

tive agreement, without penalty, if the grantee or any subgrantee, or the contractor or any subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, contract, or cooperative agreement.

(2) Assistance described

Funds referred to in paragraph (1) are funds made available to carry out any program, project, or activity abroad funded under major functional budget category 150 (relating to international affairs).

(Pub. L. 106–386, div. A, § 106, Oct. 28, 2000, 114 Stat. 1474; Pub. L. 108–193, § 3, Dec. 19, 2003, 117 Stat. 2875.)

AMENDMENTS

2003—Subsecs. (c) to (f). Pub. L. 108–193, § 3(a), added subsecs. (c) to (e), redesignated former subsec. (c) as (f), and in subsec. (f) substituted “initiatives and programs described in subsections (a) through (e)” for “initiatives described in subsections (a) and (b)”.

Subsec. (g). Pub. L. 108–193, § 3(b), added subsec. (g).

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 5 of Ex. Ord. No. 13257, Feb. 13, 2002, 67 F.R. 7259, as amended, set out as a note under section 7103 of this title.

§ 7105. Protection and assistance for victims of trafficking

(a) Assistance for victims in other countries

(1) In general

The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children, as identified by the Task Force. In addition, such programs and initiatives shall, to the maximum extent practicable, include the following:

(A) Support for local in-country nongovernmental organization-operated hotlines, culturally and linguistically appropriate protective shelters, and regional and international nongovernmental organization networks and databases on trafficking, including support to assist nongovernmental organizations in establishing service centers and systems that are mobile and extend beyond large cities.

(B) Support for nongovernmental organizations and advocates to provide legal, social, and other services and assistance to trafficked individuals, particularly those individuals in detention, and by facilitating contact between relevant foreign government agencies and such nongovernmental organizations to facilitate cooperation between the foreign governments and such organizations.

(C) Education and training for trafficked women and girls.

(D) The safe integration or reintegration of trafficked individuals into an appropriate community or family, with full respect for the wishes, dignity, and safety of the trafficked individual.

(E) Support for developing or increasing programs to assist families of victims in locating, repatriating, and treating their trafficked family members, in assisting the voluntary repatriation of these family members or their integration or resettlement into appropriate communities, and in providing them with treatment.

(2) Additional requirement

In establishing and conducting programs and initiatives described in paragraph (1), the Secretary of State and the Administrator of the United States Agency for International Development shall take all appropriate steps to enhance cooperative efforts among foreign countries, including countries of origin of victims of trafficking, to assist in the integration, reintegration, or resettlement, as appropriate, of victims of trafficking, including stateless victims.

(b) Victims in the United States

(1) Assistance

(A) Eligibility for benefits and services

Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a non-immigrant under section 1101(a)(15)(T)(ii) of title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of title 8.

(B) Requirement to expand benefits and services

Subject to subparagraph (C) and, in the case of nonentitlement programs, to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, and aliens classified as a non-immigrant under section 1101(a)(15)(T)(ii) of title 8, without regard to the immigration status of such victims. In the case of nonentitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.

(C) Definition of victim of a severe form of trafficking in persons

For the purposes of this paragraph, the term “victim of a severe form of trafficking in persons” means only a person—

(i) who has been subjected to an act or practice described in section 7102(8) of this title as in effect on October 28, 2000; and

(ii)(I) who has not attained 18 years of age; or

(II) who is the subject of a certification under subparagraph (E).

(D) Repealed. Pub. L. 108–193, § 6(a)(2), Dec. 19, 2003, 117 Stat. 2880

(E) Certification

(i) In general

Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Attorney General, that the person referred to in subparagraph (C)(ii)(II)—

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and

(II)(aa) has made a bona fide application for a visa under section 1101(a)(15)(T) of title 8, as added by subsection (e) of this section, that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons.

(ii) Period of effectiveness

A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Attorney General determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.

(iii) Investigation and prosecution defined

For the purpose of a certification under this subparagraph, the term “investigation and prosecution” includes—

(I) identification of a person or persons who have committed severe forms of trafficking in persons;

(II) location and apprehension of such persons; and

(III) testimony at proceedings against such persons.

(iv) Assistance to investigations

In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such

as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.

(2) Grants

(A) In general

Subject to the availability of appropriations, the Attorney General may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims’ service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.

(B) Allocation of grant funds

Of amounts made available for grants under this paragraph, there shall be set aside—

(i) three percent for research, evaluation, and statistics;

(ii) two percent for training and technical assistance; and

(iii) one percent for management and administration.

(C) Limitation on Federal share

The Federal share of a grant made under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted.

(c) Trafficking victim regulations

Not later than 180 days after October 28, 2000, the Attorney General and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) Protections while in custody

Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall—

(A) not be detained in facilities inappropriate to their status as crime victims;

(B) receive necessary medical care and other assistance; and

(C) be provided protection if a victim’s safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including—

(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and

(ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

(2) Access to information

Victims of severe forms of trafficking shall have access to information about their rights and translation services.

(3) Authority to permit continued presence in the United States

Federal law enforcement officials may permit an alien individual’s continued presence in the United States, if after an assessment, it is determined that such individual is a victim of

a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible, and such officials in investigating and prosecuting traffickers shall protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

(4) Training of Government personnel

Appropriate personnel of the Department of State and the Department of Justice shall be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims.

(d) Construction

Nothing in subsection (c) of this section shall be construed as creating any private cause of action against the United States or its officers or employees.

(e) Protection from removal for certain crime victims

(1)–(4) Omitted

(5) Statutory construction

Nothing in this section, or in the amendments made by this section, shall be construed as prohibiting the Attorney General from instituting removal proceedings under section 1229a of title 8 against an alien admitted as a nonimmigrant under section 1101(a)(15)(T)(i) of title 8, as added by subsection (e) of this section, for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under such section 1101(a)(15)(T)(i) of title 8.

(f) Omitted

(g) Annual reports

On or before October 31 of each year, the Attorney General shall submit a report to the appropriate congressional committees setting forth, with respect to the preceding fiscal year, the number, if any, of otherwise eligible applicants who did not receive visas under section 1101(a)(15)(T) of title 8, as added by subsection (e) of this section, or who were unable to adjust their status under section 1255(l) of title 8, solely on account of the unavailability of visas due to a limitation imposed by section 1184(o)(2) or 1255(l)(4)(A) of title 8.

(Pub. L. 106–386, div. A, §107, Oct. 28, 2000, 114 Stat. 1474; Pub. L. 107–228, div. A, title VI, §682(a), Sept. 30, 2002, 116 Stat. 1409; Pub. L. 108–193, §§4(a)(1)–(3), 6(a)(2), 8(b)(2), Dec. 19, 2003, 117 Stat. 2877, 2880, 2887.)

REFERENCES IN TEXT

Section 1101(a)(15)(T)(ii) of title 8, referred to in subsec. (b)(1)(A), (B), was in the original “section 101(a)(15)(T)(ii)”, and was translated as meaning section 101(a)(15)(T)(ii) of the Immigration and Nationality Act, act June 27, 1952, ch. 477, which is classified to section 1101(a)(15)(T)(ii) of title 8, to reflect the probable intent of Congress. Section 101 of Pub. L. 106–386 does not contain a subsec. (a)(15)(T)(ii), and section

101(a)(15)(T)(ii) of the Immigration and Nationality Act describes certain nonimmigrant aliens.

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (b)(1)(A), is title IV (§400 et seq.) of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, as amended. For complete classification of title IV to the Code, see Tables.

For the amendments made by this section, referred to in subsec. (e)(5), see Codification note below.

CODIFICATION

Section is comprised of section 107 of Pub. L. 106–386. Subsec. (e)(1)–(4) of section 107 of Pub. L. 106–386 amended sections 1101, 1182, and 1184 of Title 8, Aliens and Nationality, and subsec. (f) of section 107 of Pub. L. 106–386 amended section 1255 of Title 8.

AMENDMENTS

2003—Subsec. (a)(1)(B). Pub. L. 108–193, §4(a)(1), inserted before period at end “”, and by facilitating contact between relevant foreign government agencies and such nongovernmental organizations to facilitate cooperation between the foreign governments and such organizations”.

Subsec. (b)(1)(A). Pub. L. 108–193, §4(a)(2)(A), inserted “”, or an alien classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8,” after “in persons”.

Subsec. (b)(1)(B). Pub. L. 108–193, §4(a)(2)(B), inserted “and aliens classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8,” after “United States,” and inserted sentence at end relating to nonentitlement programs funded by the Secretary of Health and Human Services.

Subsec. (b)(1)(D). Pub. L. 108–193, §6(a)(2), struck out subpar. (D) which related to annual reports on the number of persons receiving benefits or services under paragraph (1).

Subsec. (b)(1)(E)(iv). Pub. L. 108–193, §4(a)(3), added cl. (iv).

Subsec. (g). Pub. L. 108–193, §8(b)(2), substituted “1184(o)(2)” for “1184(n)(1)”.

2002—Subsec. (a)(1). Pub. L. 107–228 inserted “In addition, such programs and initiatives shall, to the maximum extent practicable, include the following:” at end of introductory provisions and added subpars. (A) to (E).

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 7106. Minimum standards for the elimination of trafficking

(a) Minimum standards

For purposes of this chapter, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the