Balancing the equity of mental health injuries: examining the “trauma exception” for sex trafficking T-VISA applicants

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Abstract
Purpose – The purpose of this paper is to explore and expand the legal discussion on T-Visa requirements and how it can be better structured to provide support for victims of sex trafficking that suffer from severe mental health injuries.

Design/methodology/approach – The authors conducted extensive US legal and sociological research compiling human trafficking mental health report data, primarily conducted in Europe. Based on these finding, the authors interviewed practitioners in the legal field to verify assumed legal hurdles. Once validated the author’s attempted to address and design an equitable approach towards mitigating the demonstrated legal shortfall.

Findings – There is a dearth of US research on mental health trauma survivors of trafficking endure. This void prevents the legal system from adequately addressing likely outcomes suffered by the victims of this crime and prevents policy makers from structuring legal requirements equitably. Policy makers often need concrete examples of problems before reacting. This paper attempts to demonstrate how the current T-Visa requirements fail to fully recognize mental health injuries of sex trafficking and begins to provide a pathway to balance.

Originality/value – While the statistical data was previously conducted by outside sources, the legal analysis is completely original by the author’s and is likely to have a very high value to policy makers when addressing these issues. This paper also highlights the need for a more robust research program into human trafficking and mental health injuries within the US so that many of the analogies and assumptions can be supported.

Keywords Immigration, Human trafficking, I-914, Sex trafficking, T-Visa

Paper type General review

I. Introduction

Human trafficking and sexual exploitation are unspeakable atrocities that devastate the lives of trafficking victims. Human trafficking is classified and organized into three chief categories: first, Commercial Sexual Exploitation or CSE[1]; second, Forced Labor[2]; and third, Domestic Servitude[3]. Federal and State statutory definitions of human trafficking vary; however they contain common elemental threads. Human trafficking is generally defined as the recruitment, transportation or harboring of a person against their own will through the use of force, coercion, fraud or deception to be exploited for sex or labor purposes. Traffickers treat bodies as renewable resources. Too often victims sustain horrific physical and psychological abuse from their traffickers and exploitative consumers[4]. The nature of trafficking leaves survivors, especially those who are sexually trafficked and abused, with enduring mental trauma[5]. Without a nuanced understanding of trafficking and the injuries survivors sustain, this trauma could prevent the victims from obtaining the services and legal benefits afforded them under law.
Human trafficking and forced labor infects almost every corner of the globe[6]. According to the State Department, there are as many as 20.9 million adults and children in forced labor, bonded labor, and forced prostitution worldwide (see footnote 6). Human trafficking is widely recognized as the fastest growing[7] and the third most widespread criminal enterprise in the world[8]. Global profits from forced labor are estimated to be in excess of $32 billion annually[9]. This pernicious crime infests 161 countries, either by being classified as a source, transit, or destination country[10]. Victims have been known to originate from 127 different countries to be transported and exploited in 137 destination countries[11]. Over the past few years the US government has increased their awareness of this heinous crime, and enhanced immigration laws focused on restorative justice for the trafficked victim[12]. However, the piece meal approach taken by legislatures often leaves disjointed or contradictory statutory language. This chapter will highlight the evolution of the T-Visa statutory requirements, how the application process was amended to provide equity for trafficked victims suffering mental trauma and will expose continuing discrepancies in the statutory construction with proposed amendments.

T-Visa

In 2000, Congress created the T-Visa[13]. This new visa allows a victim of severe forms of human trafficking to reside, receive services, and work legally in the US for up to four years. Issuance of a T-Visa requires a victim meet certain requirements[14]. For victims of severe forms of trafficking, likely manifesting mental trauma and/or Post-traumatic Stress Disorder symptoms, adhering to the requirement to comply with all reasonable law enforcement requests may prove to be a daunting or insurmountable request. “Severe forms” of human trafficking have been defined as: either “sex trafficking[15] in which a commercial sex act[16] is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained [eighteen] years of age,”[17] or “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 subjecting to involuntary servitude[18], peonage[19], debt bondage[20], or slavery[21].”

Acknowledging this difficulty, the T-Visa process was modified in the Violence Against Women Act 2005[22]. Congress recognized the untenable position in which many victims may find themselves and provided an alternative avenue for qualified victims to achieve their rightful visa[23]. Victims suffering from significant mental trauma can apply for T-Visa protection directly to the United States Customs and Immigration Service without the previously required law enforcement certification[24]. While this option is available for all forms of trafficking, as we will discover, the type and kind of trauma most likely sustained through sexual exploitation provides the basis for the T-Visa trauma exception. The following chapter will approach the issue of mental injuries and the strength of the current US immigration policy from a primarily legal practitioner viewpoint[25].

II. The prevalence of human trafficking in the USA

While slavery, forced labor and sexual exploitation is not new a practice, the legal concept and crime of human trafficking is quite new[26]. The terms forced labor, sexual exploitation, and human trafficking has varying definitions; however all contain the central component of, forced labor. Forced labor is generally defined as, “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily[27].” The worth of one’s labor and independent control of one’s body has long been understood to be a valuable asset and an individual’s personal property[28]. For the purposes of this chapter, we will apply two main operable definitions; the United States Federal definition and the California state definition. California law defines human trafficking as:

\[\text{[A]}\text{all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons, within national or across international borders, through force, coercion, fraud or deception, to place persons in situations of slavery or slavery like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor, or other debt bondage[29].}\]

Federal law defines trafficking in persons as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not
attained [eighteen] years of age” or “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[30].”

While cross-border transit is not a required element, the US Department of State approximates some 800,000 to 900,000 people are trafficked annually across sovereign borders globally with approximately 18,000 to 20,000 of these people entering the US[31]. According to the International Labour Organization, human traffickers are reaping immense profits, estimated to be approximately $32 billion world-wide annually[32]. Primarily surpassed by the narcotics trade, trafficking of humans is understood to be the third largest criminal industry in the world and considered the fastest growing criminal act in the twenty-first century[33]. Facing this evolution of criminal activity, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA) with the intent to help stem the tide of this crime and provide services to its victims[34]:

The TVPA enhanced three aspects of federal government activity to combat trafficking in person: it provided for a range of new protections and assistance for victims of trafficking in persons; it expanded the crimes and enhanced the penalties available to federal investigators and prosecutors pursuing traffickers; and it expanded United States activities internationally to prevent victims from being trafficked in the first place[35].

Traffickers lack basic humanity, and with it, the concern for others. They are solely motivated by profit[36]. They torture, defeat, starve, and fracture the lives of their victims[37]. They intentionally attack the self-control and identity of their victims in order to strip them of their will and self-determination[38]. In this void they insert themselves as the sole controlling force – the force that dictates every aspect of the victims’ lives: traffickers control everything, from when to eat, when to sleep, with whom to interact, and when to use the bathroom[39]. This complete control of their victim is crucial to the trafficker’s business model. If the victim were to retain their own free will, the victim may seek help and the trafficker’s crime would be uncovered[40]. The extent to which traffickers will go to maintain control knows no bounds[41]. Based on the surplus of vulnerable people in the world, traffickers are willing to extend their abuse to murder if their methods of mental and physical abuse are not effective[42].

These rapacious tactics place trafficked victims at a significantly high risk for mental health problems, stemming directly from their chronic brutalization[43]. The California Attorney General’s Office has recognized victims often suffer from physical and developmental disabilities, PTSD, depression, suicidal tendencies, and other dissociative disorders[44]. Because this depth of victimization carries with it lasting significant physical and emotional symptoms, updating the T-Visa application and qualification process to account for these symptoms must be considered an integral part of a strategic and a holistic approach to fighting sexual exploitation and human trafficking.

Continually updating immigration laws to ensure equity for the victims suffering from mental health injuries is crucial as governments struggle with the concurrent challenges of conceptualizing what human trafficking is and modernizing criminal statues to adequately combat its practice.

III. T-Visa – form I-914

In 2000, Congress passed the TAPA thereby creating the T-Visa[45]. Congress began to recognize the inequity of deporting trafficked victims, treating them as criminals[46]. Placing the victim in this untenable position inhibits them from assisting law enforcement and reporting crime, thus retarding the discovery and prosecution of human trafficking[47]. Created to provide immigration safeguards for trafficked victims, the T-Visa provides an avenue for victims to remain in the USA[48]. It was designed with the understanding that a victim’s undocumented presence in the USA was not volitional, was a result of their victimization, and conditional upon their cooperation with law enforcement to investigate and prosecute trafficking[49].

A. I-914 Application process

The I-914 application, which trafficking victims must complete to obtain a T-Visa is a nine-page form, divided into eight parts; A-H[50]. Part C has particular importance for victims suffering
from mental health symptoms because it is the section in which the applicant must demonstrate that he or she complies with all the necessary statutory elements[51]. This includes asserting and providing evidence that he or she is a “victim of a severe form of trafficking in persons[52],” “will suffer extreme hardship involving unusual and severe harm upon removal[53],” and “whether the applicant has complied with all reasonable requests from Federal, State, or local law enforcement authorities during the investigation and prosecution of the acts of trafficking” relating to the victim[54].

The applicant must clearly state whether or not he or she is submitting a law enforcement agency declaration, providing evidence the victim complied with all reasonable law enforcement requests[55]. While governmental statements and regulations indicate that victim recovery and rehabilitation are just as important as the investigation and prosecution of a victim’s traffickers[56], it is unlikely applicants will be issued a T-Visa without a law enforcement agency endorsement[57]. The instruction section to Form I-914 provided by US Citizenship and Immigration Services[58] states the applicant must demonstrate “[he or she has] complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime, unless [he or she is] under the age of [eighteen][59].” Federal law does not require an applicant to comply with reasonable law enforcement requests if he or she is unable to do so because of physical or psychological trauma[60]. The I-914 form fails the victim in that it makes no mention of this exception[61]. To utilize this federal exception, one would need assistance from a well-informed legal advocate or a victim service provider with specialized knowledge.

B. Approval and denial statistics

By carefully plotting and examining the statistical history of the T-Visa, we are able to glean valuable insight on past practices and review the success of the program in assisting victims. This special visa for trafficked victims was created 12 years ago and has been vastly underutilized[62]. There are 5,000 T-Visas allotted each year; therefore, since 2000, 60,000 T-Visas could have been issued. This has not been the case[63]. The T-Visa annual cap was a procedural safeguard to protect against misuse and fraud[64]. While the number of T-Visas has steadily increased, the forecasted fear of widespread misuse and fraud has not materialized[65].

Table I

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Receipts</th>
<th>Victims</th>
<th>Family of victims</th>
<th>I-914 Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Approved</td>
<td>Denied</td>
<td>Approved</td>
<td>Denied</td>
</tr>
<tr>
<td>2002</td>
<td>163</td>
<td>17</td>
<td>12</td>
<td>234</td>
</tr>
<tr>
<td>2003</td>
<td>750</td>
<td>283</td>
<td>51</td>
<td>274</td>
</tr>
<tr>
<td>2004</td>
<td>566</td>
<td>163</td>
<td>344</td>
<td>86</td>
</tr>
<tr>
<td>2005</td>
<td>379</td>
<td>113</td>
<td>231</td>
<td>34</td>
</tr>
<tr>
<td>2006</td>
<td>384</td>
<td>212</td>
<td>106</td>
<td>24</td>
</tr>
<tr>
<td>2007</td>
<td>269</td>
<td>287</td>
<td>106</td>
<td>24</td>
</tr>
<tr>
<td>2008</td>
<td>408</td>
<td>243</td>
<td>78</td>
<td>118</td>
</tr>
<tr>
<td>2009</td>
<td>475</td>
<td>313</td>
<td>77</td>
<td>235</td>
</tr>
<tr>
<td>2010</td>
<td>574</td>
<td>447</td>
<td>138</td>
<td>463</td>
</tr>
<tr>
<td>2011</td>
<td>967</td>
<td>557</td>
<td>223</td>
<td>795</td>
</tr>
<tr>
<td>2012 YTD</td>
<td>624</td>
<td>447</td>
<td>138</td>
<td>854</td>
</tr>
<tr>
<td>Total</td>
<td>5,559</td>
<td>3,082</td>
<td>1,615</td>
<td>3,136</td>
</tr>
</tbody>
</table>

In contrast, the U-Visa provides relief for nonimmigrants who are victims of enumerated crimes, including human trafficking[66]. A U-Visa will provide the individual with temporary legal status and work eligibility[67]. The U-Visa, like the T-Visa, was created under the TVPA[68] and is meant to aid the investigation and prosecution of crime(s), while also providing access to services and protection for the victims[69]. US Citizenship and Immigration Services (USCIS), the governmental organization that issues U-Visas, can issue up to 10,000 U-Visas each fiscal year[70]. Both the T and U provide for certain family members to apply for derivative visas[71].

Successfully obtaining a U-Visa requires an applicant to submit an I-918 form and supporting evidence[72] showing the applicant: “first, has sustained “substantial physical or mental abuse as a result of having been a victim of criminal activity[73];” second, “possesses information concerning criminal activity (see footnote 74);” third, “has been helpful, is being helpful, or is likely to be helpful” to the governmental agencies investigating or prosecuting that crime (see footnote 74); and four, that the crime “violated the laws of the US or occurred in the USA. (see footnote 74) “The following chart illustrates the successful U-Visa applications for the years 2009 to 2012: Table II.

The U and T-Visa collected in these charts has been given very little analytical treatment. By further collecting Visa information – e.g. sorting applications by trafficking type – would give greater demonstrable insight and evidence into inequitable application of the law.

IV. Mental health implications – post-traumatic stress disorder

PTSD “refers to certain enduring psychological symptoms that occur in reaction to a highly distressing, psychically disruptive event (see footnote 74).” Originally created to describe mental health injuries for war combatants and disaster victims[74], “PTSD is one of the few psychiatric conditions to which the manual (DSM-III) ascribes a definite cause[75].”

A. Medical explanation

“PTSD requires the occurrence of a traumatic event as well as first, frequent re-experiencing of the event through nightmares or intrusive thoughts, second, a numbing of general responsiveness to, or avoidance of, current events, and third, persistent symptoms of increased arousal, such as jumupiness, sleep disturbance, or poor concentration[76].” “[A] traumatic experience is defined as one that involves a threat (or reality) of death, serious injury, or damage to physical integrity, and inspires intense fear, helplessness, or horror[77].” However, it does not matter whether the individual experiences the event immediately, merely witnesses it, or is confronted with the traumatic event in any other way[78].

Adult survivors of sexual abuse and trafficking commonly suffer from PTSD flashbacks[79]. Flashbacks are sudden and disturbing sensory experiences in which the victim relives some or all of the sensations experienced during the original assault, as if the traumatic event was happening all over again[80]. PTSD symptoms also commonly involve repetitive and intrusive

<table>
<thead>
<tr>
<th>Table II</th>
<th>Form I-918 – petition for U nonimmigrant status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>U-VISAS</strong></td>
<td><strong>Victims</strong></td>
</tr>
<tr>
<td>Fiscal year</td>
<td>Receipts</td>
</tr>
<tr>
<td>2009</td>
<td>6,835</td>
</tr>
<tr>
<td>2010</td>
<td>10,742</td>
</tr>
<tr>
<td>2011</td>
<td>16,768</td>
</tr>
<tr>
<td>2012 YTD</td>
<td>15,400</td>
</tr>
<tr>
<td>Total</td>
<td>49,745</td>
</tr>
</tbody>
</table>

thoughts or memories of the traumatic event, which can be highly distressing and disruptive (see footnote 85). Other than flashbacks, which focus on the sensory aspects of trauma, these thoughts and recollections mainly affect the cognitive system (see footnote 85). While, in the case of sexual abuse victims, intrusive thoughts often evolve around themes of danger and humiliation as well as guilt and “badness,” intrusive memories are best described as spontaneous recollections of specific traumatic events of abuse (see footnote 85). Nightmares are also commonly associated with PTSD, and in the case of sexual abuse victims, they often involve themes of violence and abuse (see footnote 85).

To summarize, as the disorder is currently understood, it can be divided into three sets of symptoms, the first of which is hyper-arousal (see footnote 85). Individuals suffering from PTSD appear constantly on guard, are irritable, easily startled, and have difficulties sleeping or concentrating (see footnote 85). The second set of symptoms involves re-experiencing, or intrusion (see footnote 91). The traumatic event keeps haunting the victim through vivid memories, flashbacks, or nightmares. Anything, a particular object, a specific situation, or a certain feeling can trigger intense distress, and while experiencing these symptoms, the victim may feel, or even behave, as if everything is happening in real time (see footnote 91). Avoidance and emotional numbing dominate the final set of PTSD symptoms (see footnote 91). The victim seeks to avoid potential triggers such as persons, places, situations, or thoughts (see footnote 91). In addition, the individual loses interest in her usual activities and feels estranged not only from other people, but also from her own feelings (see footnote 91). This avoidant behavior becomes a coping mechanism, aimed at the chronic trauma and accompanying feelings of sadness and anxiety caused by the victimization (see footnote 91). Some of the dysfunctional activities commonly associated with avoidance are: dissociation, substance abuse, suicidal behavior, and various activities that are geared toward reducing the tension induced by abuse-specific memories and feelings[81].

In diagnosing PTSD, certain similarities with other psychiatric disorders may pose a challenge[82]. Experts increasingly view rape trauma syndrome (RTS) as a subset of PTSD[83]. Only very few people who experience a traumatic event subsequently develop PTSD[84]; however, having previously suffered traumatic events makes the development of PTSD more likely[85]. The risk of PTSD is also higher when a person experiences injury that is intentionally inflicted by another human being, as opposed to an accident or a natural disaster[86]. This effect is exacerbated if the victim feels guilty, due to a widely held, yet generally mistaken, belief that she is in some way responsible for what has happened to her[87].

**B. Human trafficking is likely to induce PTSD**

Human trafficking reports and indictments from around the world describe deplorable acts of extreme forms of physical, psychological, and sexual abuse perpetrated; especially victims trafficked into the sex industry[88]. These abuses may also occur in a multitude of non-sex related labor settings, including construction, agriculture, and domestic servitude[89]. While the State Department acknowledges that “[i]t is essential that governments give trafficking victims a reasonable length of time to recover from the immediate trauma[90],” the lasting health consequences of human trafficking have received relatively little attention and research domestically.

Enduring physical and psychological problems are widespread among trafficked victims[91]. Common psychological problems include depression, anxiety, suicidal ideation, PTSD, and addiction[92]. In a recent study of prostitution and trafficking in nine European countries, researchers found that 68 percent of the interviewed participants met the criteria for PTSD[93]. Other emotional problems reported by participants, and characterized by the researchers as “severe,” were mood swings, anxiety, terror, depression, and wanting to die as a means of escape[94]. One Moldavian study used a validated diagnostic instrument to assess psychiatric disorder among sexually exploited women[95]. The DSM-IV Structured Clinical Interview was conducted with women who had been trafficked abroad, had returned to Moldavia within 2-12 months of the study, had registered for post-trafficking support services, and were in the process of rehabilitation[96]. Among the participants, 16.7 percent were diagnosed with major depression, and 35.8 percent met the diagnostic criteria for PTSD[97].
The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children entered into force on December 25, 2003[98]. It calls on each state party to implement “measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons…[99].” Recently, a team of researchers conducted a systematic review of the current literature to help illuminate the potential implications of human trafficking for public health systems[100]. The meta-analysis confirmed that trafficking leads to serious health issues and reemphasized the need for affected countries to coordinate their responses in the fields of health care and other support services[101].

In 2006, an in-depth study was conducted in Europe[102]. The researchers interviewed adolescents and women, all of whom had either been trafficked as sex workers or were sexually abused during their time in domestic services[103]. Many domestic and international victim service organizations view sex work and sexual exploitation as synonymous. Many studies will often amalgamate these two groups and concepts when framing the researched individuals. The European study involved 207 women, originating from 17 different home countries[104]. Nearly nine in ten (89 percent) had been enslaved for more than one month and 10 percent were enslaved for over two years[105]. The following is a review of Cathy Zimmerman’s findings: Table III.

As the VAWA Act was amended to recognize mental trauma suffered while trafficked, it would be very interesting to compare compatible domestic data; however, there has been equivalent study conducted in the USA. Ms Zimmerman’s research should be seen as a strong basic formulae from which a similar study of sexually exploited victims within the US could be conducted.

Trafficking victims are often forced into dangerous situations and may be unable, or unwilling, to jeopardize their safety, or the safety of their family, by reporting or seeking help from law enforcement[106]. It is widely recognized victims may not be able to feel fully secure and ready to advance past their victimization until they are confident their family members are safe[107]. Some trafficked victims are identified and rescued quickly; however many remain trapped, ensnared by their trafficker for years before they are able to break free[108]. Victims attempt to survive daily with emotional and physical abuse, inhumane treatment, and threats to their families and loved ones[109].

Some people view prostitution and other sexual exploitation as a victimless crime committed between two consenting adults[110]. But victims of the commercial sex trade are often not adults, but girls and boys as young as 12-years-old[111]. The risks of the commercial

<table>
<thead>
<tr>
<th>Table III</th>
<th>PTSD Associated symptoms &amp; percent of trafficked women ranking symptoms as severe a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recurrent thoughts/memories of terrifying events</td>
<td>75%</td>
</tr>
<tr>
<td>Feeling as though the event is happening again</td>
<td>52%</td>
</tr>
<tr>
<td>Recurrent nightmares</td>
<td>54%</td>
</tr>
<tr>
<td>Feeling detached/withdrawn</td>
<td>60%</td>
</tr>
<tr>
<td>Unable to feel emotion</td>
<td>44%</td>
</tr>
<tr>
<td>Jumpy, easily startled</td>
<td>67%</td>
</tr>
<tr>
<td>Difficulty concentrating</td>
<td>52%</td>
</tr>
<tr>
<td>Trouble sleeping</td>
<td>67%</td>
</tr>
<tr>
<td>Feeling on guard</td>
<td>64%</td>
</tr>
<tr>
<td>Feeling irritable, having outbursts of anger</td>
<td>53%</td>
</tr>
<tr>
<td>Avoiding activities that remind them of the traumatic or hurtful event</td>
<td>61%</td>
</tr>
<tr>
<td>Inability to remember part or most of traumatic or hurtful event</td>
<td>36%</td>
</tr>
<tr>
<td>Less interest in daily activities</td>
<td>46%</td>
</tr>
<tr>
<td>Feeling as if you didn’t have a future</td>
<td>65%</td>
</tr>
<tr>
<td>Avoiding thoughts or feelings associated with the traumatic events</td>
<td>58%</td>
</tr>
<tr>
<td>Sudden emotional or physical reaction when reminded of the most hurtful or traumatic events</td>
<td>65%</td>
</tr>
</tbody>
</table>

Note: aZimmerman et al., supra note 97 at 2.
sex industry are so prominent that the average age of death among prostitutes is 34, and “[...] the American Journal of Epidemiology reported that prostitutes suffer a ‘workplace homicide rate’ fifty-one times higher than that of the next most dangerous occupation, working in a liquor store[112].” While in the commercial sex industry, women face considerable violence at the hands of both traffickers and those who purchase their “services[113].” In one study, 82 percent of women in prostitution had been physically assaulted, 83 percent had been threatened with a weapon, 68 percent had been raped, and 84 percent reported current or past homelessness[114].

Traffickers that trade in sexual exploitation do so by employing grotesque, chronic, and dehumanizing physical and emotional trauma on their victims[115]. Survivors of sexual abuse and exploitation are often left to a life of isolation, devoid of normal human emotions, and burdened with profound feelings of anger and disjointed thoughts[116]. Trafficking victims forced into sex work often experience severe physical violence “including being kicked while pregnant, burned, punched, thrown against a wall or floor, hit with bats or other objects, and dragged by the hair[117].” These victims also often sustain lacerations, bruises, scars, burns, bite marks, and bald patches where hair has been ripped out (see footnote 135).

Victims may not be able or willing to assist in prosecution efforts for a myriad of reasons. Lack of trust and understanding of the US criminal legal process can lead to fear of law enforcement and prosecutors[118]. The lack of understanding of their legal rights, fear of detention and deportation, the continual influence and fear of their traffickers, and lasting psychological impacts from the trauma that they have experienced, similarly, all lead to cooperation barriers[119]. Victims may also be mentally traumatized to the level they are rendered unable to retell their story, thereby causing them to be unable to adequately inform law enforcement of the underlying crime[120]. All these factors potentially contribute to the appearance of lack of cooperation with law enforcement and could be seen by law enforcement as opposition to assisting in the investigation of their trafficker[121]. Law enforcement and district attorneys often deal with witnesses and victims they deem to be uncooperative. When investigating these crimes it can be extremely difficult to find and collect evidence. Many cases begin with a verbal report. While law enforcement’s edict is to employ a “victim-centered” approach, there may be times where investigators and prosecutors utilize more aggressive tactics to ascertain whether the perceived actions are obstructionist or legitimate. These tactics may include, but are not limited to: long periods of questioning, re-questioning, demanding significant proof through extensive documentation, and potentially threatening to file criminal charges against the reporter. Many of these tactics are reviled by victim service advocates as unnecessary and seen as re-traumatizing the victim. By expanding the avenues victims can obtain the T-Visa, the victims are less beholden to law enforcement’s tactics.

Moreover, many traffickers utilize misinformation to control a victim’s willingness to cooperate with law enforcement[122]. One common myth told to the victim is they are in the USA illegally and if they were to seek out help from law enforcement they will be deported back to their country of origin[123]. The victim could reasonably believe this threat and be fearful that if identified by local law enforcement, Immigration and Customs Enforcement (ICE) would be contacted[124].

From a legal standpoint, ICE has an inherent conflict of interest in handling a trafficking victim[125]. ICE is not only the governmental agency responsible for detaining and deporting undocumented immigrants, but ICE is also in charge of the issuance of a T-Visa[126].

These two responsibilities are in conflict because ICE is an investigative arm of the Department of Homeland Security (DHS) – an agency that is primarily responsible for identifying, detaining, and deporting undocumented immigrants, not providing a safe haven for them. However, DHS is also one of the federal entities responsible for investigating human trafficking, which includes identifying and providing certification to victims for cooperation[127].

With ICE playing this dual role, victims fearful of physical harm to their families and/or deportation, traffickers are able to exploit the situation and continue to subjugate their victims[128].
C. Case examples

Many victims of trafficking endure a multitude of human rights violations, including graphic, sexual and physical abuse[129]. Trauma is experienced and manifested differently by each victim: ranging from intense feelings of fear and anger to a “flat” or dissociative affect founded in a survival coping method[130]. While most of society if familiar with the traditional pimp/prostitute scenario often reported in the news, the cases examined in this chapter are purposefully designed to not only demonstrate the extent of trauma victims suffer but illuminate non-traditional forms of trafficking that may go unrecognized. The following cases are explicit, but not gratuitous. The facts included herein are factual and necessary. When demonstrating why PTSD is likely to be induced by trafficking, and why the Department of Immigration and Customs Enforcement should be more knowledgeable of the scenarios trafficked victims are likely to bear, it is imperative to have a frank discussion of fact.

United States v. Djoumessi (forced domestic servitude). “In 1996, Joseph and Evelyn Djoumessi, immigrants from Cameroon living in a Detroit suburb, arranged for then fourteen-year-old Pridine Fru to immigrate to the United States from Cameroon under a false name and with a fraudulent passport[131].” The idea was that Fru would perform housekeeping and other domestic service tasks for the Djoumessis and look after their two young children, and in exchange they would provide for her and send her to school (see footnote 150). The arrangement did not work out the way the Djoumessis described (see footnote 150). Instead, Fru would suffer three years of forced labor and exploitation (see footnote 150).

“...required Fru to perform substantially all of their housework and to provide essentially all of the care for their children.” (see footnote 150). She worked every day from 6:00 a.m. to 10:00 p.m. without compensation, other than room and board, and never attended school as promised[132]. Her housing consisted of a dilapidated, dark, and sometimes-flooded space in the basement (see footnote 155). “...did not allow her to use any of the working showers in the home, reducing her to collecting hot water from the basement sink in a bucket to clean herself. When Fru started her menstrual cycle, Evelyn refused to give her sanitary pads, leaving her to use her clothing instead.” (see footnote 155).

They strictly restricted Fru’s contact with the outside world by only allowing her outside to take their children to school and other events (see footnote 155). Even worse, the Djoumessi’s threatened that she would be imprisoned if she contacted authorities (see footnote 155). Also, Fru was beaten and threatened when they felt her work was not up to standard[133]. Fru’s abuse also included three occasions of sexual abuse by Joseph Djoumessi[134].

United States v. Bagley, et al. (commercial sexual exploitation). On March 31, 2011[135], six people were served with a superseding (second) indictment by the State of Missouri and were charged with a number of crimes including sex trafficking[136]. According to this superseding indictment, the following events took place.

Edward Bagley, Sr. (also known as “Master Ed”), his wife Marilyn Bagley, Michael Stokes (also known as “The Rodent”), Bradley Cook (also known as “PutHer2GoodUse”), James Noel, and Dennis Henry lured a sixteen-year-old mentally handicapped girl (identified as FV) to their trailer home in a wooded area near Lebanon, Missouri[137]. The young girl had run away from her home in December 2002[138]. The defendants had promised her a “great life,” and also promised to help her become a model and dancer[139]. Reality was outrageously different from all the bountiful promises. Bagley regularly gave FV marijuana and ecstasy, showed her images of pornography and sadomasochistic activities, and sexually abused her[140]. However, “Bagley was not [as] interested in the ‘role play’ aspect of [bondage, dominance and sadomasochism] BDSM,” as he “was focused on the ‘objectification’ and ‘humiliation’ of FV[141].” After FV turned eighteen years old, Bagley forced her to sign a “sex slave contract[142]” and convinced her that this legally bound her to him as his slave for the rest of her life[143]. When Bagley suspected FV became pregnant he personally terminated the pregnancy; Bagley aborted several possible pregnancies[144].

The Bagleys forced FV to work as a stripper at local gentlemen’s clubs[145] and “engaged in sexual intercourse and sexual torture activities with [her] to groom and coerce her into becoming
Edward Bagley used every torture method imaginable including "waterboarding." He "beat, whipped, flogged, suffocated, choked, electrocuted, caned, skewered, drowned, mutilated, hung and caged FV" in order to maintain her role as his sex slave. When the suffering grew too great, FV would cry for help, but Bagley would just escalate the torture. Bagley threatened to kill her and demonstrated that he could do so with the numerous guns he kept in the home. He also shot several animals that FV "cared for in front of her, and bragged about the bodies he had already buried in the woods behind the trailer home." Edward Bagley also "threatened to bury FV alive and showed her a video demonstrating how he intended to do it." Bagley even "had FV tattooed to mark her as his property," including "(1) a bar code on her neck; (2) a tribal tattoo on her back with the letter "S." to mark her as a slave; and (3) the Chinese symbol for slave on her ankle." Bagley went so far as to sew FV's "urinary opening and vagina shut" to demonstrate what was "expected of her," and nailed her nipples to slabs of wood. After he had broken her will, Bagley advertised online that FV was his slave and could be sexually tortured by others during live online sessions or in person. Michael Stokes and Bradley Cook participated as customers who paid Bagley to sexually abuse and torture the girl. Cook stated the abuse FV endured was the "most extreme he had ever seen." Bagley also forced FV to work as a stripper and kept approximately $112,000 from her work.

Finally, Bagley went too far – even for him. On February 27, 2009, he tortured FV so horribly that she had a heart attack and was hospitalized. After she returned "home," Cook tried to kill her at some point between September 28 and December 9, 2010. FV appeared on the cover of the July 2007 edition of Hustler magazine's Taboo. Bagley's photo also appeared in the magazine (see footnote 189). Bagley bragged on an online sadomasochism forum that "My slave girl is in Taboo magazine, but it's the July issue, she is in and on the cover [...]. Also, the interview about the slave and myself is in the August issue of Taboo[...]. It was a very fun experience." (see footnote 189).

Between February 2004 and February 2009, Bagley tortured FV via live web casts. Cook downloaded pictures of FV to his computer, and sent images to Edward Bagley of women he had beaten and bound in his residence, in order "to share ideas with Defendant Bagley of how to abuse FV." Stokes traveled to the Bagleys' residence and engaged in both sexually torturing FV and watching Edward Bagley torture her. Stokes gave Bagley "steaks, cigarettes, coats, clothing, lighters, and cash," and paid $1,000 for Bagley to transport FV to California in December 2006 for a photo shoot in which FV performed various deviant sexual acts. Stokes also paid Bagley $300 to build a home-made device to sexually torture FV. Noel, Henry, and Stokes all pleaded guilty to conspiracy to commit sex trafficking. Cook has pleaded guilty to sex trafficking with an expected 20-year sentence.

These situations demonstrate that traffickers brutalize their victims who come to bear a whole host of human rights violations. Governments should be better informed of scenarios that trafficked victims are likely to face. It is through this deeper understanding that they are in a better position to weigh all factors and reasonably analyze the dynamics before making decisions on granting legal benefits.

V. T-Visa application and supporting evidence

The focus of our discussion is on law enforcement cooperation aspect of T-Visas. Each T-Visa applicant must demonstrate that he or she has complied with any reasonable request for assistance by law enforcement with the investigation or prosecution of the trafficking act. As illustrated above, victims of human trafficking commonly endure extreme trauma, often making complying with law enforcement requests extremely difficult. This in turn makes the victim appear as if they are non-compliant in the legal-sense. Prosecutors try to employ a "victim-centered" approach, however there may be times when investigators and prosecutors use more aggressive tactics to ascertain whether the perceived actions are obstructionist or legitimate. By expanding the ways victims can obtain a T-Visa, the victims are less beholden to law enforcement’s tactics.
A. Procedural requirements

The “reasonableness” of any law enforcement request depends on the “totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including the fear, severe traumatization (both mental and physical), and the age and maturity of young victims[172].” This definition fails to provide clear guidance on how to determine if a law enforcement request is reasonable. Some law enforcement agencies may have a higher standard when interpreting reasonableness or may even interpret all requests to be “reasonable requests[173].” The current standard gives law enforcement and prosecutors tremendous discretion in determining the reasonableness of a request and whether the victim has adequately complied[174].

There is an array of reasons why a certification may not be issued, which provides no indication of the level of cooperation by the victim that is needed[175]. Scenarios include: the law enforcement agency has not responded to a victim’s report of a trafficking incident, the law enforcement agency has not been able to complete interviews needed for them to determine that the victim is a trafficking victim, or the law enforcement agency has a policy not to provide certifications or has a timeline for providing certifications[176]. These are hurdles that are out of the control of the victim and should not prevent an eligible victim from his or her fully entitled benefit.

The Law Enforcement Agency[177] (LEA) endorsement provides the best evidence of the applicant’s reasonable compliance with a request[178]. While the law enforcement endorsement is not mandatory, it will most easily satisfy the required element of the T-Visa application. If the applicant does not provide an LEA endorsement, secondary evidence may include an affidavit outlining a good faith attempt to obtain an endorsement or other supporting witness statements[179]. An applicant must have contact with an LEA regarding the acts of severe forms of trafficking in persons to be eligible for the T-Visa[180]. In the Violence Against Women Act 2005, Congress made changes to TVPA by including provisions that law enforcement cooperation is not required for trafficking victims who cannot fully cooperate because of physical or psychological trauma[181].

B. Supporting medical evidence

If an applicant were to consider submitting an application without LEA certification, based on the physical or psychological trauma sustained, how could the victim support a claim? While there are international standards for forensic medical examination of victims, including the victims of torture and sexual violence, standards are not yet available for the examination of trafficking victims[182]. The complexity of human trafficking and the varied forms of victimization makes the creation of standard guidelines complicated[183]. However, there are a series of common medical evidence records, and other current practices, that should be reasonably inferred as sufficient.

Evidence of physical trauma suffered can be provided with photographic evidence of bruises and injuries, police reports, medical reports, and affidavits by witnesses[184]. Physical health problems related to prostitution or sexual slavery, which includes sexually transmitted diseases, vaginal and rectal trauma, unintended pregnancies, infertility, and urinary tract infections in minors and should support such a claim[185]. Victims forced into sex work often experience severe physical violence including being kicked while pregnant, burned, punched, thrown against a wall or floor, hit with bats or other objects, and dragged by the hair[186]. Victims may have lacerations, bruises, scars, burns, bite marks, and bald patches where hair has been torn out[187].

According to the Department of Justice, “evidence of psychological trauma suffered can be provided through medical reports or affidavits by medical personnel[188].” “Anti-trafficking service providers are experts and their affidavits will be considered as critical supporting evidence. These affidavits are extremely critical when the victim is submitting an application with no [law enforcement] certification[189].” It is advised that when these service providers prepare their affidavits they take extreme care and make sure to be thorough and complete in their description of the client’s trauma.
Accepting psychological medical evidence of PTSD is not a new process for the Federal Government. The Department of Veterans Affairs and the Social Security Administration both have procedures for assessing applications claiming PTSD to receive special benefits from which we can derive guidance of the type and form of supporting evidence. PTSD was originally created to describe mental health injuries for war combatants and disaster victims[190]. Title 38, Section 3.304(f) of the Code of Federal Regulations, allows Veterans Affairs to bestow special services for veterans suffering from PTSD[191]. A valid claim must demonstrate medical evidence of a clear and current diagnosis of PTSD and that the PTSD must have arisen from an in-service/combat PTSD stressor[192]. The veteran’s own testimony can establish the claimed stressor occurred[193]. The same applies to stressors related to captivity where evidence demonstrates that the veteran was a prisoner-of-war[194]. If the claimed stressor is not related to combat, the veteran is given an exhaustive list of forms of evidence from which they must prove its existence[195]. The evidence includes medical or personnel records, unit records, or witness affidavits[196]. Veterans Affairs form number 21-0960P-3 is available for the applicant to supply their treating psychiatrist, psychologist, licensed clinical social worker (LCSW), or a nurse practitioner[197]. This short, six-page form asks for relatively brief descriptions of differentiation of symptoms, clinical findings, and a six-part checklist of PTSD criterion[198]. Over the years, the Department of Veterans Affairs has conducted millions of these evaluations[199]. While a service member may more easily demonstrate their PTSD injury as compared to victims of trafficking, the type and form of acceptable, corroborating evidence should remain the same.

The applicant, assisted by counsel, should build a mosaic of evidence that demonstrates the progression of trauma and why the victim is not able to reasonably cooperate with LEA requests. No one piece of evidence should be assessed in a vacuum. It should be the totality of medical evidence and findings coupled with police reports, witness statements, case-worker affidavits, as well as the personal statement by the victim upon which a final decision should be made. In applying a “totality of evidence” approach, the absence of any one type or form of evidence should not render an applicant’s application incomplete, thus ineligible for relief.

Immigration services approach Visa applications with an abundance of caution. With the overarching concerns of consistent application of law and treating victims with due care[200], ICE should design and promulgate a PTSD-form specifically tailored for victims of trafficking; allowing their treating psychiatrist, psychologist, LCSW, or a nurse practitioner to clearly document the victims’ PTSD. This form should be very similar, if not identical, to Veterans Affairs form number 21-0960P-3[201].

VI. T-Visa application analysis

T-Visa applicants – whether “non-immigrants” or “derivative family members” – or their sponsors must submit a completed I-914 Form[202], with all necessary documentation and evidence, to demonstrate eligibility[203]. The I-914 application is a nine-page form divided into eight parts. Part C is particularly significant because it is the section in which the trafficking victim applicant will demonstrate that he or she has complied with all statutory elements[204]. This includes evidence that demonstrates the applicant was a “victim of a severe form of trafficking in persons,” (see footnote 233) “will suffer extreme hardship involving unusual and severe harm upon removal[205],” and that the applicant has complied with all reasonable requests[206] from LEA[207] during the investigation and prosecution process[208].

The applicant must state whether or not his or her application contains an LEA endorsement, which would attest to whether or not the victim complied with all reasonable LEA requests[209]. Without this endorsement it is unlikely that applicants will be successful in receiving their visa. History has shown that the federal government has not been compassionate to the plight of non-immigrants[210], even when their presence in the USA is through no fault of their own[211]. This can be best illustrated when minors, having been trafficked to the US, are subsequently arrested for prostitution[212], even though, under federal law, they should have been classified as victims of slavery[213]. Arresting a victim of human trafficking directly conflicts with Congressional statements and regulations that signifying victim recovery and rehabilitation is a priority for the US government.
Form I-914, provided by US Citizenship and Immigration Services[214], states that the applicant must demonstrate that, “[he or she has] complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution […] unless [he or she is] under the age of [eighteen][215].” Additionally, federal law does not require that an applicant comply with reasonable LEA requests if he or she is unable to do so because of physical or psychological trauma[216]; however, the instructions to Form I-914 fail to reference this exception. This significant error potentially closes this legitimate avenue of application, and could go underutilized or unexercised without a well-informed victim or legal advocate.

A. “Severe form” of human trafficking

T-Visa eligibility requires the Secretary of Homeland Security[217] make a finding that the applicant “has been a victim of a severe form of trafficking in persons[218].” “Severe forms” of human trafficking have been defined as: either “sex trafficking[219] in which a commercial sex act[220] is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained [eighteen] years of age[221],” or “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[222], peonage[223], debt bondage[224], or slavery[225].” Thus, a victim of human trafficking is only eligible for a T-Visa if they were: first, under the age of 18 and induced into performing commercial sex acts; second, were an adult and were induced to perform commercial sex acts by means of force, fraud, or coercion; or third, performed labor or services for another, by means of force, fraud, or coercion and were not adequately compensated for their services[226].

1. Satisfying law enforcement’s requests. If a trafficking victim seeking a T-Visa does not comply with all reasonable LEA requests[227] and is not under the age of eighteen, the only way in which he or she can obtain a T-Visa is if non-compliance occurred as a result of mental or physical trauma[228]. Thus, an applicant seeking to obtain a T-Visa through this route will most likely have survived an extremely abusive and mentally impactful form of human trafficking victimization[229]. This is because a well-counseled T-Visa applicant will be told that a T-Visa will most likely only be obtained if his or her application is accompanied with LEA certification, which requires the applicant comply with all reasonable LEA requests.

While human trafficking victims can obtain a T-Visa without complying with all reasonable LEA requests, applicants should only consider this method if they attempted and were unable to comply with law enforcement requests due to lingering physical or mental trauma[230]. USCIS is unlikely to treat this exception as an optional choice for the victim (see footnote 260). Physical or mental trauma does not give a human trafficking victim carte blanche to disregard all LEA requests (see footnote 260). Non-compliance is based on a request-by-request basis; it must be determined that an applicant “is unable to cooperate with a [LEA reasonable request] due to physical or psychological trauma[231].” The statutory language specifically limited non-compliance to single instances of LEA requests and the subsequent non-compliance (see footnote 263). The section does not act as an umbrella, covering all of an applicant’s instances of non-compliance due to their physical or mental trauma, but rather requires each instance of non-compliance be evaluated in light of the applicant’s physical or mental trauma. Thus, because some LEA requests may be perceived as so minor or unobtrusive as to always be reasonable, non-compliance on the part of the applicant, no matter how severe his or her trauma, will defeat his or her T-Visa eligibility.

2. Legislative intent favors aiding law enforcement over victims’ services. Successfully obtaining a T-Visa is a tremendous step forward in the restorative justice and protection of any victim of trafficking[232]. However, regulations and the legislative intent behind the T-Visa prioritize aiding law enforcement’s investigation and prosecution of traffickers over protecting and providing services for the victims. This is important to note because the implementation of laws and regulations often requires determining the legislative intent behind the law or regulation.

The Congressional Research Service relied heavily upon a policy memorandum indicating “the T classification provides an immigration mechanism for cooperating victims to remain
temporarily in the USA to assist in investigations and prosecutions and provide humanitarian protection to the victims[233].” While providing protection and aid to victims is indeed a major policy for issuing T-Visas, the policy memorandum does not clarify which, either aiding investigations or protecting victims, is the primary and secondary goal.

The importance of a T-Visa applicant attempting to comply with LEA requests is also evidenced by the federal government’s acknowledgement that some victims of severe trafficking may not receive a T-Visa. “In view of the annual limit imposed by Congress for T-1 status and the standard of extreme hardship involving unusual and severe harm, [DHS] acknowledges that the T-1 status will not be an appropriate response to many cases involving aliens who are victims of severe forms of trafficking[234].” This language seems to indicate that victims – or survivors – of severe trafficking would not receive a T-Visa because they may be unable to satisfy the fourth prong: conflating the third prong’s analysis with requiring applicants demonstrate they would “extreme hardship involving unusual and severe harm” if removed from the US[235]. However, there are two main subjective and limiting factors. First, while a T-Visa applicant must meet the requisite criteria, a USCIS official, who has wide discretion in issuing a T-Visa, evaluates the application[236]. Second, the regulation indicated that the annual statutory quota for T-Visas would limit successful applications; since the T-Visa’s inception, however, USCIS has yet to reach just one year’s statutory limit[237]. The lack of applications can be attributed to numerous reasons most evident would be the lack of available legal representation and resources to help obtain the Visa. Other reasons are the lack of law enforcement certifications and general unawareness.

While this chapter focuses on the unjust and rigorous requirement that T-Visa applicants comply with LEA requests, even in light of severe physical or mental trauma, it is important to note that T-Visa applications are being denied due to the overly strict and rigid application of the other statutory requirements. In one case, a trafficking victim had her T-Visa application denied because “she could have departed the United States after escaping the traffickers but had failed to do so without providing an explanation[238].” And in another case, it was determined that a trafficking victim had not established he would “suffer extreme hardship involving unusual and severe harm” if returned to the Philippines despite putting on evidence that he would suffer harm including “financial hardship, lack of access to necessary medical care, lack of legal recourse against the traffickers, and harm from them[239].”

T-Visas should be a tool used to help victims of human trafficking recover from the horrendous experiences that they are forced to endure. But even if the policy of requiring victims to aid investigations is prioritized above victim rehabilitation, T-Visas are being denied when applicants fully comply with reasonable LEA requests. Political motivations and general skepticism creates the rigid application of the T-Visa statutory requirements so victims of human trafficking are having their application denied for reasons such as not proving an explanation as to why someone who just escaped domestic servitude did not return to her native country. This should not be the case. However, it provides further evidence that the US government’s claims of wishing to aid trafficking victims are duplicitous and that trafficking victims must comply with all LEA requests to have any real chance of obtaining a T-Visa.

3. Federal regulations: limiting the impact of exceptions. While the default rule is that a T-Visa applicant must comply with all reasonable LEA requests, a closer look at the definition of “reasonableness” demonstrates the limited impact these statutory exceptions have. “The ‘reasonableness’ of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims[240].” This illustrates that federal regulations require a USCIS official to consider the traumatization an applicant has experienced when determining the reasonableness of LEA requests to victims.

Noncompliance with LEA reasonable requests due to physical and mental trauma was statutorily added to help legitimate victims who otherwise would have been denied an avenue to obtain a T-Visa[241]. By expressly including this exception as a factor in the general rule, the breadth of the exception is remarkably limited, particularly in light of the flexibility USCIS has when reviewing T-Visa applications.
VII. T-Visa’s evidentiary burden

A T-Visa applicant should try to exhaust all possible methods to fully comply with the LEA; however, there may be scenarios where requests simply are not reasonable in light of the trauma the victim has experienced. The reasonableness standard is not only used by USCIS in determining whether to grant a T-Visa, but is also applied by other agencies when considering whether or not to supply a T- (or U-) Visa applicant with law enforcement certification. Unfortunately, it is likely presumed that all LEA requests may be interpreted as reasonable requests, pre-weighing the discretionary decision against the applicant. However, in a case in which an applicant has not complied with a request and is unable to retain an LEA endorsement, DHS will contact LEA to examine a means to resolve the problem.

The extent to which a victim’s traumatization is factored into determining the reasonableness of LEA requests hinges upon the victim’s ability to provide clear and convincing evidence of such traumatization. For a request to be considered unreasonable, the victim must be able to provide evidence that shows that in light of her physical or mental trauma, it would be unreasonable for her to have to comply with the LEA request. There are no cases or regulations directly stating how these factors such as the victim’s fear and traumatization are weighed in determining the reasonableness of LEA requests. Are these factors to be gauged on a sliding scale, and then taken in their totality, or does the failure of one factor disqualify the applicant? What is the weight of each factor? Which party benefits from ambiguity in drafting?

Particularly in light of the “trauma exception” statutory language, the reasonableness of an LEA request should be viewed on a sliding scale, as a victim’s trauma can be thought to be conversely related to LEA requests. If a victim has sustained significant trauma, an LEA request would have to be one with which it is much easier to comply. Thus, if a T-Visa applicant is unable to obtain law enforcement certification, the burden is on the applicant to show either that she or he has complied with all LEA reasonable requests or that noncompliance with an LEA request was reasonable as documented in an affidavit written by the applicant.


When seeking guidance on the T-Visa evaluation process, we may be able to garner insight from the related U-Visa, especially since human trafficking is a qualified crime for U-Visa issuance. Eligibility for a U-Visa requires that an applicant “has suffered substantial physical or mental abuse as a result of having been a victim of [crime].” Whether the abuse the victim sustained constitutes substantial abuse is assessed by a number of factors, including:

- The nature of the injury inflicted or suffered; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions (see footnote 283).

No one factor is specifically required and the existence of any one factor does not unequivocally prove the abuse suffered constitutes “substantial physical or mental abuse.” (see footnote 283) To date, “there are no specific cases that interpret what constitutes ‘substantial physical or mental abuse.’”[251] The legal system takes a significant amount of time to ferret out statutory errors or ambiguities. The trafficking laws in the USA are very new. As more cases are prosecuted and more victims seek redress, we will get insight on how the court system defines and understands these issues. Therefore, it is critical that applicants submit supporting documentation or evidence of the physical or mental abuse they suffered and any lingering physical or mental trauma (see footnote 286).

B. Proving mental or physical trauma

Just as it is critical for a U-Visa applicant to provide evidence that he or she suffered substantial physical or mental abuse, it is equally critical for a T-Visa applicant to provide evidence as to why he or she did not comply with a LEA request. There are many hurdles facing a victim attempting to prove their injuries, none more so than the financial cost. Many victims are not covered by a general health insurance plan or have the independent resources to pay for the...
medical visits required. Some states have financial assistance programs for medical care, but it is unclear at what point in the legal process the resources are available. Victims may avail themselves of services provided by non-governmental organizations (NGO). Many of the groups receive federal assistance to help trafficked victims.

First, it is important for an applicant and his or her legal advocate to understand the evidentiary burden presented and how to document the extent of the applicant’s trauma before pursuing this option. Suggested issues about which an applicant’s legal advocate could inquire in order to determine if the applicant sustained trauma include: if physical injuries were sustained[253], the nature of the crime against the applicant, if the applicant is currently taking medication, and if the applicant is under the care of a therapist or doctor[254]. The advocate, to better illicit meaningful responses, would obviously tailor these questions to case-specific facts. The answers will help provide the individual reviewing the T-Visa application with guidance on how to properly weigh the extent of the trauma a victim has sustained and the reasonableness of LEA requests.

For guidance on proving physical or mental trauma, it is helpful to once again turn to regulations concerning U-Visas. A U-Visa applicant must provide proof that his or her substantial physical or mental abuse results from criminal activity[255]. “Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel[256].” Photos of any physical abuse, supported by affidavits of persons who have personal knowledge of the facts of the crime, could also prove helpful[257]. These guidelines create a helpful template in determining what evidence a T-Visa applicant would want to provide in their application to support their claim that an LEA request is unreasonable due to the applicant’s underlying physical or mental trauma[258]. It would also behoove a T-Visa applicant to submit a full psychological examination to support any claim of existing mental trauma[259]. Service providers often recommend that victims of crimes, such as domestic abuse, keep a diary of thoughts, feelings, dreams, and memories[260]. Evidence of brain trauma can be captured on various types of neurological testing, most prominently in computerized tomography (CT) scans[261]. Such evidence could play an integral role in proving both physical and mental trauma. Bruising on the brain and other sustained head injuries could affect cognitive functioning such as memory, attention, and understanding language[262], all of which could qualify as physical or mental trauma.

C. Balancing victim trauma and the “reasonableness” of law enforcement’s requests

The reasonableness of any LEA request requires balancing general law enforcement and prosecutorial practices, the actual requests made balanced against the nature of the victimization, and the specific circumstances of the victim, including fear, and severe mental and physical traumatization[263]. It is important that fear was explicitly included in the regulations because fear is a palpable response victims may feel from mental trauma inflicted upon them by their traffickers[264]. There are numerous physical manifestations of fear, such as a myriad of dissociative disorders and the repression of memory[265]. These physical manifestations of fear may make it extremely difficult for victims of human trafficking to comply with LEA requests, especially testifying against their traffickers, or even picking them out of a lineup. This is best demonstrated in the State Department’s most recent report on human trafficking that urged governments to seek non-traditional methods of demonstrating their prosecutorial evidence as an alternative to calling the victim to testify (e.g. video testimony) in an attempt to ease the burden on the victim[266]. Trauma, especially mental trauma, is extremely personal and each victim’s response to stressors will vary depending on the trauma. It is imperative that this fact be understood by the USCIS officials when determining if an LEA request was reasonable in light of the applicant’s trauma. It also shows how important it is for the applicant, and their advocate, to supplement the T-Visa application with evidence showing the extent of trauma and how a given victim reacts to stressors; LEA requests may more readily be determined to be unreasonable to a particularly vulnerable or sensitive victim.

VIII. Conclusion and recommendations

We’ve learned that victim care is a necessary predicate to successful prosecution, that empowered victims with brave lawyers can make change through civil action, that all survivors should be able to
have their voices heard and see their traffickers brought to justice, and that survivors should be welcomed into society with programs like the T-Visa, not repatriated after being displayed in court [...]. While noting that the vulnerability of the victims should be taken into account, the Court suggested that if our antislavery statutes were to be updated in order to capture modern concepts of dependency and abuse, it would have to happen through legislation, not through litigation[267].

As Congress continually re-evaluates the US human trafficking policies, the steps legislators are making to combat this horrific crime are methodical and thoughtfully executed and should be based on facts gathered from quality research. While the arc of history may bend toward justice[268], to adequately provide immigration services for trafficking victims, it is imperative to recognize and fully credit victims of crime for their experiences. Services and benefits developed for these individuals should account for their foreseeable injuries and designed to address them. The new T-Visa application process will help address previous shortfalls in its initial design and will be judged successful when affectively applied. The alternate avenue of submission should be considered only when LEA certification may not be accessible. The entire T-Visa program is underutilized. Anti-trafficking non-governmental organizations should partner with Universities to conduct in-depth studies on trafficking. Through additional research focused on how victims within the US manifest their mental health injuries, law enforcement and policy makers will be better positioned to craft immigration policy and guide training for survivor support systems.

Evidence concerning the physical and mental health consequences of human trafficking is building, thus expanding the work of European mental health researchers[269]. Lawmakers and the legal profession should attend to the nexus between human trafficking and immigration policies. When victims are faced with internal mental barriers inhibiting them from assisting in investigation efforts of the underlying crime, their reluctance should not automatically be seen as obstruction. A nuanced understanding of human trafficking, and the injuries victims are likely to incur, should result in a more flexible immigration policy. The T-Visa was intended to allow for “aggressive prosecution [and] protection of [the] victims[270].” Providing non-law enforcement certification options is necessary change for meaningful application.

Notes

1. See Generally, Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While, Cornell University ILR School, International Labour Office (Commercial Sexual Exploitation (CSE) is a special sub-class of forced labor. Because of its particularly heinous nature is commonly separated and listed as an enumerated “form” of trafficking).

2. See Generally, Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While, Cornell University ILR School, International Labour Office (“forced labor” is a term that could encompass most all actions, traditionally in relation to human trafficking forced labor refers to: hotel/hospitality, peddling, restaurant work, sweatshop/garment, child/elderly care, and construction).

3. See Generally, Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement While, Cornell University ILR School, International Labour Office (While domestic servitude is a form of forced labor, it has traditionally been separated from other forms of forced labor such as mining and agricultural work).


5. Violence Against Women Office, US Dep’t of Justice, Human Trafficking and the T-Visa 2 (2012), available at: http://vaw.umn.edu/documents/humantrafficking/humantrafficking.pdf (“Victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor [...] It is a serious violation of their rights and a threat to their health”).


Economy 6, 232 (1999)) (identifying three factors that he believes have led to the resurgence of slavery). The first is the population explosion that flooded the world’s labor markets with millions of poor and vulnerable people. The second is the revolution of economic globalization and modernized agriculture, which has dispossessed poor farmers and made them vulnerable to enslavement. In the new world economy capital flies wherever labor is cheapest, and the financial links of slavery can stretch around the world. The third factor is the chaos of greed, violence, and corruption created by this economic change in many developing countries, change that is destroying the social rules and traditional bonds of responsibility that might have protected potential slaves. Kumar (2005).


9. See Patrick Besler, Forced Labour and Human Trafficking: Estimating the Profits 17 (Geneva Int’l Labor Office, Working Paper No. 42, 2005), available at: www.ilo.org/wcmsp5/groups/public/ed_norm/@declaration/documents/publication/wcms_081971.pdf (calculating that $15 billion, or 49 percent of forced labor profit is generated in industrialized economies, $9.7 billion, or 30.6 percent, comes from Asia and the Pacific, $1.3 billion, or 4.1 percent, comes from Latin America and the Caribbean, $1.6 billion, or 5 percent, comes from Sub-Saharan Africa, and $1.5 billion, or 4.7 percent is generated in the Middle East and North Africa).

10. UN Office on Drugs and Crime, Trafficking in Person: Global Patterns 58 (2006).


12. 22 U.S.C. § 7105 (2008). The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children, as identified by the Task Force, and shall be carried out in a manner which takes into account the cross-border, regional, and transnational aspects of trafficking in persons. 22 U.S.C. § 7105 (2008).


14. See 22 U.S.C. § 7105 (2008). ("[A]n alien who […] is a victim of a severe form of trafficking in persons […] shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency."); see also 8 U.S.C. § 1101(a)(15)(T)(i) (2012) (listing the requirements necessary to become eligible for T-Visa benefits and fulfill the four-pronged test); (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of Title 22; (II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the US for participation in investigative or judicial processes associated with an actor a perpetrator of trafficking; (III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime; (bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or (cc) has not attained 18 years of age; and (IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal. 8 U.S.C. § 1101(a)(15)(T)(i) (2012).


16. 22 U.S.C. § 7102(3). Commercial sex act is “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(3).

18. 22 U.S.C. § 7102(5)(A)–(B). Involuntary servitude involves inducing a person into servitude for another, through any plan or pattern, by means of coercion, such as actual or threatened serious harm or the abuse or threatened abuse of the legal process. 22 U.S.C. § 7102(6)(A)–(B).


23. See 22 U.S.C. § 801(a)(3) (inserting the language “if the Secretary of Homeland Security, in his or her discretion and with the consultation of the Attorney General, determines that a trafficking victim, due to psychological or physical trauma, is unable to cooperate with a request for assistance described in clause (i)(III)(aa), the request is unreasonable” to modify the eligibility requirements for a T-Visa).


26. See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2000) (“The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure effective punishment of traffickers, and to protect their victims.”); see also 22 U.S.C. § 7105(c)(3)(A)(i) (2008) (stating an alien victim of a severe form of human trafficking is permitted to remain in the USA to aid in the “prosecution of those responsible for such a crime.”).

27. Convention Concerning Forced or Compulsory Labour, art. 2(1), June 28, 1930, 39 U.N.T.S. 55, 58 (entered into force May 1, 1932); see also Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, art 3(a)-(d), June 17, 1999, S. Treaty Doc. No. 106-5, 1, 4, 38 I.L.M. 1207, 1208 (entered into force November 19, 2000) (defining one of “the worst forms of child labour” as “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour, including forced or compulsory recruitment of children to be used in armed conflict”).

28. John Locke, Two Treatises of Government 209-10 (R. Butler, 1821). “[E]very Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are property his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes his Property [y] it hath by this Labour being the unquestionable Property of the Labour, no Man but he can have the right to what that is once joined to [y] and as good left in common for others. 22 U.S.C. § 7101 (2000).


36. See Jones et al., *supra* note 23, at 110 (listing deception, false promises, coercion, threats, bribes, and force as methods used by traffickers to obtain control over their victims and continuously profit off of them).


38. See *id.* (“[T]raffickers use psychological torture and fear to maintain control, threatening to physically harm the victims, their families or others […] They take away victim’s identity documents and threaten to report them to government authorities for arrest, detention, or deportation.”).


40. See Jones et al., *supra* note 23, at 117 (arguing tactics such as violence and deception used by traffickers can instill a sense of self-blame and learned helplessness in a victim, which decreases the likelihood of that victim seeking out help or accepting help when it is offered).

41. See Sadruddin et al., *supra* note 27 (“Sudden, unexpected physical assaults, burnings, and the use of rape or murder as tools of control all instill terror in victims […]”).

42. See Jennifer Murray, *Who Will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina*, 34 Colum. Hum. Rts. L. Rev. 475, 494 (2003) (“In some cases, one woman may be killed to dissuade others from attempts to resist or escape.”).

43. See Sadruddin et al., *supra* note 27, at 405 (“Human trafficking victims are at an extremely high risk for developing medical and mental health consequences from their trauma due to the types of horrific physical and psychological assaults they suffer and the circumstances under which they experience this trauma.”).

44. Attorney Gen. Kamala D. Harris, Cal. Dep’t of Justice, *The State of Human Trafficking in California* 76 (2012). Human trafficking victims are often locked in situations that are almost impossible to escape. Even where escape is physically possible, victims may be psychologically incapable of escape due to their constant terror. This sense of having no control over one’s safety, daily movement, or future makes victims particularly vulnerable to traumatic stress disorders. The types of experiences that trafficking victims suffer tend to lead to the development of a range of disorders including PTSD, dissociative disorders, anxiety disorders, depression, and substance abuse. Sadruddin et al., *supra* note 27, at 405.


46. It should be noted that smuggling is different than trafficking. Smuggling entails an undocumented immigrant knowingly working with another individual to enter the U.S. illegally. While an individual smuggled into the U.S. may become a trafficking victim once in the USA, a victim trafficked into the US either did not intend to enter the US or was tricked into believing they were entering the U.S. legally.

47. Panjabi, *supra* note 9, at 18. There is also the ancillary problem whereby freed slaves can themselves face prosecution, with as illegal immigrants or as criminals where they have been forced to work as prostitutes. Often the victims have no identification papers as their exploiters all too often take their documents away. These legal anomalies whereby victims are criminalized by the law are being redressed in some countries. 22 U.S.C. § 7101 (2000).
48. VIOLENCE AGAINST WOMEN OFFICE, supra note 2 (stating that the T-Visa enables a victim of severe forms of trafficking to receive services, work legally in the USA, and potentially earn permanent residency if the victim cooperates with the criminal justice system).

49. See 22 U.S.C. § 7105(b)(1)(E)(ii) (2008) (declaring statement made to law enforcement and a willingness to “assist in every reasonable way with the respect to the investigation and prosecution” of local crimes associated with trafficking offenses as meeting the requirement of cooperation for a T-Visa).


52. USCIS,DHS, I-914 Form: Application for T Nonimmigrant Status OMB No. 1615-0099, available at: www.uscis.gov/files/form/i-914.pdf (last revised May 4, 2012) at Part C, Question 1 (requiring the victim to attach evidence of specific facts to support the claim). Trafficking victims are also strongly encouraged to submit a personal statement detailing the trafficking. USCIS,DHS, I-914.


54. USCIS,DHS, I-914 Form: Application for T Nonimmigrant Status OMB No. 1615-0099, available at: www.uscis.gov/files/form/i-914.pdf (last revised May 4, 2012) at Part C, Question 7. This question requires the trafficking victim to explain the circumstances if the answer to the question is in the negative.

55. See USCIS,DHS, I-914 Form: Application for T Nonimmigrant Status OMB No. 1615-0099, available at: www.uscis.gov/files/form/i-914.pdf (last revised May 4, 2012) at Part C, Question 2 (allowing the applicant to designate if they are including a LEA declaration form). If the applicant is submitting a law enforcement agency endorsement, he or she must submit as part of the application Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

56. See Trafficking in Persons Report, supra note 3 (explaining that if governments do not provide protection in addition to prosecution and prevention efforts, they risk worsening the original harm).

57. See supra Part V (relating to how prosecution of traffickers take precedence over aiding victims and victims services by requiring applicants to have contact with a Law Enforcement Agency trafficking to be eligible for a T-Visa).


60. See Alison Siskin and Liana Sun Wyler, Cong. Research Serv., Trafficking in Persons: U.S. Policy and Issues for Congress 25 (2010), available at: www.fas.org/sgp/crs/misc/RL34317.pdf (explaining there is an also exception to this requirement if the alien is under the age of 18).

61. I-914 Form: Application for T Nonimmigrant Status, supra note 40 (last revised May 4, 2012) (this question does not mention this exception).


64. See Trafficking in Persons Report supra note 3, at 15 (stating that when the TVPA was passed in 2000, Congress was concerned of massive fraud relating to immigration relief for trafficking victims).
65. See Trafficking in Persons Report supra note 3, at 15 (stating that when the TVPA was passed in 2000, Congress was concerned of massive fraud relating to immigration relief for trafficking victims) (demonstrating the fear of fraud has not materialized because since 2002 less than half of the allotment allowed for each year has been approved).

66. See Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status, U.S. Citizenship & Immigr. Services, available at: www.uscis.gov/portal/site/uscis/menuitem (follow “Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status” hyperlink) (last updated November 22, 2010) (detailing that to qualify for a U-Visa the person must have suffered mental or physical abuse as the result of being a victim of a crime, the person must have information relating to the criminal act, the individual must be helpful in the prosecution of the crime, and the criminal act must have violated U.S. law).

67. See U Visa for Immigrants Who Are Victims of Crimes, U.S. Immigr. Support, available at: www.usimmigrationsupport.org/visa-u.html (last visited December 27, 2012) (asserting that U-Visas last up to four years and only 10,000 may be allotted each fiscal year); see also 8 U.S.C. § 1184 (2011) (“The Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.”).

68. See Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status, supra note 57 (recognizing the U-Visa status was created with the passage of the TVPA); see also Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000) (setting out methods for combating trafficking).


70. 8 U.S.C. § 1184 (2012) (setting the statutory maximum of U-Visas per year at 10,000); see also USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012, U.S. Citizenship & Immigr. Services, available at: www.uscis.gov/portal/site/uscis/menuitem (follow “News” hyperlink) (last updated August 21, 2012) (indicating that for the third straight year in a row the maximum number of U-Visas were issued).

71. See 8 U.S.C. § 1184 (2012) (capping the U-Visas to 10,000 for principal applicants and not for the derivative applicants such as children, spouses, the parents of a child victim).

72. See 8 U.S.C. § 1184 (2012). (indicating that the U-Visa applications, unlike T-Visa applications, must include a letter of certification from a law enforcement agency attesting to the applicants assertion that they were, are, or will be helpful during the investigation or prosecution of the criminal activity of which they are a victim); see generally Instructions for Form I-918, supra note 48 (instructions for completing the U-Visa petition).


74. See Heather J. Clawson et al. (2008), available at: aspe.hhs.gov/hsp/07/HumanTrafficking/Treating/ib.pdf (claiming that although PTSD was originally created for specific victims, this list has expanded to include victims of other traumas such as human trafficking victims).

75. Heather (2008) (suggesting however, that a debate about the causes of PTSD has been ignited and reform could ensue).

76. Briere & Elliot, supra note 69, at 55-56.


79. Briere & Elliot, supra note 69, at 56.

80. Briere & Elliot, supra note 69, at 56. This can affect all sensory systems, from visual or auditory to tactile or olfactory sensations – or a combination thereof. Briere & Elliot, supra note 69, at 56.

81. Briere & Elliot, supra note 69, at 59. Dissociation occurs when a person detaches herself from her subjective awareness, behavior, and inner processes to reduce psychological distress. Briere & Elliot, supra note 69, at 59. This may happen consciously or not. Briere & Elliot, supra note 69, at 59 A person in a disassociated state may appear “spaced out” or disengaged to an observer. Briere & Elliot,
supra note 69, at 59. Emotional or physical numbness, a feeling that one’s self or a familiar environment is suddenly strange or unreal, or even out-of-body experiences may be present. Briere & Elliot, supra note 69, at 59. Abuse-related memory loss is common as well. Briere & Elliot, supra note 69, at 59. Tension-reducing activities may include indiscriminate sexual behavior, self-mutilation, or bingeing and purging. Briere & Elliot, supra note 69, at 60.

82. Harvard Med. Sch., supra note 73. Depression and anxiety are two common disorders that may display similar symptoms. Harvard Med. Sch., supra note 73. However, while practitioners may currently reexamine the diagnosis of PTSD, the consensus remains that traumatic events can have lasting effects on an individual, thus posing a clear threat to mental health, which warrants care and support for the victim. Harvard Med. Sch., supra note 73.

83. Laura E. Boeschen et al. (1998). One reason for this development is that rape trauma as a syndrome is not included in the current DSM-IV, whereas posttraumatic stress syndrome is. Harvard Med. Sch., supra note 73 at 417. However, this practice is not unproblematic, since RTS and PTSD are not entirely the same. Harvard Med. Sch., supra note 73 at 418. Critics point out that PTSD ignores the complexity of post-rape symptoms in women. Harvard Med. Sch., supra note 73.

84. Harvard Med. Sch., supra note 73, at 1. A large study from Germany found PTSD rates as low as 10 percent for women and 3 percent for men. Harvard Med. Sch., supra note 73.

85. Harvard Med. Sch., supra note 73, at 1–3. Another factor that may increase the risk for PTSD is gender. Harvard Med. Sch., supra note 73. Women bear a two-to-three times higher risk than men to develop PTSD. Harvard Med. Sch., supra note 73. Possible explanations for this gender gap are: genetic or hormonal factors, differences in the types of trauma commonly experienced by men and women, the quality of emotional and social support, and a greater willingness in women to acknowledge their symptoms and seek help. Harvard Med. Sch., supra note 73.

86. Harvard Med. Sch., supra note 73 at 1-5.

87. Harvard Med. Sch., supra note 73, at 1-4; see also Steffen Bieneck and Barbara Krahé (2011) (discussing the results of a study that demonstrated the existence of a systematic tendency to blame victims of rape but not those of other violent crimes).

88. See generally Cathy Zimmerman et al., London Sch. of Hygiene & Tropical Med., Stolen Smiles: The Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe 2 (2006), available at: http://genderviolence.lshtm.ac.uk/files/Stolen-Smiles-Trafficking-and-Health-2006.pdf (presenting statistical data concerning the wide range of negative health consequences endured by female victims of trafficking, the majority of whom are systematically exposed to physical and sexual violence); see also Rebecca Surtees, Int’l Org. for Migration (IOM), Trafficking of Men – A Trend Less Considered: The Case of Belarus and Ukraine Research Series No. 36, at 10, 12 (2008), available at: www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-36.pdf (addressing the situation of adult male trafficking victims, a group that is often overlooked yet not immune from exploitation and violation); see also Anti-Slavery Int’l, Trafficking for Forced Labour in Europe: Report on a Study in the UK, Ireland, the Czech Republic, and Portugal 1–2 (2006), available at: www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_for_fl_in_europe_4_country_report.pdf (discussing the plight of migrant workers who end up being trafficked for forced labor due to several factors such as isolation and lack of sophistication, restrictive immigration policies, coercive strategies used by employers and agents, all fueled by growing demand for cheap labor); see also Anti-Slavery Int’l, Trafficking in Women, Forced Labour, and Domestic Work in the Context of the Middle East and Gulf Region 3 (Fed. Ministry for Econ.Cooperation & Dev., Working Paper, 2006), available at: www.antislavery.org/includes/documents/cm_docs/2009/t/traffic_women_forced_labour_domestic_2006.pdf (discussing the factors which make female domestic workers vulnerable to exploitation and serious abuse).

90. Trafficking in Persons Report supra note 3, at 17.

92. See generally Janice G. Raymond & Donna M. Hughes, Coal. Against Trafficking in Women, Sex Trafficking of Women in the United States (2001), available at: www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf (presenting the results of a comprehensive study on sexually exploited female trafficking victims in the USA). Eight out of ten women who were interviewed reported symptoms of depression. Trafficking in Persons Report supra note 3, at 12. Approximately half of the women experienced hopelessness, while up to a third felt anger and rage. Trafficking in Persons Report supra note 3. A majority of the study's subjects had either suicidal thoughts, or had actually attempted to commit suicide, and half of them reported using drugs or alcohol to numb the effects of their trauma. Trafficking in Persons Report supra note 3; see also Atsuro Tsutsumi et al. (2008) (comparing the mental health status of female trafficking victims who were forced to work in the sex industry with those who performed forced labor in other areas). The study calls to attention that sex workers in general present higher rates of depression, PTSD, suicide attempts, and addiction. Trafficking in Persons Report supra note 3 at 1842.

94. Trafficking in Persons Report supra note 3. at 53.

96. Ostrovschi et al., supra note 104. Women who appeared too distressed or unwell to undergo the clinical interview were excluded from the study. Ostrovschi et al., supra note 104 at 3.
97. Ostrovschi et al., supra note 104. Another common diagnosis for women during their rehabilitation period was harmful alcohol use. Ostrovschi et al., supra note 104 at 6.
101. 2237 U.N.T.S. 319. The review also confirmed that physical and sexual violence are extremely common experiences among women and girls who are trafficked for prostitution. 2237 U.N.T.S. 319. at 9. However, the authors caution that an absence of physical or sexual violence does not automatically negate a victim's claim of sexual exploitation. 2237 U.N.T.S. 319. at 10. Finally, it appears that the experiences of trafficked men, children, and generally those who are victims of trafficking for forced labor are still not sufficiently documented. 2237 U.N.T.S. 319.
102. See Zimmerman et al., supra note 97 (providing a summary of statistical evidence concerning the health needs of women who had just recently gone through a trafficking experience).
103. Zimmerman et al., supra note 97 at 7.
104. Zimmerman et al., supra note 97 at 7. Most women came from Eastern European states, but a few were from Non-European countries. Zimmerman et al., supra note 97. Over 50 percent of the women were trafficked within Europe. Zimmerman et al., supra note 97.
105. Zimmerman et al., supra note 97 at 2.

106. See generally T.K. Logan et al., Understanding Human Trafficking in the United States, 10 Trauma, Violence, & Abuse 3, 13 (2009) (giving the four main reasons that keep the victims entrapped as fear, lack of knowledge about alternatives, isolation, and physical and psychological confinement; fear being the biggest factor). A trafficker will go to a family and deceive them about what will happen if they take a family member, like a child, to the U.S. They will be told the child will receive an education or that they’ll be able to send money back home or that they will have a better future, etc. When the person gets over here they cut off contact so the person is essentially stuck in the situation. Zimmerman et al., supra note 97 at 11.

107. Trafficking in Persons Report supranote 3, at 18. Often the best option for the victim is a path to citizenship or permanent residence in the country where they were trafficked. Zimmerman et al., supra note 97. This allows the victim to feel safe and allows them to integrate more fully into society. Zimmerman et al., supra note 97. However the decision should be made on a case-by-case determination looking at the best interest of the victim involved. Zimmerman et al., supra note 97.

108. See, e.g., United States v. Calimlim, 538 F.3d 706, 708–09 (2008) (noting that at the age of nineteen, Irma Martinez was trafficked into domestic labor in the USA, but it was not until nineteen years later that she was rescued); see also United States v. Udeozor, 515 F.3d 260, 263–64 (2008) (recounting the traumas suffered by a girl held in captivity from the age of 14 to 19).

109. See generally T.K. Logan et al., supra note 116, at 15 (explaining that the victims develop incredible coping mechanisms which may have significant consequences for their physical health, mental health, and recovery).


111. See Street Prostitution, Polaris Project, available at: www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/street-prostitution (last visited December 27, 2012). (“Street prostitution becomes trafficking when a pimp uses force, fraud and/or coercion to maintain control over the person providing commercial sexual services and cause[s] the person to engage in commercial sex acts.”). One victim explained that she had been with a pimp from 14 years of age and was only allowed on a two-block area. T.K. Logan et al., supra note 116. Another victim talked about being picked up by the police for solicitation (“prostitution”), but was too scared to give any information about her pimp, knowing he would be there to bail her out. T.K. Logan et al., supra note 116.


113. See T.K. Logan et al., supra note 116 (referencing the high rate of violence committed by “Johns” towards the prostitutes and the emotional disorders prostitutes often face due to the commercial sex trade as well as their troubled pasts).


115. See Trafficking in Persons Report supra note 3, at 23 (“[P]rostitution is inherently harmful and dehumanizing […] enabling [an] environment for human trafficking.”). These brutal sexual exploitations effect children in large numbers as well, with more than two million children entering into the sex trade each year. Trafficking in Persons Report supra note 3 at 24.

116. Mary-Ann Burkhart & Joyce Lombardi, Maryland’s Response to Human Trafficking A New Statute for New Times, 41Md. B.J. 12, 14 (2008). These emotional and psychological symptoms derive from the inhumane treatment the victims are put through. Trafficking in Persons Report supra note 3. These situations include having their identification and all other necessary documentation taken, threats to their well being and their family, humiliation, and violence which can often have permanent damage. Trafficking in Persons Report supra note 3. “There are experts who believe that human trafficking victims never recover, suffering lifelong effects of Posttraumatic Stress Disorder (PTSD), among other mental disorders.” Trafficking in Persons Report supra note 3.

117. Sabella, supra note 100. Other common physical health problems found among victims of the sex trade include “sexually transmitted diseases, vaginal and rectal trauma, unintended pregnancies, infertility, and urinary tract infections.” Sabella, supra note 100.

119. Sabella, supra note 100

120. See Christine Stark & Carol Hodgson, Sister Oppressions: A Comparison of Wife Battering and Prostitution, in Prostitution, Trafficking, and Traumatic Stress 17, 22 (Melissa Farley ed., 2003) (explaining that pimps, like traffickers, utilize “hitting, punching, kicking, starving, raping, verbally abusing [a woman], telling her she chose to be in prostitution, and telling her she is good for nothing but sex.”); see also Trafficking in Persons Report supra note 3, at 17–18 (citing to numerous emotional reactions due to the trauma and victimization including loss of memory related to the traumatic event, frequent bouts of fearlessness, detachment, feelings of self-blame, emotional numbing or emotional response that does not fit the situation, flashbacks or nightmares, anxiety, difficulty making decision or concentrating, and avoidance of eye contact).

121. See generally T.K. Logan et al., supra note 116 (listing reasons why victims remain entrapped, including fear, lack of knowledge about alternatives, isolation, and physical and psychological confinement); see also Trafficking in Persons Report supra note 3, at 17–18 (describing how the victims are often emotionally unable to cooperate with law enforcement due to the extreme trauma they have just experienced).

122. Office of the Att’y Gen., Cal. Dep’t of Justice, Human Trafficking in California: An Analysis of Current and Future Efforts to Combat Human Trafficking and Exploitation in California 24 (2012). Often the trafficker completely removes any sense of identity the victim once had and replaces it with a new name and false identification. Trafficking in Persons Report supra note 3, at 17–18 This allows the traffickers to control every facet of a victim’s life and ensure their cooperation and dependence. Trafficking in Persons Report supra note 3, at 17–18.

123. Patel, supra note 129, at 823–34; Office of the Att’y Gen., Cal. Dep’t of Justice, supra note 133.

124. See Patel, supra note 129, at 823–34 (explaining the fears the victims have which are perpetuated by the false information supplied to them by the traffickers as well as law enforcements mixed signals or relief).


126. Patel, supra note 129, at 828–29 Not only does ICE have a contradictory role in human trafficking, T-Visas purpose and how they are actually acquired is conflicting as well. Patel, supra note 129 at 824. In order to be eligible for a T-Visa and be given protection, a victim must provide assistance and be certified by law enforcement as having “complied with ‘reasonable requests’ to cooperate with the investigation.” Patel, supra note 129 If the victim does not provide such cooperation to law enforcement, their T-Visa must be denied which may even result in deportation. Patel, supra note 129 T-Visas are accessible via the TVPA, which was created to address prosecution barriers. Patel, supra note 129. But in reality, the enforcement of the TVPA creates barriers in and of itself. Patel, supra note 129. The implementation of T-Visas and the TVPA also runs afoul of the second purpose of the TVPA, which was to curtail the improper detention of victims. Patel, supra note 129. So although the TVPA was aimed at curtailing human trafficking and supporting victims in their freedom and recovery, the fact that a victim’s protection is conditioned upon cooperation with an investigation creates a burden, which is placed solely on the injured party, the victim. Patel, supra note 129. at 824–25.


130. Patel, supra note 129; see T.K. Logan et al., supra note 116, at 15 (victims emotionally handle the traumas in a multitude of ways, including fear, submission, fantasizing, rationalizing, and comparing oneself to others worse off).

132. *Djoumessi*, 538 F.3d at 549.

133. *Djoumessi*, 538 F.3d at 549.

134. *Djoumessi*, 538 F.3d at 549. It was not until a neighbor called the police that Fru was removed from the Djoumessi’s home and Djoumessi was criminally charged and convicted of “third degree criminal sexual conduct and child abuse. *Djoumessi*, 538 F.3d at 549.

135. The authors recognize that this case has not been fully adjudicated, thus the facts are still open to debate, however the authors believe they are likely to be true in light of the fact that co-defendants have plead guilty to many of the common facts. The authors also concede the victim in this case is a U.S. citizen and would not be eligible for a T-Visa. The intent and function of this fact pattern is to demonstrate the type and kind of mental and physical trauma sexually exploited trafficking victims may be exposed to.

136. See Indictment, United States v. Bagley, No. 10–00244 (W.D. Mo. September 8, 2010) (listing the defendants and the crimes they were being charged with committing).

137. See *Djoumessi*, 538 F.3d at 5.

138. See *Djoumessi*, 538 F.3d at 549 at 8 (explaining how F.V. was lured to their home in December 2002).

139. *Djoumessi*, 538 F.3d at 549.

140. Superseding Indictment at 6, 8–12, Bagley, No. 10CR00244.


143. Superseding Indictment at 9, Bagley, No. 10CR00244.

144. *Djoumessi*, 538 F.3d at 14.


146. *Djoumessi*, 538 F.3d at 6.

147. *Djoumessi*, 538 F.3d at 12.

148. Superseding Indictment at 7, Bagley, No. 10CR00244.

149. *Djoumessi*, 538 F.3d at 12.

150. *Djoumessi*, 538 F.3d at 13. The weapons confiscated from Bagley included: North American Arms, 0.22 caliber revolver; Ruger, Model Single Six, 0.22 caliber revolver; Sig Sauer, Model Mosquito, 0.22 caliber pistol; HS Products, Model XD45, 0.45 caliber pistol; Colt, Model Commander, 0.45 caliber pistol; CBC, 12 gauge caliber shotgun; two (2) Ruger, Model 10/22, 0.22 caliber rifle; Marlin Firearm Co., Model 23, 0.22 caliber rifle; Remington Arms Company, Model 742, 0.22 caliber rifle; and a Winchester, Model 67, 0.22 caliber rifle. *Djoumessi*, 538 F.3d at 24–25.


152. *Djoumessi*, 538 F.3d at 14.

153. Superseding Indictment at 9, Bagley, No. 10CR00244.

154. Superseding Indictment at 9, Bagley, No. 10CR00244 at 9.

155. Superseding Indictment at 9, Bagley, No. 10CR00244 at 11.

156. Superseding Indictment at 9, Bagley, No. 10CR00244 at 7.

157. Superseding Indictment at 9, Bagley, No. 10CR00244.

159. Superseding Indictment at 30, Bagley, No. 10CR00244.

160. Superseding Indictment at 30, Bagley, No. 10CR00244.

161. Superseding Indictment at 26, Bagley, No. 10CR00244.


163. Superseding Indictment at 13, Bagley, No. 10CR00244.

164. Superseding Indictment at 13, Bagley, No. 10CR00244 at 16.

165. Superseding Indictment at 13, Bagley, No. 10CR00244 at 17–18.

166. Superseding Indictment at 13, Bagley, No. 10CR00244 at 18.

167. Superseding Indictment at 13, Bagley, No. 10CR00244.


169. Superseding Indictment at 13, Bagley, No. 10CR00244. Marilyn Bagley has also admitted participation with her husband in an offered plea agreement. Superseding Indictment at 13, Bagley, No. 10CR00244.

170. See The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation, supra note 140 (discussing the abuses likely to be enacted against victims of human trafficking, the trauma that they face, and the likely complications law enforcement agents will face when working with such victims).

171. 8 C.F.R. § 214.11(d)(1), (d)(2)(vi), (h) (2009); I-914 Form: Application for T Nonimmigrant Status, supra note 40, at 2.

172. 8 C.F.R. § 214.11(a).

173. See Human Trafficking and the T-Visa, supra note 2 (explaining the requirement that applicants assist law enforcement officials with all reasonable requests); see also Marisa SilenziCianciarulo, Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking, 7 Nev. L.J. 826, 832–34 (2007) (discussing the cultural and legal barriers between law enforcement agencies and victims of human trafficking).

174. 8 C.F.R. § 214.11 (2009). Victims under the age of eighteen are not required to cooperate with law enforcement. 8 C.F.R. § 214.11 (2009). Also, while victims may apply for T-Visas without certification from law enforcement, they have to provide extensive corroborative/secondary evidence to show that they are victims of trafficking. Id. Law enforcement certification qualifies as primary evidence. 8 C.F.R. § 214.11 (2009).

175. See Human Trafficking and the T-Visa, supra note 2 (indicating scenarios in which a certification may not be issued).

176. See Human Trafficking and the T-Visa, supra note 2 (indicating scenarios in which a certification may not be issued).

177. 8 CFR § 214.11(a) (2012). A LEA is defined as a Federal law enforcement agency charged with detection, investigation, or prosecution of trafficking cases. 8 CFR § 214.11(a) (2012). LEAs include U.S. Attorney’s Offices, Department of Justice’s Criminal and Civil Rights Divisions, the Federal Bureau of...

178. 8 CFR § 214.11(h)(1).

179. 8 CFR § 214.11(h)(2).

180. 8 CFR


184. Human Trafficking and the T-Visa, supra note 2 (explaining the ways in which evidence of physical abuse may be provided).

185. See Sabella, supra note 100 (listing a number of the physical health problems experienced by women in human trafficking).

186. See Sabella, supra note 100 (describing the atrocities inflicted on human trafficking victims).

187. See Sabella, supra note 100 (showing physical evidence of the ravages of human trafficking); see also Alyse Faye Haugen, When It Rains, It Pours: The Violence Against Women Act’s Failure to Provide Shelter from the Storm of Domestic Violence, 14 Scholar 1035, 1043 (2012) (describing how violence, particularly against women, can become accepted and even commonplace).

188. Human Trafficking and the T-Visa, supra note 2.


190. Clawson et al., supra note 70.

191. 38 C.F.R. § 3.304(f) (2011); see also Bradley A. Fink, Presume Too Much: An Examination of How the Proposed Combat PTSD Act Would Alter the Presumption of A Traumatic Stressor’s Occurrence for Veterans, 2 Veterans L. Rev. 221, 222 (2010) (describing the process of these special services).


193. 38 C.F.R. § 3.304(f)(1).

194. 38 C.F.R. § 3.304(f)(4).

195. 38 C.F.R. § 3.304(f)(5). Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes. 38 C.F.R.

196. 38 C.F.R.


198. 38 C.F.R.


201. Dep’t of Veterans Affairs, supranote 267.

203. Id. This information and a more general discussion of the process and forms necessary are available at the U.S. Citizenship and Immigration Services website and in the instructions for Form I-914. Specifically, though, the applicant must provide evidence demonstrating that they meet all the eligibility requirements criteria for a T-Visa: that they are a victim of a severe form of trafficking in persons, are physically in the USA on account of being a trafficking victim, complied with all reasonable law enforcement requests or doesn’t have to due to extenuating circumstances, and that they would “suffer extreme hardship involving unusual and severe harm” if removed from the U.S. 8 C.F.R. § 214.11(d)(2)(iv)–(vii) (2009).

204. I-914 Form: Application for T Nonimmigrant Status, supra note 40, Part C.

205. I-914 Form: Application for T Nonimmigrant Status, supra note 40, Part C. This Article will not go into detail on this “prong” of the T-Visa application, but it should be noted that this is an extremely hard burden to meet because the undocumented immigrant must not just establish that he or she would experience extreme hardship if removed, but that hardship must also involve “unusual and severe harm.” I-914 Form: Application for T Nonimmigrant Status, supra note 40, Part C. This is an extreme hardship standard and simply proving extreme hardship will not suffice. I-914 Form: Application for T Nonimmigrant Status, supra note 40, Part C. In a case involving a Filipino T-Visa applicant, who had law enforcement certification, the application was denied. Despite circumstances such as financial hardships, lack of access to necessary medical care, lack of legal recourse against his traffickers, and potential harm from his traffickers, it was initially determined, and upheld on appeal that the applicant did not prove he would suffer extreme hardship involving unusual and severe harm should he return to the Philippines. See also 16–17 Bender’s Immigr. Bull. 6 (2011) (discussing the importance of these visas in helping victims put off removal from the U.S.).

206. 8 C.F.R. § 214.11(a) (2009) “The ‘reasonableness’ of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims.” 8 C.F.R. § 214.11(a) (2009).

207. 8 CFR § 214.11(a).

208. I-914 Form: Application for T Nonimmigrant Status, supra note 40, Part C, Question 1.

209. I-914 Form: Application for T Nonimmigrant Status, supra note 40, Part C, at Part C, Question 2. If the applicant is submitting a LEA endorsement, he or she must submit as part of the application Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

210. See generally Leticia Saucedo, A New “U”: Organizing and Protecting Immigrant Workers, 42 U. Rich. L. Rev. 891, 893–901 (2008) (describing how the government has continued actions such as ICE workplace raids and increasing immigration enforcement efforts even against undocumented workers who have been exploited by employers, had wages unilaterally cut, and experienced many characteristics of involuntary servitude and debt bondage).

211. See Trafficking in Persons Report supra note 3, at 14 (“Unfortunately, the arrest, incarceration, and/or deportation of trafficking victims occurs far too often.”).

212. See Trafficking in Persons Report supra note 3 (“Research reveals […] that a considerable number of prostituted minors […] are arrested every year in many countries, including the U.S.”).


214. Instructions for Form I-918, supra note 48, at 1.

215. Instructions for Form I-918, supra note 48, at 1 (emphasis added).


220. 22 U.S.C. § 7102(3). Commercial sex act is “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(3).


222. 22 U.S.C. § 7102(5)(A)–(B). Involuntary servitude involves inducing a person into servitude for another, through any plan or pattern, by means of coercion, such as actual or threatened serious harm or the abuse or threatened abuse of the legal process. 22 U.S.C..


227. See 8 U.S.C. § 1101(a)(15)(U)(III) (2012) (noting the differences between the level of cooperation, and proof of said cooperation, between T- and U-Visas. Successful U-Visa applicants must help law enforcement in the investigation or prosecution of a crime and subsequently obtain law enforcement certification). See also 8 C.F.R. § 214.14(a)(3)(i) (2012) (noting that law enforcement certification entails a LEA completing a U Non-immigrant Status Certification, Form I-918, Supplement B); see also 8 U.S.C. § 1101(a)(15)(T)(III)(aa–cc) (2012) (noting that T-Visa applicants must comply with reasonable requests from law enforcement unless they meet the exemption criteria. However, unlike U-Visa applicants, a T-Visa applicant, whether stating he/she has complied with all reasonable law enforcement requests or he/she is exempt from doing so, is not required to submit Form I-918B, official law enforcement certification).

228. See 8 C.F.R. § 214.11(h) (2009) (stating that compliance with reasonable requests by law enforcement agencies is required unless the applicant satisfies a specific exception).


233. Siskin & Wyler, supra note 50, at 41.


237. See supra Part III.B, T-Visa Approval and Denial Chart (showing that since 2002 only 3,082 T-1 visas have been issued and 5,000 T-1 visas may be issued annually). While the total number of T-Visas issued hasn’t even reached the number allowed in one year, for the past three years, USCIS has approved as many U-Visas as statutorily permitted, 10,000 annually.


239. 16-17 Bender’sImmigr. Bull. 6 (2011).


243. See Zhiqiang Wu v. Duffy, No. 11cv0750, 2011 U.S. Dist. LEXIS 44064, at *2 (S.D. Cal. 2011) (finding plaintiff unlikely to succeed on a claim on the basis that law enforcement has discretion over issuing certification on plaintiff’s behalf).

244. Human Trafficking and the T-Visa, supra note 2.

245. See Human Trafficking and the T-Visa, supra note 2 at 13 (explaining the significance of an individual having the ability to articulate their traumatic past when applying for a T-Visa).

246. See Human Trafficking and the T-Visa, supra note 2 at 10 (providing possible exceptions that can be used to demonstrate trauma).

247. See Human Trafficking and the T-Visa, supra note 2 at 9 (explaining that a T-Visa applicant may provide an affidavit denoting a good faith effort to obtain LEA endorsement in the case that applicant was unable to provide compliance with obtaining the endorsement).

248. 8 U.S.C. § 1101(a)(15)(U)(i)(I) (2012). The U-Visa is an immigration remedy for nonimmigrants who are victims of specific statutorily chosen crimes and have added law enforcement in the investigation or prosecution of the crime of which they are a victim. See generally 8 U.S.C. § 1101(a)(15)(U) (discussing the general provisions of obtaining a U-Visa).


252. See Human Trafficking and the T-Visa, supra note 2 (explaining that a T-Visa applicant may provide an affidavit denoting a good faith effort to obtain LEA endorsement in the case that applicant was unable to obtain one).


254. Human Trafficking and the T-Visa, supra note 2 (discussing the types of questions a U-Visa applicant should address when writing the personal statement they will attach with their application).


256. 8 C.F.R. § 204.2(c)(2)(iv).

257. 8 C.F.R. § 204.2(c)(2)(iv). “[A] combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits […]” may be used by a visa applicant as evidence to prove abuse. 8 C.F.R. § 204.2(c)(2)(iv).

258. It should be reiterated that this will only prove as a guidepost because there are significant differences between U- and T-Visa requirements. For instance, while the U-Visa applicant must establish that he sustained substantial physical or mental abuse, it is undetermined whether that abuse focuses on what the victim-applicant actually felt, or the abuse inflicted by the criminal. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed.Reg. 53,018, USCIS (September 17, 2007), available at: www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-123038/0-0-0-133528/0-0-0-1337708.html. “The statutory provision does not make clear, however, whether the standard of ‘substantial’ physical or mental abuse is intended to address the severity of the injury suffered by the victim, or the severity of the abuse inflicted by the perpetrator.” 8 C.F.R. § 204.2(c)(2)(iv) Because the T-Visa exception to complying with LEA requests focuses explicitly on the trauma felt by the applicant, a USCIS official reviewing an application will give less weight to the severity of the perpetrator’s actions in a T-Visa application than in a U-Visa application, although the “nature of the victimization” is a factor in determining the reasonableness of law enforcement requests under the T-Visa. 8 C.F.R. § 214.11(a) (2009).

259. See N.Y. Anti-Trafficking Network Legal Subcomm., supra note 52, at A-17 (asserting that an applicant in need of counseling as a result of the trauma endured should “consider including a psychological evaluation” in their application packet).


263. See 8 C.F.R. § 214.11(a) (2009) (stating the factors that will be considered when determining the reasonableness of any LEA request).

264. Clawson et al., supra note 70, at 1. “[R]esearchers report that victims often experience multiple layers of trauma including psychological damage from captivity and fear of reprisals if escape is contemplated, brainwashing, and for some, a long history of family, community, or national violence.” Clawson et al., supra note 70, at 1; see What is Trauma? Nat’l Inst. of Mental Health, available at: www.nimh.nih.gov/health/publications/helping-children-and-adolescents-cope-with-violence-and-disasters-parents/what-is-trauma.shtml (last visited December 27, 2012) (“Mental trauma […] can produce extreme behavior; such as intense fear […]”).

265. Brie& Elliot, supra note 69, at 59-60.

266. Trafficking in Persons Report supranote 3, at 29.

267. CdeBaca, supra note 315.

268. See See CdeBaca, supra note 315. (addressing the methods used to bring justice to survivors of sex trafficking via legal representation, victim care, and the T-Visa program).

269. See generally Oram et al., supra note 109 (addressing the extensive research conducted on the sexual, physical and mental health of sex trafficker survivors).


References


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