

T Visas: Trends and Policy Issues

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Outline

- I. What is the T visa and why was it created?
- II. Eligibility and Application Process
- III. Recent Policy Changes
- IV. State Laws
- IV. Statistics and Trends
- V. Policy Concerns
- VI. Potential Reforms

T Visa Benefit

- Allows stay of up to 4 yrs
 - Protection from deportation
 - Work permit
- Access to services and welfare benefits
- Visas for family members
- Path to green card (for those eligible)

- Administered by US Citizenship & Immigration Services (Under DHS)
- Cap of 5,000 per year

Who is Eligible?

- Victims of a “severe form of trafficking
- Physically present in U.S. due to trafficking
- Would suffer “extreme” hardship if removed
- Helpful to law enforcement (or exempt)
 - Minors exempt
 - Severely traumatized/unable to help
- Must be “admissible” ie no crimes, immigration fraud, national security risk. Waivers sometimes available.

Application Process

- Initiated by victim or someone acting on behalf of victim (usually lawyer)
- May request *optional* endorsement from law enforcement agency (Form I-914B)
- Waiting time currently is at least 18 months for processing

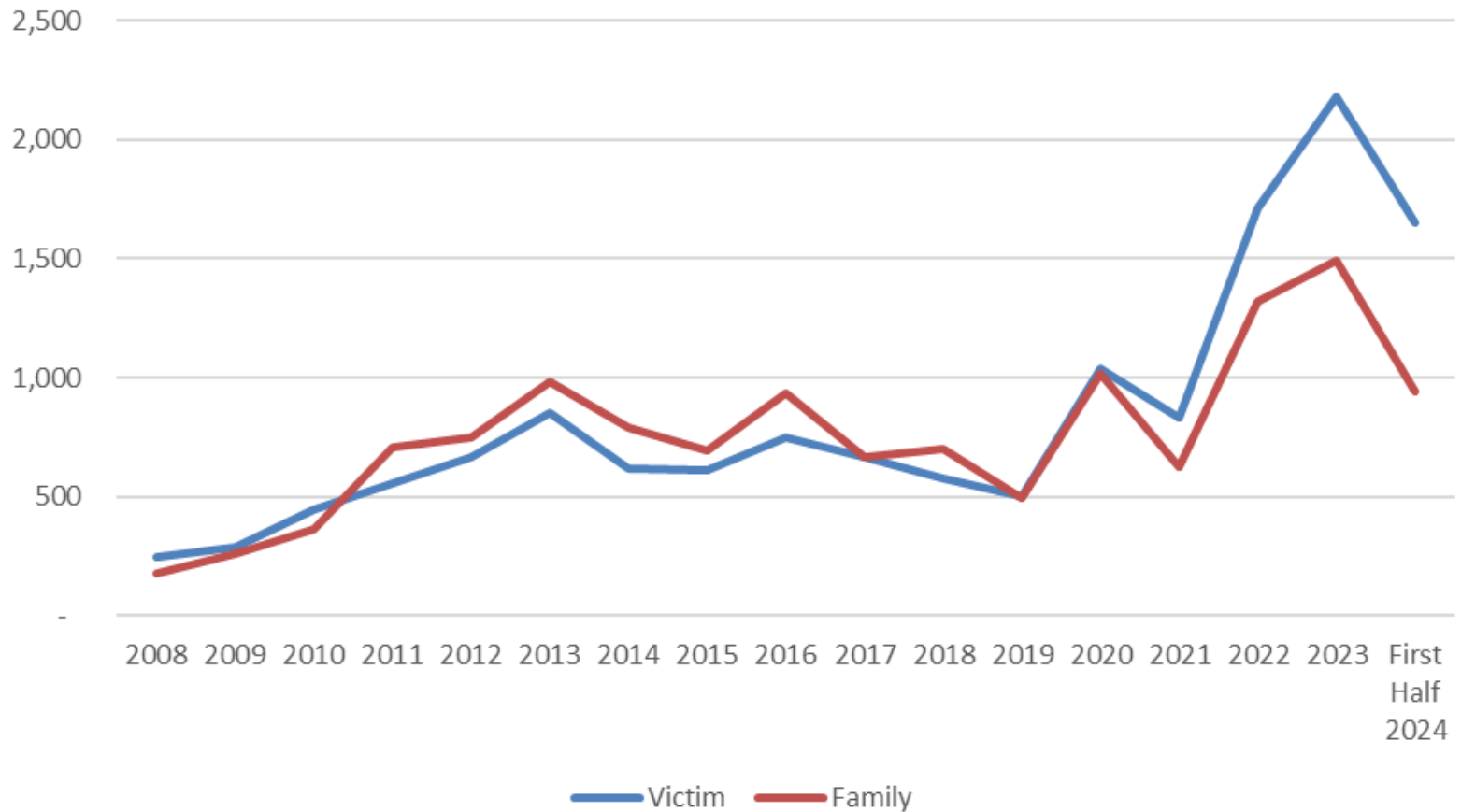
Considerations before endorsing

- Law enforcement agency endorsing has jurisdiction
- An actual crime happened and will be investigated/prosecuted
- Victim will cooperate (unless exempt)
- **DO A BACKGROUND CHECK BEFORE ENDORSING**

T Visa Applications: 2008-2024



T Visa Approvals: Victims and Family Members



Reasons for applications spike

- More incidents of trafficking occurring due to loose border policies
- Since 2021, USCIS is no longer able to issue immigration charging documents (NTAs) to denied applicants. In other words, there are no consequences for failed, fraudulent, or frivolous applications.
- OSHA has been given authority to certify applicants in cases of labor violations.

Continued Presence

- Established because of T visa backlog
- Offers immediate access to deportation protection, services and benefits
- Must be initiated by a law enforcement agency directly to ICE
- Administered by ICE's Law Enforcement Parole Board
- Can be withdrawn if victim is not cooperative

New Regulation Effective August 2024

- For applications filed after 8/28/24
- USCIS will establish a “Bonafide Determination” process (BFD)
- Applications will pass BFD if complete, signed, and have no national security issues detected.
- No other background check performed
- No fraud assessment, no eligibility determination
- Immediate access to work permit, welfare, visas for family
- No need for law enforcement endorsement

New definitions/standards

- Applicants must show only that they “contacted” LEA (not necessarily report crime, be interviewed, or seek investigation of a crime)
- “Extreme hardship” can be simply declaring less economic opportunity in home country
- Any labor or OSHA violation = “severe” form of trafficking
- Trafficking need not have occurred recently
- No background checks

Between the lenient new rules and existing concerns and problems in the T visa program, it is fair to ask whether the program is actually helping address the problem of human trafficking and aiding in the prosecution of severe forms of trafficking.

Concerns

- Only 2/3 of lawyers/advocates report case to a law enforcement agency
- Of those reported, only 2/3 will be interviewed by a LEO
- 84% of applications w/o LEA endorsement are approved by USCIS anyway
- 69% of LEAs rarely or never sign endorsements
- Overall denial rate approx. 20% currently

Examples of Currently Approvable Cases

- Applicant entered illegally in 1988. Applied for T visa in 2022, claiming he had worked roofing jobs years ago and employer had stiffed him, threatening to call immigration authorities.
- Applicant entered illegally in 1995 after paying a smuggler. Smuggler made applicant cook for other migrants in the stash house for a week, until family paid additional smuggling fee.
- Visa overstayer worked in a restaurant, was told she would be a waitress but actually had to wash dishes and clean bathrooms.

Similarities to U Visa Problems

- Cap of 10,000 per year, now 20,000+ applicants per year, leading to 10 year backlog (300K pending)
- Serious fraud problems
- Many LEAs asked to certify will decline
- Majority of LEAs surveyed say program does not help in prosecution of crimes and does more harm than good.
- **TRUE QUALIFYING VICTIMS HAVE TO WAIT IN LINE BEHIND FRIVOLOUS APPLICANTS**

Certifying Agency Best Practice

- Don't sign blindly or under pressure!
- Develop 2-way trust with advocates
- Be aware of incentives for abuse.
- Determine that the requestor is a victim of a *qualifying* crime.
- Evaluate whether the alien is likely to be helpful in investigation or prosecution of that crime and notify USCIS if requestor is not helpful.
- Do a background check and inform USCIS and ICE of any known criminal or gang activity.
- Alert USCIS and ICE of any suspected fraud.

State Laws on T Visas

- Certain states (incl Calif., Ill., Md., NY & others) have passed laws creating a deadline for LEAs to act on requests for endorsement and/or provide a reason for denials. These requirements do not exist in federal law and may be unenforceable.
- States SHOULD
 - Centralize training for certifying LEOs
 - Create a state review board to sign off
 - Track endorsements and prosecutions
 - Create penalties for fraud

Federal Regulatory Options

- Clarify “helpfulness” requirement
 - eg “not refusing help” unequal to “helping”
- Clarify definitions on victimization, hardship, etc
- Reinstigate background check by LEAs
- Enhanced scrutiny to those without LE endorsements
- Scrap BFD and work permit issuance before eligibility is determined
- Resume issuing NTAs to failed applicants

Legislative Reforms

- Create a LE certification/endorsement process
- Statute of limitations
- Define and mandate “helpfulness,” with exceptions

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