

NATIONAL
IMMIGRANT
JUSTICE CENTER

Trauma-Informed, Pro Bono Representation of Survivors of Human Trafficking

October 2024
ImmigrantJustice.org

Welcome! Please sign in.



About NIJC

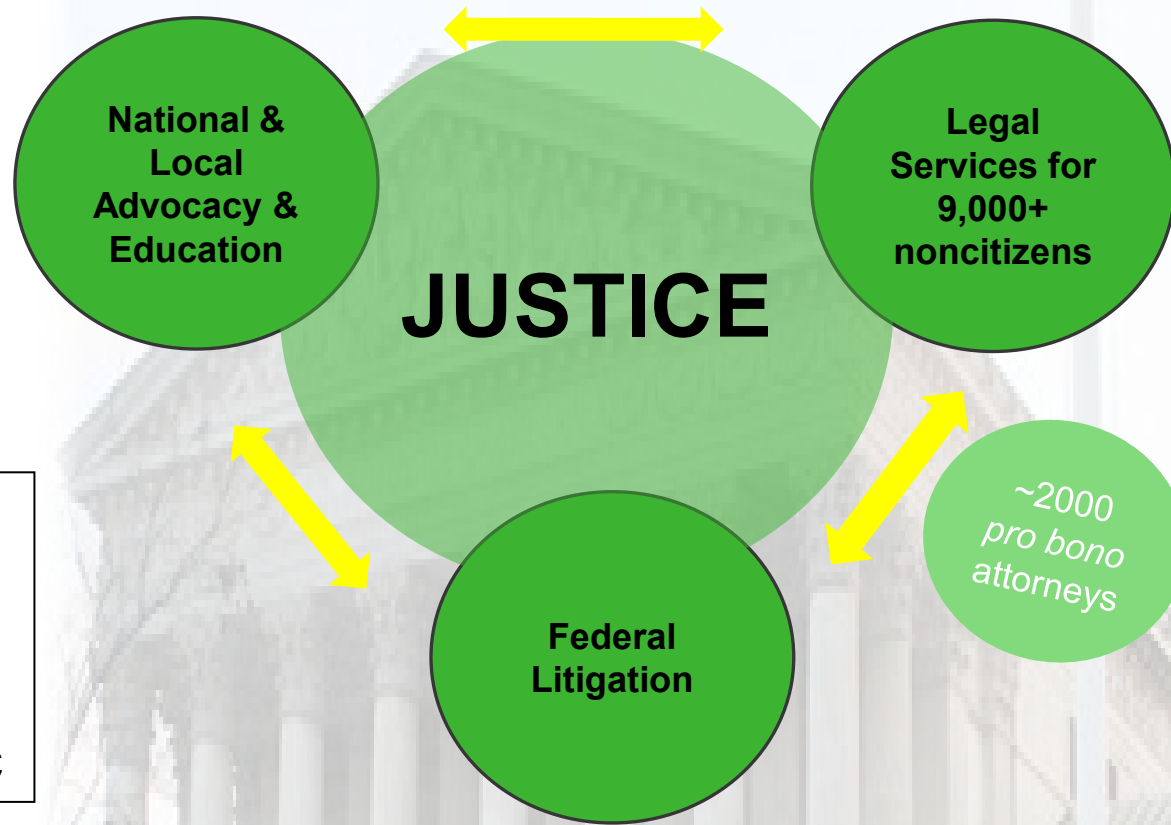
The National Immigrant Justice Center (NIJC) is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers.

With offices in Chicago, Indiana, San Diego, and Washington, D.C., NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding three decades ago, NIJC has been unique in blending individual client advocacy with broad-based systemic change.

Agenda

1. About NIJC's Pro Bono Projects
2. T Nonimmigrant Status ("T Visa") Overview
3. Trauma & Tips for Working with Survivors
4. T Visa Application Preparation
5. Next Steps
6. Legal Team Huddles

National Immigrant Justice Center (NIJC)

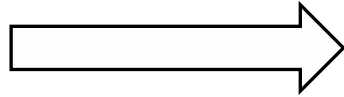


Offices in:
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Goshen and
Indy, IN
San Diego, CA
Washington, DC

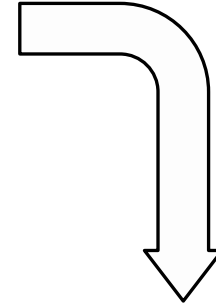
How NIJC's Pro Bono Programs Work



An immigrant contacts NIJC and needs an attorney



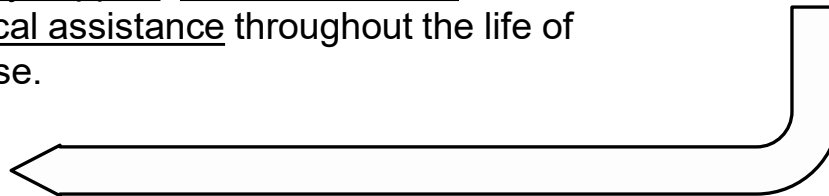
NIJC staff conduct an in-depth case screening and assessment



If case is accepted, NIJC signs a retainer with the client and begins to look for pro bono placement



A pro bono attorney team accepts the case. NIJC remains of counsel and provides attorney support, document review, and technical assistance throughout the life of the case.



Our Partnership

NIJC's Role

- Case screening and acceptance
- Provide pro bono training and materials
- Pro bono attorney support and technical assistance
- Malpractice insurance coverage

Pro Bono Attorney's Role

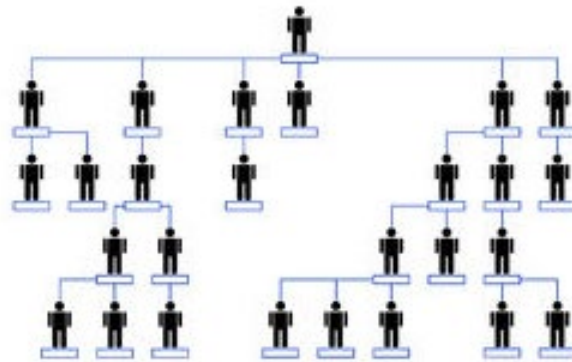
- Attend training
- Prepare and file application(s)
- Represent client for duration of case or obtain substitute counsel within the firm
- Provide NIJC with copy of filing, receipt & approval notices
- Contact NIJC with any questions or concerns about case
- Keep NIJC informed of filing dates, requests for evidence and case decisions

Human Trafficking Overview

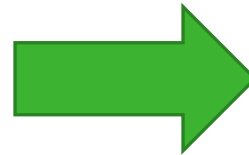
Brief Definition:

- Human traffickers use force, fraud, or coercion to compel their victims to perform labor, services, and/or commercial sex acts against his/her will.

The Actors:

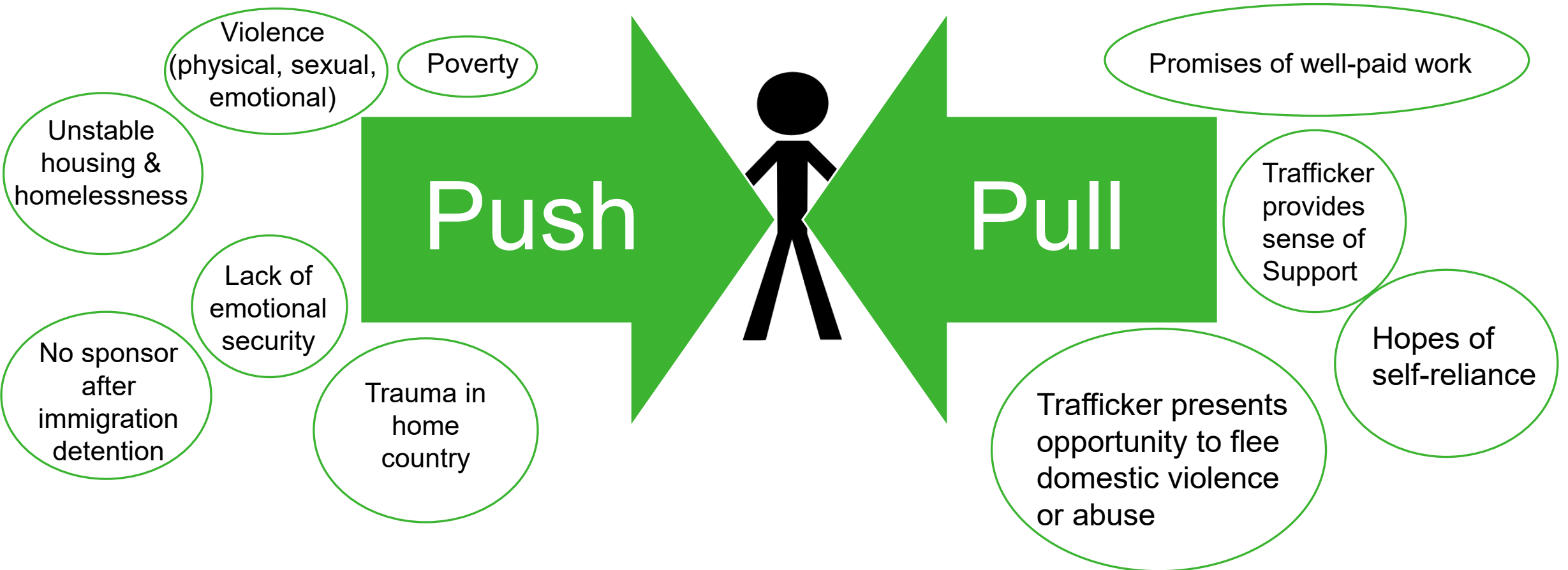


The Trafficker(s)



The Victims/Survivors

Push & Pull Factors: Root Causes of Exploitation



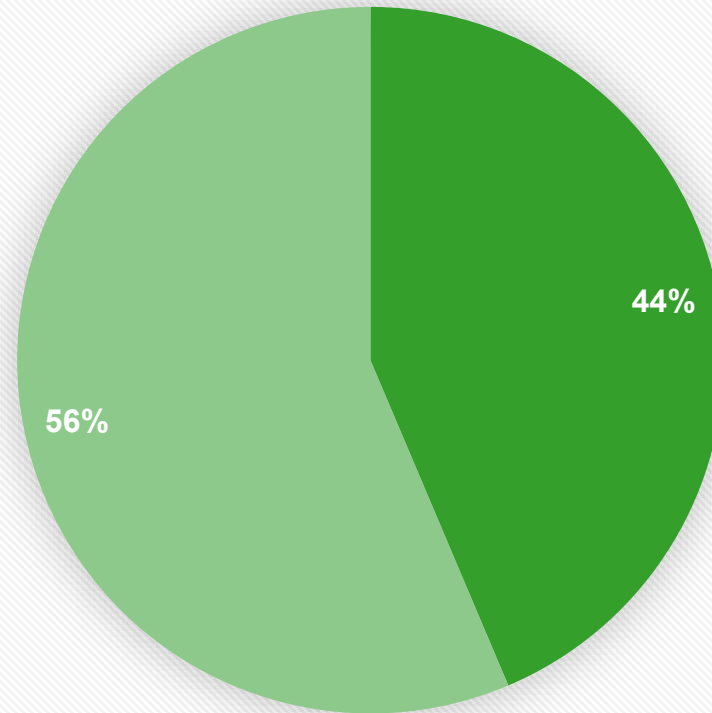
T Visa Benefits and Eligibility

T Visa Overview



T Visa: Strong, yet underutilized remedy for survivors

T-1 Visas Approved in FY 2023



■ T-1 Visas Approved, 2181 ■ Unused T-1 Visas, 2819

What benefits does a T Visa recipient obtain?



Live and work in U.S. for 4 years as T nonimmigrant

- Obtain a social security number
- Apply for derivative status for certain family members



Can apply for green card

- After either 3 years in T status or upon conclusion of investigation of crime



Eligible for certain state and federal benefits

- Illinois law grants state funded benefits to certain individuals applying for or has filed for a T Visa, if meet other requirements
- Upon approval, eligible for federal benefits

1. Victim of a
“severe form of
trafficking”

3. Complied with any
reasonable request for
assistance in the investigation
or prosecution of the crime
(unless under 18 years old or
qualifies for trauma exception)

T Visa Eligibility

INA §
101(a)(15)(T)(i)

2. Physically present
on account of the
trafficking

4. Suffer extreme
hardship involving
unusual and severe
harm if removed

8 CFR § 214.204(d)

- (5) Admissible to the U.S. or merit a waiver of inadmissibility

Element #1: Defining “Severe Form of Trafficking” 22 U.S.C.A. §7102(9)

- (A) **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
- (B) [**labor trafficking**] 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.

Act-Means-Purpose Model: Victim of “Severe Form of Trafficking”

Act	Means**	Purpose***
Induce Recruit Harbor Transport Provide Obtain Patronize* <i>or</i> Solicit*	Force Fraud <i>or</i> Coercion ** do not need to show force, fraud, or coercion for minor victim of sex trafficking	Commercial sex (sex trafficking) <i>or</i> Involuntary Servitude Peonage Debt Bondage Slavery (Labor Trafficking)
<i>*only applies to sex trafficking 22 U.S.C.A. §7102(10)</i>	<i>** If victim under 18 is induced to perform a commercial sex act, it is human trafficking regardless of whether there is any force, fraud or coercion.</i>	<i>***Can be both labor and sex.</i>

FORCE, FRAUD or COERCION

Defining “Coercion”

- a) threats of serious harm to or physical restraint against any person;
- b) 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
- c) the abuse or threatened “abuse of the legal process.”

8 C.F.R. § 214.201

Element #2: Physically Present in the U.S. on Account of Trafficking

8 C.F.R. § 214.207(a)

Ask:

“Why is applicant
here today?”

NOT

“Was the applicant
trafficked into the
U.S.?”

*Generally, not eligible
if fleeing trafficking
abroad.*

- (1) Currently being trafficked
- (2) Liberated by LEA at any time prior to the T visa application
- (3) Escaped before an LEA was involved at any time prior to filing the T visa application
- (4) Subject to trafficking in the past and their current presence is directly related to the original trafficking
- (5) Have been allowed entry into the U.S. to participate in legal process

Support for Presence “On Account of Trafficking”

- Fear of retaliation from trafficker in home country
- Need to access trafficking specific services in the U.S.
- No resources to leave the U.S.
- Need to continue to cooperation with law enforcement
- Need to access available legal remedies including civil remedies
- Continuing to experience severe adverse consequences as a result of the trafficking

8 C.F.R. § 214.207(c)

Element #3: Complied with LEA's Reasonable Requests for Assistance

- Law enforcement includes federal, state and local law enforcement
- Need only comply with “reasonable requests” for assistance
- Reasonableness depends on the totality of circumstances, the nature of the victimization, and specific circumstances of the applicant
- Law enforcement declaration (Form I-914, Supp. B) is not required and “is not given any special evidentiary weight.”

8 C.F.R. § 214.204(e); 214.208

Exemptions for Law Enforcement Cooperation

Age

- Applicant was under 18 “at the time at least one of the acts of trafficking occurred.”

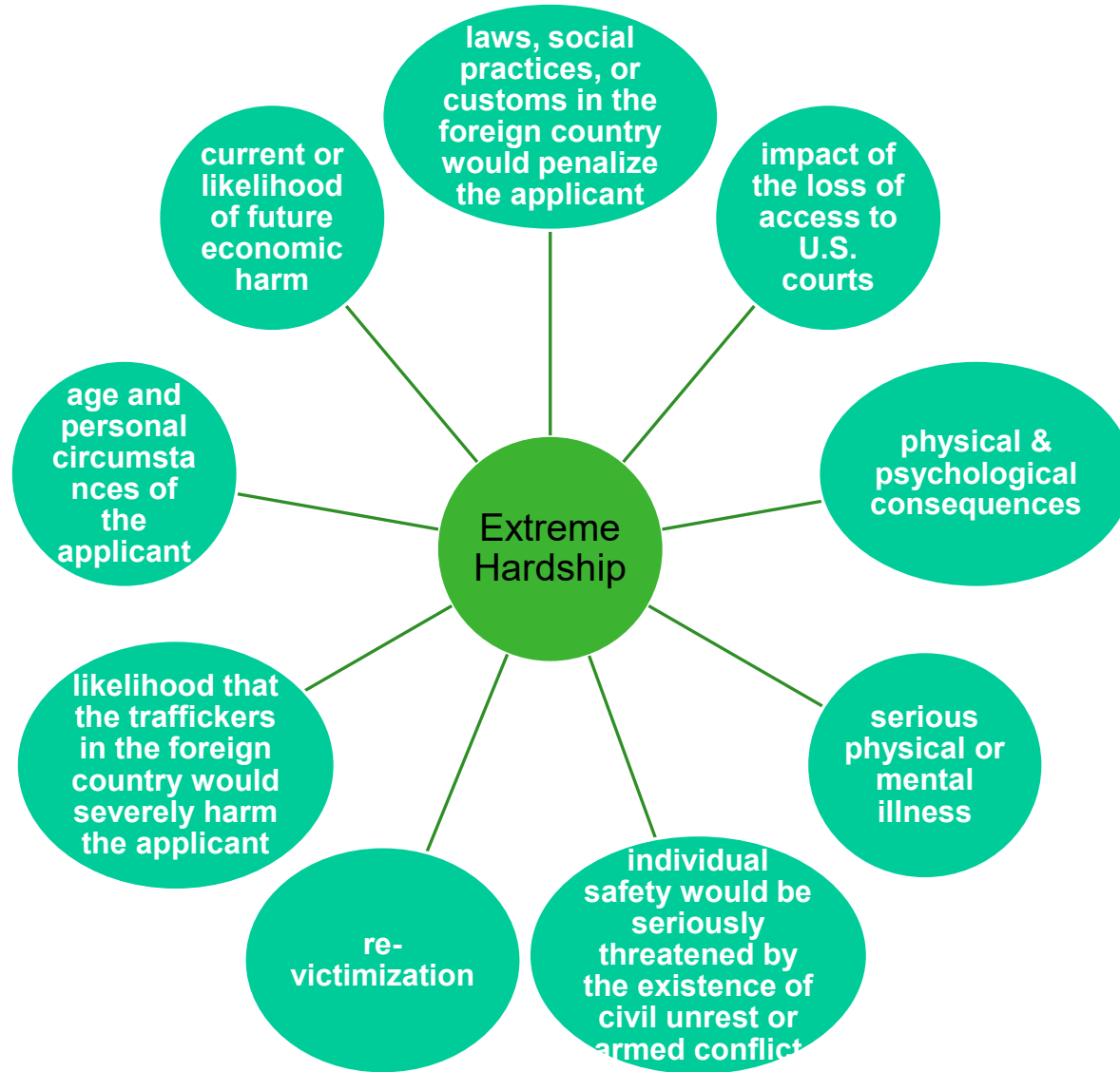
Trauma

- Applicant is unable to cooperate due to physical or psychological trauma
 - Re: Initial report
 - Re: Following report, must stop cooperating b/c of trauma, making the request unreasonable

Extreme Hardship

Cite to trafficking-specific hardship factors in the regs!

8 C.F.R. § 214.209



Admissibility

T Visa applicant must be admissible to the U.S. or otherwise obtain a “waiver of inadmissibility.” (8 C.F.R. § 214.204(d).)

The statutory grounds of inadmissibility are listed at INA § 212(a).

Common examples:

- lack of passport;
- entry without inspection;
- criminal convictions;
- fraud / misrepresentation;
- false claims to U.S. citizenship;
- prior deportations
- ** prostitution

Waivers of Inadmissibility for T Applicants

If an applicable ground of inadmissibility has been triggered, the applicant must establish she/he merits a waiver of inadmissibility. Two-part waiver analysis:

INA
212 (d)(13)

- USCIS determines whether there is a **connection** between the inadmissibility to **trafficking victimization**

INA
212(d)(3)

- USCIS determines whether a discretionary waiver of the inadmissibility should be granted in the **national interest**

INA § 212(d)(3), (d)(13); 8 C.F.R. § 212.16

Trauma & Tips on Working with Survivors

Trauma is...

**any dangerous, frightening, and
overwhelming event or series of
events witnessed or experienced by
any member of a family.**

Science of Trauma



- Trauma impacts the way the brain processes an event
- Impacts ability to organize and recall event
- May not be able to recall key portions of traumatic event because those details were not key to surviving the event

Common Types of Client Trauma



- Fear of Deportation

- Social Marginalization

- Separation from Family



- Financial Insecurity

- Trauma from Victimization

- Trauma from Home country



Effects of Trauma

- Impaired Sense of Safety
- Hyperarousal
- Dissociation
- Difficulty Controlling Emotions
- Lack of Trust
- Appear jumpy, have frequent outbursts, confrontational
- Indifferent to legal proceedings or “checking out”
- Skip appointments
- Memory lapses, especially about the trauma
- Difficulty making decisions
- Decreased ability to concentrate

Tips for Working With Survivors of Trauma

Transparency

- Be reassuring and realistic about what you can do.

Predictability

- Let them know what will happen next
- Meeting agendas

Client Control

- Provide them with choices and options.
- Where to sit, how to review affidavits, etc.

Reliability

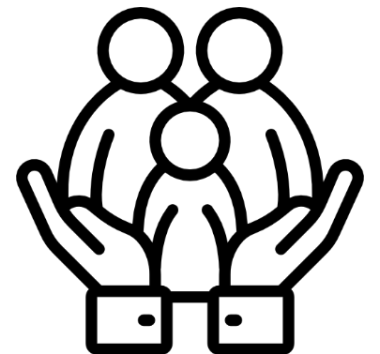
- Follow through on commitments, responsibilities and appointments.

Support

- Empathize
- Acknowledge that their feelings are rational in light of past experiences

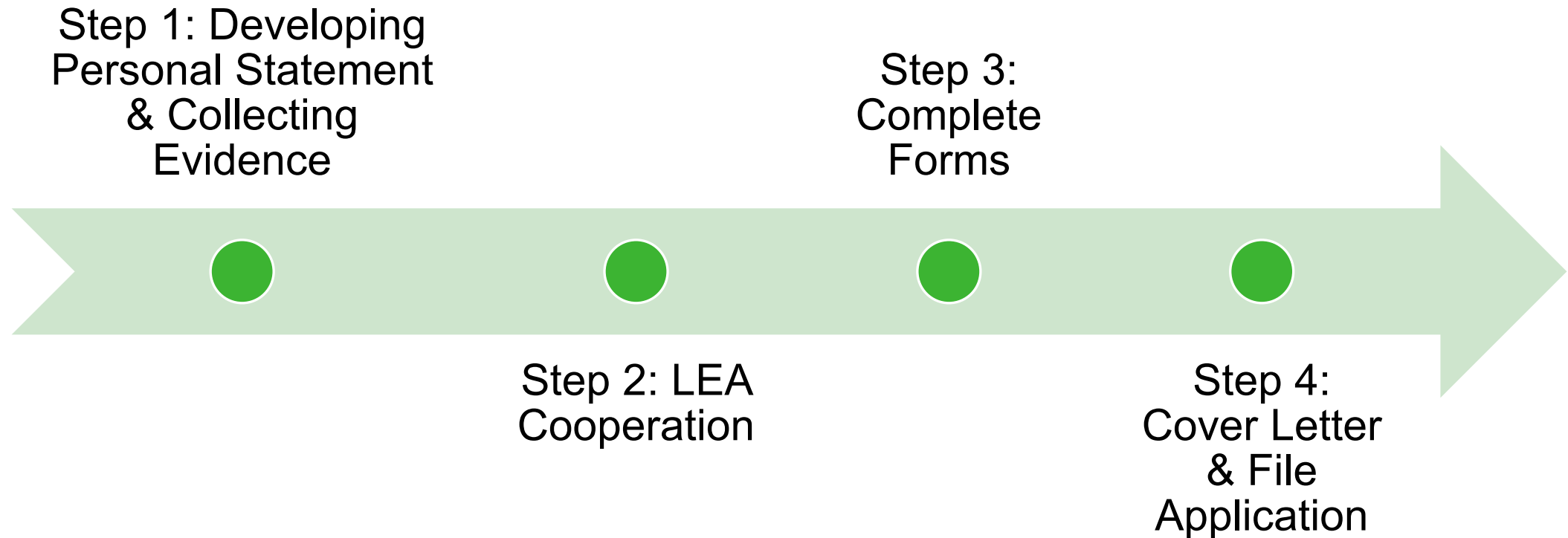
Working with Social Service Providers

- Client needs often exceed the scope of our representation, and they can benefit greatly from working with a social service agency
- A social service case manager can connect a client to key resources such as:
 - Government benefits: SNAP, Housing Assistance, Healthcare
 - Employment training
 - Safety planning
 - Orders of protection



T Visa Application Preparation

T Visa Application Process



Burden of Proof

- “The burden is on the applicant to demonstrate eligibility for T-1 nonimmigrant status by a preponderance of the evidence”
- USCIS considers all credible and relevant evidence when making eligibility determinations.

8 C.F.R § 214.204 (I)(1) (2014)

Components of T Visa

All Submissions

- Cover Letter
- Form G-28: Notice of Appearance as Attorney
- Form I-914: Petition for T nonimmigrant status
- Form I-765: Application for Employment Authorization and two passport photos
- Proof of LEA Cooperation
- Applicant's Personal Statement**
- Identity Documents
- Case Manager Letter
- U.S. Dep't of State TIP Report

If applicable

- Form I-192: Waiver of Inadmissibility with signed addendum
- Form I-914, Supp. B: Law Enforcement Certification
- Form I-914, Supplement A: Petition for Derivative Applicant
- Other supporting evidence

T-1 Petitioner's Personal Statement

The most important piece of evidence!

- Statement of the client in his/her own voice
- Should address all elements of T eligibility
- Balancing detail
- Present facts in light most favorable to client
- Chronological
- Avoid using the term “force,” “forced,” or “coerced” in its colloquial form

See NIJC's one-hour pro bono webinar: “Client Counseling and Affidavit Preparation,” available at <http://immigrantjustice.org/nijc-pro-bono-seminars>, for more tips on drafting an affidavit.

Drafting the Personal Statement

- Talk to your client about their trafficking experience
 - Ask “what,” not “why”
 - Ask open ended questions
- Think creatively about supporting evidence
- Map “characters”
- Draw timeline, maps, or visuals to assist client



Law Enforcement Advocacy

- Reporting the crime
- Attending interviews and responding to LEA inquires
- Advocating for Continued Presence and/or law enforcement certification on Form I-914, Supplement B

Cover Letter

- Cover letter outlines legal argument of how applicant meets each element of T Visa
 - Summarize the facts
 - State the legal standard and apply the facts for each T visa element
 - Include pin cites to specific paragraphs of client statement or page numbers of other evidence
- Cover letter and personal statement reflect the same information
- Cite legal authority

T Visa Legal Authority

Federal Statutes
Trafficking Victims
Protection Act (TVPA)
INA
Criminal Code

Federal Regulations
8 CFR
§ 214 Subpart C (T visa)
§ 212.16 (T waivers clarification)
§ 245.23 (T visa AOS)
§ 212.18 (Waivers for T Visa AOS)
§ 1214.2 (EOIR-Admin. Closure & Stay
of Removal)
§ 1212.16 (EOIR-Waivers in
Proceedings)

DHS T visa RULE
89 Fed. Reg. 34864
(Apr. 30, 2024)

Case Law
SCOTUS
District and Circuit
Courts

Administrative
Decisions
AAO
BIA

USCIS Policy
Manual

Submitting the Application Packet

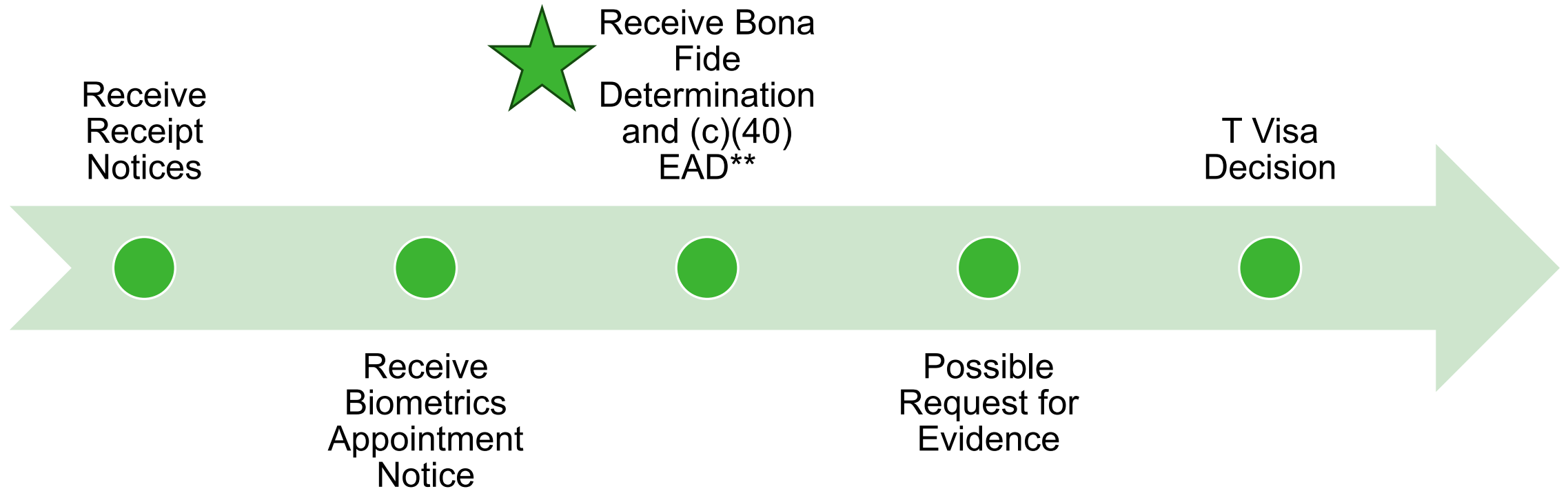
- Filing should be indexed but **avoid using tabs!** USCIS prefers that documents are identified by page number. Use a two-hole punch at the top of the packet and fasten everything together with a metal two-pronged fastener. **Do not use side-binding or a plastic cover sheet.**
 - **Scan filing packet and send NIJC a file copy!**
- Requests for a T visa should be sent via certified mail or overnight delivery service to: **Check the USCIS website for the most current address:** <https://www.uscis.gov/i-914>

U.S. Citizenship and Immigration Services
Vermont Service Center
Attn: T Visa Unit
38 River Road
Essex Junction, VT 05479

Post Filing

Post-Filing

As of October 2024, current USCIS T Visa processing times are 17.5 months. Please remind client that this time can change.



**** New as of August 28, 2024**

Bona Fide Determinations

1. Initial case review to determine if application is bona fide. An application will **not** be considered bona fide if incomplete or raises national security concerns.
2. If bona fide, does the applicant merit favorable discretion to receive deferred action and work authorization?

8 C.F.R. § 214.205

Practice tip: File Form I-765 Application for Employment Authorization with the initial application under category (c)(40).

Upon approval, please refer to NIJC for DOJ close out letter and adjustment.

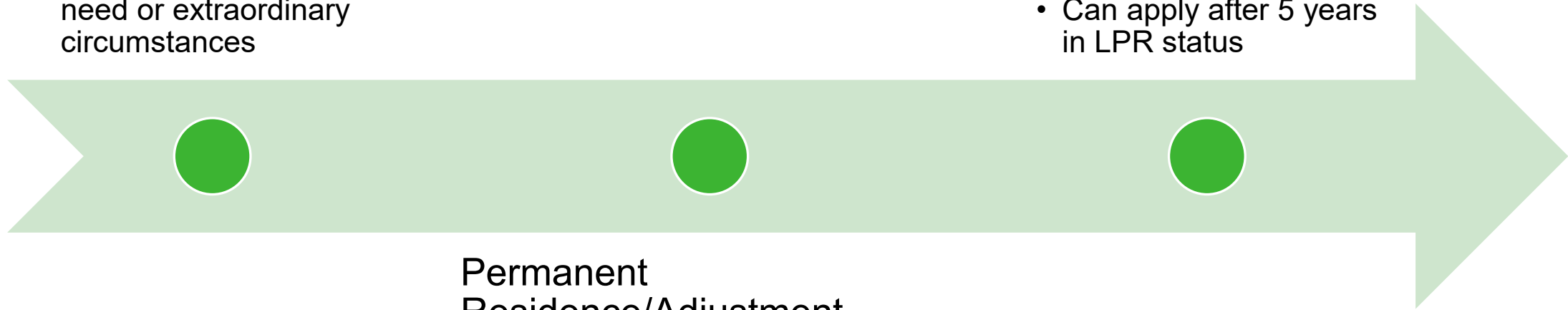
Post-Approval

T visa

- Valid for 4 years
- Can be extended in LEA need or extraordinary circumstances

Naturalization

- Can apply after 5 years in LPR status



Permanent Residence/Adjustment

- Can apply after 3 years in T status, or earlier if no ongoing investigation
- As of Oct. 2024, processing times are 37.5 months

Contacting Vermont Service Center (VSC)

Inquiry Email: HotlineFollowUpI918I914.Vsc@dhs.gov

- Generally, USCIS will not respond to inquiries regarding case status if in normal processing times
- Consult with NIJC point of contact before sending
- Attach an executed G-28 to the inquiry and include your name, organization's name and phone number in addition to the client's name, date of birth, A number, receipt number for the application, and the nature of the inquiry

Next Steps

Case Expectations

Date	To be completed
Before November 1, 2024	Complete at least one client meeting to begin case preparation
December 2024, date TBD	NIJC Office Hours – Affidavit drafting
February 2025, date TBD	NIJC Office Hours - Law enforcement reporting Initiate law enforcement report
March 2025	First draft of cover letter and statement to NIJC point of contact for review
April/May 2025	Full filing to NIJC for review
May/June 2025	Case filed – send NIJC a file copy

First Client Meeting

1. Introductions between the pro bono team and client
2. Figure out a plan for communication and next steps, including:
 - Confirming current contact information
 - Best days/times to meet
3. Review confidentiality
4. Give client opportunity to ask questions
5. Sign retainer/engagement letter
6. Review T visa process

Resources

NIJC Website: www.immigrantjustice.org

NIJC Procedural Manual: Representing Immigrant Survivors of Trafficking: T Nonimmigrant Status (T Visa) Training Manual

Questions?

For CLE credit, please complete the evaluation.



NIJC Staff Contacts

Case-specific questions:

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