Public Law 104–193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 638. 639.

(b) *Where do these rules regarding habitual residence apply?* The rules in this section apply to habitual residents living in a territory or possession of the United States to which the Act applies. Those territories and possessions are at present Guam, the Commonwealth of Puerto Rico, the American Virgin Islands, and the Commonwealth of the Northern Mariana Islands. These rules do not apply to habitual residents living in American Samoa as long as the Act does not extend to it. These rules are not applicable to habitual residents living in the fifty States or the District of Columbia.

(c) *When is an arriving FAS citizen presumed to be a habitual resident?* (1) An arriving FAS citizen will be subject to the rebuttable presumption that he or she is a habitual resident if the Service has reason to believe that the arriving FAS citizen was previously admitted to the territory or possession more than one year ago; and

(2) That the arriving FAS citizen either;

(i) Failed to turn in his or her Form I–94 (see § 1.4) when he or she previously departed from the United States; or

(ii) Failed to apply for a replacement Form I–94.

(d) *What rights do habitual residents have?* Habitual residents have the right to enter, reside, study, and work in the United States, its territories or possessions, in nonimmigrant status without regard to the requirements of sections 212(a)(5)(A) and 212(a)(7)(A) and (B) of the Act.

(e) *What are the limitations on the rights of habitual residents?* (1) A habitual resident who is not a dependent is subject to removal if he or she:

(i) Is not and has not been self-supporting for a period exceeding 60 consecutive days for reasons other than a lawful strike or other labor dispute involving work stoppage; or

(ii) Has received unauthorized public benefits by fraud or willful misrepresentation; or

(iii) Is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

(2) Any dependent is removable from a territory or possession of the United States if:

(i) The principal habitual resident who financially supports him or her and with whom he or she resides, becomes subject to removal unless the dependent establishes that he or she has become a dependent of another habitual resident or becomes self-supporting; or

(ii) The dependent, as an individual, receives unauthorized public benefits by fraud or willful misrepresentation; or

(iii) The dependent, as an individual, is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

[65 FR 56465, Sept. 19, 2000, as amended at 74 FR 55738, Oct. 28, 2009; 78 FR 18472, Mar. 27, 2013]

§§ 214.8–214.10 [Reserved]

§ 214.11 Alien victims of severe forms of trafficking in persons.

(a) *Definitions.* Where applicable, USCIS will apply the definitions provided in section 103 and 107(e) of the Trafficking Victims Protection Act (TVPA) with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of 18 U.S.C. 77. As used in this section the term:

Application for derivative T nonimmigrant status means a request by a principal alien on behalf of an eligible family member for derivative T–2, T–3, T–4, T–5, or T–6 nonimmigrant status on the form designated by USCIS for that purpose.

Application for T nonimmigrant status means a request by a principal alien for T–1 nonimmigrant status on the form designated by USCIS for that purpose.

Bona fide determination means a USCIS determination that an application for T–1 nonimmigrant status has been initially reviewed and determined that the application does not appear to be fraudulent, is complete and properly filed, includes completed fingerprint and background checks, and presents prima facie evidence of eligibility for T–1 nonimmigrant status including admissibility.

Child means a person described in section 101(b)(1) of the Act.

Coercion means threats of serious harm to or physical restraint against any person; 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 the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

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.

Derivative T nonimmigrant means an eligible family member who has been granted T–2, T–3, T–4, T–5, or T–6 derivative status. A family member outside of the United States is not a derivative T nonimmigrant until he or she is granted a T–2, T–3, T–4, T–5, or T–6 visa by the Department of State and is admitted to the United States in derivative T nonimmigrant status.

Eligible family member means a family member who may be eligible for derivative T nonimmigrant status based on his or her relationship to an alien victim and, if required, upon a showing of a present danger or retaliation; and:

(1) In the case of an alien victim who is 21 years of age or older, means the spouse and children of such alien;

(2) In the case of an alien victim under 21 years of age, means the spouse, children, unmarried siblings under 18 years of age, and parents of such alien; and

(3) Regardless of the age of an alien victim, means any parent or unmarried sibling under 18 years of age, or adult or minor child of a derivative of such alien where the family member faces a present danger of retaliation as a result of the alien victim's escape from a severe form of trafficking or cooperation with law enforcement.

Involuntary servitude means 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 a condition of servitude induced by the abuse or threatened abuse of legal process. Involuntary servitude includes a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through the law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.

Law Enforcement Agency (LEA) means a Federal, State, or local law enforcement agency, prosecutor, judge, labor agency, children's protective services agency, or other authority that has the responsibility and authority for the detection, investigation, and/or prosecution of severe forms of trafficking in persons. Federal LEAs include but are not limited to the following: U.S. Attorneys' Offices, Civil Rights Division, Criminal Division, U.S. Marshals Service, Federal Bureau of Investigation (Department of Justice); U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP); Diplomatic Security Service (Department of State); and Department of Labor.

Law Enforcement Agency (LEA) endorsement means an official LEA endorsement on the form designated by USCIS for such purpose.

Peonage means a status or condition of involuntary servitude based upon real or alleged indebtedness.

Principal T nonimmigrant means the victim of a severe form of trafficking in persons who has been granted T–1 nonimmigrant status.

Reasonable request for assistance means a request made by an LEA to a victim to assist in the investigation or prosecution of the acts of trafficking in persons or the investigation of crime where acts of trafficking are at least one central reason for the commission

of that crime. The ''reasonableness'' of the request depends on the totality of the circumstances. Factors to consider include, but are not limited to: General law enforcement and prosecutorial practices; the nature of the victimization; the specific circumstances of the victim; severe trauma (both mental and physical); access to support services; whether the request would cause further trauma: The safety of the victim or the victim's family; compliance with other requests and the extent of such compliance; whether the request would yield essential information; whether the information could be obtained without the victim's compliance; whether an interpreter or attorney was present to help the victim understand the request; cultural, religious, or moral objections to the request; the time the victim had to comply with the request; and the age and maturity of the victim.

Severe form 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 is under the age of 18 years; 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.

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

Victim of a severe form of trafficking in persons (victim) means an alien who is or has been subject to a severe form of trafficking in persons.

(b) *Eligibility for T–1 status.* An alien is eligible for T–1 nonimmigrant status under section 101(a)(15)(T)(i) of the Act if he or she demonstrates all of the following, subject to section 214(o) of the Act:

(1) *Victim.* The alien is or has been a victim of a severe form of trafficking in persons.

(2) *Physical presence.* The alien is physically present in the United States or at a port-of-entry thereto, according to paragraph (g) of this section.

(3) *Compliance with any reasonable request for assistance.* The alien has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, or meets one of the conditions described below.

(i) *Exemption for minor victims.* An alien under 18 years of age is not required to comply with any reasonable request.

(ii) *Exception for trauma.* An alien who, due to physical or psychological trauma, is unable to cooperate with a reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, is not required to comply with such reasonable request.

(4) *Hardship.* The alien would suffer extreme hardship involving unusual and severe harm upon removal.

(5) *Prohibition against traffickers in persons.* No alien will be eligible to receive T nonimmigrant status under section 101(a)(15)(T) of the Act if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons.

(c) *Period of admission*—(1) *T–1 Principal.* T–1 nonimmigrant status may be approved for a period not to exceed 4 years, except as provided in section 214(o)(7) of the Act.

(2) *Derivative family members.* A derivative family member who is otherwise eligible for admission may be granted T–2, T–3, T–4, T–5, or T–6 nonimmigrant status for an initial period that does not exceed the expiration date of the initial period approved for the T–1 principal alien, except as provided in section 214(o)(7) of the Act.

(3) *Notice.* At the time an alien is approved for T nonimmigrant status or receives an extension of T nonimmigrant status, USCIS will notify the alien when his or her T nonimmigrant status will expire. USCIS also will notify the alien that the failure to apply for adjustment of status to lawful permanent resident, as set forth in 8 CFR 245.23, will result in termination of the alien's T nonimmigrant status in the United States at the end of the 4-year period or any extension.

(d) *Application.* USCIS has sole jurisdiction over all applications for T nonimmigrant status.

(1) *Filing an application.* An alien seeking T–1 nonimmigrant status must submit an application for T nonimmigrant status on the form designated by USCIS in accordance with 8 CFR 103.2 and with the evidence described in paragraph (d) of this section.

(i) *Applicants in pending immigration proceedings.* An alien in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), and who wishes to apply for T–1 nonimmigrant status must file an application for T nonimmigrant status directly with USCIS. In its discretion, DHS may agree to the alien's request to file with the immigration judge or the Board a joint motion to administratively close or terminate proceedings without prejudice, whichever is appropriate, while an application for T nonimmigrant status is adjudicated by USCIS.

(ii) *Applicants with final orders of removal, deportation, or exclusion.* An alien subject to a final order of removal, deportation, or exclusion may file an application for T–1 nonimmigrant status directly with USCIS. The filing of an application for T nonimmigrant status has no effect on DHS authority or discretion to execute a final order of removal, although the alien may request an administrative stay of removal pursuant to 8 CFR 241.6(a). If the alien is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the applicant's removal will be extended during the period the stay is in effect. If USCIS subsequently determines under the procedures in paragraph (e) of this section that the application is bona fide, DHS will automatically grant an administrative stay of the final order of removal, deportation, or exclusion, and the stay will remain in effect until a final decision is made on the application for T nonimmigrant status.

(iii) *Minor applicants.* When USCIS receives an application from a minor principal alien under the age of 18, USCIS will notify the Department of Health and Human Services to facilitate the provision of interim assistance.

(2) *Initial evidence.* An application for T nonimmigrant status must include:

(i) The applicant's signed statement describing the facts of the victimization and compliance with any reasonable law enforcement request (or a basis for why he or she has not complied) and any other eligibility requirements in his or her own words;

(ii) Any credible evidence that the applicant would like USCIS to consider supporting any of the eligibility requirements set out in paragraphs (f), (g), (h) and (i) of this section; and

(iii) *Inadmissible applicants.* If an applicant is inadmissible based on a ground that may be waived, he or she must also submit a request for a waiver of inadmissibility on the form designated by USCIS with the fee prescribed by 8 CFR 106.2, in accordance with form instructions and 8 CFR 212.16, and accompanied by supporting evidence.

(3) *Evidence from law enforcement.* An applicant may wish to submit evidence from an LEA to help establish certain eligibility requirements for T nonimmigrant status. Evidence from an LEA is optional and is not given any special evidentiary weight.

(i) *Law Enforcement Agency (LEA) endorsement.* An LEA endorsement is optional evidence that can be submitted to help demonstrate victimization and/or compliance with reasonable requests. An LEA endorsement is not mandatory and is not given any special evidentiary weight. An LEA endorsement itself does not grant a benefit and is one form of possible evidence but it

does not lead to automatic approval of the application for T nonimmigrant status by USCIS. If provided, the LEA endorsement must be submitted on the form designated by USCIS in accordance with the form instructions and must be signed by a supervising official responsible for the detection, investigation or prosecution of severe forms of trafficking in persons. The LEA endorsement must attach the results of any name or database inquiries performed and describe the victimization (including dates where known) and the cooperation of the victim. USCIS, not the LEA, will determine if the applicant was or is a victim of a severe form of trafficking in persons, and otherwise meets the eligibility requirements for T nonimmigrant status. The decision whether to complete an LEA endorsement is at the discretion of the LEA. A formal investigation or prosecution is not required to complete an LEA endorsement.

(ii) *Disavowed or revoked LEA endorsement*. An LEA may revoke or disavow the contents of a previously submitted endorsement in writing. After revocation or disavowal, the LEA endorsement will no longer be considered as evidence.

(iii) *Continued Presence*. An applicant granted Continued Presence under 28 CFR 110.35 should submit documentation of the grant of Continued Presence. If Continued Presence has been revoked, it will no longer be considered as evidence.

(iv) *Other evidence*. An applicant may also submit any evidence regarding entry or admission into the United States or permission to remain in the United States or note that such evidence is contained in an applicant's immigration file.

(4) *Biometric services*. All applicants for T–1 nonimmigrant status must submit biometrics in accordance with 8 CFR 103.16.

(5) *Evidentiary standards and burden of proof*. The burden is on the applicant to demonstrate eligibility for T–1 nonimmigrant status. The applicant may submit any credible evidence relating to a T nonimmigrant application for consideration by USCIS. USCIS will conduct a de novo review of all evidence and may investigate any aspect of the application. Evidence previously submitted by the applicant for any immigration benefit or relief may be used by USCIS in evaluating the eligibility of an applicant for T–1 nonimmigrant status. USCIS will not be bound by previous factual determinations made in connection with a prior application or petition for any immigration benefit or relief. USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence.

(6) *Interview*. USCIS may require an applicant for T nonimmigrant status to participate in a personal interview. The necessity and location of the interview is determined solely by USCIS in accordance with 8 CFR part 103. Every effort will be made to schedule the interview in a location convenient to the applicant.

(7) *Bona fide determination*. Once an alien submits an application for T–1 nonimmigrant status, USCIS will conduct an initial review to determine if the application is a bona fide application for T–1 nonimmigrant status under the provisions of paragraph (e) of this section.

(8) *Decision*. After completing its de novo review of the application and evidence, USCIS will issue a decision approving or denying the application in accordance with 8 CFR 103.3.

(9) *Approval*. If USCIS determines that the applicant is eligible for T–1 nonimmigrant status, USCIS will approve the application and grant T–1 nonimmigrant status, subject to the annual limitation as provided in paragraph (j) of this section. USCIS will provide the applicant with evidence of T–1 nonimmigrant status. USCIS may also notify other parties and entities of the approval as it determines appropriate, including any LEA providing an LEA endorsement and the Department of Health and Human Service's Office of Refugee Resettlement, consistent with 8 U.S.C. 1367.

(i) *Applicants with an outstanding order of removal, deportation or exclusion issued by DHS*. For an applicant who is the subject of an order of removal, deportation or exclusion issued by DHS, the order will be deemed cancelled by operation of law as of the date of the USCIS approval of the application.

(ii) *Applicants with an outstanding order of removal, deportation or exclusion issued by the Department of Justice.* An applicant who is the subject of an order of removal, deportation or exclusion issued by an immigration judge or the Board may seek cancellation of such order by filing a motion to reopen and terminate removal proceedings with the immigration judge or the Board. ICE may agree, as a matter of discretion, to join such motion to overcome any applicable time and numerical limitations of 8 CFR 1003.2 and 1003.23.

(10) *Denial.* Upon denial of an application, USCIS will notify the applicant in accordance with 8 CFR 103.3. USCIS may also notify any LEA providing an LEA endorsement and the Department of Health and Human Service's Office of Refugee Resettlement. If an applicant appeals a denial in accordance with 8 CFR 103.3, the denial will not become final until the administrative appeal is decided.

(i) *Effect on bona fide determination.* Upon denial of an application, any benefits derived from a bona fide determination will automatically be revoked when the denial becomes final.

(ii) *Applicants previously in removal proceedings.* In the case of an applicant who was previously in removal proceedings that were terminated on the basis of a pending application for T nonimmigrant status, once a denial becomes final, DHS may file a new Notice to Appear to place the individual in removal proceedings again.

(iii) *Applicants subject to an order of removal, deportation or exclusion.* In the case of an applicant who is subject to an order of removal, deportation or exclusion that had been stayed due to the pending application for T nonimmigrant status, the stay will be automatically lifted as of the date the denial becomes final.

(11) *Employment authorization.* An alien granted T–1 nonimmigrant status is authorized to work incident to status. There is no need for an alien to file a separate form to be granted employment authorization. USCIS will issue an initial Employment Authorization Document (EAD) to such aliens, which will be valid for the duration of the alien's T–1 nonimmigrant status. An alien granted T–1 nonimmigrant status seeking to replace an EAD that was lost, stolen, or destroyed must file an application on the form designated by USCIS in accordance with form instructions.

(e) *Bona fide determination.* Once an alien submits an application for T–1 nonimmigrant status, USCIS will conduct an initial review to determine if the application is a bona fide application for T–1 nonimmigrant status.

(1) *Criteria.* After initial review, an application will be determined to be bona fide if:

(i) The application is properly filed and is complete;

(ii) The application does not appear to be fraudulent;

(iii) The application presents prima facie evidence of each eligibility requirement for T–1 nonimmigrant status;

(iv) Biometrics and background checks are complete; and

(v) The applicant is:

(A) Admissible to the United States; or

(B) Inadmissible to the United States based on a ground that may be waived (other than section 212(a)(4) of the Act); and either the applicant has filed a waiver of a ground of inadmissibility described in section 212(d)(13) of the Act concurrently with the application for T nonimmigrant status, or USCIS has already granted a waiver with respect to any ground of inadmissibility that applies to the applicant. USCIS may request further evidence from the applicant. All waivers are discretionary and require a request for waiver, on the form designated by USCIS.

(2) *USCIS determination.* An application will not be treated as bona fide until USCIS provides notice to the applicant.

(i) *Incomplete or insufficient application.* If an application is incomplete or if an application is complete but does not present sufficient evidence to establish prima facie eligibility for each eligibility requirement for T–1 nonimmigrant status, USCIS may request additional information, issue a notice of intent to deny as provided in 8 CFR 103.2(b)(8), or may adjudicate the application on the basis of the evidence presented under the procedures of this section.

(ii) *Notice*. Once USCIS determines an application is bona fide, USCIS will notify the applicant. An application will be treated as a bona fide application as of the date of the notice.

(3) *Stay of final order of removal, deportation, or exclusion*. If USCIS determines that an application is bona fide it automatically stays the execution of any final order of removal, deportation, or exclusion. This administrative stay will remain in effect until any adverse decision becomes final. The filing of an application for T nonimmigrant status does not automatically stay the execution of a final order unless USCIS has determined that the application is bona fide. Neither an immigration judge nor the Board has jurisdiction to adjudicate an application for a stay of removal, deportation, or exclusion on the basis of the filing of an application for T nonimmigrant status.

(f) *Victim of a severe form of trafficking in persons*. To be eligible for T–1 nonimmigrant status an applicant must meet the definition of a victim of a severe form of trafficking in persons described in paragraph (a) of this section.

(1) *Evidence*. The applicant must submit evidence that demonstrates that he or she is or has been a victim of a severe form of trafficking in persons. Except in instances of sex trafficking involving victims under 18 years of age, severe forms of trafficking in persons must involve both a particular means (force, fraud, or coercion) and a particular end or a particular intended end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery). If a victim has not performed labor or services, or a commercial sex act, the victim must establish that he or she was recruited, transported, harbored, provided, or obtained for the purposes of subjection to sex trafficking, involuntary servitude, peonage, debt bondage, or slavery, or patronized or solicited for the purposes of subjection to sex trafficking. The applicant may satisfy this requirement by submitting:

(i) An LEA endorsement as described in paragraph (d)(3) of this section;

(ii) Documentation of a grant of Continued Presence under 28 CFR 1100.35; or

(iii) Any other evidence, including but not limited to, trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and/or affidavits. In the victim's statement prescribed by paragraph (d)(2) of this section, the applicant should describe what the alien has done to report the crime to an LEA and indicate whether criminal records relating to the trafficking crime are available.

(2) If the Continued Presence has been revoked or the contents of the LEA endorsement have been disavowed based on a determination that the applicant is not or was not a victim of a severe form of trafficking in persons, it will no longer be considered as evidence.

(g) *Physical presence*. To be eligible for T–1 nonimmigrant status an applicant must be physically present in the United States, American Samoa, or at a port-of-entry thereto on account of such trafficking.

(1) *Applicability*. The physical presence requirement requires USCIS to consider the alien's presence in the United States at the time of application. The requirement reaches an alien who:

(i) Is present because he or she is currently being subjected to a severe form of trafficking in persons;

(ii) Was liberated from a severe form of trafficking in persons by an LEA;

(iii) Escaped a severe form of trafficking in persons before an LEA was involved, subject to paragraph (g)(2) of this section;

(iv) Was subject to a severe form of trafficking in persons at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons; or

(v) Is present on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.

(2) *Departure from the United States*. An alien who has voluntarily departed from (or has been removed from) the United States at any time after the act of a severe form of trafficking in persons is deemed not to be present in the United States as a result of such trafficking in persons unless:

(i) The alien's reentry into the United States was the result of the continued victimization of the alien;

(ii) The alien is a victim of a new incident of a severe form of trafficking in persons; or

(iii) The alien has been allowed reentry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking, described in paragraph (g)(4) of this section.

(3) *Presence for participation in investigative or judicial processes.* An alien who was allowed initial entry or reentry into the United States for participation in investigative or judicial processes associated with an act or perpetrator of trafficking will be deemed to be physically present in the United States on account of trafficking in persons, regardless of where such trafficking occurred. To satisfy this section, an alien must submit documentation to show valid entry into the United States and evidence that this valid entry is for participation in investigative or judicial processes associated with an act or perpetrator of trafficking.

(4) *Evidence.* The applicant must submit evidence that demonstrates that his or her physical presence in the United States or at a port-of-entry thereto, is on account of trafficking in persons, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking. USCIS will consider all evidence presented to determine the physical presence requirement, including the alien's responses to questions on the application for T nonimmigrant status about when he or she escaped from the trafficker, what activities he or she has undertaken since that time including the steps he or she may have taken to deal with the consequences of having been trafficked, and the applicant's ability to leave the United States. The applicant may satisfy this requirement by submitting:

(i) An LEA endorsement, described in paragraph (d)(3) of this section;

(ii) Documentation of a grant of Continued Presence under 28 CFR 1100.35;

(iii) Any other documentation of entry into the United States or permission to remain in the United States, such as parole under section 212(d)(5) of the Act, or a notation that such evidence is contained in the applicant's immigration file; or

(iv) Any other credible evidence, including a personal statement from the applicant, stating the date and place (if known) and the manner and purpose (if known) for which the applicant entered the United States and demonstrating that the applicant is now present on account of the trafficking.

(h) *Compliance with any reasonable request for assistance in an investigation or prosecution.* To be eligible for T–1 nonimmigrant status, an applicant must have complied with any reasonable request for assistance from an LEA in an investigation or prosecution of acts of trafficking or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime, unless the applicant meets an exemption described in paragraph (h)(4) of this section.

(1) *Applicability.* An applicant must have had, at a minimum, contact with an LEA regarding the acts of a severe form of trafficking in persons. An applicant who has never had contact with an LEA regarding the acts of a severe form of trafficking in persons will not be eligible for T–1 nonimmigrant status, unless he or she meets an exemption described in paragraph (h)(4) of this section.

(2) *Unreasonable requests.* An applicant need only show compliance with reasonable requests made by an LEA for assistance in the investigation or prosecution of the acts of trafficking in persons. The reasonableness of the request depends on the totality of the circumstances. Factors to consider include, but are not limited to:

(i) General law enforcement and prosecutorial practices;

(ii) The nature of the victimization;

(iii) The specific circumstances of the victim;

(iv) Severity of trauma suffered (both mental and physical) or whether the request would cause further trauma;

(v) Access to support services;

(vi) The safety of the victim or the victim's family;

(vii) Compliance with previous requests and the extent of such compliance;

(viii) Whether the request would yield essential information;

(ix) Whether the information could be obtained without the victim's compliance;

(x) Whether an interpreter or attorney was present to help the victim understand the request;

(xi) Cultural, religious, or moral objections to the request;

(xii) The time the victim had to comply with the request; and

(xiii) The age and maturity of the victim.

(3) *Evidence.* An applicant must submit evidence that demonstrates that he or she has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of trafficking in persons, or a crime where trafficking in persons is at least one central reason for the commission of that crime. In the alternative, an applicant can submit evidence to demonstrate that he or she should be exempt under paragraph (h)(4) of this section. If USCIS has any question about whether the applicant has complied with a reasonable request for assistance, USCIS may contact the LEA. The applicant may satisfy this requirement by submitting any of the following:

(i) An LEA endorsement as described in paragraph (d)(3) of this section;

(ii) Documentation of a grant of Continued Presence under 28 CFR 1100.35; or

(iii) Any other evidence, including affidavits of witnesses. In the victim's statement prescribed by paragraph (d)(2) of this section, the applicant should show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime, why the crime was not previously reported.

(4) An applicant who has not had contact with an LEA or who has not complied with any reasonable request may be exempt from the requirement to comply with any reasonable request for assistance in an investigation or prosecution if either of the following two circumstances applies:

(i) *Trauma.* The applicant is unable to cooperate with a reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking in persons due to physical or psychological trauma. An applicant must submit evidence of the trauma. An applicant may satisfy this by submitting an affirmative statement describing the trauma and any other credible evidence. ''Any other credible evidence'' includes, for instance, a signed statement from a qualified professional, such as a medical professional, social worker, or victim advocate, who attests to the victim's mental state, and medical, psychological, or other records which are relevant to the trauma. USCIS reserves the authority and discretion to contact the LEA involved in the case, if appropriate; or

(ii) *Age.* The applicant is under 18 years of age. An applicant under 18 years of age is exempt from the requirement to comply with any reasonable request for assistance in an investigation or prosecution, but he or she must submit evidence of age. Applicants should include, where available, an official copy of the alien's birth certificate, a passport, or a certified medical opinion. Other evidence regarding the age of the applicant may be submitted in accordance with 8 CFR 103.2(b)(2)(i).

(i) *Extreme hardship involving unusual and severe harm.* To be eligible for T–1 nonimmigrant status, an applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm.

(1) *Standard.* Extreme hardship involving unusual and severe harm is a higher standard than extreme hardship as described in 8 CFR 240.58. A finding of extreme hardship involving unusual and severe harm may not be based solely upon current or future economic detriment, or the lack of, or disruption to, social or economic opportunities.

The determination of extreme hardship is made solely by USCIS.

(2) *Factors.* Factors that may be considered in evaluating whether removal would result in extreme hardship involving unusual and severe harm should include both traditional extreme hardship factors and factors associated with having been a victim of a severe form of trafficking in persons. These factors include, but are not limited to:

(i) The age, maturity, and personal circumstances of the applicant;

(ii) Any physical or psychological issues the applicant has which necessitates medical or psychological care not reasonably available in the foreign country;

(iii) The nature and extent of the physical and psychological consequences of having been a victim of a severe form of trafficking in persons;

(iv) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of a severe form of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;

(v) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;

(vi) The likelihood of re-victimization and the need, ability, and willingness of foreign authorities to protect the applicant;

(vii) The likelihood of harm that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would cause the applicant; or

(viii) The likelihood that the applicant's individual safety would be threatened by the existence of civil unrest or armed conflict.

(3) *Evidence.* An applicant must submit evidence that demonstrates he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States. An applicant is encouraged to describe and document all factors that may be relevant to the case, as there is no guarantee that a particular reason(s) will satisfy the requirement. Hardship to persons other than the alien victim cannot be considered in determining whether an applicant would suffer the requisite hardship. The applicant may satisfy this requirement by submitting any credible evidence regarding the nature and scope of the hardship if the applicant was removed from the United States, including evidence of hardship arising from circumstances surrounding the victimization and any other circumstances. An applicant may submit a personal statement or other evidence, including evidence from relevant country condition reports and any other public or private sources of information.

(j) *Annual cap.* In accordance with section 214(o)(2) of the Act, DHS may not grant T–1 nonimmigrant status to more than 5,000 aliens in any fiscal year.

(1) *Waiting list.* All eligible applicants who, due solely to the cap, are not granted T–1 nonimmigrant status will be placed on a waiting list and will receive written notice of such placement. Priority on the waiting list will be determined by the date the application was properly filed, with the oldest applications receiving the highest priority. In the next fiscal year, USCIS will issue a number to each application on the waiting list, in the order of the highest priority, providing the applicant remains admissible and eligible for T nonimmigrant status. After T–1 nonimmigrant status has been issued to qualifying applicants on the waiting list, any remaining T–1 nonimmigrant numbers for that fiscal year will be issued to new qualifying applicants in the order that the applications were properly filed.

(2) *Unlawful presence.* While an applicant for T nonimmigrant status who was granted deferred action or parole is on the waiting list, the applicant will not accrue unlawful presence under section 212(a)(9)(B) of the Act while maintaining parole or deferred action.

(3) *Removal from the waiting list.* An applicant may be removed from the waiting list and the deferred action or parole may be terminated consistent

with law and policy. Applicants on the waiting list must remain admissible to the United States and otherwise eligible for T nonimmigrant status. If at any time prior to final adjudication USCIS receives information that an applicant is no longer eligible for nonimmigrant status, the applicant may be removed from the waiting list and the deferred action or parole may be terminated. USCIS will provide notice to the applicant of that decision.

(k) *Application for eligible family members*—(1) *Eligibility*. Subject to section 214(o) of the Act, an alien who has applied for or has been granted T–1 nonimmigrant status (principal alien) may apply for the admission of an eligible family member, who is otherwise admissible to the United States, in derivative T nonimmigrant status if accompanying or following to join the principal alien.

(i) *Principal alien 21 years of age or older*. For a principal alien who is 21 years of age or over, eligible family member means a T–2 (spouse) or T–3 (child).

(ii) *Principal alien under 21 years of age*. For a principal alien who is under 21 years of age, eligible family member means a T–2 (spouse), T–3 (child), T–4 (parent), or T–5 (unmarried sibling under the age of 18).

(iii) *Family member facing danger of retaliation*. Regardless of the age of the principal alien, if the eligible family member faces a present danger of retaliation as a result of the principal alien's escape from the severe form of trafficking or cooperation with law enforcement, in consultation with the law enforcement officer investigating a severe form of trafficking, eligible family member means a T–4 (parent), T–5 (unmarried sibling under the age of 18), or T–6 (adult or minor child of a derivative of the principal alien).

(iv) *Admission requirements*. The principal applicant must demonstrate that the alien for whom derivative T nonimmigrant status is being sought is an eligible family member of the T–1 principal alien, as defined in paragraph (a) of this section, and is otherwise eligible for that status.

(2) *Application*. A T–1 principal alien may submit an application for derivative T nonimmigrant status on the form designated by USCIS in accordance with the form instructions. The application for derivative T nonimmigrant status for an eligible family member may be filed with the T–1 application, or separately. Derivative T nonimmigrant status is dependent on the principal alien having been granted T–1 nonimmigrant status and the principal alien maintaining T–1 nonimmigrant status. If a principal alien granted T–1 nonimmigrant status cannot maintain status due to his or her death, the provisions of section 204(l) of the Act may apply.

(i) *Eligible family members in pending immigration proceedings*. If an eligible family member is in removal proceedings under section 240 of the Act, or in exclusion or deportation proceedings under former sections 236 or 242 of the Act (as in effect prior to April 1, 1997), the principal alien must file an application for derivative T nonimmigrant status directly with USCIS. In its discretion and at the request of the eligible family member, ICE may agree to file a joint motion to administratively close or terminate proceedings without prejudice with the immigration judge or the Board, whichever is appropriate, while USCIS adjudicates an application for derivative T nonimmigrant status.

(ii) *Eligible family members with final orders of removal, deportation, or exclusion*. If an eligible family member is the subject of a final order of removal, deportation, or exclusion, the principal alien may file an application for derivative T nonimmigrant status directly with USCIS. The filing of an application for derivative T nonimmigrant status has no effect on ICE's authority or discretion to execute a final order, although the alien may file a request for an administrative stay of removal pursuant to 8 CFR 241.6(a). If the eligible family member is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) will be extended while a stay is in effect for the period reasonably necessary to bring about the applicant's removal.

(3) *Required supporting evidence*. In addition to the form, an application for derivative T nonimmigrant status must include the following:

(i) Biometrics submitted in accordance with 8 CFR 103.16;

(ii) Evidence demonstrating the relationship of an eligible family member, as provided in paragraph (k)(4) of this section;

(iii) In the case of an alien seeking derivative T nonimmigrant status on the basis of danger of retaliation, evidence demonstrating this danger as provided in paragraph (k)(6) of this section.

(iv) *Inadmissible applicants*. If an eligible family member is inadmissible based on a ground that may be waived, a request for a waiver of inadmissibility under section 212(d)(13) or section 212(d)(3) of the Act must be filed in accordance with 8 CFR 212.16 and submitted with the completed application package.

(4) *Relationship*. Except as described in paragraphs (k)(5) of this section, the family relationship must exist at the time:

(i) The application for the T–1 nonimmigrant status is filed;

(ii) The application for the T–1 nonimmigrant status is adjudicated;

(iii) The application for derivative T nonimmigrant status is filed;

(iv) The application for derivative T nonimmigrant status is adjudicated; and

(v) The eligible family member is admitted to the United States if residing abroad.

(5) *Relationship and age-out protections*—(i) *Protection for new child of a principal alien*. If the T–1 principal alien proves that he or she had a child after filing the application for T–1 nonimmigrant status, the child will be deemed to be an eligible family member eligible to accompany or follow to join the T–1 principal alien.

(ii) *Age-out protection for eligible family members of a principal alien under 21 years of age*. If the T–1 principal alien was under 21 years of age when he or she filed for T–1 nonimmigrant status, USCIS will continue to consider a parent or unmarried sibling as an eligible family member. A parent or unmarried sibling will remain eligible even if the principal alien turns 21 years of age before adjudication of the T–1 application. An unmarried sibling will remain eligible even if the unmarried sibling is over 18 years of age at the time of adjudication of the T–1 application, so long as the unmarried sibling was under 18 years of age at the time of the T–1 application. The age of an unmarried sibling when USCIS adjudicates the T–1 application, when the unmarried sibling files the derivative application, when USCIS adjudicates the derivative application, or when the unmarried sibling is admitted to the United States does not affect eligibility.

(iii) *Age-out protection for child of a principal alien 21 years of age or older*. If a T–1 principal alien was 21 years of age or older when he or she filed for T–1 nonimmigrant status, USCIS will continue to consider a child as an eligible family member if the child was under 21 years of age at the time the principal filed for T–1 nonimmigrant status. The child will remain eligible even if the child is over 21 years of age at the time of adjudication of the T–1 application. The age of the child when USCIS adjudicates the T–1 application, when the child files the derivative application, when USCIS adjudicates the derivative application, or when the child is admitted to the United States does not affect eligibility.

(iv) *Marriage of an eligible family member*. An eligible family member seeking T–3 or T–5 status must be unmarried when the principal files an application for T–1 status, when USCIS adjudicates the T–1 application, when the eligible family member files for T–3 or T–5 status, when USCIS adjudicates the T–3 or T–5 application, and when the family member is admitted to the United States. If a T–1 marries subsequent to filing the application for T–1 status, USCIS will not consider the spouse eligible as a T–2 eligible family member.

(6) *Evidence demonstrating a present danger of retaliation*. An alien seeking derivative T nonimmigrant status on the basis of facing a present danger of retaliation as a result of the T–1 victim's escape from a severe form of trafficking or cooperation with law enforcement, must demonstrate the basis of this danger. USCIS may contact the LEA involved, if appropriate. An applicant may satisfy this requirement by submitting:

(i) Documentation of a previous grant of advance parole to an eligible family member;

(ii) A signed statement from a law enforcement official describing the danger of retaliation;

(iii) An affirmative statement from the applicant describing the danger the family member faces and how the danger is linked to the victim's escape or cooperation with law enforcement (ordinarily an applicant's statement alone is not sufficient to prove present danger); and/or

(iv) Any other credible evidence, including trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits from other witnesses.

(7) *Biometric collection; evidentiary standards*. The provisions for biometric capture and evidentiary standards described in paragraph (d)(2) and (d)(4) of this section apply to an eligible family member's application for derivative T nonimmigrant status.

(8) *Review and decision*. USCIS will review the application and issue a decision in accordance with paragraph (d) of this section.

(9) *Derivative approvals*. Aliens whose applications for derivative T nonimmigrant status are approved are not subject to the annual cap described in paragraph (j) of this section. USCIS will not approve applications for derivative T nonimmigrant status until USCIS has approved T–1 nonimmigrant status to the related principal alien.

(i) *Approvals for eligible family members in the United States*. When USCIS approves an application for derivative T nonimmigrant status for an eligible family member in the United States, USCIS will concurrently approve derivative T nonimmigrant status. USCIS will notify the T–1 principal alien of such approval and provide evidence of derivative T nonimmigrant status to the derivative.

(ii) *Approvals for eligible family members outside the United States*. When USCIS approves an application for an eligible family member outside the United States, USCIS will notify the T–1 principal alien of such approval and provide the necessary documentation to the Department of State for consideration of visa issuance.

(10) *Employment authorization*. An alien granted derivative T nonimmigrant status may apply for employment authorization by filing an application on the form designated by USCIS with the fee prescribed in 8 CFR 106.2 in accordance with form instructions. For derivatives in the United States, the application may be filed concurrently with the application for derivative T nonimmigrant status or at any later time. For derivatives outside the United States, an application for employment authorization may only be filed after admission to the United States in T nonimmigrant status. If the application for employment authorization is approved, the derivative alien will be granted employment authorization pursuant to 8 CFR 274a.12(c)(25) for the period remaining in derivative T nonimmigrant status.

(l) *Extension of T nonimmigrant status*—(1) *Eligibility*. USCIS may grant extensions of T–1 nonimmigrant status beyond 4 years from the date of approval in 1-year periods from the date the T–1 nonimmigrant status ends if:

(i) An LEA investigating or prosecuting activity related to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity;

(ii) The Secretary of Homeland Security determines that an extension is warranted due to exceptional circumstances; or

(iii) The alien has a pending application for adjustment of status to that of a lawful permanent resident.

(2) *Application for a discretionary extension of status*. Upon application, USCIS may extend T–1 nonimmigrant status based on law enforcement need or exceptional circumstances. A T–1 nonimmigrant may apply for an extension by submitting the form designated by USCIS with the prescribed fee and in accordance with form instructions. A T–1 nonimmigrant should indicate on the application whether USCIS should apply the extension to any family member holding derivative T nonimmigrant status.

(3) *Timely filing.* An alien should file the application to extend nonimmigrant status before the expiration of T–1 nonimmigrant status. If T–1 nonimmigrant status has expired, the applicant must explain in writing the reason for the untimely filing. USCIS may exercise its discretion to approve an untimely filed application for extension of T nonimmigrant status.

(4) *Evidence.* In addition to the application, a T–1 nonimmigrant must include evidence to support why USCIS should grant an extension of T nonimmigrant status. The nonimmigrant bears the burden of establishing eligibility for an extension of status.

(5) *Evidence of law enforcement need.* An applicant may demonstrate law enforcement need by submitting evidence that comes directly from an LEA, including:

(i) A new LEA endorsement;

(ii) Evidence from a law enforcement official, prosecutor, judge, or other authority who can investigate or prosecute human trafficking activity, such as a letter on the agency's letterhead, email, or fax; or

(iii) Any other credible evidence.

(6) *Evidence of exceptional circumstances.* An applicant may demonstrate exceptional circumstances by submitting:

(i) The applicant's affirmative statement; or

(ii) Any other credible evidence, including medical records, police or court records, news articles, correspondence with an embassy or consulate, and affidavits of witnesses.

(7) *Mandatory extensions of status for adjustment of status applicants.* USCIS will automatically extend T–1 nonimmigrant status when a T nonimmigrant properly files an application for adjustment of status in accordance with 8 CFR 245.23. No separate application for extension of T nonimmigrant status, or supporting evidence, is required.

(m) *Revocation of approved T nonimmigrant status*—(1) *Automatic revocation of derivative status.* An approved application for derivative T nonimmigrant status will be revoked automatically if the beneficiary of the approved derivative application notifies USCIS that he or she will not apply for admission to the United States.

(2) *Revocation on notice/grounds for revocation.* USCIS may revoke an approved application for T nonimmigrant status following issuance of a notice of intent to revoke. USCIS may revoke an approved application for T nonimmigrant status based on one or more of the following reasons:

(i) The approval of the application violated the requirements of section 101(a)(15)(T) of the Act or 8 CFR 214.11 or involved error in preparation, procedure, or adjudication that affects the outcome;

(ii) In the case of a T–2 spouse, the alien's divorce from the T–1 principal alien has become final;

(iii) In the case of a T–1 principal alien, an LEA with jurisdiction to detect or investigate the acts of severe forms of trafficking in persons notifies USCIS that the alien has refused to comply with reasonable requests to assist with the investigation or prosecution of the trafficking in persons and provides USCIS with a detailed explanation in writing; or

(iv) The LEA that signed the LEA endorsement withdraws it or disavows its contents and notifies USCIS and provides a detailed explanation of its reasoning in writing.

(3) *Procedures.* Procedures for revocation and appeal follow 8 CFR 103.3. If USCIS revokes approval of the previously granted T nonimmigrant status application, USCIS may notify the LEA who signed the LEA endorsement, any consular officer having jurisdiction over the applicant, or the Office of Refugee Resettlement of the Department of Health and Human Services.

(4) *Effect of revocation.* Revocation of a principal alien's application for T–1 nonimmigrant status will result in termination of T–1 status for the principal alien and, consequently, the automatic termination of the derivative T nonimmigrant status for all derivatives. If a derivative application is pending at the time of revocation, it will be denied. Revocation of an approved application for T–1 nonimmigrant status or an application for derivative T nonimmigrant status also revokes any waiver of inadmissibility granted in conjunction with such application. The

revocation of an alien's T–1 status will have no effect on the annual cap described in paragraph (j) of this section.

(n) *Removal proceedings.* Nothing in this section prohibits DHS from instituting removal proceedings for conduct committed after admission, or for conduct or a condition that was not disclosed prior to the granting of T nonimmigrant status, including misrepresentations of material facts in the application for T–1 nonimmigrant status or in an application for derivative T nonimmigrant status, or after revocation of T nonimmigrant status.

(o) *USCIS employee referral.* Any USCIS employee who, while carrying out his or her official duties, comes into contact with an alien believed to be a victim of a severe form of trafficking in persons and is not already working with an LEA should consult, as necessary, with the ICE officials responsible for victim protection, trafficking investigations and prevention, and deterrence. The ICE office may, in turn, refer the victim to another LEA with responsibility for investigating or prosecuting severe forms of trafficking in persons. If the alien has a credible claim to victimization, USCIS may advise the alien that he or she can submit an application for T nonimmigrant status and seek any other benefit or protection for which he or she may be eligible, provided doing so would not compromise the alien's safety.

(p) *Restrictions on use and disclosure of information relating to applicants for T nonimmigrant classification.* (1) The use or disclosure (other than to a sworn officer or employee of DHS, the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved application for T nonimmigrant status is prohibited unless the disclosure is made in accordance with an exception described in 8 U.S.C. 1367(b).

(2) Information protected under 8 U.S.C. 1367(a)(2) may be disclosed to federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(3) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

(4) DHS officials are prohibited from making adverse determinations of admissibility or deportability based on information obtained solely from the trafficker, unless the alien has been convicted of a crime or crimes listed in section 237(a)(2) of the Act.

[81 FR 92304, Dec. 19, 2016, as amended at 85 FR 46925, Aug. 3, 2020; 85 FR 49941, Aug. 17, 2020]

§ 214.12 [Reserved]

§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.

(a) *Applicability.* The aliens in paragraphs (a)(1) through (3) of this section are required to submit a payment in the amount indicated for their status to the Student and Exchange Visitor Program (SEVP) in advance of obtaining nonimmigrant status as an F or M student or J exchange visitor, in addition to any other applicable fees, except as otherwise provided for in this section:

(1) An alien who applies for F–1 or F–3 status in order to enroll in a program of study at an SEVP-certified institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other SEVP-certified academic or language training institution, including private elementary, middle, and secondary schools and public secondary schools, the amount of $350;

(2) An alien who applies for J–1 status in order to commence participation in an exchange visitor program designated by the Department of State, the amount of $220, with a reduced fee for certain exchange visitor categories as provided in paragraphs (b)(1) and (c) of this section; and

(3) An alien who applies for M–1 or M–3 status in order to enroll in a program of study at an SEVP-certified vocational educational institution, including a flight school, in the amount of $350.