Immigration and Human Trafficking:

Legal Remedies and Practice Tips for Attorneys Representing Immigrant Survivors

Hosted by Maryland Volunteer Lawyers Service
Our Speakers Today

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AGENDA

• Introduction to Tahirih
• Identifying Foreign Born Survivors of Trafficking
• Federal Trafficking Laws
• T Visa Overview
TAHIRIH’S MISSION

We protect courageous immigrant women and girls who refuse to be victims of violence. By elevating their voices in communities, courts, and Congress, we are creating a world where all women and girls enjoy equality and live in safety and with dignity.
Nearly 25,000 immigrant women and children served since 1997

Represent survivors of gender-based violence for immigration protection under U.S. law

Award-winning pro bono program, with a longstanding 99% litigation success rate and 65-70% of cases co-counseled

A cutting edge leader on public policy advocacy on issues affecting immigrant women and girls

Five offices: Greater Washington DC, Baltimore MD, Houston TX, San Francisco Bay Area CA, Atlanta GA
PRO BONO PROGRAM
SNAPSHOT

“**I was attracted by the close attorney mentoring and co-counsel relationships Tahirih fosters with outside counsel.**”

Lisanne Crowley, Troutman Sanders LLP

“This experience reminded us of why we went into the legal profession and renewed our passion to serve those in need.”

Erin Troy and Grace Hsieh, K&L Gates

99% SUCCESS RATE

• **Reliable Screening** Tahirih comprehensively screens all cases prior to acceptance and placement with a pro bono attorney.

• **Training and Access to Comprehensive Resources** Tahirih provides manuals, samples and templates to guide pro bono attorneys.

• **E-Library** Tahirih provides template and sample case materials available online.

• **Hands-on Mentorship and Support** An experienced Tahirih attorney is assigned to co-counsel each case and provide ongoing technical assistance for the duration of the cases.

• **Holistic Services** Tahirih offers clients case management support for shelter, medical and other legal and non-legal needs.

• **Malpractice Insurance** Tahirih provides malpractice insurance to our pro bono attorneys

99% SUCCESS RATE
FOREIGN NATIONAL VICTIMS OF TRAFFICKING...

arrive from other countries, but experience the trafficking in the U.S.; they do not have citizenship or lawful permanent resident status within the U.S.

- National Human Trafficking Hotline reports over 10k cases of HT in 2018 (of identified cases, 1237/2736 were foreign nationals)

- Globally, it is estimated 20-40 million HT victims, according to the International Labor Organization
HUMAN TRAFFICKING IN MARYLAND

• According to the National Human Trafficking Hotline, in 2018 they received 165 reports of human trafficking in Maryland.
  • Labor: 31
  • Sex: 109
  • Sex & Labor: 11
  • Type not specified: 14

• Top Venues: (labor) domestic work, peddling rings, travelling sales crews, restaurant food/service, hospitality; (sex) illicit spa, hotel/motel, escort services, residence-based commercial sex

• Demographics (of reported): 27/46 foreign national, 107/129 female, 78/119 adults
WHERE TO FIND TRAFFICKING OF FOREIGN NATIONALS?

- Domestic services
- Embassies
- In servile marriages
- Construction
- Factories
- Agricultural fields
- Laundromats
- Motel housekeeping
- Massage parlors
- Hair and nail salons
- Strip clubs
- Brothels

POTENTIALLY ANYWHERE!
ADDITIONAL CHALLENGES

• Language barrier
• Fear of deportation
• Lack of familiarity with:
  • Geography
  • Available social and legal services
• Fear of police
• Fear that traffickers will harm relatives in home country
• Lack of support network in US
• Lack of work authorization
• Lack of identity documents
• Trauma
CASE EXAMPLE

Fatoumata came to the United States from Mali on a tourist visa and remained in Maryland after her visa expired. She was working odd jobs in order to support herself and send money to her mother in Mali when she met and started dating Ousman, a fellow Malian. Ousman ran a small construction contracting company and offered Fatoumata a steady and well paid job with his business with the condition that she would move in with him. Feeling like she had no choice, Fatoumata agreed.

Once she moved in, Ousman took her passport and cell phone and told her that, in addition to working for his company, she would have to cook, clean the house, do his laundry and that he would not pay her because those tasks were her duty as his partner. Ousman would regularly rape her and threatened to harm her mother in Mali if she did not comply with his demands or if she called the police. Fatoumata is still living with Ousman. Fatoumata was recently injured when he beat her yesterday and she is now in your office.

What challenges does Fatoumata face? What should you do next?
HOLISTIC CASE ASSESSMENT

• Safety
  • Confidentiality
  • Medical Care
  • Basic Needs: Housing/Shelter, Food, Clothes and goods, Transportation
  • Legal Services
  • Case Coordination with social services providers
  • Refugee Benefits
  • Coordination with Law Enforcement
  • Mental/Behavioral Health Services
  • Education
  • Employment and job skills
  • Cultural/Linguistic Specific Barriers
HOW DO YOU IDENTIFY A VICTIM OF HT?

• Shares a scripted or inconsistent history
• Is unwilling or hesitant to answer questions about the injury or illness
• Is accompanied by an individual who does not let them speak for themselves, refuses to let them have privacy, or who interprets for them
• Evidence of controlling or dominating relationships (excessive concerns about pleasing a family member, romantic partner, or employer)
• Demonstrates fearful or nervous behavior or avoids eye contact
• Is resistant to assistance or demonstrates hostile behavior
• Is unable to provide his/her address
• Is not aware of his/her location, the current date, or time
• Is not in possession of his/her identification documents
• Is not in control of his or her own money
• Is not being paid or wages are withheld
• No adequate health care
• School-age but not going to school

Credit: National Human Trafficking Hotline, https://humantraffickinghotline.org/
INDICATORS OF LABOR TRAFFICKING

• Has been abused at work or threatened with harm by an employer or supervisor
• Is not allowed to take adequate breaks, food, or water while at work
• Is not provided with adequate personal protective equipment for hazardous work
• Was recruited for different work than he/she is currently doing
• Is required to live in housing provided by employer
• Has a debt to employer or recruiter that he/she cannot pay off

Credit: National Human Trafficking Hotline, https://humantraffickinghotline.org/
INDICATORS OF SEX TRAFFICKING

• Individual is under the age of 18 and is involved in the commercial sex industry

• Has tattoos or other forms of branding, such as tattoos that say, “Daddy,” “Property of...,” “For sale,” etc.

• Reports an unusually high numbers of sexual partners

• Does not have appropriate clothing for the weather or venue

• Uses language common in the commercial sex industry

Credit: National Human Trafficking Hotline, https://humantraffickinghotline.org/
IMMIGRATION PROTECTIONS FOR FOREIGN BORN VICTIMS OF HUMAN TRAFFICKING

• T Nonimmigrant Status/Visa
  • Exclusively for victims of human trafficking

• U Nonimmigrant Status/Visa
  • For victims of certain crimes, including sex and labor trafficking
T Non-Immigrant Status (T Visa)
TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (TVPA)

"Victims of human trafficking are subjected to force, fraud or coercion for the purpose of commercial sex or labor"

"Foreign victims of a severe form of trafficking in persons are eligible for federally funded benefits and services to the same extent as refugees"
T NON-IMMIGRANT STATUS ELIGIBILITY

Applicant:

• is or has been a victim of a severe form of trafficking, including attempted trafficking

• is physically present in the United States on account of trafficking

• complied with any reasonable request for assistance in the investigation or prosecution (if over 18)*

• would suffer extreme hardship involving unusual and severe harm if removed from the United States

• *Exception for those unable to cooperate due to physical and psychological trauma - INA 101 § (a)(15)(T)(i)(III)(bb).
UNIQUE CHARACTERISTICS OF T VISA CASES

• Filed with specialized unit at Vermont Service Center

• Strong confidentiality provisions under VAWA
  • 8 U.S.C. § 1367 and 8 U.S.C. 1229(e)

• Historically, a minimal risk of referral to immigration court

• “Any credible evidence” standard applies
ANY CREDIBLE EVIDENCE STANDARD

• Burden of proof is a preponderance of the evidence
• Standard of evidence is “any credible evidence,” an intentionally lower threshold that USCIS must consider any credible evidence.
  • Promulgated by Congress with the knowledge that survivors of domestic and sexual violence, among other trauma survivors, may not have access to traditional sources of primary evidence
TVPA (2000) DEFINITION – SEVERE FORMS OF HUMAN TRAFFICKING

22 U.S. Code § 7102 (9)

(A) 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

(B) 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.
(5) debt bondage - the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.
FEDERAL DEFINITIONS

(6) Involuntary servitude - condition of servitude induced by means of

(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B) the abuse or threatened abuse of the legal process.
VICTIMS ARE RECRUITED AND KEPT UNDER CONTROL THROUGH:

**Force**
- Physical assault (e.g. beatings)
- Sexual assault (e.g. rape)
- Physical constraint, confinement
- Starvation
- Drugs

**Fraud**
- False and deceptive offers of employment, education, romance, marriage or better life

**Coercion**
- Threats of harm to the victim, victims family or another person
- Psychological coercion
- Threatened abuse of the legal system
TRAFFICKING VS. SMUGGLING

• Definition of Smuggling: to knowingly encourage, induce, assist, abet, or aid any other alien to enter or try to enter the United States in violation of law

• Key Differences Between Trafficking and Smuggling:
  • Smuggling is typically voluntary, lacks coercion
  • Perception of smuggled persons as criminals, trafficked persons as victims
  • Crossing of border required for smuggling, not trafficking

• What begins as smuggling may evolve into human trafficking!
ASSISTED LAW ENFORCEMENT

- Trafficking must be reported to relevant law enforcement or investigating agencies, including the DOJ, FBI, ICE, DOL, or local/state law enforcement.
- Success of the investigation and/or prosecution does not affect eligibility.
- A law enforcement certification is helpful, but not required. A formal investigation is not necessary for the law enforcement agency to sign a certification.
- Applicants under 18 and those unable to cooperate due to physical or psychological trauma are exempt from this requirement.
DOCUMENTING EFFORTS TO ASSIST

• All evidence for a T visa application is subject to the “any credible evidence” standard.

• Evidence of helpfulness may include:
  • Signed Form I-914, Supplement B, Declaration of Law Enforcement Officer from investigating agency (DOJ, FBI, ICE, DOL)
  • Continued Presence Approval
  • Applicant’s statement explaining efforts to cooperate
  • Letters or other correspondence detailing efforts to obtain I-914B or client’s cooperation
COOPERATION EXCEPTION DUE TO PHYSICAL OR PSYCHOLOGICAL TRAUMA

Legal Arguments:
- Client is unable to comply/cooperate
- Client is at risk of suffering future trauma/re-traumatization
- It is unreasonable for client to comply/cooperate

Evidence:
- Client Declaration (include any attempts to comply/cooperate)
- Evidence of Trauma (medical records, therapy letter/records)
- Independent psychological evaluation
PHYSICALLY PRESENT ON ACCOUNT OF TRAFFICKING

• Applicant is present in the US, or at a port of entry, on account of the trafficking
  • Initial entry does not have to be related to the trafficking

• Continuing presence in the US since trafficking occurred is directly related to the original trafficking (including any exit/reentry)
EXTREME HARDSHIP FACTORS

• Focus on the victim’s age and personal circumstances, including:
  • Services she receives in the US (mental health, medical) that would not be available in the home country
  • Likelihood that trafficker would retaliate
  • Need for access to justice in US courts
  • Likelihood of re-victimization or penalization of victim in home country

• Corroborate with evidence of country conditions
• NOT economic harm/lack of opportunity
A T visa applicant may be inadmissible for many reasons, including:

- Criminal history
- Engaging in prostitution
- Prior misrepresentations to federal immigration authorities
- Entering the U.S. without inspection
- Receiving an order of exclusion, deportation or removal
- Medical issues

Note: Trafficking victims are exempt from the public charge ground of inadmissibility
**I-192 WAIVER**

- DHS has the discretion to waive any ground of inadmissibility for T visa applicants (with the exception of terrorism, international child abduction, and renouncing citizenship to avoid taxation) if activities leading to such grounds were caused by, or incident to, the acts of trafficking.

- Use USCIS Form I-192
  - For minor grounds (e.g., EWI) only the form is required; for more serious grounds additional explanation and evidence may be required.
  - Fee waiver available for $545 filing fee.

- Note: the primary applicant and all derivatives must be admissible.
BENEFITS OF THE T VISA

- Legal status and work authorization for four years
- Eligible for same public benefits as a refugee, including TVAP during process
- Can petition for derivatives (I-914 Supplement A)
  - For applicants under 21: spouse, children, parents and unmarried siblings < 18 years
  - For applicants 21 or older: spouse, children, or any parent or unmarried sibling who faces danger of retaliation from trafficker
- Can apply to adjust status to Lawful Permanent Resident ("green card") after three years or upon conclusion of investigation and prosecution of criminal case
- Continued presence (next slide)
BENEFITS: CONTINUED PRESENCE (CP)

• Temporary immigration relief which allows trafficking survivors to remain in the U.S. in order to aid the investigation and prosecution of a case

• CP is commonly used when:
  • Survivor only wishes to remain in the U.S. for brief period of time for medical care, etc.;
  • Government will not sign I-914B until after a prosecution.

• Only a federal law enforcement agency can request CP, and it is granted at the Dept. of Homeland Security’s discretion
ADJUSTMENT OF STATUS

A T nonimmigrant seeking to adjust her status must show:

• She is a T nonimmigrant with current T nonimmigrant status;
• She has been physically present in the US for three years or for a continuous period during the investigation or prosecution of the trafficking, which is complete;
• She complied with reasonable requests for assistance to law enforcement as certified by the DOJ or would suffer extreme hardship upon removal;
• She has been a person of good moral character since being granted T nonimmigrant status; and
• She is admissible to the US as a lawful permanent resident
LOCAL RESOURCES

• Law Enforcement Agencies
  • Local Police Departments and 911 for Emergencies

• Legal Services
  • Tahirih, Ayuda, Catholic Charities

• Housing/Shelters
  • TurnAround, Safe House of Hope

• Medical and Mental Health Services
  • University of MD SAFE Center, BCRI, Catholic Charities/Esperanza

• Food Pantries
  • My Sister’s Place, Our Daily Bread

• Trafficking Programs
  • UMD Safe Center, Ayuda, Catholic Charities, Maryland Human Trafficking Initiative

Helpful Numbers with 24-Hour Availability:

• National Human Trafficking Hotline: 1.888.373.7888

• National Center for Missing and Exploited Children: 1.800.846.5678

• Law Enforcement
QUESTIONS?

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Tell us what you think in our post-webinar survey!

We’d love to hear from you, so we can improve.
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FREE Upcoming Training & Volunteer Opportunities:

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- **Oct. 8th** – What’s New at the Maryland Comptroller’s Office.
- **Oct. 10th** – Building a Case: Discovery & Evidence Gathering in District Court Collections.

Go to [mvlslaw.org/events](http://mvlslaw.org/events) for more info!
Thank you!

For more information about the Human Trafficking Prevention Project, please contact us at:

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