



Freedom Network USA

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Submitted via <https://www.federalregister.gov/documents/2020/07/09/2020-14758/security-bars-and-processing#open-comment>

August 10, 2020

Re: Notice of Proposed Rulemaking: Request for Comments: Security Bars and Processing (July 9, 2020); RIN 1615-AC57/ USCIS Docket No. 2020-0013/ RIN 1125-AB08/ A.G. Order No. 4747-2020

Division Chief Davidson and Assistant Director Reid:

On behalf of Freedom Network USA (FNUSA), I submit these comments in response to the above-referenced Proposed Rules to express **our strong opposition** to the Proposed Rules to amend regulations relating to eligibility for asylum published in the Federal Register on July 9, 2020, and to request that the Department of Homeland Security and the Department of Justice immediately withdraw their current proposal, and instead dedicate their efforts to ensuring that individuals fleeing violence are granted full and fair access to asylum protections in the United States.

FNUSA, established in 2001, is a coalition of 68 non-governmental organizations and individuals that provide services to, and advocate for the rights of, human trafficking survivors in the United States. Our members include survivors themselves as well as former prosecutors, civil attorneys, criminal attorneys, immigration attorneys, and social service providers who have assisted thousands of trafficking survivors. Together, our members provide services to over 2,000 trafficking survivors each year.

I. Arbitrarily Short Comment Period Excludes Key Stakeholders

As a preliminary matter, FNUSA strongly objects to the unusually short notice and comment period for such an important and complex piece of rulemaking. Even in normal circumstances, rulemaking of this complexity would deserve a period of at least 45 days. And yet, these are not normal circumstances. We are in the midst of a global pandemic that is reducing work hours and access across the US. Child care and schools are shuttered or operating at reduced capacity, further reducing the availability of workers and advocates to engage in the rulemaking process. Additionally, immigrants are disproportionately impacted by the pandemic, falling ill and dying at disproportionately high rates. Service

providers who work with asylees and human trafficking survivors are critical stakeholders for this rulemaking, but must focus on the increased needs, vulnerabilities, and outreach gaps for the asylee and immigrant populations; making them less available to focus on rulemaking comment periods. Therefore, releasing this proposed rulemaking with such a short comment window seems designed to exclude critical stakeholders from this important process. **For this reason, FNUSA urges the Departments to rescind the proposed rule immediately as a matter of procedural fairness to the public and key stakeholders.** The Departments may choose to reissue the proposed rule with a comment window of at least 60 days in order to have adequate time to provide comments.

These proposed changes constitute an unnecessary, harsh, and unlawful gutting of the asylum protections enshrined in US and international law. FNUSA is especially concerned about the extraordinary impact and harm that would befall human trafficking survivors, including those who were trafficked outside of the US and have fled to the US seeking safety and protection, those who were trafficked en route to the US, and those who have been trafficked after they arrived in the US. These changes would preclude many trafficking survivors from the protection and support that the US Government has promised in domestic and international law.

II. Human Trafficking Survivors Are Found Within the Population of Asylum-Seekers in the US

US law, including the Trafficking Victims Protection Act and its many reauthorizations, articulates the US government's dedication to protecting survivors of human trafficking, both labor and sex trafficking, whether they are physically present in the US, at a US port of entry, or anywhere else.¹ Trafficking victims are found throughout the world, including in the US. The proposed rule would bar many of these vulnerable and traumatized survivors from entering the US in order to apply for either asylum or any other form of immigration protection. There is a great overlap between asylum and human trafficking, as countries that are unable or unwilling to protect their citizens who face persecution are also, generally, unable or unwilling to protect their citizens from human trafficking. Of the top 10 countries for affirmative asylum filings in the US from FY2016 to 2018,² all but one have been identified by the US Department of State as failing below Minimum Standards for the Elimination of Trafficking in Persons.³ Both Venezuela and China, the number 1 and 4 source countries for affirmative asylum in FY2018, have been found to neither meet the minimum standards, nor even attempt to meet the standards. As a result, they have a Tier 3 ranking and are subject to restrictions on funding from the US Government.⁴ Guatemala, El Salvador, Mexico, and Honduras all received Tier 2 rankings, indicating that they do not

¹ US Department of State, Office to Monitor and Combat Trafficking in Persons, International and Domestic Law, <https://www.state.gov/international-and-domestic-law/>

² DHS Annual Flow Report: Asylees and Refugees 2018, available at: https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf

³ Department of State, Trafficking in Persons Report, June 2020, hereinafter 2020 TIP Report, available at: <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

⁴ Id. at 55.

meet the minimum standards, although there is some evidence of efforts to meet the standards.⁵

A. Trafficking Survivors Presenting at a Port of Entry

Labor and sex trafficking are a worldwide problem, but trafficking victims are often left unprotected or even trafficked by their own governments. When justice is denied to trafficking survivors in their own countries, they are often left with no option but to seek safety in the US.

The 2020 TIP Report from the US State Department clearly describes how governments around the world fail to protect survivors. Some governments and government officials are complicit in the trafficking, financially benefit from trafficking, or are traffickers themselves. The Report lists 14 countries who continue to recruit or use child soldiers, a form of child trafficking that primarily targets boys.⁶ The Report further lists 19 countries⁷ which are subject to automatic US sanctions due to their Tier 3 ranking, for “failure to comply with minimum standards for the elimination of trafficking or make significant efforts to bring itself into compliance.”⁸ Diplomats who traffic workers into other countries may not face any sort of discipline. The 2020 TIP Report describes the ongoing struggle to address trafficking by UN Peacekeepers who are operating under color of law.⁹ The Report, in fact, notes that “the lack of accountability for public officials complicit in sexual exploitation and abuse.”¹⁰ Beyond the public officials actually engaged in human trafficking, there are even more officials who are unable or unwilling to protect trafficking survivors and ignore, deny, or refuse to act on reports of trafficking. This government complicity leaves trafficking survivors with no choice but to flee their home country seeking safety elsewhere.

Other asylum-seekers are not trafficking victims when they flee oppressive governments, abusive communities, and exploitive conditions in their home countries, but are then trafficked during the perilous journey to the US. Traffickers are poised to exploit migrants on their journeys. Some traffickers pose as smugglers, taking money from vulnerable migrants and promising them safe transportation, only to entrap them and force them to cook, clean, transport drugs, or provide sexual services to others. Others simply abduct migrants along their route.

B. Trafficking Survivors Present Within the US

Victims in the US include both US Citizens and foreign nationals.¹¹ Some respond to what they believe to be legitimate employment or travel offers, only to find themselves exploited

⁵ Id. at 55.

⁶ 2020 TIP Report at 34-35.

⁷ Id. at 55.

⁸ Id. at 12.

⁹ Id. at 22-23.

¹⁰ Id. at 23.

¹¹ See DHS website at <https://www.ice.gov/features/human-trafficking>

and abused in the US¹². The US government has prosecuted scores of diplomats who have trafficked household workers into the US, using their governmental authority as a mechanism of power and control¹³. Other immigrants arrive in the US in myriad ways and then become trafficking victims through the abuse and exploitation of employers and abusers inside of the US.¹⁴

III. The Proposed Procedural Changes Will Deny Trafficking Survivors a Meaningful Opportunity to Seek Asylum or a T Visa, Even if They Are Eligible

The Proposed Rule would exclude immigrants based on their potential exposure to communicable disease, regardless of their need for protection from abuse, exploitation, and persecution. Due to the pervasive nature of the current pandemic, that may be used to exclude people from any country. While many trafficking survivors present in the US apply for the T Visa¹⁵, a visa specifically created for trafficking survivors, not all do. Those who experienced trafficking outside of the US are unlikely to know about the T Visa when they arrive at a US port of entry, but may express a fear of return to their home country due to the power and control of the trafficker or others. They will, therefore, be processed through the credible fear process to determine their potential eligibility for asylum.

The T Visa was established by the Trafficking Victims Protection Act of 2000 in order to provide immigration protection, access to federally-funded benefits, and support to survivors of human trafficking *physically present in the US or at a port of entry to the US*. The Proposed Rule would reduce the due process protections that give survivors the time, space, and opportunity to express their need for protection, including protection from human traffickers. By excluding migrants based on their potential exposure to COVID-19, the US government will deny access to protection, contradicting the protections established in the Trafficking Victims Protection Act, as survivors are not able to apply from outside of the US. Therefore, if DHS is allowed to summarily exclude people at the border, they will not be able to pursue a T Visa or asylum.

DHS and DOJ must explain in their proposed rulemaking, and give adequate opportunity for comment, on how they will ensure the following:

- All immigrants subject to these new bars will be thoroughly assessed, in an age-appropriate, culturally-appropriate, trauma-informed, and victim-centered way, to determine if they are survivors of a severe form of trafficking in persons

¹² See, for example, FNUSA's Policy Papers Human Trafficking and H-2 Temporary Workers, May 2018, <https://freedomnetworkusa.org/app/uploads/2018/05/Temporary-Workers-H2-May2018.pdf>, Human Trafficking and J-1 Visas for Temporary Workers, May 2018, <https://freedomnetworkusa.org/app/uploads/2018/05/Human-Trafficking-and-J-1-Visas-May2018.pdf>

¹³ See US Department of State Fact Sheet, How Governments Address Domestic Servitude in Diplomatic Households, June 28, 2018, <https://www.state.gov/how-governments-address-domestic-servitude-in-diplomatic-households/>

¹⁴ See FNUSA Fact Sheet Human Trafficking and Immigrants' Rights, April 2015, <https://freedomnetworkusa.org/app/uploads/2018/07/HT-and-Immigrant-Rights.pdf>

¹⁵ See 8 USC 1101 (15)(T).

- Survivors of a severe form of trafficking in persons will be able to apply for a T Visa (for which sole jurisdiction lies with USCIS)
- Survivors of a severe form of trafficking in persons will have access to services and support to address their trauma and physical injuries which may have resulted from the trafficking as provided in the TVPA
- Which agency or court officer will be responsible for filing applications for Continued Presence for all survivors of a severe form of trafficking in persons identified through the Expedited Removal process, as required by the TVPA to be filed within 24 hours of the identification of a survivor of a severe form of trafficking in persons by a federal law enforcement agency
- The mechanism, process, forms, and authorities through which DHS will ensure that survivors of a severe form of trafficking in persons will not be removed, detained, or limited to lesser forms of immigration relief while their T Visa application is pending

Conclusion

In summary, these proposed revisions would put severe restrictions on access to asylum protections that would very specifically harm survivors of human trafficking seeking protection in the US. These harms cannot be mitigated with small edits or by providing exemptions for trafficking survivors. The existence of these barriers will deter survivors from even coming forward for protection and support, leaving them in continued abuse and exploitation. The US Government must act to protect survivors, not embolden traffickers. **Therefore, Freedom Network USA urges the Departments to discard these proposed changes and to, instead, stand in solidarity with human trafficking survivors.**

Thank you for the opportunity to submit comments on the Proposed Rules. Please do not hesitate to contact me at jean@freedomnetworkusa.org to provide further information.

Sincerely,



Jean Bruggeman
Executive Director
Freedom Network USA