



# SPECIAL CONSIDERATIONS WHEN SCREENING YOUTH FOR T VISA ELIGIBILITY

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## I. Introduction

This advisory gives an overview of special considerations practitioners should keep in mind when screening youth for T visa eligibility. Although youth may experience the same forms of trafficking as adults, they may be impacted very differently and have a different set of needs. Moreover, working with children often presents additional challenges and it may be more difficult for a child to communicate to you that they suffered trafficking. It is important to keep these considerations in mind when screening youth in order to ensure that you can fully assess their eligibility for relief.<sup>1</sup>

In order to be eligible for a T visa an applicant must (1) have been the victim of a severe form of trafficking in persons (2) be present in the United States on account of such trafficking, and (3) comply with any reasonable request for assistance by Federal, state, or local authorities in prosecuting the acts of trafficking, and (4) show that they would suffer extreme hardship involving unusual and severe harm upon removal.<sup>2</sup>

U.S. law divides trafficking into two categories, labor and sex trafficking.<sup>3</sup> Labor trafficking encompasses any labor that is induced through force, fraud, or coercion. Sex trafficking is defined as a commercial sex act, induced through force, fraud, or coercion. A commercial sex act is defined as a sex act on account of which anything of value is given to or received by any

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<sup>1</sup> For a more in depth discussion of the legal requirements for T visa eligibility and a more detailed explanation of how to meet the criteria please consult the ILRC manual *T Visas: A Critical Immigration Option for Survivors of Human Trafficking*.

<sup>2</sup> INA § 101(a)(15)(T)(i).

<sup>3</sup> 22 U.S.C. § 7102(11).

person.<sup>4</sup> For example, young people are sometimes forced to engage in sex acts in exchange for safe passage into the United States.

Some of the T visa requirements are different for youth applicants.<sup>5</sup> It is not required to show force, fraud, or coercion for sex trafficking involving children under the age of eighteen.<sup>6</sup> Because a person under the age of eighteen cannot consent to a commercial sex act, any instance where a person under the age of eighteen is induced to perform a commercial sex act constitutes trafficking. Additionally, it is not required for a child who is under eighteen years of age to comply with law enforcement assistance requests.<sup>7</sup>

## II. Working with Youth

According to a 2016 Freedom Network survey, 17% of respondent survivors of trafficking were under the age of eighteen and 9% of respondents were minors who suffered sex trafficking.<sup>8</sup> As is the case for adults, trafficking of youth can take on many different forms and encompasses many different types of work. Youth are vulnerable to the same types of exploitation as adults who experience trafficking. Trafficking scenarios that affect youth include sex work and unlawful activities, such as drug trafficking or smuggling. It may also include legal activities such as domestic work, caregiving, agriculture, restaurant work, and other forms of labor.<sup>9</sup> There are also many forms of trafficking that are specific to youth or primarily impact youth. Youth may be trafficked by an adult family member or caretaker, forced to enter into servile marriage, or forcibly recruited to serve as child soldiers.

### A. Youth Survivors of Trafficking and Trauma

Working with youth survivors of trafficking presents a different set of considerations from working with adult survivors. While trafficking survivors suffer a tremendous degree of trauma, its impact is especially pronounced for youth and may impact their development. However, being able to discuss this past trauma is often necessary and central to their claim for relief. You should be

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<sup>4</sup> 22 U.S.C. § 7102(4).

<sup>5</sup> Kids in Need of Defense, KIND Manual Chapter 7: T-Visa Relief, <https://supportkind.org/wp-content/uploads/2015/04/Chapter-7-T-Visa-Relief-107.pdf>.

<sup>6</sup> 22 U.S.C. § 7102(11)(A).

<sup>7</sup> INA § 101(a)(15)(T)(i)(III)(cc).

<sup>8</sup> Freedom Network, 2016 Freedom Network Member Report (2016), <https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>.

<sup>9</sup> Stephanie Richard, Carolyn M. Kim, & Erika Gonzalez, T Nonimmigrant Visas and Adjustment of Status for Victims of Human Trafficking: A Practical Guide to the Relevant Statutory Changes and Updated Regulations, Immigration Briefings, Issue 17-08, Aug. 2017, 3, <https://www.castla.org/wp-content/themes/castla/assets/files/reuters-immigration-stephanie-richardIB-aug2017-08-17-final.pdf>.

mindful of any trauma the child may have experienced and consider your approach carefully to minimize retraumatizing them while ensuring communication. Many of the interview strategies and techniques that help minimize re-traumatization in adults can help with children as well.

You should tailor your approach depending on your client's actual and developmental age. If possible, you should try to gather any available information about the youth's case prior to interviewing them.<sup>10</sup> This includes reviewing any immigration records thoroughly. If there has been a forensic interview, it can be a helpful guide as well. In addition to guiding your questions, this will also help you be more informed of your client's history of past trauma and help you plan your approach ahead of time to avoid re-traumatization.

## B. Interview Setting

You should consider the setting for the interview carefully to ensure that the child feels comfortable. Rather than sitting across a desk you may want to consider rearranging the space so that you are sitting side-by-side. It may be helpful to have toys, stuffed animals, or items that the child can hold during the interview. For older children, items like modeling clay, fidget toys, colored pencils or other drawing materials, blank paper, and mindfulness coloring books may be helpful. Some children find it easier to communicate difficult experiences if they can focus their attention on an object they are holding. Before the interview starts, let the child know you will be asking them questions and taking notes about their answers to help you remember them.<sup>11</sup> During the interview you should take notes in a way that ensures the child can see what you are writing down. If you are typing the child's responses on a computer, consider placing the screen where they can see it.

Some children may find it easier to communicate through drawings or diagrams. You should consider asking the child to draw as part of the interview. You can ask them to draw where they lived in their home country, their family members, or pets, before asking them to draw their journey to the United States. Drawing may help the child communicate some of their experiences that they may have a hard time saying out loud. You should begin by asking the child to draw things that are safe or comfortable for them before asking them to draw about more traumatic experiences.

While it may be helpful to interview the child's parent or guardian as well, it is important to interview the child separately from them. The child may not want to discuss parts of their experience in front of them or they may not want them to know about what they suffered. As with

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<sup>10</sup> You should make a Freedom of Information Act request for your client's immigration records as well as an ORR records request for clients who were detained as children.

<sup>11</sup> You should also make sure that they understand attorney-client confidentiality and know what your role is as their attorney or representative.

adult clients, it is crucial to maintain your duty of confidentiality with child clients.<sup>12</sup> If the child does not consent to have the details of their case shared with their parent or caretaker, it may be more appropriate to keep your communication with them at a very general level. For instance, you may just want to say that you are talking about why the child migrated to the United States or working with them to prepare a declaration for their immigration case.

If feasible, you should plan to screen the child over the course of multiple interviews, especially if you have to discuss past traumatic events in order to assess their relief.<sup>13</sup> The child should know that they can set the pace of the interviews and can stop at any time.<sup>14</sup> You should let the child know what will be covered by the interview beforehand and avoid discussing traumatic events at the very beginning and end of the interviews. If the client is seeing a mental health professional, and with their consent, you may want to let that professional know the dates you are interviewing the child so that they can provide support or schedule an appointment with them soon afterward to help them process what they discussed with you.<sup>15</sup>

### C. Empowering Youth to Make Decisions about their Case

You should try to give the child as much control over the interview as possible. In general, they should also be allowed to the extent possible to make decisions concerning the objectives of the case. Let them know beforehand that they can ask for a break when needed or stop at any time.

Take the time to explain your role to the child. Children especially may be unfamiliar with the role of a legal representative. It is especially important to let the child know that an attorney does not make decisions about the objectives of the representation and that they make those decisions as the client. If the child is eligible for multiple forms of relief you should walk them through the process, timeline, benefits, and drawbacks of each. You should ask the child what their priority for the case is, such as obtaining a work permit, avoiding a retraumatizing asylum

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<sup>12</sup> In many jurisdictions, attorneys are not considered mandated reporters for child abuse and may be restricted in their ability to disclose attorney-client privileged communications to report child abuse without the client's consent. The Model Rules of Professional Conduct as well as many jurisdictions' professional conduct rules do allow for disclosure of such information in emergency situations, such as "to prevent reasonably certain death or substantial bodily harm." E.g., MRPC 1.6(a). If you are unsure whether you can reveal confidential information without the client's consent to report child abuse, you should consult with your jurisdiction's ethics hotline or advisory group, especially if you believe that the child is still at risk of abuse or harm.

<sup>13</sup> See CAST, T Visa Assessment - Client Interview Questions for Attorneys, updated Jul. 2020, <https://castla.app.box.com/v/IntakeInterviewQuestions>.

<sup>14</sup> Id.

<sup>15</sup> Id.

hearing, or being able to petition for family members. Be mindful of the child's stated interests and avoid substituting your own judgment for that of the child.<sup>16</sup>

A child's past experiences, especially if they have suffered trafficking, can lead them to be distrustful of adults. It is important to take the time, over the course of multiple interviews, if possible, to build trust to ensure that the child can communicate with you easily. If feasible, it is best not to interview the child about traumatic experiences in their first meeting with you. If you have prior screening notes from a previous intake or interview you can let the child know that that information was shared with you and that you will have to talk about it over the course of your work together. You can add that while it may feel repetitive, it is central to your role of helping the client build a strong case and meet their goals.

### III. Considerations when Screening Youth for Trafficking

Practitioners should consult or develop a reliable T visa screening tool.<sup>17</sup> However, the phrasing, ordering, and content of the questions may vary depending on the facts of the case as well as the needs, past traumatization, and developmental level of the client. Especially with children, you should ensure that you phrase the questions in a way that they can understand and explain any complicated concepts or legal terms. When working with younger children it may help to use drawings to help them communicate their experiences. While a screening tool will help guide your questions, it may not capture all of the possible trafficking flags given the wide range of trafficking scenarios and the subtle ways in which traffickers, especially traffickers of youth, exercise control. Think of a screening tool as a jumping off point from which you can tailor your questions carefully based on the situation and client.

**NOTE: T Visa Screening Tools:**

The Coalition to Abolish Slavery and Trafficking (CAST) offers an excellent screening tool that includes trauma-informed interview tips. CAST, T Visa Assessment - Client Interview Questions for Attorneys, updated Jul. 2020, <https://castla.app.box.com/v/IntakeInterviewQuestions>.

It is important to keep in mind the full range of potential trafficking scenarios and settings. A child may be trafficked in their home country, in transit to the United States, while crossing the border,

<sup>16</sup> See Andrea Khoury, ABA Adopts Model Act on Child Representation, American Bar Association, Sept. 1, 2011, [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol30/september\\_2011/aba\\_adopts\\_modelactonchildrepresentation](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol30/september_2011/aba_adopts_modelactonchildrepresentation).

<sup>17</sup> See, e.g., CAST, T Visa Assessment - Client Interview Questions for Attorneys, updated Jul. 2020, <https://castla.app.box.com/v/IntakeInterviewQuestions>.

or once they reach the United States. This section will explore some of the considerations practitioners should keep in mind when flagging for youth trafficking.

### **A. Child Employment**

Child employment is widespread in many countries. A child may assist family members in their work, such as agricultural work on a family farm, or they may join the formal workforce. Although underage employment alone does not meet the trafficking definition, it is trafficking if it was induced through force, fraud, or coercion. Moreover, children in the workforce are especially vulnerable to exploitation by adults. A child could also be labor trafficked by an abusive family member or caretaker. In some instances, the child may not realize that the conditions of their employment are coercive and may not characterize their experience as labor trafficking. It is key to consider the details of the child's employment arrangement, including the hours worked, if/how they were paid, whether they could refuse requests, or what consequences were imposed for disobeying directives.

Remember that if your client was ever induced to perform a commercial sex act under the age of eighteen, they have been subjected to a severe form of trafficking regardless of whether there was any force, fraud, or coercion present.

### **B. Discussing Money, Wages, and Debt**

With youth clients, it may be difficult to spot trafficking flags that have to do with money or debt. A trafficked youth may not be fully aware of their family's financial situation. Youth who owe a debt may also not fully understand the structure of their debt arrangement, making it more difficult to identify whether it constitutes debt bondage or peonage, which are both forms of labor trafficking. Many youth who participate in the workforce do so to support their family members and may willingly give over a part or all of their payment to a parent or caretaker. It may be difficult to distinguish such arrangements from ones in which the youth does not have control over their payment and it is paid directly to someone else, which could be a trafficking flag.

Many youth who come to the United States may owe a debt to the person who helped them enter the country or financed their trip. Although having to work to pay off a debt does not necessarily indicate trafficking, it is important to consider the details and terms of the debt. Some types of debt arrangements do involve labor obtained through force, fraud, or coercion. Debt bondage and peonage are both types of trafficking where debt is used to keep someone in involuntary servitude. In such cases, the debtor is forced to work to pay off a debt that is structured in a way to keep them in a permanent debt cycle. It is important to know who the youth owes a debt to, how that debt is secured, and what type of repayment obligations and terms there are. Arrangements in which the person owed the debt also exercises control over

the youth's conditions of employment or how they are paid can be especially strong indicators of potential trafficking. This is especially true where the money to pay off the supposed debt is taken directly out the youth's pay before they are paid the remaining balance. An employer holding the child's identity documents, preventing them from attending school, or controlling where they live and charging rent could be indicators of trafficking.

Even in cases where the youth is fully paid for their work, including when it is above the required minimum wage, trafficking may still be present. Many youth who are trafficked by organized criminal groups or smuggling networks may be well paid compared to formal sector work in the community. It is also possible that the youth may be nominally well paid, but that the trafficker controls their access to that money. In some cases, the youth may have begun to work willingly for the employer before they were trafficked. Even if they are paid and began working willingly, they may be prevented from quitting their work, sometimes through threats of violence, or may be subjected to other forms of force, fraud, or coercion as a means of control.

### **C. Identifying Trafficking by Caretakers and Partners**

In some cases, a youth may be trafficked by a parent, family member, romantic partner, or another adult caretaker, such as a distant relative or "good Samaritan" who promised to take them in or care for them. If the minor's trafficker is an adult caretaker or relative, it may be especially difficult to spot trafficking flags related to physical control given that children, especially at a younger age, are generally not given full autonomy by their caretakers. It is expected for young children to not be able to leave the house on their own, or have access to a phone or car, which would ordinarily be strong trafficking flags for adult clients.<sup>18</sup>

Traffickers who are also a youth's adult caretaker or domestic partner may employ subtle forms of manipulation in order to exploit and control them. They may also structure the living arrangement so that the youth is isolated and solely dependent on them for their needs. It is important to look for subtler forms of manipulation and physical control, such as the youth and trafficker living in a remote location where outside contact is limited. There may also be threats of harm or physical restraint, as well as more subtle threats, such as threats of legal process or document confiscation. In cases involving a caretaker, it may be helpful to ask about the promises that were made or the type of relationship that the trafficker and youth had at the outset. Over time the trafficker's behavior and nature of their relationship may have changed and become more exploitative.

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<sup>18</sup> See Stephanie Richard, Carolyn M. Kim, & Erika Gonzalez, T Nonimmigrant Visas and Adjustment of Status for Victims of Human Trafficking: A Practical Guide to the Relevant Statutory Changes and Updated Regulations, Immigration Briefings, Issue 17-08, Aug. 2017, 7-8, <https://www.castla.org/wp-content/themes/castla/assets/files/reuters-immigration-stephanie-richardIB-aug2017-08-17-final.pdf>.

## IV. Supporting Youth Survivors

Youth survivors of trafficking often have needs for support beyond your legal representation. It is important to know what resources are available to them and how to help ensure they can access them. Depending on the family and community support they are receiving youth survivors may have needs for support in housing, education, job training, healthcare, and mental health counseling.

The Trafficking Victims Protection Reauthorization Act requires encounters with a potentially trafficked minor to be reported to the Department of Health and Human Services (“HHS”) within twenty four hours.<sup>19</sup> Minors who have potentially been trafficked are eligible for interim assistance and federally funded services even if they have not definitively shown that they are trafficking survivors. In such instances, HHS issues an eligibility letter to allow them to obtain services.<sup>20</sup> The eligibility letter also makes a child eligible for placement in Office of Refugee Resettlement (ORR) Unaccompanied Refugee Minor (URM) placement for children if they are in ORR custody.<sup>21</sup> Because a child can remain in URM until the age of twenty one, it is a potential option for a child who is close to turning eighteen and is in danger of aging out into ICE custody. If a child has an eligibility letter, it is especially important to screen them for T visa eligibility. However, because the letters are issued in *potential* cases of trafficking, an eligibility letter alone does not necessarily indicate that they are eligible for T visa relief.

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<sup>19</sup> 22 U.S.C. § 7105(b)(1)(G)(ii).

<sup>20</sup> 22 U.S.C. § 7105(b)(1)(G)(iv)(III).

<sup>21</sup> Office of Refugee Resettlement, Unaccompanied Refugee Minors Program, <https://www.acf.hhs.gov/orr/programs/refugees/urm>.



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