

Bulletin

The needs of victims of human trafficking are complex. Whether native to the United States or another country, they have often been displaced and isolated from their community. Many victims have experienced a range of physical, sexual, and psychological traumas, and may still be in danger from traffickers. As a result, victims of human trafficking deserve and require a great deal of care and compassion, assistance, and protection, from the government and from social service providers.

Introduction to the TVPRA

*The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (2008) was signed into law on December 23, 2008, in order to address special needs of trafficking victims that have become apparent since the initial passage of the *Trafficking Victims Protection Act* in 2000. The TVPRA 2008 was the third reauthorization of the *Trafficking Victims Protection Act of 2000 (TVPA)*, which was a landmark federal law intended to prevent human trafficking, punish traffickers, and support victims of trafficking, both in the United States and abroad. The 2008 reauthorization addresses challenges and gaps in previous versions of the *Act*. This technical assistance bulletin will*

assist advocates in their efforts to support victims of human trafficking by discussing ways in which the TVPRA of 2008 works to protect and assist victims of human trafficking. This bulletin is intended solely as a starting point in familiarizing oneself about the TVPRA of 2008. Advocates are encouraged to collaborate with immigration experts and/or attorneys because of the nuances in the laws and the changing nature of legislation.

Immigration assistance

There are four types of immigration relief that may be available to a victim of human trafficking who is not a citizen or legal resident of the United States. Continued Presence (CP) status allows victims of severe forms of human trafficking¹ who

¹ Severe forms of human trafficking are defined by the TVPA as either A. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or B. 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.





may be a potential witness to remain legally in the United States for one year during an investigation and receive a number of victim assistance benefits. There are two longer-term immigration assistance options: T Visas and U Visas.

- **T Visas** are granted to victims of severe forms of human trafficking who are living in the United States as a result of being trafficked and would risk hardship if they were made to return to their home country.

- **U Visas** are visas for immigrant victims of certain crimes (including but not limited to trafficking). With the exception of children under the age of 18 and those unable to cooperate because of physical and psychological trauma, applicants for a T Visa must at least initially report their case to law enforcement and be willing to cooperate with all reasonable requests from law enforcement in the investigation and/or prosecution of their traffickers. Unlike with the T Visa, for U Visa applicants, there are no exceptions for the cooperation requirement and all U Visa applicants must have a signed certification form from law enforcement attesting to their cooperation. If a T Visa is granted, recipients are permitted to remain in the United States for four years and may apply for permanent residency after three years of continuous presence status or less if an investigation or prosecution is complete, exempting any individual absence of 90 days or less or an aggregate of 180 days or less (8 CFR 235.23(a) (3)).

Applying for any type of immigration relief is a difficult and complex procedure. Applications are filled out and submitted by the victim



with supplemental documentation from law enforcement included. It is recommended that victims have counsel so that he or she may make informed choices that provide the best form of relief. There is no guarantee how quickly the application will be processed. However, once the application is filed, immigration officials will not begin removal proceedings (Lawson, n.d.).

Special Immigrant Juvenile (SIJ) Visas are visas for individuals under the age of 18 who have experienced abuse, neglect, or abandonment. Applicants for SIJ status must show:

1. They are a minor dependent of a juvenile court, the state, or an agency or person appointed by either of those entities;

2. That they are abused, abandoned or neglected; 3. That they cannot return to their country of origin.

Continued Presence Status, T Visas and U Visas

This section provides a snapshot of how Continued Presence Status, T Visas, and U Visas can be used to address past service gaps and difficulties encountered by trafficking victims.

Costs of applying for visas

- **Challenge:** Although fee waivers for the costs associated with applying for visas and adjustment of status were available, access to them was not guaranteed permanently.



- **Solution:** It is policy to waive application fees in human trafficking cases, as it is assumed that trafficking victims will not have the ability to pay. The form for the fee waiver should be filled out and submitted by applicants at the time the application is submitted.

Visa extensions

- **Challenge:** The process of applying to be a permanent United States resident was held up by delays in the release of guidelines for determining whether to approve applications. As a result, individuals with T Visas or U Visas came close to seeing their visas expire, and thus

were forced to either leave the United States or continue to remain in the United States illegally.

- **Solution:** T Visas and U Visas may be extended past four years in the case of extenuating circumstances (e.g., administrative delays) or when applying for permanent residency. Victim witness coordinators as well as advocates and immigration attorneys can assist with this process.

'Good moral character' requirement

- **Challenge:** Victims who had obtained T Visas were required to prove that they had "good moral character" in order to become permanent

United States residents, although they may have behaved in a way that did not demonstrate “good moral character” as a result of being trafficked.

- **Solution:** Victims who had to behave in a way that did not demonstrate “good moral character” as a result of being trafficked are now eligible to become permanent United States residents, although eligibility to waive this requirement is still discretionary. For example, individuals who engaged in prostitution and/or other criminal acts after applying for T Visas may be denied a visa.

Protecting victims' families

- **Challenge:** When a victim of trafficking is granted continued presence in the U.S., members of the victim's family (e.g., spouse, parent, child, or sibling) may be left behind in the victim's home country. These individuals were often vulnerable to retaliation by the trafficker.
- **Solution:** The Department of Homeland Security is now able to allow family members to stay with the victim in the U.S. The victim and the family member(s) must then apply for visas.

Continued presence and civil charges

- **Challenge:** Victims who sued traffickers in U.S. civil courts sometimes saw their continued presence status run out before the trial ended.
- **Solution:** Most victims pursuing civil remedies are now eligible for extensions of continued presence status.



Education of vulnerable immigrants

- **Challenge:** Immigrants who held employment or educational visas were vulnerable to trafficking but received little information about their rights as victims.
- **Solution:** Individuals applying for employment or educational visas must receive materials explaining their rights, including:
 1. The right to report trafficking without fear of harm coming to them as a result
 2. The right to sue those who trafficked them in U.S. civil courts
 3. The right to request help from social services groups



Special Immigrant Juvenile (SIJ) Visas

Delays in Special Immigrant Juvenile Visa Applicants

- **Challenge:** Decision-making on SIJ Visa applications was sometimes delayed. These delays could negatively impact efforts to provide child victims stable environments. This state of perpetual uncertainty during children's formative years can impact development and the ability to heal from resulting trauma.
- **Solution:** Decisions must be made on SIJ Visa applications within six months of filing.

Age eligibility for SIJ Visas

- **Challenge:** Children applying for SIJ Visas sometimes turned 18 years old before a decision was made on their application, and were denied visas as a result of reaching adult status.
- **Solution:** Eligibility for an SIJ Visa now depends on the age at which the application was filed.

Responsibility for initiating SIJ Visas

- **Challenge:** The Department of Homeland Security was responsible for starting the SIJ Visa application process. However, this department

was also tasked with deportation, which was seen by some as potentially problematic.

- **Solution:** In cases involving child victims of trafficking, the U.S. Department of Health and Human Services (HHS), which is responsible for the well-being of trafficked children, is responsible for starting the SIJ application process and seeing it through to its conclusion.

Assistance for child victims of trafficking

Restrictive placements for children

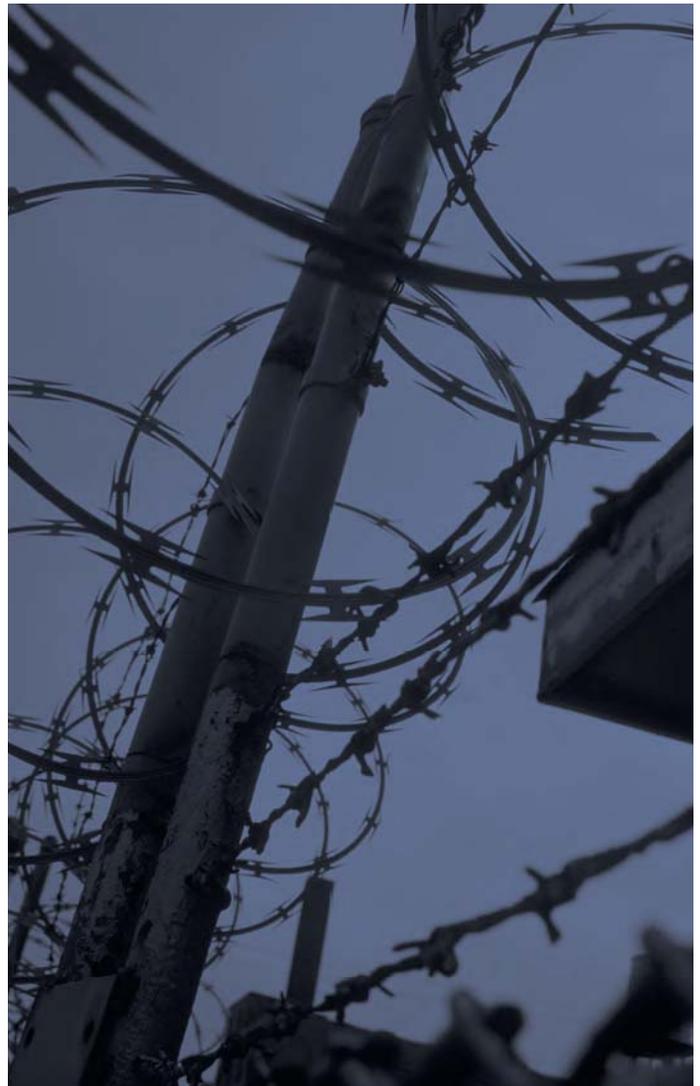
- **Challenge:** Some children who were trafficked were being placed in restrictive facilities, which were considered problematic to their well-being and recovery from trafficking.
- **Solution:** Children who have been trafficked will be put in the most unrestrictive placement possible, such as in foster care or with a family member, unless they are considered to be dangerous to the community or are charged with a crime.

Children requesting asylum

- **Challenge:** Some children who were trafficked were made to request asylum in a courtroom in front of a judge, which was potentially a scary and unfamiliar experience.
- **Solution:** Children who have been trafficked can request asylum through an asylum officer. This officer interviews the child outside of the courtroom in an effort to avoid further trauma.

Services for children

- **Challenge:** Trafficked children often lacked access to specialized assistance and support services.



- **Solution:** The *TVPA*, as amended, requires federal, state, or local officials to notify HHS within 24 hours of discovering a child who may be a foreign victim of trafficking. Then, HHS determines if the child is eligible for interim assistance and access to federal public benefits and programs as a child trafficking victim. To meet this mandatory reporting requirement, contact a Child Protection Specialist in the HHS Office of Refugee Resettlement (ORR) at: ChildTrafficking@acf.hhs.gov or (202) 205-4582.

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- U.S. Department of Homeland Security [DHS]: *The Blue Campaign* <http://www.dhs.gov/files/programs/humantrafficking.shtm>

