

CHAPTER 1

INTRODUCTION

This chapter includes:

§ 1.1	Overview of Benefits and Eligibility for T Nonimmigrant Status	1
§ 1.2	How to Use This Manual.....	2
§ 1.3	Contents of This Manual	3
§ 1.4	Resources	5

§ 1.1 Overview of Benefits and Eligibility for T Nonimmigrant Status

T nonimmigrant status¹ is a nonimmigrant (temporary) status that allows noncitizen survivors of a severe form of human trafficking to stay in the United States, obtain employment authorization, apply for lawful permanent resident status, and help certain family members obtain immigration status as well. It was created by the Victims of Trafficking and Violence Prevention Act (hereinafter VTVPA 2000).²

The T nonimmigrant status discussed in this manual is often colloquially referred to as a “T visa” by attorneys and community members alike. However, it is important to note that *most clients in the United States who benefit from this immigration option will not have a T visa. Instead, they will be approved for T nonimmigrant status.* This is an important distinction to make to clients and to understand as immigration practitioners.

PRACTICE POINTER: The importance of the distinction between T visas and T nonimmigrant status. The terms “T visa” and “T nonimmigrant status” are often used interchangeably; however, there is an important distinction between the two.

Nonimmigrant status is a form of immigration status granted to your client when they are already in the United States or they arrive in the United States. It is usually indicated on an approval notice from U.S. Citizenship and Immigration Services (USCIS) and a Form I-94 and will include an expiration date. It allows your client temporarily to remain legally in the United States as a T nonimmigrant.

A visa is a document placed in your client’s passport by a U.S. consular official. It permits your client to enter the United States and travel into and out of the United States. T nonimmigrants may obtain a multiple entry visa that can be used to repeatedly enter the United States.

Therefore, the T visa allows your client to enter the United States. T nonimmigrant status allows your client to remain in the United States.

¹ The terms “T visa” and “T nonimmigrant status” are often used interchangeably by attorneys and advocates. However, there is an important distinction between the two. See the Practice Pointer on the next page for more details on this distinction.

² Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000) [VTVPA].

Although these two terms are colloquially used interchangeably, there is an important distinction. For more information on travel issues and the T visa, see **Chapter 10** of this manual.

There is a statutory annual limit of 5,000 T visas or approved T nonimmigrant status that can be granted per fiscal year.³ This numeric limit applies only to principal applicants, and not to derivative cases.⁴ As of this manual's writing (November 2018), the statutory cap on T visas has never been reached.⁵

The duration of the T nonimmigrant status is for up to four years.⁶ However, this period of status may be extended in certain situations.⁷

T nonimmigrants may also be able to adjust status in the United States to obtain lawful permanent residence (a green card).⁸ There are also provisions to grant derivative T nonimmigrant status, T visas and lawful permanent resident status to certain family members of T nonimmigrants.⁹

The Department of Homeland Security (DHS) first published T nonimmigrant status regulations in 2002 as an interim rule, which included eligibility criteria, the application process, evidentiary standards, and benefits associated with the T visa. On December 19, 2016, DHS published a subsequent interim rule after related legislation was enacted and after reviewing submitted comments on the regulations. This interim rule became effective on January 18, 2017 and are the current regulations as of this manual's writing (November 2019). Because the current T nonimmigrant regulations are interim, they may change when final regulations are issued. Sometimes, interim regulations are in place for many, many years before the regulations become final.

On December 12, 2008, USCIS published interim regulations on adjustment of status for T nonimmigrants.¹⁰ They became effective on January 12, 2009. They are also interim regulations and therefore subject to change upon issuance of the final regulations.

Some implementing provisions have been issued in policy guidance memoranda. USCIS policy memoranda regarding T nonimmigrants may also be found on the CIS website at www.uscis.gov.

§ 1.2 How to Use This Manual

This manual is designed for attorneys, advocates, paralegals and other staff at nonprofit organizations, government agencies, shelters, law enforcement agencies, schools, social service agencies, health care providers and other organizations who serve immigrant communities and

³ INA § 214(o)(2).

⁴ INA § 214(o)(3)(B).

⁵ USCIS data on application, approval, and denials rates for immigration forms can be found online at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

⁶ INA § 214(o)(7)(A).

⁷ INA § 214(o)(7)(B) and (C). See Chapter 3 for more detail about extending T nonimmigrant status past the four-year initial period.

⁸ INA § 245(l).

⁹ INA § 101(a)(15)(T)(ii). See Chapter 8 for a detailed discussion on assisting family members of T nonimmigrants in obtaining immigration status.

¹⁰ 73 FR 75540.

immigrant survivors in search of help. Through this manual, we will guide you through the entire process of handling an immigration case for a T nonimmigrant status applicant—from screening for eligibility to adjusting status to lawful permanent residency and assisting eligible family members and T nonimmigrants who wish to travel outside the United States.

In addition to providing a thorough explanation of the requirements and process, this manual includes numerous sample materials that may be helpful to you in putting together your client's case. The included appendices include sample versions of the immigration forms you will need, sample checklists, sample declarations, samples of the receipt notices and other correspondence you can expect to receive from USCIS, sample motions to submit to the immigration court, and more. Numerous sample materials are found at the back of this manual in the appendix and are referenced throughout the manual.

Some of the processing procedures for T nonimmigrants are in flux. As of this manual's writing (November 2018), the T nonimmigrant and adjustment implementing regulations are still interim (although may remain in this state for years or become final in the same form) and more draft and final policy guidance memoranda are expected. We therefore encourage you to follow the organizations listed in the **Resources for Human Trafficking and T Visas Cases** page found at **Appendix A**.

PRACTICE POINTER: Where to find the law, regulations, and policy on the T Visa. Most of the policy and procedure related to the T visa are contained in one of three places: the statute, the regulations, or policy guidance issued by USCIS.

The statute is the Immigration & Nationality Act (INA), and the relevant sections are at:

- INA § 101(a)(15)(T): T nonimmigrant status eligibility requirements
- INA § 214(o): Miscellaneous T nonimmigrant requirements
- INA § 212(d)(13): T nonimmigrant inadmissibility waivers
- INA § 245(l): T nonimmigrant adjustment provisions

Much of the policy and procedure are outlined in the regulations, the relevant sections of which are:

- 8 CFR §§ 212.16, 214.11: T nonimmigrant status
- 8 CFR § 245.23: T nonimmigrant adjustment of status

Finally, as is often the case with immigration policy and procedure, some of important issues related to T nonimmigrant status are addressed in USCIS policy guidance memoranda. Some of these memoranda are available on the USCIS website at www.uscis.gov.

§ 1.3 Contents of This Manual

This manual contains thirteen chapters and an extensive appendix at the end of the manual. Please refer to these chapters for substantive coverage of the following topics:

Chapter 1, Introduction, covers an overview of benefits and eligibility for T nonimmigrant status, the contents of this manual and how to use it, and resources to assist you in navigating this topic.

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November 2018*

Chapter 2, Agency Preparation for Human Trafficking Cases, provide an overview of things to consider before taking on a T visa cases including background on the complexity of human trafficking cases, safety concerns, working with trauma survivors and client interviewing.

Chapter 3, T Nonimmigrant Status Eligibility, covers eligibility for T nonimmigrant status including a detailed discussion of the eligibility requirements for the visa, screening tips and practice pointers.

Chapter 4, T Nonimmigrant Status Process, details step-by-step how to apply for T nonimmigrant status, including details on how to fill out and document the Form I-914, what to expect from the process, how to obtain work authorization, and how and when to communicate with USCIS about your client's case. It also describes issues that arise after T nonimmigrant status is approved, including requesting an extension of status or the possibility of a revocation of status.

Chapter 5, Inadmissibility Grounds and Waivers, provides information about the various grounds of inadmissibility applicable to the T nonimmigrant status applicant, the standard for overcoming them with a waiver, and strategies for how to apply for the inadmissibility waiver.

Chapter 6, T Nonimmigrant Adjustment of Status Eligibility, details the requirements for T nonimmigrants to obtain lawful permanent residence, as well as how jurisdictional issues, inadmissibility grounds, and prior removal orders may affect your client's case.

Chapter 7, Adjustment of Status Process, is another step-by-step chapter providing details to guide you through completing the adjustment packet, including the I-485 and supporting documentation, for a T nonimmigrant.

Chapter 8, Assisting Family Members, is dedicated to providing information on how to help family members obtain immigration status—either as derivative family members at the T nonimmigrant status phase, the T visa phase, or at the adjustment phase.

Chapter 9, Removal Issues, discusses issues impacting clients who are currently in removal proceedings and those with prior removal or deportation issues, including information on motions and stays.

Chapter 10, T Travel Issues, is dedicated to providing practical information for helping T nonimmigrant status holders who wish to travel, and approved T derivatives in their home countries who wish to travel to the United States and will need to go through consular processing.

Chapter 11, Working with Children and Youth, covers general practice tips for working with children and youth as well as special considerations when helping children and youth survivors of trafficking with the T visa eligibility.

Chapter 12, Practical Client Considerations, is a chapter on the other agencies and issues that may come up in a T visa case, including ones related to housing, health, interpreters, funding, civil cases, and more.

Chapter 13, Secondary Trauma and the Importance of Self-Care, covers the concepts of secondary trauma, how to recognize its symptoms, things to keep in mind in working with trauma survivors, and ideas for self-care.

The **Appendix** found at the end of this manual provides numerous sample materials, screening sheets, checklists, USCIS memoranda and other materials that advocates may find useful in helping a client successfully obtain T nonimmigrant status.

§ 1.4 Resources

Those of us who work with T nonimmigrant status applicants are fortunate that a universe of resources exists to help advocates and attorneys with these cases, and there are numerous excellent attorneys who are willing to share the resources they've created. Attached to this manual at **Appendix A** please find a list of resources for immigration forms, fees and updates, technical assistance, websites, trainings, webinars, seminars, listservs, and other written materials.

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