

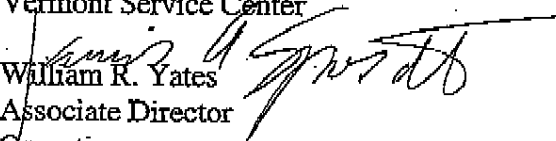


U.S. Citizenship
and Immigration
Services

HQOPRD 70/6.2

Interoffice Memorandum

To: Paul Novak
Director
Vermont Service Center

From: 
William R. Yates
Associate Director
Operations

Date: APR 15 2004

Re: Trafficking Victims Protection Reauthorization Act of 2003

Purpose

On December 19, 2003, the President signed the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub. L. 108-193. Section 4(b) of the TVPRA contains five provisions amending the Immigration and Nationality Act (INA). These amendments to the INA affect benefits for victims of a severe form of trafficking in persons who are applicants for T nonimmigrant status and their derivative family members. The purpose of this memorandum is to inform the VSC adjudicators working T nonimmigrant status applications of the effects of this legislation on adjudication issues relative to applications filed for T nonimmigrant status. The TVPRA is effective immediately for T nonimmigrant status applications pending on or filed after December 19, 2003.

Compliance with Reasonable Requests for Assistance

The TVPRA amends the eligibility requirement that T nonimmigrant status applicants demonstrate compliance with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons by increasing from 15 years of age to 18 years of age the minimum age at which a victim of a severe form of trafficking in persons is required to comply with reasonable requests for assistance to be eligible for T nonimmigrant status. Applicants under the age of 18 must provide evidence of their age. Primary evidence that a victim of a severe form of trafficking in persons has not yet reached the age of 18 would be an official copy of the alien's birth certificate, a passport, or a certified medical opinion. Secondary evidence regarding the age of the applicant also may be submitted in accordance with 8 CFR § 103.2(b)(2)(i). An applicant under the age of 18 still must provide evidence demonstrating that he or she satisfies the other necessary

requirements, including that he or she is the victim of a severe form of trafficking in persons and faces extreme hardship involving unusual and severe harm if removed from the United States.

Derivative Family Members

The TVPRA adds unmarried siblings under 18 years of age to the list of family members for whom a principal T nonimmigrant status holder or applicant may apply for derivative status. The unmarried sibling(s) must be under 18 years of age on the date on which the principal filed his or her application for T nonimmigrant status. The principal may apply for derivative T nonimmigrant status at the time of the original T-1 application or may apply at a later date by filing a separate Form I-914 and attachments. The annual limitation of T visas does not apply to an unmarried sibling under 18 years of age. All of the provisions found at 8 CFR § 214.11(o) pertaining to applications for derivative status for spouses, children and parents of the principal apply equally to unmarried siblings under 18 years of age.

Age-out Protection

The TVPRA provides age-out protection for unmarried alien children for whom their parents applied for derivative status. An unmarried alien who was under 21 years of age on the date on which his/her parent applied for T-1 status will continue to be classified as a child for derivative status purposes if he/she attains 21 years of age after his/her parent's application was filed but while it was pending. Thus, if a principal applicant properly filed a Form I-914 for derivative status for his/her unmarried child prior to the child's 21st birthday and the child turned 21 years of age before the Form I-914 was approved, that alien will remain a "child" for derivative status purposes and eligible to receive T-3 nonimmigrant status.

Similarly, the TVPRA provides age-out protection for principal applicants so that they maintain their eligibility to apply for derivative status for immediate family members. A principal T nonimmigrant status applicant who properly files a Form I-914 on his/her own behalf prior to turning 21 years of age, will continue to be considered under 21 years of age for purposes of any applications he/she has filed for his/her immediate family members if the principal applicant attains 21 years of age after his/her Form I-914 is filed but while it is pending. Thus, a principal applicant who files a Form I-914 on his/her own behalf at 20 years of age who turns 21 years of age while it is pending will remain able to apply for his/her parent(s) and/or unmarried siblings who were under the age of 18 on the date the principal filed his/her Form I-914.

Exemption from Public Charge Ground of Inadmissibility

A principal or derivative applicant who is or becomes inadmissible under section 212(a) of the INA will not be eligible for T nonimmigrant status unless the ground of inadmissibility is waived. The TVPRA, however, amends the waiver authority found at INA section 212(d)(13) to exempt aliens applying for T nonimmigrant status from the public charge ground of inadmissibility found at INA section 212(a)(4). Therefore, T nonimmigrant status applicants can no longer be found inadmissible (and required to file a waiver application) on the basis that he/she is likely at any time to become a public charge. All other grounds of inadmissibility, however, continue to apply to T nonimmigrant status applicants. If it is determined that an applicant is inadmissible and the ground of inadmissibility is one that can be waived, the applicant should apply for a waiver of the grounds of inadmissibility on Form I-192, Application for Advance Permission to Enter as Nonimmigrant (Pursuant to Section 212(d)(3) of the Immigration and Nationality Act.

Consideration of Declarations from State and Local Law Enforcement Officials

The TVPRA amends the INA to allow adjudicators to consider statements from State and local law enforcement officials regarding compliance with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons appear to have been involved. Unlike the TVPRA amendments previously discussed, this change cannot be implemented immediately and will be the subject of future guidance.

Further Information

Personnel with questions regarding this memorandum or other T nonimmigrant status related issues, please contact Laura Dawkins, Office of Program and Regulation Development, by electronic mail.