assistance in the 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 the crime, pursuant to section 101(a)(15)(T)(i)(III)(aa) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(III)(aa), as distinct from a ''severe form of trafficking in persons'' that applies to other eligibility requirements, such as section 101(a)(15)(T)(i)(I) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(I). *See, e.g.,* new 8 CFR 214.201, 214.204(c), 214.208(a) and (c) through (e), 214.209(b), 214.211(a), 214.212(a) and (e), 214.215(b) (addressing ''acts of trafficking''); 214.201, 214.202(a) and (e), 214.204(g), 214.206(a), 214.207(a) and (b), 214.208(b), 214.209(b), 214.215(a) (discussing ''severe form of trafficking in persons'').

j. Extreme Hardship Involving Unusual and Severe Harm

DHS has amended previous 8 CFR 214.11(i)(1) because the previous citation at 8 CFR 240.58 no longer exists. *See* new 8 CFR 214.209(a).

k. Waiting List

DHS has revised previous 8 CFR 214.11(j) for clarity, and reorganized the provision at new 8 CFR 214.210, to reflect how the waiting list works in conjunction with the amended bona fide determination process.

l. Appeal Rights and Procedures

USCIS has clarified appeal rights and procedures at new 8 CFR 214.213(c). *See* 8 CFR 103.3. USCIS has further clarified the existing practice that an automatic revocation cannot be appealed. *See* new 8 CFR 214.213(a).

m. References to Forms

The phrase ''form designated by USCIS'' has been replaced in several places with an official form name. Form numbers have also been removed throughout and replaced by form names.

n. Law Enforcement Endorsement

DHS has updated references to ''Law Enforcement Endorsement'' to instead refer to ''Law Enforcement Declaration.'' This update more effectively captures the declaration process in the T visa program. In addition, DHS has deleted the requirement under 8 CFR 214.11(d)(3)(i) that a law enforcement agency (LEA) declaration must include ''the results of any name or database inquiries performed'' because the information is redundant, as USCIS conducts background checks on the applicant as part of its adjudication.

o. Assistance in the Investigation or Prosecution for Adjustment of Status

Prior to TVPRA 2008, the INA referenced the Attorney General at INA section 245(l)(1)(C), 8 U.S.C. 1255(l)(1)(C), which describes the requirement of assisting in an investigation or prosecution of acts of trafficking. TVPRA 2008 amended the INA so that the Secretary of Homeland Security is now only required to consult with the Attorney General as appropriate. *See* INA sec. 245(l)(1)(C), 8 U.S.C. 1255(l)(1)(C). As a result of TVPRA 2008, DHS has sole jurisdiction over the entire T nonimmigrant adjustment of status process, including the determination of whether an applicant complied with any reasonable requests for assistance in the investigation or prosecution of acts of trafficking, and DHS consults the Attorney General as it deems appropriate.[3] The regulations state that the Attorney General has jurisdiction to determine whether an applicant received any reasonable request for assistance in the investigation or prosecution of acts of trafficking, and, if so, whether they complied with that request. *See* previous 8 CFR 245.23(d). This required applicants for adjustment of status to submit a document issued by the Attorney General (or their designee) certifying the applicant had complied with any reasonable requests for assistance. *See* previous 8 CFR 245.23(f). After TVPRA 2008, however, an applicant was no longer required to obtain a certification from the Attorney General to demonstrate compliance with any reasonable requests in the investigation or prosecution of acts of trafficking, and immigration officers were no longer required to deny an application for lack of an Attorney General certification.[4] Instead, officers were required to determine whether the applicant had met the statutory requirement to comply with any reasonable request for assistance. Therefore, consistent with DHS' longstanding practice, and the changes made to the INA by TVPRA 2008, DHS amends 8 CFR 245.23(d) and (f) in this rule to indicate that an applicant is not required to provide a certification letter from the Attorney General regarding their compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. DHS has stricken any reference to the Attorney General in these sections; applicants must establish their compliance with any reasonable request for assistance to the satisfaction of USCIS only.

C. Costs and Benefits

As discussed further in the preamble below, this final rule adopts the changes from the 2016 interim final rule (IFR), with some modifications. The rationale for the 2016 interim rule and the reasoning provided in the preamble to the 2016 interim rule remain valid with respect to these regulatory amendments; therefore, DHS adopts such reasoning to support this final rule. In response to the public comments received on the 2016 interim rule, DHS has modified some provisions for this final rule. In addition, DHS has also made some technical changes in the final rule.

This final rule clarifies some definitions and amends the bona fide determination (BFD) provisions to implement a new process. This final rule also clarifies evidentiary requirements for hardship and codifies the evidentiary standard of proof that applies to the adjudication of an application for T nonimmigrant status. Lastly, DHS made technical changes to the organization and terminology of 8 CFR part 214.

For the 10-year period of analysis of the rule using the post-IFR baseline, DHS estimates the annualized costs of this rule will be $807,314 annualized at 3 and 7 percent. Table 1 in section IV provides a more detailed summary of the final rule provisions and their impacts.

II. Background and Legislative Authority

Congress created T nonimmigrant status in the TVPA. *See* Victims of Trafficking and Violence Protection Act

[3] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicator's Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10–38)'' (2010), *https://www.uscis.gov/sites/default/files/document/memos/William-Wilberforce-TVPRAct-of-2008-July-212010.pdf* (TVPRA Memo).

[4] *See* TVPRA memo.

of 2000, div. A, TVPA, Public Law 106–386, 114 Stat. 1464 (Oct. 28, 2000). Congress has since amended the TVPA, including the T nonimmigrant status provisions, several times: Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, Public Law 108–193, 117 Stat. 2875 (Dec. 19, 2003); Violence Against Women Act (VAWA) 2005, Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006); Technical Corrections to VAWA 2005, Public Law 109–271, 120 Stat. 750 (Aug. 12, 2006); TVPRA 2008, Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008); VAWA 2013, Public Law 113–4, titles viii, xii, 127 Stat. 54 (Mar. 7, 2013); Justice for Victims of Trafficking Act (JVTA), Public Law 114–22, 129 Stat 227 (May 29, 2015). The TVPA may be found in 22 U.S.C. 7101–7110; 22 U.S.C. 2151n, 2152d.

The TVPA and subsequent reauthorizing legislation provide various means to detect and combat trafficking in persons, including tools to effectively prosecute and punish perpetrators of trafficking in persons, and protect victims of trafficking through immigration relief and access to Federal public benefits. T nonimmigrant status is one type of immigration relief available to victims of a severe form of trafficking in persons who assist LEAs in the investigation or prosecution of the perpetrators of these crimes.

The Immigration and Nationality Act (INA) permits the Secretary of Homeland Security (Secretary) to grant T nonimmigrant status to individuals who are or were victims of a severe form of trafficking in persons and have complied with any reasonable request by an LEA for assistance in an investigation or prosecution of crime involving acts of trafficking in persons (or are under 18 years of age or are unable to cooperate due to physical or psychological trauma), and to certain eligible family members of such individuals.[5] *See* INA sec. 101(a)(15)(T)(i)(I), (III), (ii), 8 U.S.C. 1101(a)(15)(T)(i)(I), (III), (ii). Applicants for T–1 nonimmigrant status must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry to the United States, on account of a severe form of trafficking in persons. This includes being physically present on account of having been allowed to enter the United States to participate in investigative or judicial processes associated with an act or a perpetrator of trafficking. *See* INA sec. 101(a)(15)(T)(i)(II), 8 U.S.C. 1101(a)(15)(T)(i)(II). In addition, an applicant must demonstrate that they would suffer extreme hardship involving unusual and severe harm if removed from the United States. *See* INA sec. 101(a)(15)(T)(i)(IV), 8 U.S.C. 1101(a)(15)(T)(i)(IV). T nonimmigrant status allows eligible individuals to: remain in the United States for a period of not more than four years (with the possibility for extensions in some circumstances), receive work authorization, become eligible for certain Federal public benefits and services, and apply for derivative status for certain eligible family members. *See* INA sec. 214(o), 8 U.S.C. 1184(o); INA sec. 101(i)(2), 8 U.S.C. 1101(i)(2); 22 U.S.C. 7105(b)(1)(A); TVPA 107(b)(1); section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, 8 U.S.C. 1641(c)(4); INA sec. 101(a)(15)(T)(ii), 8 U.S.C. 1101(a)(15)(T)(ii). T nonimmigrants who qualify may also be able to adjust their status and become lawful permanent residents. INA sec. 245(l), 8 U.S.C. 1155(l).

[5] The primary applicant who is the victim of trafficking may also be referred to as the ''principal T nonimmigrant'' or ''principal applicant'' and receives T–1 nonimmigrant status, if eligible. The principal applicant may be permitted to apply for certain family members who are referred to as ''eligible family members'' or ''derivative T nonimmigrants'' and if approved, those family members receive T–2, T–3, T–4, T–5, or T–6 nonimmigrant status. The term derivative is used in this context because the family member's eligibility derives from that of the principal applicant.

III. Response to Public Comments on the 2016 Interim Final Rule

A. Summary of Public Comments

On December 19, 2016, DHS published an interim final rule (IFR) in the **Federal Register** and received 17 public comments. 81 FR 92266 (Dec. 19, 2016). On July 16, 2021, DHS reopened the public comment period for the IFR rule for 30 days to provide the public with further opportunity to comment on the interim final rule. 86 FR 37670 (July 16, 2021). DHS received multiple requests from stakeholders to extend the deadline for submitting public comments during the reopened public comment period. In response to that request, DHS extended the reopened comment period for an additional 30 days, to provide a total of 60 days for the public to submit comments. DHS received an additional 41 comments on the IFR during the reopened comment period. In total, between the two comment periods, DHS received 58 comments. DHS has reviewed all the public comments and addresses them in this final rule.

B. General and Preliminary Matters

Most comments came from representatives of nonprofit legal service providers who provided detailed recommendations based on their experience advocating for and providing services to trafficking victims. Commenters also included members of the public and individual law practitioners.

1. General Support for the Rule

Comment: Most commenters were generally in favor of the 2016 interim rule. Several commenters supported DHS's decision to issue detailed regulations that reflect statutory changes since the initial 2002 interim rule; some commenters mentioned the confusion that has been caused by having outdated regulations that did not reflect subsequent statutory changes. Some commenters expressed concern about the growing epidemic of human trafficking in the United States and globally. Commenters expressed support for the following:

- Eliminating the requirement that applicants for T nonimmigrant status provide three passport-sized photographs with their applications, which saves victims and assisting nonprofit organizations time and money;
- Removing the filing deadline for applicants whose trafficking occurred before October 28, 2000, recognizing that there was no statutory requirement for the deadline;
- Clarifying that if a T nonimmigrant cannot file for adjustment of status within the 4-year filing deadline and can show exceptional circumstances, they may be eligible to receive an extension of status and may potentially be able to adjust status to a lawful permanent resident;
- Updating regulatory language to reflect statutory changes to the categories of eligible family members and clarifying age-out protections for family members who are eligible at the time of filing but exceed the required age before USCIS adjudicates the application;
- Clarifying that T nonimmigrant applicants are exempted from the public charge ground of inadmissibility;
- Revising the waiver authority for grounds of inadmissibility during the T nonimmigrant application stage and the T adjustment of status stage;
- Providing additional guidance that an individual need not actually perform labor, services, or commercial sex acts to meet the definition of a ''victim of a severe form of trafficking in persons'';
- Clarifying the ''any credible evidence'' standard;

• Referencing the confidentiality provisions that apply to applicants for T nonimmigrant status under 8 U.S.C. 1367(a)(2) and (b);

• Exempting applicants who, due to trauma, are unable to comply with any reasonable request by a law enforcement agency;

• Clarifying that presence in the Commonwealth of the Northern Mariana Islands after being granted T nonimmigrant status qualifies towards meeting the requisite physical presence requirement for adjustment of status;

• Conforming the regulatory definition of sex trafficking to the revised statutory definition in section 103(10) of the TVPA, 22 U.S.C. 7102(10), as amended by section 108(b) of the JVTA, 129 Stat. 239;

• Expanding the definition of ''Law Enforcement Agency'' to include State and local agencies, as well as those that detect and investigate trafficking;

• Removing the requirement that an applicant establish they had no ''opportunity to depart'' the United States and clarifying the circumstances in which an applicant who has left the United States can establish physical presence in the United States on account of trafficking;

• Clarifying that ''involuntary servitude'' encompasses ''the use of psychological coercion''; and

• Removing the extreme hardship requirement for overseas derivative family members.

Response: DHS acknowledges and appreciates commenters' support of the rule. DHS agrees with the substance of these comments and believes these changes provide greater clarity and further align the T visa program with its statutory purpose.

2. Additional Comments

Commenters also requested that DHS modify certain provisions in the 2016 interim rule. Although there was some variation in the proposed changes, there was also significant overlap in their comments. DHS considered the comments received and all other material contained in the docket in preparing this final rule. This final rule does not address comments beyond the scope of the 2016 interim rule, including, for instance, those that express general opinions, those that include personally identifying information, or those that request that USCIS establish a regular timeline for regulatory updates. All comments and other docket material are available for viewing at the Federal Docket Management System (FDMS) at *www.regulations.gov* and searching under Docket Number USCIS–2011–0010.

Many commenters wrote about several subjects. Comments are summarized for clarity and combined with other comments on the same subject matter. The substantive comments received on the 2016 interim rule and DHS responses are discussed in depth below.

C. Terminology

Comment: Several commenters requested terminology changes to the regulation, including replacing ''victim'' with ''survivor,'' using gender neutral language throughout, and replacing ''alien'' with a more appropriate term.

Response: DHS agrees with these recommendations and has made technical clarifications throughout the regulation in amending the use of the term ''alien'' and replacing it with ''victim,'' ''applicant,'' ''survivor,'' or ''noncitizen'' where appropriate, while recognizing that ''alien'' is the statutorily-defined term used by Congress in INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T) and INA sec. 214(o), 8 U.S.C. 1184(o).[6] DHS has also updated terminology to be gender neutral throughout.

D. Definitions

DHS added U.S. Code citations to the regulations that will be afforded due regard throughout subpart B of 8 CFR part 214 based on amendments to subsequent reauthorizing legislation.

1. Involuntary Servitude

Comment: Commenters wrote that they supported DHS removing the citation to *United States* v. *Kozminski,* 487 U.S. 931 (1988), from the definition of ''involuntary servitude'' and made several suggestions for further clarifying the definition. Several commenters requested that DHS delete language derived from the *Kozminski* decision to avoid confusion and promote consistency with the statutory definition of ''involuntary servitude'' at 22 U.S.C. 7102, which codifies section 103 of the TVPA and subsequent amendments.

Response: DHS agrees to delete the language derived from the *Kozminski* decision from the rule's involuntary servitude definition that is inconsistent with the TVPA's definition at 22 U.S.C. 7102(8). As stated in the preamble to the 2002 interim rule, Congress intended to expand the definition of involuntary servitude that was used in *Kozminski* by broadening the types of criminal conduct that could be labeled ''involuntary servitude.'' 67 FR 4786.

a. Abuse of the Legal System and Serious Harm

Comment: One commenter wrote that DHS should acknowledge that traffickers may specifically traffic individuals to force them to commit crimes for the benefit of the trafficker, force victims to commit crimes as a control mechanism, and target individuals with criminal histories for trafficking due to that person's reluctance or inability to seek redress from law enforcement agencies.

Response: DHS acknowledges that traffickers target individuals for these reasons, but does not feel it appropriate or necessary to include references to such practices in the regulations.

Comment: Multiple commenters proposed that the definitions section of the regulation adopt the current terms of ''abuse or threatened abuse of the legal process'' and ''serious harm'' from the criminal provisions related to ''forced labor'' in 18 U.S.C. 1589 and ''sex trafficking'' in 18 U.S.C. 1591, respectively. The commenters stated that these additional definitions would clarify for attorneys, LEAs, and advocates that ''serious harm'' is not based on subjective severity but broadly encompasses the surrounding circumstances, including financial and reputational harm. They commented further that many practitioners do not realize that ''abuse or threatened abuse of legal process'' can include administrative or civil processes and that the inclusion of these two definitions would be consistent with Congressional intent regarding how these terms should be interpreted in the trafficking context.

Response: DHS agrees with these proposed changes and the commenters' stated rationale. As stated in the preamble to the 2002 interim rule on T nonimmigrant status, the TVPA defines ''a severe form of trafficking in persons'' to include ''involuntary servitude.'' For purposes of T nonimmigrant status, this inclusion and other relevant definitions from section 103 of the TVPA, as amended, 22 U.S.C. 7102, apply. *See* 67 FR 4783, 4786. In defining ''severe form of trafficking in persons,'' the TVPA ''builds upon the Constitutional prohibition on slavery, on the existing criminal law provisions on slavery and peonage (Chapter 77 of title 18, U.S. Code, sections 1581 *et seq.*), on the case law interpreting the Constitution and these statutes (specifically *United States* v. *Kozminski,* 487 U.S. 931, 952 (1988)), and on the new criminal law prohibitions contained in the TVPA.''

[6] *See* INA sec. 101(a)(3), 8 U.S.C. 1101(a)(3) (The term ''alien'' means any person not a citizen or national of the United States).

Id. Furthermore, ''[t]he statutory definition of involuntary servitude [in the TVPA] reflects the new Federal crime of 'forced labor' contained in section 103(5) of the TVPA, and expands the definition of involuntary servitude contained in *Kozminski*.'' *Id.* Thus, DHS agrees that it is appropriate to draw from the definition of ''serious harm'' in the statute that criminalizes forced labor, 18 U.S.C. 1589. Accordingly, DHS incorporates these definitions in new 8 CFR 214.201.

b. Reasonable Person Standard

Comment: One commenter requested that the Department state within the involuntary servitude definition that the reasonable person standard applies to those with mental, cognitive, and physical disabilities or those who have been trafficked by a family member.

Response: DHS acknowledges that these factors are considered in individual cases but declines to adopt this language within the definition of involuntary servitude, as DHS does not feel it is necessary or prudent to address every possible scenario within the regulations and that such factors are best addressed in sub-regulatory guidance.[7]

c. Involuntary Servitude Induced by Domestic Violence

Comment: One commenter requested that the Department codify within the definition of involuntary servitude that the trafficker could be the victim's ''paramour or relative.'' Other commenters stated that USCIS inaccurately characterizes domestic relationships and presumes that the presence of domestic violence negates the possibility of trafficking.

Response: DHS acknowledges that trafficking can occur alongside intimate partner abuse, and involuntary servitude and domestic violence may coexist in some situations; however, DHS declines the commenter's suggestion. DHS believes that the regulations are not intended to explicitly capture every possible situation, and that this degree of specificity would not be helpful, and may inadvertently preclude scenarios that are not explicitly described in the regulation.

In determining whether threats, abuse, or violence create a condition of involuntary servitude that constitutes a severe form of trafficking in persons, DHS evaluates a number of factors, including but not limited to whether the situation involves compelled or coerced labor or services and is induced by force, fraud, or coercion. Although domestic violence and trafficking may intersect, not all work that occurs as the result of domestic violence constitutes involuntary servitude. To distinguish between domestic violence and labor trafficking resulting from domestic violence, an individual must demonstrate that the perpetrator's motive is or was to subject them to involuntary servitude.

d. Mixed Motives

Commenter: Several commenters wrote that DHS has incorrectly suggested that a trafficker's sole purpose must be involuntary servitude, and that a trafficker's intent cannot also be extortion or for monetary gain. They request DHS clarify that an applicant may meet the definition of a severe form of trafficking in persons if at least one purpose of the perpetrator's force, fraud, or coercion is to subject the person to involuntary servitude, peonage, debt bondage, slavery, or a commercial sex act. Commenters also request that DHS specify in the preamble of the final rule that a severe form of trafficking in persons may occur during smuggling even if the smugglers also have the purpose of subjecting the victim or their families to other crimes such as extortion, if they also have the purpose of subjecting them to, *inter alia,* involuntary servitude or commercial sex.

Response: DHS agrees that a trafficker may simultaneously have multiple motivations, including a desire to subject the victim to involuntary servitude and a desire for monetary gain through extortion. DHS acknowledges, as commenters note, that human trafficking rarely occurs in a vacuum. In the process of exerting force, fraud, and/or coercion on their victims, perpetrators may commit other crimes during the scheme to initiate and maintain control over the victim, including false imprisonment, assault, sexual assault, domestic violence, and extortion.

A perpetrator's motivations can be multifaceted. For example, smugglers who intend to extort an individual during a smuggling arrangement may also intend to compel forced labor or services that place the person into a condition of servitude, even where the forced labor or services end upon completion of the smuggling arrangement. Nonetheless, DHS recognizes that not all smuggling arrangements can or will qualify as a severe form of trafficking in persons, particularly where smugglers force a person to perform an act or multiple acts outside of a condition of servitude during a smuggling operation. For example, a person may be forced to perform certain labor during a smuggling arrangement to facilitate the smuggling operation or avoid detection at the border, which would not qualify as involuntary servitude and therefore would not constitute trafficking or a severe form of trafficking in persons. In addition, there may be situations where an individual is forced to perform labor for another purpose, and not for the purpose of involuntary servitude, peonage, debt bondage, or slavery. As with any T visa application, DHS considers all the evidence on a case-by-case basis before making a final determination on an application.

Although DHS agrees with the commenter, no changes have been made to the regulatory text in response to this comment given DHS' consideration of these factors when evaluating evidence in cases involving smuggling, as detailed in existing USCIS policy guidance.[8]

2. Law Enforcement Agency (LEA)

Comment: One commenter suggested using the term ''law enforcement agency'' (LEA) consistently throughout the regulation to provide clarity.

Response: DHS agrees with this comment and has amended the regulation to use the term ''law enforcement agency'' consistently throughout, rather than ''law enforcement'' or ''law enforcement officer.''

Comment: Multiple commenters expressed support for DHS expanding the definition of an LEA. Some commenters stated support for the rule's clarification that LEAs can provide

[7] For example, *see* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements, Section B, Victim of Severe Form of Trafficking in Persons, Subsection 3, Definition of Coercion,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2* (discussing analyzing coercion using a ''reasonable person'' standard) (last updated Oct. 20, 2021). As discussed elsewhere, DHS also applies a victim-centered approach in its adjudications, which takes into consideration all relevant factors in the case, including a victim's individual circumstances. *See, e.g.,* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 7, Adjudication, Section A, Victim-Centered Approach,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-7* (last updated Oct. 20, 2021).

[8] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements, Section B, Victim of Severe Form of Trafficking in Persons, Subsection 7, Difference Between Trafficking and Smuggling,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2 (last updated Oct. 20, 2021).*

Form I–914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons,[9] even when there is no formal investigation or prosecution. Several commenters requested that the rule further expand the LEA definition to include additional agencies, which would help inform victims of their reporting options and identify similar local and state counterpart agencies that would meet the LEA definition. Commenters wrote that employees of some Federal agencies have expressed confusion over their certification authority because they are explicitly designated as certifying agencies in the regulations for U nonimmigrant status but not in this regulation. *See* 8 CFR 214.14(a). Several commenters also requested DHS add tribal authorities to the list of authorized LEAs.

Response: Although the list of agencies included is not exhaustive, DHS agrees that expanding the list will provide clarity to victims, stakeholders, and the LEAs themselves, and has updated the definition accordingly. DHS has also amended the definition to include tribal authorities. Including a more expansive list will assist certifiers and will be an operational efficiency, as adjudicators will not need to evaluate in each case whether a specific agency meets the definition of an LEA.

3. Law Enforcement Involvement

Comment: DHS received comments related to the term ''law enforcement involvement,'' which is a concept used to analyze whether an applicant is physically present in the United States on account of trafficking (''physical presence''). Commenters requested additional clarification regarding the physical presence requirement, discussed in further detail in section J, below.

Response: DHS has defined ''law enforcement involvement'' under new 8 CFR 214.207(c)(4) to mean LEA action beyond simply receiving the applicant's reporting of victimization, to include the LEA interviewing the applicant, liberating the applicant from their trafficking, or otherwise becoming involved in detecting, investigating, or prosecuting the acts of trafficking. Liberation of an applicant from their trafficking will suffice to establish law enforcement involvement where the record indicates that the LEA detected the applicant's trafficking as part of this process. This definition will provide clarity to adjudicators and stakeholders as to the extent of involvement required for physical presence under new 8 CFR 214.207(c)(4).

4. Reasonable Request for Assistance

Although DHS did not specifically receive comments on this topic, as a technical edit DHS has removed the term ''reasonable'' from the definition of the term ''reasonable request for assistance,'' because the initial inquiry for DHS is to determine whether a request was made. After the threshold determination that a request was made by the LEA, the reasonableness of that request is analyzed. Accordingly, the reasonableness is assessed using the list of factors at new 8 CFR 214.208(c) (formerly 8 CFR 214.11(h)(2)). DHS retained ''reasonable request for assistance'' in other sections to reflect this analysis. DHS removed the paragraph at 8 CFR 214.11(a) describing the factors to consider the reasonableness of a request, because this language was duplicative of the language contained at 8 CFR 214.11(h)(2) (redesignated as 8 CFR 214.208(c)). Several revisions were made to the language at 8 CFR 214.208(c), which are discussed further below.

5. Commercial Sex Act

Comment: Commenters requested DHS interpret the term ''commercial sex act'' broadly, beyond what the commenters understood the current definition of ''anything of value'' may encompass, to avoid confusion and maintain consistency with the statute and legal precedent.

Response: DHS acknowledges that the term ''anything of value'' has been interpreted very broadly and encompasses things other than monetary or financial gain. ''Anything of value'' may include a range of activity that does not always have an exact monetary value attached to it, including but not limited to safety, protection, housing, immigration status, work authorization, or continued employment. Given Congressional intent and the significant precedent interpreting the term broadly, DHS has determined that it is not necessary to specifically reflect this range of activity in the regulatory text.

6. Severe Form of Trafficking in Persons

Comment: One commenter wrote that DHS should clarify that attempted trafficking may constitute a severe form of trafficking in persons by adding the following language to the definition of ''severe form of trafficking in persons'': ''This definition does not require a victim to have actually performed labor, services, or a commercial sex act.''

Response: DHS agrees that it is not necessary for the victim to actually perform the labor or commercial sex act(s) to be eligible for T nonimmigrant status. For example, a victim may be recruited through force, fraud, or coercion for the purpose of performing labor or services but be rescued or have escaped before performing any labor or services; however, DHS declines to adopt the commenter's suggestion to state this directly in the definition of a severe form of trafficking in persons, as the fact that attempted trafficking may qualify as trafficking is already clarified at 8 CFR 214.206(a) (formerly 8 CFR 214.11(f)).

E. Evidence and Burden and Standard of Proof

USCIS has historically considered ''any credible evidence'' when evaluating T visa applications. T nonimmigrant applicants are instructed to submit any credible, relevant evidence to establish that they have been a victim of a severe form of trafficking in persons, and that they have complied with any reasonable request for assistance from law enforcement. To this end, DHS has included new language in 8 CFR 214.204(f) indicating that all evidence demonstrating cooperation with law enforcement will be considered under the ''any credible evidence'' standard, for consistency with the remainder of the rule, which states that applicants may submit any credible evidence relating to their T applications for USCIS to consider. *See* new 8 CFR 214.204(l).

The ''preponderance of the evidence'' standard of proof is distinct from the evidentiary requirements and standard set by regulation. *Matter of Chawathe,* 25 I&N Dec. 369 (AAO 2010). USCIS has historically applied a ''preponderance of the evidence'' standard when determining whether the T applicant has established eligibility and has included that standard at new 8 CFR 214.204(l). To meet this standard, the applicant must prove that facts included in their claim are ''more likely than not'' to be true. *Id.* at 369. To determine whether an applicant has met their burden under the ''preponderance of evidence'' standard, DHS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376.

This standard of proof should not be confused with the burden of proof. The burden of proving eligibility for the

[9] The title of the Form I–914, Supplement B, is being changed in this rule to ''Declaration for Trafficking Victim.''

benefit sought remains entirely with the applicant. *Id.* at 375.

1. Reasonable Person Standard

Comment: One commenter requested DHS acknowledge in the preamble or regulation that individuals with cognitive, mental, and physical impairments are at greater risk for trafficking and face greater barriers to escape trafficking. The commenter stated that this should be acknowledged so that whenever a reasonableness standard is used, it should be interpreted as a reasonable person with the cognitive, mental, and physical impairments of the specific applicant.

Response: DHS acknowledges that individuals with impairments are at greater risk for exploitation. DHS does not believe that this is necessary or appropriate to include in the regulation. DHS considers all relevant evidence in adjudicating each case, including the circumstances and any vulnerabilities of an individual applicant when determining reasonableness.[10] Despite the existence of certain vulnerabilities, however, each applicant retains the burden of proof to establish eligibility by a preponderance of the evidence.

2. Credibility of Evidence

Comment: Commenters suggested that DHS amend provisions regarding initial evidence at 8 CFR 214.11(d)(2) and (3) (redesignated here as 8 CFR 214.204(c) and (e)) to state that a victim's statement alone may prove victimization.

Response: DHS declines to amend 8 CFR 214.11(d)(2) and (3) (redesignated here as 8 CFR 214.204(c) and (e)) to explicitly state that a victim's statement alone may prove victimization. While DHS may determine, based on the facts and circumstances of a particular case, that a personal statement alone may be sufficient to prove victimization, in such a scenario, the victim's statement would have to be sufficiently detailed, plausible, and consistent in order to satisfy evidentiary requirements. With all T visa applications, DHS makes an individualized determination of whether trafficking has been established based on the evidence in each particular case. DHS notes that it has revised the requirements for a victim's personal statement included in the list of evidence in redesignated 8 CFR 214.204(c) (Initial evidence). These additions are intended to clarify what is expected to be included in a victim's personal statement to establish eligibility and will reduce barriers for victims of trafficking. The revisions in § 214.204(c)(1) are intended to align with longstanding USCIS policy guidance and practice, and are consistent with the program's evidentiary standards.

Comment: One commenter requested DHS clarify that evidence is not rendered less credible because of the amount of time that has elapsed between an applicant's eligibility for T nonimmigrant status and when they filed their application. The commenter also requested DHS clarify that evidence, including personal statements and psychiatric evaluations, is not less credible because it was generated in response to a Request for Evidence.

Response: DHS acknowledges there may be legitimate reasons why significant time elapses between an applicant's trafficking and when they file for T nonimmigrant status. DHS also acknowledges that individuals produce evidence that was not initially submitted with their application in response to Requests for Evidence (RFEs) for various reasons. DHS emphasizes that any credible evidence will be evaluated in determining an applicant's eligibility but declines to include this level of specificity within the regulation. DHS acknowledges that due to the nature of victimization, victims may be unable to provide information or documentation that would otherwise be available to establish eligibility. USCIS instructs adjudicators to be mindful of the ways trauma may impact victims, including their recollection of traumatic experiences, which may shift over time.[11]

3. Opportunity To Respond to Adverse Information

Comment: Multiple commenters discussed RFEs [12] that require applicants to explain inconsistencies identified by adjudicators in the applicant's administrative record to which the applicant is not privy. The commenters stated that the inconsistent evidence typically is found within records of other agencies and that attorneys often cannot obtain this information in a timely manner through requests under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The commenters also wrote that advocates have reported that U.S. Customs and Border Protection (CBP) interviews were conducted without the use of trauma-informed techniques and did not lead to accurate identification of trafficking victims. The commenters wrote that statements taken during these interviews can later appear to be inconsistent statements. The commenters stated that the full content of the CBP interviews is not released in response to a FOIA request and that the applicant is not able to correct the inconsistent statements.

The commenters requested that DHS change the regulation to state that DHS will consider the totality of the evidence submitted along with the administrative record in evaluating the T visa application, and that if information contained in the administrative record could result in an unfavorable determination, the applicant must be given a copy of the information and must be provided an opportunity to meaningfully respond to such adverse evidence.

Response: DHS agrees that all evidence should be assessed in its totality. DHS also agrees that it is important for applicants and their advocates to understand derogatory information on which the decision will be based; however, other regulatory provisions currently address this issue. Specifically, under 8 CFR 103.2(b)(16)(i), when a decision will be adverse and is based on derogatory information ''of which the applicant or petitioner is unaware, [they] shall be advised of this fact and offered an opportunity to rebut the information and present information in [their] own behalf before the decision is rendered.'' Accordingly, when there is derogatory information of which the applicant is unaware and upon which an adverse decision will be based, USCIS will comply with existing laws and regulations in advising an applicant of the derogatory information and offer them an opportunity to rebut such information through an RFE, Notice of Intent to Deny, or other formal notice under 8 CFR 103.2(b)(8)(iii), (b)(16)(i) and 214.205(a)(1), except as otherwise provided in 8 CFR 103.2(b)(16).

[10] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 3, Documentation and Evidence for Principal Applicants,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-3 (discussing ''any credible evidence'' and the nature of victimization) (last updated Oct. 20, 2021).*

[11] As of the time of the publication of this regulation, further policy guidance describing USCIS' interpretation of the T nonimmigrant regulation can be found in the USCIS Policy Manual. *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking,'' *https://www.uscis.gov/policy-manual/volume-3-part-b* (last updated Oct. 20, 2021).

[12] 8 CFR 103.2(b)(8)(ii) (''If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.'').

4. Requests for Evidence (RFE)

Comment: Some commenters expressed concern about a trend of increasing RFEs from USCIS. They indicate that the RFEs do not indicate what evidence is lacking, are boilerplate, and create unnecessary work for practitioners and anxiety for survivors. The commenters state that issuance of RFEs has increased processing times, leaving survivors vulnerable. Finally, the commenters state that these RFEs have resulted in unprecedented denial rates.

Response: DHS acknowledges the concerns stakeholders are raising regarding RFE trends in the program. USCIS strives to apply a victim-centered, trauma-informed approach in each adjudication while also ensuring that the statutory requirements for T nonimmigrant status are met. In addition, USCIS has recently issued significant guidance in the Policy Manual aimed at clarifying evidentiary requirements for both applicants and adjudicators and reducing the need for RFEs.[13] Along with these updates, USCIS included training to adjudicators on the updates. Adjudicators also receive ongoing training on this and other issues. In addition, USCIS reviews trends in the program and revises any guidance if necessary. For example, if USCIS notices patterns in inquiries or questions asked at stakeholder engagements, it prompts review and potential revision of internal procedures.

F. Application

1. Applicant Statements

Comment: One commenter proposed that 8 CFR 214.11(d)(2)(i) (redesignated here as 8 CFR 214.204(c)(1)), which requires applicants to provide a written statement describing their victimization, include an exemption for victims who are minors and victims who invoke the trauma exception from the requirement to comply with reasonable LEA requests. They wrote that DHS could determine on a case-by-case basis whether to waive the requirement of a signed statement. They noted that preparing a statement can re-traumatize victims, even when the victim is assisted by trauma-informed service providers. The commenter stated that the statement may not be necessary when the victimization is apparent from other evidence.

Response: DHS understands that applicants could be re-traumatized by retelling their experience of victimization. Nevertheless, the information provided in the victim's personal statement is very important for USCIS. It allows USCIS to fully understand the facts of the case from the victim's perspective and helps USCIS determine whether the eligibility requirements are met. In addition, it would not be efficient and would cause unnecessary processing delays for USCIS to determine on a case-by-case basis whether a statement was necessary and, when necessary, request one after reviewing the initial filing. Therefore, DHS maintains the requirement that applicants provide a written statement describing their victimization in this final rule. 8 CFR 214.204(c)(1).

2. Interviews of Applicants

Comment: Commenters suggested that 8 CFR 214.11(d)(6) explicitly state that interviews of applicants for T nonimmigrant status are not required, and that DHS could request an interview. They asserted that this change would encourage victims who have faced high levels of trauma to come forward to apply for immigration relief.

Response: DHS is sympathetic to the issues victims face and applies a victim-centered and trauma-informed approach but declines to adopt this recommendation. DHS still reserves the discretion to require an interview for all immigration benefits, including applicants for T nonimmigrant status, as it deems necessary. In such circumstances, interviews can be an important method of obtaining further information when determining eligibility for T nonimmigrant status. As discussed above, DHS has removed the interview provision at 8 CFR 214.11(d)(6) to avoid redundancy with 8 CFR 103.2(b)(9).

3. Notification to the Department of Health and Human Services (HHS)

Comment: One commenter wrote to welcome the addition of a provision indicating that upon receiving an application for T nonimmigrant status from a minor under the age of 18, USCIS will notify HHS to facilitate interim assistance. Multiple commenters discussed the automatic nature of USCIS's notification to HHS upon receiving an application for T nonimmigrant status from a minor. *See* 8 CFR 214.11(d)(l)(iii) (redesignated here as 8 CFR 214.204(b)(4)). These commenters wrote that, in some instances, a referral to HHS can result in premature termination of some State-funded benefits that may be more comprehensive than the Federal interim assistance obtained through HHS. The commenters requested that the rule be amended to include an exception to the provision mandating automatic notification of HHS upon receiving an application for T nonimmigrant status from a minor.

Response: DHS understands the commenters' concerns and appreciates why minor applicants may want to access more expansive State-funded benefits. DHS is unable to change the regulations in response to these concerns, however, because TVPRA 2008 section 212(a)(2), 22 U.S.C. 7105(b)(1)(H), requires that DHS notify HHS no later than 24 hours after discovering that a person who is under 18 years of age may be a victim of a severe form of trafficking in persons.

4. Notification of Approval of T Nonimmigrant Status

The rule at 8 CFR 214.11(d)(9) (redesignated as 8 CFR 214.204(o)) states that upon approving an application for T–1 nonimmigrant status, USCIS may notify others ''as it determines appropriate, including any LEA providing an LEA endorsement and the HHS Office of Refugee Resettlement, consistent with 8 U.S.C. 1367.''

Comment: Commenters requested that DHS clarify in the rule which agencies or bodies that it considers appropriate to receive information about applicants for T nonimmigrant status or to limit the language to the entities listed in the rule.

Response: DHS has maintained the current broader language because it provides USCIS and applicants with more flexibility in implementing these provisions than an exhaustive list would. USCIS may identify other entities that are appropriate to receive this information and instances in which the notification would be beneficial to the T–1 nonimmigrant and/or an LEA and its efforts to combat trafficking. The final rule continues to require that the disclosure of any information must be consistent with the restrictions on information sharing in 8 U.S.C. 1367. USCIS has issued guidance and training to those who adjudicate applications for T nonimmigrant status to ensure there is no inappropriate sharing of applicant information, and to ensure any information sharing action is consistent with 8 U.S.C. 1367.

G. Law Enforcement Declarations

As noted in new 8 CFR 214.204(e), applicants may wish to submit evidence

[13] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 3, Documentation and Evidence for Principal Applicants,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-3* (last updated Oct. 20, 2021).

from LEAs, including an LEA declaration, to help establish their eligibility. Although an LEA declaration is an optional form of evidence and does not have any special evidentiary weight, it may support a T nonimmigrant application by providing detailed, relevant information about the applicant's victimization and compliance with reasonable requests for assistance. DHS received several comments on LEA declarations, discussed below.

1. Declaration Signature

Comment: One commenter supported the clarification that a formal investigation or prosecution is not required for an LEA to complete the declaration, and stated that the requirement that a law enforcement declaration be signed by a supervising official may add an unnecessary step to this more flexible approach.

Response: DHS declines to adopt this recommendation. First, the Law Enforcement Declaration is an optional form of evidence. Second, maintaining the status quo in requiring a supervisor's signature adds a level of review to DHS's flexible approach, which acknowledges that whether an investigation or prosecution occurs is outside of a victim's control.

2. Withdrawn Declarations and Revoked Continued Presence (CP)

DHS has updated terminology at new 8 CFR 214.204(h). DHS has replaced the term ''revocation'' relating to law enforcement declarations with ''withdrawal'' for accuracy and to avoid any confusion that status is being revoked.

a. Withdrawn Declarations

Comment: Commenters requested that DHS delete the language in 8 CFR 214.11(d)(3)(ii) (redesignated here as 8 CFR 214.204(h)) that provides that disavowed or withdrawn LEA declarations will no longer be considered evidence. Commenters suggested that rather than leaving it to the discretion of the LEA to provide a written explanation of its reasons for disavowing or withdrawing the declaration, the LEA should be required to do so. Commenters stated that an application should not be rejected based solely on one factor or one piece of evidence. They wrote that USCIS must provide a T nonimmigrant the opportunity to review and respond to the documentation from the LEA. Commenters also suggested adding language to 8 CFR 214.11(d)(3)(ii) (redesignated here as 8 CFR 214.204(h)) and 8 CFR 214.11(m)(2)(iv) (redesignated here as 8 CFR 214.213(b)(4)) to state that before revoking T nonimmigrant status due to a revocation or disavowal of an LEA declaration, USCIS would review the application and reassess the applicant's eligibility for T–1 nonimmigrant status in light of the LEA's explanation for the revocation, and consider all other evidence provided by the applicant under the ''any credible evidence'' standard. Finally, they stated that if USCIS determines that the application no longer meets the requirements, USCIS should issue a Notice of Intent to Revoke or a Request for Evidence.

Response: The rule at 8 CFR 214.213(b)(4) provides that USCIS may revoke T nonimmigrant status based on withdrawal by the LEA, but does not require USCIS to automatically revoke T nonimmigrant status upon a disavowal or withdrawal of the Supplement B. DHS recognizes that a Supplement B may be withdrawn or disavowed for reasons unrelated to the applicant's cooperation with the LEA's reasonable request for assistance. For example, an LEA may receive additional information indicating the initial Supplement B was issued in error. The law enforcement declaration is one piece of evidence that USCIS considers in determining whether an applicant meets the eligibility requirements for T nonimmigrant status based on the totality of the evidence. *See, e.g.,* new 8 CFR 214.204(c) and (l). Furthermore, 8 CFR 214.213(b)(4) indicates that the LEA must provide an explanation for any withdrawal or disavowal for it to serve as the basis for revocation. Therefore, DHS clarifies in this rule that a disavowed or withdrawn Supplement B will not be completely disregarded. After withdrawal or disavowal, the LEA declaration will *generally* no longer be considered as evidence of the applicant's compliance with requests for assistance in the LEA's detection, investigation, or prosecution; however, a disavowed or withdrawn Supplement B may be considered for other eligibility requirements (such as evidence of victimization) along with any other credible evidence relevant to the application. *See* new 8 CFR 214.204(f) and (h). DHS will determine whether the disavowed or withdrawn Supplement B will be considered as evidence of compliance by assessing the reasons for the disavowal or withdrawal. Once the Supplement B is disavowed or withdrawn, DHS will determine the reason for the disavowal or withdrawal and then determine what purpose, if any, for which it may be used. DHS notes that if there is an explanation from the LEA for the withdrawal or disavowal, adjudicators should consider that explanation in determining whether to still consider the declaration as evidence of compliance with requests for assistance.

DHS acknowledges that even if a declaration is disavowed or withdrawn, an individual may still meet the eligibility requirements for T nonimmigrant status, and a withdrawal or disavowal will not always lead to revocation of T nonimmigrant status. In addition, prior to issuing a Notice of Intent to Revoke (NOIR) based on the withdrawal or disavowal of the Supplement B, DHS would reassess an applicant's eligibility based on all available evidence. If DHS intends to revoke T nonimmigrant status following the withdrawal or disavowal of a Supplement B, DHS will issue a NOIR to inform the individual of the agency's intent to revoke T nonimmigrant status and the basis for intended revocation. The individual would then be able respond to the NOIR with additional evidence to overcome any noted deficiencies or discrepancies. The NOIR would detail or summarize the reasons for withdrawal or disavowal from the LEA and any other bases for intended revocation, but DHS declines to codify a requirement that USCIS provide a copy to the individual.

b. Revoked Continued Presence

DHS has similarly clarified that if the DHS Center for Countering Human Trafficking (CCHT) revokes a grant of Continued Presence (CP), generally the CP grant will no longer be considered as evidence of the applicant's compliance with the corresponding LEA investigation or prosecution but may be considered for other purposes. *See* new 8 CFR 214.204(i). If DHS determines that the revocation of the CP grant was unrelated to an applicant's compliance, for example revocation based on departing without advance parole or for subsequent criminal conduct, it may continue to consider the grant of CP as evidence of the applicant's compliance with the LEA investigation or prosecution.

3. Requirement To Sign Law Enforcement Declaration

Comment: One commenter stated DHS should clarify in the regulations that immigration judges and ICE counsel should be required to sign law enforcement declarations. The commenter wrote that a directive to immigration judges and ICE attorneys should indicate that they, and not just Homeland Security Investigations (HSI),

should be able to detect trafficking and certify in the process.

Response: DHS declines to adopt this recommendation. DHS cannot require any certifying agencies to certify a case, as signing the LEA Declaration is at the discretion of the LEA and the LEA Declaration is not a required piece of initial evidence. However, DHS agrees that immigration judges and ICE attorneys may submit declarations upon detection of trafficking consistent with applicable law and agency policy. However, DHS may accept declarations from immigration judges and ICE attorneys should such declarations be permissible under applicable law and agency policy.

H. Bona Fide Determination (BFD)

By statute, a determination that an application for T nonimmigrant status is bona fide (T BFD) enables trafficking survivors to obtain certain stabilizing benefits, including access to Federal services and benefits via the issuance of Certification Letters from HHS,[14] and the ability to obtain an administrative stay of removal.[15] The preamble to the 2016 IFR provided that USCIS may grant deferred action if the application for T nonimmigrant status is deemed bona fide, and the applicant could request employment authorization based on the grant of deferred action.[16] Although an extensive BFD process was codified in the 2016 IFR, such a process has not been implemented in the last decade outside of litigation cases due to resource constraints and the inefficiencies of the prior process. Under the extensive BFD review process set forth in the IFR, USCIS generally adjudicated the merits of T nonimmigrant applications in the same amount of time that it would take to issue a BFD. Therefore, it has generally been more efficient to adjudicate the T visa application alone than to conduct both a BFD review and full adjudication of the same application.

The revised BFD process codified in this rule at 8 CFR 214.205 is as follows: USCIS will conduct an initial review of the T nonimmigrant status application filed on or after the effective date for completeness and conduct and review the results of background checks to determine if the application is bona fide and the applicant merits a favorable exercise of discretion to receive a grant of deferred action and employment authorization. Applicants must file a Form I–765, Application for Employment Authorization, under proposed 8 CFR 274a.12(c)(40) to receive a BFD Employment Authorization Document (EAD), even if they have indicated on Form I–914, Application for T Nonimmigrant Status that they are requesting an EAD. If an applicant has not already filed a Form I–765, they will be notified in writing that they may do so, to receive a BFD EAD under 8 CFR 274a.12(c)(40). DHS strongly recommends that applicants file a Form I–765, Application for Employment Authorization, simultaneously with their T nonimmigrant status application to facilitate expeditious case processing.[17] If DHS issues a request for evidence in a case filed before the effective date of the final rule, DHS will automatically convert previously filed applications for employment authorization filed under 8 CFR 274a.12(a)(16) and (25), to applications for the newly created BFD EAD classification. This will limit the need for applicants to submit new requests or information, and enable DHS to focus on the adjudication, rather than the process of issuing multiple notices, including first notifying the applicant that they have a pending bona fide application, and then notifying the applicant that they are eligible for employment authorization. If initial review does not establish that the application is bona fide, USCIS will conduct a full T nonimmigrant status eligibility review. If the full review establishes eligibility and the statutory cap has been reached, the application will be considered bona fide.

In the situation where DHS is issuing a request for evidence and thus conducts a bona fide determination on an application filed before the effective date of this rule, if an applicant with a pending bona fide application has not previously filed an application for employment authorization, DHS will issue a notice of eligibility to apply for a BFD EAD, indicating that the individual should designate category ''(c)(40)'' on the application. *See* new 8 CFR 274a.12(c)(40).

After receipt of the Form I–765, USCIS will then consider whether the applicant warrants a favorable exercise of discretion to be granted deferred action, and if granted deferred action, whether they will be granted a discretionary employment authorization document.

In the interim rule, DHS provided that employment authorization for a bona fide T nonimmigrant applicant to whom USCIS grants deferred action would be requested under category ''(c)(14),'' 8 CFR 274a.12(c)(14). 81 FR 92285. DHS has decided to record T BFD EADs as a separate category from other EADs that are based on a grant of deferred action. Accordingly, in this rule DHS amends 8 CFR 274a.12 to establish a specific eligibility category for applicants for T nonimmigrant status whose applications have been deemed bona fide. These BFD EADs will be issued under category (c)(40). *See* new 8 CFR 274a.12(c)(40). DHS notes that a bona fide determination, or an initial grant or renewal of a BFD EAD and deferred action does not guarantee that DHS will approve the principal applicant or their derivative family members for T nonimmigrant status.

Comment: Several commenters wrote that USCIS has justified its operational practice of fully adjudicating the T visa application rather than initiating the BFD review process by claiming that because there is no T visa application backlog, it is more efficient to conduct a full adjudication. Commenters urged USCIS to uphold the regulatory mandate to provide BFDs. They emphasized that BFDs provide work authorization, which allows survivors to be self-sufficient and help reduce the risk of revictimization as well as provide access to federally funded public benefits. Commenters also wrote that BFDs are much more important given increased processing times, especially as applicants lose access to time-limited social services benefits. Commenters indicated that USCIS' failure to conduct BFDs has had a negative impact on trafficking survivors in removal proceedings and has led to survivors being removed while their applications were pending. Multiple commenters noted that applicants are forced to proceed with other forms of relief in removal proceedings while awaiting a decision on their T visa application, which wastes administrative resources and inflicts needless trauma.

Response: DHS acknowledges that processing times have increased in recent years. DHS also understands the important stabilizing benefits the BFD

[14] 22 U.S.C. 7105(b)(1)(E)(i)(II)(aa).

[15] INA sec. 237(d)(1); 8 U.S.C. 1227(d)(1). This statutory provision authorizes the Secretary of Homeland Security to grant an administrative stay of removal to an individual whose Application for T Nonimmigrant Status sets forth a ''prima facie case for approval,'' until the application is approved or there is a final administrative denial on the application after the exhaustion of administrative appeals. A determination that the application is ''bona fide'' is also sufficient to establish that the applicant has established a ''prima facie case for approval'' within the meaning of section 237(d)(1) of the INA, 8 U.S.C. 1227(d)(1). ''Prima facie'' means that the application appears sufficient on its face, which is encompassed by the bona fide determination described at 8 CFR 214.205.

[16] *See* 81 FR 92279.

[17] There is no fee for a Form I–765 filed by an applicant seeking T nonimmigrant status. 8 CFR 106.3(b)(2)(viii).

can provide to trafficking survivors, and that a lack of a viable BFD process can have negative impacts on victims. DHS is committed to implementing a streamlined and operationally efficient BFD process through the final rule and has codified a new BFD process at new 8 CFR 214.205, consistent with DHS's victim-centered approach. Pursuant to new 8 CFR 214.204(m), USCIS will conduct a BFD review for applicants in the United States once they have applied for principal or derivative T nonimmigrant status. DHS has also amended 8 CFR 214.11(d)(7) (redesignated as 8 CFR 214.204(m)) to state that USCIS will conduct an initial review of an eligible family member's Application for Derivative T Nonimmigrant Status once the principal's application has been deemed bona fide. However, as a matter of discretion, USCIS generally will not grant deferred action and employment authorization to an eligible family member based on a bona fide determination unless the principal applicant has received a positive bona fide determination.

Comment: Several commenters stated that the IFR's inclusion of an inadmissibility determination as part of the BFD is contrary to Congressional intent. They recommended that either the filing of a waiver of inadmissibility constitute *prima facie* evidence of eligibility, or that USCIS implement the same procedures used in the U visa BFD context, which eliminates the requirement that USCIS assess an applicant's admissibility as part of the BFD process. Some commenters further recommended that DHS amend the standard for finding an application to be bona fide to mirror the requirements to establish a prima facie case in an application for benefits available under VAWA. *See* 8 U.S.C. 1641; 8 CFR 204.2(c)(6).

Response: DHS agrees with the commenters' suggestion to remove the inadmissibility determination from the BFD process. The BFD process is an initial review, and an assessment of the applicant's admissibility is not necessary to determine whether an application is bona fide. In addition, as commenters noted, considering admissibility twice during adjudication would be inefficient and burdensome and would delay the BFD process. Accordingly, DHS has eliminated the requirement that USCIS analyze an applicant's admissibility as part of the BFD process, but will implement other safeguards, including background checks, to ensure the applications are bona fide, that the applicants merit a favorable exercise of discretion and do not present a threat to national security, and to maintain the integrity of the program.

Comment: Commenters also requested DHS eliminate 8 CFR 214.11(e)(1)(ii), which requires a T visa applicant to demonstrate that their application ''does not appear to be fraudulent,'' because the fraud assessment is superfluous to the other BFD requirements.

Response: DHS agrees with the commenters' rationale. Because USCIS considers an applicant's compliance with initial evidence requirements and background checks in the T visa BFD process, as well as whether the applicant merits a favorable exercise of discretion, it is unnecessary to separately analyze whether the application appears to be fraudulent. DHS has removed consideration of whether an application appears to be fraudulent from the BFD review process. An applicant who attempts to gain an immigration benefit through fraud is inadmissible,[18] and would not be granted deferred action or a BFD EAD.

Comment: Commenters urged DHS to implement a BFD review process for T derivative applicants, applying the standards set forth in the Policy Manual for eligible family members of U visa applicants.

Response: DHS understands the importance of BFDs not just for principal applicants, but for their eligible family members. Conducting BFD reviews and providing initial benefits to eligible family members is also consistent with a victim-centered approach, as it provides victims needed support from stabilized family members. DHS will conduct BFDs for eligible family members who are in the United States at the time of review, if the principal has already received a BFD.

Comment: Several commenters requested that USCIS commit to a 30- or 90-day timeline for making a bona fide determination and notifying applicants of the outcome in 8 CFR 214.11(e)(2) (redesignated here as 8 CFR 214.205(c)).

Response: Although DHS recognizes that being without work authorization or Federal benefits may be a hardship for applicants, it declines to mandate that USCIS conduct a BFD within a certain number of days. USCIS strives to process all immigration benefits in a reasonable and timely manner; however, USCIS cannot guarantee that the determination will be completed within any set number of days. The volume of applications to be reviewed will vary over time, each application is unique, and some may be complex. In addition, there are aspects of the determination beyond USCIS' control (for example, background checks) that may take longer than 90 days.

Comment: Some commenters recommended that qualified trafficking survivors on the waiting list should be granted BFDs and should have access to employment authorization and Federal benefits to ensure their safety, and so they are not vulnerable to exploitation or trafficking.

Response: DHS acknowledges the importance of these benefits for trafficking survivors, which is why USCIS will initiate the BFD process upon initial review of the application. After considering the comments on the interim final rule and our recent experience with the program, DHS has added 8 CFR 214.205(a)(3), which provides that USCIS will conduct a full T nonimmigrant status eligibility review of any applications that do not initially receive a favorable BFD. Applicants who are determined eligible following the T nonimmigrant status eligibility review will then be issued a BFD if the statutory cap has been met. In addition, applicants with a favorable BFD may be considered for deferred action and may request employment authorization based on a grant of deferred action. 8 CFR 214.205(d)(1).

DHS notes that the T visa waiting list has never been utilized in the history of the program due to the statutory cap never being reached. However, if the statutory cap is met, USCIS will place all applications that have been issued a BFD on the waiting list, including those that are deemed eligible for a BFD following a T nonimmigrant status eligibility review. 8 CFR 214.210(b). This revision will allow BFD recipients to be on the waiting list without having to provide additional information, avoid USCIS having to perform additional processing of cases with a BFD to place them on the waiting list, and provide all applications on the waiting list equal status of BFD, instead of some receiving a BFD and others being deemed approvable but for the unavailability of a visa.

This change will not affect the order in which applications are processed. The following fiscal year, when a new statutory cap becomes available, the oldest pending applications that are on the waiting list and have been granted a BFD will be processed first. The oldest application may not necessarily be approved in date-received order depending on updates and additional evidence that may be needed to adjudicate the application to a final decision. The date that applicants receive a BFD will generally not affect

[18] *See* INA 212(a)(6)(C)(i), 8 U.S.C. 1182(a)(6)(C)(i).

the order in which their application will be processed for cap adjudication.

Comment: Several commenters encouraged DHS to add language to the final rule that requires ICE to take affirmative steps to seek a BFD from USCIS for detainees with pending applications for T nonimmigrant status, which commenters note would lead to a stay of removal.

Response: DHS declines to add this language to the final rule as unnecessary, because all applications filed after the effective date of the final rule will receive a BFD review. In addition, in August 2021, ICE issued a Directive that addresses using a victim-centered approach with noncitizen crime victims, including applicants for T nonimmigrant status.[19] The ICE directive specifies that ICE will coordinate with USCIS to ''seek expedited adjudication of victim-based immigration applications and petitions'' and that in the cases of a detained individual with a pending application for a victim-based immigration benefit, ICE will request USCIS expedite the decision.[20] USCIS will continue to coordinate with ICE on this process.

I. Evidence To Establish Trafficking

Comment: Several commenters wrote that they appreciate that 8 CFR 214.11(f)(1) (redesignated here as 8 CFR 214.206(a)) includes examples of evidence that may be submitted to demonstrate a trafficker's purpose in cases where no commercial sex act or forced labor occurred. They also stated that they approve of the non-exhaustive list at 8 CFR 214.11(f)(1) (redesignated 8 CFR 214.206(a)) of examples of evidence that may be submitted to demonstrate the trafficker's purpose in this type of scenario. However, these same commenters also recommended that DHS expand the list of possible evidence and expressed that trafficking victims may not be able to supply the types of evidence in the list. They suggested DHS add additional types of evidence; clarify that all forms of evidence are acceptable; and clarify that no form of evidence is preferred over another. Specifically, commenters wrote that DHS should clarify that a law enforcement declaration or grant of Continued Presence are not required or preferred forms of evidence. The commenters also requested that 8 CFR 214.11(f)(l) (redesignated here as 8 CFR 214.206(a)) be revised to state that a victim's statement alone could be sufficient in proving attempted victimization.

Response: DHS agrees with the commenters' rationale and has amended the list of evidence in new 8 CFR 214.206(a). Although the list is not intended to be exhaustive, the regulation may have unintentionally emphasized certain types of evidence. In amending this list, DHS emphasizes that alternate forms of evidence can be submitted to establish an individual is a victim of a severe form of trafficking, or to establish the trafficker's purpose. DHS acknowledges there are some types of evidence that victims are more likely to have. Each form of evidence alone may be sufficient under the any credible evidence standard, and no form of evidence is preferred over another. As noted above, DHS declines to amend the regulatory text to explicitly state that a victim's statement alone may prove victimization. While DHS may determine, based on the facts and circumstances of a particular case, that a personal statement alone may be sufficient to prove victimization, in such a scenario, the victim's statement would have to be sufficiently detailed, plausible, and consistent in order to satisfy evidentiary requirements. With all T visa applications, DHS makes an individualized determination of whether trafficking has been established based on the evidence in each particular case. However, DHS encourages applicants to submit any additional credible evidence that could help establish their claim.

Comment: One commenter wrote that they were concerned about the statement in the Preamble to the 2016 IFR that a victim can submit any credible evidence from any reliable source that shows the purpose for which the victim was recruited, transported, harbored, provided, or obtained. *See* 81 FR 92272. That commenter requested that DHS clarify that reliable sources could include not only direct evidence, but also circumstantial evidence as well as the victim's own statement. The commenter asked that DHS assess the purpose or motivation of the trafficker in the same way it assesses the motive of a persecutor in asylum cases.

Response: DHS declines to specify in the regulation that circumstantial evidence and the applicant's affidavit can be submitted to establish the trafficker's purpose or motive. The evidentiary standards that DHS applies to all T nonimmigrant status eligibility requirements are based on an understanding that victims of severe forms of trafficking in persons often have difficulty acquiring evidence and that the best available evidence may include circumstantial evidence. But, as noted above, under the regulations an applicant's affidavit may be sufficient if it is sufficiently detailed, plausible, and consistent in order to satisfy evidentiary requirements. DHS declines to adopt asylum standards, as trafficking and asylum are distinct and involve unique forms of relief.

J. Physical Presence [21]

1. Applicability of Physical Presence Requirement

Comment: One commenter requested DHS replace the language in 8 CFR 214.11(g)(1) (redesignated here as 8 CFR 214.207(a)) that reads ''The requirement reaches an alien who'' with ''An applicant must demonstrate one of the following requirements.'' The commenter stated the wording was confusing for applicants and practitioners.

Response: DHS agrees that the language in 8 CFR 214.11(g)(1) caused confusion. DHS revised this section (new 8 CFR 214.207) to make it active tense and clarified the applicability of the physical presence standard, such that it reads: ''An applicant must demonstrate that they are physically present under one of the following grounds . . . .''

2. Passage of Time Between Trafficking and Filing the T Visa

Comment: Commenters stated that DHS has imposed a *de facto* deadline for physical presence, leading adjudicators to erroneously conclude that the mere passage of time signifies that an individual's physical presence in the United States is unrelated to their trafficking. The commenters claim this excludes many bona fide victims, who may file for T nonimmigrant status long after their trafficking. Commenters also recommended DHS explicitly consider when a survivor learned of their status as a victim of trafficking, by modifying § 214.11(g)(4) (redesignated here as 8 CFR 214.207(c)).

Response: DHS acknowledges the commenters' concerns and has clarified in the text of multiple provisions of the regulation that physical presence may be established regardless of the length of time that has passed between the trafficking and filing of the application. For example, DHS has clarified that under 8 CFR 214.207(a)(2) and (3), the applicant may satisfy the physical

[19] U.S. Immigr. & Customs Enforcement, U.S. Dep't of Homeland Security, ''ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims'' (2021), *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf* (ICE Directive).

[20] *Id.*

[21] DHS also received comments regarding physical presence and law enforcement involvement, which are addressed above in Section D, Definitions.

presence requirement if they were liberated from a severe form of trafficking in persons by an LEA at any time prior to filing their T visa application. This is intended to clarify that there is no *de facto* deadline for filing. DHS has also already clarified its interpretation via policy guidance, consistent with the legislative intent behind the program.[22] In addition, under 8 CFR 214.207(a)(4), DHS has added that the current presence may be directly related, ''regardless of the length of time that has passed between the trafficking and filing'' of the applicant's T visa application.

DHS acknowledges that survivors of trafficking experience serious consequences because of their victimization that can delay filing, including lack of access to legal representation, trauma, lack of support, and even lack of knowledge that they are a victim of trafficking. DHS emphasizes that the passage of time alone does not negate an applicant's ability to establish physical presence on account of the trafficking. In addition, DHS has clarified in the regulation that when analyzing physical presence, it will consider when and how an applicant learned that they were a victim of human trafficking.[23] DHS acknowledges that many survivors may delay filing for legitimate reasons; however, the applicant still bears the burden of establishing that their current presence in the United States is on account of trafficking.

3. LEA Liberation and LEA Involvement

Comment: Many commenters requested DHS remove 8 CFR 214.11(g)(1)(ii) and (iii) (redesignated here as 8 CFR 214.207(a)(2) and (3)) because there has been no guidance clarifying the practical distinction between these provisions versus paragraph (g)(1)(iv) (redesignated here as 8 CFR 214.207(a)(5)), and adjudicators have required applicants claiming physical presence under paragraph (g)(1)(ii) or (iii) to also demonstrate their continuing physical presence.

Response: DHS declines to remove the language at new 8 CFR 214.207(a)(2) and (3), as these provisions are important ways applicants can establish their physical presence. DHS acknowledges there has been confusion surrounding these provisions. To establish physical presence under new 8 CFR 214.207(a)(2), an individual must demonstrate that law enforcement assisted in liberating them from their trafficking situation. To satisfy physical presence under new 8 CFR 214.207(a)(3), an individual must demonstrate that law enforcement became actively involved in detecting, investigating, or prosecuting the acts of trafficking. To establish physical presence under new 8 CFR 214.207(a)(5), regardless of where the trafficking occurred, an individual must establish that they have been allowed entry into the United States for the purpose of participating in the detection, investigation, prosecution, or judicial processes associated with an act or perpetrator of trafficking. DHS has retained these provisions as additional means by which an applicant can establish physical presence; however, as discussed above, DHS has updated these sections to clarify that physical presence can be satisfied if the LEA liberated the applicant from the trafficking situation or was involved in detecting, investigating, or prosecuting the acts of trafficking the case at any point prior to the application process.

4. Presumption of Physical Presence

Comment: Several commenters urged DHS to adopt a broader interpretation of ''physical presence on account of trafficking'' such that a presumption of physical presence could apply in various scenarios, including physical presence at the time of filing.

Response: DHS appreciates the commenters' concerns but declines to codify any generalized presumptions of physical presence in the regulations. The applicant bears the burden of establishing that they satisfy each eligibility criteria for T nonimmigrant status, including physical presence on account of trafficking at the time of filing and adjudication. Each application for T nonimmigrant status will be evaluated on its own merits. Although DHS declines to formally codify any presumptions of physical presence, DHS has clarified how physical presence may be satisfied, consistent with many of the commenters' requests. For example, the regulations have expanded the evidence applicants may submit to establish physical presence or overcome the effect of a prior departure. DHS notes that generally, where the applicant provides evidence that they are receiving services in the United States as a trafficking victim or pursuing civil, administrative, or criminal remedies because of the trafficking, this will be considered favorably in the physical presence assessment. Because DHS cannot enumerate all circumstances under which an applicant may satisfy physical presence, DHS declines to codify any presumption.

5. Continuing Presence and Nexus to Trafficking

Comment: Many commenters suggested revising 8 CFR 214.11(g)(1)(iv) (redesignated here as 8 CFR 214.207(a)(4)) to refer to ''current presence'' rather than ''continuing presence.'' One commenter stated that DHS ignores, discounts, or improperly analyzes the impacts of trafficking victimization in analyzing continuing presence. The commenter recommended DHS provide a non-exhaustive list of factors that USCIS will consider in determining whether an applicant has demonstrated continuing presence.

Response: DHS agrees that the ''continuing presence'' terminology at 8 CFR 214.11(g)(1)(iv) has caused confusion for adjudicators and stakeholders. DHS has replaced the phrase with ''current presence.'' This change is intended to clarify that the focus of the evaluation is on the applicant's presence at the time of filing and adjudication, rather than their presence prior to that time. *See* new 8 CFR 214.207(a)(4). DHS has also revised the regulation to include a non-exhaustive list of factors USCIS will consider in analyzing the physical presence requirement, at redesignated 8 CFR 214.207(c) (discussed further below). These updates clarify expectations regarding timeline requirements and bring this provision into present tense.

Commenter: One commenter requested the rule clarify that for an applicant's continuing presence in the United States to be directly related to their original trafficking, it is sufficient that if the applicant were to depart the United States, they would suffer hardship as a result of circumstances caused by their trafficking, regardless of whether such hardship constitutes extreme hardship. The commenter also requested the rule clarify that whether the applicant's continuing presence in the United States is directly related to their original trafficking, and whether the applicant would suffer extreme hardship upon removal are separate requirements that may be supported by the same evidence.

Response: DHS declines to adopt this recommendation. Physical presence is a current assessment of an applicant's experience, whereas extreme hardship

[22] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2* (stating that an individual may satisfy the physical presence requirement regardless of the time that has passed since liberation from the initial trafficking and filing the T visa application) (last updated Oct. 20, 2021).

[23] *See* new 8 CFR 214.207(c)(1)(i).

is a prospective assessment of hardship the applicant may face. Although DHS acknowledges that the same evidence may be presented to satisfy multiple eligibility requirements, an applicant must explain how the evidence satisfies each eligibility requirement. The applicant bears the burden of establishing each eligibility requirement and clearly explaining how the evidence presented addresses each eligibility criteria.

Comment: Another commenter stated that if DHS retains the requirement that certain victims demonstrate that their continuing presence is directly related to trafficking, the rule should provide explicit guidance as to what sort of nexus is and is not required to meet this test. Another commenter indicated that USCIS practice suggests that if a survivor becomes stable at any point after their trafficking victimization, they are no longer present in the United States on account of their trafficking. The commenter emphasized that progress in a victim's life does not negate the ongoing impact of the trafficking victimization.

Response: DHS has revised the regulations to include a more expansive list of scenarios that can establish physical presence on account of trafficking. DHS has also provided significant guidance for adjudicators in its Policy Manual on analyzing whether an applicant's ongoing presence is directly related to their trafficking.[24] The Policy Manual provides that if the applicant has repeatedly traveled outside the United States since the trafficking, and their departures are not the result of continued victimization; or the applicant lacks continued ties to the United States or has established an intent to abandon life in the United States; this may support a finding that their current presence is not directly connected to the original trafficking. On the other hand, developments in an applicant's life following the trafficking do not prevent an applicant from establishing ongoing presence on account of trafficking. An applicant may still demonstrate that their current presence in the United States is directly related to the initial victimization and should not be penalized for stabilizing themselves following their victimization.

USCIS will assess the specific impacts of trafficking on the applicant's life at the time of application. The applicant may not establish eligibility if the evidence of the ongoing impact of trauma on the applicant's life does not sufficiently establish the connection between the trafficking and the applicant's presence in the United States at the time of filing.

6. Effect of Departure or Removal

Comment: Commenters asked DHS to eliminate the ''departure from the United States'' language at 8 CFR 214.11(g)(2) (redesignated here as 8 CFR 214.207(b)). Commenters indicated that the departure language prevents trafficking victims from obtaining benefits simply by virtue of their removal, even if they have a pending T application. They requested that DHS update the final rule to clarify that if an individual was in the United States on account of trafficking when they filed the application, subsequent departure or removal should not bar relief.

Response: DHS appreciates the concerns the commenters have raised but declines to eliminate the language describing the effect of departure or removal on physical presence. Instead, DHS has codified additional scenarios by which victims who have departed the United States following their victimization and subsequently re-entered may establish physical presence (including returning to the United States to pursue remedies against their trafficker or returning to seek treatment or services related to victimization they cannot obtain elsewhere). *See* new 8 CFR 214.207(b)(4) and (5). In addition, although DHS appreciates the sensitivities and unique impact removal has on applicants for T nonimmigrant status, T visa applicants must demonstrate physical presence in the United States pursuant to the statute.

Comment: Other commenters suggested that the rule should identify scenarios that may demonstrate that a victim's reentry to the United States is the ''result of continued victimization'' under § 214.11(g)(2)(i) (new 8 CFR 214.207(b)(1)) and would satisfy the physical presence requirement. The commenters proposed the following scenarios be included in the regulations: reentry into the United States (1) due to current fear of the traffickers in the victim's home country or last place of residence; (2) to seek treatment for victimization from trafficking which cannot be provided in the victim's home country or last place of residence; or (3) to pursue civil and criminal remedies against the traffickers in the victim's home country or last place of residence.

Response: DHS agrees with the second and third suggestions and has updated the regulations accordingly, such that both suggestions are encompassed in the new language at 214.207(b)(3)–(5). DHS declines to adopt the first suggestion, as a reentry to the United States due to current fear of the traffickers in the victim's home country or last country of residence would already fall under the ''continued victimization'' scenario articulated in 8 CFR 214.11(g)(2) (redesignated 8 CFR 214.207(b)).

Comment: One commenter requested that if DHS did not remove the departure language from the regulation, it should substantially alter the language found in 8 CFR 214.11(g)(2) (redesignated 8 CFR 214.207(b)), such that the regulation: acknowledges the possibility that a trafficker may have played a role in the survivor's departure from the United States; clarifies that a new incident of trafficking or new attempted incident of trafficking is not required; makes explicit that reentry related to fear of retaliation or re-victimization by the traffickers allows an applicant to meet this requirement; and clarifies that applicants may meet this requirement if, after their return to the United States, regardless of the exact motivation of the reentry, they are actively cooperating with an investigation or prosecution of trafficking.

Response: DHS has clarified how an applicant may establish physical presence after departure from and reentry to the United States by adding additional scenarios that can allow an applicant who has departed and returned to establish physical presence at 8 CFR 214.207(b)(4) and (5). These new provisions aim to provide clarity and reduce barriers for victims. Under new 8 CFR 214.207(b)(4), an applicant may establish physical presence after departure if their current presence in the United States ''is on account of their past or current participation in investigative or judicial processes associated with an act or perpetrator of trafficking, regardless of where such trafficking occurred.'' An applicant may satisfy this provision ''regardless of the length of time that has passed between their participation in an investigative or judicial process associated with an act or perpetrator of trafficking'' and the filing of their application for T nonimmigrant status. *See* new 8 CFR 214.207(b)(4). These new provisions allow individuals who have participated in investigative or judicial processes to establish physical presence following a prior departure, regardless of their manner of entry or where such trafficking occurred. Under new 8 CFR 214.207(b)(5), an applicant may establish physical presence following a

[24] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 2, Eligibility Requirements,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2* (last updated Oct. 20, 2021).

previous departure if they returned to the United States and received treatment or services related to their victimization that cannot be provided in their home country or last place of residence. These additions support the dual purpose of the T visa, acknowledge there may be various reasons an individual may depart the United States, are consistent with a victim-centered approach to combatting trafficking, and do not require an individual to be revictimized to establish physical presence following a departure.

7. Trafficking That Occurs Outside the United States, and Traveling Outside the United States Following Victimization

Comment: Various commenters wrote that DHS interprets the physical presence requirement too narrowly for victims whose trafficking occurred outside the United States or who traveled outside of the United States after suffering trafficking. They stated that trafficking victims may be present in the United States on account of trafficking in various situations, including those in which they were trafficked in a neighboring country that failed to protect them before fleeing to the United States for protection. Some commenters stated that Congress did not specifically require that the trafficking occur in the United States or have violated U.S. law to qualify for the T visa. One commenter wrote that presence in the United States at the time of filing the application for T nonimmigrant status should be sufficient to meet the requirement, regardless of where the trafficking occurred or the circumstances of the applicant's reentry. Commentors also encouraged DHS to ensure definitions and interpretations acknowledge the global nature of trafficking, such as international child pornography rings and international sex trafficking rings, often with perpetrators based in the United States even if the trafficking occurred abroad.

Response: First, DHS acknowledges that trafficking may have a global nature and include a nexus to the United States even if the trafficking occurred abroad; however, DHS declines to interpret the TVPA to encompass trafficking situations in which a trafficking victim seeks protection in the United States for a trafficking situation that occurred fully outside U.S. borders and for which there is no nexus to the United States—either through presence at a United States port of entry on account of the trafficking or cooperation with U.S. law enforcement.

Congress created T nonimmigrant status with a dual purpose: to protect victims of a severe form of trafficking in persons and to encourage and facilitate assistance to U.S. law enforcement to prosecute and combat human trafficking. *See generally,* TVPA section 102, 22 U.S.C. 7101. Congress provided an incentive for victims of a severe form of trafficking in persons to report their victimization by providing for an immigration benefit contingent upon complying with reasonable requests for assistance to LEAs. *Id.;* new 8 CFR 214.202(c). If DHS adopted the commenters' suggested interpretation of the physical presence requirement, victims who were trafficked anywhere in the world could seek T nonimmigrant status in the United States, although a U.S. law enforcement agency would not necessarily have jurisdiction to investigate or prosecute the trafficking. This result would not be consistent with the dual purposes for which Congress created T nonimmigrant status.

DHS appreciates the difficult circumstances facing victims trafficked outside of the United States, particularly when an applicant is unable to find protection elsewhere; however, DHS does not believe that Congress intended to offer protection in the form of T nonimmigrant status in the United States to victims who suffer trafficking in other countries, who flee to the United States for protection, and whose trafficking has no nexus to the United States. DHS acknowledges, however, there may be situations in which trafficking could have occurred abroad that would make an applicant eligible for T nonimmigrant status; as indicated in the Policy Manual, applicants whose trafficking ended outside of the United States may be able to satisfy physical presence if they can demonstrate that they are now in the United States or at a port of entry on account of trafficking or were allowed valid entry into the United States to participate in a trafficking-related investigation or a prosecution or other judicial process. Cases where trafficking occurred abroad require an individualized and nuanced consideration. Consistent with this interpretation, DHS has amended 8 CFR 214.11(g)(1)(v) (redesignated 8 CFR 214.207(a)(5)) to indicate that an applicant may be deemed physically present under this provision regardless of where such trafficking occurred. *See* new 8 CFR 214.207(a)(5)(i). DHS has consolidated the language at 8 CFR 214.11(g)(3) at new 8 CFR 214.207(a)(5)(ii) and (b)(3) to instruct applicants how they may demonstrate physical presence, by showing documentation of valid entry into the United States for purposes of an investigative or judicial process associated with an act or perpetrator of trafficking.

Comment: Another commenter requested that DHS address situations where trafficking occurred abroad, but the applicant can satisfy physical presence because the trafficking is directly the result of U.S. immigration policy.

Response: DHS emphasizes that applicants who are physically present in the United States or at a port of entry on account of trafficking can demonstrate eligibility for T nonimmigrant status even if the trafficking occurred abroad; however, the requirement that an applicant be physically present in the United States or at a port of entry is a statutory requirement that cannot be waived. Eligibility may be established where there exists a nexus between the trafficking and presence in the United States.

8. Opportunity To Depart

Comment: Commenters also requested DHS strike the reference to the ''applicant's ability to leave the United States'' at 8 CFR 214.11(g)(4) because such evidence is unnecessary, and DHS had already removed the requirement for an applicant to prove they had no ''opportunity to depart'' the United States. Another commenter indicated that DHS imposes a de facto ''opportunity to depart'' requirement.

Response: DHS agrees that striking the ''ability to leave'' language is consistent with the prior removal of the ''opportunity to depart'' language and has revised the regulation accordingly. DHS clarifies that an applicant need not show they had no opportunity to depart the United States to establish physical presence.

9. Presence for Participation in Investigative or Judicial Process

Comment: Commenters stated that DHS incorrectly interprets the language in 8 CFR 214.11(g)(3), redesignated as § 214.207(a)(5)(ii) and (b)(3) to require a victim's entry through lawful means. *See* 81 FR 92274. The commenters claim the statute does not indicate that only lawful reentries or those arranged by the government can be used to demonstrate physical presence. The commenters noted that the regulations are not structured to include non-criminal processes, and it is likely that LEAs will not be involved in such proceedings, making it unlikely that a victim would be able to enter the United States through lawful means. The commenters

also stated that it would be unlikely for a victim to have a visa authorized for the purpose of pursuing civil remedies.

Response: DHS maintains that the current interpretation requiring a lawful entry to establish physical presence based on ''having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking,'' remains the best legal reading of the statutory language added by TVPRA 2008, as explained in detail in the 2016 IFR preamble. Where the regulatory provisions focus on the purpose of the entry, for example at 8 CFR 214.11(g)(2)(iii) (new 8 CFR 214.207(b)(3)), the statutory authority comes from the ''allowed entry'' language found in section 101(a)(15)(T)(i)(II) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(II), which includes physical presence on account of an individual ''having been allowed entry.'' DHS therefore is retaining the provisions as drafted, striking 8 CFR 214.11(g)(3), and moving the language to new 8 CFR 214.207(a)(5)(ii) and (b)(3). However, having been allowed entry to participate in investigative or judicial processes is just one example of how an individual can establish they are physically present on account of trafficking, and DHS acknowledges that the requirement of a lawful reentry in 8 CFR 214.11(g)(3) has had unintentional limitations, such that victims of trafficking who departed the United States and reentered unlawfully, but are present in order to participate in an investigative or judicial process associated with the trafficking, were unable to establish eligibility due to their manner of reentry. DHS believes it is consistent with Congressional intent to recognize that such victims may be able to establish that they are physically present on account of trafficking, regardless of the manner of reentry or the time that has passed between cooperation and filing of the T visa application. Accordingly, DHS has added new 8 CFR 214.207(b)(4), which focuses on the reason for the victim's current presence rather than the purpose or means of their entry. DHS maintains that ''allowed entry'' as used in section 101(a)(15)(T)(i)(II) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(II), signifies a ''lawful entry'' for purposes of initial entry and reentry after departure.

Comment: Another commenter requested that DHS revise the language in 8 CFR 214.11(g)(3) (consolidated into 8 CFR 214.207(a)(5)(ii) and (b)(3)) to include civil or administrative investigations, prosecutions, or judicial processes associated with acts or perpetrators of trafficking.

Response: DHS declines to make this edit, as the new language at 8 CFR 214.207(b)(5) encompasses these processes. ''Investigative or judicial processes'' covers all the suggested language from the commenter, and includes criminal, civil, administrative, or other investigations, prosecutions, or judicial processes.

10. Evidence To Establish Physical Presence

Comment: One commenter requested that in determining whether trafficking survivors are present on account of trafficking, DHS should consider the ability or inability of survivors to access legal and social services after escaping a trafficker.

Response: DHS emphasizes that adjudicators consider all evidence presented, including the applicant's ability to access services following victimization. DHS has made several clarifications and amendments to redesignated 8 CFR 214.207(c) to address this concern; however, DHS cannot specifically agree to such a broad request to acknowledge consideration of an applicant's inability to access services if this information is not presented via evidence relevant to a particular case.

Commenter: Another commenter proposed significant revisions to 8 CFR 214.11(g)(4) (redesignated as 8 CFR 214.207(c)). The commenter stated that Requests for Evidence appear to require mental health diagnoses, which places survivors in rural areas at great disadvantage; and current emphasis on law enforcement evidence reinforces that evidence from law enforcement is considered primary evidence and encourages misinterpretation that there is a statute of limitations to file for a T visa.

Response: DHS has updated the evidentiary requirements for how applicants may establish that they are physically present in the United States on account of trafficking in redesignated 8 CFR 214.207(c). The amended section codifies a non-exhaustive list of evidence with the intent of providing clarity to stakeholders and adjudicators around evidentiary expectations. DHS acknowledges that the prior regulation may have inadvertently created confusion surrounding what types of evidence are preferred, rather than underscoring that any credible evidence will be considered in determining whether an applicant has established physical presence in the United States on account of trafficking. Although the list at 8 CFR 214.207(c) has been significantly expanded, DHS again emphasizes that there is no preferred or required type of evidence, and victims may be more likely to have access to certain types of evidence.

K. Compliance With Any Reasonable Request for Assistance

1. Requirement To Comply With Reasonable Request

Comment: One commenter requested DHS rephrase, reconsider, or remove the requirement that an applicant for a T visa cooperate with law enforcement, particularly because of safety considerations for relatives abroad and continued victimization. The commenter also stated that LEAs deport individuals who refuse to cooperate.

Response: DHS declines to adopt this recommendation. Although DHS is sympathetic to these concerns, the statute requires compliance with a reasonable request for assistance in order to be eligible to receive T nonimmigrant status. DHS notes that there is a trauma exception and an age exemption to this eligibility requirement to account for circumstances that may impact an applicant's ability to comply with reasonable requests for assistance. In addition, as discussed above, DHS endeavors not to remove trafficking victims and applicants for T nonimmigrant status outside of exigent circumstances.[25] Moreover, as discussed further below, the statute and regulations provide eligibility for T nonimmigrant status to family members facing a present danger of retaliation as a result of the principal T nonimmigrant's escape from the severe form of trafficking or cooperation with law enforcement. *See* 8 CFR 214.211; INA sec. 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III).

2. Incompetence and Incapacity

Comment: Commenters requested DHS expand the exceptions for compliance with a reasonable request for assistance, including lack of capacity/competency found in the U visa regulations. The commenters proposed including the same exception for individuals lacking capacity or competency even if it is not linked to the trafficking because it often prevents

[25] The White House, ''The National Action Plan to Combat Human Trafficking,'' (2021) *https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf* (National Action Plan); U.S. Dep't of Homeland Security, ''Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation'' (Jan. 2020), *https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf* (DHS Strategy); ''ICE Directive 11005.3,'' *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.*

victims from complying with reasonable requests from law enforcement.

Response: DHS appreciates and shares these concerns about individuals who lack capacity or competency; however, the age exemption and trauma exception are both statutory. There is no statutory authority for an incapacity or incompetence exemption or exception. Instead, DHS has included consideration of an individual's capacity, competency, or lack thereof as factors to be considered when determining whether a request was reasonable. Moreover, the existing age exemption and trauma exception cover incapacity or incompetence due to age or trauma suffered. The existing exemption and exception, coupled with DHS's addition of capacity/competency as a factor to consider will have the same intended effect as a specific exception for incapacity and incompetency.

3. Minimum Contact With Law Enforcement

To meet the requirement that an applicant comply with reasonable LEA requests for assistance, 8 CFR 214.11(h)(1) (redesignated 8 CFR 214.208(b)) mandates that an applicant, at a minimum, has contacted an LEA regarding an act of a severe form of trafficking in persons, unless an exemption or exception applies.

Comment: One commenter requested DHS clarify that an applicant under 18 years of age who reports the trafficking to the National Human Trafficking Hotline or Office of Trafficking in Persons meets the requirement that the person report to LEAs and comply with reasonable requests, including if they make an anonymous report.

Response: DHS emphasizes that applicants who are under the age of 18 at the time of victimization are, by statute, exempt from the requirement to cooperate with any reasonable requests for assistance from law enforcement. Additionally, reports to the National Human Trafficking Hotline or the Office of Trafficking in Persons would generally satisfy the reporting requirement, if the person making the report requested or provided permission for the report to be referred to law enforcement; however, anonymous reports generally do not satisfy the requirement, as they do not meet the required evidentiary standard of proof.

Comment: Some commenters supported DHS' removal of regulatory provisions describing how to obtain an LEA declaration when the victim has not had contact with an LEA. *See* 81 FR 92276. Commenters stated that adjudicators apply inconsistent standards as to what type of contact with an LEA is sufficient. They wrote that some applicants have documented in their T visa applications that they reported to law enforcement, but received no LEA response, and then received RFEs requesting additional documentation of law enforcement contact including a Supplement B or proof of Continued Presence. The commenters recommended that DHS amend 8 CFR 214.11(h)(1) (redesignated 8 CFR 214.208(b)) to provide that a single contact with law enforcement by telephone or electronic means documented by the applicant is sufficient to meet the eligibility requirement. They also recommended that in this same section, DHS repeat aspects of the definition of an LEA to speed responses to RFEs, clarify the minimum amount of LEA contact required, and clarify that it is not necessary that law enforcement respond to the contact. Commenters also requested DHS explicitly clarify in the regulations that participation in civil, family, juvenile, criminal, administrative or any type of court proceedings involving human trafficking or where the victim reveals facts of the trafficking to the court meets the ''contact with an LEA'' requirement.

Response: DHS agrees to adopt this recommendation regarding clarifying what constitutes minimum conduct and has revised the regulation to state that a single contact through telephonic, electronic, or other means may suffice. The means of contact can vary depending on the agency and the facts of the case. Applicants may document whether the LEA responded, and the type of response received. DHS encourages applicants to document all interactions they have had with law enforcement. DHS also clarified that the LEA to which the applicant reports must have jurisdiction over the reported crime. DHS emphasizes that there is no requirement that an individual provide a Supplement B or evidence of a Continued Presence grant, that an investigation or prosecution has been initiated, or that law enforcement respond to the applicant. While an investigation or prosecution is not necessary, the LEA's response to the report of trafficking is helpful to understand LEA involvement in the criminal case and determine whether the applicant meets the requirement to comply with any reasonable LEA requests. DHS does not consider it necessary to repeat the definition of an LEA or to specify every type of contact or the context of that contact that would suffice, given that redesignated 8 CFR 214.201 (defining an LEA) clearly specifies the types of agencies that qualify as LEAs.

4. Determining the Reasonableness of a Request

Comment: Multiple commenters suggested eliminating language in 8 CFR 214.11(a) (redesignated here as 8 CFR 214.201) and 8 CFR 214.11(h)(2) (redesignated as 8 CFR 214.208(c)) referencing the presence of an attorney. The commenters stated that the presence of an attorney should not be evaluated as a factor in whether an LEA request was reasonable and doing so may lead to victims with an attorney being held to higher standards in complying with LEA requests than those without an attorney present. The commenters wrote that the presence of an attorney does not make the law enforcement request more or less reasonable.

Response: DHS declines to adopt this recommendation. Whether an attorney was present during an LEA request is just one of the potentially many factors that DHS considers in examining the totality of the circumstances. Applicants may feel pressured to comply with an LEA request in the absence of an attorney, so DHS believes that it is appropriate to include it as a relevant factor. Furthermore, including an attorney's presence as a factor does not create a higher standard for victims who have attorneys present when requests are made, nor does it put such victims at a relative disadvantage. The presence or absence of an attorney generally will not be dispositive, but is a relevant factor in determining the reasonableness of a request, and will be analyzed on a case-by-case basis.

Comment: Several commenters requested that a ''qualified interpreter'' be added into 8 CFR 214.11(h)(2) (redesignated as 8 CFR 214.208(c)), as language access during LEA interactions is critical to victim protections and is legally required by the Civil Rights Act.

Response: DHS agrees that language access during such interaction is important for victims and has updated the language at new 8 CFR 214.208(c)(11) accordingly.

Comment: Commenters requested DHS add additional factors in determining the reasonableness of a request, including: the circumstances in which a request was made, the ability and health of an applicant, and the nature of trauma suffered. Commenters stated it was critical to understand the context in which requests are made of victims, as well as the circumstances of the victim themselves. The commenters also requested striking ''severe'' from

''severe trauma'' at 8 CFR 214.11(h)(2) (redesignated as § 214.208(c)) because all trauma should be considered.

Response: DHS generally agrees with these comments and has amended the list of factors to consider, by adding the victim's capacity, competency, or lack thereof; removing ''severity'' of trauma; adding ''qualified'' to interpreters; adding the ''health'' of the victim; and adding ''any other relevant circumstances surrounding the request.'' *See* new 8 CFR 214.208(c). DHS believes that these clarifying changes will improve determinations of the applicant's compliance with a reasonable LEA request.

5. Trauma Exception

Comment: Several commenters expressed support for provisions clarifying the types of supporting evidence that applicants can submit to establish that they meet the trauma exception from the general eligibility requirement of compliance with any reasonable LEA request for assistance in 8 CFR 214.11(h)(4)(i) (redesignated here as 8 CFR 214.208(e)(1)). Commenters suggested DHS consider the circumstances of the victim while they were being victimized and the surrounding circumstances, which may have exacerbated the trauma. They also recommended including additional examples of types of evidence that could be submitted to establish that an applicant meets the trauma exception.

Response: DHS has revised the regulations to include additional examples of evidence that may be submitted to establish the applicant qualifies for the trauma exception, to benefit adjudicators and applicants, give applicants additional information, and allow for consistency in adjudications. The updated provision clarifies that an applicant's statement should explain the circumstances surrounding the trauma and includes additional types of credible evidence that may be submitted. *See* 8 CFR 214.208(e)(1).

Comment: One commenter recommended DHS define what constitutes physical or psychological trauma to help applicants determine what evidence to submit when claiming the exception.

Response: DHS declines to include a definition of trauma in the regulatory text, as it could have the unintended effect of restricting access to benefits for victims.

Comment: One commenter stated that requiring an applicant to prove trauma to qualify for the exception risks re-traumatization, and that implicit in the definition of trafficking is some element of trauma. The commenter stated that requiring survivors to retell their experiences could hinder healing, and this could be mitigated by mandating a signed attestation to the psychological trauma from a qualified individual. The commenter stated that not requiring an applicant's affidavit would reduce the risk of re-traumatization.

Response: DHS declines to adopt this recommendation. DHS is sympathetic to the risks of re-traumatization for survivors of trafficking, but the trauma exception is statutory. The personal statement is and will continue to be initial required evidence because it is one of the most important sources of information for adjudicators in determining whether an individual meets the eligibility requirements for T nonimmigrant status. The personal statement also allows an applicant to provide credible evidence of their experiences in their own words, without requiring them to provide other evidence that may be more difficult to obtain. In addition, adjudicators consider the impact of trauma and victimization when evaluating the personal statement.[26] DHS declines to mandate a signed attestation from a medical or other qualified professional, as this would be inconsistent with the ''any credible evidence'' standard and would create a limitation on types of evidence that may be submitted under this standard.

6. DHS Contact With Law Enforcement

Comment: Several commenters requested that DHS amend 8 CFR 214.11(h)(4)(i) (redesignated here as 8 CFR 214.208(e)(1)) to provide that, in cases where an applicant has invoked the trauma exception and is unable to comply with reasonable LEA requests, USCIS will only contact an LEA if the applicant has already had initial contact. These commenters stated that maintaining this provision might discourage applicants who fear that USCIS' discretion to contact an LEA could potentially endanger applicants or their family members. Multiple commenters also requested clarification to ensure adjudicators understand that applicants who qualify for the exception are not required to have any contact with any LEA.

Response: DHS appreciates the sensitivities of applicants who are seeking an exception due to trauma and acknowledges that individuals who qualify for the trauma exception are not required to have had contact with any LEA. However, DHS feels it is important to retain the authority to contact law enforcement agencies for any information that may be necessary to adjudicate an application, in certain limited circumstances, even where an applicant has not already contacted an LEA. This is especially true for T nonimmigrant status, which requires cooperation with law enforcement unless the trauma exception or age exemption applies. *See* 8 CFR 214.208. DHS has stricken the reference to contacting law enforcement in relation to the trauma exception and has created a new section at 8 CFR 214.208(f) indicating that USCIS reserves the authority and discretion to contact an LEA involved in a case where an applicant previously contacted an LEA or when otherwise permitted by law. *See, e.g.,* 8 U.S.C. 1367.

7. Age Exemption

Comment: Several commenters commended DHS for updating its regulations to reflect the statutory provision that minors under 18 years of age are not required to comply with any reasonable law enforcement requests. *See* INA sec. 101(a)(15)(T)(i)(III). Multiple commenters requested that DHS clarify its interpretation of the exemption by amending 8 CFR 214.11(h)(4)(ii) (redesignated here as 8 CFR 214.208(e)(2)) to specify that the relevant age for determining whether this exemption is met is the age at the time of victimization, not the age at the time of application. Commenters stated this change is important because child trafficking victims in particular suffer long-term trauma that may limit their ability to cooperate with law enforcement and to confide in their attorneys. Additionally, commenters noted that attorneys may not identify applicants who suffered trafficking as a minor until after they have turned 18. One commenter requested that DHS consider increasing the age for the minor exemption. Another commenter stated there should be no requirement to comply with reasonable requests for assistance from law enforcement regardless of age, considering that brains are not fully developed until the age of 25. One commenter requested DHS clarify that any credible evidence related to a minor's age be included. The commenter indicated they work with many children who do not have access to birth certificates, passports, or certified medical opinions; whose documents have been withheld by their legal guardians; or do not know their

[26] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 3, Documentation and Evidence for Principal Applicants,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-3* (last updated Oct. 20, 2021).

own birthdates or exactly where they were born.

Response: DHS agrees that suffering human trafficking as a child can be particularly traumatizing and has significant and negative impacts on development. DHS has revised the regulation to clarify that the exemption for minors applies based on the age of the applicant at the time of victimization. An applicant is exempt from the requirement to comply with reasonable law enforcement requests if the applicant was under 18 years of age at the time at least one of the acts of trafficking occurred. This is consistent with longstanding DHS policy and practice. DHS declines to increase the age for the minor exemption above age 18, as this exemption is provided in the statute. Moreover, DHS declines to remove the requirement to comply with reasonable requests for assistance, as it is a statutory requirement, and individuals who were under the age of 18 at the time of at least one of the acts of trafficking or may not be able to comply with reasonable requests for assistance due to trauma qualify for an exemption or exception.

DHS also acknowledges that minors may have difficulty obtaining certain types of evidence to establish their age and has revised the regulation to emphasize that any other credible evidence regarding age will be considered.

L. Extreme Hardship

Comment: One commenter requested DHS remove the extreme hardship requirement altogether. Another commenter wrote that the standard for ''unusual and severe harm'' in 8 CFR 214.11(i) (redesignated here as 8 CFR 214.209) for purposes of evaluating whether an applicant would suffer extreme hardship if removed from the United States is unnecessarily narrow and should include considerations of hardship inflicted on individuals other than the applicant. The commenter also recommended that DHS revise this section to take greater account of economic detriment and financial harm as factors in assessing hardship, particularly when those factors create a risk of re-victimization. The commenter requested DHS add language to 8 CFR 204.11(i) (redesignated here as 8 CFR 214.209) ''indicating that current or economic detriment may be considered as one factor in assessing hardship, particularly when it creates a risk of re-victimization.'' Another commenter supported the broad list of factors that should be considered, but also requested to include financial and support issues, and encouraged DHS to provide a greater list of possible, but not exhaustive factors to be considered.

Response: DHS declines to fully adopt these recommendations. DHS cannot remove the extreme hardship eligibility requirement, as it is required by statute. *See* INA sec. 101(a)(15)(T)(i)(IV), 8 U.S.C. 1101(a)(15)(T)(i)(IV) (''the alien would suffer extreme hardship involving unusual and severe harm upon removal''). The statute is clear that the extreme hardship eligibility requirement refers to hardship that the applicant would suffer and does not include hardship to anyone other than the applicant as a factor. *See* INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T). Accordingly, USCIS will not consider hardship to family members unless the evidence demonstrates specific harms that the applicant will suffer upon removal as a result of hardship to a family member. DHS has amended redesignated 8 CFR 214.209(c)(2) to provide this clarification.

DHS has revised 8 CFR 214.209 to include economic harm as an extreme hardship factor. Economic harm has always been considered a factor; the prior regulation indicated that economic detriment alone could not be the sole basis for a finding of extreme hardship involving unusual and severe harm. Although the revised regulations do not bar economic hardship as the sole basis for such a finding, it must rise to the level of extreme hardship involving unusual and severe harm, and thus, generally, economic hardship alone may not suffice. However, adjudicators will consider the totality of the circumstances and all relevant factors in making an extreme hardship determination. Each case will require an analysis based on the specific facts and circumstances present.

Comment: One commenter requested that DHS clarify whether the hardship must be directly related to trafficking and that it does not need to rise to the level of extreme hardship.

Response: As discussed above, DHS has not removed the reference to extreme hardship in the regulation. DHS clarifies that an applicant's hardship does not need to be directly related to their trafficking. *See* 8 CFR 214.209.

M. Family Members Facing a Present Danger of Retaliation

The regulations at 8 CFR 214.11(k) (redesignated here as 8 CFR 214.211) implement section 101(a)(15)(T)(ii)(III) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(III), to provide that T nonimmigrant status may be available for a parent, unmarried sibling under the age of 18, or the adult or minor child of a derivative of the principal facing a present danger of retaliation as a result of the T–1 nonimmigrant's escape from the severe form of trafficking or cooperation with law enforcement. One commenter expressed support for allowing principal applicants under 21 years of age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years and parents as eligible derivative family members.

Comment: Commenters requested that DHS mandate an expedited adjudication process for these applications, which would protect family members at risk and encourage victims of trafficking to report their victimization. Some commenters recommended a specific 30-day timeline.

Response: DHS shares the commenters' concerns about family members at risk; however, it declines to impose processing deadlines on itself given staffing resources and the case-by-case review required in adjudicating T visa applications. DHS notes that there is already a process in place to request expedited processing based on urgent humanitarian reasons. Guidance for requesting expedited processing can be found on the USCIS website.[27]

Comment: Commenters also wrote that section 101(a)(15)(T)(ii)(III) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(III), does not provide an opportunity to request T nonimmigrant status for a principal's adult children who face a present danger of retaliation. Some commenters indicated they understood that DHS had limited ability to address this statutory gap, while others stated that DHS could construe the statute more broadly to include these adult children but did not provide legal support for this assertion.

Response: DHS acknowledges that the statute omits a principal's adult children who face a present danger of retaliation. However, the statutory language is not ambiguous on this point and a change in the law to include a principal's adult children would be necessary to include adult children of a T–1 nonimmigrant as eligible family members. INA sec. 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III).

Comment: Commenters wrote that family members at risk of retaliation from traffickers have difficulty securing evidence listed in 8 CFR 214.11(k)(6) (redesignated here as 8 CFR 214.211(f)) to prove a present danger of retaliation. They requested that DHS indicate that a victim's statement describing the present danger of retaliation alone would be sufficient or, at a minimum,

[27] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''How to Make an Expedite Request,'' *https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request* (last updated Oct. 20, 2022).

clarify that police reports filed in the home country and affidavits from witnesses in the home country would meet the evidentiary standard. Several commenters requested that DHS consider any credible evidence of the danger of retaliation.

Response: DHS appreciates the difficulties that trafficking victims and their family members may have in obtaining evidence. For this reason, the rule is clear that applicants may submit any credible evidence related to all the eligibility requirements for both principal applicants and derivative applicants. *See, e.g.,* 8 CFR 214.204(c) and (l). The standard also applies specifically to the evidentiary standard for proving that an eligible family member faces a present danger of retaliation. *See* 8 CFR 214.211(a)(3). In cases where the LEA has not investigated the trafficking, USCIS will evaluate any credible evidence demonstrating derivatives' present danger of retaliation. The types of evidence listed at 8 CFR 214.211(f) are non-exhaustive examples, and the inclusion of ''and/or'' at the end of the list before the inclusion of ''any credible evidence'' clarifies that USCIS will consider any credible evidence.

An applicant's personal statement alone could be sufficient to establish a present danger of retaliation, in accordance with the ''any credible evidence'' standard. *See* new 8 CFR 214.211(f). DHS has not specifically revised the rule to state that a statement describing the present danger of retaliation alone would be sufficient, as this is already permitted by the ''any credible evidence'' standard, and referencing one particular piece of evidence in the regulatory text could unintentionally discourage applicants from submitting additional relevant, credible evidence that would assist in the adjudication. DHS encourages applicants to submit additional credible evidence whenever possible to provide USCIS adjudicators with as complete an understanding of the facts of the case as possible.

The ''any credible evidence'' standard also encompasses evidence originating from a family member's home country; however, DHS has clarified that evidence may be from the United States or any country in which an eligible family member faces retaliation at new 8 CFR 214.211(f).

Comment: One commenter requested DHS revise the T–6 regulation to eliminate the policy of requiring that a derivative beneficiary of a T–1 nonimmigrant have already secured T nonimmigrant status before their adult or minor children facing present danger of retaliation become eligible for T–6 status. They stated that DHS's interpretation of ''derivative beneficiary'' is overly narrow, that the interpretation that the term means someone who has ''derived status'' and ''benefited'' from the qualifying relationship has no basis, and that it is inconsistent with DHS's own use of the term ''beneficiary'' elsewhere.

Response: DHS appreciates the commenter's concerns; however, it maintains that its interpretation as presented in the 2014 Policy Memorandum [28] regarding T derivatives (T Derivative Memo) is the correct legal reading of the statute. The commenter's contention that a ''derivative beneficiary'' may include someone who merely ''stands to benefit,'' but has not, at minimum, sought such a benefit, lacks statutory support. DHS maintains that the phrase ''adult or minor children of a derivative beneficiary'' plainly requires the T–6 family member to establish their eligibility through their relationship to the derivative beneficiary of the principal. A plain language reading of ''derivative beneficiary'' is someone who has *derived* a *benefit;* that is, an individual who has derived their nonimmigrant status as a family member, as defined at section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii), and who has benefited from the qualifying relationship to the principal. As noted in the T Derivative Memo, this means that a ''derivative beneficiary'' is a family member described in section 101(a)(15)(T)(ii)(I) and (II) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(I) and (II), who has been granted derivative T nonimmigrant status. Accordingly, a ''derivative beneficiary'' must have been granted T–2, T–3, T–4, or T–5 nonimmigrant status through the principal in order for the derivative beneficiary's adult or minor child to be eligible for T–6 nonimmigrant status. This conclusion is further supported by the requirement under section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii) that any derivatives be ''accompanying, or following to join'' the principal T–1 applicant.

As noted in the T Derivative Memo, Congress created the T–6 classification through a relationship to a derivative, instead of directly to a principal, as it is in other immigration benefits. Therefore, establishing a qualifying relationship between the T–6 family member and their parent is insufficient to derive eligibility as a T–6, if the T–6's parent never held T nonimmigrant status as a T derivative beneficiary. To be eligible for T–6 classification, the adult or minor child must establish the qualifying relationship to their parent who actually derived T nonimmigrant status through the principal beneficiary. Accordingly, DHS declines to make any changes in response to this comment.

N. Marriage of Principal After Principal Files Application for T Nonimmigrant Status

The regulation at redesignated 8 CFR 214.211(g)(4) states that if an applicant marries after filing the application for T–1 nonimmigrant status, USCIS will not consider the spouse eligible for derivative T–2 nonimmigrant status.

Comment: Several commenters wrote that this limitation on eligible derivatives relies on an unnecessarily narrow interpretation of section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii), by requiring that a spousal relationship exist at the time of filing. They suggested that the spouse from a marriage that occurs after the principal applicant applies for T–1 nonimmigrant status should be able to be considered as a T–2 derivative spouse.

Response: The U.S. Court of Appeals for the Ninth Circuit, in *Medina Tovar* v. *Zuchowski,* held that the regulatory requirement at 8 CFR 214.14(f)(4) that a spousal relationship must exist at the time a Petition for U Nonimmigrant Status is filed for the spouse to be eligible for classification as a derivative U–2 nonimmigrant was invalid.[29] As a matter of policy, DHS applies this decision nationwide to spousal and stepparent relationships arising in adjudications of derivative U nonimmigrant status petitions, as well as derivative T nonimmigrant status applications.[30] Accordingly, DHS has amended the regulations in the final rule to adopt the holding in *Medina Tovar* for T nonimmigrant adjudications and has stricken the following language: ''If a T–1 marries subsequent to filing the application for T–1 status, USCIS will not consider the spouse eligible as a T–2 eligible family member.'' DHS has

[28] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands'' (2014), *https://www.uscis.gov/sites/default/files/document/memos/Interim_PM-602-0107.pdf* (T Derivative Memo).

[29] *Medina Tovar* v. *Zuchowski,* 982 F.3d 631 (9th Cir. 2020).

[30] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 4, Family Members, Section D, Family Relationship at the Time of Filing,'' *https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-4* (last updated Oct. 20, 2021).

added language that principal applicants who marry while their Application for T Nonimmigrant Status is pending may file an Application for Family Member of T–1 Recipient on behalf of their spouse, even if the relationship did not exist at the time they filed their principal application. *See* new 8 CFR 214.211(e). DHS has also included language allowing for a principal applicant to apply for a stepparent or stepchild if the qualifying relationship was created after they filed their principal application but before it was approved. Finally, DHS has clarified that it will evaluate whether the marriage creating the qualifying spousal relationship or stepchild and stepparent relationship exists at the time of adjudication of the principal's application and thereafter.

Comment: One commenter requested that principal applicants should be permitted to apply for derivative T status for the parent of the principal's derivative children, as many individuals may not formalize their committed relationships through marriage.

Response: Although DHS sympathizes with these situations, the family relationships giving rise to derivative T nonimmigrant status eligibility are set forth at section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii). Thus, DHS declines to add a new standard for derivative benefits for a committed relationship in the T visa context.

O. Relationship and Age-Out Protections

DHS has amended new 8 CFR 214.211(e)(1) to state that if the principal applicant establishes that they have become a parent of a child after filing, the child will be deemed an eligible family member. This new language replaces ''had a child'' because it is more inclusive and accurate, and mirrors similar regulations in the U visa context.

DHS has also amended new 8 CFR 214.211(e)(3) to state that the age-out protections apply to a child who may turn 21 during the pendency of the principal's application for T nonimmigrant status. The prior text erroneously referred to age-out protections for children of principals who were 21 years of age or older.

P. Travel Abroad

Comment: Commenters encouraged DHS to provide advance parole for T nonimmigrants in recognition of the fact that victims' families may remain abroad. They wrote that victims would feel safer and be able to return to the United States without immigration consequences.

Response: DHS notes that T nonimmigrants are already permitted to apply for advance parole, as clarified in both the Form I–914 and Form I–131 form instructions and Policy Manual. Applications for advance parole are evaluated on a case-by-case basis pursuant to section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5). In addition, DHS has clarified that a noncitizen granted T–1 nonimmigrant status or an eligible family member must apply for advance parole to return to the United States after travel abroad. The T nonimmigrant must comply with advance parole requirements to maintain T nonimmigrant status upon return to the United States and remain eligible to adjust status under section 245(l) of the INA, 8 U.S.C. 1255(l). 8 CFR 245.23(j). *See* new 8 CFR 214.204(p), 214.211(i)(4).

Q. Extension of Status

DHS provides in this rule that a derivative T nonimmigrant may file for extension of status independently, if the T–1 nonimmigrant remains in status, or the T–1 nonimmigrant may file for an extension of their own status and request that the extension be applied to their derivative family members. This codifies the current process for derivatives to seek extensions of status. *See* new 8 CFR 214.212(b). In administering the T nonimmigrant program, USCIS found, and stakeholders expressed, that there was a lack of clarity with the extension of status process for T nonimmigrants. USCIS issued a Policy Memorandum in 2016 to clarify requirements for extension of status for T and U nonimmigrants (T/U Extension Memo).[31] DHS is codifying some of the policies in the T/U Extension Memo at new 8 CFR 214.212(f). First, this rule provides that USCIS may approve an extension of status for principal applicants based on exceptional circumstances. Second, when an approved eligible family member is awaiting initial issuance of a T visa by an embassy or a consulate and the principal's T–1 nonimmigrant status will soon expire, USCIS may approve an extension of status for a principal applicant based on exceptional circumstances. *See* new 8 CFR 214.212(f).

Finally, DHS has clarified in the evidence section for extension of status that it will consider affidavits from individuals with direct knowledge of or familiarity with the applicant's circumstances, rather than affidavits of ''witnesses.'' *See* new 8 CFR 214.212(g)(2)(v).

R. Revocation Procedures

DHS has clarified the existing practice that an automatic revocation cannot be appealed. *See* new 8 CFR 214.213(a). DHS has also clarified at § 214.213(c) that if an applicant appeals a (non-automatic) revocation, the decision will not become final until the appeal is decided. *See* 8 CFR 103.3. DHS has revised the language at new 8 CFR 214.213(b)(1) which previously referenced errors that affected the ''outcome'' and now refers to errors that led to an ''approval'' of a case.

Comment: Some commenters expressed concern that 8 CFR 214.11(m) (redesignated here as 8 CFR 214.213)) eliminates a step in the process of revocation, stating that under the prior rule at 8 CFR 214.11(s)(2), a notice of intent to revoke (NOIR) would initiate a 30-day window for the applicant to submit a rebuttal that a district director would then consider as evidence. They proposed that the rule include this prior process and provide individuals with an opportunity of rebuttal.

Response: The removal of this language in the interim rule does not reflect a change in USCIS' revocation procedures. T nonimmigrants who are issued a NOIR are provided 30 days to respond with evidence to rebut the grounds stated for revocation in the notice. These grounds and the deadline to respond are stated in all NOIRs. USCIS will consider all evidence presented in deciding whether to revoke the approved application. The reference to the district director in the 2002 interim rule is outdated, as district offices are no longer involved in revoking T nonimmigrant status. DHS has codified the current procedures for NOIRs, including the time period during which an individual may submit rebuttal evidence at 8 CFR 214.213(c).

S. Waivers of Inadmissibility

DHS has the authority to waive grounds of inadmissibility on a discretionary basis under section 212(d)(3)(A)(ii) or (d)(13) of the INA, 8 U.S.C. 1182(d)(3)(A)(ii), (d)(13).

Comment: Commenters requested that DHS clarify in the regulation that immigration judges have jurisdiction over waiver applications, referencing court decisions in the U visa context.

Response: DHS declines to adopt this recommendation. In the 2002 interim rule, DOJ delegated T-related waiver authority exclusively to the Immigration

[31] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Extension of Status for T and U Nonimmigrants (Corrected and Reissued)'' (2016), *https://www.uscis.gov/sites/default/files/document/memos/2016-1004-T-U-Extension-PM-602-0032-2.pdf* (T/U Extension Memo).

and Naturalization Service (INS), and INS's adjudicative authority transferred to USCIS with the Homeland Security Act.[32]

Comment: In cases involving violent or dangerous crimes, 8 CFR 212.16 specifies that USCIS will only exercise favorable discretion toward the applicant in extraordinary circumstances unless the criminal activities were caused by or were incident to the victimization. *See* 8 CFR 212.16(b)(3). Several commenters wrote that this provision is too stringent in its application. They stated that this language is not statutorily required, that victims of trafficking often have unfavorable criminal histories that are not directly tied to their victimization but are related to their vulnerability that led to their exploitation, and that this provision could have a chilling effect on victims coming forward to report crimes.

Other commenters encouraged DHS to require consideration of the effects and circumstances of the trafficking as they relate to criminal issues. They suggested DHS determine whether the crime occurred before the trafficking situation or is related to the trafficking, including trauma or vulnerabilities in the wake of trafficking. They requested DHS focus not on the seriousness or number of crimes and instead focus on a victim-centered approach using a balancing test.

Response: DHS declines these edits, while recognizing nuances in evaluating an applicant's criminal history and the potential for unique factors related to victimization. DHS believes that 8 CFR 212.16 appropriately informs the exercise of discretion and is fundamental to maintaining the integrity of the T nonimmigrant status program and the ability to adjudicate T visa applications on a case-by-case basis. DHS has broad waiver authority to waive most grounds of inadmissibility under section 212(d)(3)(A)(ii) and (d)(13) of the INA, 8 U.S.C. 1182(d)(3)(A)(ii), (d)(13) (if in the national interest for section 212(a)(1) of the INA, 8 U.S.C. 1182(a)(1), or if in the national interest and caused by or incident to the victimization for most other provisions of subsection 212(a) of the INA, 8 U.S.C. 1182(a) inadmissibility grounds). DHS reserves the ability to evaluate inadmissibility grounds in each individual case to ensure that the waiver is in the national interest and considers a broad variety of factors in doing so. Moreover, DHS already considers all positive and negative factors in the exercise of discretion.

T. Adjustment of Status

DHS has made several changes to the adjustment of status regulations for T nonimmigrants. DHS has stricken from 8 CFR 245.23(a)(3) the requirement that an applicant accrue 4 years in T–1 nonimmigrant status and file a complete application prior to April 13, 2009, as all such applications have been adjudicated.

In addition, DHS has removed the word ''first'' before ''date of lawful admission'' in 8 CFR 245.23(a)(4) to clarify the agency's interpretation of re-accrual of physical presence following a break in presence. This edit clarifies an outstanding legal and policy concern in the program and eliminates barriers for victims of trafficking. The statutes and regulations permit T nonimmigrants to restart the clock after a break in continuous physical presence after the first admission as a T nonimmigrant (including, but not limited to, restarting after a subsequent admission as a T nonimmigrant, or restarting after returning with advance parole after a break in continuous physical presence). This interpretation treats T nonimmigrant adjustment of status applicants and U nonimmigrant adjustment of status applicants the same regarding the requirements for continuous physical presence.

Comment: Commenters encouraged DHS to take a broader approach to adjustment of status eligibility, including allowing derivative family members to adjust independently of the T–1 nonimmigrant, and to evaluate each application on its own merits. One commenter recommended incorporating the policies outlined in the T/U Extension Memo, because it allowed derivatives to adjust independently of principals.

Response: Section 245(l) of the INA, 8 U.S.C. 1255(l), provides that if a T–1 nonimmigrant has been continuously physically present for three years since admission as a T–1 nonimmigrant (or during the investigation or prosecution of trafficking which is complete); establishes good moral character; and has complied with any reasonable request for assistance in the trafficking investigation or prosecution, would suffer extreme hardship involving unusual and severe harm upon removal, or was under age 18 at the time of victimization, the Secretary may adjust the status of the T–1 nonimmigrant and any person admitted under section 101(a)(15)(T)(ii) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii). Thus, a precondition for a derivative T nonimmigrant to adjust status under section 245(l) of the INA, 8 U.S.C. 1255(l) is that the T–1 nonimmigrant has met the above specified requirements (continuous physical presence, good moral character, etc.). For all practical purposes, a derivative T nonimmigrant generally cannot demonstrate that the T–1 nonimmigrant meets the requirements for adjustment of status in the absence of USCIS adjudicating an application for adjustment of status from the T–1 nonimmigrant themself. Therefore, DHS declines to adopt the commenter's recommendation to permit T derivatives to adjust independent of the T–1 principal.

DHS also notes that the T/U Extension Memo says derivative family members with T nonimmigrant status do not lose their status when the T–1 nonimmigrant adjusts status, allowing the derivative to adjust status later. DHS has codified this longstanding policy at 8 CFR 245.23(b)(5).

Comment: Commenters also requested changes to 8 CFR 245.23(a)(6) such that it includes an exemption for trafficking victims under the age of 18 at the time of victimization, to be consistent with the statute at 8 U.S.C. 1255(l)(1)(C).

Response: DHS agrees that Congress intended to exempt trafficking victims who were under the age of 18 at the time of their victimization from being required to contact law enforcement. This exemption should apply at the adjustment of status stage; accordingly, DHS has made this change to the regulation as a technical edit. Similarly, DHS has added reference to the trauma exception, consistent with the statute and congressional intent. *See* new 8 CFR 245.23(a)(7)(iii) and (iv).

Comment: Other commenters requested changes be made to the minimum 3-year continuous physical presence requirement because it punishes trafficking victims by forcing them to wait, and conditions early adjustment eligibility on things outside the victim's control, such as the conclusion of the investigation or prosecution.

Response: DHS is sympathetic to the difficulties victims may face in waiting to adjust status; however, the continuous physical presence period is statutory and cannot be changed by regulation.

Comment: Commenters also requested that DHS implement a process by which principal applicants who obtain lawful permanent residence and subsequently marry may file the equivalent of a Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant on behalf of eligible family members.

[32] 6 U.S.C. 271(b).

Response: DHS is sympathetic to the concerns raised in these comments but declines to adopt a process for certain relatives to apply to adjust status if they have never held T nonimmigrant status. Commenters noted the ability of U–1 nonimmigrants to file for spouses they subsequently marry after receiving U nonimmigrant status; U–1 nonimmigrants are able to do so under 8 U.S.C. 1255(m)(3); however, there is no equivalent statutory basis to create such a process in the T visa context under 8 U.S.C. 1255(l)(1).

U. Applicants and T Nonimmigrants in Removal Proceedings or With Removal Orders

Commenter: One commenter requested DHS acknowledge that trafficking survivors often escape trafficking through arrest or contact with Immigration and Customs Enforcement (ICE), who may later prosecute them without investigating whether they have been trafficked. The commenter requested that special protections be extended to survivors placed in removal proceedings and detention, to ensure survivors have access to due process in requesting a T visa.

Response: DHS acknowledges that many survivors may escape their trafficking through encounters with ICE. Understanding the concern that trafficking victims may require additional protection, DHS has made several changes to the regulation (discussed below) to further its victim-centered approach. In addition, DHS has made significant accomplishments of Priority Actions within the Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation (DHS Strategy). For example, in October 2020, DHS launched the Center for Countering Human Trafficking (CCHT), a DHS-wide effort comprising 16 supporting offices and components, led by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI). The CCHT is the first unified, intercomponent coordination center for countering human trafficking and the importation of goods produced with forced labor. In October 2021, the Secretary directed DHS components to incorporate a victim-centered approach into all policies, programs, and activities governing DHS interactions with victims of crime. Finally, in August 2021, ICE issued Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, which sets forth ICE policy regarding civil immigration enforcement actions involving noncitizen crime victims, including victims of trafficking and Continued Presence recipients.[33] This Directive emphasizes the duty to protect and assist noncitizen crime victims.

Comment: Another commenter requested that in cases where applicants can make a credible showing that they were placed in removal proceedings through retaliatory actions of their trafficker or due to their trafficking, DHS should automatically join in a motion to administratively close or to terminate the removal proceeding for the pendency of the T nonimmigrant application, including through any appeals, and overcoming any applicable time and numerical limitations.

Response: DHS declines to adopt this recommendation. DHS is cognizant that individuals may be placed in removal proceedings because of their trafficking experience and implements a victim-centered approach for all individuals it encounters. DHS believes that the following changes (listed in the subsequent seven numbered paragraphs) made to the regulation will address many of the commenter's concerns.

1. Principal Applicants, T–1 Nonimmigrants, and Derivative Family Members

Comment: Commenters indicated that their clients have faced unnecessary hurdles and additional trauma when seeking to reopen and terminate a prior removal order due to opposition by ICE. Commenters also stated that ICE ''rarely'' joins applicants' motions to administratively close, continue, or terminate proceedings. They emphasized that removal from the United States can render a victim ineligible for a T visa and vulnerable to re-trafficking or retaliation from the trafficker. The commenters suggested that the regulations be amended to mandate ICE's participation in joint motions to reopen upon a grant of T–1 or T derivative nonimmigrant status in these circumstances, or at the respondent's request, ICE should agree to a motion to administratively close, terminate or continue proceedings (if proceedings are ongoing).

Response: DHS values the need to conserve government resources and maintain coordination across the department; however, DHS declines to codify limitations on ICE's ability to make case-by-case determinations. In line with the victim-centered approach, we have revised the regulation to provide that ICE will maintain a policy regarding the exercise of discretion toward all applicants for T nonimmigrant status, and all T nonimmigrants. *See* new 8 CFR 214.214(b). To that end, DHS has also revised the regulation at new 8 CFR 214.204(b)(1)(ii), 214.205(e), and 214.211(b)(2)(ii) to state that ICE may exercise prosecutorial discretion as appropriate.

Comment: Other commenters stated that if DHS disagreed with mandating ICE to join such motions, DHS should add permissive language to this effect, making clear that the language set forth at 8 CFR 214.11(d)(1)(ii) and (k)(2)(i) (redesignated as 8 CFR 214.204(b)(2) and 214.211(b)(2)) applies both to T–1 nonimmigrants as well as T derivatives in pending removal proceedings. Other commenters also requested the regulation address derivative family members in removal proceedings.

Response: DHS agrees with the commenter's suggestion, and as described above, has amended the regulation to state that ICE may exercise prosecutorial discretion, including in cases of T derivatives or eligible family members. *See* new 8 CFR 214.211(b)(2)(ii).

2. Immigration Judges

Comment: Several commenters requested DHS add language to the regulation specifically stating that an immigration judge may terminate removal proceedings once T nonimmigrant status is granted. They requested DHS add language clarifying that an immigration judge can administratively close removal proceedings while USCIS adjudicates an application for T nonimmigrant status.

Response: This rule amends DHS regulations only and is not a joint Department of Justice (DOJ) rule. Accordingly, comments related to the authority of an immigration judge to terminate or administratively close removal proceedings are outside the scope of this rule, which cannot bind DOJ.

Comment: Commenters also suggested that the regulation direct immigration judges to terminate or administratively close proceedings for all T nonimmigrant status applicants and recipients on their own accord without a motion or request from the parties.

Response: DHS declines to adopt this recommendation. This rule amends DHS regulations only and is not a joint Department of Justice (DOJ) rule. Thus, DHS cannot bind DOJ in this rule.

3. Automatic Stays of Removal

Comment: One commenter urged DHS to automatically stay removals of

[33] ''ICE Directive 11005.3,'' *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.*

applicants whose applications are deemed to be properly filed. They request in the alternative that DHS expedite bona fide determinations for applicants with final orders of removal. Other commenters requested that DHS issue a stay of removal to applicants with pending T visa applications until a bona fide determination is made.

One commenter stated that if an application is found to be bona fide, DHS should extend an administrative stay of a final order until a final decision is made on the application for T nonimmigrant status.

Response: DHS declines to adopt these recommendations. DHS acknowledges the commenters' concerns regarding the removal of applicants with pending T visa applications. As a matter of policy, DHS generally will not remove applicants with pending T nonimmigrant status applications; however, there may be situations where it is prudent for DHS to execute removal orders prior to adjudication, and DHS does not intend to limit DHS discretion in this manner. DHS feels that the regulation's language at 8 CFR 214.204(b)(2)(i) and (ii) is sufficient to address these commenter's concerns by providing that, once granted, a stay of removal will remain in effect until a final decision is made on the application for T nonimmigrant status.

4. Unrepresented Applicants

Comment: One commenter requested that in cases where an applicant is unrepresented in proceedings, DHS should be mandated to move for termination, dismissal, administrative closure, or a continuance. The commenter stated that actively pursuing removal cases against survivors of trafficking is inconsistent with ICE's goal of prioritizing limited resources.

Response: DHS declines to adopt these recommendations. Generally, relief from removal has been historically requested by the noncitizen and is not initiated by DHS. DHS does not wish to limit ICE's discretion by mandating specific actions, as each case will present different circumstances. However, DHS agrees that prioritizing the removal of trafficking survivors is generally inconsistent with the victim-centered approach to which DHS adheres.

5. Detained Applicants

Comment: Commenters requested DHS be required to release a detained applicant once a bona fide determination has been made. Some commenters requested that DHS add a provision to the regulation requiring ICE to seek expedited processing for all detained T visa applicants (principals and derivatives). They also stated that ICE should be required to check DHS systems for VAWA confidentiality flags that indicate a pending or approved T, U, or VAWA application or petition for every detainee within 24 hours of detention. Finally, they state the regulation should specify how quickly ICE should make this request and how long USCIS should generally take to respond to the expedite request.

Response: DHS declines to adopt this recommendation. DHS appreciates the commenter's concerns. Existing USCIS and ICE processes already flag protected records via secure methods for information sharing, including through the USCIS Central Index System, which, among other things, includes flags for individuals whose records are protected under 8 U.S.C. 1367.

In addition, there is already a process in place to request expedited processing based on urgent humanitarian reasons, which can be found on the USCIS website.[34] ICE also will request expedited adjudication when necessary and appropriate, including when noncitizens are detained so adjudication of applications for T nonimmigrant status is prioritized. ICE then exercises discretion to defer decisions on enforcement action in compliance with their directives and processes.[35] Finally, although DHS understands the commenter's concerns about detained T applicants, it declines to impose processing deadlines on itself given resource needs and shifting priorities.

6. Reinstatement of Removal

Comment: One commenter requested DHS create a presumption that reinstatement of removal would not occur in cases of T, U, and VAWA eligible victims, to avoid victims being removed from the United States.

Response: DHS declines to adopt this recommendation. This comment is partially out of scope, as DHS can make no changes to VAWA or U regulations in this rule because we made no changes to those programs in the interim rule. In addition, relief from removal has been historically requested by the noncitizen and is not initiated by DHS. Operationally, it would take many resources and considerable infrastructure to create a process in which DHS could actively seek out noncitizens with pending T applications, and who have a prior removal order, just to ensure a reinstatement would not be issued. Furthermore, DHS declines to limit ICE's discretion in this manner, but emphasizes that ICE uses a victim-centered approach in which all relevant circumstances are considered.

7. Issuances of Notices To Appear (NTAs)

Comment: Commenters suggest codifying DHS statements from the 2016 Interim Final Rule preamble language regarding not issuing NTAs to individuals with pending applications for T nonimmigrant status.

Response: DHS agrees to adopt this suggestion and has introduced a new provision at 8 CFR 214.204(b)(3) clarifying that USCIS does not have a policy to refer applicants for T nonimmigrant status for removal proceedings absent serious aggravating circumstances, such as the existence of an egregious criminal history, a threat to national security, or where the applicant is complicit in trafficking. Issuing NTAs to survivors of trafficking outside of these circumstances undermines both the humanitarian and law enforcement purposes of the statute. The new provision at 8 CFR 214.204(b)(3) is consistent with several of the Priority Actions outlined in the White House's 2021 National Action Plan to Combat Human Trafficking[36] as well as several objectives laid out in the DHS Strategy.[37]

V. Notification to ICE of Potential Trafficking Victims

8 CFR 214.11(o) (redesignated here as 8 CFR 214.215) addresses the duty of USCIS employees who encounter potential victims of trafficking to consult with the appropriate ICE officials to initiate law enforcement investigation and assistance to victims.

Comment: Commenters requested that DHS reconsider whether USCIS employees should be making referrals to consult with ICE officials. They wrote

[34] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''How to Make an Expedite Request,'' *https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request* (last updated Oct. 20, 2022).

[35] *See* ''ICE Directive 11005.3,'' *https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.*

[36] ''National Action Plan,'' *https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf.* In particular, this aligns with ''Priority Action 2.2.2: Provide human trafficking victims protection from removal'' and ''Priority Action 2.3.2: Provide immigration protections to ensure eligible victims are not removed.''

[37] ''DHS Strategy,'' *https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf.* Specifically, the new regulation is consistent with the priority actions ''Develop Victim-Centered Policies and Procedures for DHS Personnel'' and ''Improve Coordination of Immigration Options for Victims of Human Trafficking.''

that interaction with ICE may put trafficking survivors at risk for criminal liability and potential deportation and that these interactions may harm applicants eligible for the trauma exception or who do not feel comfortable cooperating with LEAs. Commenters suggested instead that USCIS employees should advise potential victims of their possible immigration remedies and provide a referral to the National Human Trafficking Hotline. Some commenters suggested that such a referral would defeat the purpose of the confidentiality protections at 8 U.S.C. 1367. They wrote that USCIS should be especially cautious of such consultations when the potential victim is represented by an attorney or receiving services from a social services agency and recommended that DHS revise the provision to require USCIS to consider such information when consulting with ICE officials.

Response: DHS appreciates concerns about the protection of vulnerable applicants and the potential consequences of LEA intervention, including concerns that represented individuals and those receiving social services may have made an informed decision with regard to reporting to law enforcement in light of the trauma exception; however, referrals to ICE's Homeland Security Investigations (HSI) are important given the role they play in combating criminal organizations that commit human rights violations, including human trafficking. HSI is victim-oriented, has extensive experience handling trafficking cases with sensitivity, and employs victim assistance specialists that work directly with individuals who have experienced trafficking. Sharing information between USCIS and ICE under these circumstances is permitted under 8 U.S.C. 1367 because the referral is within DHS for legitimate Department purposes, including coordination on Continued Presence and expedite requests. Nevertheless, in consideration of these comments, DHS has revised 8 CFR 214.215 to state that USCIS ''may'' consult, rather than ''should'' consult with ICE.

USCIS exercises caution whenever it shares information protected under 8 U.S.C. 1367 with ICE HSI, and evaluates all relevant circumstances in deciding whether to share such information, including whether there is a legitimate Department purpose for sharing. ICE HSI is equally bound by the confidentiality protections of 8 U.S.C. 1367(a)(2), including whether a person is represented by an attorney or accredited representative.

W. Fees

Comment: Commenters stated that T visa applicants incur significant fees in filing related forms and that access to fee waivers is crucial. Some commenters noted that detained trafficking survivors do not have funds to pay filing fees or provide documentation of their financial circumstances. They asked DHS to simplify and streamline the fee waiver request process and consider ''any credible evidence'' in adjudicating fee waiver requests. Other commenters requested that DHS extend the fee exemption to all ancillary applications related to the application for T nonimmigrant status to include motions and appeals. A few commenters noted that DHS has eliminated many of the fees associated with applying for T nonimmigrant status in recognition of the challenges victims of a severe form of trafficking in persons and their family members may face in bearing these costs. Commenters asked that DHS extend the fee exemptions to applications for employment authorization filed by eligible family members in 8 CFR 214.11(k)(10) (redesignated here as 8 CFR 214.211(i)(3)). They proposed that, at a minimum, the rule clarify that family members seeking employment authorization can submit fee waiver requests instead of associated fees. Other commenters requested DHS require that all fee waiver requests be processed within 30 days of receipt.

Response: DHS recognizes the challenges faced by trafficking victims and their family members, including the costs of submitting applications associated with T nonimmigrant status. DHS appreciates the importance of the fee waiver process and takes note of the commenters' concerns. On January 31, 2024, USCIS published a Final Rule (Fee Rule) to adjust certain immigration and naturalization benefit request fees.[38] That rule codified 8 CFR 106.3(b)(2) which exempts persons seeking or granted T nonimmigrant status from the fees for several different USCIS forms. As a result, T nonimmigrants, T nonimmigrant applicants, and their derivatives will generally pay no USCIS fees until they apply for naturalization, at which time they may request a fee waiver or a reduced fee.

Comment: Commenters also requested a presumption in favor of granting fee waivers submitted in association with a T visa application or if the applicant is detained by DHS, in the absence of specific and exceptional circumstances.

Response: Persons seeking or granted T nonimmigrant status are exempt from paying fees for all related forms through adjustment of status. 8 CFR 106.3(b)(2). As a result, T nonimmigrants, T nonimmigrant applicants, and their derivatives will not be required to request a fee waiver until they file Form N–400, Application for Naturalization.[39]

X. Restrictions on Use and Disclosure of Information Relating to T Nonimmigrant Status

Comment: Commenters expressed support for DHS including the reference at 8 CFR 214.11(p) (redesignated as 8 CFR 214.216) in confidentiality provisions and exceptions that specifically apply to human trafficking survivors under 8 U.S.C. 1367(a)(2) and (b). One commenter acknowledged DHS's rationale for not including the entire list of exceptions to the restrictions included in 8 U.S.C. 1367(b) but requested that DHS add language to the provision that would highlight the exceptions on disclosure for law enforcement or national security purposes. The commenter wrote that including these specific examples would help victims make an informed decision of whether to apply for T nonimmigrant status.

Response: DHS recognizes the importance of ensuring that applicants are fully informed of the consequences of applying for immigration benefits. Nevertheless, DHS may share the information with other Federal, State, and local government agencies and other authorized organizations. *See* 5 U.S.C. 552a. DHS regulations already discuss the reasons an applicant's information may be released. *See* 6 CFR part 5, subpart B. In addition, the Form I–914, Application for T Nonimmigrant Status, Instructions clearly state that the information provided may also be made available as appropriate for law enforcement purposes or in the interest of national security as permitted by 8 U.S.C. 1367. Therefore, DHS made no changes in the final rule in response to this comment.

Comment: One commenter requested DHS add to the regulation that upon denial of an application, USCIS will inform an applicant that their privacy protections are void per 8 U.S.C. 1367 and will state the parties with whom the applicant's information may be shared.

Response: DHS declines to adopt this recommendation because protections

[38] *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,* 89 FR 6194 (Jan. 31, 2024).

[39] DHS published multiple new fee exemptions for T nonimmigrants as part of a comprehensive adjustment to all USCIS fees. *See, e.g.,* 89 FR 6392.

under 8 U.S.C. 1367(a)(2) only end when ''the application for relief is denied and all opportunities for appeal of the denial have been exhausted.'' 8 U.S.C. 1367(a)(2). Therefore, including such a notification in the denial notice would be premature.

Y. Public Comment and Responses on Statutory and Regulatory Requirements

Comment: Some commenters cited statistics on the number and demographics of trafficked victims within the United States. One commenter cited a survey entitled, ''YES Project; Youth Experiences Survey: Exploring the Sex Trafficking Experiences of Arizona's Homeless and Runaway Young Adults,'' conducted by Arizona State University (ASU) School of Social Work in 2014. The results of the survey found that 25 percent of the 246 homeless youth who were surveyed reported being victims of trafficking. Additionally, the commenter cited that the average age of entry to sex trafficking is 14 years old. Another commenter provided data on the total number of human trafficking victims (20.9 million people) as published in a U.S. News and World Reports opinion editorial.

Response: DHS appreciates the commenters' responses and has reviewed the cited data provided by commenters. Although DHS recognizes that the cited data supports the goals of this rule, DHS cannot confirm or deny the data with reliable accuracy and, therefore, does not use it in its analysis. The sampling frame of the YES Project survey included 246 homeless youth who received services from three Arizona-based young adult serving organizations.[40] Because the survey sampled only a small number of homeless youth and a small number of Arizona youth-based programs, DHS did not feel it was appropriate to make any general conclusions from such data.

Z. Biometrics

Comment: One commenter encouraged USCIS to accept biometrics taken by ICE rather than require a detained applicant to submit their biometrics at a USCIS Application Support Center.

Response: DHS appreciates the commenter's goal of increasing efficiency. USCIS is examining whether it has the legal authority and technical capability to submit to the Federal Bureau of Investigation biometrics collected by a criminal justice agency or from a non-criminal justice agency when the biometrics were collected for a different purpose from USCIS' purpose of use. DHS will continue to explore the feasibility of permitting USCIS to use biometrics collected by ICE for adjudication of applications for T nonimmigrant status from detained individuals, but declines to codify any changes at this time.

AA. Trafficking Screening, Training, and Guidance

1. Screening

Comment: One commenter requested that the regulation require DHS to conduct screening for trafficking victims by all levels of DHS, at each stage of the immigration process; require ICE to screen all detained individuals and provide release on bond or parole for anyone identified as a trafficking victim; and require OPLA attorneys to screen for trafficking both before issuing NTAs as well as for each case they prosecute. The commenter also stated that if an NTA has already been issued, the regulation should require that the ICE attorney immediately notify the court and opposing counsel (or, in absence of counsel, the Respondent), request a continuance or administrative closure, and refer the victim for trafficking support services and investigation.

Response: DHS appreciates the commenter's recommendation regarding screening efforts to protect victims of trafficking. In response to the White House National Action Plan to Combat Human Trafficking, there is a government-wide effort to update screening forms and protocols for all Federal officials who have the potential to encounter a human trafficking victim in the course of their regular duties that do not otherwise pertain to human trafficking. In support of this priority action, DHS co-chairs the interagency working group to document promising practices and identify opportunities to strengthen current efforts to screen for victims of human trafficking.[41] DHS declines to impose anything further via regulation at this time, as DHS believes these actions address the commenter's concerns.

2. Training

Comment: Several commenters requested DHS provide additional resources, support, and training to LEAs to help them understanding the nuances of trafficking. Specifically, they stated that LEAs should be trained to recognize the co-existence of trafficking and domestic violence. The commenters encouraged DHS to release a Law Enforcement Declaration Guide. They also suggested that DOJ's Office on Violence Against Women (OVW) should provide training, not DHS.

Response: DHS is committed to providing training and support to certifying officials and stakeholders on trafficking and the T visa program. As discussed extensively above, DHS acknowledges that domestic violence and trafficking may coexist, and has provided significant guidance in the Policy Manual to reflect this.

On October 20, 2021, USCIS published the first ever standalone T Visa Law Enforcement Resource Guide for certifying officials,[42] which clarifies the role and responsibility of certifying agencies in the T visa program, provides certifying officials with best practices for approaching the T visa certification process, and emphasizes that completing the declaration is consistent with a victim-centered approach. In addition, OVW provides leadership in developing the national capacity to ''reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.'' [43] OVW also supports the provision of training and technical assistance to assist service providers and the anti-trafficking field in ensuring successful for survivors of trafficking.[44]

As DHS is responsible for adjudicating T visas, and encounters trafficking victims in various ways, it is imperative DHS continues to train certifying officials and others about trafficking and the T visa.

3. Guidance

Comment: Several commenters requested DHS issue policy guidance to LEAs on referring potential victims to local nongovernmental organizations for assistance to identify, support, and protect trafficking victims.

Response: DHS already works with local governments and NGOs to assist

[40] Dominique Roe-Sepowitz, and Kristen Bracy, ''YES Project; Youth Experiences Survey: Exploring the Sex Trafficking Experiences of Arizona's Homeless and Runaway Young Adults.'' Office of Sex Trafficking Intervention Research (2014): ASU School of Social Work, *http://www.trustaz.org/downloads/rr-stir-youth-experiences-survey-report-nov-2014.pdf.* (Nov. 2014).

[41] ''DHS Strategy,'' *https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf.*

[42] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''T Visa Law Enforcement Resource Guide'' (2021), *https://www.uscis.gov/sites/default/files/document/guides/T-Visa-Law-Enforcement-Resource-Guide.pdf.*

[43] Office on Violence Against Women, U.S. Dep't of Justice, *https://www.justice.gov/ovw* (last visited Apr. 4, 2023).

[44] *See, e.g.,* Office on Violence Against Women, U.S. Dep't of Justice, ''OVW Fiscal Year 2022 Training and Technical Assistance Initiative Solicitation'' (2022), *https://www.justice.gov/ovw/page/file/1484676/download.*

trafficking victims and it is not necessary to address those efforts and guidance in this rule. DHS will consider this comment in future policy-making efforts.

BB. Miscellaneous Comments

1. Cases Involving Multiple Victims

Comment: One commenter requested DHS recognize the complexity and special nature of cases of groups of trafficking victims in an active and ongoing law enforcement investigation. Specifically, the commenter requested DHS create a mechanism to identify cases with multiple victims and to coordinate a streamlined evaluation of these victims' applications.

Response: DHS declines to adopt this recommendation, as each applicant is required to meet their own individual burden of proof, and each case is evaluated based on the evidence presented in that specific application. USCIS adjudicates each case on its own merits and declines to create processes to handle cases as a group. DHS thinks a group application process would be particularly difficult to administer considering the confidentiality protections each member of the group would have as required by 8 U.S.C. 1367.

2. Social Security Cards

Comment: Another commenter requested that DHS revise the Form I–914 and Form I–914, Supplement A, Application for Family Member of T–1 Recipient, to include a checkbox for applicants to indicate they wish to receive a Social Security card, similar to the checkbox for applicants to indicate they wish to receive an Employment Authorization Document (EAD). The commenter stated that it would allow trafficking survivors to obtain their Social Security cards in a more streamlined manner, and this would allow individuals to more easily access important services needed for emotional and financial stability.

Response: DHS acknowledges the concerns of the commenter regarding delays in victims obtaining benefits and appreciates there are significant benefits and efficiencies that could be achieved through this change; however, DHS declines to adopt this recommendation in this final rule. The Social Security Administration (SSA) issues Social Security cards, whereas USCIS issues EADs. Implementing this suggestion would require specific coordination with SSA, as well as updating USCIS systems. At this time, DHS does not have the required infrastructure or resources to adopt this recommendation. Moreover, rulemaking would not be required to implement this recommendation when the capabilities are in place. Therefore, DHS will keep this suggestion under consideration for possible, future form revision efforts and interagency coordination.

3. Victim-Blaming

Comment: One commenter stated that USCIS routinely blames the victim and says in RFE and denial notices that individuals who knowingly undertook the dangerous journey to the United States should have expected to experience forced labor or rape. The commenter wrote that blaming the victim should not be allowed by regulation and this language should be prohibited from RFEs.

Response: DHS appreciates the commenter's concern and has taken these comments into consideration. DHS has implemented a victim-centered approach, which is evident in the language of the regulation. Moreover, adjudicators are specifically trained to write RFEs in a manner that does not revictimize applicants. Officers regularly receive supervisory guidance. USCIS conducts ongoing training to adjudicators, and routinely evaluates trends that may require additional training or recalibration of procedures. As part of this rulemaking, USCIS is also updating related policy guidance on issuance of RFEs and the victim-centered approach. However, DHS declines to adopt the recommendation of including specific language in the regulation about what should be included in RFEs. General guidelines on the contents of official correspondence are more appropriately suited for policy guidance, and DHS feels that prohibiting specific language could unnecessarily restrict discretion to address case-specific circumstances.

4. Processing Times

Comment: One commenter stated that the new regulations should indicate that any case pending for more than 90 days should be considered to be outside an acceptable processing time, to allow attorneys to sue USCIS more easily when it unnecessarily delays adjudication of T visas. The commenter wrote that survivors need status and adjudication quickly.

Response: DHS understands and is sympathetic to the commenter's concern about survivors receiving status as quickly as possible and their frustrations with processing times but declines to implement an ''acceptable processing time'' due to various factors, including USCIS resource constraints. Each case presents a different set of facts that require highly technical analysis, and processing times may differ between cases. Some cases, due to circumstances outside of DHS's control, may not be able to be adjudicated within such a prescribed timeframe. DHS also notes the new BFD provisions address this concern, as their goal is to help stabilize bona fide applicants faster.

5. Motions To Reopen and Reconsider

Comment: One commenter stated that there is a lack of clarity in the regulations as to whether a Motion to Reopen and Reconsider filed by a T visa principal extends to their derivatives' applications. The commenter stated that their clients who were derivatives received NTAs related to denied T visa applications, although the associated T principal applicant had submitted a timely Motion to Reopen and Reconsider. This would indicate that a separate Motion to Reopen and Reconsider should be filed for each individual derivative application, despite the fact that this would be duplicative, and the T–1 application is the decisive factor in the adjudication of the derivative applications. The commenter recommended revising the regulation to state that a denial would not become final for the applicant or their derivatives until the administrative appeal is decided.

Response: DHS declines to adopt this recommendation. Each denied application, Forms I–914 and I–914A, requires a separately filed Form I–290B, Notice of Appeal or Motion as a Form I–290B cannot be filed for multiple receipts or filings. DHS emphasizes that in cases where an appeal of a T–1 application denial has been filed, the case is considered to remain administratively pending until a decision on appeal is made. If an applicant files an appeal for a denied Form I–914A, then that application would also be considered administratively pending until a final decision is rendered by the Administrative Appeals Office (AAO). A decision on appeal is then considered to be administratively final even if a subsequent motion is filed. 8 CFR 214.11(d)(10) (redesignated as 8 CFR 214.204(q)). In this case, an administratively final decision occurs when the AAO issues a decision affirming the denial of the Form I–914. The filing of an appeal of the Form I–914 denial would affect its own administratively pending status and not automatically place any denied Form I–914As in a pending status.

6. HHS Notification

Comment: Other commenters requested that USCIS notify HHS of any applicant on the waiting list.

Response: DHS declines to adopt this recommendation. Such inter-agency communications are generally not appropriate to be mandated in the Code of Federal Regulations. In addition, given the confidentiality protections and sensitive nature of T applications, DHS wishes to avoid mandating any communications that are not required by statute.

7. Program Integrity

Comment: One commenter expressed concern about oversight in the T visa program. They expressed concern that victims could cause harm to themselves and American society. The commenter wondered about vetting and expressed concern about exploitation of loopholes. The commenter also stated that Americans should be receiving the same type of or superior benefits first.

Response: DHS acknowledges the commenter's concerns; however, DHS implements the T visa program as authorized by Congress. Adjudicators evaluate each application on its own merits. DHS remains committed to the fair and just adjudication of all immigration benefit requests. At the same time, DHS vets all immigration benefit requests to ensure they are granted only to those who have established eligibility. This requires DHS to ensure that applicants do not obtain benefits for which they are not eligible under the law.

8. Annual Cap

Commenter: One commenter stated that the annual cap on T visas is inconsistent with Congress' intent when creating T nonimmigrant status relief. They stated DHS should provide comprehensive data about T visa application trends, and other information as necessary, to support any Congressional efforts to eliminate the T visa cap.

Response: DHS provides comprehensive data on the characteristics of T visa applications, and regularly posts quarterly updates on the number of applications received, approved, denied, and pending by fiscal year.[45] In addition, DHS is responsive to Congressional and stakeholder inquiries on T visa filing trends, including questions and concerns about the cap.

9. Continued Presence Adjudication

Comment: Another commenter encouraged DHS to ensure Continued Presence (CP) benefits are not arbitrarily adjudicated or delayed. They suggested DHS create regulations on CP that: direct DHS to grant CP within 60 days of receiving a credible report of human trafficking; detail a uniform, fair, and timely process for granting or denying CP, with a focus on providing the maximum protections envisioned by Congress; and to the extent possible under legislation, allow DHS to receive CP requests from any law enforcement agency.

Response: DHS appreciates the commenter's concerns but declines to address them in this rulemaking effort, particularly because CP was not included in the IFR. The CCHT, which processes all requests for CP, implements a victim-centered approach. DHS declines to impose a deadline on adjudicating CP, given shifting priorities and resource allocations. CP may already be requested by any LEA with the authority to investigate or prosecute human trafficking, including local law enforcement.[46]

10. Comment Period

Comment: One commenter requested that DHS and other agencies allow 60 days for comment on proposed regulations. The commenter also requested that DHS establish a regular schedule for updating regulations when statutory changes are made in order to reflect legislative changes.

Response: DHS generally publishes proposed rules for 60 days of public comments as provided in section 6.(a)(1) of Executive Order 12866, Regulatory Planning and Review, unless exigent circumstances justify a 30-day comment period as permitted by 5 U.S.C. 553. DHS also published regulations as soon as practicable after new legislation is passed that requires a change in the applicable regulations. This comment requires no change to the final rule.

CC. Out of Scope Comments

Several comments were submitted that did not relate to the substance of the Final Rule. One commenter provided a list of general criticisms of USCIS in general and its administration of the T nonimmigrant program as follows:

- USCIS generally ignores expedite requests.
- USCIS regularly dismisses labor trafficking, particularly of men, as ''mere exploitation'' without defining what the difference between that and trafficking may be.
- USCIS uses boilerplate RFEs and denial letters that are victim blaming and dismissive of the survivor's experience.
- USCIS denial notices have stated that less weight would be given where an individual initiated therapy after issuance of an RFE, even though USCIS made it very difficult for a person to be able to pay for therapy, by refusing to review prima facie/bona fides and issue a determination that could help the person access services. The commenter wrote that this blames the victim for something outside their control.

Response: DHS acknowledges the commenter's feedback but notes that their suggestions are not about and do not affect the substantive content of this rulemaking. DHS makes no changes to the final rule in response to these comments.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866, 13563, and 14094

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' as defined under section 3(f) of E.O. 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed $200 million in

[45] *See* U.S. Citizenship and Immig. Servs., U.S. Dep't of Homeland Security, ''Characteristics of T Nonimmigrant Status (T Visa) Applicants Fact Sheet'' (2022), *https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Characteristics of T Nonimmigrant Status (T Visa) Applicants Fact Sheet'' (2023), *https://www.uscis.gov/sites/default/files/document/fact-sheets/Characteristics_of_T_Nonimmigrant_Status_TVisa_Applicants_FactSheet_FY08_FY22.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Immigration and Citizenship Data,'' *https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data* (last visited Feb. 15, 2023).

[46] *See* Center for Countering Human Trafficking, U.S. Dep't of Homeland Security, ''Continued Presence Resource Guide'' (2023), *https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf.*

any year of the analysis. Accordingly, OMB has reviewed this rule.

1. Summary

As discussed further in the preamble, this final rule adopts the changes from the 2016 interim rule with some modifications. The rationale for the 2016 interim rule and the reasoning provided in the preamble to the 2016 interim rule remain valid with respect to these regulatory amendments, therefore, DHS adopts such reasoning to support this final rule. In response to the public comments received on the 2016 interim rule, DHS has modified some provisions for the final rule. DHS has also made some technical changes in the final rule.

This final rule clarifies some definitions and amends provisions regarding bona fide determinations (BFD) to implement a new process. This final rule also clarifies evidentiary requirements for hardship, codifies the evidentiary standard, and codifies the standard of proof that applies to the adjudication of an application for T nonimmigrant status. DHS also made technical changes to the organization and terminology of 8 CFR part 214.

For the 10-year period of analysis of the rule using the post-IFR baseline of the rule, DHS estimates the annualized costs of this rule will be $807,314 annualized at 3- and 7 percent. Table 1 provides a more detailed summary of the final rule provisions and their impacts.

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Table 1. Summary of Provisions and Impacts of the Final Rule Using the Post-IFR Baseline			
Final Rule Provisions	Description of Change to Provision	Estimated Costs of Provisions	Estimated Benefits of Provisions
• Bona Fide Determination (BFD) Process Modifications.	• The new streamlined process will include case review and background checks. • Once an individual whose application has been deemed bona fide files a Form I-765, Application for Employment Authorization, DHS will consider whether the applicant warrants a favorable exercise of discretion and will be granted deferred action and a BFD employment authorization document.	Quantitative: Applicants - • None. • DHS estimates the additional cost for completing and filing Form I-765 will be $807,314 annually. DHS/USCIS - • None. Qualitative: Applicants – • None. DHS/USCIS – • DHS may incur additional costs due to the time to review evidence; however, DHS cannot estimate how many applications would take any additional time.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • The primary benefits of this provision to applicants are the opportunity to receive work authorization sooner and the ability to receive forbearance from removal (deferred action) while the T visa application is pending. Likewise, applicants with a final order of removal will receive a stay of removal more quickly. DHS/USCIS – • The benefit of this provision is that it prioritizes efficient T visa BFD review, protects the integrity of the BFD review by requiring review of initial required evidence and assessment of routine background checks.
• Clarifications to eligibility requirements.	• DHS is also clarifying the eligibility requirements that apply to the adjudication of an application for a T visa.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – Based on the additional clarifications regarding eligibility requirements for T	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • None. DHS/USCIS –

		nonimmigrant status, USCIS estimates that there will be a reduction in Requests for Evidence (RFEs). This reduction will save the applicant time and will allow for their application to be adjudicated earlier. DHS/USCIS – • None.	• USCIS estimates that there will be a reduction in RFEs, because applicants will be aware of the evidentiary requirements from the outset, resulting in a decrease in time per adjudication.
• Technical Changes, Clarifying Definitions, and other Qualitative Impacts in this Final Rule.	• This rule moves the regulations for T nonimmigrant status to a separate subpart of 8 CFR part 214 to reduce the length and density of part 214, while making it easier to locate specific provisions. • In addition to the re-numbering and re-designating of paragraphs, the rule has reorganized and modified some sections to improve readability, such as in new sections.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • None. DHS/USCIS – • None.	Quantitative: Applicants - • None. DHS/USCIS - • None. Qualitative: Applicants – • The benefit of these changes is to make the application process clearer for T visa applicants. DHS/USCIS – • None.

In addition to the impacts summarized above, and as required by OMB Circular A–4, Table 2 presents the prepared accounting statement showing the costs and benefits to each individual affected by this final rule using the post-IFR baseline.[47]

[47] Office of Mgmt. & Budget, Exec. Office of the President, ''OMB Circular A–4'' (2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

Table 2. OMB A-4 Accounting Statement ($ millions, FY 2021) **Time Period: FY 2023 through FY 2032** Post-IFR Baseline				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	N/A			Regulatory Impact Analysis ("RIA")
Annualized quantified, but unmonetized, benefits	N/A			RIA
Unquantified Benefits	This rule will allow certain T visa applicants the opportunity to receive work authorization sooner and to receive forbearance from removal (deferred action) while their T visa applications are pending. This rule prioritizes efficient T visa BFD review and protects the integrity of the BFD review by requiring review of initial required evidence and assessment of routine background checks.			RIA
COSTS				
Annualized monetized costs (7%)	**$0.81**	N/A	N/A	RIA
Annualized monetized costs (3%)	**$0.81**	N/A	N/A	
Annualized quantified, but unmonetized, costs	N/A			
Qualitative (unquantified) costs	USCIS estimates that there will be a reduction in RFEs. This reduction will save the applicant time and will allow USCIS to adjudicate their applications earlier. The reduction in RFEs will also save USCIS adjudicators time because they will more frequently have all required information at the outset of adjudication. This will allow USCIS to adjudicate applications more efficiently. These are all seen as unquantified cost savings. DHS may incur additional costs due to the time to review evidence from the new streamlined process; however, DHS cannot estimate how many applications would take additional time.			RIA
TRANSFERS				
Annualized monetized transfers (7%)	**N/A**	N/A	N/A	
Annualized monetized transfers (3%)	**N/A**	N/A	N/A	
From whom to whom?	From the fee-paying populations to Form I-914 applicants.			
Miscellaneous Analyses/Category	***Effects***			***Source Citation***
Effects on State, local, or tribal governments	None			RIA
Effects on small businesses	None			RIA
Effects on wages	None			None
Effects on growth	None			None

In addition to the impacts summarized above, and as required by OMB Circular A–4, table 3 presents the prepared accounting statement showing the costs and benefits to each individual affected by this final rule using the pre-IFR baseline.[48]

[48] Office of Mgmt. & Budget, Exec. Office of the President, ''OMB Circular A–4'' (2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.*

Table 3. OMB A-4 Accounting Statement ($ millions, FY 2021) **Time Period: FY 2017 through FY 2032,** Pre-IFR Baseline				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Monetized Benefits	N/A	Regulatory Impact Analysis ("RIA")		
Annualized quantified, but unmonetized, benefits	N/A	RIA		
Unquantified Benefits	Provided clarity and consistency in DHS practice with DHS regulations will lead to a qualitative benefit providing transparency to both the victims of trafficking and USCIS adjudicators. Provided a broader definition of an eligible family member and may increase the number of eligible family members. Provided a benefit by acknowledging the significance of an applicant's maturity in understanding the importance of participating with an LEA. Victims who are likely to become a public charge are able to apply for T nonimmigrant status and receive the benefits associated with that status. Provided T nonimmigrants status for an additional year with the possibility of extension. Provided a broader definition of physical presence on account of trafficking and may increase the number of eligible applicants. Provided a qualitative benefit by removing an age-out restriction, allowing a principal applicant parent to apply for a child as a derivative beneficiary, even if the child reaches age 21 while the principal's T-1 application is pending. Provided a qualitative benefit by enabling the health and well-being of a minor victimized by trafficking. These victims also obtain federally funded benefits and services.	RIA		
COSTS				
Annualized monetized costs (7%)	N/A	RIA		
Annualized monetized costs (3%)	N/A			
Annualized quantified, but unmonetized, costs	N/A			
Qualitative (unquantified) costs	N/A	RIA		
TRANSFERS				
Annualized monetized transfers (7%)	N/A	RIA		
Annualized monetized transfers (3%)	N/A			

From whom to whom?		
Miscellaneous Analyses/Category	***Effects***	***Source Citation***
Effects on State, local, or tribal governments	None	RIA
Effects on small businesses	None	RIA
Effects on wages	None	None
Effects on growth	None	None

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2. Background and Population

As stated in the 2016 interim final rule, Congress created T nonimmigrant status in the Trafficking Victims Protection Act (TVPA) of 2000. T nonimmigrant status is available to victims of a severe form of trafficking in persons who comply with any reasonable request for assistance from law enforcement agencies (LEAs) in investigating or prosecuting the perpetrators of these crimes and who meet other requirements. T nonimmigrant status provides temporary immigration benefits (nonimmigrant status and employment authorization) and the ability to adjust to lawful permanent resident status, provided that established criteria are met, and a favorable exercise of discretion is warranted. Additionally, if a victim of a severe form of trafficking in persons obtains T nonimmigrant status, then certain eligible family members may also obtain T nonimmigrant status.[49]

Table 4 provides the number of T nonimmigrant application receipts, approvals, and denials for principals and derivative family members for FY 2017 through FY 2022. Although the maximum annual number of T nonimmigrant visas that may be granted is 5,000 for T–1 principal applicants per fiscal year[50] Table 4 shows that based on a 6-year annual average, DHS receives 2,889 Form I–914 applications (both Form I–914 and I–914 Supplement A) per year.

Table 4. USCIS Processing Statistics for Form I-914[1] and Form I-914 Supplement A FY 2017 through FY 2022.

	VICTIMS (T-1), Form I-914			**FAMILY OF VICTIMS (T-2 through T-6), Form I-914A**			**Form I-914 and Form I-914A TOTALS**		
FY	**Receipts**	**Approved**	**Denied**	**Receipts**	**Approved**	**Denied**	**Receipts**	**Approved**	**Denied**
2017	1,141	672	226	1,118	690	115	2,259	1,362	348
2018	1,666	580	310	1,313	698	261	2,979	1,278	571
2019	1,302	495	390	1,029	464	236	2,331	959	626
2020	1,207	1,041	798	992	1,013	526	2,199	2,054	1,324
2021	1,596	826	564	1,033	623	379	2,629	1,449	943
2022	3,070	1,715	389	1,865	1,319	247	4,935	3,034	636
6-year Total	**9,982**	**5,329**	**2,677**	**7,350**	**4,807**	**1,764**	**17,332**	**10,136**	**4,448**
6-year Annual Average	**1,664**	**888**	**446**	**1,225**	**801**	**294**	**2,889**	**1,689**	**741**

Notes:

[1]Approved and denied volumes may not add up to the receipts in a given fiscal year because the processing and final adjudication decision for T nonimmigrant status applications may overlap fiscal years, due to backlogs. USCIS records indicate that processing an application for T nonimmigrant status requires an estimated 6 to 9 months. Data source for the table: Performance Analysis System (PAS), USCIS Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB), March 2023& USCIS Analysis.

Table 5 shows the number of receipts received with and without Form G–28, FY 2017 through FY 2022. Based on a 6-year annual average, DHS estimates the annual average receipts to be 2,909 and the annual average number of Form G–28 receipts to be 2,673. Based on these figures, DHS estimates that 92 percent of Form I–914 receipts are filed by applicants represented by an attorney or accredited representative. The data in table 4 and table 5 differ due to the dates the data were pulled and the different systems from which they were pulled. Both data sources are accurate; however, they use different criteria/assumptions to extract the results from USCIS sources. Estimates in table 4 are based

[49] The current T nonimmigrant categories are T–1 (principal applicant), T–2 (spouse), T–3 (child), T–4 (parent), T–5 (unmarried sibling under 18 years of age); and T–6 (adult or minor child of a principal's derivative beneficiary).

[50] There is no statutory cap for grants of derivative T nonimmigrant status or visas.

on vintage data while results in table 5 continue to fluctuate in real-time, sometimes even in prior fiscal years, as updates are made in the administrative data.

Table 5. Total Form I-914 and Form I-914 Supplement A Receipts with and without Form G-28, FY 2017 through FY 2022.

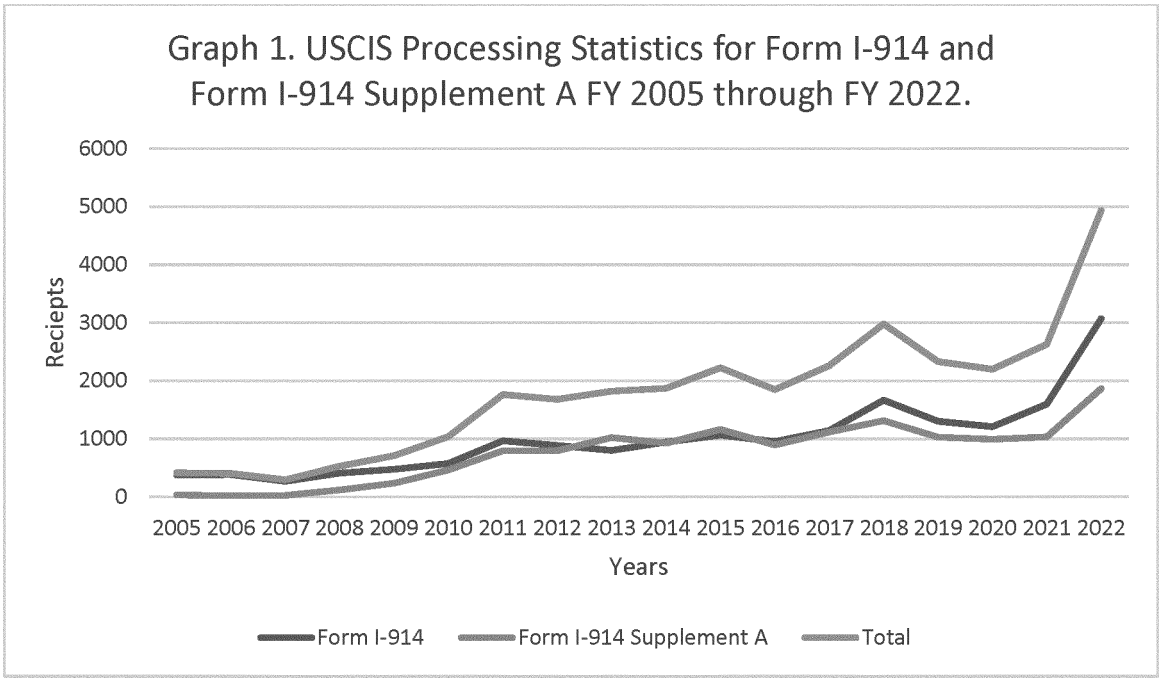
FY	Form G-28 Receipts Received without a Form I-914 and Form I-914 Supplement A	Form G-28 Receipts Received with a Form I-914 and Form I-914 Supplement A	Total Form I-914 and Form I-914 Supplement A Receipts	Percentage of Forms I-914 and Form I-914 Supplement A filed with Form G-28
2017	191	2,128	2,319	92%
2018	415	2,516	2,931	86%
2019	164	2,101	2,265	93%
2020	135	2,010	2,145	94%
2021	166	2,617	2,783	94%
2022	343	4,667	5,010	93%
6-year Total	**1,414**	**16,039**	**17,453**	**92%**
6-year Annual Average	**236**	**2,673**	**2,909**	**92%**

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. May 31, 2023 & USCIS Analysis.

DHS acknowledges that there was a significant increase in receipts in FY 2022 as shown in table 4 and table 5. While there was a sharp increase in this single year, DHS could not build a forecast solely based on the increase during a single year. This analysis uses a 6-year annual average as an estimate to calculate the total costs of this rule.

As Graph 1 shows, since FY 2005 there has been a gradual increase in receipts until FY 2022. On October 20, 2021, USCIS added comprehensive policy guidance on T visas to its Policy Manual.[51] The goal of the Policy Manual Update was to provide consolidated guidance as to how USCIS approaches T visa adjudication and interprets eligibility criteria. The Policy Manual offers more comprehensive guidance than previous USCIS policy sources and provides interpretation and examples of previously undefined terms and concepts. This will hopefully assist practitioners better identify trafficking survivors who are eligible for a T visa. This could be one possible reason that there were increased receipts in FY 2022.

[51] U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, PA–2021–22 Policy Alert, ''T Nonimmigrant Status for Victims of Severe Forms of Trafficking in Persons'' (Oct. 20, 2021), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20211020-VictimsOfTrafficking.pdf.*



3. Updates to the Economic Analysis Since the 2016 Interim Rule, Pre-IFR Baseline

In this final rule, DHS has updated several definitions to provide clarity and ensure consistency with the Trafficking Victims Protection Act (TVPA) of 2000. DHS has amended provisions regarding bona fide determinations (BFD), which reflect a modified process. This process will now allow applicants for T nonimmigrant status to file a Form I–765, Application for Employment Authorization, concurrently with their Form I–914.

DHS also codified the evidentiary standard and standard of proof that apply to the adjudication of a T visa application. For T nonimmigrants, this rule retains the standard that applicants may submit any credible evidence relating to their T visa applications for USCIS to consider. This is presented as a qualitative benefit to both USCIS and T nonimmigrant applicants.

The pre-IFR baseline is shown below with zero costs to the government or to the applicants. Because the pre-IFR baseline is identical to the post-IFR baseline, consistent with table 7, it is not useful to do a complete pre-IFR baseline and the analysis will focus on the post-IFR baseline.

Congress created the T nonimmigrant status in the TVPA of 2000. The TVPA provides various means to combat trafficking in persons, including tools for LEAs to effectively investigate and prosecute perpetrators of trafficking in persons. The TVPA also provides protection to victims of trafficking through immigration relief and access to Federal public benefits. DHS published an interim final rule on January 31, 2002, implementing the T nonimmigrant status and the provisions put forth by the TVPA 2000.[52] The 2002 interim final rule established the eligibility criteria, application process, evidentiary standards, and benefits associated with obtaining T nonimmigrant status.

T nonimmigrant status is available to eligible victims of severe forms of trafficking in persons who comply with any reasonable request for assistance from LEAs in investigating and prosecuting the perpetrators of these crimes or otherwise meet the statutory criteria. T nonimmigrant status provides temporary immigration benefits (nonimmigrant status and employment authorization) and a pathway to permanent resident status, provided that established criteria are met. Additionally, if a victim obtains T nonimmigrant status, certain eligible family members may also apply to obtain T nonimmigrant status.[53]

[52] *See* 67 FR 4784.

[53] The current T nonimmigrant categories are: T–1 (principal applicant), T–2 (spouse), T–3 (child), T–4 (parent), and T–5 (unmarried sibling under 18 years of age). The interim rule created a new T nonimmigrant category, T–6 (adult or minor child of a principal's derivative).

Table 6. USCIS Processing Statistics for Form I-914[1] and Form I-914 Supplement A FY 2005 through FY 2016.

	VICTIMS (T-1), Form I-914			FAMILY OF VICTIMS (T-2 through T-6), Form I-914 Supplement A			Form I-914 and Form I-914 Supplement A TOTALS		
FY	Receipts	Approved	Denied	Receipts	Approved	Denied	Receipts	Approved	Denied
2005	379	113	321	34	73	21	413	186	342
2006	384	212	127	19	95	45	403	307	172
2007	269	287	106	24	257	64	293	544	170
2008	408	243	78	118	228	40	526	471	118
2009	475	313	77	235	273	54	710	586	131
2010	574	447	138	463	349	105	1,037	796	243
2011	967	557	223	795	722	137	1,762	1,279	360
2012	885	674	194	795	758	117	1,680	1,432	311
2013	799	848	104	1,021	975	91	1,820	1,823	195
2014	944	613	153	925	788	105	1,869	1,401	258
2015	1,062	610	294	1,162	694	192	2,224	1,304	486
2016	953	750	194	895	986	163	1,848	1,736	357

Notes: Approved and denied volumes may not add up to the receipts in a given fiscal year because the processing and final decision for T nonimmigrant status applications may overlap fiscal years. USCIS records indicate that processing an application for T nonimmigrant status requires an estimated 6 to 9 months. Data for T-6 applications has been collected since January 2014 and is included in FY 2014 – FY 2016.

Data source for the table: Performance Analysis System (PAS), USCIS Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB).

Table 6 provides the number of T nonimmigrant application receipts, approvals, and denials for principal victims and derivative family members for FY2005 through FY2016. The maximum annual number of T nonimmigrant visas that may be granted is 5,000 for T–1 principal applicants per fiscal year.

From the publication of the interim final rule in 2002 through 2016, Congress passed various statutes amending the original TVPA 2000. These include: the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). After the passage of each of the statutes, as noted in section I.A.1 of this preamble, USCIS issued policy and guidance memoranda to both implement the provisions of the Acts and to ensure compliance with the legal requirements of the Acts.[54]

The 2016 interim final rule codified DHS policy and guidance from these statutes into the Code of Federal Regulations (CFR). The statutory changes from TVPRA 2003, TVPRA 2008, and VAWA 2005 are reflected in table 7, below. Codifying existing USCIS policy and guidance ensures that the regulations are consistent with the applicable legislation, and that the general public has access to these policies through the CFR without locating and reviewing multiple policy memoranda. DHS provides the impact of these provisions in table 7 assuming a pre-IFR baseline per OMB Circular A–4 requirements.

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[54] See U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Trafficking Victims Protection Reauthorization Act of 2003,'' (2004); *see also* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to AFM Chapters 23.5 and 39 (AFM Update AD10–38)'' (2010), *https://www.uscis.gov/sites/default/files/document/memos/William-Wilberforce-TVPRAct-of-2008-July-212010.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''Extension of Status for T and U Nonimmigrants; Revisions to Adjudicator's Field Manual (AFM) Chapter 39.1(g)(3) and Chapter 39.2(g)(3) (AFM Update AD11–28)'' (2011), *https://www.uscis.gov/sites/default/files/document/memos/exten.status-tandu-nonimmigrants.pdf;* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, ''New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands'' (2015), *https://www.uscis.gov/sites/default/files/document/memos/2015-0415-TNonimmigrant-TVPRA.pdf.*

Table 7. Summary of Impacts to the Regulated Population of TVPRA 2003, TVPRA 2008 and VAWA 2005 Statutory Changes Codified by this Interim Rule

Provision	Current policy	Expected cost of the interim rule	Expected benefit of the interim rule	Actual Outcome of Changes
Expanding the definition and discussion of LEA (added by VAWA 2005)	LEA includes State and local law enforcement agencies	None	Provides clarity and consistency in DHS practice with DHS regulations will lead to a qualitative benefit providing transparency to both the victims of trafficking and USCIS adjudicators.	There were no costs associated with this change. This provision provided clarity to the victims and adjudicators.
Removing the requirement that eligible family members must face extreme hardship if the family member is not admitted to the United States or was removed from the United States (removed by VAWA 2005)	Family members may be eligible for T nonimmigrant status without having to show extreme hardship	No additional costs, other than the opportunity cost of time to file Form I-914 Supplement A. However, DHS reiterates that this is a voluntary provision	Provides a broader definition of an eligible family member and may increase the number of eligible family members.	There were no costs associated with this change. This provision provided increased the number of eligible family members.
Raising the age at which the applicant must comply with any reasonable request by an LEA for assistance in an investigation or prosecution of acts of trafficking in persons (added by TVPRA 2003)	The provision increased the minimum age requirement from 15 years to 18 years of age	None	Provides a benefit by acknowledging the significance of an applicant's maturity in understanding the importance of participating with an LEA.	There were no costs associated with this change.

Exempting T nonimmigrant applicants from the public charge ground of inadmissibility (added by TVPRA 2003)	DHS may grant T nonimmigrant status to applicants even if they are likely to become a public charge	No additional costs, other than the opportunity cost of time to file Form I-914 and if necessary, Supplement B	Victims who are likely to become a public charge are able to apply for T nonimmigrant status and receive the benefits associated with that status.	There were no costs associated with this change. This provision allowed victims who were likely to become a public charge
Exemptions to an applicant's requirement, to comply with any reasonable request by an LEA (added by TVPRA 2008)	Applicants are exempt from the requirement to comply with any reasonable request by an LEA in cases where the applicant is unable to comply, due to physical or psychological trauma	None	Provides a benefit by acknowledging the significance of an applicant's mental capacity in understanding the importance of participating with an LEA.	There were no costs associated with this change.
Limiting duration of T nonimmigrant status but providing extensions for LEA need, for exceptional circumstances, and for the pendency of an application for adjustment of status (VAWA 2005 and TVPRA 2008)	Extends the duration of T nonimmigrant status from 3 years to 4 years, but limits the status to 4 years unless an applicant can qualify for an extension	None	Provides T nonimmigrants status for an additional year with the possibility of extension.	There were no costs associated with this change.
Expanding the regulatory definition of physical presence on account of trafficking (added by TVPRA 2008)	DHS will consider victims as having met the physical presence requirement if they were allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator trafficking for purposes of eligibility for T nonimmigrant classification	None	Provides a broader definition of physical presence on account of trafficking and may increase the number of eligible applicants.	There were no costs associated with this change. This provision allowed more applicants to be eligible.

Allowing principal applicants under 21 years of age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years and parents as eligible derivative family members (added by TVPRA 2003)	Unmarried siblings under 18 years of age and parents of the principal applicant may now be eligible for T nonimmigrant status under the T-4 and T-5 derivative category, if the principal applicant is under age 21	No additional costs, other than the opportunity cost of time to file Form I-914 Supplement A on behalf of the principal's unmarried siblings under 18 years of age and parents	Provides a broader definition of eligible family member and may increase the number of eligible family members.	There were no costs associated with this change. This provision allowed more family members to be eligible.
Providing age-out protection for child principal applicants to apply for eligible family members (added by TVPRA 2003)	A principal applicant who was under 21 years of age at the time of filing the Form I-914 can file Form I-914 Supplement A on behalf of eligible family members, including parents and unmarried siblings under age 18, even if the principal alien turns 21 years of age before the principal T-1 application is adjudicated	None	Provides a qualitative benefit by removing an age-out restriction, allowing principal applicants to apply for parents and unmarried siblings under age 18, even if the principal applicant turns 21 years of age before the T-1 application is adjudicated.	There were no costs associated with this change. This provision allowed more applicants to be eligible.
Providing age-out protection for child derivatives (added by TVPRA 2003)	An unmarried child of the principal who was under age 21 on the date the principal applied for T-1 nonimmigrant status may continue to qualify as an eligible family member, even if he or she reaches age 21 while the T-1 application is pending	None	Provides a qualitative benefit by removing an age-out restriction, allowing a principal applicant parent to apply for a child as a derivative beneficiary, even if the child reaches age 21 while the principal's T-1 application is pending.	There were no costs associated with this change. This provision allowed more applicants to be eligible.

Allowing principal applicants of any age to apply for derivative T nonimmigrant status for unmarried siblings under 18 years of age and parents as eligible family members if the family member faces a present danger of retaliation as a result of the principal applicant's escape from a severe form of trafficking or cooperation with law enforcement (added by TVPRA 2008)	Allows any principal applicant, regardless of age, to apply for derivative T nonimmigrant status for parents or unmarried siblings under 18 years of age if they face a present danger of retaliation	No additional costs, other than the opportunity cost of time to file Form I-914 Supplement A, on behalf of the derivative's unmarried siblings under 18 years of age and parents	If eligible, unmarried siblings under 18 years of age and parents of principal applicants may qualify for T-4 and T-5 nonimmigrant status and obtain the immigration benefits that accompany that status. In addition, LEAs may benefit if more victims come forward to report trafficking crimes.	There were no costs associated with this change. This provision allowed more applicants to be eligible.
Care and custody of unaccompanied children with the HHS (added by TVPRA 2008)	Federal agencies must notify HHS upon apprehension or discovery of an unaccompanied child or any claim or suspicion that an individual in custody is under 18 years of age. Minors are eligible to receive federally funded benefits and services as soon as they are identified by HHS as a possible victim of trafficking	DHS may have some additional administrative costs associated with informing HHS of unaccompanied children. As a result, HHS may have some additional costs in providing benefits and services to the affected minors	Provides a qualitative benefit by enabling the health and well-being of a minor victimized by trafficking. These victims also obtain federally funded benefits and services.	There were no costs recorded with this change.

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In calculating the additional costs of the increased time burden to Form I–765, DHS uses updated wage and fiscal year data. Wages were updated according to the occupational data released by the Bureau of Labor Statistics (BLS). The 2016 interim rule used 2015 BLS data, and now more current data is available from 2022. The 2016 interim rule used fiscal year filing data from FY 2005 through FY 2015, and DHS has updated this analysis by using filing data from FY 2017 through FY 2022.

DHS is increasing the time burden for Form I–765 by 4 minutes from 4 hours and 30 minutes (4.5 hours) per response to 4 hours and 34 minutes (4.56 hours) to reflect the current Form I–765 estimated time burden. DHS is clarifying the Form I–765 instructions, increasing the time burden of the form, which includes the time for reviewing instructions, gathering the required documentation, and completing and submitting the request.

4. Costs, and Benefits of the Final Rule

(a) Bona Fide Determination Process

Although an extensive BFD process was codified in the 2016 IFR, such a process has not been consistently implemented in the last decade outside of litigation cases due to resource constraints. After this rule takes effect, on a routine basis USCIS will review an applicant's filing for completeness and conduct background checks to determine if the application is bona fide. If an applicant has not already filed a Form I–765, they will be notified that they may do so. Adjudicators will then consider whether an applicant warrants deferred action as a matter of discretion. This process will benefit the applicants with bona fide filings, as they will be invited to apply for an EAD when they receive their bona fide determination letter. Applicants may also choose to apply for an EAD at the same time they submit their Form I–914. USCIS plans to implement a process concurrently with this rule (*see* new 8 CFR 214.205 on the Bona Fide Determination Process) taking effect under which future applicants may file Form I–765 at the same time as their Form I–914. This will benefit the applicants because they will be more likely to apply for an EAD simultaneously and therefore be eligible to work sooner than they would have previously. This concurrent Form I–765 policy could be paused if, in the future, USCIS is able to process Form I–914 from intake to approval within a time frame that obviates the need for employment while the application is being adjudicated.

USCIS estimates that 100 percent of applicants will file Form I–765 concurrently with their Form I–914, so they may receive employment authorization quickly if USCIS determines that their T visa application is bona fide, that they warrant a favorable exercise of discretion to be granted deferred action, and that they warrant a discretionary grant of employment authorization, rather than waiting for USCIS to make a bona fide determination and inviting them to submit a Form I–765. DHS does not expect material impacts to the U.S. labor market from this final rule. DHS believes these impacts would accrue as benefits to the T visa applicants who apply for an EAD and their families.

Table 8 shows that the average adjudication timeframe from FY 2017 through 2022 was around 458 days from the time an applicant submits their T visa application, to the time they receive a final decision. The goal of this rule is that all applicants will apply for their BFD-based EAD at the same time they apply for their T visa. This will allow the applicants with bona fide filings to begin working earlier than they would have previously. DHS uses the 6-year annual average because it typically takes 1.25 years [55] for an adjudicative decision.[56]

Table 8. Average Number of Days for Form I-914 Application to Notice of Decision of Approval or Denial, FY 2017 through FY 2022.

FY	Form I-914	Form I-914A	Average
2017	430	457	444
2018	625	615	620
2019	547	498	523
2020	359	309	334
2021	486	514	500
2022	303	347	325
6-year Total	**2,750**	**2,740**	**2,746**
6-year Annual Average	**458**	**457**	**458**

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. June 07, 2023 & USCIS Analysis.

This new process would not add a large cost to the government because the process has been in place since 2002, when USCIS began adjudicating Form I–914. However, this change could add additional time to review cases. DHS cannot estimate how many additional applications would take additional time to review. DHS anticipates any particular case requiring additional time should not take more than an additional 15 to 30 minutes. This additional time will be a cost to USCIS.

As a part of the BFD process, if the statutory cap prevents further grants of T–1 nonimmigrant status, all BFD recipients will be placed on a waiting list. USCIS is unable to determine if, when, or for what duration T visa approvals will grow to exceed the annual statutory cap, but recent volumes depicted in Chart 1 suggest this occurrence is possible in the future. Past growth in the number of T visa approvals alone is not indicative of continued growth. While DOJ's Bureau of Justice Statistics collects data and reports statistics on human trafficking, they do not forecast trends.[57] Consequently, DHS cannot predict the contribution of growing T visa awareness to future volumes. The placement of individuals on the waiting list results in nominal cost to USCIS, as BFD recipients are simply moved to the waiting list once the cap is reached. In addition, applicants with a favorable BFD may be considered for deferred action and may request employment authorization based on a grant of deferred action. This change will benefit

[55] Calculation: 458 days/365 days in a year = 1.25 years.

[56] This analysis also assumes that the adjudication timeframe for Form I–914 will continue to require several months for the foreseeable future and thus not remove the incentive for simultaneous filing of Form I–765 that the faster EAD provides.

[57] *See* Bureau of Justice Statistics, U.S. Dep't of Justice, ''Human Trafficking Data Collection Activities, 2022,'' *https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/htdca22.pdf* (last visited Sept. 27, 2023).

applicants because if they are unable to be approved for a T visa they may now receive deferred action and have the possibility to request employment authorization, allowing them to stay and lawfully work in the United States.

(b) Additional Time Burden for Form I–765

The revised BFD process allows T visa applicants the opportunity to apply for their BFD EAD concurrently with their T visa application. Under the revised BFD process, USCIS will review an applicant's file for completeness and complete background checks to determine if the applicant is bona fide. If an applicant has not already filed a Form I–765, they will be invited to do so. T visa applicants did not previously file Form I–765 for employment authorization incident to T nonimmigrant status. DHS estimates that all T–1 visa applicants will now apply for a BFD-based EAD with their T visa application. Although T–1 visa applicants pay no fee to file Form I–765, DHS estimates the current public reporting time burden is 4 hours and 30 minutes (4.5 hours) for paper submissions, which includes the time for reviewing instructions, gathering the required documentation and information, completing the application, preparing statements, attaching necessary documentation, and submitting the application.[58] DHS acknowledges that T visa applicants filing Form I–765 may elect to acquire legal representation.

Table 9 shows the total receipts received for Form I–914 for FY 2017 through FY 2022. The table also shows the number of Form I–914 receipts filed with an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the number of Forms I–765 that are filed by an attorney or accredited representative and thus estimate the opportunity costs of time for an applicant, attorney, or accredited representative to file each form. Based on a 6-year annual average, DHS estimates the annual average receipts of Form I–765 to be 2,909, with 92 percent of applications filed by an attorney.

Table 9. Total Form I-914 and Form I-914 Supplement A Receipts with and without Form G-28, FY 2017 through FY 2022.

FY	Form G-28 Receipts Received without a Form I-914 and Form I-914 Supplement A	Form G-28 Receipts Received with a Form I-914 and Form I-914 Supplement A	Total Form I-914 and Form I-914 Supplement A Receipts	Percentage of Forms I-914 and Form I-914 Supplement A filed with Form G-28
2017	191	2,128	2,319	92%
2018	415	2,516	2,931	86%
2019	164	2,101	2,265	93%
2020	135	2,010	2,145	94%
2021	166	2,617	2,783	94%
2022	343	4,667	5,010	93%
6-year Total	**1,414**	**16,039**	**17,453**	**92%**
6-year Annual Average	**236**	**2,673**	**2,909**	**92%**

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. June 07, 2023 & USCIS Analysis.

Table 10 shows the total receipts received for Form I–914 for FY 2017 through FY 2022 for only the T–1 classification. The table also shows the number of Form I–914 receipts filed with an attorney or accredited representative using Form G–28. The number of Form G–28 submissions allows USCIS to estimate the number of Form I–765 that are filed by an attorney or accredited representative and thus estimate the opportunity costs of time for an applicant, attorney, or accredited representative to file each form. Based on a 6-year annual average, DHS estimates the annual average receipts of Form I–765 to be 1,664, with 92 percent of applications filed by an attorney.

[58] *See* U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Security, Instructions for Application for T Nonimmigrant Status (Form I–914), OMB No. 1615–0020 (expires Dec. 31, 2023) *https://www.uscis.gov/sites/default/files/document/forms/i-914instr.pdf* (time burden estimate in the Paperwork Reduction Act section).

Table 10. Total Form I-914, T-1 Receipts with and without Form G-28, FY 2017 through FY 2022.				
FY	**Form G-28 Receipts Received without a Form I-914**	**Form G-28 Receipts Received with a Form I-914**	**Total Form I-914 Receipts**	**Percentage of Forms I-914 filed with Form G-28**
2017	75	1,102	1,177	94%
2018	295	1,319	1,614	82%
2019	73	1,178	1,251	94%
2020	64	1,082	1,146	94%
2021	93	1,609	1,702	95%
2022	218	2,877	3,095	93%
6-year Total	**818**	**9,167**	**9,985**	**92%**
6-year Annual Average	**136**	**1,528**	**1,664**	**92%**
Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. June 07, 2023& USCIS Analysis.				

In order to estimate the opportunity costs of time for completing and filing Form I–765, DHS assumes that an applicant will use an attorney or accredited representative to prepare Form I–765s or will prepare Form I–765 themselves. DHS estimates the opportunity cost of time for attorneys or accredited representatives using an average hourly wage rate of $78.74 for lawyers to estimate the opportunity cost of the time for preparing and submitting Form I–765.[59]

However, average hourly wage rates do not account for worker benefits such as paid leave, insurance, and retirement. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using a Department of Labor (DOL), Bureau of Labor Statistics (BLS) report detailing average compensation for all civilian workers in major occupational groups and industries. DHS estimates the benefits-to-wage multiplier is 1.45.[60] DHS calculates the average total rate of compensation as 114.17 [61] per hour for a lawyer.

To estimate the new opportunity costs of time, USCIS uses an average total rate of compensation based on the effective minimum wage. DHS assumes that T visa applicants have limited work experience/education and would therefore have lower wages. The Federal minimum wage is currently $7.25 per hour,[62] but many states have implemented higher minimum wage rates.[63] However, the Federal Government does not track a nationwide population-weighted minimum wage estimate. Individuals in the population of interest for an analysis could be located anywhere within the United States and may be subject to a range of minimum wage rates depending on the state or city in which they live.

For this final rule, DHS uses the most recent wage data from DOL, BLS National Occupational Employment and Wage Estimates. More specifically, we use the 10th percentile hourly wage estimate for all occupations as a reasonable proxy for the effective minimum wage when estimating the opportunity cost of time for individuals in populations of interest who are likely to earn an entry-level wage.[64] We also use the 10th percentile hourly wage estimate for individuals who are unemployed, or for individuals who cannot, or choose not to, participate in the labor market as these individuals incur opportunity costs, assign valuation in deciding how to allocate their time, or both.

Due to the wide variety of unpaid activities an individual could pursue, such as childcare, housework, or other activities without paid compensation, it is difficult to estimate the value of that time. Even when an individual is not working for wages, their time has value. In addition, using a percentile of the hourly wage estimate for all occupations allows DHS the flexibility to adjust its estimates, when necessary, depending on the population(s) of interest for regulatory impact analyses. Moreover, BLS estimates account for changes in wages across the United States labor market, which includes any future changes to state minimum wage rates. DHS will continue to evaluate the most appropriate wage assumptions for the populations of interest in its regulatory impact analyses.

The 10th percentile hourly wage estimate for all occupations is currently $13.14, not accounting for worker benefits. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier. The benefits-to-wage multiplier is calculated using the most recent BLS report detailing average total employee compensation for all civilian U.S. workers.[65] DHS estimates the benefits-to-wage multiplier to be 1.45, which incorporates employee wages and salaries and the full cost of benefits,

[59] *See* Bureau of Labor Stat., U.S. Dep't of Labor, ''Occupational Employment Statistics, May 2022, Lawyers,'' *https://www.bls.gov/oes/2022/may/oes231011.htm* (last visited May. 11, 2023).

[60] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) ($42.48 Total Employee Compensation per hour)/($29.32 Wages and Salaries per hour) = 1.44884 = 1.45 (rounded). *See* Bureau of Labor Stat., U.S. Dep't of Labor, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' ''Table 1. Employer Costs for Employee Compensation by ownership [Dec. 2022],'' *https://www.bls.gov/news.release/archives/ecec_03172023.htm* (last updated Mar. 17, 2023). The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[61] Calculation: $78.74 * 1.45 = $114.17 total wage rate for lawyer.

[62] *See* U.S. Dep't of Labor, ''Minimum Wage,'' *https://www.dol.gov/general/topic/wages/minimumwage* (last visited May 17, 2023).

[63] *See* U.S. Dep't of Labor, ''State Minimum Wage Laws,'' *https://www.dol.gov/agencies/whd/minimum-wage/state* (last visited May 17, 2023).

[64] *See* Bureau of Labor Stat., U.S. Dep't of Labor, ''Occupational Employment Statistics,'' *https://www.bls.gov/oes/2022/may/oes_nat.htm#00-0000* (last visited May 15, 2023). The 10th, 25th, 75th and 90th percentile wages are available in the downloadable XLS file link.

[65] *See* Bureau of Labor Stat., U.S. Dep't of Labor, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' ''Table 1. Employer costs for employer compensation by ownership,'' *https://www.bls.gov/news.release/archives/ecec_03172023.pdf* (last updated Mar. 17, 2023).

such as paid leave, insurance, and retirement.[66] Therefore, using the benefits-to-wage multiplier, DHS calculates the total rate of compensation for individuals as $19.05 per hour for this final rule, where the 10th percentile hourly wage estimate is $13.14 per hour and the average benefits are $5.91 per hour.[67]

DHS uses the historical Form G–28 filings of 92 percent by attorneys or accredited representatives accompanying T visa applications as a proxy for how many may accompany Form I–765 applications. The remaining 8 percent [68] of T visa applications are filed without a Form G–28. DHS estimates that a maximum of 1,528 applications annually would be filed with a Form G–28 and 136 applications would be filed by the applicant.

To estimate the opportunity cost of time to file Form I–765, DHS applies the newly estimated time burden 4 hours and 34 minutes (4.56 hours) for to the newly eligible population and compensation rate of who may file the form. Therefore, for those newly eligible, as shown in table 11, DHS estimates the total annual opportunity cost of time to applicants completing and filing Form I–765 applications are estimated to be $795,500 for lawyers and estimates the cost to be $11,814 for applicants who submit their own application. DHS estimates the total additional cost for completing and filing Form I–765 are expected to be $807,314 annually.

Table 11. Average Annual Opportunity Costs of Time to Newly Eligible Form I-914 Applicants applying for Form I-765

	Affected Population	Time Burden to Complete Form I-765 (Hours)	Cost of Time (Hourly)	Annual Opportunity Cost
	A	B	C	D=(AxBxC)
Attorney- Paper Form	1,528	4.56	$114.17	**$795,500**
Applicant- Paper Form	136	4.56	$19.05	**$11,814**
Total	**1,664**			**$807,314**
Source: USCIS Analysis				

(c) Clarifying Eligibility Requirements To Reduce RFEs

DHS is codifying the evidentiary standard and standard of proof that apply to the adjudication of a T visa. For T nonimmigrants, this rule retains the standard that applicants may submit any credible evidence relating to their T applications for USCIS to consider. This expression in the evidentiary standard and standard of proof could affect the number of requests for evidence (RFE) that USCIS must send for Form I–914. DHS is also making clarifications to eligibility requirements. USCIS estimates that there will be a reduction in RFEs. Table 12 shows the total number of requests for evidence (RFE) for FY 2017 through FY 2022. Based on a 6-year annual average, DHS estimates the annual requests for information to be 1,107.

Table 12. Form I-914 Receipts with additional Requests for Evidence (RFEs), FY 2017 through FY 2022.

Reported Fiscal Year	Non-RFE Count	RFE Count	Total
2017	1,343	976	2,319
2018	1,330	1,601	2,931
2019	1,037	1,228	2,265
2020	1,128	1,017	2,145
2021	2,262	521	2,783
2022	3,709	1,301	5,010
6- year Total	**10,809**	**6,644**	**17,453**
6year Annual Average	**1,802**	**1,107**	**2,909**
Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD)/ Data Analysis Branch, Claims 3 database. June 07, 2023 & USCIS Analysis.			

[66] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) = $42.48/$29.32 = 1.45 (rounded). *See* Bureau of Labor Stat., U.S. Dep't of Labor, Economic News Release, ''Employer Costs for Employee Compensation—December 2022,'' ''Table 1. Employer costs for employer compensation by ownership,'' *https://www.bls.gov/news.release/archives/ecec_03172023.pdf* (last updated Mar. 17, 2023).

[67] The calculation of the benefits-weighted 10th percentile hourly wage estimate: $13.14 per hour * 1.45 benefits-to-wage multiplier = $19.053 = $19.05 (rounded) per hour.

[68] Calculation: 100 percent—92 percent filing with Form G–28 = 8 percent only filing Form I–914.

Based on the additional information expected to be provided with the initial Form I–914 filing USCIS estimates that there will be a reduction in RFEs. This change will also reduce the burden on applicants because they will be better aware of the evidentiary requirements from the outset, and they will not have to take the time to search for additional information subsequent to the submission of their application. DHS cannot estimate the amount of time each applicant takes to search for additional information. This would then allow the applicant to receive their employment authorization document earlier and allow them to work sooner. The reduction in RFEs will also save USCIS adjudicators time because they will not have to return to a particular application a second time once USCIS receives the additional required evidence. This change will make the overall process faster for applicants and USCIS.

(d) Technical Changes, Clarifying Definitions, and Other Qualitative Impacts in This Final Rules

The remaining changes in this final rule do not add quantifiable implications beyond those already discussed in the 2016 IFR. This rule moves the regulations for T nonimmigrant status to a separate subpart of 8 CFR part 214 to reduce the length and density of part 214, while making it easier to locate specific provisions. In addition to the renumbering and redesignating of paragraphs, the rule has reorganized and reworded some sections to improve readability, such as in new 8 CFR 214.204(d)(1) (discussing the law enforcement agency (LEA) declaration) and 8 CFR 214.208(e)(1) (discussing the trauma exception to the general requirement of compliance with any reasonable law enforcement requests for assistance).

The rule also divides overly long paragraphs into smaller provisions to improve the organization and understanding of the regulations. The reorganization of the rule does not impact the analysis provided in the 2016 IFR. DHS also added clarifying language to support current eligibility and application requirements in response to public comments. These changes are consistent with the Immigration and Nationality Act and the Trafficking Victims Protection Act. The primary benefit of these changes is to make it clearer and easier for T visa applicants to understand and apply for T nonimmigrant status.

DHS is also amending 8 CFR 214.11(k) (redesignated here as 8 CFR 214.211) implementing section 101(a)(15)(T)(ii)(III) of the INA, 8 U.S.C. 1101(a)(15)(T)(ii)(III), to clarify that, USCIS will evaluate any credible evidence demonstrating the derivative applicant's present danger of retaliation in cases where the LEA has not investigated the acts of trafficking after the applicant reported the crime. This revision benefits the applicant, because it provides greater clarity on the evidence USCIS will consider in determining their eligibility. The ''any credible evidence'' standard also encompasses evidence originating from a family member's home country; however, DHS has clarified that evidence may be from the United States or any country in which an eligible family member faces retaliation. 8 CFR 214.211(g). This flexibility is shown as an unquantified benefit the applicant to provide additional credible evidence in order to establish eligibility.

DHS has also clarified in the preamble that the ''continued victimization'' criteria referenced at 8 CFR 214.207(b)(1) does not require that the applicant is currently a ''victim of a severe form of trafficking in persons,'' but instead may include ongoing victimization that directly results from either ongoing or past trafficking. This will allow applicants who were victims of a severe form of trafficking in persons in the past, departed the United States, and reentered as a result of their continued victimization to establish that they meet the physical presence eligibility requirement without demonstrating that they are currently victims of a severe form of trafficking in persons. DHS cannot estimate how many victims may now be able to establish that they meet the physical presence eligibility requirement due to this change. This clarification benefits applicants who may be able to satisfy the physical presence requirement if their reentry into the United States was the result of continued victimization tied to ongoing or past trafficking.

(e) Alternatives Considered

Where possible, DHS has considered, and incorporated alternatives to maximize net benefits under the rule. For example, DHS considered multiple different elements and the operational considerations for implementing a BFD review. DHS considered conducting a fully electronic T visa BFD review with extremely limited background checks and conducting physical file review with limited background checks. However, DHS chose an approach that accommodated public comments, preserves a good faith review of the initial filing, removes barriers to the immigration process, and prioritizes efficient T visa BFD review. This protects the integrity of the BFD review by requiring review of initial required evidence and assessment of routine background checks.

5. Final Costs of the Final Rule

(a) Undiscounted Costs

Table 13 details the annual costs of this final rule. DHS estimates the annual additional cost for completing and filing Form I–765 are expected to be $807,314.

Table 13. Summary of Costs

Description	**Annual Cost**
Changes to BFD Process	$807,314
Source: USCIS Analysis	

(b) Discounted Costs

Table 14 shows the total cost over the 10-year implementation period of this final rule. DHS estimates the total annualized costs to be $807,314 discounted at 3 and 7 percent.

Table 14. Total Undiscounted and Discounted Costs of this Final Rule Using the Post-IFR Baseline.		
FY	Total Estimated Costs	
	$807,314 (Undiscounted)	
	Discounted at 3 percent	Discounted at 7 percent
2023	$783,800	$754,499
2024	$760,971	$705,139
2025	$738,807	$659,009
2026	$717,288	$615,896
2027	$696,396	$575,604
2028	$676,113	$537,947
2029	$656,420	$502,755
2030	$637,301	$469,864
2031	$618,739	$439,125
2032	$600,717	$410,398
10-year Total	**$6,886,552**	**$5,670,236**
Annualized Cost	**$807,314**	**$807,314**

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000. This final rule does not mandate any actions or requirements for small entities. This final rule regulates individuals and individuals are not defined as a ''small entities'' by the RFA.[69] DHS did not receive any comments on small entities during the previous comment period. A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. The changes made in the interim rule were determined to not require advance notice and opportunity for public comment, because they are (1) required by various legislative revisions, (2) exempt as procedural under 5 U.S.C. 553(b)(A), (3) logical outgrowths of the 2002 interim rule, or (4) exempt from public comment under the ''good cause'' exception to notice-and-comment under 5 U.S.C. 553(b)(B). 81 FR 92288. Therefore, a regulatory flexibility analysis is not required for this rule. Nonetheless, USCIS examined the impact of this rule on small entities under the Regulatory Flexibility Act, 5 U.S.C. 601(6). The individual victims of trafficking and their derivative family members to whom this rules applies are not small entities as that term is defined in 5 U.S.C. 601(6).

C. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

This final rule is not a major rule as defined by section 804 of Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This final rule likely will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This rule is exempt from the written statement requirement because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, the inflation-adjusted value of $100 million in 1995 is approximately $192 million in 2022 based on the Consumer Price Index for All Urban Consumers (CPI–U).[70] This proposed rule does not contain a Federal mandate as the term is defined under UMRA.[71] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will

[69] *See* Public Law 104–121, tit. II, 110 Stat. 847 (5 U.S.C. 601 note). A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act. *See* 15 U.S.C. 632(a)(1).

[70] *See* Bureau of Labor Stat., U.S. Dep't of Labor, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' *www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202212.pdf* (last visited Jan. 19, 2023). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2022); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2022—Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)]*100 = [(292.655 − 152.383)/152.383]*100 = (140.272/152.383)*100 = 0.92052263*100 = 92.05 percent = 92 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars*1.92 = $192 million in 2022 dollars.

[71] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

not result in an annual effect on the economy of $100 million or more. DHS has complied with the reporting requirements of and has sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1). While the Congressional Review Act requires a delay in the effective date of 30 days, this rule has a delayed effective date of 120 days, to provide DHS time to comply with the Paperwork Reduction Act as explained later in this preamble.

F. Executive Order 13132 (Federalism)

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect this rule would impose substantial direct compliance costs on State and local governments or preempt State law. As stated above, neither the proposed rule nor this final rule modifies the extent of State involvement set by statute.

G. Executive Order 12988 (Civil Justice Reform)

This final rule meets the applicable standards set forth in section 3(a) and (b)(2) of E.O. 12988.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have ''tribal implications'' because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) financially impacts families, and whether those impacts are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then the agency must prepare an impact assessment to address criteria specified in the law. As discussed in the interim final rule, DHS assessed this action in accordance with the criteria specified by section 654(c)(1). This final rule will continue to enhance family well-being by aligning the regulation more closely with the statute. This rule will also enhance family well-being by encouraging vulnerable individuals who have been victims of a severe form of trafficking in persons to report the criminal activity and by providing critical assistance and immigration benefits. Additionally, this regulation allows certain family members to obtain T nonimmigrant status once the principal applicant has received status.

J. National Environmental Policy Act

DHS analyzes actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01, Revision 01, ''Implementation of the National Environmental Policy Act,'' and DHS Instruction Manual 023–01–001–01, Revision 01, ''Implementation of the National Environmental Policy Act (NEPA)'' (Instruction Manual), establish the procedures DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA codified at 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') that experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1501.4 and 1507.3(e)(2)(ii). The DHS categorical exclusions are listed in Appendix A of the Instruction Manual. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that demonstrate, or create the potential for, significant environmental impacts. Instruction Manual, section V.B(2)(a–c).

This action amends existing regulations governing requirements and procedures for victims of severe forms of trafficking in persons seeking T Nonimmigrant Status. The amended regulations codify and clarify eligibility criteria and will have no impact on the overall population of the United States and will not increase the number of immigrants allowed into the United States.

DHS analyzed the proposed amendments and has determined that this action clearly fits within categorical exclusion A3(a) in Appendix A of the Instruction Manual because the regulations being promulgated are of a strictly administrative or procedural nature. DHS has also determined that this action clearly fits within categorical exclusion A3(d) because it amends existing regulations without changing their environmental effect. This final rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this final rule is categorically excluded from further NEPA review.

K. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, as amended, 44 U.S.C. 3501–3521, all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. In this final rule, DHS is addressing the public comments received on the revised information collections in the interim rule and also amending the application requirements and procedures that the interim rule provided for individuals to receive T nonimmigrant status. Therefore, DHS is revising Form I–914, Form I–914, Supplement A, Form I–914, Supplement B, and Form I–765, as well as the associated form instructions to conform with the new regulations. These forms are information collections under the PRA.

When DHS published the 2016 interim rule, it revised Form I–914, Form I–914, Supplement A, Form I–914, Supplement B, and the associated form instructions (OMB Control Number 1615–0099). DHS published two versions of the forms and associated instructions for public comment, the first version on December 20, 2016, and the second version on January 20, 2017. *See* DHS Docket No. USCIS–2011–0010 at *www.regulations.gov.* Once OMB approved the forms and the rule became effective, DHS published a final version of the forms and associated instructions, which were dated February 27, 2017.

On December 2, 2021, OMB approved and USCIS issued a revised Form I–914,

Form I–914, Supplement A, Form I–914, Supplement B, with additional changes. The December 2, 2021, changes were independent of the interim rule that is being finalized by this rule, but the changes made in that revision may obviate or address some of the public comments on the information collection requirements for the interim rule. *See* DHS Docket No. USCIS–2006–0059. In this final rule, USCIS is requesting comments for 60 days on this information collection by July 1, 2024. When submitting comments on the information collection, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses.

Table 15 Information Collections, below, lists the information collections that are part of this rulemaking.

Table 15. Information Collections

OMB Control No.	Form No.	Form Name	Type of PRA Action
1615-0099	I-914	Application for Derivative T Nonimmigrant Status, and Declaration for Trafficking Victim	Revision of a Currently Approved Collection
1615-0040	I-765	Application for Employment Authorization	Revision of a Currently Approved Collection
1615-0013	I-539	Application to Extend/Change Nonimmigrant Status	No material change/Non-substantive change to a currently approved collection
1615-0023	I-485	Application to Register Permanent Residence or Adjust Status	No material change/Non-substantive change to a currently approved collection

This final rule requires non-substantive edits to the forms listed above where the Type of PRA Action column states, ''No material change/ Non-substantive change to a currently approved collection.'' USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

USCIS Form I–914; Form I–914, Supplement A; Form I–914, Supplement B (OMB Control Number 1615–0099)

Overview of information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of Form/Collection:* Application for T Nonimmigrant Status, Application for Derivative T Nonimmigrant Status, and Declaration for Trafficking Victim.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Form I–914, Form I–914, Supplement A, and Form I–914, Supplement B; USCIS.

(4) *Affected public who will be asked or required to respond:* Individuals or households. Form I–914 permits victims of a severe form of trafficking in persons and certain eligible family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000, and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914, 1,310 responses at 2.63 hours per response; Form I–914, Supplement A, 1,120 responses at 1.083 hours per response; Form I–914, Supplement B (section that officer completes), 459 responses at 3.58 hours per response; Form I–914, Supplement B (section that respondent completes), 459 responses at .25 hours per response.

Biometric processing 2,430 respondents requiring Biometric Processing at an estimated 1.17 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 9,261 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated annual cost burden associated with this collection of information is $2,532,300.

USCIS Form I–765; I–765WS (OMB Control Number 1615–0040)

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization; I–765 Worksheet.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; I–765WS; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I–765 to collect information needed to determine if a noncitizen is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Noncitizens in many immigration statuses are required to possess an EAD as evidence of work authorization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765 paper filing is 1,830,347 and the estimated hour burden per response is 4.56 hours; the estimated total number of respondents for the information collection I–765 online filing is 455,653 and the estimated hour burden per response is 4.00 hours; the estimated total number of respondents for the information collection I–765WS is 302,000 and the estimated hour burden per response is 0.5 hours; the estimated total number of respondents for the information collection biometrics submission is 302,535 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection passport photos is 2,286,000 and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,816,960 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

1. Comments on the Information Collection Changes to Form I–914 and Related Forms and Instructions Published With the 2016 Interim Rule

Comment: Two commenters on the 2016 interim rule also provided comments on the forms and associated instructions. One of the commenters had a general comment that applied to all the forms and instructions. The commenter wrote that although DHS published a table of changes for each of the forms, advocates and community members had not been able to review the actual forms and instructions with the final changes included. The commenter requested that the proposed forms and instructions with all planned changes be made available to the community and that DHS extend the comment period for the proposed forms to allow the community an opportunity to comment fully.

Response: DHS understands that the table of changes must be used in comparison with the previous versions of the form and instructions to determine the precise impact the changes have on the form and agrees that this comparison requires some effort. Nonetheless, the table of changes clearly indicated where the changes were being made or proposed to a sufficient extent to determine the effects on the form and the changes to the information collection burden.

Commenters also suggested specific revisions to the forms and associated instructions. DHS responds to those recommendations for each form, supplement, or instructions. Following this discussion, DHS explains the changes it is making on its own initiative for legal accuracy, consistency with the 2016 interim rule and the final rule, and enhanced clarity.

Form I–914

Comment: One commenter provided many recommendations to revise Form I–914. The commenter appears to have suggested edits to the version of Form I–914 labeled, ''Form I–914, Application for T Nonimmigrant Status 10.20.16'' published on December 20, 2016, with the 2016 interim rule. Thus, all the commenter's references to content of the form relate to that version. In discussing final changes all references are to the version of the forms published in connection with this final rule.

The commenter recommended that DHS amend the question on page 1, part B, ''General Information About You'' requesting applicants to choose whether their gender is male or female. The commenter suggested including a blank space in which applicants could write in their gender identity. The commenter wrote that an increasing number of its clients who are survivors of trafficking identify as lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) and may identify as non-binary or gender non-conforming. The commenter stated that these clients face heightened vulnerabilities to trafficking and requiring applicants to select from a binary answer option may deter them from representing their preferred gender expression and perpetuate their marginalization.

Response: DHS notes that components across the Department are reviewing forms to pursue more inclusive sex and gender markers that accommodate non-binary and transgender individuals.[72] This will improve DHS's ability to verify identity, as well as to expand access to accurate identity documents, thereby reducing the risk of future harm to LGBTQI+ persons. DHS is also reviewing policy guidance, training materials, and website content to ensure they provide accurate guidance and consistently use appropriate terminology. To support these Department-wide efforts, DHS will revise the forms to include a third gender option, ''Another Gender Identity.'' Including a third option on Form I–914, Form I–914, Supplement A, and Form I–914, Supplement B supports Executive Order 14012 (Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans) to promote inclusion and identify barriers that impede access to immigration benefits.

Comment: Regarding questions related to T nonimmigrant status eligibility requirements in part C (now designated part 3), the commenter suggested that the questions be reordered to match the order that the requirements appear in the statute to facilitate completing and adjudicating the form.

[72] ''Interagency Report on the Implementation of the Presidential Memorandum on Advancing the Human Rights of LGBTQI+ Persons Around the World,'' (2022) *https://www.state.gov/wp-content/uploads/2022/04/Interagency-Report-on-the-Implementation-of-the-Presidential-Memorandum-on-Advancing-the-Human-Rights-of-Lesbian-Gay-Bisexual-Transgender-Queer-and-Intersex-Persons-Around-the-World-2022.pdf.*

Response: DHS understands the commenter's stated rationale, but the commenter did not explain why reordering would make the form easier to complete. Neither adjudicators nor other stakeholders have reported any challenges with the ordering of the questions. DHS believes the suggested change is not essential enough to warrant the burden of reprogramming USCIS Form I–914 related computer systems.

Comment: On page 3, part C, ''Additional Information,'' (now titled ''Part 3. Additional Information About your Application'') the commenter recommended deleting the question regarding whether the applicant's most recent entry was on account of the trafficking that forms the basis for the applicant's claim and requests that the applicant explain the circumstances of their most recent arrival. The commenter stated that to qualify for T nonimmigrant status, an applicant need only show physical presence in the United States on account of trafficking, and there is no requirement an applicant's most recent entry be on account of trafficking.

Response: The commenter is correct with respect to the statutory eligibility requirements; however, including this question does not mean that an applicant must show their last entry was related to their trafficking. *See* INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T). The question (now located at part 3, question 9) helps provide information to adjudicators about the general circumstances of the applicant's most recent arrival, whether related to the trafficking or not, and information regarding the applicant's immigration history. All this information assists adjudicators in understanding the full history and facts of an applicant's claim. Accordingly, DHS declines to delete the question.

Comment: The form at part D, ''Processing Information,'' question 1(a) (now part 4, question 1.A) asked whether the applicant has ever committed a crime or offense for which the applicant has not been arrested. The commenter suggested that DHS clarify the meaning of the question, noting that the question is broadly written and would include even minor criminal activity and behavior (such as jaywalking) that has no effect on the applicant's eligibility for T nonimmigrant status.

Response: DHS will maintain this question as it is useful for adjudicators in gathering relevant information related to determining admissibility and assessing the applicant's truthfulness. In addition, in DHS's experience, answers to the question have provided information relevant to the applicant's trafficking experiences.

Comment: The commenter requested that DHS revise part D ''Processing Information,'' question 3(a) (Now at part 4, question 2.A), regarding whether the applicant has engaged in prostitution or procurement of prostitution or intends to engage in prostitution or procurement of prostitution. The commenter stated that although the referenced conduct renders an applicant inadmissible under section 212(a)(2)(D) of the INA, 8 U.S.C. 1182(a)(2)(D), DHS should explicitly exclude acts of prostitution that occurred during trafficking and should clarify that this question does not apply to sex trafficking. The commenter also stated that this question causes confusion and anxiety for many of its clients who are victims of sex trafficking. The commenter suggested rephrasing the question to read: ''Have you engaged in prostitution that was not related to being a victim of trafficking?''

Response: DHS declines to make the specific suggested change. The question is appropriate as written because engaging in prostitution is a ground of inadmissibility, regardless of whether it is connected to the victimization. If the applicant has engaged in this conduct and the prostitution was connected to the trafficking, the applicant can request a waiver but must still answer the question so that USCIS can assess whether the inadmissibility ground applies in the first instance, and thus whether a waiver is needed. USCIS will examine all the evidence submitted and decide on a case-by-case basis whether to grant any waiver request.

Comment: The commenter requested that DHS revise part D, ''Processing Information,'' question 8, regarding whether the applicant has, ''during the period of March 23, 1933, to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, nationality, membership in a particular social group, or political opinion[.]'' The commenter suggested that DHS delete the question entirely or preface it with the question: ''Were you born before May 8, 1945?,'' followed by ''If no, proceed to the next question.'' The commenter stated that, given the temporal limits, this question applies to an extremely limited number of applicants, and the question as written is confusing and time-consuming to explain to applicants.

Response: DHS declines to make the suggested revision. DHS appreciates the suggestion and will take it under consideration for future revision efforts, but will retain the question as is, to collect information about specific conduct that constitutes a ground of inadmissibility under section 212(a)(3)(E) of the INA, 8 U.S.C. 1182(a)(3)(E).

Comment: The form at part D, ''Processing Information,'' question 8 (now part 4, question 8), asked whether the applicant has ever been present or nearby when a person was: ''(a) intentionally killed, tortured, beaten or injured?; (b) displaced or moved from their residence by force, compulsion, or duress?; or (c) in any way compelled or forced to engage in any kind of sexual contact or relations?.'' The commenter requested that DHS delete the question, and indicated that the question was vague, led to confusion among attorneys and applicants, and did not relate to any particular ground of inadmissibility in section 212(a) of the INA, 8 U.S.C. 1182(a).

Response: DHS declines to delete the question. Although it does not relate to a specific ground of inadmissibility, the question tends to yield information helpful to adjudicators in understanding the details of both the victimization and the applicant's conduct, which are relevant to the adjudication of the claim for T nonimmigrant status.

The following suggestions have already been resolved by revisions to the Form I–914 and are maintained in the version of the form published with this final rule:

- Page 2, part C, ''Additional Information,'' insert a question that allows an applicant to invoke the ''trauma exception'' for cooperation with law enforcement codified in section 101(a)(15)(T)(i)(III)(bb) of the INA, 8 U.S.C. 1101(a)(15)(T)(i)(III)(bb);
- Page 2, part C, ''Additional Information,'' delete the question related to whether the applicant is submitting an LEA declaration on Form I–914, Supplement B and if not, to explain why;
- Page 4, part D, ''Processing Information,'' delete question 2 on whether the applicant has ever received public assistance given that the 2016 interim rule indicates USCIS intends to remove this question on both Form I–914 and Form I–914, Supplement A; and
- Page 10, part H, ''Checklist'':
- Insert language in second box allowing applicants to indicate that they are asserting an exception to the compliance with reasonable law

enforcement requests requirement based on trauma;

- Delete checkbox indicating the applicant has included three photographs of the applicant; and
- Delete checkbox indicating the principal applicant has included three photographs of each family member for whom they are applying.
- DHS has deleted the checklist with the version of the Form I–914 and associated instructions published with this final rule because the instructions are sufficiently clear without the checklist, and it added unnecessary length to the forms. There is a checklist and other filing tips on the Form I–914 forms landing page.

Form I–914, Supplement A

DHS received suggestions from two commenters to revise Form I–914, Supplement A. One commenter proposed edits to the version of the supplemental form entitled, ''Form I–914A, Supplement A, Application for Family Member of T–1 Recipient 10.20.16'' published on December 20, 2016, with the 2016 interim rule. This commenter made several of the same suggestions it made on the Form I–914 in relation to the following questions, which DHS declines for the same reasons discussed above:

- Part E, ''Processing Information,'' delete the question asking whether the family member has committed any offense for which they have not been arrested;
- Part E, ''Processing Information,'' delete or simplify question 8 related to whether the family member has ever engaged in persecutory conduct between March 23, 1933, and May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany;
- Part E, ''Processing Information,'' delete question 9 on whether the applicant has ever been present or nearby during certain conduct.

The commenter also made suggestions that have already been resolved by revisions to Form I–914, Supplement A, and remain resolved with the publication of the Form I–914, Supplement A published with this final rule:

- Page 1, part A (now part 1), ''Family Member Relationship to You,'' insert a box to include the T–6 derivative-of-derivative category; and
- Part E, ''Processing Information,'' delete the question about whether the family member has ever received public assistance.

The other commenter proposed edits to the version of the supplemental form entitled, ''(I–914A) Supplement A, Application for Family Member of T–1 Recipient 1.11.2017.''

Comment: The commenter recommended that on page 1, part B, DHS remove the new additional heading ''Part B. Family Member Relationship to Your Derivative'' and combine the additional checkboxes related to the T–6 derivative category with the existing ''Part A. Family Member Relationship to You.'' The commenter wrote that the new part B heading made it appear as though both parts A and B of Form I–914, Supplement A would need to be completed for all derivatives. The commenter wrote that combining the boxes in one heading would more clearly distinguish how the family member is related to the principal applicant.

Response: To address this concern, DHS has edited the form so that it is no longer divided into two parts with separate headings. The new form includes one part, labeled part 1, which has two items numbered 1 and 2, but do not contain further headings. DHS is removing the parenthetical ''(the derivative)'' in the title to previous part D (renumbered part 3), ''Information About Your Family Member'' consistent with the changes to new part 1. DHS amends the Form I–914 Instructions, as discussed in the next section, to provide further clarification on the questions in new part 1 and the form's references to family members.

Form I–914 Instructions

Commenters provided several comments on the Form I–914 Instructions. With respect to one of the commenters, it is not clear which version of the instructions its comments refer to, as some of the suggestions were already resolved by both versions of the form published in the docket with the 2016 interim rule. The other commenter's proposed edits relate to the version of the instructions entitled, ''(I–914) Instructions for Application for T Nonimmigrant Status 1.11.2017.'' In discussing both commenters' proposed edits, DHS will use references to the January 11, 2017, version.[73]

Comment: One commenter suggested adding the statutory citation of section 103 of the TVPA, as amended, 22 U.S.C. 7102, for the definition of ''a severe form of trafficking in persons'' when explaining that to qualify for T nonimmigrant status, an applicant must meet that definition at page 1, Point 1(A), ''Who May File This Form?''. The commenter explained that including the citation would easily refer applicants and advocates to review the statutory definition of ''a severe form of trafficking in persons.'' *See* 22 U.S.C. 7102. The commenter mentioned that the instructions to Form I–918, Petition for U Nonimmigrant Status, provide references to the relevant designation of qualifying crimes.

Response: DHS agrees that the term ''a severe form of trafficking in persons'' has a specific legal meaning and that applicants may not readily understand the term. DHS has added language at new page 1, ''What Is the Purpose of Form I–914?,'' to refer applicants to the language of the definition of ''a severe form of trafficking'' included in the section ''Evidence to Establish T Nonimmigrant Status,'' which derives from the language in TVPA section 103, the citation suggested by the commenter.[74] This approach will provide applicants with easy reference to the actual definition.

Comment: The commenter recommended changing the description of family members who may be eligible for T nonimmigrant status based on facing a danger of retaliation at page 2, Point 2(C)(3), ''Who May File This Form?'' and at page 4, part B, ''Completing Form I–914, Supplement A, Application for Family Member of T–1 Recipient.'' The commenter requested DHS use the term ''your sibling's children'' rather than the phrase ''niece or nephew,'' which could have a more expansive definition than the regulations have intended. The commenter also recommended using the term ''your parent's adult child'' rather than ''your sibling,'' explaining that the term sibling could include all siblings of a T–1 applicant, which it believed was a broader category than that of the adult or minor children of the parent.

Response: DHS disagrees with the commenter's reasoning. The terms suggested by the commenter would exclude some eligible family members who Congress intended to include in the statute. INA sec. 101(a)(15)(T)(ii)(III), 8 U.S.C. 1101(a)(15)(T)(ii)(III), provides that the ''adult or minor child'' of a

[73] Although it is not clear which version of the forms one commenter reviewed, the commenter's suggestions are consistent with the version dated January 11, 2017.

[74] The page numbers and section headings of the forms and instructions are provided in these comment responses to permit the commenter to find and review precisely how their comment was addressed. However, text may have shifted during final development and publication and DHS does not guarantee that the page numbers in the final version of the form will correspond to the page numbers cited here or as they existed on the forms when they were published for the interim rule or on January 10, 2018.

derivative of the principal who faces a present danger of retaliation may obtain derivative T nonimmigrant status. DHS interprets the term ''adult or minor child'' to encompass both the ''son or daughter'' and ''child'' immigration definitions; therefore, persons of any age and any marital status can be ''adult or minor children.'' *See* USCIS Policy Memorandum, *New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands* (Oct. 30, 2014).[75] Because the term ''child'' is a legal term of art defined as an unmarried person who is under the age of 21, *see* INA sec. 101(b)(1), 8 U.S.C. 1101(b)(1), using the phrase ''your parent's child'' would only include unmarried children under age 21 of the principal's derivative parents. The term ''your parent's child'' would not include the adult children of the principal's derivative parents, or the married children of any age of the principal's derivative parents. The phrase ''your sibling's children'' would be similarly restrictive.

However, as discussed above, to provide greater clarity on the family relationship of the category of adult or minor children who may be eligible for T nonimmigrant status based on facing a danger of retaliation, DHS has revised Form I–914, Supplement A (*see* new page 1, part 1, item 2) and the Form I–914 Instructions (*see* new page 4, ''Completing Form I–914, Supplement A, Application for Derivative T Nonimmigrant Status'').

Comment: The commenter suggested changes to page 2, ''General Instructions,'' part B, ''General Information About You,'' item 1, and page 5, part D, ''Information About Your Family Member (the derivative),'' item 1. Both sections explained that the questions requesting the applicant's or family member's name refer to the name as shown on the individual's ''birth certificate or legal name change document.'' The commenter requested DHS delete these explanations because some trafficking survivors do not have access to identity documents with the applicant's legal name, and such a requirement could create an evidentiary barrier for victims.

Response: It is important to maintain similar language as it provides clear instruction on the name that DHS is requesting. It is essential for DHS to know the name of the applicant or their family member as it appears on official identification documents so that DHS can conduct proper background checks and ensure there is no confusion about the identity of the person receiving the status, if approved. Neither this explanation nor the questions on the form indicate that evidence of a specific document is a requirement to obtaining status. Furthermore, the requirement does not in any way impact an applicant's evidentiary burden. However, DHS has changed the phrasing to ''birth certificate, passport, or other legal document'' to provide more clarity. *See* new part 4, ''Information About your Family Member,'' item 1.

Comment: Regarding the instruction at part D, ''Information About Your Family Member,'' item 3, the commenter opposed the collection of the family member's intended physical street address because the 2016 interim rule states that DHS is allowed to disclose an applicant's information to a law enforcement agency with the authority to detect, investigate, or prosecute severe forms of trafficking in persons. The commenter wrote that disclosing the applicant's physical street address could jeopardize the victim's safety and recommended adding language to clarify that an applicant should only provide this information if it was safe to do so and could instead provide an alternate safe mailing address.

Response: DHS declines to make the change. The request for the applicant's physical street address is distinct from the request for the applicant's mailing address used to provide official correspondence. DHS allows applicants to provide an alternative mailing address if they do not feel it is safe to receive mail at their residence as noted on previous editions of the form as well as at new page 5, part 4, item 4. This provision is to protect against perpetrators having access to USCIS correspondence with the applicant. DHS requests the applicant's physical street address for internal information purposes and consistent with requirements that individuals applying for visas register their presence. *See* INA secs. 221(b), 261, 265, 8 U.S.C. 1201(b), 1301, 1305. Furthermore, while DHS appreciates the commenter's concern that sharing address information with law enforcement agencies could jeopardize an applicant's safety, that authority exists for the purpose of promoting investigation and prosecution of traffickers, not to put victims of trafficking at risk.

Comment: The commenter made a general recommendation that DHS clarify on page 2, ''Completing Form I–914,'' part B, number 3, that an applicant's home address will not be used to contact an applicant if the applicant provides an address in the ''safe mailing address'' space on the Form I–914.

Response: DHS believes that the explanation of the safe mailing address is clear on this point. The language explains that if an applicant does not feel secure in receiving correspondence regarding their application at the applicant's home address, the applicant should provide a safe mailing address. DHS maintains this language in the Form I–914 Instructions. *See* new page 3, part 3, ''General Information About You,'' item 4, and new page 4, ''Completing Form I–914, Supplement A, Application for Derivative T Nonimmigrant Status,'' part 4, item 4, for instructions regarding the safe mailing address.

Comment: The commenter also requested that the instructions at page 3, ''Completing Form I–914,'' part B, number 6, include a clarification that the applicant's home telephone number will not be used to contact an applicant if they provide a telephone number in the ''safe daytime telephone number'' blank on the Form I–914.

Response: Again, DHS believes the explanation of the safe telephone number in the instruction at part 6 is clear and already explains that an applicant may include a safe daytime phone number if they wish. *See* new page 4, part 6, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature'' and new page 6, part 6, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature'' for instructions regarding the safe telephone number.

Comment: The other commenter requested DHS add an instruction to the section, ''General Instructions,'' that applicants represented by an attorney should include on the Notice of Entry of Appearance as Attorney or Accredited Representative (Form G–28) to be filed with Form I–914 that the attorney also represents the applicant with respect to the Form I–765. The commenter reported that attorneys have experienced difficulty communicating with USCIS regarding the status of Employment Authorization Documents (EADs) for approved T–1 nonimmigrants when the attorney has submitted a Form G–28 in connection with the Form I–914.

Response: DHS agrees with the commenter's recommendation. Because USCIS has codified a new, streamlined Bona Fide Determination process, DHS believes it would be helpful for

[75] ''T Derivative Memo,'' *https://www.uscis.gov/sites/default/files/document/memos/Interim_PM-602-0107.pdf.*

attorneys or representatives to include all forms covered by their representation on the Form G–28.

Comment: The commenter requested that in the ''Evidence to Establish T Nonimmigrant Status'' section of the Instructions, DHS delete the phrase ''You must demonstrate that you were brought to the United States'' and replace it with either ''You must demonstrate that you were a victim of a severe form of trafficking as defined by 22 U.S.C. 7102'' or with the full definition of the term ''a severe form of trafficking in persons.'' The other commenter also suggested adding the statutory reference for the definition of ''a severe form of trafficking in persons'' so applicants could easily review the statutory definition.

Response: DHS declines to include the statutory citation but, as recommended, already included the actual language of the definition from 22 U.S.C. 7102 in the revisions to the Form I–914 Instructions published on December 2, 2021, and February 27, 2017, in conjunction with the 2016 interim rule. To provide an even more complete definition, DHS also added further detail from the definition of sex trafficking included at 22 U.S.C. 7102. *See* new page 8, ''Evidence to Establish T Nonimmigrant Status,'' second items 1–2.

Comment: One commenter suggested adding language to the section ''Evidence of Cooperation with Reasonable Requests from Law Enforcement.'' The commenter recommended adding after the statement that USCIS makes the decision of whether the applicant meets the eligibility requirements for T nonimmigrant status: ''regardless of whether LEA chooses to investigate or prosecute the trafficking crime.'' The commenter wrote that the proposed language would further clarify that USCIS makes the final determination about whether an applicant is eligible for T nonimmigrant status and provide additional reassurance to law enforcement agencies that their declarations are not determinations of an individual's eligibility to obtain T nonimmigrant status.

Response: In DHS's view, the proposed language does not achieve the commenter's goal, and DHS believes the existing language is sufficient on this point; therefore, DHS declines to adopt this recommendation.

Comment: One of the commenters recommended deleting from the ''Evidence to Establish T Nonimmigrant Status'' section, language instructing applicants to describe their attempts to obtain a Form I–914, Supplement B if one was not included with their Form I–914. The commenter wrote that there is no requirement in statute or the 2016 interim rule regulations requiring this information and that this instruction is inconsistent with the 2016 interim rule's clarification that Form I–914, Supplement B Declarations will be given ''no special weight.''

Response: This suggestion was resolved by revisions to the Form I–914 Instructions published on February 27, 2017, in conjunction with the 2016 interim rule. To provide additional clarity, however, DHS is adding guidance to the Form I–914 Instructions at new page 8, ''Evidence of Cooperation with Reasonable Requests from Law Enforcement,'' that applicants are not required but may choose to provide evidence of their reasons for not submitting or attempting to obtain a Form I–914, Supplement B. In DHS's experience, if applicants choose to include this information, it can be helpful to adjudicators in understanding the full details of an applicant's claim and their engagement with law enforcement.

Comment: One commenter requested DHS update items 10–11, which directed applicants to discuss the harm or mistreatment they fear if removed from the United States and the reasons for the fear. The commenter stated that the factors detailed in 8 CFR 214.11(a) (redesignated here as 8 CFR 214.201) are broader than ''harm'' or ''mistreatment'' and that the current instructions fail to detail the types of extreme hardship involving unusual and severe harm contemplated by the 2016 interim rule.

Response: DHS acknowledges that this item's phrasing could be revised to ensure that applicants do not believe that USCIS only considers extreme hardship factors related to feared harm or mistreatment. Accordingly, DHS is revising the form to direct applicants to include information on the hardship that they believe they would suffer, including harm or mistreatment as examples. For conciseness, DHS has also combined items 10 and 11. DHS has also revised the other factors for consistency with the new regulatory text, discussed further below. *See* new page 9, ''Personal Statement,'' item 3.

The following suggestions were resolved by subsequent revisions to the Form I–914 Instructions:

- Page 1, ''Who May File this Form?,'' item 1(C), next to ''under the age of 18:'' insert the following text: ''or is asserting an exception due to physical or psychological trauma;''
- Page 1, ''Who May File this Form?,'' number 2, insert language to reflect T–6 classification;
- Page 1, ''Who May File This Form?,'' add language to the heading to clarify that principal applicants can file for their eligible family members at any time after the initial T–1 application has been filed and that the principal applicant need not be granted T–1 nonimmigrant status before they can file for their eligible family members;
- Page 7, ''Initial Evidence'' and throughout the form, delete references to a requirement to submit passport photos;
- Page 7, ''Evidence to Establish T Nonimmigrant Status,'' section 1, delete ''You must demonstrate that you were brought to the United States . . .'';
- Page 8, ''Evidence of Cooperation with Reasonable Requests from Law Enforcement,'' add language that if an applicant does not provide Form I–914, Supplement B, they must provide additional evidence, which can be in the form of a declaration to show victimization and attempted cooperation with law enforcement;
- Page 8, ''Personal Statement,'' delete item 2 that directed applicants to provide information on ''the purpose for which [they] were brought to the United States'';
- Page 8, ''Personal Statement,'' delete item 6 requesting information on the length of time the applicant was detained by the traffickers because there is no requirement that the victim be detained in order to qualify for T nonimmigrant status;
- Page 8, ''Personal Statement,'' delete item 9, instructing applicants to indicate why they were unable to leave the United States after being separated from the traffickers;
- Regarding the discussion of privacy in the instructions, add examples of the entities to which an applicant's information could be disclosed under 8 U.S.C. 1367;
- Throughout the instructions, delete distinctions between primary and secondary evidence, consistent with 2016 interim rule's elimination of this distinction; and
- Throughout the instructions, insert language to include the T–6 classification.

Form I–914, Supplement B

One commenter provided suggested revisions to the Form I–914, Supplement B. It is not clear which version of the form the commenter refers to in its suggestions. In discussing the commenter's proposed edits, DHS will use references to the version of the Form I–914, Supplement B entitled, ''(I–914B) Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons 1.9.2017'' in the

rulemaking docket. The commenter made the same request it made with respect to Form I–914 and Form I–914, Supplement A to expand the options for answering the question on gender on page 1, part A, ''Victim Information.'' DHS will make the suggested revision to the question about gender for the same reasons discussed above in DHS's response to comments to Form I–914.

Comment: The commenter recommended that at page 3, part E, ''Family Members Implicated in Trafficking,'' in the question regarding whether the applicant believes that their family members were involved in the applicant's trafficking to the United States, DHS delete the phrase ''to the United States.'' The commenter noted that the statutory requirement for eligibility is that the victim be physically present on account of trafficking and that there is no requirement that the trafficker trafficked the victim to the United States or brought the person to the United States for the purpose of trafficking.

Response: DHS agrees with the comment and is revising the question accordingly. *See* new page 4, part 5, ''Family Members Implicated in Trafficking,'' question 1.

The following suggestion was resolved by subsequent revisions to the Form I–914, Supplement B and is maintained in the form revision published with this rule:

- Page 2, part C, ''Statement of Claim,'' item 1, add the words ''patronizing, or soliciting'' after ''obtaining'' to reflect statutory changes made by the JVTA to the definition of sex trafficking codified at 22 U.S.C. 7102 and reflected in the definition of sex trafficking in the 2016 interim rule at 8 CFR 214.11(a).

Form I–914, Supplement B Instructions

One commenter made several requests to revise the Form I–914, Supplement B Instructions to the version entitled, ''(I–914B) Instructions for Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons 1.9.2017.''

Commenter: Regarding the first paragraph included on page 1, in the section, ''What is the Purpose of this Form?,'' the commenter recommended DHS add language that ''a formal investigation or prosecution is not required in order for a LEA to complete an endorsement.'' The commenter also suggested that DHS move to the beginning of the second paragraph under this heading the language that USCIS, not the LEA, makes the decision regarding whether the applicant meets the eligibility requirements for T nonimmigrant status. The commenter wrote that some law enforcement officers believed that criminal charges or convictions were needed before Form I–914, Supplement B could be signed and that signing a Supplement B would lead to the automatic approval of an immigration benefit.

Response: The commenter's first suggestion was resolved by revisions to the Form I–914, Supplement B Instructions published on February 27, 2017, in conjunction with the 2016 interim rule. The instructions on page 1 in the third paragraph under the heading, ''When Should I Use Form I–914, Supplement B?'' clearly state that a formal investigation is not a requirement for an LEA to sign the form. The instructions also state in the first paragraph that a formal investigation or prosecution is not required for an LEA to complete the form. DHS declines to make the commenter's recommendation to move the language about USCIS' role in the adjudication process. DHS believes it is appropriate to describe the purpose of Form I–914, Supplement B before clarifying the respective roles of USCIS and the LEA signing the form. *See* new page 1, ''When Should I Use Form I–914, Supplement B?''.

Comment: At page 1 ''When Should I Use Form I–914, Supplement B,'' and at page 2, part C, ''Statement of the Claim,'' item 1, the commenter suggested adding the statutory citation for the definition of ''a severe form of trafficking in persons'' when explaining that to qualify for T nonimmigrant status, an applicant must meet that definition. *See* TVPA 103, 22 U.S.C. 7102. The commenter wrote that some officers interpret ''severe'' as extremely cruel or egregious activity or to mean the length of time in trafficking. The commenter wrote, for example, that a law enforcement officer had stated that 2 months of involuntary servitude was ''not severe enough'' to be trafficking. Other officers, the commenter continued, have stated that human trafficking means sex trafficking and have not recognized labor trafficking survivors as victims.

Response: DHS agrees it is important for LEAs to understand the term but declines to include the statutory citation to TVPA section 103, 22 U.S.C. 7102. The instructions refer the reader to the ''Statement of Claim'' section to read a definition, which includes a plain language definition that incorporates relevant text from the statute. *See* new page 2, part 3, ''Statement of Claim,'' item 1.

Comment: The commenter suggested at page 2, ''General Instructions,'' part A, ''Victim Information,'' number 1, that DHS remove from the instructions the text, ''as shown on his or her birth certificate or legal name change document,'' for the same reasons discussed above in the section on the Form I–914 Instructions.

Response: DHS has revised the language in a similar manner as the Form I–914 Instructions. The language now refers to a ''birth certificate, passport, or other legal document.'' As discussed above in the context of the same suggestion with respect to Form I–914 Instructions, it is important to provide clear instruction on what name USCIS is requesting. Neither this explanation nor the question on Form I–914, Supplement B indicate that the applicant must submit a specific document to obtain T nonimmigrant status or for law enforcement to sign a Form I–914, Supplement B. *See* new page 2, part 1, ''Victim Information,'' item 1.

Comment: The commenter suggested that at page 2, part B, ''Agency Information,'' number 1, DHS revise the discussion of certifying agencies to mirror language in the preamble to the 2016 interim rule and to include other agencies, such as the U.S. Department of Labor, that have the authority to provide a Form I–914, Supplement B.

Response: DHS agrees that the language in this section is inconsistent with the definition of LEA at 8 CFR 214.201 (previously 8 CFR 214.11(a)). Although DHS did not include every example of a certifying agency, DHS revised the Form I–914, Supplement B Instructions for consistency with the language in new 8 CFR 214.201 and included a cite to the new regulation. *See* new page 2, part 2, ''Agency Information,'' item 1.

The following suggestions were resolved by revisions to the Form I–914, Supplement B Instructions published on February 27, 2017, in conjunction with the 2016 interim rule, and/or in the December 2, 2021, publication:

- Page 3, part C.1.D, ''Statement of Claim,'' delete the option for law enforcement officers to certify that they believe the individual is not a victim of trafficking.

- Page 3, part D, ''Cooperation of Victim,'' add language clarifying that if an applicant is unable to cooperate with LEA requests due to physical or psychological trauma or age, ''the applicant must provide additional evidence.''

2. Comments on Information Collection Changes to Form I–914, Application for T Nonimmigrant Status, and Related Forms and Instructions Published With Final Rule (60 Day Notice)

DHS received several comments on the January 10, 2018, **Federal Register** notice, many of which suggested revisions to the forms and associated instructions. DHS responds to those recommendations for each form, supplement, or instructions. DHS does not respond to comments outside the scope of the information collection.

Form I–914

Comment: A few commenters requested that on page 1, part 2, ''U.S. Physical Address,'' the form include instructions informing applicants that they could provide a safe mailing address instead of their physical address. The commenters stated many victims of trafficking are involved in multiple legal systems and are often required to provide the T nonimmigrant status application to the trafficker as part of the criminal or civil discovery process. Additionally, they stated that under this rule, DHS may disclose an applicant's information to an LEA that may be required to share this information with the trafficker to comply with constitutional requirements during criminal prosecution, potentially jeopardizing the applicant's safety. The commenters further suggested that DHS could instruct them to provide just the ZIP code of their physical address to ensure that applicants can have their biometrics appointments scheduled at the nearest ASC.

Response: DHS shares the commenters' goal of ensuring the safety of applicants for T nonimmigrant status; however, DHS declines to make these changes. As discussed previously, DHS requests the applicant's physical street address for internal information purposes and consistent with requirements that individuals applying for visas register their presence. *See* INA secs. 221(b), 261, 265, 8 U.S.C. 1201(b), 1301, 1305. Although DHS appreciates the concern regarding information provided to law enforcement agencies, that authority exists for the purpose of promoting investigation and prosecution of traffickers, not to put victims of trafficking at risk. If law enforcement is obligated to turn over a T nonimmigrant status application in the context of a criminal prosecution, law enforcement and the prosecutor should take steps to ensure the victim's safety.

Comment: The same commenters recommended adding an instruction at page 2, part 2, ''Other Information,'' question 9, for applicants to check the box corresponding to the gender with which they identify. The commenters mentioned USCIS' policy to change the gender on official immigration documents, such as employment authorization cards and documentation of immigration status, if the individual can provide specifically enumerated evidence verifying a change in gender.

Response: DHS appreciates the sensitivity that surrounds the issue of gender identity. Although DHS declines to make universal changes at this time to questions and data collections regarding sex, gender, male, female, mother, father, sister, brother, and other gender-related terms, as discussed above, DHS will add a third gender identity option to the Form I–914 and related forms.

Comment: On page 3, part 4, ''Additional Information About Your Application,'' questions 3.b. and 4.b., commenters suggested changes to the instruction to provide an explanation and supporting documentation for the answers to the questions. The commenters recommended deleting language indicating that the applicant should attach documents in support of their claim to be a victim of a severe form of trafficking in persons and the specific facts supporting the claim. The commenters also suggested deleting instructions in 3.b. and 4.b. to use extra space on the form to provide explanations for affirmative answers to questions regarding the physical presence requirement and the extreme hardship requirement. Finally, they recommended adding an instruction that the personal narrative statement describing the trafficking also address each eligibility requirement for T nonimmigrant status.

Both commenters stated the current language appears to suggest that a one-sentence explanation will be sufficient evidence of the physical presence and extreme hardship eligibility requirements. They also expressed that the recommended additional language would help ensure that the personal narrative sufficiently addresses all eligibility requirements. One of the commenters stated it has observed an increase in RFEs for lack of sufficient information in the initial T visa application on these two eligibility requirements. The commenter stated that the additional language could reduce the number of RFEs and delays in processing time.

Response: DHS agrees that it is important for applicants to provide sufficient information regarding their eligibility for T nonimmigrant status in their initial application. DHS already deleted the instruction included in 3.b. and 4.b., which it agrees may not have encouraged applicants to provide sufficient information as to the physical presence and extreme hardship eligibility requirements. DHS also already included an instruction to address the eligibility requirements in the personal narrative statement. DHS has deleted the instructions in questions 1, 3, and 4 requested the applicant attach evidence or documentation; instead, DHS has included in the introductory paragraph that the applicant should attach evidence and documents to support their claim if they answer ''Yes'' to questions 1–4. The applicant bears the burden of establishing their eligibility for T nonimmigrant status and available documentation corroborating the applicant's claim should be provided.

Comment: About page 3, part 4, ''Additional Information About Your Application,'' question 5, which asks whether the applicant has reported the crime they claim to have suffered, one commenter suggested DHS change the word ''crime'' to ''trafficking.'' The commenter stated this change will clarify that applicants must report a crime that includes trafficking as at least one central reason for the commission of the crime.

Response: DHS agrees and has already changed the wording to ''trafficking crime,'' which is more specific and appropriate, given the requirement that the applicant be a victim of ''a severe form of trafficking in persons'' and comply with any reasonable law enforcement requests for assistance in an investigation or prosecution of a crime involving acts of trafficking in persons. *See* INA sec. 101(a)(15)(T)(i)(I), (III), 8 U.S.C. 1101(a)(15)(T)(i)(I), (III).

Commenter: Regarding page 3, part 4, ''Additional Information About Your Application,'' commenters suggested adding the parenthetical ''(if any)'' after the question requesting the criminal case number. The commenters stated that the recommended language would provide clarification that a police report case number is not required and that it would reinforce that a law enforcement declaration or documentation of criminal investigation is not required to file for a T visa. One of the commenters stated it frequently encounters the misconception that a law enforcement declaration is required to apply for a T visa, causing some survivors and advocates to unnecessarily delay filing their application until a law enforcement report is made or a

criminal investigation is instigated. The commenters also suggested deleting the request for an explanation if the applicant did not report to law enforcement. They instead suggested adding in an instruction to provide the explanation in the applicant's personal narrative. Two commenters stated that question 7 suggests that the explanation of why the survivor has not reported the trafficking crime can be achieved by a brief sentence and makes it appear as if reporting to law enforcement is optional rather than reinforcing the need for the applicant to raise either the trauma-based exception or age-based exemption to the requirement to comply with reasonable law enforcement requests.

Response: DHS agrees with the commenters' suggestion regarding the case number and has already revised the form to state that the applicant should indicate ''the case number assigned, if any.'' *See* new page 3, part 3, question 5. However, DHS declines to remove the requirement that an applicant explain why they did not report the crime. The current form indicates that an applicant should explain the circumstances. Applicants have the option to either provide an explanation on the form or in their personal narrative statement. DHS does not see the need to further specify where the explanation is included.

Comment: Regarding page 3, part 4, ''Additional Information About Your Application,'' questions 8 and 9 (now questions 6 and 7), two commenters recommended deleting the instruction for minors under 18 years of age to skip question 9.b. (now question 7) related to whether the minor reported their trafficking to law enforcement. The commenters stated that although minors are exempt from the general requirement to comply with reasonable law enforcement requests for assistance in the investigation or prosecution of acts of trafficking, many minor applicants do report their trafficking victimization to law enforcement and do not need to skip the question. The commenters further stated that forcing minors to skip question 9.b. regarding cooperation with law enforcement may jeopardize their opportunity to adjust status to lawful permanent residence early based on the criminal investigation or prosecution having been completed. The commenters also stated the language creates unnecessary confusion that only those who are minors at the time of filing Form I–914 are eligible for an exemption to the requirement to comply with reasonable law enforcement requests when USCIS has stated that minors under 18 at the time of the victimization can meet this exemption.

Response: DHS agrees with the commenter's stated rationale and has deleted this instruction.

Comment: At page 4, part 4, ''Additional Information About Your Application (continued),'' questions 14.a.–14.b. (now question 9), commenters suggested deleting both questions regarding the circumstances of the applicant's most recent entry. Two commenters stated that question 3.a. (now question 3) already sufficiently addressed the physical presence eligibility requirement and question 14.a. confuses the physical presence eligibility requirement and reinforces existing physical presence misconceptions. The first misconception is that an applicant's latest entry must be based on the trafficking and does not recognize that there are other alternative exceptions to satisfy the physical presence requirement when the latest entry is not related to the trafficking. Commenters wrote that question 14.a. also reinforces the misconception that a victim of severe form of trafficking in persons is required to be trafficked across the United States border. One commenter stated that question 14.a. misstates the physical presence eligibility requirement. Neither the statutory language nor the regulatory language requires that an applicant's last entry be related to the trafficking.

Response: As discussed previously in response to comments on Form I–914 published with the IFR, the commenters are correct with respect to the statutory eligibility requirements, *see* INA sec. 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T); however, including these questions does not mean that an applicant must show their last entry was related to the trafficking suffered. The questions help provide information to adjudicators about the general circumstances of the applicant's most recent arrival, whether related to the trafficking or not, and information regarding the applicant's immigration history. All this information assists adjudicators in understanding the full history and facts of an applicant's claim. Accordingly, DHS declines to delete the questions; however, DHS has combined the two into a new question at new page 4, part 3, item 9.

Comment: At page 4, part 5, ''Processing Information,'' the introductory paragraph instructs applicants to answer affirmatively any question that applies even if their records were sealed, otherwise cleared or the applicants have been told they no longer have a record. Commenters requested DHS add an instruction that applicants could answer ''no'' to questions 1.b. through 1.f. and ''n/a'' to questions 2–5 regarding their criminal history if they had been granted vacatur. The commenter stated that vacatur is a form of relief for trafficking survivors who were forced to commit illegal acts by their traffickers and that, unlike expungement, vacatur is the recognition from the criminal justice system that a mistake was made, that the accused was wrongfully accused and in fact is a victim, and that the arrest or conviction should never have occurred. The commenters expressed that vacatur completely eradicates a survivor's criminal history as if the arrest and conviction had not occurred, instead of excusing criminal behavior; vacatur also recognizes that victims who did not have the requisite *mens rea* to commit the criminal act should not be penalized. They also stated that the current instructions are confusing and may lead to the inadvertent or illegal disclosure of state court records where state confidentiality laws may prevent disclosure of juvenile state court files without a court order. One of these commenters also requested that DHS delete instructions to answer each question about the applicant's criminal history regardless of whether the criminal records were sealed or otherwise cleared.

Response: DHS recognizes that victims of human trafficking may be forced to commit illegal acts at the hands of their traffickers; however, DHS declines to make the requested changes because having all information relevant to an applicant's trafficking experience is helpful to the adjudication. Applicants have an opportunity to explain in their personal statement and through their supporting evidence, the circumstances of any criminal activity. As the instructions state, answering ''yes'' to the questions regarding criminal conduct and inadmissibility will not necessarily lead to a denial of the application.

Comment: Another commenter requested DHS add an instruction that applicants could answer questions in the negative if their response related to prostitution that they were forced to engage in by their trafficker. The commenter stated the question could lead to filing unnecessary inadmissibility waivers, fee waivers, and additional explanations.

Response: DHS responded to a similar comment above. As discussed above, the question is appropriate as written because engaging in prostitution is a ground of inadmissibility, whether or not connected to victimization. If the

applicant has engaged in this type of conduct and the prostitution was connected to the trafficking, the applicant can request a waiver but must still answer the question to address possible inadmissibility. USCIS will examine all the evidence submitted and decide on a case-by-case basis whether to grant any waiver request.

Comment: Regarding page 4, part 5, ''Processing Information,'' question 1.a., one commenter requested DHS delete the question which asks whether the applicant has ever committed a crime or offense for which the applicant has not been arrested. The commenter stated the question was vague and overbroad and goes beyond the statutory grounds of inadmissibility at section 212(a)(2) of the INA, 8 U.S.C. 1182(a)(2). The commenter further stated that the question would encompass very minor criminal infractions as well as serious criminal activity, and that the question assumes applicants have sufficient legal knowledge to answer accurately.

Response: DHS declines to delete the question. As discussed previously in response to a similar comment above, answers to this question are useful for adjudicators in gathering relevant information related to determining admissibility and assessing the applicant's truthfulness. In addition, in DHS's experience, answers to the question have provided information relevant to the applicant's trafficking experiences.

Comment: One commenter stated that DHS's changes to the inadmissibility questions dramatically expand the scope of information sought without identifying the need for the expansion. According to the commenter, these changes appear intended to bolster an adjudicator's ability to deny applications on attenuated discretionary grounds. The commenter stated that this was especially troubling given that several of these expanded queries relate to potential inadmissibility grounds or other discretionary concerns that are often incidental to the trafficking or the victim's attendant vulnerabilities that helped precipitate the trafficking victimization.

Response: DHS will not change the wording or delete any of the inadmissibility questions as a result of this comment. The changes to these questions do not change the meaning of any of the statutory grounds of inadmissibility but were meant to make the questions less legalistic and use plain language to facilitate greater understanding of their meaning. The changes were also made to promote consistency with changes to questions on admissibility used in other USCIS forms.

Comment: Regarding page 5, part 5, ''Processing Information,'' question 7, one commenter suggested making a change to the inadmissibility question related to whether the applicant ever imported prostitutes. The commenter stated that the phrase ''imported prostitutes'' was dehumanizing and insensitive, especially because many victims who suffered sex trafficking will be using this form and suggested, in the alternative, the phrase ''prostituted persons'' or ''persons in prostitution.''

Response: DHS declines to make this change. The question uses the statutory language from section 212(a)(2)(D) of the INA, 8 U.S.C. 1182(a)(2)(D) and is not meant to ascribe any characteristics to the people referenced.

Comment: At page 8, part 7, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' commenters requested DHS add to the paragraph on the authorization of release of information that ''any disclosure shall be in accordance with the VAWA confidentiality provisions at 8 U.S.C. 1367 and 8 CFR 214.14(e).'' One commenter stated this inclusion would clarify and reinforce the applicability of these confidentiality provisions.

Response: DHS agrees that it is important that applicants understand that their release of information is subject to the confidentiality provisions at 8 U.S.C. 1367 and is adding in language regarding these provisions.

Comment: One commenter requested DHS not restrict the forms from editing to allow users to make comments directly on the form. The commenter is a national technical assistance provider and uses forms to provide training and technical assistance by creating comments and guidance on how to complete specific sections of the forms.

Response: DHS declines to make any changes in response to the comment. Nevertheless, stakeholders can obtain an unlocked version of the form for training purposes by contacting the information contact for this rule.

The following suggestion was resolved by subsequent revisions to the Form I–914:

- Page 2, part 2, ''General Information About You (Victim),'' ''Information About Your Last Arrival in the United States,'' questions: 14.b.–14.f, add the parenthetical ''(if any)'' after the requests for recent passport or travel document information.

Form I–914, Supplement A

DHS received several comments on Form I–914, Supplement A, some of which were duplicative of comments received on Form I–914. For the following comments, DHS declines to make the requested change for the same rationale stated in response to suggestions to revise Form I–914:

- Page 1, part 2, U.S. Physical Address, 2.a.–2.e, include instructions informing applicants they could provide a safe mailing address instead of their physical address;
- Page 2, part 3, ''Current or Intended U.S. Physical Address,'' 4.a.–4.e., include instructions informing applicants they could provide a safe mailing address instead of their family member's physical address;
- One commenter made a general comment about DHS's proposed changes to the inadmissibility questions, stating that the changes dramatically expand the scope of information sought without identifying the need for the expansion;
- One commenter requested DHS not restrict the forms from editing to allow users to have the capability to make comments directly on the form.

Comment: Two commenters repeated their comment on the Form I–914 that DHS should add language at page 8, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' to the paragraph on the authorization of release of information that ''any disclosure shall be in accordance with the VAWA confidentiality provisions at 8 U.S.C. 1367 and 8 CFR 214.14(e).''

Response: For the reason discussed above, DHS agrees to add language referencing the confidentiality protections included in 8 U.S.C. 1367.

The following suggestions were resolved by subsequent revisions to the Form I–914, Supplement A:

- Page 3, part 3, ''Information About Your Family Member,'' question 16 (asked for ''Your Current Immigration Status or Category''), change the question to add ''Family Member's'' after ''Your'' and delete the reference to ''Category'';
- Page 4, part 3, ''Additional Information About Your Family Member,'' question 37 directs the applicant to answer questions 38–40.g. if the applicant answers question 37 affirmatively and to skip to item 41.a. if the applicant answers question 37 negatively. One commenter stated that it was not clear whether applicants who respond affirmatively to the question must answer question 41.b;
- Page 4, part 3, ''Additional Information About Your Family Member,'' question 41.b., add a space to write that the family member is currently in removal proceedings;

• Page 5, part 4, ''Processing Information,'' question 15 regarding whether the family member has ever ''illicitly (illegally) trafficked or benefited from the trafficking of any controlled substance, such as chemicals, illegal drugs, or narcotics?,'' remove the reference to illegal drugs;

• Page 8, Part 5, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' item 8.a., remove requirement of a signature from an applicant's family members who are not in the United States.

Form I–914 Instructions

DHS received several comments on the Form I–914 Instructions, many of which were duplicative of comments received on the Form I–914. For the following comments, DHS declines to make the requested changes for the same rationale discussed in response to comments on Form I–914:

• Page 4, part 2, ''General Information About You (Victim),'' items 4.a.–4.e., ''U.S. Physical Address,'' and items 5.a.–5.f., ''Safe Mailing Address;'' page 7, ''Specific Instruction for Form I–914, Supplement A,'' part 2, ''General Information About You (Principal Applicant (Victim)),'' items 2.a.–3.e., ''U.S. Physical Mailing Address'' and items 3.a.–3.f., ''Safe Mailing Address,'' commenters requested DHS include instructions informing applicants that could provide a safe mailing address in lieu of their physical address and just provide the ZIP code of their physical address to ensure a biometrics appointment near their physical location.

DHS provides individualized responses to the remaining comments.

Comment: Commenters recommended several changes to the description of the adult or minor children at page 2, item 2.C.3 including deleting the parenthetical phrase specifying the relationship of the adult or minor children to the applicant's family members. The commenters made a similar recommendation at page 14, ''Evidence to Establish T Nonimmigrant Status For Your Family Member,'' item 3.C. The commenters stated that applicants and advocates often struggle with understanding the ''derivative of a derivative'' category and stated that removing this language will simplify the description and avoid confusion.

Response: DHS appreciates the complex nature of this category of eligible family members and the value of simplifying instructions but believes the additional information could be helpful to applicants in confirming the meaning of the description of the eligible family members.

Comment: At page 4, part 2, ''General Information About You (Victim),'' items 1.a.–1.c., ''Your Full Legal Name,'' and page 7, part 2, ''General Information About You (Principal Applicant (Victim)),'' items 1.a.–1.c., ''Your Full Legal Name,'' commenters recommended DHS delete its request for the applicant's and family member's legal name as shown on the individual's ''birth certificate or legal name change document.'' The commenter stated that some trafficking survivors do not have access to identity documents with the applicant's legal name and that the current text could create an evidentiary barrier for victims who do not have these documents.

Response: As discussed previously in response to this same comment to the Form I–914 instructions published on December 20, 2016, it is essential for DHS to know the name of the applicant or their family member as it appears on official identification documents so that DHS can conduct proper background checks and ensure there is no confusion about the identity of the person receiving the status, if approved. Neither this explanation nor the questions on the form indicate that evidence of a birth certificate or legal name change document is a requirement to obtain status. DHS has already amended the language to state ''birth certificate, passport, or other legal document.'' Furthermore, the requirement does not in any way impact an applicant's evidentiary burden.

Comment: At page 4, part 2, ''General Information About You (Victim),'' item 9, which requests the applicant's gender, commenters consistent with comments to Form I–914 and Form I–914, Supplement A, requested an instruction regarding an additional checkbox for applicants who identify as transgender or, as one commenter stated, ''a non-binary option for LGBTQI applicants.'' Another commenter also made a similar comment at page 8, part 3, ''Information about Your Family Member,'' item 8, ''Gender.''

Response: For the rationale discussed above in response to similar comments on Form I–914, DHS will make this change.

Comment: At page 5, items 14.a.–14.f., ''Passport and Travel Document Numbers,'' commenters suggested making changes to this instruction on providing passport and travel document information to take into account the fact that trafficking survivors often do not have these documents and that having a passport is not required to apply for T nonimmigrant status. One of the commenters made a similar comment at page 10, ''Specific Instructions for Form I–914, Supplement A.''

Response: DHS agrees that many trafficking victims may lack access to passports or travel documentation, and, therefore, adds to the instructions at both pages for applicants to provide the passport and travel document information ''if applicable and if known.''

Comment: One commenter requested that DHS add a similar instruction in relation to questions about the applicant's last arrival into the United States and the applicant's current immigration status or category at page 5, item 15.–16.b., ''Information About Your Last Arrival in the United States'' and item 17, ''Current Immigration Status or Category.''

Response: DHS declines to adopt this recommendation. This information should be reasonably available to the applicant, as it does not require the applicant to have particular documents in their possession. If an applicant does not know the information, the applicant can write ''unknown'' and provide an explanation.

Comment: About page 6, part 5, ''Processing Information,'' commenters requested DHS delete instructions to answer each question about the applicant's criminal history regardless of whether the criminal records were sealed or otherwise cleared. One of the commenters also made this suggestion in reference to page 10, ''Specific Instructions for Form I–914, Supplement A,'' part 4, ''Processing Information,'' items 1.a.–44.c. Both commenters stated the language was unduly burdensome, confusing to trafficking survivors, and assumes applicants have sufficient legal knowledge to respond accurately. One of the commenters also recommended deleting the instruction at page 6, part 5, ''Processing Information,'' for applicants to answer affirmatively to the questions about their conduct, regardless of whether the actions or offenses occurred in the United States or anywhere in the world. Another commenter requested DHS add an instruction at page 6, part 5, ''Processing Information,'' that applicants could answer questions about their conduct in the negative if their conduct involved prostitution that they were forced to engage in by their trafficker.

Response: DHS declines to delete any language from these instructions. All of an applicant's prior conduct is relevant to the adjudication of their application and DHS can consider any extenuating circumstances such as forced criminal conduct or other circumstances that

may have led to the applicant's records being sealed or criminal history being cleared.

Comment: At page 7, ''Specific Instructions for Form I–914, Supplement A,'' one commenter recommended throughout that DHS replace the use of the pronouns ''his'' and ''hers'' with ''family member'' or ''derivative'' to provide more clarity to the applicant.

Response: DHS has revised the use of pronouns to be gender neutral throughout but declines to adopt this suggestion because DHS believes the use of pronouns is clear.

Comment: At page 11, ''Specific Instructions for Form I–914, Supplement B,'' one commenter suggested adding an instruction that if applicants do not submit the Form I–914, Supplement B, they should provide alternative evidence to show victimization and cooperation with law enforcement. Another commenter suggested that DHS add a similar instruction but recommended that it state that applicants ''must'' provide additional evidence to show victimization and cooperation with law enforcement. The commenters also suggested referring applicants to the section of the Form I–914, Supplement B Instructions on ''Evidence of Cooperation with Reasonable Requests from Law Enforcement'' for additional information. The commenters expressed that the language would clarify that the I–914 Supplement B is not required and is no longer considered primary evidence and would prompt applicants to consider providing alternate evidence.

Response: DHS had already included an instruction that applicants may provide other evidence and directs applicants to the relevant portion of the Form I–914, Supplement B Instructions; however, to emphasize that applicants must provide evidence to show victimization and cooperation with law enforcement, DHS has revised the language to state that an applicant ''must'' provide other evidence.

Comment: At page 11, ''What Evidence Must You Submit?,'' commenters suggested that the initial paragraph state that applicants may submit ''any credible evidence'' in accordance with 8 CFR 214.11(d)(2)(ii) (new 8 CFR 214.204). In addition, the commenters suggested adding language that the application may not be denied for failure to submit particular evidence, but only if the evidence that was submitted was not credible or otherwise failed to establish eligibility and that the ''any credible evidence'' standard is discretionary. Commenters also suggested including mention of the ''any credible evidence'' standard in the ''General Instructions'' at page 2.

Response: DHS agrees that it is important to mention the ''any credible evidence'' standard and has added language in the form instructions to describe the standard. DHS is not adding language on the standard in the ''General Instructions'' at page 2 as one mention should be sufficient.

Comment: At page 12, ''Evidence of Cooperation with Reasonable Requests from Law Enforcement,'' in the introductory paragraph, commenters requested DHS amend the sentence specifying that it is USCIS' role to decide whether the applicant meets the eligibility requirements for T nonimmigrant status. The commenter suggested DHS include the phrase ''regardless of whether [the] LEA choose[s] to investigate or prosecute the trafficking crime.'' Commenters stated that the proposed language would further clarify that USCIS has the final determination of whether an applicant is eligible for T nonimmigrant status and that this determination is not dependent on a declaration from law enforcement. One commenter added that this proposed language will provide clarity to applicants that an LEA's unwillingness to sign a Form I–914, Supplement B should not be a deterrent to filing the application for T nonimmigrant status and to provide additional reassurance to LEAs that the Form I–914, Supplement B is not a determination of an individual's eligibility to obtain T nonimmigrant status.

Response: DHS declines the suggested change. The introductory paragraph clearly states that Form I–914, Supplement B is not required, and states that eligibility for T nonimmigrant status is not dependent upon whether the LEA pursues an investigation or prosecution. It also already states that USCIS determines whether an applicant meets the eligibility requirements.

Comment: At page 16, ''Waiver of Grounds of Inadmissibility,'' commenters suggested the inclusion of the standards that USCIS uses in determining whether an applicant or their family member is eligible for a waiver of inadmissibility. The commenters stated this addition will provide clarity that the applicant may be eligible to receive a waiver and provides additional guidance on when USCIS will use its discretion to waive grounds of inadmissibility.

Response: DHS declines to make this change. The suggested language conflates two different waiver standards included in section 212(d)(3) and (d)(13) of the INA, 8 U.S.C. 1182(d)(3), (d)(13). The ''Waiver of Grounds of Inadmissibility'' section was added for contextual information. The standards and requirements for a waiver are discussed in detail on the separate inadmissibility waiver application forms. The standards and requirements that apply are too detailed and complex to include in these form instructions.

Comment: At page 16, ''What is the Filing Fee?,'' the Instructions state that there is no fee for the Form I–914 and commenters recommended adding a discussion of fees for other related forms, available fee waivers and where to find more information on these topics, to provide clear guidance on where more information can be obtained.

Response: DHS appreciates the suggestions but declines to adopt them. The information provided on fees and fee waivers for all related forms is sufficiently specified through vehicles such as the USCIS website or Form G–1055, Fee Schedule.

Comment: One commenter requested DHS include information earlier in the ''General Instructions'' on the 8 U.S.C. 1367 protections related to disclosure and to the prohibitions on using information provided solely by a perpetrator. The commenter also requested DHS include information on which agency the applicant should contact with questions or concerns about confidentiality violations.

Response: DHS believes the Instructions only need to mention the 8 U.S.C. 1367 protections once. DHS does not believe it is necessary to include information on which agency to contact if the applicant has questions or concerns about confidentiality violations because that is outside the scope of instructions for completing a form. In addition, USCIS provides information on its website on how to make a complaint about employee misconduct.

The following suggestions were resolved by subsequent revisions to the Form I–914 Instructions:

- Page 1, ''Principal Applicant,'' question 1.C., add language about enforcement agencies with the authority to detect or investigate trafficking crimes.
- Page 1, ''Who May File Form I–914?,'' item 2, ''Principal Applicant Filing for Eligible Family Members at the Same Time,'' delete the phrase ''at the same time'' from this title and the instruction, and add an instruction that the applicant may file a Supplement A with an initial application or at a later time;

• Page 3, ''General Instructions,'' ''Copies,'' delete the statement that USCIS may destroy original documents that are submitted when not required or requested;

• Page 10, part 5, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' ''NOTE;'' page 11, ''Initial Evidence,'' item 4; page 11, ''Initial Evidence,'' second item 1, remove requirement that all eligible family members sign the Supplement A;

• Page 10, part 5, ''Applicant's Statement, Contact Information, Declaration, Certification, and Signature,'' ''Note;'' page 11, ''Initial Evidence,'' delete the instruction that all family members must sign Form I–914, Supplement A;

• Page 11, ''What Evidence Must You Submit?,'' delete the first two sentences of the initial paragraph, which instruct applicants to submit all evidence requested in the Instructions and warns that a failure to provide required evidence could result in a rejection or denial of the application;

• Page 15, ''Unavailable Documents,'' delete language that suggests applicants can provide secondary evidence if a required document is not available and that USCIS may require a certification from an appropriate civil authority if a necessary document is unavailable;

• Page 17, ''Processing Information,'' ''Confidentiality,'' add examples of the entities to which an applicant's information could be disclosed under 8 U.S.C. 1367.

Form I–914, Supplement B

DHS received three comments on Form I–914, Supplement B, two of which are similar to comments made on Form I–914 and Form I–914, Supplement A regarding questions about the gender of applicants and family members at page 1, part 1, ''Victim Information,'' ''Other Information About Victim,'' question 8. For the same reasons discussed above, DHS will instruct that responses to questions about the applicant's gender on Form I–914, Supplement B reflect the gender with which the applicant identifies.

The following suggestion was resolved by subsequent revisions to the Form I–914, Supplement B:

• Page 2, part 3, ''Statement of Claim,'' ''Type of Trafficking,'' question 1.e., remove the option for law enforcement to indicate a belief that the applicant is not a victim of trafficking.

Form I–914, Supplement B Instructions

Comment: For page 1, ''What is the Purpose of Form I–914, Supplement B?,'' ''Description,'' commenters suggested DHS move to the beginning of the second paragraph under this heading the language that USCIS, not the LEA, makes the decision regarding whether the applicant meets the eligibility requirements for T nonimmigrant status and add a phrase that signing a Supplement B does not lead to automatic approval of the T visa application. The commenters wrote that the changes would correct the misconception that criminal charges or convictions were needed before Form I–914, Supplement B could be signed and that signing a Supplement B would lead to the automatic approval of an immigration benefit. Another commenter suggested adding language that officers can sign the Form I–914, Supplement B even if there is no investigation opened. That commenter stated that the existing language in the Form I–914, Supplement B Instructions has not been sufficient to empower some law enforcement agents to sign the Form I–914, Supplement B if a prosecuting authority decides not to open a case. The commenter also suggested DHS add detailed language about the compliance with reasonable law enforcement requests requirement to give examples of sufficient cooperation and include language that there is a presumption of compliance for applicants who reported the trafficking incident and had not denied any reasonable requests for assistance.

Response: For reasons discussed previously in response to similar suggestions when the Form I–914, Supplement B Instructions were published on December 20, 2016, DHS declines to make these changes. The instructions on page 1 in the third paragraph under the heading, ''When Should I Use Form I–914, Supplement B?'' clearly state that a formal investigation is not a requirement for an LEA to sign the form. DHS does not believe it is necessary to provide more detail regarding the compliance with reasonable law enforcement requests requirement. Law enforcement decides at its own discretion whether to provide a Form I–914, Supplement B, and an applicant does not have to submit Form I–914, Supplement B to receive T nonimmigrant status. The regulations do not include a presumption of compliance with reasonable law enforcement requests, and DHS declines to include language to that effect in the Form I–914, Supplement B Instructions.

DHS also declines to adopt the recommendation to move the language about USCIS' role in the adjudication process. DHS believes it is appropriate to describe the purpose of Form I–914, Supplement B before clarifying the respective roles of USCIS and the LEA signing the form. DHS also does not believe it is necessary to add a phrase that signing does not lead to automatic approval of the application for T nonimmigrant status. The Form I–914, Supplement B Instructions already state that by providing a Supplement B, the LEA is not giving an immigration benefit.

Comment: For page 1, ''When Should I Use Form I–914, Supplement B?,'' one commenter requested that DHS not use the phrase ''on account of'' but ''as a result of'' when describing the physical presence on account of trafficking eligibility requirement. The commenter stated that the phrase is a legal term of art that will generate confusion and will dissuade law enforcement agents from signing a Form I–914, Supplement B.

Response: DHS agrees with the commenter and has changed this language for consistency.

Comment: Regarding page 3, part 1, ''Victim Information,'' items 1.a.–1.c., ''Full Legal Name of Victim,'' commenters repeated a request made in connection with the Form I–914 and the Form I–914, Supplement A to delete instructions to provide the applicant's name as shown on their birth certificate or legal name change document.

Response: As discussed previously, DHS declines to make this change, but has revised the question to include ''other legal documents.''

Comment: Regarding page 3, part 1, ''Victim Information,'' item 8, ''Gender,'' commenters provided similar suggestions to those made on Form I–914 and Form I–914, Supplement A regarding providing additional options to respond to the question about the applicant's gender.

Response: For the same reasons discussed previously, DHS will instruct that the response reflect the gender with which the applicant identifies.

Comment: For page 4, ''General Instructions,'' items 10.–12.b., one commenter stated that asking for the case number, case status, and, if applicable, the FBI Universal Control Number or State Identification Number is likely to dissuade LEAs from signing a Form I–914 Supplement B because they will believe they need to have an identifying case number associated with the investigation. The commenter suggested adding language that to sign a Form I–914, Supplement B, an investigation consisting of an initial report is sufficient, and no case number is required.

Response: DHS does not believe that asking for this information will dissuade LEAs from providing a Form I–914,

Supplement B. The ''General Instructions'' at page 2 make it clear that if the LEA does not have certain information, the LEA can leave the field blank. The Form I–914, Supplement B Instructions at page 1 clarify that the LEA does not necessarily need to formally launch an investigation or file charges to provide a Form I–914, Supplement B. In addition, the instructions indicate this information should be filled out only if applicable. DHS will retain the question because the case identifying information is helpful if USCIS needs to inquire further with the LEA about the case.

Comment: About page 4, part 3, ''Statement of Claim,'' items 1.a.–1.e., ''Type of Trafficking,'' one commenter stated that the options available to LEAs to choose which type of trafficking occurred do not account for sex or labor trafficking that did not result in a completed sex act or completed labor/service.

Response: DHS agrees and has added a statement clarifying that victims of attempted labor or sex trafficking can be considered victims of a severe form of trafficking in persons.

Comment: Regarding page 4, part 3, ''Statement of Claim,'' item 2, ''Victimization Description,'' LEAs are instructed to identify the relationship between the victimization and the crime under investigation or prosecution. One commenter requested the instructions clarify that the LEA's own investigation independently satisfies the threshold and that a separate investigation opened by a prosecutor is not required.

Response: DHS feels that the Instructions do not suggest the need for a separate investigation or prosecution and do not need to be changed.

Comment: At page 4, part 3, ''Statement of Claim,'' items 3.a.–3.b., ''Fear of Retaliation or Revenge,'' the instruction asks LEAs to indicate whether the applicant has expressed any fear of retaliation or revenge if removed from the United States. One commenter stated that it was unlikely that many victims will feel comfortable enough to provide much detail to LEAs about why they fear returning to their home country but did not recommend any specific changes.

Response: DHS does not believe any change is necessary. In some cases, trafficking victims may share information with LEAs about what they fear will happen to them if removed from the United States. In other cases, as the commenter stated, they may not. The instruction asks for the information if it exists and, if it is shared, it can help adjudicators understand the full facts of a case. If the LEA has no information about this topic and applicants want to show they have such a fear, they can submit other relevant credible evidence.

Comment: Regarding page 5, part 5, ''Family Members Implicated in Trafficking,'' one commenter expressed that requiring LEAs to include the names of family members ''who they believe to be affected by the trafficking may instill fear and uncertainty in a survivor's mind.'' The commenter stated that applicants may not want to disclose this information initially, and it could come out later creating the appearance of an inconsistency and affect their credibility.

Response: DHS understands trafficking victims may be hesitant to admit that a family member was involved in their trafficking; however, DHS will maintain this question. Again, the Form I–914, Supplement B Instructions do not require this information, and whether the information exists does not directly impact an applicant's eligibility for T nonimmigrant status. However, if an LEA has this information, it can help USCIS understand the full facts of an applicant's victimization. The information may also be relevant to the family member's eligibility for derivative T nonimmigrant status, as section 214(o)(1) of the INA, 8 U.S.C. 1184(o)(1), provides that an individual is ineligible for admission to the United States as a T nonimmigrant if there is substantial reason to believe they have committed an act of a severe form of trafficking in persons. If the family member is an immigrant USCIS may be able to use the information provided to deny or revoke immigration status if appropriate.

The following suggestions were resolved by subsequent revisions to the Form I–914, Supplement B Instructions:

- Page 1, ''What is the Purpose of Form I–914, Supplement B?,'' ''Description,'' add language that ''a formal investigation or prosecution is not required in order for a LEA to complete an endorsement'';
- Page 3, part 1, ''Victim Information,'' items 4–6, add that LEAs should provide this information if known;
- Page 4, part 3, ''Statement of Claim,'' items 1.a.-1.e., ''Type of Trafficking,'' remove the option for an LEA to indicate that the applicant for T nonimmigrant status is not a victim of trafficking;
- Page 4, part 4, ''Cooperation of the Victim,'' add that the victim must provide additional evidence if they claim they are unable to cooperate with law enforcement requests for assistance.

3. Changes to Form I–914, Form I–765, and Related Forms and Instructions Published With Final Rule

a. Discretionary and Technical Changes to Form I–914 Package

i. Overarching Changes

To improve readability, DHS made non-substantive edits to questions, headings and narrative in the forms and the associated instructions. DHS revised all forms and associated instructions to use gender neutral language. DHS has also updated all references to the regulations.

Throughout the forms and instructions, DHS has revised the reference to law enforcement officials to match the new definition found at new 8 CFR 214.201.

On the Form I–914 and Form I–914, Supplement A, in the ''For USCIS Use Only'' section, DHS changed its reference from ''Conditional Approval'' to ''Waitlisted,'' which is a more accurate descriptor for this internal process.

ii. Specific Form Changes

Form I–914

At new page 3, part 3, ''Additional Information,'' item 6, DHS has revised the question to read that the applicant *was* under 18 years of age at the time at least one of the acts of trafficking occurred, and as discussed above, has removed the parenthetical instructing the applicant to skip item 7 if they answered yes to item 6. The relevant inquiry is the applicant's age at the time at least one of the acts of trafficking occurred, not at the time of filing, as clarified in the Preamble and the regulations. Similarly, in item 7, DHS has added that an explanation of why an individual did not comply with reasonable requests for assistance is only required if the individual was over the age of 18 at the time one of the acts of trafficking occurred.

At new page 7, part 5, ''Information About Your Family Members,'' DHS has added ''Information About Your Spouse'' to item 1 to clarify that the information being requested (date of birth, country of birth, etc.) is for the applicant's spouse. DHS has also renumbered the items, and under ''Information About Your Children,'' has deleted ''relationship,'' as the relationship should always be ''child.''

DHS deleted language at the end of part 5 of Form I–914 regarding completion of Form I–914, Supplement A. This language is unnecessary to include in the form as the Form I–914 Instructions provide clear guidance on the topic.

As previously discussed, in updating standard language at new page 9, ''Applicant's Declaration and Certification,'' DHS added language so that the applicant understands that any disclosure will be in accordance with the confidentiality protections contained in 8 U.S.C. 1367 and new 8 CFR 214.216.

At new page 11, part 9, ''Additional Information,'' DHS has added ''if any'' after A-Number and instructed the applicant to sign and date each additional sheet of paper included with the application. These additions will help ensure the integrity of additional sheets included with the application.

Form I–914, Supplement A

DHS has revised the name of the Supplement A to ''Application for Derivative T Nonimmigrant Status,'' as the prior title incorrectly implied that the application could only be filed by family members of T–1 recipients, rather than T–1 applicants *or* recipients.

As discussed above, DHS has combined part 1 and part 2, such that they both are now under new part 1, ''Family Members for Whom You Are Filing,''

At new page 2, part 4, ''Information About Your Family Member,'' DHS has revised item 2, ''Other Names Used'' to state that the applicant should provide any other names ''your family member has used'' rather than ''you have used.'' This clarifies the information being sought.

At new page 5, part 5, ''Processing Information,'' DHS has revised the first paragraph for clarity.

DHS made the same additions in the Form I–914, Supplement A regarding release of information to new page 9, ''Applicant's Declaration and Certification'' that it made to the same section in Form I–914 and for the same reasons as discussed in the previous section discussing changes to Form I–914. In the same section, at the end of the paragraph just prior to the signature, DHS has added a note stating that if a family member is in the United States, they must verify the information in Supplement A and sign the Supplement A. Stakeholders had indicated confusion over who was required to sign the form. Finally, in the Applicant's signature block, DHS included ''(if any)'' after the ''Safe Phone Number'' field to indicate the field is not required, and revised item 7, to clarify that the signature is for the family member for whom the applicant is filing (rather than using the less clear terminology of ''derivative'').

Form I–914 Instructions

As noted previously, DHS has added language at new page 1, ''What Is the Purpose of Form I–914?,'' to refer applicants to the language of the definition of ''a severe form of trafficking'' included in the section ''Evidence to Establish T Nonimmigrant Status,'' to provide easy reference to the definition.

DHS added a note regarding filing for adult or minor children of eligible family members at new page 2, ''Who May File Form I–914,'' item 2(C)(3) to clarify that although applications for all eligible family members can be filed concurrently, USCIS will not approve the application for an adult or minor child unless the application for derivative T nonimmigrant status for their parent has already been approved, consistent with existing policy. USCIS Policy Memorandum, *New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands* (Oct. 30, 2014). DHS also added this note at new page 4, ''Completing Form I–914, Supplement A, Application for Derivative T Nonimmigrant Status,'' ''Part 1. Family Member For Whom You Are Filing.''

At new page 2, ''General Instructions,'' DHS has added a note for applicants with attorneys who wish to receive communication from USCIS about filings related to the I–914, they should include those additional form numbers on the Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative.

At new page 3, part 5, ''Information about Your Family Members,'' DHS clarified its guidance that all children regardless of age or marital status should be included, which is consistent with the change made to the Form I–914, Supplement A.

DHS had already included an instruction that applicants may provide other evidence and directs applicants to the relevant portion of the Form I–914, Supplement B Instructions; however, to emphasize that applicants must provide evidence to show victimization and cooperation with law enforcement, DHS has revised the language at new page 7, ''Completing Form I–914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons to state that an applicant ''must'' provide other evidence.

At new page 7, ''Initial Evidence,'' DHS deleted the instruction to submit a copy of the principal applicant's Form I–914 with a Form I–914, Supplement A, due to enhanced processing procedures. DHS has also added an instruction that an applicant must include all evidence at the time of filing, and that any credible evidence can be submitted.

At new page 8, ''Evidence to Establish T Nonimmigrant Status,'' item 2, DHS has replaced ''as a result of'' with ''on account of,'' as discussed above, for consistency with the regulation. DHS has also added a grant of Continued Presence as a type of evidence that can be submitted to establish that an individual is or has been a victim of trafficking. DHS has also added a note that an applicant may explain why they did not provide or attempt to obtain a Supplement B (even though it is not required). In addition, DHS has added a list of evidence that an applicant may submit to establish tier claim that they were unable to cooperate with requests from law enforcement due to trauma, or due to their age.

At new page 9, ''Personal Statement,'' DHS has revised the list of what the applicant's personal statement should include, due to changes in the regulations relating the contents of the statement at new 8 CFR 214.204(c).

At new page 11, DHS has included a personal statement from the principal applicant or a derivative family member as an example of credible evidence describing the danger of retaliation, due to changes in the regulations at new 8 CFR 214.211(f)(3). DHS has also changed the section on this page from ''Unavailable Documents'' to ''Required Evidence.'' DHS has removed any reference to secondary evidence, as well as the list of secondary evidence, and instead instructs that applicants may submit any credible evidence, consistent with the evidentiary standard USCIS applies.

At new page 12, ''Initial Processing,'' DHS has added that a Form I–914 may also be rejected if the form's *required fields* are not completely filled out or the forms do not include *required* initial evidence. This will support timely applicant notification if USCIS determines that they are missing critical information that would otherwise delay processing or result in a denial of their request. As a result, applicants will have an opportunity to resolve the issue(s) with their filing sooner than if USCIS accepted the filing and ultimately issued a Request for Additional Evidence or Notice of Intent to Deny. Additionally, this will allow USCIS to focus its limited resources on cases that are properly completed and filed.

At new page 12, DHS has added a section titled ''Bona Fide Determination Process'' to describe the new, streamlined bona fide determination

process codified at 8 CFR 214.205. At the same page, DHS has also revised ''Employment Authorization'' to include reference to the bona fide determination process.

Form I–914, Supplement B and Form I–914, Supplement B Instructions

DHS has changed the title of Form I–914, Supplement B to ''Declaration for Trafficking Victim'' for simplicity and for ease of reference.

DHS has revised Form I–914, Supplement B at new page 2, part 3, ''Statement of Claim,'' ''Note:'' to reference the correct regulatory provision because USCIS is redesignating these provisions in the final rule. DHS has removed the language from part 3, ''Statement of Claim'' requesting the LEA attach the results of any name or database inquiry, as well as any relevant reports and findings, because this requirement was removed from the regulations.

DHS clarified at new page 4, part 6, ''Attestation,'' that the officer signing Form I–914, Supplement B is certifying their belief that the individual has been a victim of a severe form of trafficking in persons and is not certifying that it is an established fact that the individual is a victim.

DHS has added a new part 7, ''Additional Information,'' and included references throughout Form I–914, Supplement B and its Instructions to use the new part 7 if extra space is needed to complete any section. DHS has revised ''law enforcement officer'' to ''certifying official'' in recognition of the fact that many individuals who complete Supplement B may not consider themselves law enforcement officials.

On new page 2 of the Instructions in the section, ''General Instructions,'' DHS has included guidance to leave a field blank if the answer to a question is unknown. DHS also added a new section below entitled ''Specific Instructions.''

DHS has clarified at new page 3, part 3, ''Statement of Claim,'' item 1, that the official signing the Form I–914, Supplement B should base their analysis as to whether an individual is or has been a victim of a severe form of trafficking in persons based on the practices to which the victim was subjected (as listed in new 8 CFR 214.201), rather than any criminal violations or prosecutions.

At new page 3, part 5, ''Family Members Implicated in Trafficking,'' DHS added a ''NOTE:'' and replaced the word ''principal applicant'' with ''victim'' based on regulatory changes to terminology.

Also at new page 3, ''How Can I Provide Further Information at a Later Date?,'' DHS has replaced the term ''revoke'' with ''withdraw or disavow'' to mirror a change in the wording of the regulations.

At new page 4, under ''DHS Privacy Notice,'' ''PURPOSE:'' and ''DISCLOSURE,'' DHS replaced ''you'' with ''the applicant,'' because Supplement B is filled out by someone other than the applicant. This clarifies that the purpose is to determine the applicant's eligibility, and that failure to provide the applicant's information could result in denial of their application.

Form I–765 Instructions

DHS has revised the Form I–765 Instructions to include a section titled ''Bona Fide Determination Process for T Nonimmigrant Status Principal Applicants and Eligible Family Members.'' This change describes the bona fide determination process, including how to obtain work authorization, codified at new 8 CFR 214.205.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (section 7209 of Pub. L. 108–458, 118 Stat. 3638), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2. Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 2. Revise § 212.16 to read as follows:

§ 212.16 Applications for exercise of discretion relating to T nonimmigrant status.

(a) *Requesting the waiver.* An applicant requesting a waiver of inadmissibility under section 212(d)(3)(A)(ii) or (d)(13) of the Act must submit an Application for Advance Permission to Enter as a Nonimmigrant, or successor form as designated by USCIS in accordance with 8 CFR 103.2.

(b) *Treatment of waiver request.* USCIS, in its discretion, may grant a waiver request based on section 212(d)(13) of the Act of the applicable ground(s) of inadmissibility, except USCIS may not waive a ground of inadmissibility based on section 212(a)(3), (a)(10)(C), or (a)(10)(E) of the Act. An applicant for T nonimmigrant status is not subject to the ground of inadmissibility based on section 212(a)(4) of the Act (public charge) and is not required to file a waiver form for the public charge ground. Waiver requests are subject to a determination of national interest and connection to victimization as follows.

(1) *National interest.* USCIS, in its discretion, may grant a waiver of inadmissibility request if it determines that it is in the national interest to exercise discretion to waive the applicable ground(s) of inadmissibility.

(2) *Connection to victimization.* An applicant requesting a waiver under section 212(d)(13) of the Act on grounds other than the health-related grounds described in section 212(a)(1) of the Act must establish that the activities rendering them inadmissible were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I) of the Act.

(3) *Criminal grounds.* In exercising its discretion, USCIS will consider the number and seriousness of the criminal offenses and convictions that render an applicant inadmissible under the criminal and related grounds in section 212(a)(2) of the Act. In cases involving violent or dangerous crimes, USCIS will only exercise favorable discretion in extraordinary circumstances, unless the criminal activities were caused by, or were incident to, the victimization described under section 101(a)(15)(T)(i)(I) of the Act.

(c) *No appeal.* There is no appeal of a decision to deny a waiver request. Nothing in this section is intended to prevent an applicant from re-filing a

request for a waiver of a ground of inadmissibility in appropriate cases.

(d) *Revocation.* USCIS, at any time, may revoke a waiver previously authorized under section 212(d) of the Act. There is no appeal of a decision to revoke a waiver.

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

§§ 214.1 through 214.15 [Designated as Subpart A]

■ 4. Designate §§ 214.1 through 214.15 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Classes A through S

■ 5. Revise § 214.11 to read as follows:

§ 214.11 Former regulations for noncitizen victims of severe forms of trafficking in persons.

For DHS and USCIS regulations governing Noncitizen Victims of Severe Forms of Trafficking in Persons, see subpart C of this part.

Subpart B—[Added and Reserved]

■ 6. Add and reserve subpart B.

■ 7. Add subpart C to read as follows:

Subpart C—Noncitizen Victims of Severe Forms of Trafficking in Persons

Sec.

§ 214.200 Scope of this subpart.

This subpart governs the submission and adjudication of an Application for T Nonimmigrant Status, including a request by a principal applicant on behalf of an eligible family member for derivative status.

§ 214.201 Definitions.

Where applicable, USCIS will apply the definitions provided in section 103 and 107(e) of the Trafficking Victims Protection Act (TVPA), 22 U.S.C. 7102, and 8 U.S.C. 1101, 1182(d), and 1184, with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of 18 U.S.C. 77. As used in this section the term:

Abuse or threatened abuse of the legal process means the use or threatened use of a law or legal process whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

Application for Derivative T Nonimmigrant Status means a request by a principal applicant on behalf of an eligible family member for derivative T–2, T–3, T–4, T–5, or T–6 nonimmigrant status on an Application for T Nonimmigrant Status.

Application for T Nonimmigrant Status means a request by a principal applicant for T–1 nonimmigrant status on the form designated by USCIS for that purpose.

Child means a person described in section 101(b)(1) of the Act.

Coercion means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of their personal services or those of a person under their control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Derivative T nonimmigrant means an eligible family member who has been granted T–2, T–3, T–4, T–5, or T–6 derivative status. A family member outside of the United States is not a derivative T nonimmigrant until they are issued a T–2, T–3, T–4, T–5, or T–6 visa by the Department of State and they are admitted to the United States in derivative T nonimmigrant status.

Eligible family member means:

(1) A family member eligible for derivative T nonimmigrant status based on their relationship to a principal applicant or T–1 nonimmigrant and, if required, upon a showing of a present danger of retaliation;

(2) In the case of a principal applicant or T–1 nonimmigrant who is 21 years of age or older, the spouse and children of such applicant;

(3) In the case of a principal applicant or T–1 nonimmigrant under 21 years of age, the spouse, children, unmarried siblings under 18 years of age, and parents of such applicant; and

(4) Regardless of the age of a principal applicant or T–1 nonimmigrant, any parent or unmarried sibling under 18 years of age, or adult or minor child of a derivative of such principal applicant or T–1 nonimmigrant where the family member faces a present danger of retaliation as a result of the principal applicant or T–1 nonimmigrant's escape from a severe form of trafficking in persons or cooperation with law enforcement.

Involuntary servitude, for the purposes of this part:

(1) Means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or a condition of servitude induced by the abuse or threatened abuse of legal process; and

(2) Includes a condition of servitude in which the victim is forced to work for the trafficker by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the trafficker holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

Law Enforcement Agency (LEA) means a Federal, State, Tribal, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, adult protective services agency, or other

authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons under any administrative, civil, criminal, or Tribal laws. Federal LEAs include but are not limited to the following: Department of Justice (including U.S. Attorneys' Offices, Civil Rights Division, Criminal Division, U.S. Marshals Service, Federal Bureau of Investigation (FBI)); U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP); Department of State (including Diplomatic Security Service); Department of Labor (DOL); Equal Employment Opportunity Commission (EEOC); National Labor Relations Board (NLRB); Offices of Inspectors General (OIG); Bureau of Indian Affairs (BIA) Police, and Offices for Civil Rights and Civil Liberties.

Law Enforcement Agency (LEA) declaration means an official LEA declaration submitted on the Declaration for Trafficking Victim.

Law enforcement involvement, for purposes of establishing physical presence, means law enforcement action beyond receiving the applicant's reporting and may include the LEA interviewing the applicant or otherwise becoming involved in detecting, investigating, or prosecuting the acts of trafficking.

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

Principal applicant means a noncitizen who has filed an Application for T Nonimmigrant Status.

Request for assistance means a request made by an LEA to a victim to assist in the detection, investigation, or prosecution of the acts of trafficking in persons or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime. The reasonableness of the request is assessed using the factors delineated at § 214.208(c).

Serious harm means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

Severe form 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 is under the age of 18 years; 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.

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

T–1 nonimmigrant means the victim of a severe form of trafficking in persons who has been granted T–1 nonimmigrant status.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

Victim of a severe form of trafficking in persons (victim) means a noncitizen who is or has been subjected to a severe form of trafficking in persons.

§ 214.202 Eligibility for T–1 nonimmigrant status.

An applicant is eligible for T–1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act if they demonstrate all of the following, subject to section 214(o) of the Act:

(a) *Victim.* The applicant is or has been a victim of a severe form of trafficking in persons, according to § 214.206.

(b) *Physical presence.* The applicant is physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, according to § 214.207.

(c) *Compliance with any reasonable request for assistance.* The applicant has complied with any reasonable request for assistance from law enforcement or meets one of the conditions described below. The reasonableness of the request is assessed using the factors delineated at § 214.208(c).

(1) *Exemption for minor victims.* An applicant who was under 18 years of age at the time at least one act of trafficking occurred is not required to comply with any reasonable request for assistance.

(2) *Exception for trauma.* An applicant who, due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance from law enforcement is not required to comply with such reasonable request.

(d) *Hardship.* The applicant would suffer extreme hardship involving unusual and severe harm upon removal, according to § 214.209.

(e) *Prohibition against traffickers in persons.* No applicant will be eligible to receive T nonimmigrant status if there is substantial reason to believe that the applicant has committed an act of a severe form of trafficking in persons.

§ 214.203 Period of admission.

(a) *T–1 Principal.* T–1 nonimmigrant status may be approved for a period not to exceed 4 years, except as provided in section 214(o)(7) of the Act.

(b) *Derivative family members.* A derivative family member who is otherwise eligible for admission may be granted T–2, T–3, T–4, T–5, or T–6 nonimmigrant status for an initial period that does not exceed the expiration date of the initial period approved for the T–1 principal applicant, except as provided in section 214(o)(7) of the Act.

(c) *Notice.* At the time an applicant is approved for T nonimmigrant status or receives an extension of T nonimmigrant status, USCIS will notify the applicant when their T nonimmigrant status will expire. USCIS also will notify the applicant that the failure to apply for adjustment of status to lawful permanent resident during the period of T nonimmigrant status, as set forth in 8 CFR 245.23, will result in termination of the applicant's T nonimmigrant status in the United States at the end of the 4-year period or any extension.

§ 214.204 Application.

(a) *Jurisdiction.* USCIS has sole jurisdiction over all applications for T nonimmigrant status.

(b) *Filing an application.* An applicant seeking T–1 nonimmigrant status must submit an Application for T Nonimmigrant Status on the form designated by USCIS in accordance with 8 CFR 103.2 and with the evidence described in paragraph (c) of this section.

(1) *Applicants in pending immigration proceedings.* (i) An applicant in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), and who wishes to apply for T–1 nonimmigrant status must file an Application for T Nonimmigrant Status directly with USCIS.

(ii) In its discretion, ICE may exercise prosecutorial discretion, as appropriate, while USCIS adjudicates the Application for T Nonimmigrant Status, including applications for derivatives.

(2) *Applicants with final orders of removal, deportation, or exclusion.* An applicant subject to a final order of removal, deportation, or exclusion may file an Application for T Nonimmigrant Status directly with USCIS.

(i) The filing of an Application for T Nonimmigrant Status has no effect on DHS authority or discretion to execute a final order of removal, although the applicant may request an administrative stay of removal pursuant to 8 CFR 241.6(a).

(ii) If the applicant is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the applicant's removal will be extended during the period the stay is in effect.

(iii) If USCIS subsequently determines under the procedures in § 214.205 that the application is bona fide, the final order of removal, deportation, or exclusion will be automatically stayed, and the stay will remain in effect until a final decision is made on the Application for T Nonimmigrant Status.

(3) *Referral of applicants for removal proceedings.* USCIS generally will not refer an applicant for T nonimmigrant status for removal proceedings while the application is pending or following denial of the application, absent serious aggravating circumstances, such as the existence of an egregious criminal history, a threat to national security, or where the applicant is complicit in committing an act of trafficking.

(4) *Minor applicants.* When USCIS receives an application from a principal applicant under the age of 18, USCIS will notify the Department of Health and Human Services to facilitate the provision of interim assistance.

(c) *Initial evidence.* An Application for T Nonimmigrant Status must include:

(1) A detailed, signed personal statement from the applicant, in their own words, addressing:

(i) The circumstances surrounding the applicant's victimization, including:

(A) The nature of the victimization; and

(B) To the extent possible, the following:

(*1*) When the victimization occurred;

(*2*) How long the trafficking lasted;

(*3*) How and when they escaped, were rescued, or otherwise became separated from the traffickers;

(*4*) The events surrounding the trafficking;

(*5*) Who was responsible for the trafficking; and

(*6*) The circumstances surrounding their entry into the United States, if related to the trafficking;

(ii) How the applicant's physical presence in the United States relates to the trafficking; (iii) The hardship, including harm or mistreatment the applicant fears if they are removed from the United States; and

(iv) Whether they have complied with any reasonable law enforcement request for assistance and whether any criminal, civil or administrative records relating to the acts of trafficking exist, if known, (or if applicable, why the age exemption or trauma exception applies); and

(2) Any credible evidence that supports any of the eligibility requirements set out in §§ 214.206 through 214.208.

(d) *Inadmissible applicants.* If an applicant is inadmissible to the United States, they must submit a request for a waiver of inadmissibility on the Application for Advance Permission to Enter as a Nonimmigrant, or successor form as designated by USCIS accordance with 8 CFR 103.2, in accordance with form instructions and 8 CFR 212.16, and accompanied by supporting evidence.

(e) *Evidence from law enforcement.* An applicant may wish to submit evidence from an LEA to help establish eligibility, including victimization and the compliance with reasonable requests for assistance. An LEA declaration:

(1) Is optional evidence;

(2) Is not given any special evidentiary weight;

(3) Does not grant an immigration benefit and does not lead to automatic approval of the Application for T Nonimmigrant Status;

(4) Must be submitted on the ''Declaration for Trafficking Victim,'' and must be signed by a supervising official responsible for the detection, investigation, or prosecution of severe forms of trafficking in persons;

(5) Is completed at the discretion of the certifying official; and

(6) Does not require that a formal investigation or prosecution be initiated.

(f) *Any credible evidence.* All evidence demonstrating cooperation with law enforcement will be considered under the any credible evidence standard.

(g) *USCIS determination.* USCIS, not the LEA, will determine if the applicant was or is a victim of a severe form of trafficking in persons, and otherwise meets the eligibility requirements for T nonimmigrant status.

(h) *Disavowed or withdrawn LEA declaration.* An LEA may disavow or withdraw the contents of a previously submitted declaration and should provide a detailed explanation of its reasoning in writing. After disavowal or withdrawal, the LEA declaration generally will no longer be considered as evidence of the applicant's compliance with requests for assistance in the LEA's detection, investigation, or prosecution, but may be considered for other purposes.

(i) *Continued Presence.* An applicant granted Continued Presence under 28 CFR 1100.35 should submit documentation of the grant of Continued Presence. If revoked, the grant of Continued Presence will generally no longer be considered as evidence of the applicant's compliance with requests for assistance in the LEA's investigation or prosecution but may be considered for other purposes.

(j) *Other evidence.* An applicant may also submit any evidence regarding entry or admission into the United States or permission to remain in the United States. An applicant may also note that such evidence is contained in their immigration file.

(k) *Biometric services.* All applicants for T–1 nonimmigrant status must submit biometrics in accordance with 8 CFR 103.16.

(l) *Evidentiary standards, standard of proof, and burden of proof.* (1) The burden is on the applicant to demonstrate eligibility for T–1 nonimmigrant status by a preponderance of the evidence. The applicant may submit any credible evidence relating to a T nonimmigrant application for consideration by USCIS.

(2) USCIS will conduct a review of all evidence and may investigate any aspect of the application.

(3) Evidence previously submitted by the applicant for any immigration benefit request or relief may be used by USCIS in evaluating the eligibility of an applicant for T–1 nonimmigrant status. USCIS will not be bound by previous factual determinations made in connection with a prior application or petition for any immigration benefit or relief. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(4) USCIS will consider the totality of the evidence the applicant submitted and other evidence available to USCIS in evaluating an Application for T Nonimmigrant Status.

(m) *Bona fide determination.* Once an applicant submits an Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status, USCIS will conduct an initial review to determine if the application is bona fide under the provisions of § 214.205. USCIS will conduct an initial review of an eligible family member's Application for Derivative T Nonimmigrant Status to determine if the application is bona fide if the principal's Application for T Nonimmigrant Status has been deemed bona fide.

(n) *Decision.* After completing its review of the application and evidence, USCIS will issue a decision approving

or denying the application in accordance with 8 CFR 103.3.

(o) *Approval.* If USCIS determines that the applicant is eligible for T–1 nonimmigrant status, USCIS will approve the application and grant T–1 nonimmigrant status, subject to the annual limitation as provided in § 214.210. USCIS will provide the applicant with evidence of T–1 nonimmigrant status. USCIS may also notify other parties and entities of the approval as it determines appropriate, including any LEA providing an LEA declaration and the Department of Health and Human Service's Office of Refugee Resettlement, consistent with 8 U.S.C. 1367.

(1) *Applicants with an outstanding order of removal, deportation, or exclusion issued by DHS.* For an applicant who is the subject of an order of removal, deportation, or exclusion issued by DHS, the order will be deemed cancelled by operation of law as of the date of the USCIS approval of the application.

(2) *Applicants with an outstanding order of removal, deportation, or exclusion issued by the Department of Justice.* An applicant who is the subject of an order of removal, deportation or exclusion issued by an immigration judge or the Board of Immigration Appeals (Board) may seek rescission of such order by filing a motion to reopen and terminate removal proceedings with the immigration judge or the Board. ICE may agree, as a matter of discretion, to join such motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(3) *Employment authorization.* An individual granted T–1 nonimmigrant status is authorized to work incident to status. An applicant does not need to file a separate Application for Employment Authorization to be granted employment authorization. USCIS will issue an initial Employment Authorization Document (EAD) to such T–1 nonimmigrants for the duration of the T–1 nonimmigrant status. An applicant granted T–1 nonimmigrant status seeking to replace an EAD that was lost, stolen, or destroyed must file an Application for Employment Authorization in accordance with form instructions.

(p) *Travel abroad.* In order to return to the United States after travel abroad and continue to hold T–1 nonimmigrant status, a T–1 nonimmigrant must be granted advance parole pursuant to section 212(d)(5) of the Act prior to departing the United States.

(q) *Denial.* Upon denial of an application, USCIS will notify the applicant in accordance with 8 CFR 103.3. USCIS may also notify any LEA providing an LEA declaration and the Department of Health and Human Service's Office of Refugee Resettlement. If an applicant appeals a denial in accordance with 8 CFR 103.3, the denial will not become final until the administrative appeal is decided.

(1) *Effect on bona fide determination.* Upon denial of an application, any benefits derived from a bona fide determination will automatically be revoked when the denial becomes final.

(2) *Applicants previously in removal proceedings.* In the case of an applicant who was previously in removal proceedings that were terminated on the basis of a pending Application for T Nonimmigrant Status, once a denial becomes final, DHS may file a new Notice to Appear to place the individual in removal proceedings again.

(3) *Applicants subject to an order of removal, deportation, or exclusion.* In the case of an applicant who is subject to an order of removal, deportation, or exclusion that had been stayed due to the pending Application for T Nonimmigrant Status, the stay will be automatically lifted as of the date the denial becomes final.

§ 214.205 Bona fide determination.

(a) *Bona fide determinations for principal applicants for T nonimmigrant status.* If an Application for T Nonimmigrant Status is submitted after August 28, 2024, USCIS will conduct an initial review to determine if the application is bona fide.

(1) *Request for evidence.* If an Application for T Nonimmigrant Status was pending as of August 28, 2024, and additional evidence is required to establish eligibility for principal T nonimmigrant status, USCIS will issue a request for evidence, and conduct a bona fide review based on available evidence.

(2) *Initial review criteria.* After initial review, USCIS will deem an Application for T Nonimmigrant Status bona fide if:

(i) The applicant has submitted a properly filed and complete Application for T Nonimmigrant Status;

(ii) The applicant has submitted a signed personal statement; and

(iii) The results of initial background checks are complete, have been reviewed, and do not present national security concerns.

(3) *Secondary review criteria.* If initial review does not establish an Application for T Nonimmigrant Status is bona fide, USCIS will conduct a full T nonimmigrant status eligibility review. An Application for T Nonimmigrant Status that meets all eligibility requirements will be approved, or if the statutory cap has been reached, will receive a bona fide determination.

(b) *Bona fide determinations for eligible family members in the United States.* Once a principal applicant's application has been deemed bona fide, USCIS will conduct an initial review for any eligible family members in the United States who have filed an Application for Derivative T Nonimmigrant Status to determine whether their applications are bona fide.

(1) If an Application for Derivative T Nonimmigrant Status was pending as of August 28, 2024, and additional evidence is required to establish eligibility for derivative T nonimmigrant status, USCIS will issue a request for evidence and conduct a bona fide review based on available evidence.

(2) After initial review, USCIS will determine an Application for Derivative T Nonimmigrant Status is bona fide if:

(i) The eligible family member is in the United States at the time of the bona fide determination;

(ii) The principal applicant or T–1 nonimmigrant has submitted a properly filed and complete Application for Derivative T Nonimmigrant Status;

(iii) The Application for Derivative T Nonimmigrant Status is supported by credible evidence that the derivative applicant qualifies as an eligible family member; and

(iv) Initial background checks are complete, have been reviewed, and do not present national security concerns.

(3) If initial review does not establish an Application for Derivative T Nonimmigrant Status is bona fide, USCIS will conduct a full T nonimmigrant status eligibility review. An Application for Derivative T Nonimmigrant Status that meets all eligibility requirements during this secondary review will be approved, or if the statutory cap has been reached, will receive a bona fide determination.

(c) *Notice of USCIS determination.* If USCIS determines that the Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status is bona fide under this section, USCIS will issue written notice of that determination, and inform the applicant that they may be considered for deferred action and may file an Application for Employment Authorization if they have not already filed one. The notice will also inform the applicant that any final order of removal, deportation, or exclusion is automatically stayed as set forth in paragraph (g) of this section. An

application will be treated as a bona fide application as of the date of the notice.

(d) *Not considered bona fide.* If an application is incomplete or presents national security concerns, it will not be considered bona fide. There are no motion or appeal rights for a bona fide determination upon initial review under this section.

(1) For applications found not to be bona fide upon initial review, USCIS will proceed to full T nonimmigrant status eligibility review as described in paragraphs (a)(3) and (b)(3) of this section, generally in order of application receipt date.

(2) If an application is found through this review not to establish eligibility for T nonimmigrant status, the application will be denied in accordance with § 214.204(q).

(e) *Exercise of discretion.* (1) Once USCIS deems an Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status bona fide, USCIS may consider the applicant for deferred action.

(2) If, after review of the available information including background checks, USCIS determines that deferred action is warranted in a particular case as an exercise of enforcement discretion, USCIS will then proceed to adjudication of the Application for Employment Authorization, if one has been filed.

(3) There are no motion or appeal rights for the exercise of enforcement discretion under this section.

(f) *Bona fide determinations for applicants in removal proceedings.* This section applies to applicants whose Applications for T Nonimmigrant Status or Applications for Derivative T Nonimmigrant Status have been deemed bona fide and who are in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997). In such cases, ICE may exercise prosecutorial discretion, as appropriate, while USCIS adjudicates an Application for Derivative T Nonimmigrant Status.

(g) *Stay of final order of removal, deportation, or exclusion.* (1) If USCIS determines that an application is bona fide it automatically stays the execution of any final order of removal, deportation, or exclusion.

(2) This administrative stay will remain in effect until any adverse decision becomes final.

(3) Neither an immigration judge nor the Board has jurisdiction to adjudicate an application for a stay of removal, deportation, or exclusion on the basis of the filing of an Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status.

§ 214.206 Victim of a severe form of trafficking in persons.

(a) *Evidence.* The applicant must submit evidence that demonstrates:

(1) That they are or have been a victim of a severe form of trafficking in persons. Except in instances of sex trafficking involving victims under 18 years of age, severe forms of trafficking in persons must involve both a particular means (force, fraud, or coercion) and a particular end or a particular intended end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery); or

(2) If an applicant has not performed labor or services, or a commercial sex act, they must establish that they were recruited, transported, harbored, provided, or obtained for the purposes of subjection to sex trafficking, involuntary servitude, peonage, debt bondage, or slavery, or patronized or solicited for the purposes of subjection to sex trafficking.

(3) The applicant may satisfy the requirements under paragraph (a)(1) or (2) of this section by submitting:

(i) The applicant's personal statement, which should describe the circumstances of the victimization suffered. For more information regarding the personal statement, see § 214.204(c).

(ii) Any other credible evidence, including but not limited to:

(A) Trial transcripts;

(B) Court documents;

(C) Police reports or other documentation from an LEA;

(D) News articles;

(E) Copies of reimbursement forms for travel to and from court;

(F) Affidavits from case managers, therapists, medical professionals, witnesses, or other victims in the same trafficking scheme;

(G) Correspondence or other documentation from the trafficker;

(H) Documents used in furtherance of the trafficking scheme such as recruitment materials, advertisements, pay stubs, logbooks, or contracts;

(I) Photographs or images;

(J) An LEA declaration as described in § 214.204(c); or

(K) Documentation of a grant of Continued Presence under 28 CFR 1100.35.

(b) [Reserved]

§ 214.207 Physical presence.

(a) *Requirement.* To be eligible for T–1 nonimmigrant status, an applicant must be physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto on account of such trafficking. USCIS considers the applicant's presence in the United States at the time of application. An applicant must demonstrate that they are physically present under one of the following grounds:

(1) Are currently being subjected to a severe form of trafficking in persons;

(2) Were liberated from a severe form of trafficking in persons by an LEA, at any time prior to filing the Application for T Nonimmigrant Status;

(3) Escaped a severe form of trafficking in persons before an LEA was involved, at any time prior to filing the Application for T Nonimmigrant Status;

(4) Were subject to a severe form of trafficking in persons at some point in the past and their current presence in the United States is directly related to the original trafficking in persons, regardless of the length of time that has passed between the trafficking and filing of the Application for T Nonimmigrant Status; or

(5) Have been allowed entry into the United States for participation in the detection, investigation, prosecution, or judicial processes associated with an act or perpetrator of trafficking.

(i) An applicant will be deemed physically present under this provision regardless of where such trafficking occurred.

(ii) To demonstrate that the applicant's physical presence is for participation in an investigative or judicial process, the applicant must submit documentation to show valid entry into the United States and evidence that this valid entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.

(b) *Departure from the United States.* An applicant who has voluntarily departed from or has been removed from the United States at any time after the act of a severe form of trafficking in persons is deemed not to be present in the United States as a result of such trafficking in persons unless:

(1) The applicant's reentry into the United States was the result of the continued victimization of the applicant;

(2) The applicant is a victim of a new incident of a severe form of trafficking in persons;

(3) The applicant has been allowed reentry into the United States for participation in the detection, investigation, prosecution, or judicial process associated with an act or a perpetrator of trafficking. An applicant will be deemed physically present

under this provision regardless of where such trafficking occurred. To demonstrate that the applicant's physical presence is for participation in an investigative or judicial process, the applicant must submit documentation to show valid entry into the United States and evidence that this valid entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking;

(4) The applicant's presence in the United States is on account of their past or current participation in investigative or judicial processes associated with an act or perpetrator of trafficking, regardless of where such trafficking occurred. The applicant may satisfy physical presence under this provision regardless of the length of time that has passed between their participation in an investigative or judicial process associated with an act or perpetrator of trafficking and the filing of the Application for T Nonimmigrant Status; or

(5) The applicant returned to the United States and received treatment or services related to their victimization that cannot be provided in their home country or last place of residence outside the United States.

(c) *Evidence.* The applicant must submit evidence that demonstrates that their physical presence in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, is on account of trafficking in persons. USCIS will consider any credible evidence presented to determine the physical presence requirement, including but not limited to:

(1) A detailed personal statement describing the applicant's current presence in the United States on account of the trafficking, including:

(i) The circumstances describing the victimization, including when the events took place, the length and severity of the trafficking, how and when the applicant escaped, was rescued, or otherwise became separated from the traffickers, when the trafficking ended, and when and how the applicant learned that they were a victim of human trafficking;

(ii) An explanation of any physical health effects or psychological trauma the applicant has suffered as a result of the trafficking and a description of how this trauma impacts the applicant's life at the time of filing;

(iii) The financial impact of the victimization;

(iv) The applicant's ability to access mental health services, social services, and legal services;

(v) Any relevant description of the applicant's cooperation with law enforcement at the time of filing;

(vi) A description of how the victimization relates to the applicant's current presence in the U.S., if relevant.

(2) Affidavits, evaluations, diagnoses, or other records from the applicant's service providers (including therapists, psychologists, psychiatrists, and social workers) documenting the therapeutic, psychological, or medical services the applicant has sought or is currently accessing as a result of victimization and that describe how the applicant's life is being impacted by the trauma at the time of filing, and describing any mental health conditions resulting from the trafficking;

(3) Documentation of any stabilizing services and benefits, including financial, language, housing, or legal resources, the applicant is accessing or has accessed as a result of being trafficked. For those services and benefits not currently being accessed, the record should demonstrate how those past services and benefits related to trauma the applicant is experiencing at the time of filing;

(4) An LEA declaration as described in § 214.204(c) or other statements from LEAs documenting the cooperation between the applicant and the LEA or law enforcement involvement in liberating the applicant;

(5) Documentation of a grant of Continued Presence under 28 CFR 1100.35;

(6) Any other documentation of entry into the United States or permission to remain in the United States, such as parole under section 212(d)(5) of the Act, or a notation that such evidence is contained in the applicant's immigration file;

(7) Copies of news reports, law enforcement records, or court records; or

(8) Any other credible evidence to establish the applicant's current presence in the United States is on account of the trafficking victimization.

§ 214.208 Compliance with any reasonable request for assistance in the detection, investigation, or prosecution of an act of trafficking.

(a) *Requirement.* To be eligible for T–1 nonimmigrant status, an applicant must have complied with any reasonable request for assistance from an LEA in the detection, investigation, or prosecution of acts of trafficking or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime, unless the applicant meets an exception or exemption described in paragraph (e) of this section.

(b) *Applicability.* An applicant must, at a minimum, contact an LEA with proper jurisdiction to report the acts of a severe form of trafficking in persons. Credible evidence documenting a single contact with an LEA may suffice. Reporting may be telephonic, electronic, or through other means. An applicant who has never had contact with an LEA regarding the acts of a severe form of trafficking in persons will not be eligible for T–1 nonimmigrant status, unless they meet an exemption or exception as described in paragraph (e) of this section.

(c) *Reasonable requests.* An applicant need only show compliance with reasonable requests made by an LEA for assistance in the investigation or prosecution of the acts of trafficking in persons. The reasonableness of the request depends on the totality of the circumstances. Factors to consider include, but are not limited to:

(1) General law enforcement and prosecutorial practices;

(2) The nature of the victimization;

(3) The specific circumstances of the victim;

(4) The victim's capacity, competency, or lack thereof;

(5) Trauma suffered (both mental and physical) or whether the request would cause further trauma;

(6) Access to support services;

(7) The safety of the victim or the victim's family;

(8) Compliance with previous requests and the extent of such compliance;

(9) Whether the request would yield essential information;

(10) Whether the information could be obtained without the victim's compliance;

(11) Whether a qualified interpreter or attorney was present to ensure the victim understood the request;

(12) Cultural, religious, or moral objections to the request;

(13) The time the victim had to comply with the request;

(14) The age, health, and maturity of the victim; and

(15) Any other relevant circumstances surrounding the request.

(d) *Evidence.* An applicant must submit evidence that demonstrates that they have complied with any reasonable request for assistance in a Federal, State, Tribal, or local detection, investigation, or prosecution of trafficking in persons, or a crime where trafficking in persons is at least one central reason for the commission of that crime. In the alternative, an applicant can submit evidence to demonstrate that they should be exempt under paragraph (e) of this section. If USCIS has any question

about whether the applicant has complied with a reasonable request for assistance, USCIS may contact the LEA. The applicant may satisfy this requirement by submitting any of the following:

(1) An LEA declaration as described in § 214.204(c);

(2) Documentation of a grant of Continued Presence under 28 CFR 1100.35; or

(3) Any other evidence, including affidavits of witnesses. In the victim's statement prescribed by § 214.204(c), the applicant should show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime, why the crime was not previously reported.

(e) *Exception or exemption.* An applicant who has not had contact with an LEA or who has not complied with any reasonable request may be excepted or exempt from the requirement to comply with any reasonable request for assistance in an investigation or prosecution if either of the following circumstances apply:

(1) *Trauma.* The applicant is unable to cooperate with a reasonable request for assistance from an LEA in the detection, investigation, or prosecution of acts of trafficking in persons due to physical or psychological trauma. An applicant must submit credible evidence of the trauma experienced. The applicant may satisfy this exception by submitting:

(i) A personal statement describing the trauma and explaining the circumstances surrounding the trauma the applicant experienced, including their age, background, maturity, health, disability, and any history of abuse or exploitation;

(ii) A signed statement from a qualified professional, such as a medical professional, mental health professional, social worker, or victim advocate, who attests to the victim's mental state or medical condition;

(iii) Medical or psychological records documenting the trauma or its impact;

(iv) Witness statements;

(v) Photographs;

(vi) Police reports;

(vii) Court records and court orders;

(viii) Disability determinations;

(ix) Government agency findings; or

(x) Any other credible evidence.

(2) *Age.* The applicant was under 18 years of age at the time of victimization. An applicant who was under 18 years of age at the time at least one of the acts of trafficking occurred is exempt from the requirement to comply with any reasonable request for assistance in the detection, investigation, or prosecution, but they must submit evidence of their age at the time of the victimization. Where available, an applicant should include an official copy of their birth certificate, a passport, or a certified medical opinion. USCIS will also consider any other credible evidence submitted regarding the age of the applicant.

(f) *Exception or exemption established.* When an applicant has established that the exception or exemption applies, they are not required to have had any contact with law enforcement or comply with future requests for assistance, including reporting the trafficking. USCIS reserves the authority and discretion to contact the LEA involved in the case, if appropriate.

§ 214.209 Extreme hardship involving unusual and severe harm.

To be eligible for T–1 nonimmigrant status, an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(a) *Standard.* A finding of extreme hardship involving unusual and severe harm may be based on the following factors.

(b) *Factors.* Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should include both traditional extreme hardship factors and factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to:

(1) The age, maturity, and personal circumstances of the applicant;

(2) Any physical or psychological issues the applicant has that necessitate medical or psychological care not reasonably available in the foreign country to which the applicant would be returned;

(3) The nature and extent of the physical and psychological consequences of having been a victim of a severe form of trafficking in persons;

(4) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of a severe form of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;

(5) 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;

(6) The likelihood of re-victimization and the need, ability, and willingness of foreign authorities to protect the applicant;

(7) The likelihood that the trafficker or others acting on behalf of the trafficker in the foreign country would cause the applicant harm;

(8) The likelihood that the applicant's individual safety would be threatened by the existence of civil unrest or armed conflict; or

(9) Current or likelihood of future economic harm.

(c) *Evidence.* (1) An applicant is encouraged to describe and document all factors that may be relevant to the case, as there is no guarantee that a particular reason(s) will satisfy the requirement.

(2) Hardship to persons other than the applicant may be considered in determining whether an applicant will suffer the requisite hardship only if the related evidence demonstrates specifically that the applicant will suffer extreme hardship upon removal as a result of hardship to persons other than the applicant.

(3) The applicant may satisfy this requirement by submitting any credible evidence regarding the nature and scope of the hardship if the applicant was removed from the United States, including evidence of hardship arising from circumstances surrounding the victimization and any other circumstances.

(4) An applicant may submit a personal statement or other evidence, including evidence from relevant country condition reports and any other public or private sources of information.

§ 214.210 Annual numerical limit.

(a) *5,000 per fiscal year.* DHS may not grant T–1 nonimmigrant status to more than 5,000 principal applicants in any fiscal year.

(b) *Waiting list.* If the numerical limit prevents further grants of T–1 nonimmigrant status, USCIS will place applicants who receive a bona fide determination pursuant to § 214.205 on a waiting list. USCIS:

(1) Will assign priority on the waiting list based on the date the application was properly filed, with the oldest applications receiving the highest priority for processing;

(2) Will in the next fiscal year, issue a number to each application on the waiting list, in the order of the highest priority; and

(3) After T–1 nonimmigrant status has been issued to eligible applicants on the waiting list, USCIS will issue any remaining T–1 nonimmigrant numbers for that fiscal year to new eligible applicants in the order the applications were filed.

(c) *Unlawful presence.* While an applicant for T nonimmigrant status in the United States is on the waiting list, the applicant will not accrue unlawful presence under section 212(a)(9)(B) of the Act.

(d) *Removal from the waiting list.* An applicant may be removed from the waiting list consistent with law and policy. Applicants on the waiting list must remain admissible to the United States and otherwise eligible for T nonimmigrant status. If at any time prior to final adjudication USCIS receives information that an applicant is no longer eligible for T nonimmigrant status, the applicant may be removed from the waiting list. USCIS will provide notice to the applicant of that decision.

§ 214.211 Application for eligible family members.

(a) *Eligibility.* Subject to section 214(o) of the Act, an applicant who has applied for or has been granted T–1 nonimmigrant status (principal applicant) may apply for the admission of an eligible family member, who is otherwise admissible to the United States, in derivative T nonimmigrant status if accompanying or following to join the principal applicant.

(1) *Principal applicant 21 years of age or older.* For a principal applicant who is 21 years of age or over, eligible family member means a T–2 (spouse) or T–3 (child).

(2) *Principal applicant under 21 years of age.* For a principal applicant who is under 21 years of age, eligible family member means a T–2 (spouse), T–3 (child), T–4 (parent), or T–5 (unmarried sibling under the age of 18).

(3) *Family member facing danger of retaliation.* Regardless of the age of the principal applicant, if the eligible family member faces a present danger of retaliation as a result of the principal applicant's escape from the severe form of trafficking or cooperation with law enforcement, in consultation with the law enforcement agency investigating a severe form of trafficking, eligible family member means a T–4 (parent), T–5 (unmarried sibling under the age of 18), or T–6 (adult or minor child of a derivative of the principal applicant). In cases where the LEA has not investigated the acts of trafficking after the applicant has reported the crime, USCIS will evaluate any credible evidence demonstrating derivatives' present danger of retaliation.

(4) *Admission requirements.* The principal applicant must demonstrate that the applicant for whom derivative T nonimmigrant status is being sought is an eligible family member of the T–1 principal applicant, as defined in § 214.201, and is otherwise eligible for that status.

(b) *Application.* (1) *Application submission.* A T–1 principal applicant may submit an Application for Derivative T Nonimmigrant Status in accordance with the form instructions.

(i) The Application for Derivative T Nonimmigrant Status for an eligible family member may be filed with the T–1 application, or separately.

(ii) T nonimmigrant status for eligible family members is dependent on the principal applicant having been granted T–1 nonimmigrant status and the principal applicant maintaining T–1 nonimmigrant status.

(iii) If a T–1 nonimmigrant cannot maintain status due to their death, the provisions of section 204(l) of the Act may apply.

(2) *Eligible family members in pending immigration proceedings.* (i) If an eligible family member is in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), the principal applicant or T–1 nonimmigrant must file an Application for Derivative T Nonimmigrant Status directly with USCIS.

(ii) At the request of the eligible family member, ICE may exercise prosecutorial discretion, as appropriate, while USCIS adjudicates an Application for Derivative T Nonimmigrant Status.

(3) *Eligible family members with final orders of removal, deportation, or exclusion.* (i) If an eligible family member is the subject of a final order of removal, deportation, or exclusion, the principal applicant must file an Application for Derivative T Nonimmigrant Status directly with USCIS.

(ii) The filing of an Application for Derivative T Nonimmigrant Status has no effect on ICE's authority or discretion to execute a final order, although the applicant may file a request for an administrative stay of removal pursuant to 8 CFR 241.6(a).

(iii) If the eligible family member is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) will be extended while a stay is in effect for the period reasonably necessary to bring about the applicant's removal.

(c) *Required supporting evidence.* In addition to the form, an Application for Derivative T Nonimmigrant Status must include the following:

(1) Biometrics.

(2) Evidence demonstrating the relationship of an eligible family member, as provided in § 214.211(d).

(3) In the case of an applicant seeking derivative T nonimmigrant status based on danger of retaliation, evidence demonstrating this danger as provided in § 214.211.

(4) If an eligible family member is inadmissible based on a ground that may be waived, a request for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with § 212.16 of this subchapter and submitted with the completed application package.

(d) *Relationship.* Except as described in paragraph (e) of this section, the family relationship must exist at the time:

(1) The Application for T Nonimmigrant Status is filed;

(2) The Application for T Nonimmigrant Status is adjudicated;

(3) The Application for Derivative T Nonimmigrant Status is filed;

(4) The Application for Derivative T Nonimmigrant Status is adjudicated; and

(5) The eligible family member is admitted to the United States if residing abroad.

(e) *Relationship and age-out protections*—(1) *Protection for new child of a principal applicant.* If the T–1 principal applicant establishes that they have become a parent of a child after filing the application for T–1 nonimmigrant status, the child will be deemed to be an eligible family member eligible to accompany or follow to join the T–1 principal applicant.

(2) *Age-out protection for eligible family members of a principal applicant under 21 years of age.* (i) If the T–1 principal applicant was under 21 years of age when they applied for T–1 nonimmigrant status, USCIS will continue to consider a parent or unmarried sibling as an eligible family member.

(ii) A parent or unmarried sibling will remain eligible even if the principal applicant turns 21 years of age before adjudication of the application for T–1 nonimmigrant status.

(iii) An unmarried sibling will remain eligible even if the unmarried sibling is over 18 years of age at the time of

adjudication of the T–1 application, so long as the unmarried sibling was under 18 years of age at the time the T–1 application was filed.

(iv) The age of an unmarried sibling when USCIS adjudicates the T–1 application, when the principal applicant or T–1 nonimmigrant files the Application for Derivative T Nonimmigrant Status, when USCIS adjudicates the derivative application, or when the unmarried sibling is admitted to the United States does not affect eligibility.

(3) *Age-out protection for child of a principal applicant.* (i) USCIS will continue to consider a child as an eligible family member if the child was under 21 years of age at the time the principal filed the Application for T Nonimmigrant Status, but reached 21 years of age while the principal's application was still pending.

(ii) The child will remain eligible even if the child is over 21 years of age at the time of adjudication of the T–1 application.

(iii) As long as the child is under age 21 when the Application for T Nonimmigrant Status is filed and reaches age 21 while such application is pending, the age of the child when the principal applicant or T–1 nonimmigrant files the Application for Derivative T Nonimmigrant Status, when USCIS adjudicates the Application for Derivative T Nonimmigrant Status, or when the child is admitted to the United States does not affect eligibility.

(4) *Marriage of an eligible family member.* (i) An eligible family member seeking T–3 or T–5 status must be unmarried when the principal applicant files an Application for T Nonimmigrant Status, when USCIS adjudicates the Application for T Nonimmigrant Status, when the principal applicant or T–1 nonimmigrant files the Application for Derivative T Nonimmigrant Status, when USCIS adjudicates the Derivative T Nonimmigrant Status, and if relevant, when the family member is admitted to the United States.

(ii) Principal applicants who marry while their Application for T Nonimmigrant Status is pending may file an Application for Derivative T Nonimmigrant Status on behalf of their spouse, even if the relationship did not exist at the time they filed their Application for T Nonimmigrant Status.

(iii) Similarly, the principal applicant may apply for a stepparent or stepchild if the qualifying relationship was created after they filed their Application for T Nonimmigrant Status but before it was approved.

(iv) USCIS evaluates whether the marriage creating the qualifying spousal relationship or stepchild and stepparent relationship exists at the time of adjudication of the principal's application and through completion of the adjudication of the derivative's application.

(f) *Evidence demonstrating a present danger of retaliation.* A principal applicant or T–1 nonimmigrant seeking derivative T nonimmigrant status for an eligible family member on the basis of facing a present danger of retaliation as a result of the principal applicant's or T–1 nonimmigrant's escape from a severe form of trafficking or cooperation with law enforcement, must demonstrate the basis of this danger. USCIS may contact the LEA involved, if appropriate. An applicant may satisfy this requirement by submitting:

(1) Documentation of a previous grant of advance parole to an eligible family member;

(2) A signed statement from a law enforcement agency describing the danger of retaliation;

(3) A personal statement from the principal applicant or derivative applicant describing the danger the family member faces and how the danger is linked to the victim's escape or cooperation with law enforcement; and/or

(4) Any other credible evidence, including trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits from other witnesses. This evidence may be from the United States or any country in which the eligible family member is facing danger of retaliation.

(g) *Biometric submission; evidentiary standards.* The provisions for biometric submission and evidentiary standards described in § 214.204(b) and (d) apply to an eligible family member's Application for Derivative T Nonimmigrant Status.

(h) *Review and decision.* USCIS will review the application and issue a decision in accordance with paragraph (d) of this section.

(i) *Derivative approvals.* A noncitizen whose Application for Derivative T Nonimmigrant Status is approved is not subject to the annual limit described in § 214.210. USCIS will not approve an Application for Derivative T Nonimmigrant Status unless and until it has approved T–1 nonimmigrant status for the principal applicant.

(1) *Approvals for eligible family members in the United States.* When USCIS approves an Application for Derivative T Nonimmigrant Status for an eligible family member in the United States, USCIS will concurrently approve T nonimmigrant status for the eligible family member. USCIS will notify the T–1 nonimmigrant of such approval and provide evidence of T nonimmigrant status to the derivative.

(2) *Approvals for eligible family members outside the United States.* When USCIS approves an application for an eligible family member outside the United States, USCIS will notify the T–1 nonimmigrant of such approval and provide the necessary documentation to the Department of State for consideration of visa issuance.

(3) *Employment authorization.* (i) A noncitizen granted derivative T nonimmigrant status may apply for employment authorization by filing an Application for Employment Authorization in accordance with form instructions.

(ii) For derivatives in the United States, the Application for Employment Authorization may be filed concurrently with the Application for Derivative T Nonimmigrant Status or at any later time.

(iii) For derivatives outside the United States, an Application for Employment Authorization based on their T nonimmigrant status may only be filed after admission to the United States in T nonimmigrant status.

(iv) If the Application for Employment Authorization is approved, the derivative T nonimmigrant will be granted employment authorization pursuant to 8 CFR 274a.12(c)(25) for the period remaining in derivative T nonimmigrant status.

(4) *Travel abroad.* In order to return to the United States after travel abroad and continue to hold derivative T nonimmigrant status, a noncitizen granted derivative T nonimmigrant status must either be granted advance parole pursuant to section 212(d)(5) of the Act and 8 CFR 223 or obtain a T nonimmigrant visa (unless visa exempt under 8 CFR 212.1) and be admitted as a T nonimmigrant at a designated port of entry.

§ 214.212 Extension of T nonimmigrant status.

(a) *Eligibility.* USCIS may grant extensions of T–1 nonimmigrant status beyond 4 years from the date of approval in 1-year periods from the date the T–1 nonimmigrant status ends if:

(1) An LEA detecting, investigating, or prosecuting activity related to acts of trafficking certifies that the presence of the applicant in the United States is necessary to assist in the detection, investigation, or prosecution of such activity; or

(2) USCIS determines that an extension is warranted due to exceptional circumstances.

(b) *Application for a discretionary extension of status.* Upon application, USCIS may extend T–1 nonimmigrant status based on law enforcement need or exceptional circumstances. A T–1 nonimmigrant may apply for an extension by submitting the form designated by USCIS in accordance with form instructions. A derivative T nonimmigrant may file for an extension of status independently if the T–1 nonimmigrant remains in valid T nonimmigrant status, or the T–1 nonimmigrant may file for an extension of T–1 status and request that this extension be applied to the derivative family members in accordance with the form instructions.

(c) *Timely filing.* An applicant should file the application to extend nonimmigrant status before the expiration of T nonimmigrant status. If T nonimmigrant status has expired, the applicant must explain in writing the reason for the untimely filing. USCIS may exercise its discretion to approve an untimely filed application for extension of T nonimmigrant status.

(d) *Evidence.* In addition to the application, a T nonimmigrant must include evidence to support why USCIS should grant an extension of T nonimmigrant status. The nonimmigrant bears the burden of establishing eligibility for an extension of status and that a favorable exercise of discretion is warranted.

(e) *Evidence of law enforcement need.* An applicant may demonstrate law enforcement need by submitting evidence that comes directly from an LEA, including:

(1) A new LEA declaration;

(2) Evidence from a law enforcement official, prosecutor, judge, or other authority who can detect, investigate, or prosecute acts of trafficking, such as a letter on the agency's letterhead, email, or fax; or

(3) Any other credible evidence.

(f) *Exceptional circumstances.* (1) USCIS may, in its discretion, extend status beyond the 4-year period if it determines the extension of the period of such nonimmigrant status is warranted due to exceptional circumstances as described in section 214(o)(7)(iii) of the Act. (2) USCIS may approve an extension of status for a principal applicant, based on exceptional circumstances, when an approved eligible family member is awaiting initial issuance of a T visa by an embassy or consulate and the principal applicant's T–1 nonimmigrant status is soon to expire.

(g) *Evidence of exceptional circumstances.* An applicant may demonstrate exceptional circumstances by submitting:

(1) The applicant's affirmative statement; or

(2) Any other credible evidence, including but not limited to:

(i) Medical records;

(ii) Police or court records;

(iii) News articles;

(iv) Correspondence with an embassy or consulate; and

(v) Affidavits from individuals with direct knowledge of or familiarity with the applicant's circumstances.

(h) *Mandatory extensions of status for adjustment of status applicants.* USCIS will automatically extend T nonimmigrant status when a T nonimmigrant properly files an application for adjustment of status during the period of T nonimmigrant status, in accordance with 8 CFR 245.23. No separate application for extension of T nonimmigrant status, or supporting evidence, is required.

§ 214.213 Revocation of approved T nonimmigrant status.

(a) *Automatic revocation of derivative status.* An approved Application for Derivative T Nonimmigrant Status will be revoked automatically if the family member with an approved derivative application notifies USCIS that they will not apply for admission to the United States. An automatic revocation cannot be appealed.

(b) *Revocation on notice/grounds for revocation.* USCIS may revoke an approved Application for T Nonimmigrant Status following issuance of a notice of intent to revoke if:

(1) The approval of the application violated the requirements of section 101(a)(15)(T) of the Act or this subpart or involved error in preparation, procedure, or adjudication that led to the approval;

(2) In the case of a T–2 spouse, the applicant's divorce from the T–1 principal applicant has become final;

(3) In the case of a T–1 principal applicant, an LEA with jurisdiction to detect, investigate, or prosecute the acts of severe forms of trafficking in persons notifies USCIS that the applicant has refused to comply with a reasonable request to assist with the detection, investigation, or prosecution of the trafficking in persons and provides USCIS with a detailed explanation in writing; or

(4) The LEA that signed the LEA declaration withdraws it or disavows its contents and notifies USCIS and provides a detailed explanation of its reasoning in writing.

(c) *Procedures.* (1) USCIS may revoke an approved application for T nonimmigrant status following a notice of intent to revoke.

(i) The notice of intent to revoke must be in writing and contain a statement of the grounds for the revocation and the time period allowed for the T nonimmigrant's rebuttal.

(ii) The T nonimmigrant may submit evidence in rebuttal within 30 days of the notice.

(iii) USCIS will consider all relevant evidence in determining whether to revoke the approved application for T nonimmigrant status.

(2) If USCIS revokes approval of the previously granted T nonimmigrant status application, USCIS:

(i) Will provide written notice to the applicant; and

(ii) May notify the LEA who signed the LEA declaration, any consular officer having jurisdiction over the applicant, or the Office of Refugee Resettlement of the Department of Health and Human Services.

(3) If an applicant appeals the revocation, the decision will not become final until the administrative appeal is decided in accordance with 8 CFR 103.3.

(d) *Effect of revocation.* Revocation of T–1 nonimmigrant status will terminate the principal's status as a T nonimmigrant and result in automatic termination of any derivative T nonimmigrant status. If a derivative application is pending at the time of revocation of T–1 nonimmigrant status, such pending applications will be denied. Revocation of a T–1 nonimmigrant status or derivative T nonimmigrant status also revokes any waiver of inadmissibility granted in conjunction with such application. The revocation of T–1 nonimmigrant status will have no effect on the annual numerical limit described in § 214.210.

§ 214.214 Removal proceedings.

(a) Nothing in this section prohibits DHS from instituting removal proceedings for conduct committed after admission, or for conduct or a condition that was not disclosed prior to the granting of T nonimmigrant status, including misrepresentations of material facts in the Application for T–1 Nonimmigrant Status or in an Application for Derivative T Nonimmigrant Status, or after revocation of T nonimmigrant status.

(b) ICE will maintain a policy regarding the exercise of discretion toward all applicants for T nonimmigrant status and T nonimmigrants. This policy will address, but need not be limited to,

ICE's discretionary decision-making in proceedings before the Executive Office for Immigration Review and considerations related to ICE's immigration enforcement actions involving T visa applicants and T nonimmigrants.

§ 214.215 USCIS employee referral.

(a) Any USCIS employee who, while carrying out their official duties, comes into contact with a noncitizen believed to be a victim of a severe form of trafficking in persons and is not already working with an LEA may consult, as necessary, with the ICE officials responsible for victim protection, trafficking investigations and prevention, and deterrence.

(b) The ICE office may, in turn, refer the victim to another LEA with responsibility for detecting, investigating, or prosecuting acts of trafficking.

(c) If the noncitizen has a credible claim to victimization, USCIS may advise the individual that they can submit an Application for T Nonimmigrant Status and seek any other benefit or protection for which they may be eligible, provided doing so would not compromise the noncitizen's safety.

§ 214.216 Restrictions on use and disclosure of information relating to applicants for T nonimmigrant classification.

(a) The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved Application for T Nonimmigrant Status is prohibited unless the disclosure is made in accordance with an exception described in 8 U.S.C. 1367(b).

(b) Information protected under 8 U.S.C. 1367(a)(2) may be disclosed to Federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending Federal criminal proceedings.

(c) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(d) DHS officials are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the trafficker, unless the applicant has been convicted of a crime or crimes listed in section 237(a)(2) of the Act.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 8. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1252, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 9. Revise § 245.23 to read as follows:

§ 245.23 Adjustment of noncitizens in T nonimmigrant classification.

(a) *Eligibility of principal T–1 applicants.* Except as described in paragraph (c) of this section, a noncitizen may be granted adjustment of status to that of a noncitizen lawfully admitted for permanent residence, provided the noncitizen:

(1) Applies for such adjustment.

(2) Was lawfully admitted to the United States as a T–1 nonimmigrant, as defined in 8 CFR 214.201.

(3) Continues to hold T–1 nonimmigrant status at the time of application.

(4) Has been physically present in the United States for a continuous period of at least 3 years since the date of lawful admission as a T–1 nonimmigrant, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period is less; except

(i) If the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain continuous physical presence in the United States for purposes of section 245(l)(1)(A) of the Act; and

(ii) If the noncitizen was granted T nonimmigrant status, such noncitizen's physical presence in the CNMI before, on, or after November 28, 2009, and subsequent to the grant of T nonimmigrant status, is considered as equivalent to presence in the United States pursuant to an admission in T nonimmigrant status.

(5) Is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment.

(6) Has been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of the application for adjustment of status.

(7)(i) Has, since first being lawfully admitted as a T–1 nonimmigrant, and until the conclusion of adjudication of the application, complied with any reasonable request for assistance in the detection, investigation or prosecution of acts of trafficking, as defined in § 8 CFR 214.201; or

(ii) Would suffer extreme hardship involving unusual and severe harm upon removal from the United States, as provided in 8 CFR 214.209; or

(iii) Was younger than 18 years of age at the time of the victimization that qualified the T nonimmigrant for relief under section 101(a)(15)(T) of the Act, 8 U.S.C. 1101(a)(15)(T); or

(iv) Established an inability to cooperate with a reasonable request for assistance at the time their Application for T Nonimmigrant Status was approved, as defined in 8 CFR 214.202(c)(1) and (2).

(b) *Eligibility of derivative family members.* A derivative family member of a T–1 nonimmigrant status holder may be granted adjustment of status to that of a noncitizen lawfully admitted for permanent residence, provided:

(1) The T–1 nonimmigrant has applied for adjustment of status under this section and meets the eligibility requirements described under paragraph (a) of this section;

(2) The derivative family member was lawfully admitted to the United States in derivative T nonimmigrant status under section 101(a)(15)(T)(ii) of the Act, and continues to hold such status at the time of application;

(3) The derivative family member has applied for such adjustment; and

(4) The derivative family member is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment.

(5) The derivative family member does not automatically lose T nonimmigrant status when the T–1 nonimmigrant adjusts status.

(c) *Exceptions.* A noncitizen is not eligible for adjustment of status under paragraph (a) or (b) of this section if:

(1) Their T nonimmigrant status has been revoked pursuant to 8 CFR 214.213;

(2) They are described in section 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E) of the Act; or

(3) They are inadmissible under any other provisions of section 212(a) of the Act and have not obtained a waiver of

inadmissibility in accordance with 8 CFR 212.18 or 214.210.

(4) Where the applicant establishes that the victimization was a central reason for their unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable, and the applicant need not obtain a waiver of that ground of inadmissibility. The applicant, however, must submit with their application for adjustment of status evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. To qualify for this exception, the victimization need not be the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

(d) *Jurisdiction.* (1) USCIS shall determine whether a T–1 applicant for adjustment of status under this section was lawfully admitted as a T–1 nonimmigrant and continues to hold such status, has been physically present in the United States during the requisite period, is admissible to the United States or has otherwise been granted a waiver of any applicable ground of inadmissibility, and has been a person of good moral character during the requisite period.

(2) USCIS shall determine whether the applicant received a reasonable request for assistance in the investigation or prosecution of acts of trafficking as defined in 8 CFR 214.201 and 214.208(c), and, if so, whether the applicant complied in such request.

(3) If USCIS determines that the applicant failed to comply with any reasonable request for assistance, USCIS shall deny the application for adjustment of status unless USCIS finds that the applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(e) *Application*—(1) *Filing requirements.* Each T–1 principal applicant and each derivative family member who is applying for adjustment of status must file an Application to Register Permanent Residence or Adjust Status; and

(i) Accompanying documents, in accordance with the form instructions;

(ii) A photocopy of the applicant's Notice of Action, granting T nonimmigrant status;

(iii) A photocopy of all pages of their most recent passport or an explanation of why they do not have a passport;

(iv) A copy of the applicant's Arrival-Departure Record; and

(v) Evidence that the applicant was lawfully admitted in T nonimmigrant status and continues to hold such status at the time of application. For T nonimmigrants who traveled outside the United States and returned to the United States after presenting an Advance Parole Document issued while the adjustment of status application was pending, the date that the applicant was first admitted in lawful T status will be the date of admission for purposes of this section, regardless of how the applicant's Arrival-Departure Record is annotated.

(2) *T–1 principal applicants.* In addition to the items in paragraph (e)(1) of this section, T–1 principal applicants must submit:

(i) Evidence, including an affidavit from the applicant and a photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport), that they have been continuously physically present in the United States for the requisite period as described in paragraph (a)(2) of this section. Applicants should submit evidence described in § 245.22. A signed statement from the applicant attesting to the applicant's continuous physical presence alone will not be sufficient to establish this eligibility requirement. If additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts.

(A) If the applicant has departed from and returned to the United States while in T–1 nonimmigrant status, the applicant must submit supporting evidence showing the dates of each departure from the United States and the date, manner, and place of each return to the United States.

(B) Applicants applying for adjustment of status under this section who have less than 3 years of continuous physical presence while in T–1 nonimmigrant status must submit a document signed by the Attorney General or their designee, attesting that the investigation or prosecution is complete.

(ii) Evidence of good moral character in accordance with paragraph (g) of this section; and

(A) Evidence that the applicant has complied with any reasonable request for assistance in the investigation or prosecution of the trafficking as described in paragraph (f)(1) of this section since having first been lawfully admitted in T–1 nonimmigrant status and until the adjudication of the application; or

(B) Evidence that the applicant would suffer extreme hardship involving unusual and severe harm if removed from the United States as described in paragraph (f)(2) of this section.

(3) *Evidence relating to discretion.* Each applicant seeking adjustment under section 245(l) of the Act bears the burden of showing that discretion should be exercised in their favor. Where adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider. Depending on the nature of adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(f) *Assistance in the investigation or prosecution or a showing of extreme hardship.* Each T–1 principal applicant must establish that since having been lawfully admitted as a T–1 nonimmigrant and up until the adjudication of the application, they complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking, as defined in 8 CFR 214.201, or establish that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(1) Each T–1 applicant for adjustment of status under section 245(l) of the Act must submit evidence demonstrating that the applicant has complied with any reasonable requests for assistance in the investigation or prosecution of the human trafficking offenses during the requisite period; or

(2) In lieu of showing continued compliance with requests for assistance, an applicant may establish that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(i) The hardship determination will be evaluated on a case-by-case basis, in accordance with the factors described in 8 CFR 214.209.

(ii) Where the basis for the hardship claim represents a continuation of the hardship claimed in the Application for

T Nonimmigrant Status, the applicant need not re-document the entire claim, but rather may submit evidence to establish that the previously established hardship is ongoing. However, in reaching its decision regarding hardship under this section, USCIS is not bound by its previous hardship determination made under 8 CFR 214.209.

(g) *Good moral character.* A T–1 nonimmigrant applicant for adjustment of status under this section must demonstrate that they have been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of their applications for adjustment of status. Claims of good moral character will be evaluated on a case-by-case basis, taking into account section 101(f) of the Act and the standards of the community. The applicant must submit evidence of good moral character as follows:

(1) An affidavit from the applicant attesting to their good moral character, accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the applicant has resided for 6 or more months during the requisite period in continued presence or T–1 nonimmigrant status.

(2) If police clearances, criminal background checks, or similar reports are not available for some or all locations, the applicant may include an explanation and submit other evidence with their affidavit.

(3) USCIS will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the applicant's good moral character.

(4) An applicant who is under 14 years of age is generally presumed to be a person of good moral character and is not required to submit evidence of good moral character. However, if there is reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require evidence of good moral character.

(h) *Filing and decision.* An application for adjustment of status from a T nonimmigrant under section 245(l) of the Act shall be filed with the USCIS office identified in the instructions to the Application to Register Permanent Residence or Adjust Status. Upon approval of adjustment of status under this section, USCIS will record the noncitizen's lawful admission for permanent residence as of the date of such approval and will notify the applicant in writing. Derivative family members' applications may not be approved before the principal applicant's application is approved.

(i) *Denial.* If the application for adjustment of status or the application for a waiver of inadmissibility is denied, USCIS will notify the applicant in writing of the reasons for the denial and of the right to appeal the decision to the Administrative Appeals Office (AAO) pursuant to the AAO appeal procedures found at 8 CFR 103.3. Denial of the T–1 principal applicant's application will result in the automatic denial of a derivative family member's application.

(j) *Effect of Departure.* (1) If an applicant for adjustment of status under this section departs the United States, they shall be deemed to have abandoned the application, and it will be denied.

(2) If, however, the applicant is not under exclusion, deportation, or removal proceedings, and they filed an Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, and was granted advance parole by USCIS for such absences, and was inspected and paroled upon returning to the United States, they will not be deemed to have abandoned the application.

(3) If the adjustment of status application of such an individual is subsequently denied, they will be treated as an applicant for admission subject to sections 212 and 235 of the Act. If an applicant for adjustment of status under this section is under exclusion, deportation, or removal proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States.

(k) *Inapplicability.* Sections 245.1 and 245.2 do not apply to noncitizens seeking adjustment of status under this section.

(l) *Annual limit of T–1 principal applicant adjustments*—(1) *General.* The total number of T–1 principal applicants whose status is adjusted to that of lawful permanent residents under this section may not exceed the statutory limit in any fiscal year.

(2) *Waiting list.* (i) All eligible applicants who, due solely to the limit imposed in section 245(l)(4) of the Act and paragraph (l)(1) of this section, are not granted adjustment of status will be placed on a waiting list. USCIS will send the applicant written notice of such placement.

(ii) Priority on the waiting list will be determined by the date the application was properly filed, with the oldest applications receiving the highest priority.

(iii) In the following fiscal year, USCIS will proceed with granting adjustment of status to applicants on the waiting list who remain admissible and eligible for adjustment of status in order of highest priority until the available numbers are exhausted for the given fiscal year.

(iv) After the status of qualifying applicants on the waiting list has been adjusted, any remaining numbers for that fiscal year will be issued to new qualifying applicants in the order that the applications were properly filed.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 10. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 8 CFR part 2.

■ 11. Amend § 274a.12 by reserving paragraphs (c)(37) through (39) and adding paragraph (c)(40) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(40) A noncitizen applicant for T nonimmigrant status, and eligible family members, who have pending, bona fide applications, and who merit a favorable exercise of discretion.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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