

This practice advisory contains general information about the US Federal definition of human trafficking and T Visa eligibility and is geared towards practitioners who have experience with humanitarian immigration visas. This advisory specifically addresses tips on how to address the eligibility requirements for T Visas as well as best practices for cover letters and declarations.

Trafficking survivors are often intersecting with multiple legal systems (i.e., criminal justice, civil, family law, and immigration). It is important to be cognizant on how the immigration application might impact other future cases, specifically on your client's credibility in all these systems. Be mindful of what is being included in the immigration applications, which may be subpoenaed and obtained by opposing counsel to impeach the client and attack the client's credibility.

While T Visas have a lot of similarities with U visas and VAWA applications, T Visas require a nuanced legal analysis of the crime itself. In T Visa cases, a law enforcement certification verifying that the applicant is a trafficking victim is not required so it is important to write clear and effective cover letter and declaration to prove that the client is a victim of severe form of trafficking in persons and is T Visa eligible.

Many of the tips in this advisory are tailored specifically for T Visas, but should also be considered when applying for other forms of humanitarian relief.

## Federal Definition of Human Trafficking

The Federal Code of Regulations provides a definition of severe form of human trafficking that advocates across the nation utilize in determining whether the individual is a survivor of a severe form of trafficking and eligible for a T Visa and other benefits.

“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.”<sup>1</sup>

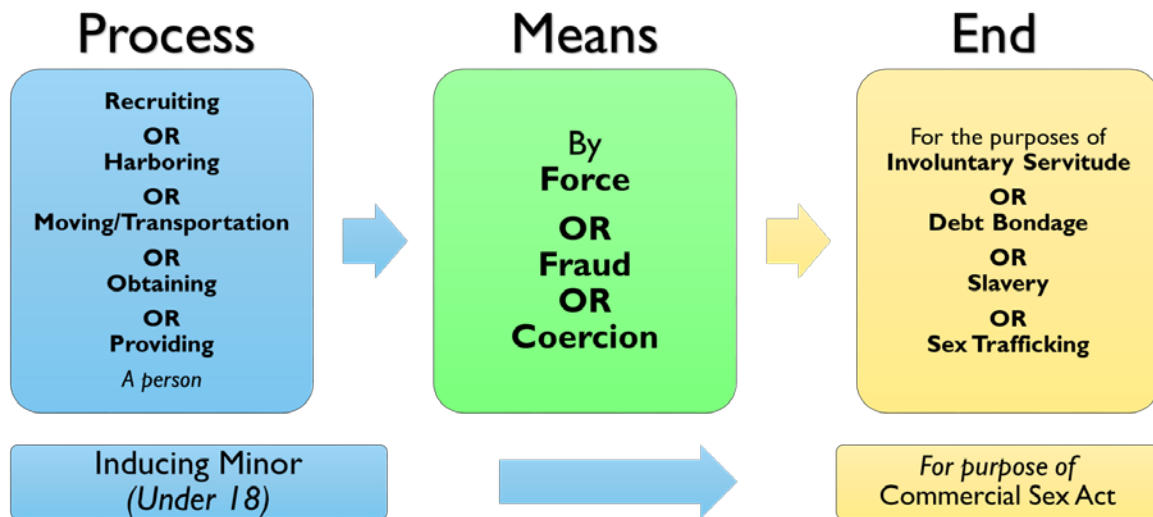
The T Visa regulations at section 214.11(a) divides the identification of a victim into three distinct elements:

- Process (How the victim entered the trafficking situation?)
- Means (How the victim was kept in the trafficking situation?)
- Ends (For what purpose?).

Practitioners have utilized this element-based definition to create a three column test to determine whether an individual is a victim of a severe form of trafficking. If an element exists in each of the columns (depicted in the chart below), then the individuals is a victim of trafficking unless the victim is a minor.

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<sup>1</sup> 8 CFR § 214.11(a). See also 22 USC §7102(9). For additional definitions see 22 USC §7102(3) [Coercion]; 22 USC § 7102(1), 18 USC § 1589(c)(1), 18 USC § 1591(e)(1) [Abuse of the Legal Process]; and 18 USC § 1589(c)(2), 18 USC § 1591(e)(4) [Serious harm].



If a minor is a victim of sex trafficking, then the minor victim does not need to show he/she was compelled by force, fraud or coercion to perform the commercial sex act. Inducement alone into a commercial sex act qualifies the minor as a victim of severe form of trafficking. In this scenario, the “process” is inducement and the “ends” is the commercial sex act. There is no “means.”

For further guidance, please refer to [CAST’s Human Trafficking Analysis Practice Advisory](#) and to [CAST’s Legal Remedies for Trafficking Survivors e-Learning courses](#).

## T-Visa Eligibility

After being identified as a victim of trafficking, another legal analysis must be performed to determine whether the survivor of trafficking is eligible for a T Visa.

Elements for T Visa eligibility require that the applicant:<sup>2</sup>

1. Is or has been victim of severe form of trafficking in persons;
2. Is present in U.S., American Samoa, Northern Marianas on account of trafficking
3. Has complied with reasonable requests for assistance in investigation or prosecution of acts of trafficking. (Applicants under 18 do not need to report the trafficking to law enforcement)
4. Would suffer extreme hardship involving unusual and severe harm upon removal

## Cover Letter Best Practices

### Writing Effective Initial Cover Letters for T Visas

A clear and focused cover letter is extremely helpful not only in organizing the evidence in your case, but also to help the adjudicating officers put the evidence into context. It is essential for advocates and

<sup>2</sup> See [8 CFR § 214.11](#) for guidelines regarding these T-Visa eligibility elements.

attorneys to know that many USCIS adjudicators and supervisors are not lawyers; therefore, it is important that your legal argument is clear and accessible to a non-lawyer. Avoid long legal briefs. The Vermont Service Center (VSC) has previously stated that the cover letter is not evidence or testimony but can be useful to illustrate how the evidence submitted help the applicant meet the requirements of the T Visa and to explain the evidence submitted. For example, if the applicant is submitting contradictory evidence, the officer may not understand the discrepancy. When possible, any discrepancies like that should be explained to provide context for the officers.

CAST attorneys find it helpful to use the tried and true legal memo writing method CRAC (Conclusion-Rule- Analysis-Conclusion) to make legal arguments. As you may recall, in legal memo style writing, you use the law as the outline and framework. Use smart and informative headers as guideposts for the readers. CAST attorneys find this style helpful to use in cover letters as it ensures that adjudicators see that every element for the T Visa is met. Use headers to distinguish T Visa eligibility requirements (victim of severe form of trafficking in persons, physical presence, LEA cooperation, and extreme hardship) and to highlight important parts of the definition of trafficking (e.g., recruitment, harboring, forced labor in the U.S, etc.). We recommend listing utilizing the exhibits and evidence to support the legal argument. It is a stylistic choice on how to present the exhibit/evidence list. We found in our practice that it is helpful to provide a summary list of all the evidence included in the application in the beginning of the cover letter, and then referencing each exhibit that supports each legal argument.

Below, we have included a table with a very basic trafficking argument that highlights the CRAC writing style and incorporation of exhibits into the legal argument:

| Example  |   |
|--|---|
| <b>Conclusion</b><br>Conclusion should be incorporated into the heading and the first sentence of the paragraph. | <b>A. Vicky Loo Would Suffer Extreme Hardship Upon Removal to Mexico</b><br>Vicky Loo would suffer “extreme hardship involving unusual and severe harm upon removal” to Mexico.   |
| <b>Rule</b><br>The rule is the regulatory/statutory eligibility requirement.                                     | An applicant must demonstrate that removal from the United States would subject the applicant to extreme hardship involving unusual and severe harm to be eligible for a T Visa. See INA § 101(a)(15)(T)(i)(IV)(as amended); 8 U.S.C. § 1101(a)(15)(T)(i)(IV).  |
| <b>Analysis</b><br>This is where you apply the rule to the facts of the case.                                    | Vicky has suffered trauma as result of her trafficking experience. If Vicky was forced to return to Mexico, she would no longer be able to obtain access comparable social and psychological care that is available to her in the US, which she requires to recover from the trafficking trauma. She is also afraid of her trafficker who knows where her family in Mexico lives and has continued to threaten her since her escape. Additionally, Vicky’s trafficker denied her medical care, and also suffers long-term health issues from her trafficking. Mexico remains a Tier 2 country in the State Department’s Trafficking in Persons Report, which reports that there are no specialized governmental services for trafficking victims and victims rely almost entirely on services provided by Non-Governmental Organizations (NGOs). Moreover, Without the continued care |

and emotional support Vicky receives in the United States from governmental programs, NGOs, and friends, she may never recover emotionally from the trauma he endured. See U.S. Department of State, [Trafficking in Persons Report: Mexico](#) (Attached at Exhibit I).

**Conclusion**  
Re-state the conclusion

As a result of her trafficking, Vicky has suffered extensive trauma and requires continuing support, including psychological care and other social services. Vicky will suffer extreme hardship if removed from the US.

**Evidence**

The following exhibits support that Vicky will suffer extreme hardship if she is returned to Mexico:

- Exhibit F, Declaration of Applicant
- Exhibit G, Declaration of Case Manager
- Exhibit H, Declaration of Attorney
- Exhibit I, U.S. Department of State, [Trafficking in Persons Report: Mexico](#) (2012)

For a complete cover letter, [click here](#).

## Request for Additional Evidence Cover Letters v. Initial Cover Letters

If you do not provide sufficient evidence or explanation on the initial filing, USCIS may require you to submit a Request for Additional Evidence (RFE). The difference between the initial cover letter and an RFE response cover letter is the level of legal analysis and amount of evidence included.

The RFE cover letter should not focus the factual arguments already presented in the initial cover letter; rather it should:

- Present new evidence (always include supplemental client declaration and any other additional evidence), include more detailed legal arguments and authorities that address the RFE, and/or
- Highlight misstatement of law, or mischaracterized legal arguments made or missed evidence in the initial application.

In terms of evidence, remember that the standard of evidence is “any credible evidence” which does not mean to include all evidence that you have, but rather that USCIS will accept and give equal weight when considering any credible evidence that proves the T Visa requirement. As a result, CAST advises to focus on the factual argument limit the evidence included in the initial cover letter. Remember, the only evidence that is required for the initial T Visa is the client declaration. CAST highly advises against including secondary resources like news articles or academic resources that do not involve the applicant as these secondary resources do not prove that the applicant was a victim of trafficking.

If you are submitting new evidence with your RFE, you will want to do a roadmap cover letter format first to show the submission of new evidence and then focus on your legal arguments. CAST has samples of these type of full legal arguments that can be requested through [CAST's technical assistance hotline](#).

## Avoiding Credibility Issues

VSC has repeatedly noted that one frequent mistake made by attorneys who were applying for U/T Visas for their client, was that cover letters, declarations, and other documentation did not have consistent facts. Check ASISTA best evidence and credibility advisory for other points [here](#).

Attorneys should be taking steps to make sure the cover letter and declaration do not contradict each other. As in the cover letter, you should make sure to use headers in the client declaration and make sure each and every fact is consistent with the cover letter.

Most importantly, all declarations need to be **in the clients owns words**. VSC will question the credibility of an applicant's declaration if sounds like it was written by the attorney. Providing headers for organizing the information and highlighting the elements is very useful but the actual language of the declaration should avoid legalistic language.

Attorneys should work with clients to articulate and present only the relevant trafficking facts through a interview process that empowers clients to speak freely. Attorneys should be attentive to use the client's voice to describe their experience. In all victim of crime cases, practitioners should expect to undertake an extensive interview process to produce an adequate and accurate declaration. Trafficking victims often have difficulty articulating trafficking-related facts and focus on facts not always relevant to the trafficking. When a person has experienced trafficking, sometimes victims focus on facts that are horrific but not germane to the trafficking. For example, a trafficking survivor who was raped as part of the force to keep them in a domestic servitude situation will tend to focus more on the rape than on the labor they were forced to do. Or, as another example, for a victim of labor trafficking, they may focus more on the lost wages than on the threats of abuse of the legal system like blacklisting or deportation which forced them to work. It is important for credibility to use as much of the client's own words in the declaration, but the framework of the declaration should be constructed by the attorney.

CAST attorneys draft the declaration through the interview approach using the client's voice as declarations written by the client may be subject to discovery in both criminal and civil proceedings. Although, having draft declarations written by clients may be considered attorney work-product, the privilege may not be sufficient to keep a draft from being discovered in future litigation. Having an attorney draft the declaration can avoid potential inconsistencies and other issues of privilege in the criminal and civil context if the draft declarations are successfully subpoenaed.

Sometimes the interview process can take many hours or take multiple appointments depending on the client's level of trauma and memory. CAST has created a sample interview outline for the declaration interviews [available here](#) that attorneys should use to gather important information.

For a sample declaration: [Click Here](#).

## Common Mistakes

### Not Completing the Trafficking Scheme, Not Connecting the Means to the Ends

Often attorneys get focused in proving the elements of trafficking (purpose, means, and end) that they forget to connect all the elements together to demonstrate the entire trafficking scheme to show how the trafficker used the force, fraud, and coercion, to force the survivor into forced labor or commercial sex.

Common examples of mistakes:

- Describing the bad treatment, psychological abuse, or physical beatings without connecting to how trafficker used these to compel the client into forced labor or commercial sex.
  - **Mistake:** “She told me I was illegal, that I had no rights, and that I would be deported as soon as I left the house. She always pinched me, slapped me in the face, and threw heavy objects at me.”
  - **Try instead:** “She always pinched and slapped me and threw objects at me if I ever questioned her. I learned that if I followed her orders and worked that I would not get beaten. She also constantly told me that I was illegal and that I would be deported if I ever left the house. I was so scared of being arrested that I never tried to leave the house and believed that I had no choice but to stay in her house and continue to work.”
- Describing labor law violations (which do not qualify someone as a trafficking victim by themselves) and including the facts of force, fraud or coercion used to force survivor to work.
  - **Mistake:** “I had to work 10 hours a day without any breaks.”
  - **Try instead:** “I had to work 10 hours a day without a break because if I took a break or would ask for a break, the employer would threaten to fire me, deport me, and made sure I was never hired in the US again. I felt like I had no choice but to keep working.”

### Irrelevant Facts

- Providing the declaration in the client's own words does not mean you must include everything your client has experienced in the declaration. Include only facts that are helpful to explaining the trafficking situation. Detailed history and background of the client are often NOT relevant to meet the T Visa eligibility requirements. In some cases, such information may be more harmful than helpful, distracting the VSC adjudicator with issues that are not relevant to T Visa eligibility.
  - **Try instead:** limit background details to ½ page and only including relevant background information like facts that explain why application was vulnerable to being trafficked.
- Spending multiple pages of the declaration on the client's smuggling experience that was not related to their trafficking and only 2-3 paragraphs on the forced labor. May convince the adjudicator that your client's case is a smuggling case rather than trafficking.
  - **Try instead:** Do not include details of the hard journey to the US, and instead focus on facts of the journey that were relevant to the trafficking like how throughout the journey men with guns walked beside us so we had no choice but to carry heavy backpacks. We were in the dessert and they told me if I did not carry the backpack that I would be left in the dessert to die, so I carried the backpack into the US.”

## Further Questions

If you have additional questions or wish to republish this materials, please contact [technicalassistance@castla.org](mailto:technicalassistance@castla.org).