

LEGAL NEEDS OF UNDOCUMENTED HT SURVIVORS

Overview

Is Your Survivor Client Eligible for a T Visa to Stay in the U.S.?

- Human trafficking survivors can apply for “T nonimmigrant status” through the T visa. The T visa provides status to survivors of severe forms of trafficking,¹ who cooperate with the investigation or prosecution of the trafficker.
- Consult an immigration attorney with human trafficking experience before speaking to law enforcement. Law enforcement may involve Immigration and Customs Enforcement (ICE), which could lead to your client being detained and/or deported.²
- To qualify for a T Visa, a human trafficking survivor must:
 - » Be a victim of a severe form of trafficking in persons,
 - » Be physically present in the United States on account of the trafficking,
 - » Comply with any reasonable requests for assistance in the investigation or prosecution (or be under the age of 18), and
 - » Suffer extreme hardship involving unusual and severe harm if removed from the United States.”³
- To apply for T nonimmigrant status, your client will need to file Form I-914. T visas are granted for four years. Find Form I-914 here: <https://www.uscis.gov/i-914>
- In November 2019, the estimated processing time for a T Visa was 19.5 months to 26 months.⁴
- After three years or the conclusion of the criminal case, T visa holders may apply for Lawful Permanent Resident (LPR) status.

Is Your Survivor Client Eligible for a U Visa to Stay in the U.S.?

- Human trafficking survivors may also be eligible for U Nonimmigrant Status through the U visa. Obtaining a U visa could take five or more years.⁵

¹ <https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>

² <https://www.womenslaw.org/laws/federal/immigration/t-visa-trafficking-victims/contacting-law-enforcement/if-i-think-i-am>

³ <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/-Battered%20Spouse%2C%20Children%20%26%20Parents/Immigration%20Options%20for%20Victims%20of%20Crimes.pdf>

⁴ <https://egov.uscis.gov/processing-times/>

⁵ <https://www.womenslaw.org/laws/federal/immigration/u-visa-laws-crime-victims/basic-info-and-definitions>



LEGAL NEEDS OF UNDOCUMENTED HT SURVIVORS

- Consult an immigration attorney with human trafficking experience before speaking to law enforcement. Law enforcement may involve Immigration and Customs Enforcement (ICE), which could lead to your client being detained and/or deported.
- To qualify for a T Visa, a human trafficking survivor must:
 - » “Be a victim of qualifying criminal activity and have suffered substantial physical or mental abuse as a result of the crime,
 - » Possess credible and reliable information about the qualifying criminal activity,
 - » Be, have been, or are likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity,
 - » Be a victim of criminal activity that violated a U.S. law.”⁶
- Criminal activity covered by the U visa includes abduction, abusive sexual contact, rape, false imprisonment, trafficking, sexual exploitation, and more.
- To apply for U nonimmigrant status, your client will need to file Form I-918. U visas are granted for four years. Find Form I- 918 here: <https://www.uscis.gov/i-918>
- After three years or the conclusion of the criminal case, U visa holders may apply for Lawful Permanent Resident (LPR) status.

Is your survivor client eligible for Continued Presence?

- Your client may also be eligible for Continued Presence. Continued Presence allows human trafficking survivors to remain in the U.S. while they cooperate with the investigation and prosecution of the trafficker. Continued Presence is granted in one-year increments and can be renewed. Law enforcement must file for Continued Presence on a survivor’s behalf; a survivor cannot apply for Continued Presence on their own.
- If possible, consult an immigration attorney with human trafficking experience before speaking to law enforcement. Law enforcement may involve Immigration and Customs Enforcement (ICE), which could lead to your client being detained and/or deported.
- Continued Presence generally ends when the criminal case ends. If your client wants to remain in the U.S. after their Continued Presence ends, they should consult an attorney about obtaining a T Visa.

⁶ <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse%2C%20Children%20%26%20Parents/Immigration%20Options%20for%20Victims%20of%20Crimes.pdf>



LEGAL NEEDS OF UNDOCUMENTED HT SURVIVORS

Is your survivor client eligible for Special Immigration Juvenile Status (SIJS)?

- Clients under the age of 21 may be eligible for SIJS if they are unmarried; found to be dependent on a juvenile court; reunification with one or both parents is not possible due to abuse, neglect, or abandonment; and return to their country of origin is not in their best interest.
- If you think your client might be eligible for SIJS, consult an immigration attorney. If your client is not already in removal proceedings, filing an SIJS petition would make USCIS aware of your client and could potentially lead to removal proceedings.

Best Practices

- Do not directly ask your client about their immigration status. Tell your client they do not have to talk about their immigration status if it makes them uncomfortable, but if they are a noncitizen they may be eligible for some immigration status.
- Do not reach out to ICE, DHS, or law enforcement about an undocumented client before consulting an immigration attorney.
- Provide your client with publicly available legal information about immigration about immigration rights, such as:
<https://www.acluaz.org/en/know-your-rights-police-or-immigration-agents>
- Assure your client that you will provide them services regardless of their immigration status (if this is true).

Resources

To view current processing times for T and U visas, check out:

<https://egov.uscis.gov/processing-times/>

For more information on obtaining a U Visa, check out:

Womenslaw.org - U Visa for Crime Victims

<https://www.womenslaw.org/laws/federal/immigration/u-visa-laws-crime-victims/basic-info-and-definitions>

New York Anti-Trafficking Network - U Visa Manual

<https://nyatn.files.wordpress.com/2010/03/u-manual-finald.pdf>

The Irina Project - U Visas: A Source for Reporting on Human Trafficking

<http://www.theirinaproject.org/u-visas-a-source-for-reporting-on-human-trafficking.html>

This fact sheet provides legal information, not advice.



LEGAL NEEDS OF UNDOCUMENTED HT SURVIVORS

For more information on obtaining a T Visa, check out:

Womenslaw.org - T Visa for Trafficking Victims

<https://www.womenslaw.org/laws/federal/immigration/t-visa-trafficking-victims/contacting-law-enforcement/if-i-think-i-am>

National Human Trafficking Resource Center - T Visa and the Trauma Exception

https://humantraffickinghotline.org/sites/default/files/The%20Trauma%20Exception%20To%20The%20T%20Nonimmigrant%20Visa%20-%20Fact%20Sheet_1.pdf

For more information on Special Immigrant Juvenile Status (SIJS), check out:

USCIS: Special Immigrant Juvenile Status: Information for Juvenile Courts

https://www.ncjfcj.org/sites/default/files/Information_for_Juvenile_Courts_-FINAL%20%281%29.pdf

Kids in Need of Defense (KIND) - Chapter 4: Special Immigrant Juvenile Status (SIJS)

<https://supportkind.org/wp-content/uploads/2015/04/Chapter-4-Special-Immigrant-Juvenile-Status-SIJS.pdf>

For more general information about immigration and human trafficking, check out:

Office for Victims of Crimes - Immigration Needs

<https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/44-comprehensive-victim-services/legal-needs/immigration-needs/>

DHS - Immigration Relief for Victims of Human Trafficking and Other Crimes

<https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf>

Family Violence Prevention Fund - Collaborating To Help Trafficking Survivors: Emerging Issues and Practice Pointers

<https://www.futureswithoutviolence.org/userfiles/file/ImmigrantWomen/Collaborating%20to%20Help%20Trafficking%20Survivors%20Final.pdf>

DHS - U and T Visa Law Enforcement Resource Guide

https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf

Kids In Need of Defense (KIND): Immigration Options for Victims of Crimes

<https://supportkind.org/wp-content/uploads/2016/08/Immigration-Options-for-Victims-of-Crimes-LOGOS.pdf>

This fact sheet provides legal information, not advice.

