



Freedom Network USA

Lauren Alder Reid
Assistant Director, Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1800
Falls Church, VA 22041

September 25, 2020

RE: EOIR Docket No. 19-0022, Public Comment Opposing Proposed Rules on Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure

Submitted via www.regulations.gov

Dear Ms. Reid:

On behalf of Freedom Network USA (FNUSA), I submit this comment in response to the proposed rule, entitled “**Public Comment Opposing Proposed Rules on Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure**” published in the Federal Register on August 26, 2020 (hereinafter “proposed rule”).

FNUSA, established in 2001, is a coalition of 71 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. As the largest network of providers working directly with trafficking survivors in the US, we are uniquely situated to evaluate the impact of US government efforts to address human trafficking, identify challenges, and propose solutions.

Trafficking survivors have, by definition, suffered a financial crime. Trafficking survivors have been robbed of their earned income by the traffickers who have exploited and abused them. Most foreign national trafficking survivors also have incurred debts in their home country while attempting to access a well-paid job in the US. Trafficking survivors have been exploited by recruiters, employers, and poorly regulated labor sectors that regularly leave them in debt and struggling to support their families while pursuing justice.

In recognition of these challenges, Congress created the T and U Visas¹ to ensure that survivors have access to immigration protections while they work with the justice system. Trafficking survivors routinely rely on nonprofit legal service providers, including our members, for representation in immigration matters. These under-resourced providers work diligently to provide high quality, specialized assistance for trafficking survivors. They need more flexibility, not less, in court proceedings to ensure trafficking survivors have access to justice in the immigration system. Therefore, we strongly oppose the barriers to justice

¹ See 8 USC 1101 (15)(T) and (U).

created by the proposed rule, especially for survivors of human trafficking. Instead, we call on EOIR to develop policies and procedures that ensure that immigrant survivors of human trafficking and other forms of violence and exploitation have equal access to critical, life-saving protections.

Filing Deadline Extension Timeline Reductions Harm Trafficking Survivors

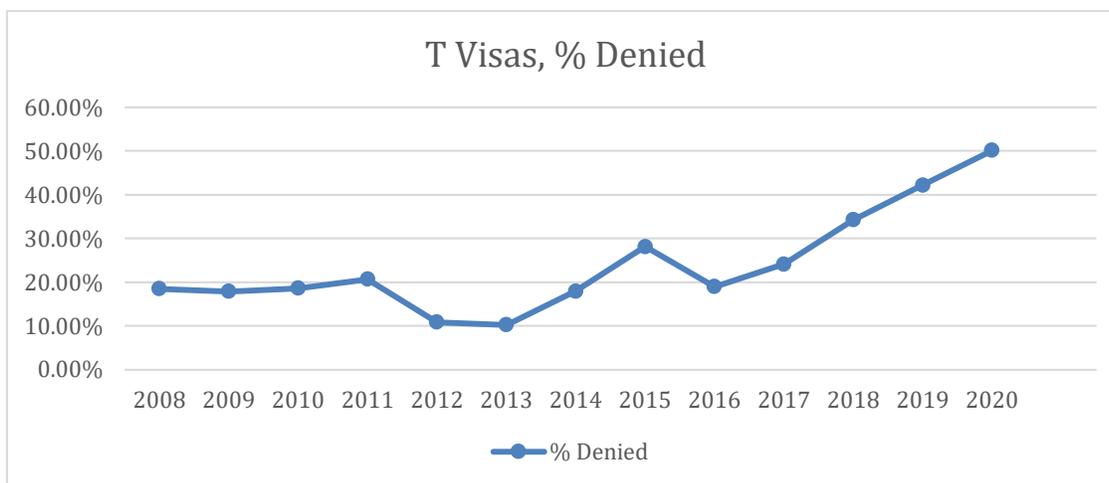
The reduction in the filing deadline extension to a maximum of 14 days, with good cause shown, does not allow the flexibility needed for trafficking survivors and other vulnerable immigrants. This serves to undermine congressional intent to make humanitarian relief accessible to victims. EOIR should instead focus its efforts on ensuring that low-income and other vulnerable immigrants have access to the immigration relief for which they are eligible.

Human trafficking cases are rare and complex. The trafficking history may extend over a long period of time. The trauma of the trafficking experience often makes it difficult for survivors to recall events clearly, to recall dates and times, and to discuss their experiences in chronological order. These issues present challenges for their immigration attorneys who need to assist the survivor in preparing a sufficiently detailed personal statement for their immigration application. Preparation for each immigration hearing can require complex interviews and mental health support. Foreign national trafficking survivors generally fear return to their home country where the trafficker may reside and/or where the survivor has enormous trafficking-related debt. Survivors must overcome these fears and trauma to work with their immigration attorney to prepare their cases, they may need frequent breaks or to space out interviews over long periods of time to allow for mental health services and support.

A strict time limit does not allow the court to consider the individual needs of the survivors, especially those who have complex cases, and those represented by nonprofit legal services providers. Human trafficking is a fairly novel issue, and most immigration attorneys (including DHS attorneys and judges) are not well-versed in the dynamics of human trafficking and the immigration protections provided in US law.

This is a critical time to preserve access to a fair appeals process for trafficking survivors. The most recent data released by USCIS shows a substantial increase in the denial rates for T Visas.² The denial rate for T Visas, when taken as a percentage of total decisions made in each Fiscal Year, has skyrocketed to 50% in the first half of FY20 after hovering between 10-20% from 2008 to 2014. No explanation has been provided by USCIS for the precipitous increase seen since 2016. It is reasonable to assume that a significant number of these trafficking visa denials will be appealed and that providing sufficient time for traumatized trafficking survivors to present a complete case is in the interests of justice.

² https://www.uscis.gov/sites/default/files/document/data/l914t_visastatistics_fy2020_qtr2.pdf



Barring Administrative Closure Would Harm Human Trafficking Survivors

The rule proposes the elimination of administrative closure, which would be catastrophic for human trafficking survivors. Due to the complexity of human trafficking cases, Congress has reserved to USCIS the authority to grant T Visas. T Visas were created by the Trafficking Victims Protection Act of 2000 (TVPA) specifically to protect human trafficking victims from deportation and to ensure their eligibility for the services and support they need to heal.

Unfortunately, most human trafficking survivors do not self-identify as such. They do not know that protections are available to them. Many do not even know that the abuse and exploitation that they have suffered is unlawful in the US, or that US authorities would protect them. Thus, they do not report their experience readily. Many are not identified as trafficking victims until they are already in removal proceedings. As described above, most trafficking victims are left destitute by the trafficking and may not engage immigration counsel. They are unlikely to know that immigration protection exists for trafficking survivors, as the US is one of very few countries that offers such protection. And even if they did have immigration counsel, few immigration practitioners are familiar with the T Visa and may not screen the client for this relief at the beginning of representation.

Therefore, trafficking survivors often find themselves applying for a T Visa while they are already in removal proceedings, perhaps even after an initial denial of another form of relief such as asylum. However, only the USCIS Vermont Service Center can adjudicate a T Visa application. At this point, processing times average 18-24 months.³

It is both a waste of court resources, and a manifest injustice, to move forward with removal proceedings while a T Visa application is pending. An administrative closure allows for the conservation of court resources while the application is decided. Congress created the T Visa to make sure that trafficking survivors would not be returned to their trafficker, but would instead be provided services and support while they pursue justice in the US. Eliminating administrative closure would frustrate this Congressional intent and violate the TVPA.

³ <https://egov.uscis.gov/processing-times/>. Accessed on September 25, 2020 at 5.27pm Eastern.

sensitive nature of appeals, once again survivors are in the impossible situation of choosing between their basic needs (like food, housing, and medicine) and pursuing their T Visa.

Conclusion

In summary, these proposed revisions would put severe restrictions on access to immigration protections that would very specifically harm survivors of human trafficking. 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 Department to discard these proposed changes and to, instead, stand in solidarity with human trafficking survivors.

I can be reached at jean@freedomnetworkusa.org if you have any questions or need any further information or explanation.

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is fluid and cursive, with a long horizontal flourish at the end.

Jean Bruggeman
Executive Director
Freedom Network USA