

Unified Statewide T Visa Protocol

NEW YORK STATE'S PROTOCOL REGARDING ENDORSEMENT OF USCIS FORM I-914, SUPPLEMENT B

1. PURPOSE

The purpose of this Protocol is to establish guidelines and procedures for certain New York State agencies issuing T Nonimmigrant Status ("T visa") endorsements.¹

2. BACKGROUND

In October 2000, Congress created the T visa category by enacting the Trafficking Victims Protection Act of 2000 ("TVPA"). The dual purpose of the T visa is to: (1) protect victims of human trafficking, and (2) strengthen law enforcement's ability to investigate or prosecute human trafficking crimes. To be eligible, an applicant must demonstrate to the United States Citizenship and Immigration Services ("USCIS") that the applicant is a victim of a severe form of trafficking in persons, that the applicant is present in the U.S. due to trafficking, that the applicant complied with any reasonable request from a law enforcement agency for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking, and that the applicant would suffer extreme hardship if removed from the U.S. If approved, a T visa is valid for four years and can provide a path to legal permanent resident status, authorization to work in the United States, and access to social services including refugee benefits.

New York State recognizes that a T visa is a particularly powerful tool for agencies tasked with enforcing laws that protect vulnerable non-citizen New Yorkers. This Protocol serves as a general guideline to ensure that all state agencies with the authority to endorse have adequate procedures for the receipt and timely processing of requests using USCIS Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Human Trafficking ("Form I-914B"). This Protocol addresses when this endorsement form must be provided by a New York State agency to an eligible applicant.

3. DEFINITIONS:

- a. **Labor Trafficking:** is "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."² A severe form of trafficking in persons includes labor trafficking.

¹ This protocol may be applied to T visas created by future amendments to relevant immigration statutes.

² 22 U.S.C. § 7102(9).

- b. Sex Trafficking** is “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”³ A severe form of trafficking in persons includes “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.”⁴
- c. Applicant:** For purposes of this Protocol, an applicant is an individual submitting a request for a T visa endorsement to an endorsing agency.⁵
- d. Endorsing Agency:** For the purposes of this Protocol, an appropriate “endorsing agency” includes state agencies responsible for the detection, investigation, prosecution, conviction, or sentencing of human trafficking, including the New York State Police, the New York State Department of Labor, and the New York State Division of Human Rights. It also includes local departments of social services (LDSS) responsible for investigating child and adult protective matters, supported by the guidance and technical assistance of the New York State Office of Children and Family Services (OCFS).⁶
- e. Endorsing Official:** Form I-914B requires the endorsement of the law enforcement officer and the officer’s supervisor. The endorsing agency may designate endorsing official(s) and supervisors. The endorsing agency can email a written delegation of authority, identifying the designated endorsing official(s) and supervisors to LawEnforcement_UTVAWA.VSC@uscis.dhs.gov for USCIS to keep on file. Certifying Officials should be identified by titles rather than specific individuals by name.

4. GENERAL REQUIREMENTS:

³ 22 U.S.C. § 7102(10).

⁴ *Id.*

⁵ In instances of severe forms of human trafficking, applicants and their authorized representatives have the discretion to request a U visa certification and/or T visa endorsement from the relevant agency. Upon meeting the individual requirements, the agency can decide to issue both a U visa certification and T visa endorsement.

⁶ “[A]gencies that may sign a declaration include any federal, *state*, or local law enforcement agency that has the authority for the investigation or prosecution of human trafficking.” USCIS, Information for Law Enforcement Officials – Immigration Relief for Victims of Human Trafficking and Other Crimes, (last visited Dec. 12, 2016) available at [http://www.uscis.gov/sites/default/files/USCIS/Resources/Humanitarian Based Benefits and Resources/TU_QAforLawEnforcement.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Humanitarian%20Based%20Benefits%20and%20Resources/TU_QAforLawEnforcement.pdf). The only State agencies currently engaging in the endorsement of T visas are the New York State Police, the New York State Department of Labor, and the New York State Division of Human Rights. OCFS does not sign T visa endorsements; however, OCFS can provide assistance to LDSS who have the authority to issue T visa endorsements, and has issued guidance to LDSS set forth in a Local Commissioners’ Memorandum. See https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016_State_of_the_State_Book.pdf.

A T visa applicant must submit evidence to USCIS that fully establishes, among other criteria, that the applicant has complied with any “reasonable request for assistance” in the detection, investigation, prosecution, conviction, or sentencing of human trafficking. While this evidence can be established by the applicant’s own statements of cooperation with law enforcement, USCIS gives great weight to the inclusion of Form I-914B, signed and completed by an appropriate endorsing agency or endorsing official.

To obtain an endorsement from an endorsing agency, an applicant must demonstrate to the endorsing agency that the applicant is a victim of a severe form of trafficking in persons, and that the applicant complied with any reasonable request from a law enforcement agency for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking.

5. CONFIDENTIALITY & NON-DISCLOSURE

- a. **Confidentiality during investigative process:** The contact information for applicants requesting the endorsement of Form I-914B will only be shared with authorized endorsing agencies and USCIS.
- b. **Except as required by state or federal law, or if authorized by the applicant or the applicant’s attorney or authorized representative, endorsing agencies and officials shall not disclose:**
 - i. The immigration status of an applicant;
 - ii. The existence of a request for endorsement of Form I-914B; or
 - iii. Other confidential or personal information.

6. PROCEDURE

- a. **Submitting the Request:**
 - i. **Timeliness of Submission:** The request for endorsement of Form I-914B, must be submitted at any time during, or within a reasonable time after the conclusion of the endorsing agency’s detection, investigation, prosecution, conviction, or sentencing of a severe form of trafficking in persons.⁷
 - ii. **Appropriate Endorsing Agency:** Applicants may only submit requests to the agency involved in the underlying case. Request may be submitted by contacting:
 1. **NY State Police:** *Kevin Gagan, Kevin.Gagan@troopers.ny.gov*
 2. **NY State Department of Labor:** *Estelle Davis, Estelle.Davis@labor.ny.gov*

⁷ The agency is required to specify a reasonable length of time that an investigation may conclude, in keeping with the customary operative practices within the agency.

3. **NY State Division of Human Rights:** *Dilia Travieso*, Dilia.Travieso@dhr.ny.gov
4. **Local Departments of Social Services (LDSS)** regulated by the New York State Office of Children and Family Services (OCFS). An alphabetical list of the fifty-eight LDSS Offices available throughout New York State can be found on the OCFS website, here: <http://ocfs.ny.gov/main/localdss.asp>. To reach the appropriate endorsing official, please contact your LDSS office.⁸

b. Eligibility for New York State Agency's Issuance of Form I-914B:

- i. **Jurisdiction:** To endorse, the endorsing agency must have jurisdiction to investigate an allegation of a violation of law under the agency's area of enforcement.
- ii. **Trafficking Victim:** The endorsing agency must have a reasonable basis to believe, based on credible and reliable evidence, including the applicant's self-testimony, that the applicant is a victim of a severe form of trafficking in persons as defined by the federal statute (which may include sex or labor trafficking); and
- iii. **Reasonable Assistance to the Endorsing Agency:** The applicant has complied with any reasonable request from the endorsing agency for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking. The determination of whether an endorsing agency's request to an applicant for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking is "reasonable" depends on the totality of the circumstances.⁹

Factors that USCIS will take into consideration include general law enforcement and prosecutorial practices; the nature of the victimization; and the applicant's specific circumstances, including fear, severe traumatization, and the age and maturity of young applicants.¹⁰ **Exception to "reasonable assistance" requirement may be made when the applicant is:**

⁸For technical assistance or clarification of the protocols outlined in the Local Commissioners' Memorandum provided by the New York State Office of Children and Family Services to Local District Commissioners regarding signing forms for non-immigrant clients applying for T visas, contact Sonia Meyer at OCFS, uandtvisa@ocfs.ny.gov. The Local Commissioners' Memorandum is available at:

https://ocfs.ny.gov/main/policies/external/ocfs_2018/LCM/18-OCFS-LCM-15.pdf

⁹Department of Homeland Security. U and T Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies (last visited Dec. 12, 2016) available at https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

¹⁰*Id.*

- a. Under 18 years old, or
- b. Unable to cooperate due to physical or psychological trauma.

c. Issuance of Completed Form I-914B:

If all the criteria listed in Section 6 are present, the endorsing agency shall prepare, sign, and issue Form I-914B to the applicant or the applicant's authorized representative for the applicant's submission to USCIS. The form should include information regarding how the applicant is a victim of a severe form of trafficking in persons, and that the applicant complied with any reasonable request for assistance in the detection, investigation, prosecution, conviction, or sentencing of human trafficking.

i. Required Information: In submitting a request for a T visa endorsement, the applicant should make every effort to include the claim or case number and the name of any agency staff involved in the claim or case, if known. The applicant should also provide as much information on Form I-914B as possible, including:

1. The applicant's personal information;
2. Details of the trafficking, including:
 - a. Any known dates,
 - b. Description of instance of trafficking being investigated and the applicant's knowledge of and involvement in the investigation, and
 - c. Description of any known or documented injuries to the applicant, including physical or mental abuse; and
3. The applicant's statement as to the applicant's helpfulness in the detection, investigation, prosecution, conviction, or sentencing of trafficking. The applicant may attach additional pages as necessary, including copies of any relevant reports or findings.

ii. Processing Time for Request

In order to provide timely endorsements for eligible applicants, endorsements should be processed and completed by endorsing agencies as soon as eligibility requirements listed in Section 6 are met. The endorsing official shall issue or deny an endorsement as soon as possible, but no later than 60 days from the date the request was received, absent exceptional circumstances.

Where the applicant or a qualifying family member is in removal proceedings or other exigent circumstances exist, the endorsement shall be processed within 14 days of receiving the request for endorsement. Where the endorsing agency cannot issue a decision within 14 days, the endorsing agency may

issue a letter indicating that the applicant has submitted an application for a T visa endorsement and that it is under review.

iii. Return Original Signed Request to the Applicant or the Applicant's Authorized Representative

An endorsing agency shall return the original signed Form I-914B to the applicant or the applicant's authorized representative. The endorsing agency will not send the signed endorsement separately to USCIS. The applicant will send the original signed endorsement together with the applicant's T visa application to USCIS. For verification purposes by USCIS, the signature must be in blue ink.

7. ADDITIONAL CONSIDERATIONS

- a. New York State agencies enforce state laws regardless of the immigration status of any individuals involved. Agency staff will not question applicants, claimants, victims, or witnesses about their immigration status, unless it is to discuss the possibility for a T visa endorsement.¹¹ Staff will not discuss the possibility of T visa endorsements with applicants until after receiving authorization to do so from a supervisor, who would have by then discussed the matter with the appropriate endorsing official.
- b. Endorsing agencies shall explain to the applicant that the agency does not make referrals to USCIS or United States Immigration and Customs Enforcement ("ICE"). Under no circumstances will staff at an endorsing agency give legal advice to any applicants.
- c. The role of an endorsing agency in the T visa endorsement process is to attest that the applicant is a victim of a severe form of trafficking in persons and the reasonable compliance of the applicant in an agency investigation. It is not to determine or assess the applicant's eligibility for a T visa, or whether the applicant has suffered sufficient harm to merit a T visa. USCIS has the sole authority to make a determination on whether to approve the T visa application.
- d. If the applicant unreasonably refuses to comply with a request for assistance in the detection, investigation, prosecution, conviction, or sentencing of trafficking in persons, of which the applicant is a victim, even after the endorsement has been submitted to USCIS, the endorsing agency, at its discretion, may notify USCIS by

¹¹ Staff can ask individuals identified as potentially eligible for an endorsement whether they would be interested in information about *potential* visas for individuals in their circumstances. It is critical that potentially eligible applicants not be told they are eligible for a visa, since that determination is made by USCIS, or given any information that may influence their statements.

email at the Vermont Service Center:
LawEnforcement_UTVAWA.vsc@uscis.dhs.gov.

- e. All applicants should be offered the opportunity to be referred to appropriate criminal law enforcement agencies. It should be clear that the endorsement is not contingent upon their agreement to be referred to criminal law enforcement agencies.

8. LANGUAGE ACCESS

Executive State agencies are required to obtain interpretation or translation services for interactions with all applicants who have limited English language proficiency. Interactions include, but are not limited to, intake sessions and interviews. The use of interpreters and translation services are considered vital to the proper processing and execution of a T visa endorsement and these services are required by Governor Cuomo's Executive Order No. 26.

9. RECONSIDERATIONS

A denial shall not preclude an applicant from reapplying at a later time if new evidence or new arguments become available. Agencies shall provide an applicant with instructions for reapplying after receiving a denial of a request for a T visa endorsement.

10. STATEWIDE VISA COORDINATOR

The Statewide U & T Visa Coordinator ("Statewide Visa Coordinator") shall be available to endorsing agencies for the implementation of this Protocol, including providing guidance and assistance on the endorsement process and helping to resolve programmatic issues.

Applicants may contact the Statewide Visa Coordinator with questions or concerns about the T visa endorsement process for their specific matter. The Statewide Coordinator can assist the endorsing agency with outstanding issues or questions to reach a proper resolution.

The Statewide Visa Coordinator may be reached by emailing: penny.zhu@dos.ny.gov

11. AGENCY PROTOCOL & STAFF TRAINING

- a. **Protocol:** Agencies shall develop any additional internal guidelines, as needed, to accomplish the intent and objective of this Protocol. At a minimum, any additional guidance shall define staff responsibilities, agency-specific definitions, and important considerations for endorsing staff or officers when deciding whether to issue an endorsement.
- b. **Endorsing Official Training:** Endorsing agencies shall ensure that agency staff designated to issue endorsements have a sufficient understanding of the T visa endorsement requirements, and how to process requests in a timely manner. At a minimum, training should include:
 - i. Protocols for identifying potential applicants;

