

PRESENTED AT

Annual Conference on Immigration and Nationality Law
October 27, 2017
Austin, TX

**Use of T-Visas, U-Visas, and Issue Spotting:
Selected Resources**

Natalia Drelichman, American Gateways
Stacie Jonas, Texas RioGrande Legal Aid

Natalia Drelichman
Director of Legal Programs
American Gateways
314 E. Highland Mall Blvd. , Suite 501
Austin, TX 78752
nataliad@americangateways.org
512.478.0546 x 206

Stacie Jonas
Managing Attorney,
Human Trafficking Team
Texas RioGrande Legal Aid
4920 North IH 35
Austin, TX 78751
sjonas@trla.org, 512-374-2719

**RELEVANT FEDERAL STATUTORY AND
REGULATORY PROVISIONS:
T- VISA, CONTINUED PRESENCE, AND
RELATED PROTECTIONS**

WHAT IS A SEVERE FORM OF TRAFFICKING IN PERSONS?

General

Severe forms of trafficking in persons means 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 18 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. 22 U.S.C. § 7102(9); 8 C.F.R. § 214.11(a).

Coercion means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process. 22 U.S.C. § 7102(3); 8 C.F.R. § 214.11(a).

Labor Trafficking Definitions

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. 22 U.S.C. § 7102(5); 8 C.F.R. § 214.11(a).

Involuntary servitude means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” 8 C.F.R. § 214.11(a); *see also* 22 U.S.C. § 7102(6).¹

¹ 22 U.S.C. § 7102(6) defines “involuntary servitude” as a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint or the abuse or threatened abuse of the legal process. The term “involuntary servitude” is intended to reach “cases in which persons are held in a condition of servitude through nonviolent coercion.” 22 U.S.C. § 7101(13). Note that the Supreme Court in *United States v. Kozminski*, 487 U.S. 931, 952 (1988), interpreted the term “involuntary servitude” in 18 U.S.C. § 1584, a criminal provision that pre-dates the TVPA, and the *Kozminski* decision does not govern or limit the TVPRA definition of involuntary servitude or coercion. . 22 U.S.C. § 7101(b)(13); *see also* H.R. Conf. Rep. No. 106-939 at 101 (2000), 2000 SL 1479163 (Oct. 5, 2000) (legislative history on *Kozminski* and TVPRA). Accordingly, reference to *Kozminski* was removed from the definition of involuntary servitude in the 2017 T-regulations.

Abuse or threatened abuse of the legal process means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action. 22 U.S.C. § 7102 (1).

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness. 8 C.F.R. § 214.11(a).

Sex Trafficking Definitions

Commercial sex act means any sex act on account of which anything of value is given to or received by any person. 8. C.F.R. § 214.11(a); 22 U.S.C. § 7102 (4); 28 C.F.R. § 1100.25; *see also Ricchio v. McLean*, 853 F.3d 553, 556 (1st Cir. 2017) (citing *United States v. Cook*, 782 F.3d 983, 988 (8th Cir. 2015) (“The phrase ‘anything of value’ [in the Act] is extremely broad.”)).

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. § 7102 (10); 8. C.F.R. § 214.11(a); 28 C.F.R. §1100.25.

WHO IS ELIGIBLE FOR A T- VISA?

Basic Eligibility Requirements, 8 C.F.R. § 214.11(b); *see also* 8 U.S.C. § 1101(a)(15)(T)

An alien is eligible for T-1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act if he or she demonstrates all of the following, subject to section 214(o) of the Act:

- (1)Victim. The alien is or has been a victim of a severe form of trafficking in persons.
- (2)Physical presence. The alien is physically present in the United States or at a port-of-entry thereto, according to paragraph (g) of this section.
- (3)Compliance with any reasonable request for assistance. The alien has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, or meets one of the conditions described below.
 - (i)Exemption for minor victims. An alien under 18 years of age is not required to comply with any reasonable request.
 - (ii)Exception for trauma. An alien who, due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, is not required to comply with such reasonable request.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Relevant Federal Statutory and Regulatory
Provisions:T- Visa, Continued Presence, and Related Protections

Also available as part of the eCourse

[2017 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the
41st Annual Conference on Immigration and Nationality Law session
"Use of T-Visas, U-Visas, and Issue Spotting"