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

October 2023
immigrantjustice.org

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. Client Meetings and Next Steps
How NIJC’s Pro Bono Programs Work

1. **An immigrant contacts NIJC and needs an attorney.**
2. **NIJC staff conduct an in-depth case screening and assessment.**
3. **If case is accepted, NIJC signs a retainer with the client and begins to look for pro bono placement.**
4. **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.**

**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

**Our Partnership**

Heartland Alliance
National Immigrant Justice Center (NIJC)

**Legal Services** for 9,000+
**Advocacy & Education**

Federal Litigation

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

National & Local Advocacy & Education
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 their will.

The Actors:
- The Trafficker(s)
- The Victims/Survivors

Push & Pull Factors: Root Causes of Exploitation

Push:
- Violence (physical, sexual, emotional)
- Poverty
- Lack of emotional security
- Trauma in home country
- No sponsor after immigration detention

Pull:
- Promises of well-paid work
- Trafficker provides sense of support
- Hopes of self-reliance
- Trafficker presents opportunity to flee domestic violence or abuse

T Visa Benefits and Eligibility
T Visa:
Humanitarian Relief & Law Enforcement Tool

Humanitarian Relief: Victim Protection
Law Enforcement Tool: Increase Prosecutions = T Visa

T Visa:
Strong, yet underutilized, remedy for survivors

T-1 Visas Approved in FY 2022

- 34% T-1 Visas Approved
- 66% Unused T-1 Visas

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 anyone who is applying for or has filed for T Visa, if meet other requirements
- Upon approval, eligible for federal benefits

Source:
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 subjecting to involuntary servitude, peonage, debt bondage, or slavery.

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

<table>
<thead>
<tr>
<th>Act</th>
<th>Means**</th>
<th>Purpose***</th>
</tr>
</thead>
<tbody>
<tr>
<td>Induce</td>
<td>Force</td>
<td>Commercial Sex (Sex Trafficking) Or Involuntary Servitude, Peonage, Debt bondage, or Slavery (Labor Trafficking)</td>
</tr>
<tr>
<td>Recruit</td>
<td>Fraud</td>
<td></td>
</tr>
<tr>
<td>Harbor</td>
<td>Coercion</td>
<td></td>
</tr>
<tr>
<td>Transport</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provide</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obtain</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patronize, or Solicit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*only applies to sex trafficking 22 U.S.C.A. § 7102(9)

**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.

***Can be both labor and sex.
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.”

22 U.S.C.A. § 7102(3)

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

Ask:
• “Why is applicant here today?”
NOT
• “Was the applicant trafficked into the U.S.?”

Present

• Still present in US after escape
• Brought into the U.S. to cooperate w/ LEA or civil litigation
• Left, but
• Continued Victimization
• New Incident of Victimization

Not Present

• Fleeing to the U.S. to escape trafficking abroad
• Voluntary left after trafficked in the U.S.
• Deported/removed from the U.S.

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. § 214.11(g)(3) (2017)
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. § 214.11(b)(3) and (d)(3)

Exemptions for Law Enforcement Cooperation

<table>
<thead>
<tr>
<th>Age</th>
<th>Trauma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant is under 18 at the time at least one of the acts of trafficking occurred.</td>
<td>Applicant is unable to cooperate due to physical or psychological trauma</td>
</tr>
<tr>
<td>Re: Initial report</td>
<td>Re: Following report, must stop cooperating b/c of trauma, making the request unreasonable</td>
</tr>
</tbody>
</table>


Element #4: Extreme Hardship if Removed

8 C.F.R. § 214.11(i)
Admissibility

T Visa applicant must be admissible to the U.S. or otherwise obtain a “waiver of inadmissibility.” 8 CFR 214.11(d)(2)(iii)

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, including unlawful voting and falsification of I-9 form for employment;
- prior deportations

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:

- USCIS determines whether there is a connection between the inadmissibility to trafficking victimization
- 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 on 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
- Financial Insecurity
- Social Marginalization
- Trauma from Victimization
- Separation from Family
- 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.
- Empathize
- Acknowledge that their feelings are rational in light of past experiences

Support

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**

- Step 1: Developing Personal Statement & Collecting Evidence
- Step 2: LEA Cooperation
- Step 3: Complete Forms
- Step 4: Cover Letter & File Application

**Burden of Proof**

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

8 C.F.R § 214.11(d)(5)
Components of T Visa

- Cover Letter
- Form G-28: Notice of Appearance as Attorney
- Form I-914: Petition for T nonimmigrant status
- Proof of LEA Cooperation
- Applicant’s Personal Statement
- Identity Documents
- Case Manager Letter
- U.S. Dep’t of State TIP Report

Form I-192: Waiver of Inadmissibility with signed addendum
Form I-912: Fee Waiver Request
Form I-914, Supp. B: Law Enforcement Certification
Form I-914, Supplement A: Petition for Derivative Applicant
Other supporting evidence

Form I-912 Request for Fee Waiver

- Receipt of means-tested benefit
  - Proof of receipt of VTTC (state) benefits
- Income below 150% of the federal poverty guidelines
  - Income tax return or W2
  - Recent pay statements
- Financial hardship
  - Statement from client
  - Statement from case manager
  - Medical bills, etc.

T-1 Petitioner’s Personal Statement

- 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

The most important piece of evidence!

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 inquiries
- 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
  - § 214.1 (T visa)
  - § 212.14 (T visa application)
  - §§ 214.20 (T visa eligibility)
  - § 245.23 (T visa AOS)
  - § 212.18 (Waivers for T Visa AOS)
- 8 CFR
  - § 214.11

DHS T visa RULE
- USCIS Policy Manual

Case Law
- SCOTUS
- District and Circuit Courts
- AAO
- BIA

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 filling packet and send NIJC a file copy!

- Requests for a T visa should be sent via certified mail or overnight delivery service to: https://www.uscis.gov/i-914

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

Post - Filing
Complete and file T Visa
Possible Request for Evidence (RFE)
T Visa Approved
Eligible for LPR status
May be eligible for Naturalization

3 years of physical presence in T status or after the Attorney General has determined investigation is complete

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

<table>
<thead>
<tr>
<th>Date</th>
<th>To be completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 2023</td>
<td>Complete at least one client meeting to begin case preparation</td>
</tr>
<tr>
<td>December 2023</td>
<td>NIJC Office Hours – Affidavit drafting</td>
</tr>
<tr>
<td>February 2024</td>
<td>NIJC Office Hours - Law enforcement reporting</td>
</tr>
<tr>
<td>March 2024</td>
<td>First draft of cover letter and statement to NIJC (Erika) for review</td>
</tr>
<tr>
<td></td>
<td>Initiate LEA report</td>
</tr>
<tr>
<td>April 2024</td>
<td>Full filing to NIJC (Erika) for review</td>
</tr>
<tr>
<td>May 2024</td>
<td>Case filed – send NIJC (Erika and Brandon) a file copy</td>
</tr>
</tbody>
</table>

### Today’s 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

### November Client Meeting

1. Review case file and manual before meeting
2. Reiterate introductions, your role, and confidentiality
3. Review T visa process
4. Optional, begin a less intensive section of the statement, such as the background/childhood or services currently receiving in the U.S.
NIJC Staff Contact

Case specific questions:
Erika Asgeirsson, Supervising Attorney, Counter-Trafficking Project  
P: 312-660-1362  
easgeirsson@heartlandalliance.org

Brandon Jaimes, Paralegal, Counter-Trafficking Project  
P: 312-660-1489  
bjaimes@heartlandalliance.org

General Pro Bono Matters:  
Ellen Miller, Pro Bono Manager  
P: 312.660.1415  
emiller@heartlandalliance.org

NIJC relies on philanthropy to do our work and grow as an organization. Your gift to NIJC empowers our team to:
- Respond to emerging issues
- Invest in staff
- Support pro bono programs
- Provide trauma-informed advocacy

The Difference YOU Can Make

- Helps an asylum seeker win a complex case: $10,000
- Defends an asylum seeker against deportation in immigration court: $5,000
- Sponsors a legal clinic for asylees & refugees to obtain lawful permanent residency: $2,500
- Educates 10 unaccompanied immigrant children about their legal rights: $1,000
- Files a young immigrant’s application to renew DACA: $500
- Provides a legal consultation to keep a family together: $100

You can give today! Immigrantjustice.org/donate

Thank You!

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@njc

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Thank You!

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