

PART 1100—TRAFFICKING IN PERSONS

Subpart A [Reserved]

Subpart B—Victims of Severe Forms of Trafficking in Persons

Sec.

1100.25 Definitions.

1100.27 Purpose and scope.

1100.29 The roles and responsibilities of federal law enforcement, immigration, and Department of State officials under the Trafficking Victims Protection Act (TVPA).

1100.31 Procedures for protecting and providing services to victims of severe forms of trafficking in persons in federal custody.

1100.33 Access to information and translation services for victims of severe forms of trafficking in persons.

1100.35 Authority to permit continued presence in the United States for victims of severe forms of trafficking in persons.

1100.37 Requirements to train appropriate personnel in identifying and protecting victims of severe forms of trafficking in persons.

AUTHORITY: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1104, 1252; 22 U.S.C. 7101, 7105; 42 U.S.C. 10606 and 10607; and section 107(c) of Public Law 106-386 (114 Stat. 1464, 1477).

SOURCE: 66 FR 38518, July 24, 2001, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Victims of Severe Forms of Trafficking in Persons

§ 1100.25 Definitions.

In this subpart, the following definitions apply:

Admission and *Admitted* mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer (8 U.S.C. 1101).

Alien means any person not a citizen or national of the United States (8 U.S.C. 1101).

Attorney General Guidelines means the *Attorney General Guidelines for Victim and Witness Assistance 2000*, which contain a policy guidance on how to treat crime victims and witnesses; these guidelines are available through the Internet on the Department of Justice's website.

Coercion means threats of serious harm to or physical restraint against any person; or 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 law or the legal process (22 U.S.C. 7102).

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

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).

Family members of victims of severe forms of trafficking in persons means spouses, children, parents, or siblings whom traffickers have targeted or are likely to target and for whom protections from harm may reasonably be provided. At the discretion of the responsible official, this classification may be extended to include other family members. This definition is only applicable to the protections from harm referred to in this subpart.

Federal custody means that statutory detention and custodial authority exercised by personnel of federal agencies, bureaus, boards, divisions, programs, and offices.

Federal victims' rights legislation means the following statutes, as amended: the Victim and Witness Protection Act of 1982 (VWPA), Public Law 97-291, 96 Stat. 1248; the Victims of Crime Act of 1984, Public Law 98-473, 98 Stat. 2170; the Victims Rights and Restitution Act of 1990, Public Law 101-647, 104 Stat. 4820; the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796; the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, 110 Stat. 1214; the Victim Rights Clarification Act of 1997, Public Law 105-6, 111 Stat. 12; and the Victims of Trafficking and Violence Protection Act of

§ 1100.27

28 CFR Ch. XI (7–1–22 Edition)

2000 (VTVPA), Public Law 106–386, 114 Stat. 1464.

INA means the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*

Involuntary servitude includes 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 (22 U.S.C. 7102).

Responsible official refers to the agency official designated to provide the services described in 42 U.S.C. 10607(a).

Section 107(c) means section 107(c) of TVPA, Division A of Public Law 106–386.

Services to victims refer to those services to be provided pursuant to 42 U.S.C. 10607(c), unless otherwise specified in the TVPA or this subpart.

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).

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).

TVPA means the Trafficking Victims Protection Act of 2000, Public Law 106–386, Division A, October 28, 2000, 114 Stat. 1464, as amended, 22 U.S.C. 7105, *et seq.*

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States (22 U.S.C. 7102).

Victims' rights refer to crime victims' rights under 42 U.S.C. 10606(b), as well as in other federal victims' rights legislation.

§ 1100.27 Purpose and scope.

(a) Under section 107(c) of the TVPA, both the Department of Justice (DOJ) and the Department of State (DOS) have been directed to promulgate regulations to implement the following:

(1) Procedures for appropriate federal employees to ensure, to the extent practicable, that victims of severe forms of trafficking in persons are housed in a manner appropriate to their status as crime victims, afforded proper medical care and other assistance, and protected while in federal custody, in accordance with their status as victims of severe forms of trafficking in persons;

(2) Procedures to provide victims of severe forms of trafficking in persons with access to information about their rights and with translation services;

(3) Procedures for federal law enforcement officials to request that certain victims of severe forms of trafficking in persons, who are aliens and are also potential witnesses, be permitted to remain in the United States to effectuate the prosecution of those responsible, and procedures to protect their safety, including taking measures to protect victims of severe forms of trafficking in persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates (these procedures should be appropriate to their status as victims of severe forms of trafficking in persons); and

(4) Training of appropriate DOJ and DOS personnel in identifying victims of severe forms of trafficking in persons, in understanding the particular needs common to victims of severe forms of trafficking in persons, and in providing for the protection of such victims.

(b) The regulations in this subpart apply to all federal law enforcement personnel, immigration officials and DOS officials, insofar as their duties involve investigating or prosecuting traffickers in persons, or may involve identifying, encountering or detaining victims of severe forms of trafficking in persons.

(c) The rights and protections made available to victims of severe forms of trafficking in persons under section

107(c) supplement those rights and protections provided to victims and witnesses in federal victims' rights legislation as defined in this subpart. The intent of this subpart is to ensure that the protections available under the provisions of federal victims' rights legislation as well as the TVPA are fully provided to victims of severe forms of trafficking in persons, in keeping with their status as victims of severe forms of trafficking in persons. This subpart will ensure that these victims are identified as early as possible in the investigation and prosecution process, so that services and protections available to them under the laws of the United States are provided.

(d) The regulations under this subpart set forth the general procedures to ensure these rights are protected in cases involving victims of severe forms of trafficking in persons. All agencies, bureaus, boards, divisions, programs, and offices in the DOJ and the DOS with specific responsibilities under this subpart shall adopt such regulations and/or operating procedures as may be necessary to ensure compliance with section 107(c) and the requirements of this subpart.

§ 1100.29 The roles and responsibilities of federal law enforcement, immigration, and Department of State officials under the Trafficking Victims Protection Act (TVPA).

(a) *Department of Justice officials.* The various agencies, bureaus, boards, divisions, programs, and offices of the DOJ have most of the responsibilities assigned by section 107(c). The goals of section 107(c) are to identify victims of severe forms of trafficking in persons as early as possible in the investigation and prosecution process, to ensure efforts are made to see that such victims are accorded the rights described in 42 U.S.C. 10606, and to provide the protections and services required under 42 U.S.C. 10607 and under the TVPA.

(b) *Department of State officials.* Department of State missions throughout the world are often the initial contact for aliens in foreign countries who wish to come to the United States. Appropriate DOS personnel should be trained in identifying victims of severe forms of trafficking in persons. Furthermore, considering the international nature of

trafficking in persons, appropriate DOS personnel, upon encountering victims of severe forms of trafficking in persons in foreign countries, should consider referrals to local law enforcement or service providers in the host country, but only if the local host country conditions support such actions.

(c) *Federal law enforcement officials.* Federal law enforcement officials who, during the performance of their duties, encounter a person whom they believe may be a victim of a severe form of trafficking in persons as defined by this subpart, are responsible for bringing such an individual to the attention of those federal law enforcement officials primarily responsible for enforcing trafficking laws, specifically INS or FBI. In addition, DOS's Diplomatic Security Service has investigative authority in visa and passport fraud cases that may involve trafficking in persons. Federal law enforcement officials also include federal law enforcement personnel working cooperatively with law enforcement officials who have primary investigative jurisdiction in such trafficking cases. Each federal agency having law enforcement responsibilities should ensure that its officers are trained in identifying victims of severe forms of trafficking in persons, and are familiar with the rights, services, and protections such victims are to be accorded under the TVPA and 42 U.S.C. 10606 and 10607.

§ 1100.31 Procedures for protecting and providing services to victims of severe forms of trafficking in persons in federal custody.

(a) While in federal custody, all victims of severe forms of trafficking in persons must be provided, to the extent practicable, the protections and services outlined in this section in accordance with their status as victims of severe forms of trafficking in persons. Under 42 U.S.C. 10607(a), each agency must designate officials who are responsible for identifying victims of crime and providing services to them. The designations appear in the *Attorney General Guidelines*. This responsibility also extends to those who are responsible for victims of severe forms of trafficking in persons while they are in federal custody.

§ 1100.33

28 CFR Ch. XI (7–1–22 Edition)

(b) To the extent practicable and allowed by law, alternatives to formal detention of victims of severe forms of trafficking in persons should be considered in every case. However, if detention is required, victims of severe forms of trafficking in persons in federal custody, to the extent practicable, shall not be detained in facilities inappropriate to their status as crime victims. The responsible official shall make all efforts, where appropriate and practicable, to house those victims separately from those areas in which criminals are detained. The responsible official must also provide protections and security to those victims as required by federal standards, policies, and procedures. Information on the federal prohibitions against intimidation and harassment, and the remedies available for such actions should routinely be made available to victims.

(c) Victims of severe forms of trafficking in persons in federal custody shall receive necessary medical care and other assistance. This care should include free optional testing for HIV and other sexually transmitted diseases in cases involving sexual assault or trafficking into the sex industry, as well as a counseling session by a medically-trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim. Other forms of mental health counseling or social services also may be appropriate to address the trauma associated with trafficking in persons.

(d) As mandated by 42 U.S.C. 10607, federal officials are responsible for arranging for victims to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender. Federal law enforcement agencies also should protect victims of a severe form of trafficking in persons from harm and intimidation pursuant to section 6 of the Victim and Witness Protection Act of 1982 and 18 U.S.C. 1512 note. It may also be appropriate to discuss with the victims the available remedies described in 18 U.S.C. 1512 and 1513. Federal officials also should employ civil procedures for protecting victims and witnesses, including application for temporary restraining orders

and protective orders, as set out in 18 U.S.C. 1514, if practicable. If the victim's safety is at risk or if there is danger of the victim's recapture by the trafficker, the responsible official should take the following steps under the TVPA:

(1) Use available practical and legal measures to protect the trafficked victim and family members from intimidation, harm, and threats of harm; and

(2) Ensure that the names and identifying information pertaining to trafficked victims and family members are not disclosed to the public.

§ 1100.33 Access to information and translation services for victims of severe forms of trafficking in persons.

(a) All federal investigative, prosecutorial, and correctional agencies engaged in the detection, investigation, or prosecution of crime shall use their best efforts to see that victims of severe forms of trafficking in persons are accorded all rights under federal victims' rights legislation. In cases involving severe forms of trafficking in persons, federal officials should provide victims within the United States, as defined by this subpart, information about their rights and applicable services, including:

(1) Pro bono and low-cost legal services, including immigration services;

(2) Federal and state benefits and services (victims who are minors and adult victims who are certified by the United States Department of Health and Human Services (HHS) are eligible for assistance that is administered or funded by federal agencies to the same extent as refugees; others may be eligible for certain, more limited, benefits);

(3) Victim service organizations, including domestic violence and rape crisis centers;

(4) Protections available, especially against threats and intimidation, and the remedies available as appropriate for the particular individual's circumstances;

(5) Rights of individual privacy and confidentiality issues;

(6) Victim compensation and assistance programs;

(7) Immigration benefits or programs that may be relevant to victims of severe forms of trafficking in persons, including those available under the VTVPA;

(8) The right to restitution;

(9) The right to notification of case status; and

(10) The availability of medical services.

(b) The federal agencies as defined in paragraph (a) of this section must ensure reasonable access to translation services and/or oral interpreter services in the event the victim is not able to communicate in English.

§ 1100.35 Authority to permit continued presence in the United States for victims of severe forms of trafficking in persons.

(a) Federal law enforcement officials who encounter alien victims of severe forms of trafficking in persons who are potential witnesses to that trafficking may request that the Immigration and Naturalization Service (INS) grant the continued presence of such aliens in the United States. All law enforcement requests for continued presence must be submitted to the INS, Headquarters Office of Field Operations, in accordance with INS procedures. Each federal law enforcement agency will designate a headquarters office to administer submissions and coordinate with the INS on all requests for continued presence. The designated headquarters office will be responsible for meeting all reporting requirements contained in INS procedures for the processing and administering of the requests for continued presence in the United States of eligible aliens.

(b) Upon receiving a request, the INS will determine the victim's immigration status. When applicable and appropriate, the INS may then use a variety of statutory and administrative mechanisms to ensure the alien's continued presence in the United States. The specific mechanism used will depend on the alien's current status under the immigration laws and other relevant facts. These mechanisms may include parole, voluntary departure, stay of final order, section 107(c)(3)-based deferred action, or any other authorized

form of continued presence, including applicable nonimmigrant visas.

(1) The alien's continued presence in the United States under this subpart does not convey any immigration status or benefit apart from that already encompassed by the particular form of authorized continued presence granted. In most circumstances, victims granted continued presence will be eligible for temporary employment authorization.

(2) The continued presence granted through any of the mechanisms described in this paragraph (b) will contain the terms normally associated with the particular type of authorized continued presence granted, including, but not limited to, duration of benefit, terms and procedures for receiving an extension, travel limitations, and employment authorization unless expressly waived in an individual approval. Aliens granted deferred action based upon section 107(c)(3) are considered to be present in the United States pursuant to a period of stay authorized by the Attorney General for purposes of INA sections 212(a)(9)(B)(I) and (C).

(c)(1) In cases where it is determined that the granting to an alien of continued presence in the United States poses a threat to national security or to the safety and welfare of the public, the INS may require the requesting agency to meet special conditions or requirements prior to approval. The INS will promptly convey any such condition or requirement to the requesting agency in writing. Upon agreement by the requesting agency to comply with the conditions and accept the costs associated with the implementation of those conditions, the INS will grant the continued presence of the alien in the United States.

(2) Although the INS and the requesting law enforcement agency will make every effort to reach a satisfactory agreement for the granting of continued presence, the INS may deny a request for continued presence in the following instances:

(i) Failure, on the part of the requesting agency, to provide necessary documentation or to adhere to established INS procedures;

(ii) Refusal to agree or comply with conditions or requirements instituted

§ 1100.37

28 CFR Ch. XI (7–1–22 Edition)

in accordance with paragraph (c)(1) of this section;

(iii) Failure, on the part of the requesting agency, to comply with past supervision or reporting requirements established as a condition of continued presence; or

(iv) When the INS determines that granting continued presence for the particular alien would create a significant risk to national security or public safety and that the risk cannot be eliminated or acceptably minimized by the establishment of agreeable conditions.

(3) In the case of a denial, the INS shall promptly notify the designated office within the requesting agency. The INS and the requesting agency will take all available steps to reach an acceptable resolution. In the event such resolution is not possible, the INS shall promptly forward the matter to the Deputy Attorney General, or his designee, for resolution.

(d) In addition to meeting any conditions placed upon the granting of continued presence in accordance with paragraph (c) of this section, the responsible official at the law enforcement agency requesting the victim's continued presence in the United States as described in paragraph (a) of this section shall arrange for reasonable protection to any alien allowed to remain in the United States by the INS. This protection shall be in accordance with 42 U.S.C. 10606 and shall include taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates in accordance with section 107(c)(3). Such protection shall take into account their status as victims of severe forms of trafficking in persons.

§ 1100.37 Requirements to train appropriate personnel in identifying and protecting victims of severe forms of trafficking in persons.

(a) The TVPA requires that appropriate DOJ and DOS personnel be trained in identifying victims of severe forms of trafficking in persons and providing for the protection of such victims. These federal personnel will be trained to recognize victims and pro-

vide services and protections, as appropriate, in accordance with the TVPA, 42 U.S.C. 10606 and 10607, and other applicable victim-assistance laws. Specifically, the training will include, as applicable:

(1) Procedures and techniques for identifying victims of severe forms of trafficking in persons;

(2) Rights of crime victims, including confidentiality requirements;

(3) Description of the services available to victims of severe forms of trafficking in persons at the investigation, prosecution, and, where applicable, correction stages of the law enforcement process;

(4) Referral services to be provided to victims of severe forms of trafficking in persons;

(5) Benefits and services available to alien victims of severe forms of trafficking in persons regardless of their immigration status;

(6) Particular needs of victims of severe forms of trafficking in persons;

(7) Procedures and techniques for dealing with specialized needs of victims who may face cultural, language, and/or other obstacles that impede their ability to request and obtain available services for themselves; and

(8) Protection obligations of responsible officials under federal law and policies, as these apply to victims of severe forms of trafficking in persons.

(b) Each component of the DOJ and the DOS with program responsibility for victim witness services must provide initial training in the particular needs of victims of severe forms of trafficking in persons, and appropriate federal agencies' responses to such victims; initial training of appropriate agency personnel should be conducted as soon as possible. Thereafter, training must be held on a recurring basis to ensure that victims of severe forms of trafficking in persons receive the rights, protections, and services accorded them under the TVPA and federal victims' rights laws, and the federal policies, procedures, and guidelines implementing the TVPA and other federal victims' rights laws.

PARTS 1101–1199 [RESERVED]