



Freedom Network USA

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Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington DC 20529-2140
Via: www.regulations.gov

**RE: DHS DOCKET No. USCIS-2006-0059
OMB Control Number 1615-0099
Classification for Victims of Severe Forms of Trafficking in Persons Forms**

Dear Ms. Deshommes:

I am writing to submit Freedom Network USA's comments to DHS Docket No. USCIS-2006-0059, OMB Control Number 1615-0099, Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for T Nonimmigrant Status.

FNUSA is the nation's largest coalition of service providers and advocates working directly with human trafficking survivors in the United States. We are committed to the human rights-based approach to human trafficking, placing a trafficked person's priorities and narrative at the center of anti-trafficking work. We work to create a coordinated national system in which appropriate and effective high-quality services are available to any survivor, anywhere, anytime—regardless of legal status, geographic location, age, gender, sexual orientation, or type of trafficking experienced.

We would like to commend the Department of Homeland Security (DHS) for making changes to these forms and make them more accessible to survivors. We appreciate the opportunity to comment on these forms.

Specific Recommendations, by Form:

Note: Strikethroughs are used to indicate language we recommend removing and italics are used to indicate recommended replacement language.

Instructions for Application for T Nonimmigrant Status

Section: Who May File This Form?

Number 1. Principal Applicant, Part C(1). You are under 18 years of age.

Recommended Change:

You are under 18 years of age *OR were under 18 years of age during any part of the trafficking victimization.*

Explanation:

This should be clarified to specify the age-based exemption applies to individuals who were under 18 when they experienced trafficking, even if they are older than 18 at the time of filing the I-914.

Section: Completing Form I-914

Part 2. General Information About You (Person filing this application as a victim)

Number. 1. Your Full Legal Name.

Recommended Change:

Provide your legal name, ~~as shown on your birth certificate, passport or other legal document.~~ If you have two last names, include both and use a hyphen (-) between the names, if appropriate. Write your last, first, and middle names in each appropriate field.

Explanation:

Some trafficking survivors do not have access to legal documents with their legal name. USCIS should accept any credible evidence of the applicant's legal name, which may include a combination of documents.

Number 3. U.S. Physical Address.

Recommended Change:

Give your physical street address, *if you have one and you feel safe providing it.* This must include a street number and name or a rural route number. Do not put a post office box (PO Box) number here. *If you are unable to provide your physical address, you must still include the zip code of your current location in section 4.e. in order to ensure that your biometrics appointment is at the Appointment Service Center nearest to you.*

Explanation:

We commend DHS for taking into consideration the safety of victims of crime by including a field for a Safe Mailing Address. However, there should be language clearly indicating the **alternative** option of completing the Safe Mailing Address ***instead*** of the physical address (not in addition to). Trafficking survivors may be living in a temporary location, such as a shelter, and may not have a reliable home address or indeed a home address of any kind, to provide to USCIS. Additionally, as DHS is aware, many victims of trafficking are required to provide the T Visa application to the Trafficker-Defendant as part of the criminal or civil discovery process. Finally, DHS may disclose an applicant's information to a Law Enforcement Agency to investigate or prosecute severe forms of trafficking in persons, and that law enforcement agency may be required to share this information with the trafficker during criminal prosecution. This disclosure could jeopardize the victim's safety and they may fear submitting the application if it requires them to reveal their current location.

Therefore, USCIS must provide instructions to ensure the greatest level of protection of trafficking survivors' information. By requiring the applicant to include their zip code only in the physical address and completing the Safe Mailing Address, DHS can provide biometrics appointments at the ASC location nearest to the applicant, protect and enforce victims' rights to privacy and protection, while gathering all the information it needs to process the application.

Number 4. Safe U.S. Mailing Address.

Recommended Change:

If you do not *have a home address, or do not* feel secure in receiving correspondence regarding this application at your home address, you may provide a "safe mailing address in this space. This address may be a post office box, the address of a friend, your attorney, a community-based organization that is helping you, or any other address where you can safely and promptly receive mail. *In order to make sure you are given a biometrics appointment at the Application Support Center (ASC) nearest you, put the zip code for your physical address in section 4.e. of this application.*

Explanation

As stated above, by requiring the applicant to include their zip code, DHS can provide biometrics appointments at the ASC location nearest to the applicant.

Number 7. Gender or Sex and Marital Status.

Recommended Change:

++FNUSA recommends that USCIS add a Nonbinary/Gender Fluid or Other option to the form.

Alternative Change:

Select the appropriate box for each. *If you identify as transgender, gender fluid or nonbinary, please select the box that corresponds with the gender with which you most closely identify.*

Explanation:

On April 10, 2012, U.S. Citizenship and Immigration Services issued Policy Memorandum, "Adjudication of Immigration Benefits for Transgender Individuals; Addition of *Adjudicator's Field Manual (AFM) Subchapter 10.22 and Revisions to AFM Subchapter 21.3 (AFM Update AD12-02)*". In this memo, USCIS has indicated it will issue applicant's preferred gender if the individual presented documentation recognizing the correct gender. This approach is further cemented through the January 19, 2017 USCIS Policy Memorandum, "Revision of Adjudicator's Field Manual Subchapter 10.22 - Change of Gender Designation on Documents Issued by U.S. Citizenship and Immigration Services." FNUSA commends USCIS for taking steps to recognize transgender individuals need to have immigration documentation that matches their preferred gender identity and would like to see that approach reflected in these instructions. FNUSA wants to highlight that gender identity and documentation are means of coercion for transgender trafficking victims. If a trafficking survivor is able to receive an employment and immigration document reflective of their gender identity, it will help them to gain stability.

Number 11. Passport

Recommended Change:

Give the number of the passport used to enter the United States. Give the location where your passport was issued. Give the date when your passport was issued, even if the passport is currently expired. If the passport you used to enter the United States is not available, include an explanation in Part 9. *A passport is not required when applying as a principal T applicant (the victim); however, not having a passport may be a ground of inadmissibility.*

Explanation:

Trafficking victims often have their identity documents taken away by their traffickers. The Trafficking Victims Protection Act (TVPA) has acknowledged and accommodated trafficking survivors by establishing the T Visa application as one of the few applications for immigration relief that does not require identity documents in the initial filing. The current instruction appears to require a survivor of trafficking to produce an identity document. This language can deter trafficking survivors from seeking a T Visa or place survivors in situations where they might jeopardize their safety in order to retrieve the identity document from their trafficker.

Explicitly stating that a passport is not required in the instructions will combat the misconception that a passport or identity document is required, be in alignment with the intentions of the TVPA, and allow survivors to file their T Visa application sooner. By clarifying that a waiver of inadmissibility may be required, USCIS would be putting applicants and their advocates on notice that the applicant may still be inadmissible under INA section 212(a)(7)(B)(i)(I).

Section: Completing Form I-914, Supplement A, Application for Family Member of T-1 Recipient

Part 3. General Information About You (the principal)

Number. 1. Your Full Legal Name.

Recommended Change:

You should provide your legal name, ~~as shown on your birth certificate, passport or other legal document.~~ If you have two last names, include both and use a hyphen (-) between the names, if appropriate. Type or print your last, first, and middle names in each appropriate field.

Explanation:

As noted above, some trafficking survivors do not have access to identity documents in their legal name.

Part 4. Information About Your Family Member (the derivative)

Number. 1. Full Legal Name.

Recommended Change:

Provide the name of the family member, ~~as shown on his or her birth certificate or legal change of name document.~~ If the person has two last names, include both and use a hyphen (-) between the names, if appropriate. Type or print the person's last, first, and middle names in each appropriate field.

Explanation:

As noted above, some trafficking survivors and their derivatives do not have access to identity documents in their legal name.

Number 3. U.S. Physical Address or Intended Physical Address.**Recommended Change:**

Give his or her intended physical street address, *if you the person has one and you feel safe providing it*. This must include a street number and name or a rural route number. Do not put a post office box (P.O. Box) number here. *If you are unable to provide the physical address, include the zip code of the current or intended location in order to ensure that the biometrics appointment is at the nearest Appointment Service Center.*

Explanation:

FNUSA again commends DHS for taking into consideration the safety of victims of crime by including a field for Safe Mailing Address. However, the victim's family members are likely to intend to live at the same address as the trafficking victim. Therefore, this address should not be required in any part of any related application.

Number 7. Gender.**Recommended Change:**

++FNUSA recommends that USCIS add a Nonbinary/Gender Fluid or Other option to the form.

Alternative Change:

Select the appropriate box for each. *If you identify as transgender, gender fluid or nonbinary, please select the box that corresponds with the gender with which you most closely identify.*

Explanation:

As noted above, USCIS should provide the options for all gender identities.

Section: Evidence to Establish T Nonimmigrant Status**Recommended Change:**

You must file Form I-914 with evidence sufficient to demonstrate that you satisfy each of the eligibility requirements. If you have in your possession, or have access to, a document showing how you entered the United States, you must submit a copy of that document with your application. *Applicants may submit "any credible evidence" and the applicant is not required to demonstrate the unavailability of any specific document. 8 CFR 214.11(d)(ii). An applicant may not be denied for failure to submit particular evidence, only if the evidence that was submitted is not credible or otherwise fails to establish eligibility. It is within the Service's sole discretion to determine what evidence is credible and to determine what weight to give that evidence.*

Explanation:

It is important to clearly state the evidentiary standard, especially given the previous Interim Rule, which divided evidence into Primary and Secondary evidence.

Number 3.**Recommended Change:**

Have complied with any reasonable request for assistance in a Federal, State, or local law enforcement investigation or prosecution of acts of trafficking in persons, unless are under

18 years of age *or you were under age 18 at any point during your victimization*, or you are unable to cooperate with request due to physical or psychological trauma; and

Explanation:

The language should clearly explain that the age-based cooperation exemption applies to survivors who were under age 18 when they were trafficked but are now age 18 or older.

Section: What is the filing fee?

Recommended Change:

There is no filing fee for Form I-914. *There are fees for the following, related, forms:*

1. *If applicable, for principal applicants and family members, Form I-192, Application for Advance Permission to Enter. See “Waiver of Grounds of Inadmissibility” for more information. A fee waiver may be available.*
2. *For family members, Form I-765, Application for Employment Authorization. A fee waiver may be available.*

NOTE: *The principal applicant (victim) is not required to file a Form I-765. See “Specific Instructions for Form I-914” for additional information.*

Explanation:

This additional language will provide clear guidance on where applicants and advocates can get more information on fees for forms associated with the T visa application.

Form I-914, Application for T Nonimmigrant Status

Part 2. General Information About You (Person filing this application as a victim)

Number 3. Physical Address

Recommended Change:

If you do not enter your physical street address, you must provide a Safe Mailing Address, below, and include your zip code here. For more information, please review the Instructions to Form I-914, Application for T Nonimmigrant Status.

Explanation:

As described above, this is critical to protect the safety of victims.

Number 8. Gender

Recommended Change:

++FNUSA recommends that USCIS add a Nonbinary/Gender Fluid or Other option to the form.

Explanation:

Adding an additional gender option would be more inclusive of transgender, gender fluid, and non-binary survivors. We also note that Form I-914 Supplement A, includes “Other” as an option.

Part 3. Additional Information About Your Application

Number 6. I am under 18 years of age.

Recommended Change:

Move to Number 5.

Explanation:

Minors are exempt from the requirement to comply with reasonable requests from law enforcement. Therefore, applicants under 18 should not be asked about reporting of the crime, as if is not required. 8 USC 1101 (T)(i)(III)(cc). By moving this question to #5 and including the instructions for applicants under 18 to skip forward, USCIS is correctly representing the legal requirements for minors.

Part 3. Additional Information About Your Application

Number 9. My most recent entry was on account of the trafficking that forms the basis for my claim. (Explain the circumstances of your most recent arrival.)

Recommended Change: (Delete this question entirely.)

~~9. My most recent entry was on account of the trafficking that is the basis for my claim.~~

Explanation:

This language misstates the physical presence eligibility requirement. Neither the statutory language nor the regulatory language requires that an applicant's last entry be related to the trafficking. The law requires only that the applicant be currently present in the US on account of the trafficking. The entry may have been unrelated to the trafficking. This question deters eligible trafficking victims from seeking the protection that is guaranteed under the law. Additionally, it makes no sense to ask for an explanation when the form has only Yes/No check boxes.

Part 4. Processing Information**Instructions****Recommended Change:**

For purposes of this application, you must answer "Yes" to the following questions, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record. *You may answer "No" if the records were vacated and expunged based on a factual finding.* (If your answer is "Yes" to any one of these questions, explain in the space provided in **Part 9. Additional Information**. Additionally, explain if any of the acts or circumstances below are related to you having been a victim of a severe form of trafficking. ...)

Explanation:

In vacatur or expungement, courts may have entered a finding that the judgement was made in error, therefore the applicant no longer has a conviction and would properly answer "no".

Part 6. Applicant's Statement, Contact Information, Declaration, Certification, and Signature**Section: Applicant's Declaration and Certification****Recommended Change:**

I furthermore authorize release of information contained in this application, in supporting documents, and in my USCIS records, to other entities and persons where necessary for the administration and enforcement of U.S. immigration law. **Any disclosure shall be in accordance with the VAWA confidentiality provisions at 8 U.S.C. §1367 and 8 CFR 214.14(e).**

Explanation:

This clarifies and reinforces the applicability of the VAWA confidentiality provisions, as required by law.

Form I-914, Supplement A, Application for Family Member of T-1 Recipient**Part 4. Information About Your Family Member (the derivative)****Number 3. U.S. Physical Address or Intended Physical Address****Recommended Change:**

[Insert the following instructions.]

If you are unable to provide your physical address because of safety concerns, you must still include the zip code of the derivative's current or intended physical address.

Explanation:

FNUSA again commends DHS for taking into consideration the safety of victims of crime by including a field for Safe Mailing Address. However, the victim's family members are likely to intend to live at the same address as the trafficking victim. Therefore, this address should not be required in any part of any related application.

Part 4. Information About Your Family Member (the derivative)**Number 14. Passport or Travel Document Number - Number 18. Current****Immigration Status****Recommended Change to each:**

Add *(if any)*

Explanation:

Derivatives, like applicants, may not have a passport at the time of the application. Derivatives may not be present in the US, therefore they would not have a Current Immigration Status.

Part 5. Processing Information**Instructions****Recommended Change:**

For purposes of this application, if applicable, you must answer "Yes" to the following questions, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer, or attorney, told you that your family member no longer has a record. *You may answer "No" if the records were vacated and expunged based on a factual finding.* (If your answer is "Yes" to any one of these questions, explain in the space provided in **Part 9. Additional Information. ...**)

Explanation:

In vacatur or expungement, courts may have entered a finding that the judgement was made in error, therefore the applicant no longer has a conviction and would properly answer "no".

Part 6. Applicant's Statement, Contact Information, Declaration, Certification, and Signature**Section: Applicant's Declaration and Certification**

Recommended Change:

I furthermore authorize release of information contained in this application, in supporting documents, and in my USCIS records, to other entities and persons where necessary for the administration and enforcement of U.S. immigration law. **Any disclosure shall be in accordance with the VAWA confidentiality provisions at 8 U.S.C. §1367 and 8 CFR 214.14(e).**

Explanation:

This clarifies and reinforces the applicability of the VAWA confidentiality provisions, as required by law.

Thank you in advance for your consideration of these comments.



Jean Bruggeman
Executive Director
Freedom Network USA