



IDENTIFYING HUMANITARIAN FORMS OF RELIEF FOR DERIVATIVES

T Nonimmigrant Status

By Veronica Garcia

T nonimmigrant status, often referred to as the “T visa” is a form of immigration status for certain noncitizen survivors of trafficking. This visa was created by Congress to help combat human trafficking and provide immigration relief to persons who were affected. As part of the protections given, Congress allowed for applicants to petition for certain family members to gain status. These family members are known as “derivatives.” For many family members, being a derivative on an application may be the only way they will be able to get legal status in the United States. Because of this, it is important to understand when a derivative can be included on a petition, how to screen for their eligibility, and what would make them ineligible.

This practice advisory will only address derivatives in the T nonimmigrant context but keep in mind that many other forms of relief also allow for derivatives to be included, such as U visas and VAWA self-petitions. The chart below summarizes the derivatives allowed for these forms of humanitarian relief.

	<u>U Visa</u>	<u>T nonimmigrant</u>	<u>VAWA</u>
<u>Principal Applicant Over 21 years of age -</u>	Spouse or children under 21 years of age. ¹	Spouse and children. ²	<u>Spouse is the Self Petitioner</u> – unmarried children under 21.
<u>Principal Applicant Under 21 years of age -</u>	Spouse, children under 21 years of age, parents, or unmarried siblings under the age of 18.	Spouse, children under 21 years of age, parents, or unmarried siblings under 18 years of age. ³	<u>Child is the Self Petitioner</u> – Unmarried children under 21.
		<u>Regardless of principal applicant’s age if family member shows present danger due to cooperation or retaliation</u> – Any parent or unmarried sibling under 18 years of age or adult or minor child of a derivative. ⁴	<u>Parent is the Self Petitioner</u> – no derivatives!

¹ 8 CFR § 214.14(a)(10).

² 8 CFR § 214.11(a)(1).

³ 8 CFR § 214.11(a)(2).

⁴ 8 CFR § 214.11(a)(3).

This practice advisory provides information on derivatives for T nonimmigrant status as well as considerations to keep in mind when filing an application. For more detailed information on T nonimmigrant status and tips for submitting applications, advocates can look at the T visa manual available on the Immigrant Legal Resource Center's website.⁵

I. Common Family Member Terms in Immigration Law

Family unity is a longstanding concern of Congress and a motivation behind much of U.S. immigration law. This priority to keep families together is at the core of many immigration relief options, including humanitarian forms of relief, where immigrant survivors of crime and persecution are able to petition family members. To understand who can be included, it is important to learn who is considered family members under immigration law.

Spouses: Individuals are considered spouses under immigration law if the marriage creating the spousal relationship was legally valid in the location where the marriage was performed and celebrated.⁶ The marriage must also have been entered into in “good faith” and not simply to obtain an immigration benefit.⁷

Parents: Parent, father, and mother, are defined in relation to a child in immigration law, described below.⁸

Children: A child under immigration law is a person who is unmarried and under 21 years.⁹ This includes children born out of wedlock and stepchildren, if the parent and stepparent must have married before the stepchild's 18 birthdate.¹⁰ It also includes adopted children where the adoption occurred before the child turned 16.¹¹ The natural sibling of an adopted child also meets the definition of child, if the sibling is adopted by the same adopting parents before reaching age 18.¹²

Siblings: Siblings are persons who were once “children” with at least one parent in common.¹³ This also includes stepsiblings and adopted siblings as long as both stepsiblings were under the age of 18 when their parents were married, or the adopted sibling was under 16 when adopted.

II. Derivates of T Nonimmigrant Applicants

A. Step 1: Who is the principal applicant?

Before advocates can determine who can be included as a derivative, they must identify who the principal petitioner will be. In the T nonimmigrant context, advocates will want to screen potential clients for situations related to trafficking in sex or labor. Advocates should be aware that this can include situations that occurred within the United States and there is no requirement that the person was necessarily trafficked *into* the United States.

⁵ ILRC, *T Visas: A Critical Immigration Options for Survivors of Human Trafficking*, (1st Ed. 2018) available at <https://www.ilrc.org/publications>.

⁶ *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982).

⁷ *Lutwak v. United States*, 344 U.S. 604 (1955).

⁸ INA § 101(b)(2).

⁹ INA § 101(b)(1)(A).

¹⁰ INA § 101(b)(1)(B).

¹¹ INA §§ 101(b)(1)(E)(i), (F)(i), (G)(i).

¹² INA §§ 101(b)(1)(E)(ii), (F)(ii), (G)(iii).

¹³ *Matter of Garner*, 15 I & N Dec. 215 (BIA 1975).

Practice Note: Screening potential T nonimmigrant clients can be difficult. Clients may not self-identify as trafficking survivors, and they might not openly speak about their situation. Advocates who work or are beginning to work in the field of trafficking should ensure that their staff have good information and training on how to work with trafficking survivors. For intakes, it can be helpful to include questions around who employed them and in what situations; what were the conditions; if there was physical abuse, an exchange of money/service, or were they allowed to move freely. For more tips on how to work with this population, visit the Coalition to Abolish Slavery & Trafficking at (CAST), <http://www.castla.org/training>.

Eligibility for T Nonimmigrant Status:

To qualify for this form of relief, applicants will need to show they:

- are or have been the victim of a severe form of trafficking;
- are physically present in the United States, a U.S. territory, or at a port of entry on account of trafficking. This includes a survivor who was allowed to enter the United States to participate in the investigative or judicial processes associated with the trafficking;
- can demonstrate that they complied with any reasonable request for assistance in the federal, state, or local investigation or prosecution of acts of trafficking or the investigation of a crime where acts of trafficking are at least a central reason for the commission of that crime UNLESS they qualify for an exemption or exception to this requirement;
- would suffer extreme hardship involving unusual and severe harm upon removal from the United States.¹⁴

B. Step 2: Who are the Derivatives?

Like in other forms of immigration relief, advocates will need to identify if family member meets the derivative requirements.

1. Derivative Basics:

Depending on their age, survivors of trafficking may be able to include spouses, parents, children, and unmarried siblings under 18.¹⁵ The relationship between the principal petitioner and the derivative has to be in existence at the time the application for the principal is filed, adjudicated, and (if they are abroad) the derivative enters the United States.¹⁶ Derivatives included in the T nonimmigrant application do not count toward the visa cap of 5,000.¹⁷

T nonimmigrant Derivatives Classification

- **T-1—Principal Petitioner**—the survivor of the human trafficking, who must meet the T nonimmigrant requirements to qualify.
- **T-2—Spouse**—an individual married to the principal petitioner at the time the principal files their T nonimmigrant application. Divorce will terminate a spouse eligibility to obtain T derivative status.¹⁸
- **T-3—Child**—an individual under 21 years of age and unmarried who is the child of the T-1 principal.

¹⁴ INA § 101(a)(15)(T).

¹⁵ 8 CFR § 214.11(a).

¹⁶ 8 CFR § 214.11(k)(4).

¹⁷ INA § 214(o)(3).

¹⁸ 8 CFR § 214.11(m)(2)(ii).

- **~~T-4—Parent~~**—the parent of the T-1 petitioner if the petitioner is under 21 years old when the petition was filed.
- **~~T-5—Sibling~~**—unmarried sibling under the age of 18 of the T-1 petitioner, if the T-1 petitioner is under 21 years old.
- **~~T-6—Adult or minor child of a derivative of the principal~~**—this includes the children of any of the categories above. In other words, the T nonimmigrant is unique in that the T-1 principal can also apply to include their grandchildren, the children of the T-1's spouse, the T-1's siblings, and the T-1's nephews or nieces.

2. Who can be included in the application?

Scenario 1: The principal petitioner is over 21 years of age when they submit their T nonimmigrant application.

Applicants who are over 21 years of age when they file their T nonimmigrant application can include their spouses and unmarried children under 21 years of age.

Example: Raul filed a T nonimmigrant application when he was 23 years old as a survivor of sex trafficking. Raul's boyfriend had been pimping him out since he was 16 years old. Raul would like to include his parents, siblings and spouse. **Can he?**

Here Raul will only be able to include his spouse because he is over 21 years of age when he filed his application.

Age out protections: A child will continue to be considered a “child” under 21 years of age if the principal petitioner *filed* their application before the child turned 21.¹⁹ This means that the child will remain eligible even if the child turns 21 before the application is adjudicated. The age of the child freezes when the principal submits their application.

Marriage: On the other hand, for a child to remain eligible to be a derivative, they will need to remain unmarried until the process is complete. This means the child must remain unmarried until the application for the T-1 is filed and adjudicated; their own application is filed and adjudicated by USCIS; and they are admitted into the United States (if abroad).²⁰

Children born after principal files application: Principals may also add children who are born after the application is filed—they will be deemed an eligible family member who is accompanying or following to join the T-1 petitioner.²¹

Practice Note: Including after-acquired spouses and after-acquired children: Advocates should note that in order for a T petitioner to include a spouse, the relationship has to have existed prior to filing the T-application.²² This is not the case for after-acquired children. T petitioners will be able to include after acquired children even if they have already submitted their T application.

¹⁹ 8 CFR § 214.11(k)(5)(iii).

²⁰ 8 CFR § 214.11(k)(5)(iv).

²¹ 8 CFR § 214.11(k)(5)(i).

²² 8 CFR § 214.11(5)(iv).

Scenario 2: The principal petitioner is under 21 years of age when they submit their T nonimmigrant application.

T nonimmigrant petitioners who submit their application when they are under 21 years of age can include their spouses, parents, unmarried children under 21 years of age, and unmarried siblings under 18 years of age.

Example: Mai filed her T nonimmigrant application when she was 18 years old after she escaped from her employer's house. Mai would like to include her young child, parents, and siblings. **Can she?**

Here, Mai will be able to add her child, parents, and any unmarried sibling who is under 18 years of age. Unlike Raul above who was only able to include his spouse, Mai can include more derivatives because she is under 21 years of age.

Spouse & Children: The requirements for spouse and child derivatives for T petitioners under 21 years old are the same requirements as for T petitioners 21 and older, described above in Scenario 1.

Parents: A parent includes biological parents, adoptive parents, and stepparents. As noted in the definition of parents above, their eligibility is tied to the definition of a child. They will have to show they are the parent of the T principal.

Unmarried siblings under 18 years of age: The sibling must be under 18 when the principal files the application for T nonimmigrant status. Like with children, their age freezes when the T principal files their application. Their age when they file, when their application is adjudicated, or when they are admitted into the United States is not relevant so long as they were under 18 when the T principal submitted their application.²³

Marriage: The sibling **MUST** remain unmarried until both the T-1's petitioner and their own petition are adjudicated by USCIS and they are admitted into the United States (if abroad).²⁴

Scenario 3: The family members face present danger because the T principal cooperated with law enforcement and/or escaped the trafficking situation.

In this scenario, the T principal can include the spouses, parents, unmarried siblings under 18 years of age, and the children of derivatives, regardless of the principal's age at the time of filing.²⁵ This includes "adult or minor" derivatives. USCIS has defined this to mean a person of any age and any marital status,²⁶ including the adult children of T-1 derivatives. Here the qualifying relationship will be to the principal's derivative, and therefore their application will not be approved until their parent's application is approved (the T-1's derivative).²⁷

In order to be considered a derivative in this category, two criteria must be met. First, the parent of the T-6 must have held derivative status at some point. This means that the qualifying family member of the T-6 must have had derivative status because of their qualifying familial relationship to the T-1 (i.e. they were T-1's derivative). As long as the T-6's parents held derivative status at some point, it is okay that they no longer hold derivative status at the time the T-6 applies. This means that the qualifying family member can now be deceased or have let their status lapse.

²³ 8 CFR § 214.11(k)(5)(ii)

²⁴ 8 CFR § 214.11(k)(5)(iv).

²⁵ 8 CFR § 214.11(10).

²⁶ USCIS Policy Memorandum PM-602-0107, *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), at 3 available at <https://www.uscis.gov/sites/default/files/files/nativedocuments/2015-0415-TNonimmigrant-TVPRA.pdf>.

²⁷ *Id.* at 6.

Second, the derivatives will have to demonstrate danger of retaliation because of the T-1's involvement with the investigation. To show this, derivatives can include documentation of previous grants of advance parole, a signed statement from a law enforcement agency describing the danger they face because of the cooperation, articles in the news that support their claim of danger, affidavits of support from witnesses, etc.

Example: Ana is married to Jane. Although Ana and Jane have no children of their own, Jane has three adult children from a previous marriage. When Ana applied for a T nonimmigrant, she was able to include Jane, but since Jane's children were over 18 when Ana and Jane got married, she was unable to include Jane's children as "stepchildren." Recently, Ana and Jane have become worried about the children since they have been receiving threats from Ana's captors due to Ana's cooperation with the police.

Here, Ana can include Jane's adult children as derivatives because they are facing present danger on account of her cooperation with law enforcement, and because they are Jane's children, who herself is a derivative on the application.

3. At what point in the application process can derivatives be included?

A T principal petitioner can file the derivative application when they file their own application or at a later point while they hold T nonimmigrant status.²⁸ It is important to remember that even though the derivative application can be filed separately, their eligibility is tied directly to the T principal's. If the T principal's application is denied, or they obtain a green card, a derivative cannot apply for T status anymore based on that T principal (they could apply alone or through another family member if that became a possibility).²⁹

Extending T nonimmigrant status to ensure the derivatives can be included:

In order for a qualifying family member to obtain derivative status, the T-1 nonimmigrant must still hold T nonimmigrant status. This means that the T-1 cannot adjust until the T derivative has obtained derivative status.³⁰ Additionally, the T-1 immigrant has to remain in status until their derivative is granted status and is admitted into the United States (if abroad). If the principal's status is soon to expire, it is best practice to seek an extension based on exceptional circumstances.³¹

Example: Joe is from Thailand and holds T-1 status. He would like to include his spouse and 17-year-old daughter so they can get T status to come to the United States. Joe has had T status since 2016 but was unaware he could include his family. Joe is ready to adjust status, but if he does so before submitting his family members' T derivative applications, he will be unable to include them. Here, Joe could submit both an application for his family to get T status as derivatives and seek an extension of his status if needed. Once his family gets T status and has entered the United States, Joe can adjust. At that point, his spouse's and daughter's status will no longer be affected if he adjusts status.

Revocation Issues:

If the T-1 principal's status is revoked, the derivative's status will also be revoked.

²⁸ 8 CFR § 214.11(k)(2).

²⁹ *Id.*

³⁰ USCIS Policy Memorandum PM-602-0032.2, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* (Oct. 4, 2016), at 1 available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/2016-1004-T-U-Extension-PM-602-0032-2.pdf>.

³¹ *Id.* at 8.

Death of T-1 applicant:

Section 204(l) of the INA allows T derivatives, who were granted T nonimmigrant status prior to the T-1's death, to continue to hold status and later adjust. They must have been admitted to the United States before the death of the T-1 applicant. Note that USCIS will not continue to adjudicate cases for derivatives whose applications were not approved before the death of the derivative.³²

III. T Nonimmigrant Derivative Application Packet

A derivative applicant should file the following forms, either with or following the T principal:

- Form I-914 Supplement A;
- Documentation of relationship for each qualifying relative;
- A short declaration of T-1 principal applicant explaining the hardship that they would suffer if their derivative is not granted T status;
- A complete copy of the derivatives beneficiary's passport, valid for six months;
- Form I-912, if the derivative falls under an inadmissibility ground;
- Form I-765, request for employment authorization, if the derivative is in the United States and aged fourteen or older.

IV. Conclusion

This practice is an introduction to including derivatives in a T nonimmigrant status application. It is important to understand who can be included as a derivative to ensure all possible avenues for relief are explored for the client, and any family members they may wish to include.

³² USCIS, *Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act*, (Dec. 16, 2010) available at: <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/January/Death-of-Qualifying-Relative.pdf>.



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