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Shoba Sivaprasad Wadhia
Editor-in-Chief

Volume 3, Number 1, April 2021

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Present Yet Unprotected

USCIS's Misinterpretation of the T Visa's Physical Presence Requirement and Failure to Protect Trafficking Survivors

Corie O'Rourke, Cory Sagduyu, and Katherine Soltis*

Abstract: U.S. Citizenship and Immigration Services (USCIS) has failed to protect trafficking survivors applying for T nonimmigrant status by changing its interpretation of the T visa's "physical presence" requirement. The article reviews the history of the Trafficking Victims Protection Act (TVPA), which Congress passed to provide humanitarian protection to foreign-born trafficking survivors and encourage them to cooperate with law enforcement, and T visa regulatory requirements. The authors conclude that USCIS's recent interpretation of the physical presence requirement conflicts with the TVPA's statutory history and existing T visa regulations. Further, USCIS's misinterpretation of the physical presence requirement combined with other policies enacted by the Trump administration has curtailed protections for trafficking survivors, and the authors advocate for a reversal of these changes under the Biden administration.

Introduction

The Trump administration enacted sweeping changes making it harder for foreign-born trafficking survivors to obtain legal status in the United States and discouraging trafficking survivors from reporting crimes. One such change involved a sudden and abrupt shift in the U.S. Citizenship and Immigration Services's (USCIS) interpretation of the "physical presence" requirement of the T visa, a nonimmigrant visa that provides legal status to foreign-born human trafficking survivors.

Under the Trafficking Victims Protection Act (TVPA) and federal regulations, applicants for T visas must prove not only that they are victims of trafficking, but also that they are "physically present in the United States . . . on account of such trafficking,"¹ among other requirements. Prior to the Trump administration, USCIS interpreted the "physical presence" requirement broadly and generally found that trafficking survivors satisfied this requirement so long as the applicants had been subjected to trafficking in the United States in the past and had not left the United States since escaping or being liberated from their traffickers. However, under the Trump administration, USCIS changed its interpretation of the physical presence requirement with no public

announcement or warning. The agency began denying T visa applications if more than a few years had passed since the applicant had escaped the traffickers before applying for a T visa, despite the absence of any explicit T visa filing deadline in the TVPA or federal regulations.

One case illustrates the impact of this narrow interpretation of the physical presence requirement. Anita² fled gender-based violence in her home country of Honduras in 2000 and sought protection in the United States. She worked as a waitress in a restaurant from 10 a.m. until 2 a.m. without breaks and was only paid with tips. The manager of the restaurant was physically, verbally, and psychologically abusive. Anita was barred from leaving the restaurant for any reason, and her every move was monitored throughout the day. Anita's manager threatened to call the police and have her deported if she did not obey him. New to the United States, Anita did not know anyone outside of the restaurant, could not speak English, and was terrified. Anita escaped the constant abuse of her employers with the help of a customer in 2001.

For the next 16 years, Anita scraped together a living while struggling with the lasting mental and physical effects of having been subjected to labor trafficking. Anita had never heard the term "human trafficking," and, even though she sought assistance from two immigration lawyers, she was not identified as a trafficking survivor³ for many years. She lived in constant fear of being deported by immigration officials. She struggled with post-traumatic stress disorder (PTSD), depression, and anxiety, but had not previously heard of these illnesses and was unaware of available mental health services.

In 2017 Anita sought legal assistance at Ayuda, an organization that provides immigration legal representation in the Washington, DC, metropolitan area, and was identified as a labor trafficking survivor.⁴ That same year, Anita reported her traffickers to the police, participated in an investigation, and sought protection from USCIS by applying for a T visa. However, while Anita's T visa application was pending, USCIS began narrowing its interpretation of the physical presence requirement and denying relief to applicants who did not come forward for several years after the trafficking occurred. USCIS denied Anita's application, leaving her undocumented, at risk of being put in removal proceedings, and vulnerable to future abuse and exploitation.

USCIS's change in interpretation has affected trafficking survivors nationwide. Appeals to the Administrative Appeals Office (AAO) involving the physical presence requirement rose sharply⁵ following this change in interpretation, amounting to nearly one-half of all T visa appeals in 2020. Additionally, there is at least one recent federal court case contesting USCIS's changed interpretation of the physical presence requirement, claiming it constitutes an unlawful interpretation of regulations.⁶

Despite the drastic impact of this change, little has been written about it. This article aims to create awareness of USCIS's harmful misinterpretation of the physical presence requirement and advocate for USCIS, and the Department of Homeland Security (DHS) more broadly, to realign its interpretation

of the physical presence requirement with the federal regulations and the TVPA. First, this article will provide background on the TVPA, which created the T visa to protect foreign-born trafficking survivors and encourage their cooperation with law enforcement. Second, drawing from extensive experience representing T visa applicants and an analysis of AAO decisions, the article will demonstrate how USCIS has been interpreting the physical presence requirement in a way that is contrary to the plain language of the regulations and conflicts with the intent of the TVPA. Third, the article will describe how, in tandem with other policies implemented under the Trump administration, USCIS's change in interpretation has curtailed protections for trafficking survivors and hindered law enforcement's ability to investigate and prosecute trafficking cases.⁷ Finally, the article will explain that, despite a handful of promising nonprecedential AAO decisions regarding this requirement, appealing to the AAO is not a viable or realistic option for most trafficking survivors. As a result of these legal hurdles, trafficking survivors nationwide are frequently being denied protection or are discouraged from applying for protection in the first place.

Background of the TVPA and T Visa

In 2000, Congress created the T visa as part of the TVPA, a comprehensive piece of bipartisan legislation that sought to fight sex and labor trafficking both in the United States and abroad.⁸ The TVPA was passed on the heels of and mirrored the primary international legal protection against trafficking, The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children [hereinafter, Palermo Protocol],⁹ which was adopted by the United Nations in 2000 and entered into force in 2003.¹⁰ Both the TVPA and the Palermo Protocol adopted a three-pronged approach (often called the "3 P approach") to fight trafficking: prosecution of traffickers, protection of victims, and prevention of trafficking.¹¹ In line with this three-pronged approach, the main provisions of the TVPA and its subsequent reauthorizations include: increased criminal penalties for traffickers,¹² financial assistance and case management services for survivors from the Department of Health and Human Services (HHS),¹³ the creation of the T visa as an immigration remedy for foreign-born trafficking survivors, and a private right of action for trafficking survivors.¹⁴

The creation of the T visa was a crucial part of Congress's strategy to encourage cooperation between foreign-born trafficking survivors and law enforcement agencies (LEAs). Congress recognized that foreign-born individuals were vulnerable to trafficking due to their unfamiliarity with U.S. laws, inability to speak English, and isolation; however, because of their fear of immigration enforcement, foreign-born trafficking survivors often feared reporting to LEAs and seeking critical assistance when they were victimized.¹⁵

In response to this problem, Congress created the T visa as a legal remedy to provide legal status to trafficking survivors who cooperate with LEAs.¹⁶

The T visa provides four years of nonimmigrant status and a path to permanent residency for the principal trafficking survivor and certain family members. To be eligible for a T visa, the applicant must demonstrate that he or she: (1) was a victim of a “severe form of trafficking,” as defined in the TVPA, which includes both sex and labor trafficking;¹⁷ (2) is physically present in the United States on account of trafficking; (3) has not unreasonably refused to cooperate with an LEA, with limited exceptions; and (4) would “suffer extreme hardship involving unusual and severe harm upon removal.”¹⁸ The TVPA defines a “severe form of trafficking” as:

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.¹⁹

Subsequent reauthorizations of the TVPA have consistently expanded the group of potential applicants eligible for T nonimmigrant status.²⁰ The TVPA places an annual cap of 5,000 visas per year—a cap that has never been reached.²¹

The T visa is very advantageous compared to other forms of immigration relief. Prior to the Trump administration, the processing time for T visas was between six months and a year—much shorter than for most other types of relief.²² Unlike with the U visa, the annual cap of 5,000 visas has never been met, resulting in much faster processing times. Additionally, upon approval of their T visa application, T visa recipients become eligible for a host of public benefits that allow them to stabilize and heal from the trauma of trafficking. T visa holders can apply to adjust their status to lawful permanent residence either after three years in T nonimmigrant status or after receiving an attorney general certification that the investigation or prosecution is complete; as a result of this provision, many T nonimmigrant recipients can apply for their residency just a few months after receiving their initial T visa, which provides another source of long-term stability.

Since the TVPA's inception, both scholars and practitioners have lamented how the humanitarian goals of the TVPA²³ have been hindered by the U.S. government's competing goal of immigration enforcement and by an over-emphasis on trafficking prosecutions. Several articles have found fault with the premise of the T visa altogether, as it limits protections, with few exceptions, to survivors who have cooperated with LEAs rather than being a purely humanitarian form of relief for all trafficking survivors.²⁴ Other scholars have criticized how LEAs tasked with identifying survivors and investigating and prosecuting perpetrators have primarily focused on sex trafficking and the idea of a “perfect victim,” a stereotypical view “involving a trafficking victim who

is under the full control of traffickers ... for sex work.”²⁵ Finally, and most relevant to this article, practitioners and scholars have faulted how immigration enforcement efforts have continually impeded the humanitarian goals of the TVPA, with Jennifer Chacón explaining:

U.S. immigration law and policy unintentionally helps traffickers assert control over victims once those victims are in the United States. Unauthorized peoples are more vulnerable to threats because they know that efforts to seek legal recourse can result in protracted immigration detention, criminal prosecution, and, of course, removal. The legal limbo of unauthorized migrants has left many migrant laborers reluctant to report crimes and labor violations.²⁶

Criticism stemming from the competing goals of immigration enforcement and humanitarian protection increased as the Trump administration prioritized immigration enforcement to the detriment of trafficking survivors. By placing applicants whose cases were denied in removal proceedings, issuing substantially more requests for evidence (RFEs) and denials, and creating an overwhelming climate of fear for immigrants, the Trump administration both denied protection to many trafficking survivors and deterred others from applying for relief and reporting to law enforcement. The Biden administration has already taken some initial steps to begin undoing these harms. However, without comprehensive immigration reform, it may take years to undo the damage inflicted by the Trump administration. Below, the article turns to an examination of one of the T visa requirements whose changing interpretation by USCIS has resulted in hardships for both trafficking survivors and LEAs.

Recent Misinterpretation of the Physical Presence Requirement

USCIS has quietly undermined the federal regulations and the TVPA with its recent interpretation of the physical presence requirement for T visa applicants. USCIS has (1) imposed a de facto filing deadline, (2) ignored a regulatory change that removed the previous requirement that T visa applicants show they did not have an “opportunity to depart” the United States, (3) failed to adopt a trauma-informed approach, and (4) failed to take into consideration key provisions of the physical presence requirement.

USCIS Began Imposing a De Facto Filing Deadline

Under the federal regulations, an applicant for T nonimmigrant status is physically present in the United States on account of trafficking when the applicant: (1) is present because he or she is currently being subjected to a

severe form of trafficking, (2) was liberated from a severe form of trafficking by an LEA, (3) escaped a severe form of trafficking in persons before an LEA was involved, (4) was subject to a severe form of trafficking “at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons,” or (5) is present on account of having been allowed entry into the United States for participation in investigation “or judicial process associated with an act or perpetrator of trafficking.”²⁷

USCIS previously interpreted the physical presence requirement more broadly. If the trafficking occurred in the United States and the trafficking survivor had not left the United States since the trafficking occurred, USCIS would generally find that the applicant satisfied the physical presence requirement.²⁸ However, since 2018, USCIS has issued RFEs and denials based on the physical presence requirement in many cases when the trafficking survivor applied for a T visa more than a few years after escaping their trafficker. This interpretation is at odds with both the regulations and the TVPA.

Without any notice or opportunity to comment, USCIS began imposing a de facto filing deadline despite the absence of any such deadline in the TVPA or the federal regulations. Trafficking survivors who had escaped or were rescued from their traffickers more than a few years before filing a T visa application frequently began receiving RFEs and denials in which USCIS questioned whether the applicants were physically present on account of trafficking because of the length of time that had passed before applying for relief.²⁹ Additionally, in many RFEs and denials, USCIS has inserted *ultra vires* language. For example, RFEs have incorrectly stated that federal regulations require the trafficking survivor to have been “recently liberated by an LEA” to meet the physical presence requirement, although federal regulations only state that the person needs to have been “liberated by an LEA,” without any time limits or qualifiers.³⁰

USCIS’s actions in these cases contradict existing law and federal regulations. Congress specifically did not include a statutory filing deadline when creating the T visa. Moreover, DHS initially included a filing cutoff date for T visa applications in the regulations but intentionally removed the cutoff date in 2017 in order to make protections more available to survivors.³¹ Federal regulations previously required adults who were victims of trafficking prior to October 28, 2000, to file their T visa application before January 31, 2003, unless there were exceptional circumstances.³² In removing this cutoff date, DHS sought to make it *easier* for trafficking survivors who had been victimized several years in the past to obtain immigration relief; instead, the opposite has occurred.

Cases like Adele’s illustrate this problem. Adele came to the United States as a domestic worker for a foreign dignitary in the 1990s. After Adele arrived in the United States, her employer withheld her passport, prevented her from leaving the home, and forced her to work for 14 hours per day for only \$200 per month. Adele sought legal protection in 2016, prior to the change in the federal regulations, and was concerned about applying due to the cutoff date.

However, she decided to apply for a T visa after DHS removed this requirement, as it appeared that she then qualified for relief. Now, given USCIS's imposition of a de facto filing deadline, she has received an RFE regarding physical presence and is nervously awaiting a final decision in her case.

Although DHS Removed a Requirement That Applicants Show They Did Not Have the “Opportunity to Depart” the United States, USCIS Instead Began Heavily Scrutinizing Why Applicants Had Not Left the United States After Leaving Their Traffickers

Under the Trump administration, USCIS ignored another regulatory change that was intended to make it easier for T visa applicants to satisfy the physical presence requirement. Prior to 2017, the federal regulations required applicants who had escaped their traffickers before an LEA became involved to demonstrate that they had not had an “opportunity to depart” the United States or a “clear chance to leave.”³³ Under the previous standard, USCIS could examine “circumstances attributable to the trafficking in persons situation, such as trauma, injury, lack of resources, or travel documents that have been seized by the traffickers” to determine whether the applicant had a “clear chance to leave.”³⁴ In new regulations that went into effect on January 18, 2017, DHS removed the “opportunity to depart” regulatory requirement, recognizing in doing so that the requirement was “unnecessary and may be counterproductive.”³⁵

Notwithstanding this change in the federal regulations, which was meant to make it easier to qualify for T status, USCIS shortly thereafter began issuing an increasing number of RFEs on the physical presence requirement. These RFEs seemingly require many T visa applicants—not just those who had escaped their traffickers before an LEA became involved—to show they had not had an opportunity to depart the United States. USCIS has included language in RFEs and denials questioning why T visa applicants lack the resources to leave the United States or are unable to leave, despite the regulatory change four years ago that specifically removed the requirement to provide such evidence.

USCIS Has Failed to Adopt a Trauma-Informed Approach in Considering Why T Visa Applicants' Physical Presence in the United States Is Directly Related to the Trafficking

In issuing RFEs and denials, USCIS has focused heavily on the fourth of the five ways listed in the federal regulations about how applicants can demonstrate that they meet the physical presence requirement. Under the fourth provision, an applicant will be considered physically present if he or

she was subjected to trafficking “at some point in the past and whose continuing presence in the United States is directly related to the original trafficking in persons.”³⁶ Drawing from a consideration of the authors’ cases and AAO decisions, this section will explore how USCIS has frequently discounted and ignored factors like trauma, lack of awareness of services and rights, financial insecurity, and access to the U.S. justice system in determining whether trafficking survivors’ continued presence is directly related to the trafficking.³⁷

Trauma

Trafficking often results in a deep sense of mistrust toward others, which may hinder survivors from seeking assistance for many years.³⁸ Trafficking survivors are frequently unaware of available mental health services. Language and cultural barriers may also delay or prevent trafficking survivors from accessing psychological services.³⁹ For example, Anita, discussed in the introduction, struggled with PTSD and depression for 16 years due to her trafficking victimization until her immigration attorney referred her to a therapist for mental health services. However, even though Anita submitted a psychological evaluation, a letter from her therapist about her ongoing need for treatment, and a letter from her case manager about the trafficking-specific social services she receives, USCIS still found that her physical presence in the United States was not directly related to the trafficking.

Additionally, instead of recognizing the difficulties trafficking survivors face in accessing mental health services, USCIS has instead cast doubt on the credibility of trafficking survivors who did not seek mental health services for many years after the trafficking. For example, the AAO recently reversed a USCIS decision that concluded an applicant’s physical presence was not directly related to trafficking, even when the applicant was receiving mental health care, because the USCIS director believed the applicant “only sought mental health care for the purpose of filing his T application.”⁴⁰ USCIS should consider how trafficking leads to trauma that may delay trafficking survivors from filing T visa applications earlier, and how receiving mental health services to address trauma that resulted from trafficking is one way a survivor may demonstrate they are still in the United States on account of trafficking.

Lack of Awareness of Available Services and Rights

Many trafficking survivors do not file for T nonimmigrant status or receive trafficking-related services for several years after escaping their traffickers because they are unaware of available services and their rights in the United States. DHS itself has recognized that trafficking survivors may “not identify themselves as a victim.”⁴¹ Similarly, a survey of labor trafficking survivors found that “[e]ven though labor trafficking victims are afforded protection under

US law, victims were not aware that (1) the victimization they experienced was labor trafficking, (2) labor trafficking is a crime, and (3) they had rights and protections under the law regardless of their immigration status.”⁴² For example, in Anita’s case, she knew that she had been treated wrongly, but she was not aware that her employers’ actions were criminal in nature or that there were legal protections available to her.

It is not only trafficking survivors who lack knowledge about available services and their rights, but also organizations responsible for identifying trafficking survivors, including first responders, social workers, immigration attorneys, and even LEAs. Disturbingly, many survivors have reported trafficking to agencies within DHS itself before coming to Ayuda, yet these agencies frequently have not referred them to legal or social services. For example, several survivors were subjected to labor and sex trafficking by smugglers they initially employed to bring them to the United States. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) had apprehended these trafficking survivors near the border and either put them in removal proceedings or ordered them expeditiously removed. In many of these cases, trafficking survivors assisted CBP and ICE with investigating their traffickers, yet CBP and ICE never identified them as trafficking survivors or referred them to services. When they applied for immigration relief years later, USCIS—also within DHS—issued RFEs stating that the individuals were no longer physically present on account of trafficking because of the intervening years.

USCIS should recognize that a lack of awareness of legal protections in the United States may delay survivors from filing a T visa application. Further, USCIS should recognize that survivors and even LEAs may not properly identify individuals as trafficking survivors, which causes more time to pass before an applicant realizes that they may qualify for a T visa.

Financial Insecurity and Debt

Trafficking survivors often remain in the United States for years after the original trafficking due to financial insecurity and debt resulting from trafficking victimization. Many survivors escape their traffickers with nothing more than the clothes they are wearing. Other survivors have accrued tens of thousands of dollars in debt in order to pay recruitment agencies for jobs that never materialized. Instead, these survivors are often forced into other jobs where they continue to amass debt to their recruiters and employers. Once trafficking survivors have escaped their trafficker, a top priority is generally earning money for basic necessities such as food and housing. As a result of financial insecurity, “some victims . . . forgo immigration relief and instead remain unauthorized and move to wherever they could find work.”⁴³

However, USCIS frequently does not consider how “chronic financial insecurity characterizes formerly trafficked persons’ lives in the US not only in

the short term, but also years into their resettlement.”⁴⁴ For example, a recent AAO decision reversed USCIS’s decision that a T visa applicant was not physically present as he would “suffer hardships in the Philippines [due to his] . . . fear of the recruiters there, and inability to repay the loans he owes to family members for recruiting fees.”⁴⁵ Similarly, another trafficking survivor, Marco, borrowed \$4,000 from a lender in El Salvador to pay a smuggler to come to the United States, where he was promised employment. However, upon arriving in the United States, Marco’s employer forced him to pay for items such as housing and food at extremely high rates. Marco ultimately ended up paying his employer \$20,000 over the next four years until he escaped from his employer with virtually no money of his own. USCIS ignored Marco’s statements regarding the long-term financial insecurity he experienced after his escape and his fear of his lender in El Salvador, instead issuing an RFE alleging that he was not physically present in the United States on account of trafficking because of the intervening years. USCIS should recognize that financial insecurity and debt caused by trafficking victimization may delay a trafficking survivor from filing a T visa application.

Access to U.S. Justice System

Another important factor that should establish that trafficking survivors’ physical presence in the United States is directly related to the original trafficking is that trafficking survivors must stay in the United States to cooperate with LEAs and to access the U.S. justice system. However, despite Congress’s clearly stated goal of encouraging cooperation between foreign-born trafficking survivors and LEAs in the TVPA, USCIS has instead discounted and ignored this as a manner of establishing physical presence.

In many instances, traffickers use threats of harm to the trafficking survivor and their family members in their country of origin to dissuade the trafficking survivor from cooperating with law enforcement. In these cases, the trafficking survivor must stay in the United States both to assist with the investigation and prosecution and to receive protections from the U.S. justice system that would not be available in their home country. For example, Gina escaped her trafficker by calling the police when her trafficker physically attacked her. Gina received a protective order against her trafficker and was a witness in the prosecution against him.⁴⁶ Gina submitted evidence of her cooperation with law enforcement and her ongoing protective order against her trafficker, who she feared would be able to retaliate against her in her home country of Peru. Despite this evidence, USCIS issued an RFE alleging that she had failed to submit sufficient evidence demonstrating that her presence in the United States was directly related to trafficking.

As the U.S. Department of State (DOS) has recognized, the ability to hold their traffickers accountable is imperative for many trafficking survivors in the recovery process:

While governments cannot undo the pain and indignity victims face, they can seek to right those wrongs through official acknowledgment of injustice and by prosecuting, convicting, and sentencing traffickers and those complicit in human trafficking. In taking these measures, governments provide justice for victims, create more stable societies to keep the vulnerable safe, and work towards a world free from modern slavery.⁴⁷

Additionally, the TVPA requires federal courts to order restitution in trafficking prosecutions in the “full amount of the victim’s losses,”⁴⁸ which has been recognized by DOS as “key to justice [and] key to rebuilding a life.”⁴⁹ Similarly, many trafficking survivors nationwide need to remain in the United States to pursue civil suits against their traffickers, and the civil cause of action “has become a potent and essential weapon in the fight against human trafficking . . . [and] has permitted trafficking survivors to hold traffickers accountable who would otherwise have enjoyed total impunity.”⁵⁰

By denying T visa applications filed by survivors who wish to remain in the United States to access the U.S. justice system, USCIS is hindering both of the goals of the TVPA. Trafficking survivors are not receiving protection, and as discussed further below, LEAs are unable to investigate and prosecute the perpetrators.

USCIS Has Ignored Several Provisions in the Regulations That Establish Physical Presence

USCIS has often ignored provisions in the regulations that establish physical presence and instead only focused on the fourth provision in the regulation requiring the applicant demonstrate his or her “continuing presence in the United States is directly related to the original trafficking in persons.”⁵¹ However, the reach of the federal regulations is broad in nature, as the regulations include both applicants who “escaped an act of trafficking before an LEA became involved,”⁵² and applicants who were “liberated from a severe form of trafficking by an LEA.”⁵³ Read together, these two provisions include all trafficking survivors. However, USCIS has issued several RFEs and denials that supposedly cite the regulations but omit these two provisions, instead focusing solely on one of the five ways to establish physical presence.⁵⁴

Harmful Effects of USCIS’s Interpretation on Trafficking Survivors and LEAs

USCIS’s changing interpretation of the physical presence requirement—in tandem with other policies—has had devastating effects on trafficking survivors

and LEAs. Perhaps the most harmful policy for immigrant trafficking survivors enacted by the Trump administration was the implementation of the “NTA Memo” (Notice to Appear) in 2018, which greatly expanded the situations in which USCIS officers were directed to initiate immigration enforcement against individuals whose applications for relief were denied.⁵⁵ Prior to this memorandum, an undocumented trafficking survivor could apply for a T visa and not be put in removal proceedings if the application was denied. However, the NTA Memo, coupled with the staggering number of T visa denials under the previous administration, has resulted in trafficking survivors being put into removal proceedings and has discouraged other trafficking survivors from applying for T visas and reporting to law enforcement in the first place.

The Biden administration has issued a recent memorandum directing DHS to conduct a review of its policies and practices concerning immigration enforcement.⁵⁶ Part of this memorandum rescinded and superseded several prior DHS memoranda, including the 2018 NTA Memo.⁵⁷ Rescinding the NTA Memo was an important first step in removing barriers for trafficking survivors to obtain immigration relief. However, more changes are necessary to address the full scope of the harm inflicted by the previous administration. Trafficking survivors who had a legal consultation during the time that the NTA Memo was in place were often hesitant to apply for a T visa based on the heightened risk created by the NTA Memo, and may have lost years that they could have had legal status. Additionally, some survivors whose T visa applications were denied while the NTA Memo was in effect were placed in removal proceedings. Rescinding the NTA Memo does not have any immediate impact on their cases, and they still have to seek alternative forms of relief in immigration court, or face deportation.

Additionally, even though many trafficking survivors ultimately receive T visas after overcoming RFEs, both survivors and the immigration bar are still negatively affected by USCIS’s quiet revision of the legal requirements and increased number of RFEs. For T visa applications USCIS began issuing RFEs almost as a matter of course, many of which involve the physical presence requirement. Data provided by USCIS indicates that 6,027 T visa principal applications and 5,471 derivative applications were received between fiscal year (FY) 2015 and FY 2019, for a total of 11,498 applications.⁵⁸ According to data provided by the acting director of USCIS in September 2019, USCIS issued an overwhelming 7,063 RFEs to principal and derivative T applicants between FY 2015 and July 2019.⁵⁹ Responding to increased and frequently unnecessary RFEs burdens applicants and their legal representatives, who are often nonprofit legal service providers with limited resources.

Partially as a result of the increased number of RFEs, estimated processing times for T visa applications rose from less than 12 months in 2016 and 2017 to between 19 and 29 months by January 2021.⁶⁰ This delay in adjudication leaves trafficking survivors without status for significantly longer periods of time, which affects their ability to obtain employment authorization,

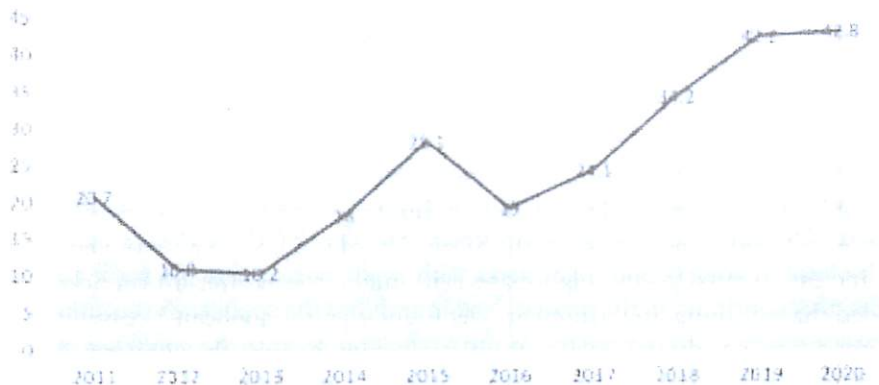
identification documents, and public benefits associated with T visa status. This leaves survivors vulnerable to future abuse and exploitation.

Adjudication delays are particularly problematic when the applicant is in removal proceedings. Starting in mid-2017, Attorneys General Sessions and Barr enacted policies to limit immigration judges' ability to grant continuances and requests for administrative closure in removal proceedings and imposed case completion quotas and time-based deadlines on cases.⁶¹ There have been reports of survivors with pending T visa applications or appeals being removed from the United States.⁶² Such actions eliminate their eligibility for T visa status, deny them due process, and leave them vulnerable to additional future abuse.

Of particular concern, the T visa denial rate also began to increase dramatically following the administration change in January 2017. The denial rate of adjudicated cases for survivors of trafficking for FY 2016 was 19 percent. In FY 2017, the denial rate rose to 24.1 percent. The trend has continued, with denial rates of 34.2 percent and 42.2 percent for FY 2018 and 2019, respectively. The denial rate for FY 2020 (the most current data available) is a record high of 42.8 percent (see Figure 1).⁶³ No explanation for this increase in denials has been provided by USCIS. Further, no published regulations, policies, or programmatic changes explain the increase in denial rates.

The combination of increased denials, the harmful changes mentioned above, and an increasingly hostile immigration environment has resulted in fewer reports by trafficking survivors to LEAs and applications for immigration relief.⁶⁴ According to research done by the American Civil Liberties Union and the National Immigrant Women's Advocacy Project, 64 percent of law enforcement officers surveyed said that human trafficking had become more difficult to investigate due to increasing immigration enforcement under the current administration. Additionally, 55 percent of prosecutors surveyed said that human trafficking is now underreported and harder to investigate and/or

Figure 1. Percentage of Adjudicated T Visa Cases That Received Denials by Fiscal Year



prosecute due to survivors' increased fear of immigration consequences.⁶⁵ The success of prosecutions also depends largely on the cooperation of survivors and their ability to remain in the United States. In human trafficking investigations and prosecutions, "the central piece of evidence is victim testimony. Indeed, often this may be the main or only evidence available. Even when other kinds of evidence are submitted, victim testimony is often necessary to explain them."⁶⁶

The chilling effect of these damaging changes is reflected in a decrease in T visa applications that were filed in 2019 and 2020. Based on the data available from FY 2019 and FY 2020, the number of T visa applications filed has decreased for two years in a row for the first time since 2008, when the available data set begins.⁶⁷

AAO Decisions

If a T visa application is denied, the trafficking survivor has the option of appealing the case to the AAO. Because of the high number of T visa denials in recent years, particularly denials relating to the physical presence requirement, physical presence has been the subject of many recent nonprecedential AAO decisions.⁶⁸ Notably, of the 50 AAO nonprecedential decisions about T visa applications in calendar year 2020, physical presence was mentioned in 26 decisions and was the basis of the appeal in 20 of the cases.⁶⁹ Despite several recent promising AAO decisions, many trafficking survivors are unable to obtain protection from the AAO due to the nonprecedential nature of these decisions, other contradictory decisions, a relatively low likelihood of success, and the costly fee.

Several of the AAO's recent nonprecedential decisions on physical presence have been promising. The agency has sustained or remanded several cases to USCIS to readjudicate the case correctly, by considering relevant factors that hinder an applicant's ability to apply for immigration relief, including the applicant's ongoing need for mental health and social services in the United States, financial hardship preventing the applicant from leaving the United States, and whether a delay in filing is due to the applicant's lack of knowledge of available legal services and his or her rights.⁷⁰

However, the AAO's decisions have been inconsistent, with some that appear to misinterpret the regulations⁷¹ and others that do not include an understanding of the lasting challenges that result from trafficking. For example, one decision recognized that the applicant "suffers from Generalized Anxiety Disorder and Posttraumatic Stress Disorder (PTSD) and experienced an increase in anxiety and nightmares with night sweats after his trafficking ended that continues to the present," yet found that the applicant's continued presence was not directly related to the trafficking because the applicant was financially supporting his family and had steady employment.⁷²

Based on an overview of data from the past several years, there is a low likelihood of success at the AAO. Between FY 2017 and FY 2020, the AAO adjudicated 152 appeals of I-914s, Application for T Nonimmigrant Status (16 in FY 2017, 47 in FY 2018, 52 in FY 2019, and 37 in FY 2020).⁷³ Of those appeals, 133 were dismissed (87.5 percent of the adjudicated appeals), one was sustained, and 18 were remanded back to USCIS for readjudication.⁷⁴ Additionally, of the 20 AAO decisions that focused on physical presence in calendar year 2020, 15 were dismissed and only 5 were remanded to USCIS.⁷⁵ Thus, although some recent AAO opinions have considered the challenges trafficking survivors experience and the need for specialized services, these cases represent only a handful of the hundreds of trafficking cases filed each year.

Further, the filing fee for an AAO appeal as of February 2021 is \$675, which is often impossible for a trafficking survivor to pay. While there is a possibility of filing a fee waiver application, the short appeal time frame and uncertainty of whether the fee waiver will be granted deters survivors from trying to get the fee waived. Although fee waivers were routinely granted by USCIS in the past, practitioners began reporting that fee waiver requests for their clients began getting denied with increasing frequency beginning in 2018. Fee waivers were even denied for applicants with no income, such as homeless individuals, minors, and individuals in immigration detention.⁷⁶

Additionally, there is no immigration protection during the T visa appeals process, and, as mentioned above, some T visa applicants have been deported while they were waiting for a decision on their appeal.⁷⁷ Given these obstacles, it is important for USCIS to realign its interpretation of the physical presence requirement with the language in the federal regulations and the TVPA so that trafficking survivors are able to obtain the relief they need without unnecessary delay.

Conclusion

USCIS's increasingly narrow interpretation of the physical presence requirement is contrary to law and regulations, and it erodes protections for trafficking survivors. Congress created the T visa to protect trafficking survivors and encourage them to cooperate with LEAs to hold traffickers accountable. However, USCIS's increasingly narrow interpretation of the physical presence requirement thwarts Congressional intent and exerts a chilling effect on both T visa applications and trafficking prosecutions.

The Biden administration should quickly reverse the harmful policies and practices that have left trafficking survivors vulnerable. Many of the changes made by the Trump administration happened quietly, escaping the attention of the media and the public. However, these insidious changes are preventing one of the most vulnerable populations in the United States—immigrant survivors of trafficking—from accessing the protections they are entitled to under the TVPA.

Notes

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1. INA § 101(a)(15)(T); 8 CFR § 214.11(g).

2. All names and identifying information have been changed to protect confidentiality.

3. The authors have chosen to use the language of survivor rather than victim, whenever possible. In direct quotes, the authors use the original language from the source.

4. Ayuda is a well-established provider of legal and social services to victims of human trafficking in Washington, DC, Virginia, and Maryland. With funding from the Department of Justice's Office for Victims of Crime (OVC), Ayuda has represented over 300 trafficking survivors since 2015. These survivors come from over 30 countries and include labor-trafficked domestic workers, immigrant youth forced to perform commercial sex or labor by family members, foreign-born women subjected to forced prostitution by gangs and others, and LGBTQ individuals whose traffickers threatened to have them deported to a country where they would face certain persecution.

5. U.S. Advisory Council on Human Trafficking, *Annual Report 2020*, www.state.gov/wp-content/uploads/2020/07/United-States-Advisory-Council-on-Human-Trafficking-2020-Annual-Report.pdf.

6. Complaint, *Doe v. Wolf et al.*, No. 3:20-cv-00481 (W.D.N.C. Oct. 28, 2020) (voluntarily dismissed after USCIS reopened and approved plaintiff's T visa application); Michael Gordon, *Lured to U.S. at 16, She Sought Visa for Trafficking Victims. Now She May Be Deported*, *The News & Observer* (Sept. 11, 2020), www.newsobserver.com/article245622580.html.

7. See U.S. Dep't of State, *Trafficking in Persons Report June 2019*, www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf; Kathryn

Finley, *Access to Justice in a Climate of Fear: New Hurdles and Barriers for Survivors of Human Trafficking and Domestic Violence*, Center for Migration Studies, <http://doi.org/10.14240/cmsesy012919>.

8. Louis Henkin et al., *Human Rights* 242 (2nd ed. 2009).

9. The United States signed the Palermo Protocol on December 13, 2000, and ratified it on November 3, 2005. See *United Nations Treaty Collection, Status of Treaties, 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (Nov. 15, 2000), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

10. *Id.*

11. See U.S. Dep't of State, Office to Monitor and Combat Trafficking in Persons, *3Ps: Prosecution, Protection, and Prevention*, www.state.gov/3ps-prosecution-protection-and-prevention/. See also Paula Renkiewicz, *Sweat Makes the Green Grass Grow: The Precarious Future of Qatar's Migrant Workers in the Run Up to the 2022 FIFA World Cup Under the Kafala System and Recommendations for Effective Reform*, 65 Am. U. L. Rev. 721, 737 (2016).

12. The TVPA increased the criminal sentences for trafficking crimes that already existed, including: 18 USC § 1581, peonage and obstructing enforcement; § 1582, providing vessels for the slave trade; § 1583, enticement into slavery; § 1584, sale into involuntary servitude; and § 1589, forced labor. Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 Fordham L. Rev. 2977, 2992 (2006). The TVPA added criminal statutes, including: 18 USC § 1590, trafficking with respect to peonage, slavery, involuntary servitude, or forced labor (knowingly recruiting, harboring, transporting, providing, or obtaining any person for labor or services); § 1591, sex trafficking of children by force, fraud, or coercion; § 1592, unlawful conduct with regard to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor (knowingly destroying, concealing, removing, confiscating, or possessing any passport or immigration document in the course of violating any of the prior statutes); and § 1594, attempting or conspiring to violate any of the prior statutes, and it provided for asset forfeiture and witness protection. Jennifer Sheldon-Sherman, *The Missing "P": Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 Penn St. L. Rev. 443, 471 n.7 at; Jennifer M. Chacón, at 2992.

13. Louis Henkin et al., at 242.

14. 18 USC § 1595 allows trafficking survivors to sue their traffickers for damages in federal court.

15. 22 USC § 7101(b)(20) ("Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.").

16. See, e.g., Jennifer Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 158 U. Penn. L. Rev. 1609 (2010).

17. 22 USC § 7102(11).

18. INA § 101(a)(15)(T).

19. 22 USC § 7102(11).

20. For example, the 2003 reauthorization raised the minimum age at which a trafficking victim is required to assist in investigations and prosecutions from 15 to 18 and broadened law enforcement cooperation to include participation in state and local investigations, rather than only federal investigations. Trafficking Victims Protection Reauthorization Act of 2003 [TVPRA 2003], Pub. L. No. 108-193 § 4(a)(4)(A), 117 Stat. 2875, 2878, codified at 18 USC § 1595. The 2008 reauthorization then added a “trauma exception” for survivors who are unable to participate in law enforcement investigation due to physical or psychological trauma. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 [TVPRA 2008], Pub. L. No. 110-457 § 201, 122 Stat. 5044, 5052, codified at 8 USC § 101(a)(15)(T)(i)(III)(bb). At the T visa adjustment of status stage, the original TVPA allowed for waiver of inadmissibility grounds for acts “caused by or incident to” the trafficking. The 2008 TVPRA built on this, and also allowed for waiver of acts “caused by or incident to” the trafficking when making a determination on the “good moral character” requirement for T visa adjustment of status. The 2013 reauthorization of the Violence Against Women Act (VAWA) increased the types of family members who are eligible to receive status as derivatives of T visa holders. Violence Against Women Reauthorization Act of 2013 [VAWA 2013], Pub. L. No. 113-4 § 1221, 127 Stat. 54, 144, codified at 8 USC § 101(a)(15)(T)(ii)(III). *See also* VAWA 2013 at § 809, 127 Stat. at 117 (for purposes of adjustment from T status, physical presence in the Commonwealth of the Northern Mariana Islands considered as equivalent to presence in the United States pursuant to admission in T status).

21. INA § 214(o)(2).

22. *See* <https://egov.uscis.gov/processing-times/historic-pt>, showing average processing times of 7.9 months in FY 2016 and 9 months in FY 2017.

23. *See, e.g.*, Victims of Trafficking and Violence Protection Act of 2000 [TVPA], Pub. L. No. 106-386 § 1513(a)(2)(B), 114 Stat. 1464, 1534 (“providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States”); *Hearing on the Implementation of the TVPA* (Serial 107-63), 107th Cong. 13 (2001) (“As the statute provides, the visa should be, in the first instance, a humanitarian visa, not one used only as a club to obtain the law enforcement cooperation from frightened and abused.”).

24. *See, e.g.*, Hussein Sadruddin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 Stan. L. & Pol’y Rev. 379, 381 (2005); Wendy Chapkis, *Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants*, 17 Gender & Soc’y 923 (2003).

25. Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. Rev. 158, 161 (2007).

26. Jennifer Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 158 U. Penn. L. Rev. 1609, 1615 (2010).

27. 8 CFR § 214.11(g)(1).

28. Matthew Hoppock, *AAO Grants T Visa Approval About Presence “On Account of” Trafficking*, Apr. 7, 2019, www.lexisnexis.com/legalnewsroom/immigration/b/insideneews/posts/aao-grants-t-visa-appeal-about-presence-on-account-of-trafficking.

29. In some cases, USCIS has issued RFEs when only a year had passed from when the applicant escaped until applying for a T visa.

30. 8 CFR § 214.11(g)(1)(ii).

31. 81 Fed. Reg. 92266, 92301-02 (Dec. 19, 2016).

32. Even when imposing this cutoff date, Congress included exceptions: “If the applicant misses the deadline, he or she must show that exceptional circumstances prevented him or her from filing in a timely manner. Exceptional circumstances may include severe trauma, either psychological or physical, that prevented the victim from applying within the allotted time.” 8 CFR § 214.11(d)(4) (2002).

33. 81 Fed. Reg. 92266, 92273, 92298 (Dec. 19, 2016).

34. 8 CFR § 214.11(g)(2).

35. 81 Fed. Reg. 92266, 92271, 92295-96, 92301-02 (Dec. 19, 2016).

36. 8 CFR § 214.11(g)(1)(iv).

37. The authors recognize this is a nonexhaustive list of reasons why an applicant may need to remain in the United States, but focus on these as common examples.

38. Colleen Owens et al., *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States* (Urban Institute ed., 2014) (“The lag in time between escape and connection with a service provider may be due to unsuccessful attempts to seek help or attempts by survivors to live hidden lives due to fear of traffickers and fear of being unauthorized.”).

39. “[I]n many parts of the United States, victims have limited access to service providers with specialized training in the psychological needs of trafficking victims [T]rauma-informed psychological services specifically for this population are still in development and difficult to access.” Am. Psychological Ass’n, *Report of the Task Force on Trafficking of Women and Girls* 5, 56 (2014), www.apa.org/pi/women/programs/trafficking/report.pdf.

40. *In Re 6246073* (AAO June 24, 2020).

41. www.dhs.gov/blue-campaign/victim-centered-approach.

42. Colleen Owens et al., *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States* (Urban Institute ed., 2014).

43. *Id.*

44. Denise Brennan, *Key Issues in the Resettlement of Formerly Trafficked Persons in the United States*, 158 U. Pa. L. Rev. 1581, 1601 (2010).

45. *In Re 6246073* (AAO June 24, 2020). *See also, e.g., Matter of D–A–A–* (AAO 2019) (finding that the applicant “continued in a situation of financial instability and debt”).

46. Gina’s trafficker was prosecuted for assault. Cooperation with an LEA can be in regard to a trafficking charge, or for other charges central to the trafficking such as rape, assault, or kidnapping. *See* 8 CFR § 214.11(b)(3) (an individual is eligible for T-1 nonimmigrant status if she demonstrates that she “has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime . . .”).

47. U.S. Dep’t of State, *Trafficking in Persons Report: 2017*, www.state.gov/reports/2017-trafficking-in-persons-report/.

48. 18 USC § 1593(b)(1).

49. U.S. Dep’t of State, *Trafficking in Persons Report: 2009*, <https://2009-2017.state.gov/j/tip/rls/tiprpt/2009/index.htm>.

50. The Human Trafficking Legal Center, *Federal Human Trafficking Civil Litigation: 15 Years of the Private Right of Action* 30 (2018), www.htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation-1.pdf.

51. 8 CFR 214.11(g)(1)(iv).

52. 8 CFR § 214.11(g)(1)(iii).

53. 8 CFR § 214.11(g)(1)(ii).

54. *See, e.g., Matter of R-B-A-* (AAO Oct. 31, 2019), “On appeal, the Applicant asserts that ‘there exists a strong causal connection between the trafficking and her current physical presence because 1) her traffickers brought her into the United States, 2) her traffickers subjected her to severe sex trafficking while inside the United States and 3) the trauma she suffered as a result of the trafficking relates to, and explains, her current physical presence in the United States.’ We acknowledge the psychological and emotional harm the Applicant suffered during her captivity. However, the Applicant’s statements do not demonstrate that her continuing presence in the United States is directly related to the original trafficking. While it is understandable that the Applicant suffered emotional and psychological trauma from the abuse, she has not described any direct relationship between her continuing physical presence in the United States and the original trafficking. Rather, the Applicant in her second statement explains that she now has two children and is actively involved with her church. The record contains her children’s birth certificates, which show that the Applicant’s older son with R-S-1 was born in 1997 and her younger son with R-S- was born in 2005. As stated in the Director’s decision, the Applicant has not provided a detailed description of the impact of her mental health conditions on her daily life activities and presence in the United States.”

55. USCIS Policy Memorandum, *Updated Guidance for the Referral of Cases and Issuance of Notice to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (June 28, 2018), AILA Doc. No. 18070539.

56. DHS Memorandum, *Review of and Interim Revisions to Civil Immigration Enforcement and Removal Policies and Priorities* (Jan. 20, 2021), www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf.

57. *Id.*

58. *See* Letter from USCIS Acting Director Ken Cuccinelli to Hon. Dianne Feinstein (Sept. 30, 2019), www.uscis.gov/sites/default/files/document/foia/T_visa_denials_-_Senator_Feinstein.pdf.

59. *Id.*

60. *See* <https://egov.uscis.gov/processing-times/>.

61. AILA Policy Brief, *Restoring Integrity and Independence to America’s Immigration Courts* (updated Jan. 24, 2020), AILA Doc. No. 18092834.

62. One of the authors had a client removed from the United States while their T visa application was pending. Other immigration attorneys have shared similar experiences with the authors.

63. The denial rate is calculated by dividing the number of denied applications for victims of trafficking (not including their family members) by the number of resolved applications (approved plus denied) in the time period considered. The data used is from USCIS, *Number of Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status Fiscal Years 2008-2020*, www.uscis.gov/sites/default/files/document/reports/I914t_visastatistics_fy2020_qtr4.pdf. Figure 1 was created by the authors in Microsoft Excel using the calculations and data identified above.

64. *See* U.S. Dep’t of State, *Trafficking in Persons Report* (June 2019), www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf; Kathryn Finley, *Access to Justice in a Climate of Fear: New Hurdles and Barriers for Survivors of Human Trafficking and Domestic Violence*, Center for Migration Studies (Jan. 29, 2019), <https://cmsny.org/publications/finley-climate-of-fear/>.

65. *Id.*

66. United Nations Office on Drugs and Crime, *Evidential Issues in Trafficking in Persons Cases* (2017), www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf.

67. See Letter from USCIS Acting Director Ken Cuccinelli to Hon. Dianne Feinstein (Sept. 30, 2019), www.uscis.gov/sites/default/files/document/reports/I914t_visa_statistics_fy2020_qtr4.pdf.

68. Between fiscal year (FY) 2017 and FY 2020, the AAO adjudicated 152 appeals of I-914s, Application for T Nonimmigrant Status (16 in FY 2017, 47 in FY 2018, 52 in FY 2019, and 37 in FY 2020). Of those appeals, 133 were dismissed (87.5% of the adjudicated appeals), 1 was sustained, and 18 were remanded back to the Vermont Service Center. There were 50 AAO decisions on T visa appeals in calendar year 2020 (all were nonprecedential decisions), www.uscis.gov/sites/default/files/document/data/AAO_Data_for_Publishing_Thru_FY20.pdf. All AAO decisions are available at www.uscis.gov/administrative-appeals/aao-decisions/aao-non-precedent-decisions.

69. Of the 2020 appeals, 21 focused on severe form of trafficking, 20 on physical presence, 7 on derivative eligibility, and 2 on inadmissibility issues. All AAO decisions are available at www.uscis.gov/administrative-appeals/aao-decisions/aao-non-precedent-decisions.

70. See, e.g., *In Re 6246073* (AAO June 24, 2020); *In Re 5600239* (AAO June 24, 2020).

71. See *Matter of S-L-H-*, ID# 4572861 (AAO July 29, 2019), which included analysis stating that applicants need to show that they are physically present under both 8 CFR § 214.11(g)(1)(iii) and 8 CFR § 214.11(g)(1)(iv), whereas the regulations state that the requirement reaches applicants who meet 8 CFR § 214.11(g)(1)(i), (ii), (iii), (iv), or (v).

72. *Matter of L-O-B-* (AAO 2018).

73. The authors analyzed all published T visa based AAO appeals from 2020 and looked at the outcomes and the subject matter focus of each appeal. This analysis revealed the information shared. All published AAO decisions can be accessed at www.uscis.gov/administrative-appeals/aao-decisions/aao-non-precedent-decisions.

74. *Id.*

75. *Id.*

76. Letter from Cecilia Friedman Levin, ASISTA, to Maureen Dunn, Chief, Family Immigration and Victim Protection Division, USCIS, re: Request for USCIS to Provide Clarification on Fee Waiver Practice for Humanitarian Unit at Vermont Service Center, https://drive.google.com/file/d/1Sq_CtrhuAiiKGayzT9wQld3ZglmFffK/view.

77. See *Matter of O-R-H-* (AAO Apr. 2019) (AAO did not address trafficking because applicant was removed from the United States in 2018 while the appeal was pending); *Matter of V-E-M-I-* (AAO Apr. 2019) (although appeal was based on severe form of trafficking, AAO affirmed appeal as applicant was no longer physically present since that person was removed in 2018 after the denial of a withholding of removal).